

**In Re: Burn and Co. and Reference Under Section 57(1) of the Indian Stamp Act, 1899**

**In Re: Burn and Co. and Reference Under Section 57(1) of the Indian Stamp Act, 1899**

**SooperKanoon Citation :** [sooperkanoon.com/885746](http://sooperkanoon.com/885746)

**Court :** Kolkata

**Decided On :** Jun-08-1910

**Reported in :** 6Ind.Cas.778

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

**Appellant :** In Re: Burn and Co. and Reference Under Section 57(1) of the Indian Stamp Act, 1899

**Judgement :**

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:

Pay Order No. 8684 Burn & Co. Ld., Howrah In Favour of J.C. Hinde Account  
Export Cash-----Particulars  
Signature of Payee.-----To  
amount of freight Pay for export charges (Initials illegi-11138, 3783, 3577,  
able)2632... .. 700020-6-1908. Received Rs. 70 (se-venty only) C. Jones Rupees

seventy only J.C. Hinde 20-6-1908. End: J.N.M. Entd. C.B., Folio. 20-6-1908. Dated the 20th June 1908. ----- Pay rupees seventy Only 7000----- (On The Back,) Orders Nos. 11085, 11138, 3783, 3577, 2632. Pay Order. Accounts Mr. Ribbins.

3. 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. J.C. Hinde.

4. 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 Account 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.

5. 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 1st 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 on one feature of

the transaction without regard to the rest.

6. Now what was the transaction? The Company owed money to a creditor, and for the purpose of discharging their 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. *Paradice's case* 2 East P.C. 565, *Reg. v. Murray* 1 Moo. 276.

7. 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 were 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.

8. The Advocate General has relied strongly on the *Attorney-General v. Cartton Bank* (1899) 2 Q.B. 158 : 68 L.J.Q.B. 788 : 81 L.T 115 : 47 W.R. 650 : 63 J.P. 629 : 15 T.L.R. 380, 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.S. 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 Lord Chief Justice when Coxwell handed over the moneys to the Bank, he in fact was paying a debt (see at page 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.

9. At the same time it is significant, that the Lord Chief Justice gave manifest indication of opinion, to which the Solicitor General on behalf of the Government 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.

10. 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. By the agreement of Counsel this decision will govern the case as to the other documents.

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