

REFERENCE BY THE BOARD OF REVENUE.

*Before Sir Lawrence H. Jenkins, K.C.I.E., Chief Justice, Mr. Justice Doss
and Mr. Justice Chatterjee.*

1910
June 8.

*In re BURN & CO.**

Stamp-duty—Money received by servant of a firm and handed over to fellow-servant—Consideration—Acknowledgment of receipt by fellow-servant of a sum larger than Rs. 20, if liable to stamp-duty—Stamp Act (II of 1899), s. 2 (23), Sch. I, Art. 53

Where a sum exceeding Rs. 20 was received by an assistant in a mercantile firm from the cashier of the firm as advance made on the firm's behalf, and to be expended on the firm's behalf, and previous to disbursement of the sum in question a pay-order was made out by the Accounts Department of the firm and was sent to the cashier who had paid the sum to the assistant, and the assistant at the same time acknowledged receipt by signing his name or initials on the pay-order :—

Held, that the acknowledgment did not require a receipt-stamp by reason of the assistant's signature on the pay-order.

Attorney-General v. Carlton Bank (1) distinguished.

REFERENCE by the Board of Revenue.

The statement of case was as follows :—

" Sums exceeding Rs. 20 were received by four assistants of the firm of Messrs. Burn and Company from the cashier of the firm as advances made on the firm's behalf, and to be expended on the firm's behalf on account of export charges, (*i.e.*, freight, cooly hire, etc., for material despatched), purchase of postage stamps, expenses of a journey undertaken for the firm's work, and cost of erection of certain sheds.

Previously to disbursement of the sums in question, pay-orders were made out by the Accounts Department of the firm and were sent to the cashier, who paid the sums to the assistants. At the same time the assistants acknowledged receipt by signing their names or initials on the pay orders, in some cases also writing the word "Received" on the pay order.

Stamps were not affixed on these documents.

Proceedings were initiated by the Collector of Stamps, Calcutta, against the four assistants on the ground that they had given receipts for money which should have been stamped under the Stamp Law. It was contended on their behalf that the moneys were not paid to them for their personal use, but that

*Reference by the Board of Revenue under s. 57 (I) of the Indian Stamp Act, 1899.

the payments were made without consideration, and were, therefore, exempt from stamp-duty under Exemption (b) to Article 53 of Schedule I of the General Stamp Act. The Collector, however, held that the payments had not been made without consideration. He was of opinion that the words 'without consideration' used in the Exemption in the Act apply only to such payments as are made from natural love and affection, or voluntarily as gifts, gratuities and the like. In lieu of prosecuting before a Magistrate under s. 70 (2) of the Stamp Act, he allowed composition, on payment of penalties, of the offences which he held had been committed against the Act.

The cases were then brought to the notice of the Board of Revenue, who referred them for the opinion of the Law Officers of Government. The Law Officers advised that the documents in question were receipts within the definition contained in s. 2 (23) of the Stamp Act, and that the payments for which the receipts were given were not made without consideration. They advised that the consideration for which the receipts were given may probably be taken to be a promise by the payees that they would employ the money paid in the business, or for the purposes, of their employers, the payers, or some consideration of the same nature. The receipts were clearly meant to be acquittances, and unless such a promise, as above indicated, can be considered as implied, the payers could not afterwards be called upon to account for the moneys. Such a promise, it was argued, is clearly a good consideration in law.

The Board accepted the opinion of the Law Officers.

Opportunity, however, was afterwards afforded by the Board to Messrs. Burn & Co. for argument of the case, as it has been urged, on their behalf, that before the payments were made there was no legal obligation in respect of these payments as between Messrs. Burn & Co. and their assistants, and that the acknowledgments given by the assistants cannot, therefore, be held to be acquittances; that the payment of the money conferred no benefit upon the assistants; that the contract or consideration was unilateral; that there was no consideration so far as the Company is concerned. The undertaking was by the assistant to use the money, and account for it. There was no acquittance of the cashier, as the cashier might have paid against order, or without authority. The cashier is merely the agent of the firm. The payments were purely voluntary payments of the firm's money; they were merely a transfer from one department to another department of the office, and the receipts are merely a part of the machinery of the firm's office. The case of *Attorney-General v. Carlton Bank* (1) was cited, and attention was called to the judgment of Lord Chief Justice Russell, and to the statement made on behalf of the Crown in that case, to the effect that the multiform invoices used in large shops, for the purpose of identifying the particular clerks through whose hands money passes, do not require to be separately stamped (under English law), because they are not intended as a discharge to the respective clerks, and are not retained in their possession, but are intended merely to simplify the business of book-keeping.

On the other hand, the learned Government Solicitor also relied on the English case quoted as a clear and strong authority (i) that the documents

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in question are receipts within the meaning of the Stamp Law, and (ii) on the question of intention of the Legislature. He urged that the judgment in the English case laid down in very clear and emphatic terms that no special canons of construction should be applied to a revenue or taxing Act, and that the intention in construing such, as all other Acts, must be gathered from the "language employed, having regard to the context in connection with which it is employed," and that "it is not open to the Court to narrow or whittle down the operation of the Act by seeming considerations of hardship, or of business convenience or the like."

At the same time the Government Solicitor pointed out that a strict application of the principle involved in the English case may be of far-reaching effect as regards the practice of the commercial community, and may be considered to necessitate a revolution of the existing practice involving much inconvenience in the working of the internal machinery of offices and businesses. While accepting, as above stated, the opinion of the Law Officers, the Board consider that the question, whether exemption-clause (b) to Article 53 of the Stamp Act was or was not applicable in the present cases, is of such importance as to render it expedient that a ruling of the Hon'ble High Court should be obtained."

The Advocate-General (Mr. Kenrick, K.C.), for the Board of Revenue, contended that the documents in question were undoubtedly acknowledgments given in respect of the receipt of money, and were, therefore, receipts for money within the meaning of the Stamp Act, and as such were liable to the stamp-duty imposed by that Act. They were not exempted from duty under Schedule I, Article 53 (b), which exempts from liability to duty any payment of money made without consideration.

Payment by the cashier of a firm, to a servant or agent, of money to be applied to specific purposes on behalf of the firm, could not be regarded legally as money paid without consideration. The mere fact of a gratuitous bailee undertaking to hand over money to a third person was sufficient to raise an implication of consideration. Consideration in English law means some profit or advantage to the one party, or some detriment, disadvantage or liability incurred by the other party: see the definition of consideration in *Misa v. Currie* (1). In the present case the cashier, acting on behalf of the firm in requiring a stamp receipt for money handed to an assistant to

be laid out for the purposes of the firm, would acquire the advantage of an evidentiary document which would be valuable for purposes of account. Moreover, the assistant in receiving the money impliedly undertook to expend it for the purposes of the firm, and incurred a liability to account for its due and proper expenditure which could be enforced by action. He was, in fact, in the position of a gratuitous bailee, and the law imports the doctrine of consideration into every bailment. In the legal sense, therefore, there was consideration, and the transaction could not properly be viewed as a payment without consideration so as to be exempt from stamp duty : *Attorney-General v. Carlton Bank* (1) referred to.

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Mr. B. Chakravarti, for Messrs. Burn & Co. The argument of the learned Advocate-General is based on a total misconception of the true nature of the transaction. Sums of money have been made over by the cashier of the firm to its various assistants for facility of business and for meeting its liabilities to various creditors. And until paid out to the creditors, the money continues to be the money of the firm and in its possession, although distributed amongst several servants of the firm for the efficient carrying out of its business. It is like putting money by a person in several safes in his house, and the so called receipts in this case may be well compared to keeping a note of the contents of each safe. Further, what are the relations between the firm on the one hand and its servants on the other in respect of the sums made over to them in the circumstances of this case ? The servants are in no sense the debtors of the firm in respect of these sums ; their liability, if any, in this respect, arises from the subsisting relationship of master and servant. As between the assistants and the cashier, the documents under consideration cannot properly be called acquittances. They are merely memoranda and not discharges. Further, how can it be said that there was any contract between them ? The absurdity of the whole thing was quite apparent from the difficulty my learned friend found in answering your

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Lordship's questions as to what the consideration was, and from whom it moved and to whom. Why should the Revenue Authorities expect to be paid more than once in respect of one and the same transaction? Proper stamp is of course paid on sums paid out by the firm to outsiders and creditors. The case of *Attorney-General v. Carlton Bank* (1) is distinguishable. The English statute makes no provision for exemption for payments made without consideration. Then, the money in that case did not come into the possession of the Bank until Coxwell made it over to the Bank.

JENKINS C.J. This is a case which has been referred to this Court under section 57 of the Indian Stamp Act, and though the case submits, for our consideration, several documents termed pay orders, it has been agreed by the contending parties that we should express our opinion as to the liability to stamp-duty of one only of these documents, and that this opinion should be treated as governing the rest.

The document selected for this purpose is in these terms :—

"BURN & CO., LD., HOWRAH, Pay Order 8684
In favour of Mr. J. C. Hinde.
 Account—*Export Cash.*

PARTICULARS.	Rs.	A.	P.	SIGNATURE OF PAYEE.
	To amount of freight for export charges on Orders Nos. 11085, 11138, 3783, 3577, 2632 ...	70	0	
Received Rs. 70 (seventy only), C. JONES—20-6-1908. Rupees seventy only. J. C. HINDE.	70	0	0	Entd. C. B. Folio 20-6-1908.

Passed for under rupees seventy-one only.

Exmd.—J. N. M.
 Dated the 20th June 1908.
 Pay rupees seventy only.
 Annas—*Nil.* Pies—*Nil.*

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“ Orders Nos. 11085, 11138, 3783, 3577, 2632.
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Accounts —

Mr. RIBBINS,

Please issue a pay order for Rs. 70 (seventy only) being freight on the above orders.

The 19th June 1908.

C. JONES.

The 19th June 1908.

J. C. HINDE.”

According to the statement submitted for our opinion, what happened in the ordinary course of the Company's business was this.

“Previously to disbursement of the sums in question, pay orders were made out by the Accounts Department of the firm and were sent to the cashier, who paid the sums to the assistants. At the same time the assistants acknowledged receipt by signing their names or initials on the pay orders, in some cases also writing the word “Received” on the pay order.”

It will be seen that in the pay order I have read, C. Jones wrote his name below the words “Received Rs. 70 (seventy only).” This, it is said, is a receipt which requires to be stamped under the Indian Stamp Act. The provisions of that Act which are directly applicable are section 2 (23) and Article 53 in the first Schedule. It is provided by section 2 (23) that a receipt includes (among other things) any note, memorandum, or writing whereby any money is acknowledged to have been received, while Article 53 exempts from duty a receipt for any payment of money without consideration. The argument for the Board is briefly this :—Money was received by the assistant from the cashier ; this was acknowledged by a writing ; and the payment of the money was not without consideration. Consideration, it was said, moved between the cashier and the assistant, and there was a contract between these two servants of the Company. But this argument appears to me to give the go-bye to the realities of the case, and to concentrate attention on one feature of the transaction without regard to the rest.

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Now, what was the transaction? The Company owed money to a creditor, and for the purpose of discharging this liability, the Company's money was handed by the Company's cashier, its custodian, to the Company's assistant in order that he might hand it over to the creditor. Until the money was handed over to the creditor, it throughout continued to be the Company's money and to be in the Company's possession, though its custody was at one time with one of its servants and at another time with another: *Rex v. Paradise* (1) and *Rex v. Murray* (2). It loses sight of the true relations between those concerned to say that there was a contract between the cashier and the assistant, or that consideration moved between them: for the purpose of the matter in hand, they were parts of the machinery whereby the business of a large concern has to be carried on; and the signature by C. Jones was but a useful expedient for the purposes of the internal economy of the Company's business, affording a means of identifying the assistant through whose hands the Company's money passed for payment to the Company's creditor.

The Advocate-General has relied strongly on *Attorney-General v. Carlton Bank* (3), and has, indeed, suggested that it covers this case. But that decision is clearly distinguishable. It was a decision on the English Stamp Act, 1891, in which there is no provision, as there is in the Indian Act, for exemption when payment is made without consideration. And it is further to be noticed that there the money, for payment of which the acknowledgments were given, was received by C. S. Coxwell from customers of the Bank and handed over by him to the Bank, so that the money did not come into the Bank's possession until handed over by Coxwell. In the opinion of the Lord Chief Justice, when Coxwell handed over the moneys to the Bank, he, in fact, was paying a debt (see at p. 164), and the receipt was given by the Bank. Here, however, it would be impossible to hold that there was the relation of debtor and creditor, either between the assistant and the

(1) (1766) 2 East P. C. 565.

(2) (1830) 1 Moody C. C. 276.

(3) [1899] 2 Q. B. 153.

cashier, as was argued by the Advocate-General, or as between the assistant and his employer, the Company.

At the same time it is significant that the Lord Chief Justice gave a manifest indication of opinion, as to which the Solicitor-General on behalf of the Crown assented, that the multiform invoices in large shops for the purpose of identifying the particular clerk through whose hands money passed did not require to be stamped.

It has been urged that the case is one of great importance to the Board of Revenue, but its importance probably lies not so much in the direction of the possibility of increasing the receipt of revenue as of embarrassing the conduct of business, for were we constrained to decide in the Board's favour, it is not unreasonable to suppose that these signatures would not be taken. But these are considerations with which we have no concern. Our duty is to construe the Act and apply it to the transaction under consideration, and so doing, we hold that the document submitted for our consideration does not require a receipt stamp by reason of C. Jones' signature thereon.

By the agreement of counsel this decision will govern the case as to the other documents.

DOSS AND CHATTERJEE JJ. concurred.

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