

In Re: Arthur Paul Benthall

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Court : Kolkata

Decided On : Jun-27-1952

Reported in : AIR1952Cal815,57CWN323

Judge : Chakravartti, C.J., ; Das and ; S.R. Das Gupta, JJ.

Acts : [Stamp Act, 1899](#) - Sections 5, 6 and 31 - Schedule - Article 48

Appellant : In Re: Arthur Paul Benthall

Advocate for Def. : S.M. Basu, Adv. General of West Bengal

Advocate for Pet/Ap. : H.N. Sanyal and ; B. Das, Advs.

Judgement :

Chakravartti, C.J.

1. This is a Reference under Section 57, Stamp Act and came to be made in the following circumstances.

2. On 4-7-1949, Messrs. Orr, Dignam & Co., writing as Solicitors for the Bengal Chamber of Commerce, forwarded to the Collector of Customs Calcutta, a draft Power of Attorney, purporting to relate to an intended grant from one Mr. A. P. Benthall in favour of two persons, named D. C. Fairburn and J. J. B. Sutherland. The power conferred by the document was a general power, authorising the attorneys to act jointly and severally in the name of the executant and on his

behalf in his individual capacity as also in his capacity as Director, Managing Director, Agent, Managing Agent and Liquidator of any company in which he was or might in future be interested and further, as Executor, Administrator or Trustee or in any capacity whatever as occasion might require. The Solicitors requested the Collector to adjudicate the stamp duty payable on the document under Section 31 of the Act but added that if he did not agree that the duty chargeable was Rs. 10, he should refer the question to the Board of Revenue. In due course the Collector made a reference to the Board and while the matter was pending, the Solicitors addressed a letter to the Board in which they set out their reasons for the view that the duty chargeable was Rs. 10. This time they added that if the Board disagreed with them, it should make reference to the High Court under Section 57 of the Act.

3. The decision of the Board was communicated to the Collector in a letter dated 20-1-1950. The Board held that Benthall, in his personal and his representative capacities, was not the same person and since there was also no community of any kind between the different interests in respect of which power was intended to be delegated, delegation of power in respect of the personal interest and such delegation in respect of the fiduciary or representative interests did not constitute one transaction, but were "distinct matters" within the meaning of Section 5, Stamp Act. Accordingly, the Board held that stamp duty was payable on the document for as many respective capacities as those in which the executant was executing it. The Board declined to make a reference to the High Court because it did not feel any doubt as to the correctness of its decision and also because it thought that since it was not clear in what kind of transactions the agents would be actually called upon to act, the question was an abstract question about which no reference could be made.

4. Benthall next moved this Court under Article 226, Constitution of India for the issue of writs of certiorari and mandamus on the Board of Revenue for the purpose of bringing up the records of the proceedings and quashing the determination and for requiring the Board to state a case for the decision of the question by this Court. A rule nisi issued on that application was, however, eventually discharged by S. R. Das Gupta J. and the application dismissed. The

learned Judge held that the view taken by the Board was plainly right and as there was no serious question of law which required decision by this Court, the Board had not failed in its duty in refusing to make a reference. Against that decision Benthall appealed and the Appellate Court, constituted of Harries C. J. and Banerjee J. directed the Board to state and refer a case' on the question of the amount of duty with which the power-of-attorney, mentioned in the petition, is chargeable.' It was in pursuance of that direction that the present reference was made.

5. Section 57(1), Stamp Act requires the referring authority to state its own opinion on the question referred. In para. 3 of the Statement of the Case, the Board has repeated the opinion it originally expressed and given the same reasons.

6. Since a Bench of this Court has already directed the Board to state a case, we cannot reopen the matter, but if the question was open, I would have had some difficulty in holding that, on the facts of the case, the executant of the document was entitled to ask for a reference. It is true that under Section 56(2) of the Act, the Collector can make a reference to 'the Chief Controlling Revenue Authority in respect of any document which is before him under Section 31 and the Chief Controlling Revenue Authority can, in its turn make a reference to the High Court in respect of a document so referred to it. It is also true that Section 31 does not require that a document presented to the Collector for adjudication of the stamp duty should be a document already executed. The fact that the document in the present case was only a draft was, therefore, no bar to a reference either by the Collector to the Board or by the Board to this Court, as appears to have been contended. But although Section 31 speaks of 'the person bringing' the document to the Collector, such person cannot obviously be any person in the world but must-at least be a person authorised by a party to the document to present it, if he is not one of the parties himself. In the present case, the document was presented to the Collector by Messrs. Orr, Dignam & Co., acting for the Bengal Chamber of Commerce and not acting for either Benthall or Fairburn or Sutherland. It would appear from the letters addressed by the Solicitors to the Collector and the Board that the reason why they were presenting the document for adjudication of the stamp duty was that such powers of attorney were extant among the members of

mercantile community in Calcutta and, therefore, the Bengal Chamber of Commerce had taken it upon itself to choose a typical power and start a test case with it. In any event, the party who moved this Court was not the party who had moved the Collector and the Board of Revenue and the party who had moved those authorities was not one of the parties to the document or the authorised representative of any one of them. I, therefore, doubt whether Benthall had any right to require a case to be stated.

7. To turn now to the question referred, it will be convenient to set out first the relevant provisions of the Indian Stamp Act, as amended by the Bengal Stamp (Amendment) Act (III [3] of 1922) and the Indian Stamp (Bengal Amendment Act (XII [12] of 1935). The Bengal amendments may, for all practical purposes, be disregarded, for, besides making certain special provisions for instruments executed in another Province, they merely substitute a schedule of their own, called Schedule I-A, for Schedule I of the Central Act and prescribe an enhanced duty in the case of certain instruments. Neither the language of the charging section in the Central Act, nor the specification or the classification of the instruments chargeable to stamp duty is in any way altered.

8. The charging section in the Central Act is Section 3 which, so far as is material, provides that three classes of instruments, specified in the section in three separate clauses, shall be chargeable with duty of the amount mentioned in Schedule I. For the purposes of the present case, the material clause is clause (a) which reads as follows :

'(a) Every instrument mentioned in that schedule which, not having been previously executed by any person, is executed in India except Part B States on or after the first day of July, 1899.'

The Bengal amendment of the section is in the form of a proviso which lays down that notwithstanding anything contained in any of the clauses of the section or in Schedule 1 of the Central Act, the amount indicated in Schedule I-A of the Bengal Act shall be the duty chargeable on the instruments mentioned in two clauses of the proviso. The material clause for the present is clause (aa) which reads as follows :

'(aa) Every instrument mentioned in Schedule I-A aa chargeable with duty under that schedule, which, not having been previously executed by any person is executed in Bengal on or after the, first day of April, 1922.'

9. Power-of-attorney is defined in S 2 (21) of the Central Act and the stamp duty chargeable thereon is prescribed in Article 48 of both the Schedules. The definition is in the following terms:

'Power-of-attorney includes any instrument (not chargeable with a fee under the law relating to court-fees for the time being in force empowering a specified person to act for and in the name of the person executing it.'

Article 48 contains seven clauses, six of which deal with specified varieties of powers-of-attorney, while the seventh is a residuary clause, providing for 'any other case'. The relevant clause for the present purpose is clause (d) which is expressed as follows :

'(d) when authorising not more than five persons to not jointly and severally in more than one transaction or generally.'

The duty chargeable on such a power-of-attorney is, under the Central Act, Rs. 5 and, under the Bengal amendment, Rs. 10.

10. The general provisions of the power-of-attorney in the present case have already been referred to. The document proceeds to authorise, in 21 separate paragraphs, specific acts to be done for the executant by the attorneys and in so doing, distinguishes between acts to be done as representing him in his individual capacity and those to be done as representing him in his capacity as an executor or administrator or trustee or managing director or director or managing agent or agent or secretary or liquidator of any company. Paragraph 22 authorises the attorneys 'generally to act' as agents of the executant in relation to all matters in which he is or may in future be interested and para. 23 appoints and authorises them to act 'jointly and severally' in his place and stead in cases where he himself is an attorney. In all other cases also the attorneys are to act jointly and severally under the direction contained in the introductory paragraph.

11. It has already been stated that the power-of-attorney is in favour of two persons. There can thus be no question that it is a power falling exactly within the words of Article 48(d), authorising, as it does, not more than five persons to act jointly and severally in more than one transaction or generally. Had there been no other provision in the Act, the duty payable on the document would clearly be single sum of Rs. 10, but an apparent complication is created by the provisions of Section 5. That section is in the following terms :

'5 Any instrument comprising or relating to several distinct matters shall be chargeable with the aggregate amount of the duties with which separate instruments, each comprising or relating to one of such matters, would be chargeable under the Act.'

12. As already stated, the contention of the Revenue authorities is that delegation of power in respect of each of the several capacities of the executant is a 'distinct matter' within the meaning of Section 5 and accordingly as many sets of stamp duty would be payable as there were capacities in respect of which power was delegated.

13. The answer to the question referred thus depends on the true meaning of the expression 'distinct matters' in Section 5. Although the definition of 'power-of-attorney', as given in the Act, speaks of 'the person executing it' and 'a specified person' who is empowered it is clear from the types of power-of-attorney mentioned in Article 48, clauses (d) and (e) and the duty prescribed therefore, that the Act contemplates powers-of-attorney executed in favour of more than one person but does not require more than one stamp duty to be paid on that account. The power granted to each of the attorneys in such cases is thus not a 'distinct matter'. The types specified in Article 48 do not, however, include a power-of-attorney executed by more than one person. To such documents decided cases have applied the test of community of interest and it has been held that where there is a common bond between the several executants of a power-of-attorney in respect of the purpose of the delegation of power, the document may be regarded as limited to a single matter. It would seem that this 'community of interest' between the several executants of a power-of-attorney has been introduced as the

counterpart of the direction 'to act jointly and severally' which is to be found in the powers-of-attorney specified in clauses (d) and (e) of Article 48 and which may be regarded as binding together the several donees of the power and making them a single entity. The contention of the Revenue authorities in the present case is that in respect of each of the capacities in which he is purporting to delegate power, Benthall is a different person and since there is no community of interest between such different persons, nor any community of purpose between the several acts of delegation, the document is really a combination of several distinct powers-of-attorney and chargeable to duty as such.

14. I may point out that if the reasoning of the Revenue authorities be correct, the conclusion must go beyond the point at which they stopped. If a Director or Managing Director of a company is, as such Director or Managing Director, a different person from himself as an individual, he must also be a different person in respect of each of the companies of which he may happen to be a Director or Managing Director, because each company is a different entity and his contract with each company is a different contract, vesting him with a different character or personality in relation to that company. So must be the position as regards trusteeships of different trusts, executorships under different wills and administratorships in respect of different estates. A power-of-attorney of the present character must therefore be a combination of not merely as many powers as there are capacities, but of as many powers as there may be companies or estates or trusts with which the executant is connected at the time or may come to be connected in future, in addition to the power granted by him in his capacity as an individual. If such a power-of-attorney is presented for registration, the registering officer, required by Section 35 of the Act to examine the sufficiency of the stamp duty paid, would not know if the duty paid was sufficient, unless he was furnished with a list of the companies, estates or trusts in respect of which the instrument was to operate. The same would be the position of the authorities, generally charged by Section 33, Stamp Act, to examine instruments produced or sought to be used before them and to impound such instruments, if not duly stamped.

There does not appear to be any provision either in the Registration Act or in the Stamp Act, empowering the registering or other officer to call for particulars

relating to the instrument, except only that if an instrument is presented to the Collector for adjudication of the stamp duty under Section 31(1), Stamp Act, he may call for an affidavit or other evidence under sub-section (2) of the section. Besides, the document in the present case purports to delegate power in respect of companies in which the executant is or may at any time in future be interested and also empowers the attorneys to act for him in his capacity as executor or administrator or trustee as occasion may require. If the reasoning of the Revenue authorities be correct, then not only must there be paid, at the time the document is executed, as many sets of stamp duty on it as there may be companies or trusts or estates in which the executants is interested at that time, but whenever the executants becomes interested in a fresh company or trust or estate, a further duty must also then be paid, if the instrument is to be duly stamped. It is clear that the view pressed by the Revenue authorities creates an unworkable position and unless the statute imperatively requires such view to be taken, it ought not to be adopted.

15. In my opinion, the view contended for by the Revenue authorities is not correct. The learned Advocate-General pressed that view on the same grounds as the Revenue authorities and submitted that qua executor or qua trustee or even qua managing director of a company, a person was a 'juristic person' different from himself in his individual capacity. He re-inforced that argument by saying that if a trustee sought to transfer some trust property through an attorney, no one would accept such transfer unless the attorney was specifically authorised by his principal in his capacity as trustee and he pointed out further that, in the present case, the document itself recognised such difference of capacity in para. 18 where the executant was speaking of 'duties conferred or imposed on me as such trustee by any Trust Instrument, Vesting Deed or Statute.' All that may be true, but it appears to me that for the purpose of determining whether or not a power of attorney comprises or relates to several 'distinct matters' within the meaning of Section 5, Stamp Act, the individuality or plurality of the capacity in which the donor of the power is executing it is not the test.

16. At the same time I do not think that the matter is disposed of by the argument advanced by Mr. Sanyal that if only the power-of-attorney had been a general

power, it would clearly be chargeable to a single stamp duty under the express words of Article 48(d) and, therefore, the fact that the powers had been specified and referred to the different capacities of the executant could make no difference. It is clear that the words 'or generally' in Article 48(d) must be read along with the words 'in more than one transaction' and the effect of the former words is only to provide for a case of general delegation of power as distinguished from delegation in respect of a number of specified transactions. But if a difference in the capacity of the executant is a fundamental difference and makes the delegation of power in each capacity a distinct matter, that difference or distinction is in no way neutralised by the words 'or generally.' It may be, as Mr. Sanyal contended, that a general power-of-attorney, in the absence of anything to derogate from the generality of the power, will cover at least all capacities which the grantor may possess at the time, but such effect of a document so expressed has nothing to do with the stamp duty payable on it in order to make it an operative instrument. The question whether more than one amount of stamp duty are payable on such an instrument must depend on whether or not it comprises several 'distinct matters.'

17. If singularity or plurality of the grantor's capacity be the test, it would seem that a power of attorney executed by a Hindu widow in respect of both her personal properties and the properties of her deceased husband's estate held by her would be liable to a double duty. So also a power of attorney executed by a member of a Hindu joint family in respect of his self-acquisitions and his interest in the coparcenary properties. Strictly speaking, a power executed by a person in respect of properties owned by him and in respect of pro. parties held by him as a lessee or a mortgagee would be subject to the same liability. It is true-that in such cases the grantor is not acting both in a personal and in a representative or fiduciary capacity, but still the capacities are different. If it be said that, at bottom, the grantor is the same individual, so is Benthall, at bottom, the same individual in the present case.

18. The substance of the contention of the Revenue authorities is that the present is a case where several persons, entirely unconnected with one another, are combining to make a delegation of power in respect of their individual interests in separate subject-matters in favour of the same persons. When a case which may

truly be regarded as such a case comes up for decision, it will have to be duly considered, but it is not necessary in the present case to decide anything more than whether a power-of-attorney, executed by one particular person in respect of all his interests held by him in different capacities, is a combination of several powers so as to comprise several 'distinct matters' and attract a multiple stamp duty.

19. The charging section of the Act lays down no principle and follows the simple method of declaring certain specified varieties of instruments enumerated in the Schedule to be liable to amounts of stamp duty stated therein. The general scheme of the Act is that if an instrument falls under one or other of the categories mentioned in the Schedule, it will be liable to stamp duty and the amount payable will be the amount prescribed for the particular category. Only one duty of the appropriate amount is payable. If, however, the instrument is an ambiguous instrument and appears to fall under more than one category, it will be chargeable under Section 6 to the highest of the duties prescribed respectively for the categories under which the instrument appears to fall. But if the instrument comprises or relates to several 'distinct matters', it will be chargeable under Section 5 to the aggregate amount of duties which would be chargeable under the Act on separate instruments, if there were a separate instrument comprising or relating to each one of such matters. Section 6 is subject to Section 5 and, therefore, if an instrument clearly comprises several distinct matters, Section 5 will apply and not Section 6.

20. What Section 5 means by 'distinct matters' has always been regarded as a question of some difficulty, but it appears to me that there is some indication of the meaning in the section itself. Clearly, a matter, in order to be distinct, must be such that if there were an instrument comprising or relating to it, such instrument would be chargeable to duty under the Act. The Act makes instruments chargeable by the method of specification of categories and, therefore, a distinct matter, it seems to me, must be a distinct or separate category mentioned in the Schedule so that an instrument relating to such matter would be chargeable to duty. The same meaning is suggested by the distinction made between cases coming under Sections 6 and 5, for if an instrument is so framed 'as to come within two or more

of the descriptions in Schedule I,' it is chargeable under Section 6-with the heighest of the duties prescribed severally for instruments coming respectively under such several descriptions, but if it comprises or relates to several 'distinct matters,' it is chargeable under Section 5 to the aggregate amount of duties payable on separate instruments, each relating to one such matter. The contrast is between instruments coming more or less under 'two or more descriptions in Schedule I' and instruments comprising or relating to 'several distinct matters.' Since Section 6 is subject to Section 5 and the two sections must therefore be read together, it appears to me that 'descriptions in Schedule I' and 'distinct matters' are synonymous, or there would be no sense in the contrast.

From the commonsense point of view also, that meaning of the expression seems to be the only feasible one, for an Act which is prescribing stamp duties for instruments by reference to the categories under which they fall, cannot logically make a provision for more than one duty to be payable on an instrument, unless it combines in itself more than one instrument falling under different categories. It appears that the same view has been taken in England on Section 4 (a), Stamp Act, 1891 (54 and 55 Vict. c. 39), Section 4 (a), which provides that:

'An instrument containing or relating to several distinct matters is to be separately and distinctly charged, as if it were a separate instrument, with duty in respect of each of the matters.'

With reference to that section, it was held by Walton J. in *The Reversionary Interest Society Ltd. v. Commissioners of Inland Revenue*, (1906) 22 T. L. Rule 740 that 'distinct matters' in Section 4 (a) were matters in respect of which a duty was chargeable and by Rowlatt, J. in *Ansell v. Commissioners of Inland Revenue*, (1929) 1 K. B. 608, that 'distinct matters' in Section 4 (a) must be distinct matters for the purposes of the Stamp Act, 'matters different from the point of view of the Stamp Act and taxation.' The view expressed in Hals-bury's Laws of England is that 'matters' referred to in Section 4 (a) are 'the heads of charge in Schedule I.' (Hailsham Edn. vol. 28, p. 442).

2l. In England, there is now a specific provision contained in Section 56, Finance Act, 1927 (17 & 18 Geo. V, c. 10) which lays down that no instrument chargeable

as a letter or power-of-attorney is to be charged with duty more than once by reason only that more persons than one are named in the instrument as donors or donees of the powers thereby conferred. It might be thought that but for such special provision, a power-of-attorney executed by more than one person would be chargeable to more than one amount of duty but it appears from the entry relating to power-of-attorney in the Schedule to the English Stamp Act that it provides only for delegation in respect of specific and personal acts and it was perhaps for that reason that the position with regard to such a power-of-attorney executed by more than one person was clarified by the Finance Act. Besides, the Indian Act specifically mentions a power-of-attorney executed in favour of more than one person and makes only a single duty chargeable.

22. I am not referring to any Indian decision, because there is no decision exactly in point, nor any that furnishes any-guidance.

23. As I have said already, it is not necessary in the present case, at least directly, to consider powers-of-attorney executed by a plurality of actual persons in favour of the same grantee or grantees, but in respect of their different and separate interests in different subject-matters. It would follow from what I have said about the true meaning of 'distinct matters' that even such instruments would be chargeable to a single duty, but since the question does not directly arise, I would prefer not to decide it. We are concerned in the present case with a power-of-attorney executed by a single person in favour of two agents in respect of interests held by him in different capacities. I am unable to hold that this instrument comprises or relates to several 'distinct matters'. The instrument is a power-of-attorney and nothing else and it is the single individual Benthall and no one else who is executing it. It is true that he is delegating power in respect of (interests held by him in several different capacities, but by doing so, he is not, in effect, executing several powers-of-attorney. Even if he is doing so, each power-of-attorney is not a 'distinct matter', because it does not fall under a different category in the Schedule. It is true that if a separate power-of-attorney had been executed in each of the several capacities, each would be chargeable to duty under the Act, but that circumstance does not make the delegation of power in respect of each of the capacities a distinct matter within the meaning of Section 5. If, for example,

separate powers-of-attorney were executed in respect of the several properties or the several transactions covered by a single instrument executed by a single person, each of such powers would equally be chargeable to duty under the Act, but that fact does not make the single instrument chargeable to more than one amount of duty. The real test is whether, if separate instruments were executed, they would be chargeable under other and different categories. Indeed, even that test is really not relevant in the present case, for here the executant is a single individual, the grantees are two persons directed to act jointly and severally and the subject-matter of delegation is the power of that single individual in respect of interests held by him in various capacities. Although the capacities may be different in character, they are all possessed by one and the same person and he, by a single instrument, is delegating all those powers, in whatever capacity held, to the same agents. No question of community of interest arises, for since the interests reside in the same person, there is, instead of community, identity. Essentially, such a power-of-attorney is not different from one which is executed by a person in respect of all his properties, some owned by him individually, some as a member of a joint family, some held as a lessee and some held as a mortgagee-in-possession. The matter comprised in such a power-of-attorney is, in my view, one.

24. For the reasons given above, I would answer the question referred by saying that the amount of stamp duty payable on the power-of-attorney in the present case is a single amount of Rs. 10 under Article 48 (d) of Schedule I-A, Stamp Act, as mentioned in Bengal.

25. Each party will bear his own costs in this Reference.

26. Das, J.

I agree.

S.R. Das Gupta, J.

27. I am unable to agree with the view taken by my Lord the Chief Justice and Das J. and I humbly and very respectfully dissent from the same. I shall shortly state

my reasons.

28. In my opinion the document in question comprises several distinct matters and should be charged with aggregate amount of duties with which each separate instrument comprising one of such matters would be chargeable. It is no doubt true that the document in question is on the face of it a power of attorney, but it is in effect a power of attorney given by several persons in respect of several distinct matters concerning each of such persons. If it were a power of attorney given by one person although authorising several individuals not exceeding five to act jointly and severally in more than one transaction or generally, then, I agree, the instrument in question would be chargeable with one stamp duty and would not fall within the provisions of Section 5, Stamp Act. But to my mind the position becomes entirely different when several persons combine to execute one power of attorney comprising several matters in which they are separately interested. In such a case it cannot but be said that the instrument in question comprises several distinct matters. The person who is the donee of such a power is to act for each of the donors with respect to the matter or matters in which they are separately interested. The position in such a case is not different from a case where, for example, three persons each owning one property jointly execute one document whereby they grant leases to different individuals of their respective properties. The transaction in such a case certainly comprises distinct matters though lumped up in one document; the distinct matters being leases given by each individual in respect of his separate property. Similarly, in the present case the distinct matters are the powers given by each person with respect to his own affair.

29. Mr. Sanyal contended before us that the Indian Stamp Act merely goes by the nature of instrument. In other words, his contention is that all that will have to be seen in order to determine the amount of stamp duty chargeable is the nature of the document and if it is found that it is a document of a particular kind, for example, lease or conveyance or gift-no matter what the document comprises-then one stamp duty would be chargeable. In this case he contended that the document in question is a power of attorney and it is a document of one kind and it should be charged with one stamp duty chargeable for a power of attorney. In support of this contention he cited before us the case of *Ansell v. Commissioners*

of Inland Revenue, (1929) 1 K. B. 608, and relied on the observations of Rowlatt J. made therein. He also relied on the definition of 'power of attorney' as given in Section 2, sub-section (21), Stamp Act.

30. I am unable to accept this contention. In the first place, the plain words of Section 5, Stamp Act negatives such a contention. The said section provides as follows:

'Any instrument comprising or relating to several distinct matters shall be chargeable with the aggregate amount of the duties with which separate instruments, each comprising or relating to one of such matters, would be chargeable under this Act.'

31. The section it appears maintains a distinction between 'instrument' and 'matters comprised therein'. What has to be seen in order to determine whether an instrument falls within the purview of Section 5 is the subject-matter of such an instrument and not merely the nature of it. If, of course, the instrument is such that it comprises transactions of different nature, then, certainly, it would be a case falling under Section 5, but that to my mind is not the only case contemplated by Section 5. To hold otherwise would be to take a very limited view as to the scope of the said section and the language of it does not warrant it. The instrument in question may be of one particular nature, nonetheless, it may comprise several distinct matters. The present case, in my opinion, is an example of the same. If the only object of Section 5, as Mr. Sanyal contended, that several instruments of different kinds should not be lumped up in one document, then Section 5 would have been differently worded. In the second place, Mr. Sanyal's contention, if accepted, would lead to strange results I shall take for an example a case where the amount of stamp duty payable does not depend upon any pecuniary consideration payable under the said document. If, for example, several persons combine and execute one adoption deed, although, by that document they purport to give to their respective wives authority to adopt, such a document according to Mr. Sanyal's contention would be chargeable with stamp duty for one deed of adoption. But such an instrument, to my mind, although of one kind, comprises several distinct matters as contemplated in Section 5, Stamp Act.

As for the case in *Ansell v. Commissioners of Inland Revenue*, (1929-1 K. B. 608) relied on by Mr. Sanyal, the same to my mind is distinguishable from the one which is before us. In that case the question which is now before us did not arise for his Lordship's consideration. In that case the question as to what would be the position if different persons execute one instrument in respect of their own separate matters in which they are separately interested did not come up for consideration. The definition of 'power of attorney' as given in Section 2 sub-section (21), Stamp Act also does not throw any light on the question now for our consideration. 'Power of attorney' is merely defined as an instrument empowering a specified person to act for and in the name of the person executing it. I do not see how this definition helps Mr. Sanyal's contention. On the other hand, the use of the words 'the person executing it' may suggest that a power given by each individual is a separate instrument and is a distinct and separate transaction.

32. Mr. Sanyal also contended before us that in this case the power of attorney is given not by several persons in respect of their several distinct matters, but is merely a power given by one individual Mr. Benthall, although in different capacities. In other words, his contention is that a person may hold different capacities; but a power given by him although in all his capacities would nonetheless be a power by that person as one individual in respect of all his matters. In this case, he urged that although Mr. Benthall was giving the power in his capacities as managing director, director, managing agent, liquidator, executor, administrator or trustees and also in his individual capacity, nonetheless, it is a power given by one person, that is, Mr. Benthall in respect of all his matters.

33. I am unable to accept that contention. In the eye of law Mr. Benthall as an individual and Mr. Benthall as the executor, administrator or trustees or as the director or managing agent or liquidator are not the same persons. In the eye of law he is a different person as and when he comes to occupy the different positions mentioned in the document. It makes no difference that it is the same Mr. Arthur Benthall who has executed the power of attorney in favour of the persons named therein. A man in his individual capacity is certainly not the same person as a trustee. From juristic point of view he is a different person. If, for instance, a suit has to be filed against him in respect of the trust he is to be sued as trustee and in

respect of the trust properties. In the promises, I am of opinion that the contentions of Mr. Sanyal on this point should also fail.

34. In my opinion, therefore, the instrument in question relates to several distinct matters and should be charged with the aggregate amount of duties with which separate instruments each comprising or relating to one of such matters would be chargeable under this Act.

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