In Re: Burn and Co.

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Court : Kolkata

Decided On : Jun-08-1910

Reported in : (1910)ILR37Cal634

Judge : Lawrence H. Jenkins, C.J., ;Doss and ;Chatterjee, JJ.

Appellant : In Re: Burn and Co.

Judgement :

Lawrence H. Jenkins, C.J.

1. 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.

2. 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.

Passed for under rupees seventy-one only.

PARTICULARS.	Rs.	A.	P.	SIGNATURE OF PAYEE.
To amount of freight for export charges on Orders Nos. 11085, 11138, 3783, 3577, 2632 ...	70	0	0	
				Pay.
				(Initials illegible).
				20-6-1908.
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.

Exmd.-J.N.M.

Dated the 20th June 1908.

Pay rupees seventy only.

Annas-Nil. Pies--Nil.

Orders Nos. 11085, 11138, 3783, 3577, 2632.

Pay order.

19-6-1908.

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. T.C. Hinde.

3. 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.

4. 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.

5. 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. Paradice (1766) 2 East P.C. 565 and Rex v. Murray (1830) 1 Moody C.C. 276. 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 ware 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.

6. The Advocate-General has relied strongly on Attorney-General v. Carlton Bank [1899] 2 Q.B. 158, 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. Section 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 cashier, as was argued by the Advocate-General, or as between the assistant and his employer, the Company.

7. 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.

8. 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.

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

Doss and Chatterjee, JJ.

10. concurred.