courtkutchehry.com

Company : CourtKutchehry
Website : www.courtkutchehry.com
Printed For :
Date : 12/08/2026

(1903) 02 CAL CK 0014

In the Calcutta High Court

Case No : Civil Reference No. 1 of 1903

In Re: Reference Under the Indian Stamp Act, 1899

Date of Decision : 23-02-1903

Acts Referred:

Citation : (1903) 02 CAL CK 0014

Judgement

Sir Francis W. Maclean, K.C.I.E., C.J.—Two points have been referred to us by the Board of Revenue-first, whether certain documents which are annexed to the statement of the case are bills-of-lading within the meaning of the Stamp Act of 1899 and as such, liable to stamp duty under that Act; and secondly, whether, in those cases where for an increased payment the Company takes all risk they are liable to be stamped as policies of sea-insurance under that Act.

2. Upon the first point, I think these documents are bills-of-lading within the meaning of the Act. It is said they are not, because they do not relate to the carriage of goods by a "seagoing vessel," but to inland navigation only. They come within the definition of a bill-of-lading as laid down by Lord Bramwell in the case of Sewell v. Burdick (1884) L.R. 10 A.C. 74, 105. I do not think that the fact that they relate to the carriage of goods by inland navigation can alter the nature and character of the document. We have been referred to a passage in Smith''s Mercantile Law, in which a doubt is expressed whether a bill-of-lading, properly so called, be not confined to a marine adventure and whether an instrument so worded given by a boat-master in a canal navigation would operate in any way except as a receipt or memorandum and reference is made to the case of Bryans v. Nix (1889) 4 M. and W. 775. The judgment in that case hardly supports this view. Baron Park, in delivering the judgment of the Court in that case, says : "We think it unnecessary to decide whether the instruments were ; regular bills-of-lading, so as to have all the properties which the A custom of merchants has attached to these documents. We need not say, whether, like bills-of-lading, they are the symbols of property, so that their transfer by endorsement is equivalent to an actual delivery of the goods, which they represent in specie; nor whether they have the privileges which by the Factors Act are given to such instruments."

Downloaded from CourtKutchehry — https://dev.courtkutchehry.com/judgments/in-re-reference-under-the-indian-…

3. A vast amount of trade is carried on over the inland navigation of India, as compared with that of England and we may fairly take this into consideration.

4. In my opinion stamp duty was payable upon these documents as bills-of-lading.

5. As regards the second point, I do not think it is. These documents are not policies of sea-insurance. Stamp duty can only be claimed under Article 47A of Schedule I to the Stamp Act, which says : "Policy of Insurance-A. Sea-Insurance (see Section 7)."

6. If we look at Section 7, that section says : "No contract for sea-insurance shall be valid unless the same is expressed in a sea-policy," and it tells us what a sea-policy must contain. Can we say that this document is a sea-policy? I think not. Having regard to the last sub-section of Sub-section 20 of Section 2, this document cannot be put higher than a contract for sea-insurance. That sub-section says : "Where any person, in consideration of any sum of money paid or to be paid for additional freight or otherwise, agrees to take upon himself any risk attending good s, merchandise or property of any description whatever, while on board of any ship or vessel, or engages to indemnify the owner of any such goods, merchandise or property from any risk, loss or damage, such agreement or engagement shall be deemed to be a contract for sea-insurance." This is what has occurred in the present case. A contract for sea-insurance is one thing and a policy of sea-insurance is another. As I have pointed out, under Article 47A, the stamp duty is payable" only upon a policy of sea-insurance u/s 7 and this document does not come within that section. An Act of this nature must be construed strictly.

7. In my opinion stamp duty is not payable on these documents as policies of sea-insurance.

Stevens J.

8. I am of the same opinion.

Geidt J.

9. I am also of the same opinion.

Downloaded from CourtKutchehry — https://dev.courtkutchehry.com/judgments/in-re-reference-under-the-indian-…