

to show that the business, so far as it was carried on by the liquidator, was not carried on legitimately for the purposes of the winding up.

A question was raised in the first argument (not, I think, in the second) as to the power of a liquidator to pledge, as security for a loan contracted by him, not merely realised assets of the company, but even the liability of members of the company for calls; such liability being, it was argued, assets of the company within the meaning of the section.

The facts of the present case do not give rise to such a question; for the realised assets of the company, divided among the shareholders in pursuance of the resolution referred to by him, stand on a different footing from the liability to calls on shares in the company, and are in any case, I think, assets within the meaning of the section.

It is not necessary to determine the question whether the principle of *Baroness Wenlock's* case applies to the present. But I may say that had it been necessary, I should myself have been prepared to hold that that case did apply.

Appeal allowed.

Attorneys for the appellants: Messrs. *Morgan & Co.*

Attorneys for the respondents: Messrs. *Gregory & Jones.*

A. A. C.

REFERENCE FROM THE BOARD OF REVENUE.

*Before Sir W. Comer Petheram, Knight, Chief Justice, Mr. Justice Pigot,
and Mr. Justice O'Kinealy.*

IN THE MATTER OF QUEEN-EMPRESS *v.* TRAILAKYA NATH
BARAL.*

1890.
July, 30.

*Stamp Act (I of 1879), ss. 3 (10), 61—Instruments "duly stamped"—
Rule 5 (b) of the rules made by the Governor-General in Council under
Notification No. 1283 of 3rd March 1882.*

The absence of the certificate required by rule 5 (b) of the rules, dated 3rd March 1882, issued by the Governor-General in Council under

* Reference from the Board of Revenue under section 46 of the Indian Stamp Act, made by K. G. Gupta, Esq., Secretary, Revenue Board, dated the 7th of July 1890.

1890 sections 9, 15, 17, 32, 51, and 56 of the Indian Stamp Act (I of 1879) does not make the document in question not "duly stamped" within the intention of the Stamp Act.

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The non-compliance by the treasury officer or the stamp vendor with the direction to give such a certificate is not an act for which the person purchasing the stamp from him can be punished, by the invalidation of the stamp innocently bought by him, or under section 61 of the Indian Stamp Act.

THIS was a reference to the High Court by the Board of Revenue under section 46 of the Indian Stamp Act (I of 1879) in the following terms:—

"A deed of conveyance was written on two impressed sheets—one of Rs. 200 and the other of Rs. 90. On the consideration set forth, Rs. 27,345, the proper stamp duty was Rs. 275, and as Rs. 290 had been paid, the deed, it will appear, was more than sufficiently stamped. Nevertheless, the Collector of Maldah, before whom it was presented, impounded it on the ground that it did not bear the treasury officer's endorsement as laid down in rule 5 (b) of the rules issued by the Governor-General in Council under Notification No. 1288, dated 3rd March 1882 (page 82 of the Board's Stamp Manual, 1889), certifying that the number of sheets used was the smallest available, and that therefore the deed was not 'duly stamped' within the meaning of section 3 (10) of the Act. The Collector further called upon the executant to pay Rs. 275 as stamp duty and Rs. 5 as penalty, and on the latter's failure to do so, ordered his prosecution under section 61. The Deputy Magistrate who tried the case convicted the accused and sentenced him to a fine of Rs. 10.

"The Collector, being dissatisfied with this decision, referred the case for the orders of the Board through the Commissioner, contending that the Magistrate trying the case was bound to include in the fine the amount of stamp duty due, viz. Rs. 275. Both the Commissioner and the Board did not concur in this view, and the Board expressed an opinion that it was probably incorrect to treat the deed as not 'duly stamped' under section 3 (10) of the Indian Stamp Act, 1879, referring to a decision of the Madras High Court (Full Bench) reported in the Indian Law Reports, Madras series, volume VIII, page 532. The Collector in reply asks that the question whether the document is to be held to be 'duly

stamped' or not may be referred to the High Court under section 46, and the Commissioner supports the request. Hence the present reference.

"The case before the Madras High Court was very analogous to this case, though the point at issue was not precisely the same, and the Board, for the reasons set forth by the majority of the Judges in that case, are of opinion that this document ought to be held to be duly stamped. The precise point on which the Board asks for a ruling is whether the absence of the certificate required by rule 5 (b) of the rules issued by the Governor-General in Council in the notification of the 3rd March 1882 makes the document in question 'not duly stamped' under the Indian Stamp Act of 1879."

Rule 5 (b) is as follows:—

"When the amount of duty chargeable in respect of any instrument exceeds one hundred rupees, or a treasury officer or stamp vendor has certified under clause (a) that he is unable to furnish a single stamp of the required value, the number of sheets used for indicating the payment of duty shall not exceed the number for which the treasury officer or the stamp vendor certifies in either case to be the smallest number which he can furnish so as to make up the required amount."

The *Advocate-General* (Sir Charles Paul) appeared for the Government upon the reference.

The judgment of the Court (PETHERAM, C.J., and PIGOT and O'KINEALY, J.J.) was delivered by—

PIGOT, J. (PETHERAM, C.J., and O'KINEALY, J., concurring)—
We think that the question put to us at the end of the 4th paragraph of this reference must be answered in the negative, and that the absence of the certificate required by rule 5 (b) of the rules issued by the Governor-General in Council does not make the document in question "not duly stamped" within the intention of the Stamp Act. It is not necessary for us to express an opinion as to the exact scope of the direction contained in that rule. Whether or not it is a purely administrative order, directory as addressed to the treasury officer or to the stamp vendor, or whether it be also intended for the protection from inconvenience, or what not, of the person applying for the stamps, in neither case can it, in our judgment, be held that the non-compliance by the treasury officer or the stamp vendor with the

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direction to give such a certificate is an act for which the person purchasing the stamp from him can be punished by the invalidation of the stamps innocently bought by him. So long as the proper stamp is obtained and paid for by him, as was the case in this instance, he is, we think, unaffected by the operation of that rule. We are not aware, nor probably does the matter come strictly before us, of the exigencies which, in the opinion of the Collector under some rule issued, as he supposes, probably correctly, by the Board of Revenue, rendered it his duty to institute this astonishing prosecution directed against a person who had done all required of him by law, and even paid Rs. 15 more than the stamp required from him by law.

We would earnestly invite attention to the question whether the rules and directions issued by the Board of Revenue are, in truth, of such a stringent nature as to compel the Collector, who of course did, as he understood it, his duty, and no more, to institute this prosecution under the impression that he was bound to do so. If so, it seems obvious that such rules should be corrected.

As to the prosecution, we have already intimated our opinion—an opinion in which the learned Advocate-General, as might be expected from him, cordially joins—that the matter ought to be sent to the Criminal Bench for their consideration in case the learned Judges sitting on it should think proper to take notice of the case. If so, perhaps the stigma of a criminal conviction under such circumstances may not be allowed to remain upon Trailakya Nath Baral, the subject of that prosecution.

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 September 3.

On the matter coming before the Criminal Bench, the Court (PETHERAM, C.J., and RAMPINI, J.) delivered the following judgment:—

We think that for the reasons given in the judgment of this Court, dated the 30th July last, the document executed by the accused was duly stamped, and that therefore the accused has not committed any offence punishable under section 61, Act I of 1879. We accordingly set aside his conviction and the sentence inflicted upon him. The fine, if paid, must be returned to him.

Conviction quashed.