

**In Re: Preference from a District Judge Under Section 49 of the General Stamp Act.**

**In Re: Preference from a District Judge Under Section 49 of the General Stamp Act.**

**SooperKanoon Citation :** [sooperkanoon.com/774163](http://sooperkanoon.com/774163)

**Court :** Chennai

**Decided On :** Feb-20-1882

**Reported in :** (1884)ILR5Mad18

**Judge :** Charles A. Turner, Kt., C.J., ;Innes, ;Kernan, ;Kindersley and ;Muttusami Ayyar, JJ.

**Appellant :** In Re: Preference from a District Judge Under Section 49 of the General Stamp Act.

**Judgement :**

Charles A. Turner, Kt., C.J., Innes, Kernan, Kindersley and Muttusami Ayyar, JJ.

1. The District Judge refers the question 'Whether a certificate of sale is to be stamped as a conveyance for a consideration equal to the purchase-money (No. 16 of Schedule I) in cases where existing encumbrances are reserved.'

2. If it were necessary to determine the construction of Section 24, we should be inclined to hold that the view taken by the Board of Revenue in their Proceedings, dated 6th July 1881, and 21st September 1881, (a) is erroneous.

3. The stamp duty on a conveyance is assessed on the consideration for the conveyance.

4. A conveyance may be made in consideration of a present payment of money or delivery of stock or of a debt or of an undertaking in the future to pay money or deliver stock.

5. Where there is such an undertaking the property is transferred subject to the payment.

6. Where the property is under mortgage, the property is subject to the charge, but the transfer is not necessarily subject to the charge; it becomes so if it be accompanied by an undertaking to discharge the mortgage.

7. This undertaking is in whole or in part the consideration.

8. Where there is no such undertaking, the mortgage debt cannot be regarded as forming any part of the consideration for the transfer.

9. The stamp duty payable on a certificate of sale is, however, governed by this section, but by the express provisions of clause 16, Schedule I, which declare the amount of the purchase-money is the measure of the consideration on which duty is payable

(a) A sale certificate having been issued under the Civil Procedure Code upon a 5-rupee stamp when property was sold for Rs. 451 subject to a previous mortgage of 25,000 rupees, the Registrar was of opinion that, under Section 25 of the Indian Stamp Act, the previous mortgage debt should be considered part of the consideration and the stamp duty calculated on 2,951 rupees. The document before presentation to the Registrar was taken to the Head Assistant Collector under the provisions of Section 30 of the Stamp Act. That officer endorsed on the document that it was properly stamped. The Sub-Registrar, before whom the document was produced, considered himself bound by this certificate.

The Resolution of the Board of Revenue was as follows:

The Board agree in the view taken by the Registrar and consider the document to be insufficiently stamped.

The decision of the Head Assistant Collector being ultra vires was not binding upon the Sub-Registrar.

**SooperKanoon - India's Premier Online Legal Search - [sooperkanoon.com](http://sooperkanoon.com)**