

(1928) 06 CAL CK 0025
In the Calcutta High Court
In Re: Stamp Act

Date of Decision : 12-06-1928

Acts Referred:

Stamp Act, 1899 — Section 57

Citation : AIR 1928 Cal 566

Hon'ble Judges : Rankin, C.J.;Suhrawardy, J;Mukherji, J;Mukerji, J;Cammiade, J;B.B. Ghose, J

Bench : Full Bench

Judgement

Rankin, C.J.—This is a Reference made to us under the provisions of Section 57, Stamp Act. It would appear that certain, instruments were presented on behalf of the holder for adjudication as to whether it was necessary that they should be stamped u/s 19, Stamp Act. The documents of which three in number are before us may be sufficiently exemplified by choosing one of the three. The one which I shall choose is a document in the form in which bills of exchange are accustomed to be couched. It is headed "Imperial Bank of India." It is addressed from Calcutta. It is signed as drawer by the Secretary and Treasurer and the Accountant of the Imperial Bank of India. It is addressed to the Imperial Bank of India, Lahore, as the addressee or drawee and it is made payable to a third party, the Commercial Syndicate Ltd. or order. It will be observed, upon a strict reading of the instrument, that there are two parties and only two parties—the Imperial Bank of India on the one hand and the payee, the Commercial Syndicate Ltd., on the other. The question is whether these instruments are required to be stamped by virtue of the terms of the Stamp Act as amended recently by the Finance Act, 1927, and I shall discuss first whether this instrument is a bill-of-exchange within the meaning of the phrase as it is used in the Stamp Act. If it is a bill-of-exchange, then as by its express terms it is payable on demand, it is prima facie freed from stamp duty by the amendment introduced by the Finance Act (5 of 1927).

2. When we come to consider the question whether it is a bill-of-exchange, we have to refer to Clause 2, Section 2, Stamp Act. By that clause "bill-of-exchange" is defined as meaning

a bill-of-exchange as defined by the Negotiable Instruments Act, 1881 and includes also a hundi, and any other document entitling or purporting to entitle any person, whether named therein or not, to payment by any other person or, or to draw upon any other person for, any sum of money.

3. Now, the first question is whether this document is a bill-of-exchange as defined by the Negotiable Instruments Act, 1881, and, on that question, we have to look to Section 5 of the Act. We find that a bill-of-exchange is defined there as an instrument in writing containing an unconditional order, signed by the maker directing a certain person to pay a certain sum of money only to or to the order of a certain person or to the bearer of the instrument.

4. This definition may be contrasted with the definition contained in Section 3 of the English Bills of Exchange Act, 1882 (45 and 46 Vic. 61) whereunder an instrument to be a bill-of-exchange must be an unconditional order in writing, addressed by the person to another, signed by the person giving it, requiring the person to whom it is addressed to pay on demand or at a fixed or determinable future time a sum certain in money to, or to the order of, a specified person or to bearer. It is to be observed that, whereas in the English Act express provision is made by Sub-section 2, Section 5, for the case where in a bill the drawer and the drawee are the same person, namely, that the holder may treat the instrument either as a bill-of-exchange or as a promissory note; the Indian statute, which has not expressly required that the instrument in order to be a bill-of-exchange must needs be addressed by one person to another, nevertheless contains a provision in Section 17 that where an instrument may be construed either as a promissory note or a bill-of-exchange the holder may at his election treat it as either, and the instrument shall thenceforward be treated accordingly. So far as the first part of the wording of Sub-section 2, Section 2, Stamp Act of 1899 is concerned, the question whether the document before us is a bill-of-exchange as defined by the Negotiable Instruments Act, 1881 raises certain considerations. It is, in my judgment, a case which is governed by Section 17, Negotiable Instruments Act, in the sense that it would be open to the holder to treat the document as a promissory note. But I must emphatically decline to say that it is made out to my satisfaction that the instrument itself is not a bill-of-exchange within the definition given by Section 5 of that Act. Indeed if this were so the case would not come u/s 17 at all and in my judgment the reason why the definition in Section 5 does not include the requirement that the drawee should be a different person from the drawer a requirement which had long been insisted upon in English case-law is because the intention was that this kind of document should with other cases be dealt with by the general provision made by Section 17. To imply this requirement and thus insert it into the definition of "bill-of-exchange" seems to me to spoil the draftsman's work.

5. However, let us proceed further to the definition given by the Stamp Act. There we find, that, for the purposes of the Stamp Act, a document is a bill-of-exchange, even although it be not so within the definition in the Negotiable

Instruments Act, if it be a document entitling or purporting to entitle any person, whether named therein or not, to payment by any other person of any sum of money.

6. Now, these words which conclude Sub-section 2, Section 2, Stamp Act, are modelled upon or taken from the provisions of a section which in the English Stamp Act of 1891 (54 and 55 Victoria, Ch. 39) stands as Section 32 and it appears that in the previous English Stamp Act, 1870 it stood as Section 48. It has been held in cases in England, to which I will refer, that the language which I have quoted cannot be taken literally because the language is so wide that it might include all sorts of instruments which are not for any purpose capable of being called or classed as bills-of-exchange. It has been pointed out that a mortgage or a lease may be a document entitling a person to payment by another person of a sum of money. Hence, in the present case, we have, to - consider whether any difficulty that may arise upon the definition in Section 5, Negotiable Instruments Act, is or is not removed by the concluding words of Sub-section 2, Section 2, Stamp Act.

7. Now, on the strength to which those words may legitimately be carried, certain cases have been cited to us and there are two cases to which our attention has been drawn which appear to me to afford some assistance. These cases are illustrations on either side of the line. In the case of *Fisher v. Calvert* [1879] 27 W.R. 301 where a person entitled to a sum of money under a will signed a document purporting to authorize and direct the trustee of the will to pay a certain sum of money to a creditor, it was held that although that instrument was within the literal meaning of the wider language used by the English Stamp Act, the case was not one which could be intended to be covered by the expression "bill-of-exchange" even for the purpose of a Stamp Act. The instrument in question in that case was really in the nature of an equitable assignment by way of charge of the right to receive a sum of money under the will; in other words, it was not a document of the general character which was in the contemplation of the legislature while using the wide language to which I have referred. On the other hand, in the case of *Rothschild & Sons v. Commissioners of Inland Revenue* [1894] 2 Q.B. 142 we have an illustration of an instrument which was not a bill-of-exchange in the technical sense, but was held to come within the extension of the usual definition which is operated by the Stamp Act. In that case a certain foreign Government had issued bonds and had issued interest coupons for ten years. As part of the same document, there was what was called talon, namely, a document stating that interest coupons for another ten years would be forthcoming at the end of ten years. The question arose whether these interest coupons were liable to duty as being bills-of-exchange and it was held that, although the documents merely stated that interest would be paid at a certain time and place and were not bills of exchange within the legal definition of that phrase, nevertheless they did come within the more general language by which the Stamp Act had extended the definition.

8. Now, as I have stated already, I am not prepared to say that these instruments are not bills-of-exchange within the definition of the Negotiable Instruments Act, but I am without any difficulty prepared to say that they do come within the extension which the Indian Stamp Act by Clause 2, Section 2, has put upon the usual definition. We are not here concerned with an equitable assignment or anything foreign to the nature of bill-of-exchange. The document before us is a document of a mercantile character which has all the appearance of a bill-of-exchange. On the face, it is a bill-of-exchange. In any case the holder can treat it as a bill-of-exchange. It is just such a document as may well be drawn within the concluding terms of Sub-section 2 without running any risk of going beyond the intention of the legislature. In my judgment this document is a bill-of-exchange which is payable on demand.

9. Two cases of this Court have been cited : Kishori Chand Surana v. Asharam Mahato 19 C.W.N. 1326 and Assaram v. Kishari Chand [1915] 22 C.L.J. 22. Both cases had reference to Sahajogi hundies which were attested and were drawn by a firm upon itself. Mookerjee, J., held that the instrument before him did not fall within the wider definition of "bill-of-exchange" given by Sub-section 2, Section 2, Stamp Act. I cannot say that it is evident to me that the document before him was not one

entitling any person whether named therein or not, to payment by any other person of any sum of money,

but his reasons may have been based upon the fact that in a Sahajogi hundi the holder must be a "respectable holder." He also held that it was clear that the document was not a promissory note as it contained no unconditional promise to pay. Fletcher, J., in the earlier case, had held a similar document to be an attested promissory note which for the reasons given later by Mookerjee, J., seems to me to be wrong. He over-looked the statutory provision made in Section 17, Negotiable Instruments Act. In both oases the documents were held to be "bonds," and in this way the claim of the plaintiff succeeded on payment of duty and penalty u/s 35. It will be observed that Fletcher, J., applied Section 6, Stamp Act, and admitted the document u/s 35, although he found that it was a promissory note because h was also a "bond."

10. In the present case the question which we have to answer seems to me to be this: Can it be said that this document which is a bill-of-exchange and which is not dutiable as such because it is payable on demand is nevertheless dutiable as being a promissory note? The Stamp Act contains no extension applicable to this, document of the definition of "promissory note" given by Section 4, Negotiable Instruments Act, and unless this document be

an instrument in writing containing an unconditional undertaking signed by the maker to pay a certain sum of money only to or to the order of a certain person or to the bearer of the instrument

it is not a promissory note. This is not a ease u/s 6, Stamp Act, of an instrument

conning within two descriptions so as to be chargeable with different duties.

11. It has been pointed out to us that there are English decisions which say that instruments such as this contain all the essentials of a promissory note, *Miller v. Thompson* [1842] 3 M. G. 576 and *Allen v. Sea Fire & Insurance Co.* [1850] 9 C.B. 574. These cases proceed on the ground that

there is an absence of the circumstances of there being two distinct parties as drawer and drawee, which is essential to the constitution of a bill-of-exchange. That being so the only alternative is, that this instrument is a promissory note (per Tindal, C.J., in the former case).

12. The Law on this point, so far as we are concerned is declared now in the Negotiable Instruments Act. The document may imply but it does not express any promise to pay, though it is covered by Section 17, It is for the Court to show that the language of Section 19, Stamp Act, clearly covers it. Now that the intention to exempt bills-of-exchange payable on demand is clear, we have to see whether it is consistent with the intention of the statute that it should be dutiable as a promissory note though it is a bill-of-exchange within the Stamp Act and is payable on demand. Under the Negotiable Instruments Act it is in form a bill-of-exchange and it may be treated as a bill-of-exchange. It does not seem to me to be at all plain that this document which can claim now exemption under its proper category should be treated under the Act as dutiable under another category to which it never may belong. I think we should answer this Reference by saying that demand drafts such are described therein are exempt from stamp duty. No order as to costs.

Suhrawardy, J.

13. I agree.

B.B. Ghose, J.

14. I agree.

Mukerji, J.

15. I agree.

Cammiade, J.

16. I agree.