

The Stamp Act. 1899

(As applicable in the Province of Sindh)

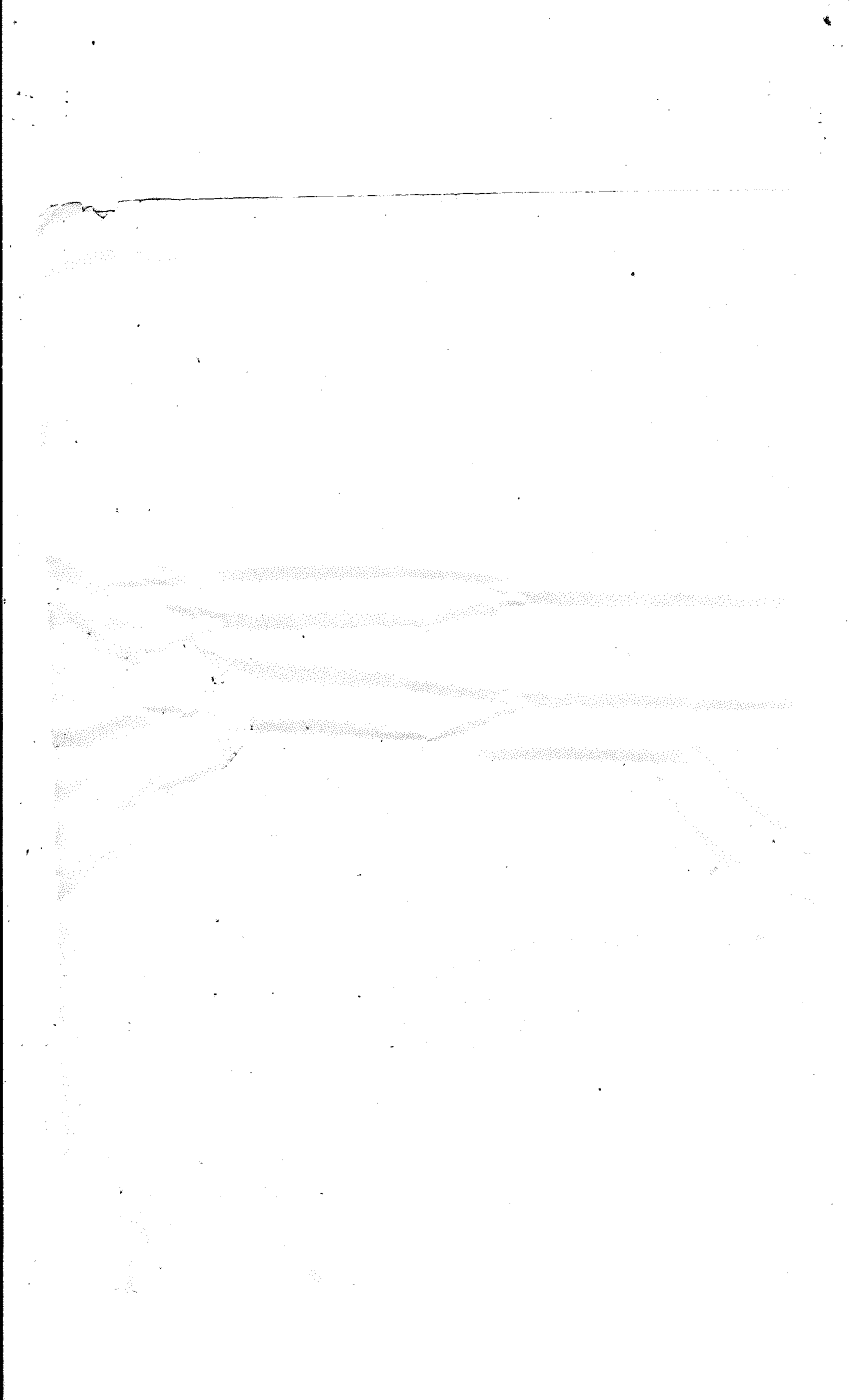
WITH COMMENTARY, STAMP RULES

AND

ADMINISTRATIVE INSTRUCTIONS

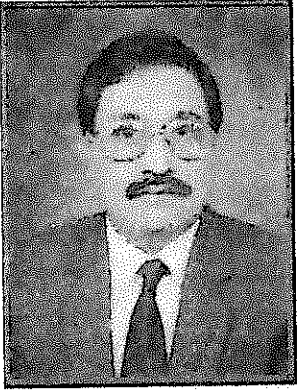


PROFESSIONAL EDUCATION FOUNDATION





EX-MEMBER (RS&EP)
BOARD OF REVENUE, SINDH.



GOVERNMENT OF SINDH
BOARD OF REVENUE, SINDH
79, Pakistan Secretariat, Karachi

FOREWORD

Stamp duty is an orderly and voluntary contribution towards the government kitty, which culminates in the sanctifying, legalising and legitimizing of due process of transactions. It confirms an act as lawful, legal and with full force of the law. It also confirms the rights of both the parties involved in the said transaction.

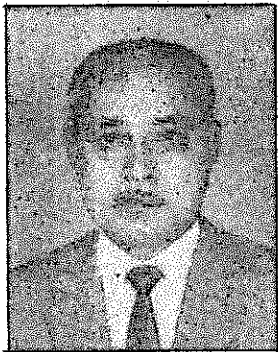
Stamp duty has always had a back seat because it is a voluntary duty and because its due importance and duties of the citizens through its payment, were never highlighted. People were either ignorant or were arrogant as transactions duty charges were of voluntary nature.

Hopefully, with the publication of this Book alongwith its commentary would assist the citizenry at large and members of the legal community to understand the same well and thus advance and be active proponents for fulfillment of a vital national duty. It shall help the governed and the government in their quests for fulfillment of their responsibilities with full and sound knowledge of the Stamp Act, 1899.

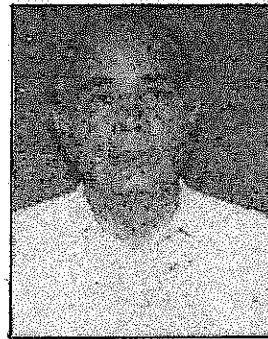
I wish the authors of this Book viz Mr. Abid Husain & Mr. Muhammad Ismail Memon, Ex-Deputy Chief Inspector of Stamps, to have a resounding success in disseminating information at the door-step of the targeted clients.

Sd/-
(MUNAWAR OPEL)
EX-MEMBER (RS&EP)
BOARD OF REVENUE, SINDH.

AUTHORS



MUHAMMAD ISMAIL MEMON
M.A., L.L.B.



ABID HUSAIN
F.C.A., C.A. (Scotland)
A.C.I.S. (London)
F.C.I.S., F.A.C.S.

*This book is published as it was a long felt necessity that the changes and amendments, made from time to time, in different sections and articles of the **Stamp Act** are brought together and published in a consolidated form and the Act upto dated in its application to various segments of the Society.*

I congratulate the authors for their excellent work and thanks to Mr. S. Haroon Husain for the assistance provided to the authors in bringing about this book.

In the end, I have to thank the authors for assigning this book to our Foundation.

Abid Husain
Chief Executive,
PROFESSIONAL EDUCATION FOUNDATION

THE STAMP ACT, 1899

CONTENTS

CHAPTER I

Preliminary

Sections:

Pages

1. Short title, extent and commencement 1
- ✓ 2. Definitions 1

CHAPTER II

Stamp-Duties

A. — Of the Liability of Instruments to Duty

- ✓ 3. Instruments chargeable with duty 17
4. Several instruments used in single transaction of sale, mortgage or settlement 17
5. Instruments relating to several distinct matters 18
6. Instruments coming within several descriptions in Schedule I 18
7. Policies of sea-insurance 18
8. Bonds, debentures or other securities issued on loans under Act XI, 1879 18
- ✓ 9. Power to reduce, remit or compound duties 18

B. Of Stamps and the mode of using them

- ✓ 10. Duties how to be paid 20
11. Use of adhesive stamps 21
12. Cancellation of adhesive stamps 21
13. Instruments stamped with impressed stamps how to be written 21
14. Only one instrument to be on same stamp 21
15. Instrument written contrary to Section 13 or 14 deemed unstamped 21
16. Denoting duty 21

C. — Of the time of stamping instruments

17. Instruments executed in Pakistan, etc. 22
18. Instruments other than bills and notes executed out of Pakistan, etc. 22
19. Bills and notes drawn out of Pakistan, etc. 22

D. — Of Valuations for Duty

20.	Conversion of amount expressed in foreign currencies	22
21.	Stock and marketable securities how to be valued	23
22.	Effect of statement of rate of exchange or average price	23
23.	Instruments reserving interest	23
23-A	Certain instruments connected with mortgages of marketable securities to be chargeable as agreements	23
24.	How transfer in consideration of debt, or subject to future payment, etc., to be charged	23
25.	Valuation in case of annuity, etc.	23
26.	Stamps where value of subject-matter is indeterminate	24
27.	Facts affecting duty to be set forth in instrument	24
27-A	Valuation of urban immovable property	25
27-B	Valuation of rural immovable property	25
27-C	Impounding of powers of attorney	25
28.	Direction as to duty in case of certain conveyances	25

E. — Duty by whom payable

✓ 29.	Duties by whom payable	25
30.	Obligation to give receipt in certain cases	27

CHAPTER III

Adjudication as to Stamps

✓ 31.	Adjudication as to proper stamp	28
✓ 32.	Certificate by Collector (<i>Power and of Jurisdiction</i>)	29

CHAPTER IV

Instruments not Duly Stamped

33.	Examination and impounding of instruments	31
34.	Special provision as to unstamped receipts	34
35.	Instruments not duly stamped inadmissible in evidence, etc.	34
36.	Admission of instrument where not to be questioned	38
37.	Admission of improperly stamped instruments	39
38.	Instruments impounded how dealt with	39
✓ 39.	Collector's power to refund penalty paid under Section 38, sub-section (1)	40
✓ 40.	Collector's power to stamp instruments impounded	41
✓ 41.	Instruments unduly stamped by accident	43
42.	Endorsement of instruments on which duty has been paid under Section 35, 40 or 41	43
43.	Prosecution for offence against Stamp-law	44
44.	Persons paying duty or penalty may recover same in certain cases	44
✓ 45.	Power to Revenue-authority to refund penalty or excess duty in certain cases	45

46. Non-liability for loss of instruments sent under Section 38	45
47. Power of payer to stamp bills and promissory notes received by him unstamped	46
48. Recovery of duties and penalties	46

CHAPTER V

Allowances for Stamps in certain cases

49. Allowances for spoiled stamps	48
50. Application for relief under Section 49 when to be made	53
51. Allowance in case of printed forms no longer required by Corporations	56
52. Allowance for misused stamps	56
53. Allowance for spoiled or misused stamps how to be made	57
54. Allowance for stamps not required for use	57
55. Allowance on renewal of certain debentures	59

CHAPTER VI

References and Revision

56. Control of and statement of case to, Chief Revenue Authority	61
57. Statement of case by Chief Revenue Authority, to High Court	62
58. Power of High Court to call for further particulars as to case stated	64
59. Procedure in disposing of case stated	64
60. Statement of case by other courts to High Court	65
61. Revision of certain decisions of courts regarding the sufficiency of stamps	65

CHAPTER VII

Criminal Offences and Procedure

62. Penalty for executing, etc., instrument not duly stamped	67
63. Penalty of failure to cancel adhesive stamps	67
64. Penalty for omission to comply with provisions of Section 27	67
65. Penalty for refusal to give receipt, and for devices to evade duty on receipts	68
66. Penalty for not making out policy, or making one not duly stamped	69
67. Penalty for not drawing full number of bills or marine policies purporting to be in sets	69
68. Penalty for post-dating bills, and for other devices to defraud the revenue	69
69. Penalty for breach of rule relating to sale of stamps and for unauthorised sale	69
70. Institution and conduct of prosecutions	70
71. Jurisdiction of Magistrates	70
72. Place of trials	70

CHAPTER VIII
Supplement Provisions

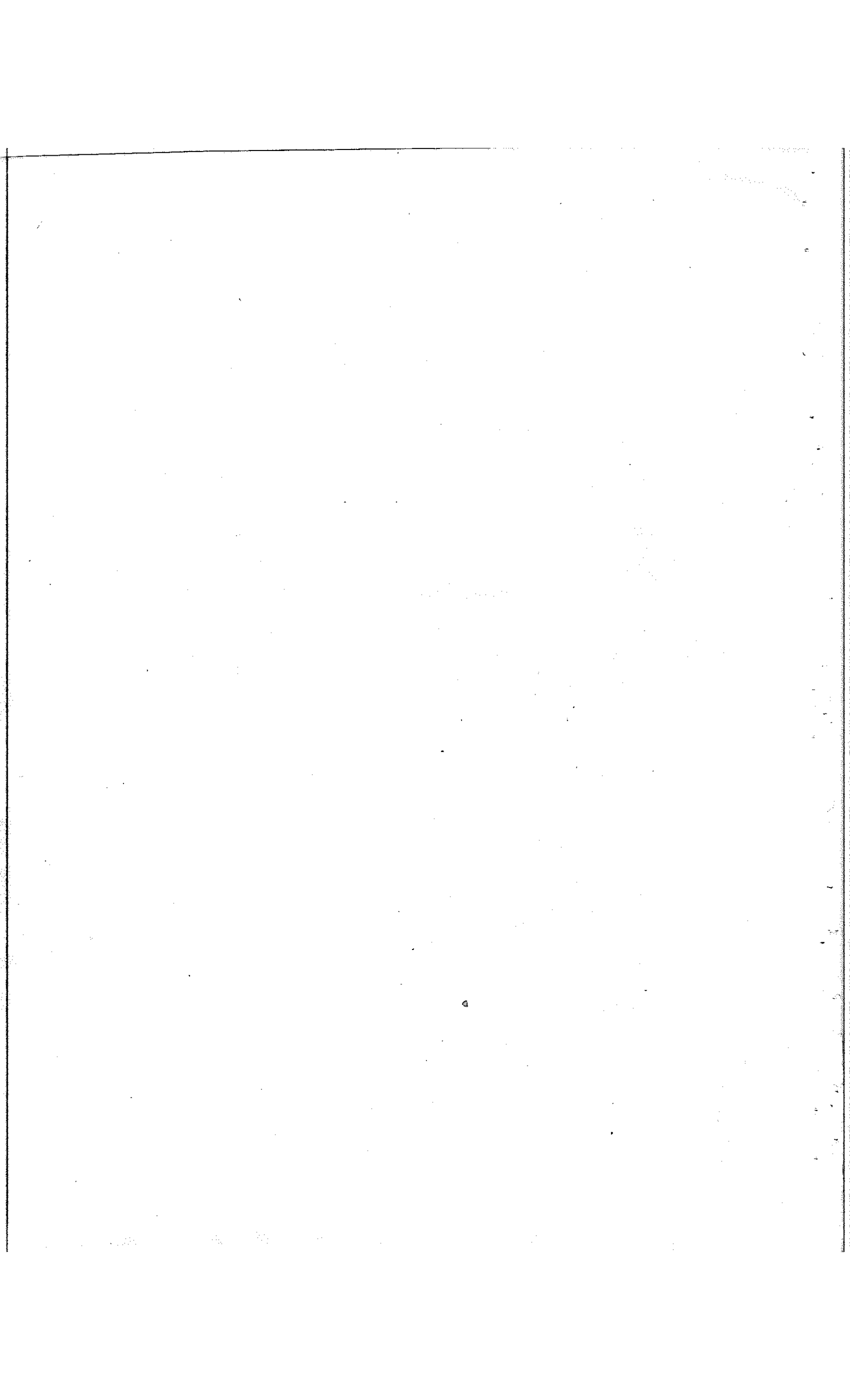
✓ 73. Books, etc., to be open to inspection	71
74. Powers to make rules relating to sale of stamps	72
75. Power to make rules generally to carry out Act	72
76. Publication of rules	72
76-A. Delegation of certain powers	73
77. Saving as to court-fees	73
78. Act to be translated and sold cheaply	73
79. [Repealed]	73
SCHEDULE I. — Stamp-duty on Instruments ...	(i)
SCHEDULE II. — [Repealed]	—
APPENDIX I	
Valuation Table of Karachi Division	A/1
APPENDIX II	
Remissions and Reductions	B/1
APPENDIX III	
The Stamp Rules, 1925	C/1
APPENDIX IV	
Sindh stamps supply and sale rules, 1940	D/1
APPENDIX V	
Rules regulating disposal of spoilt, cancelled and unserviceable stamps	E/1
APPENDIX VI	
Rules regulating grant to refund and renewal of Court Fee stamps	F/1
APPENDIX VII	
Rules regulating refund of the value of Court Fee stamps affixed to documents unnecessarily or in excess of legal requirements.	G/1
APPENDIX VIII	
The West Punjab Inspection and Audit Rules, 1949.	H/1
APPENDIX IX	
Delegation of Powers Rules, 1962.	I/1

IMPORTANT NOTE
REGARDING CHANGES IN THE SCHEDULE

THE SCHEDULE APPENDED TO THE STAMP ACT, 1899 HAS BEEN THOROUGHLY REVISED AND RATIONALIZED THROUGH THE STAMP (SINDH AMENDMENT) ORDINANCE NO. XVIII OF 2002, IN WHICH THE NUMBER OF CHARGING ARTICLES HAS BEEN REDUCED FROM 71 TO 31 ONLY. RESULTANTLY, THE ARTICLE NOS. HAVE ALSO BEEN CHANGED IN THE REVISED SETUP.

THE READERS OF THIS BOOK ARE REQUESTED TO CONSULT THE TABLE APPEARING AT THE END OF THE REVISED SCHEDULE, WHILE REFERRING TO THE COMMENTS UNDER VARIOUS SECTIONS AND ARTICLES, WHICH CONTAINS COMPARATIVE ARTICLE NOS. IN THE OLD AND THE REVISED SCHEDULE.

AUTHORS



THE STAMP ACT, 1899 (II OF 1899)

[27th January, 1899]

(An Act to consolidate and amend the law relating to Stamps)

Whereas it is expedient to consolidate and amend the law relating to stamps; it is hereby enacted as follows:—

CHAPTER I PRELIMINARY

1. Short title, extent and commencement: (1) This Act may be called the Stamp Act, 1899.
 - (2) It extends to the whole of Pakistan.
 - (3) It shall come into force on the first day of July, 1899.
2. Definitions: In this Act, unless there is something repugnant in the subject or context,—
 - (1) "banker" Includes a bank and any person acting as a banker;

COMMENTS

1. "Bank", "Banker"

The word "bank" connotes the business of utilising money received for purposes of profit and such a business must have a commercial side. In Wharton's Law Lexicon a "bank" is defined as "a place where money is deposited for the purpose of being lent out at interest, returned by exchange, disposed of to profit, or to be drawn out again as the owner shall call for it"; and a "banker" is defined as "one who receives money to be drawn out again as the owner has occasion for it, the customer being lender, and the banker borrower, with the super added obligation of honouring the customers cheques up to the amount of the money received and still in the banker's hands".

According to *Halsbury's Law of England*, a bank is a corporation, partnership or individual carrying on the business of banking. A banker is such individual or a member of such partnership; but for some purposes, the term banker includes corporations or partnerships carrying on the business of banking. A banker therefore, is any original partnership or company carrying on the business of banking, the business of banking is receipt of money from or on account of a customer to be repaid on demand or when drawn by cheque. (H.L. cases 28, 43; (1907) 29 All 773: 776; 1 I.C. 712)

A 'bank' has been defined in *Webster Dictionary* as "an institution which trades in money; an establishment for the deposit, custody, and issue of money, as also for making loans and discounts, and facilitating the transmission of remittances from one place to another". It defines a banker as "one who keeps a bank or is engaged in the business of banking; "one who receives money on deposit and makes loans, negotiates bills of exchange".

As defined by Hart in *Law of Banking* a 'banker' is a person or company carrying on the business of receiving moneys, and collecting drafts, for customers subject to the obligation of honouring cheques drawn upon them from time to time by the customers to the extent of the amounts available on their current accounts.

The distinction between an ordinary money lender and a banker is that the former lend's his own moneys where as the latter lend's the moneys of others, namely, the customers. (AIR 1927 Mad. 478)

2. 'Person'.

'Person' as defined in the General Clauses Act 1897 includes any company or association or body of individuals, whether incorporated or not. It includes a partnership or corporation. The definition does not exclude a minor to be a person. A government fall within the purview of the word. (PLD 1965 Kar. 337)

(2) "bill of exchange" means 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 of, or to draw upon any other person for, any sum of money;

COMMENTS

1. Bill of exchange

Section 3 of the Bill of Exchange Act, 1882 defines the term 'Bill of Exchange' as under:

- (1) A bill of exchange is an unconditional order in writing, addressed by one 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.
- (2) An instrument which does not comply with these conditions, or which orders any act to be done in addition to the payment of money, is not a bill of exchange.
- (3) An order to pay out of a particular fund is not unconditional within the meaning of this section, but an unqualified order to pay, coupled with (a) an indication of a particular fund out of which the drawee is to reimburse himself or a particular account to be debited with the amount, or (b) a statement of the transaction which gives rise to the bill, is unconditional.
- (4) A bill is not invalid by reason:
 - (a) that it is not dated;
 - (b) that it does not specify the value given, or that any value has been given therefore;
 - (c) that it does not specify the place where it is drawn or the place payable.

2. Essentials of a bill of exchange.

The expression 'bill of exchange' as defined in the Stamp Act contains two parts; firstly it means a bill of exchange as defined by the Negotiable Instruments Act 1881 and secondly it includes certain other instruments which may not fall within the definition as laid down by the Negotiable Act.

The essential of a bill of exchange under the negotiable instrument Act, are as follows:

1. There must be an instrument in writing;
2. The instrument must be signed by the maker;
3. The instrument must be one which contains an order;
4. The order must be an unconditional one;
5. The order must be for the payment of money;
6. The order must not be for anything else;
7. The person ordered must be certain;
8. The money must be payable to a certain person or to his order or to bearer.

3. Letter of credit.

A letter of credit is not a bill of exchange as defined in sub-section (2) but by virtue of the special provision in sub-section (3) it is bill of exchange payable on demand for purposes of the Stamp Act. (S.2 (3) Stamp Act).

(3) "bill of exchange payable on demand" includes

- (a) an order for the payment of any sum of money by a bill of exchange or promissory note, or for the delivery of any bill of exchange or promissory note in satisfaction of any sum of money, or for the payment of any sum of money out of any particular fund which may or may not be available, or upon any condition or contingency which may or may not be performed or happen;
- (b) an order for the payment of any sum of money weekly, monthly or at any other stated periods; and
- (c) a letter of credit, that is to say, any instrument by which one person authorises another to give credit to the person in whose favour it is drawn;

- (4) "bill of lading" includes a "through bill of lading," but does not include a mate's receipt;

COMMENTS

Bill of lading.

"Bill of lading" means a document signed by the ship owner or by the master or any other agent of the ship owner which states that certain specified goods have been shipped upon a particular ship, and which purports to set out the terms on which the goods have been delivered to and received by the ship. (54 L.J. Q.B. 156)

Bill of lading is usually drawn in a set of three. One copy is meant for use by the Captain of the ship and other is transmitted to the consignee and the third is retained by the consignor. Possession of the bill of lading is the possession of goods. As such it is symbol of the right to property in the goods specified therein. (52 L.J. Q.B. 481)

A bill of lading is not transferable when the payment is to be received under a letter of credit for the purpose of collecting the price. (AIR 1959 Cal. 328)

(5) "bond" includes —

- (a) any instrument whereby a person obliges himself to pay money to another, on condition that the obligation shall be void if a specified act is performed, or is not performed, as the case may be ;
- (b) any instrument attested by a witness and not payable to order or bearer, whereby a person obliges himself to pay money to another ; and
- (c) any instrument so attested, whereby a person obliges himself to deliver grain or other agricultural produce to another;

COMMENTS

1. Pre-requisites of bond :

The following are the pre-requisites of a bond :

- (a) the instrument must be one by which a person undertakes to do something ;
- (b) the thing to be done must be payment of money or the delivery of grain or other agricultural produce, but the instrument need not be for a definite sum of money;
- (c) a bond to pay money must be of one of two types, namely
 - (i) it must contain a condition of defeasance as described in clause (a) S. 2.5 or
 - (ii) it must be attested by a witness and must not be payable to order or bearer ;
- (d) a bond to deliver grain or other agricultural produce must be attested by a witness.

The definition in the Stamp Act covers both the single bond or the double or the conditional bond of the English Law. This definition, however, is not exhaustive, as the word "includes" shows, and may cover instruments which may not fall strictly in the definition e.g., an agreement containing a simple obligation to pay money may be a 'bond' though not attested. (AIR 1941 All. 243 + AIR 1940 Nag. 240).

The distinction between an obligation under a bond and an obligation under an ordinary contract is that breach of an obligation under a bond does not, to use a legal expression, sound in damages whereas 'damages' is what one who breaks an ordinary contract is subjected to. (AIR 1916 Low Bur. 100 (101)).

Where instrument contained agreement that executant would pay certain amount to his pleader, in addition to what he had already paid him if case ended successfully but that if it fails, he would pay nothing, held, that this was 'bond' under clause (a). (1870 Pun Re. No. 82 p. 209 (210) D.B.)

Where A owes money to B on some promissory notes. A and B enter into an agreement under which A promises to pay a certain sum of money to B and the latter promises not to sue on the promissory notes in lieu of which the agreement is entered into. The agreement is not a conditional 'bond' under clause (a). (5 Low Bur Rul 102 (106) F.B)

An agreement to do or forbear from doing a certain act with a penal clause providing for the payment of a certain sum of money on breach of the agreement is liable to be stamped not as bond but as an agreement. (AIR 1927 Nag. 72).

2. Simple money bonds — Clause (b)

In case of simple money bond under clause (b) the document must be one by which a person obliges himself to pay money to another. The important word in this definition is the word 'oblige' and no document can be a bond within it unless

it is one which itself creates an obligation to pay money. (22 Cal. 757).

A police constable who was offered training as driver of police lorries executed a document stating that he was bound to the Government in a sum of Rs. 200. If from the date of completion of his training remained for three years in the police service this bond was to be void other wise it was to remain in full force and effect. Held, that the document executed by the police constable was a bond under the above clause. (United Provinces Board's order in file No. 173(18)—letter No. 735/ dt. Feb. 24, 1927).

3. Agreement and bond distinguished.

2. I understand that point referred to me for opinion is whether the document dated 12th June 1935 on the file is a mere agreement requiring stamp as such or whether it is also a bond which requires to be stamped as a bond under Art 15 of the 1st Schedule of the Stamp Act.
3. In my opinion the document is a simple Kabala or agreement for the sale and purchase of a share in immoveable property and that it has been correctly stamped with a stamp of Re 1/-.
4. It is a principle of law that in order to ascertain the nature of an instrument for the purpose of determining the stamp duty to which it is liable the instrument must be read as a whole and the purpose of the instrument must be gathered from the reading thereof as a whole. It is not permissible to root out portions of the instrument, to read such portions apart from their context and construe them into instruments of a nature different from that which the entire instrument is intended to be. If this was permissible then every kabala for the sale of immovable property attested by a witness would contain a bond; for every such Kabala provides that a specified sum which is the purchase money is to be paid in a specified manner after a specified time. Such a clause answers the definition of "bond" in section 2 (5) (b) of the Stamp Act.
5. In the present case it is sought to root out of the instrument which is an agreement for the sale of share in immovable property that portion in it which contains the provision for the payment of the purchase price and to style this a bond. Sub clause (1) and (2) of paragraph 1 of the instrument appearing at page 3 thereof contain merely one of the terms of the agreement specifying the particular mode in which the purchase money in the transaction is to be paid by the vendee to the vendor. It is immediately followed by paragraph 2 which provides that on payment of the purchase money in that manner the sale will be completed by the execution of a proper conveyance.
6. A bond has to be distinguished from an obligation under a contract. The distinction is clear. The remedy for the breach of the terms of a bond is the recovery of the amount of the bond. The remedy for the breach of term in the contract is damages. As has been stated by a learned author "the distinction between a bond and an obligation under an ordinary contract is that a breach of an obligation under a bond does not "sound in damages" is what one who breaks an ordinary contract is subjected to. "
7. The test in the present case would be this : If there was a breach in respect of sub clauses (1) and (2) of paragraph 1 of the agreement on the part of vendee could the vendor sue the vendee for the amount of Rs. 26000/- under this instrument. The answer is emphatically no. If the vendee committed such a breach the only remedy of the vendor would be a suit for specific performance of the contract as a whole and a claim for damages is the alternative. By no manner of means would the vendor succeed in a suit on the so-called bond.
8. It may be argued that penal clause is contained in sub clause (2) of paragraph 1 of the agreement under consideration which is attested. There is clear authority that agreements with penal clauses are not bonds even if attested vide *Gisborne & Co., Vs Subal Bowrie* I. L. R. 8 Cal 284 and in the matter of *Gajrasing* I. L. R. 9 All. 585 (F.B.)

I am therefore of opinion that the instrument in this case has been correctly stamped and no question of fine arises. (Opinion of the Government Pleader, Karachi No. 513 dated 6th July 1936 to the Revenue Commissioner for Sind).

4. Suttas for delivery of cotton or indigo-Attestation.

A sutta attested by a witness and executed for the delivery of cotton on a certain day, is a "bond" within the meaning of section 3 (4) of the Stamp Act, 1879, and, as such, is liable to stamp duty. The transfer of a sutta of the above description is a transfer under Article 60 (b). As regards indigo suttas, the form in which they are said to be drawn would constitute them bonds under the Stamp Act unless unattested. If unattested an indigo sutta would be covenant with a penalty attached i.e. an agreement to deliver a certain quantity of indigo, and in the event of non-delivery to pay damages. (G.I. Resolution No. 6509 dated 9th December, 1887).

(6) "chargeable" means, as applied to an instrument executed or first executed after the commencement of

this Act, chargeable under this Act, and, as applied to any other instrument, chargeable under the law in force in Pakistan when such instrument was executed or, where several persons executed the instrument at different times, first executed;

(7) "cheque" means a bill of exchange drawn on a specified banker and not expressed to be payable otherwise than on demand

(8) Repeated by A.O. 1937.

(9) "District Officer (Revenue)" means the District Officer (Revenue) of a District.

2. Through out Chapter III, for the word "Collector", the words "Chief Inspector of Stamps, Board of Revenue" shall be substituted.

3. Through out Chapter IV, for the word "Collector", the words "District Officer (Revenue) or Chief Inspector of Stamps, Board of Revenue" shall be substituted.

4. In sections 61 and 73, for the word "Collector", the words "Chief Inspector of Stamps, Board of Revenue" shall be substituted.

5. In other Chapters, for the word "Collector", the words "District Officer (Revenue) or Chief Inspector of Stamps" shall be substituted.

COMMENTS

1. Investment of powers of Assistant Collector to certain officers:

(i) In exercise of the powers conferred by Sub-Section (2) & (3) of Section 16 of the Sindh Land Revenue Act 1967, the Board of Revenue Sindh is pleased to confer the powers of Assistant Collector Grade-I under the said Act on the followings Inspectors of Stamps of Board of Revenue Sindh, for the purpose of recovery of Stamp Duty/dues as arrears of Land Revenue under the said Act. Such powers are to be exercised by them subject to the control of the Collector concerned from the date of issue of this notification:

1. Mr. Gul Hassan Chandio, Inspector of Stamps, Larkana Circle.
2. Mr. Salahuddin Sand, Inspector of Stamps, Hyderabad Circle.
3. Mr. Ghulam Abbas Shah, Inspector of Stamps, Sukkur Circle.

(Vide Board of Revenue, Sindh Notification No. 27-12-1995-Estt:IV, dated 28-11-1995)

(ii) In exercise of the powers vested under Section-16, Sub-Section (2) & (3) of the Sindh Land Revenue Act, 1967, as amended by Sindh Law (Amendment) Ordinance, 2001 (Sindh Ordinance No.XXXVI of 2001) issued on 28-11-2001, the Senior Member, Board of Revenue, Sindh is pleased to confer the powers of Assistant District Officer (Revenue) of the first grade on the following Assistant Chief Inspectors of Stamps Board of Revenue Sindh, for the purpose of Recovery of Stamp Duty/dues as arrears of Land Revenue under the said Act. Such powers to be exercised by them are subject to the control of the District Officer (Revenue) concerned:

1. Mr. Fazal Ahmed Khan, Assistant Chief Inspector of Stamps, Board of Revenue.
2. Mr. Suhail Ahmed Khan, Assistant Chief Inspector of Stamps, Board of Revenue.
3. Mr. Abdul Jabbar Jalbani, Assistant Chief Inspector of Stamps, Board of Revenue.

(Vide Board of Revenue, Sindh Notification No. 27-12-1995-Estt:IV, dated 19-02-2003)

2. The Collector has got specified duties to perform under the various sections of the Act and they are as under:

S. 16 to endorse denoting duty, S. 18 (2) to receive foreign documents and to send them under rule 12(2) to the proper officer to be stamped with special adhesive stamps. Ss. 31 and 32. to adjudicate and to certify as to stamps. Ss 40, 41 and 42 to deal with impounded and voluntarily brought instruments. Ss. 43 and 70 to sanction prosecutions for offences under the Stamp Act. S. 48 to recover duties and penalties. Ss. 49 and 52 to 55 to make allowances for spoilt stamps. S. 56 to make references to the Chief Revenue authority. S. 61 to apply for revision. S. 73 to authorize any person to inspect books etc. to secure stamp duty.

(10) "conveyance" includes a conveyance on sale and every instrument by which property, whether movable or immovable, is transferred *inter vivos* and which is not otherwise specifically provided for by Schedule I:

COMMENTS

1. Trade Mark.

Trade-mark is property and an agreement to sell a trade-mark is liable to *ad valorem* stamp duty as a conveyance on sale. (1896 OB 356 (359) : 65 LJQB 657)

Share in a patent and a sole licence to use in a particular area, the invention protected by the patent are property and an agreement for the sale of such a share or licence is liable to stamp duty as a conveyance on sale (1897-LQB 175 (180, 181)).

2. Assignment of contracts.

Instrument assigning the benefit of a contract amounts to a conveyance. ((07)9 Bom LR 119 (121), 122).

3. Company cases.

Where by deed of "apport" executed in France, property in France, transferred by one English company to another English company, consideration for transfer being shares of latter company to be issued and delivered to former company in England. Instrument held conveyance on sale. (77 L.J. KB 55).

Where share holders of A company then in course of being voluntarily wound up entered into agreement in writing with B company that shareholders of A company should respectively exchange their shares in A company for shares in B company, and upon B company allotting to them shares to which they were respectively entitled they should thenceforth hold their respective shares in A company in trust for B Company. Agreement held amounted to conveyance on sale to B company of equitable interest in shares of A company ((1899) 1899-2 QB7 (12,13) : 68 LJ QB 204).

Where consideration for transfer of whole undertaking of one railway company to another railway company consisted of purchasing company taking on itself liabilities of vendors and creating and allotting to shares-holder of selling company preference stock of purchasing company. Deed held conveyance on sale. ((1864) 33 LJ Ex. 173 (176)+13 WR (Eng.) 10).

An agreement between old bank and its liquidators and new bank that former should transfer all its property and effects to new bank consideration being that new bank should discharge all debts and liabilities of old bank, and that every member of old bank should, in respect of each share held by him in old bank be entitled to claim allotment of one share of equal value in new bank. — By deed old company and its liquidators transferred its immovable property to new company at agreed value. Deed held conveyance on sale. (('96) 20 Bom. 432 (434, 435) FB).

A conveyance to the company, of property which is the property of the share-holders in their individual capacity, is just as much a conveyance as if the share-holders were totally different persons. (1894-l QB 516).

Where a share-holder exchanges his shares with another the transaction may amount to a transfer by way of exchange or conveyance. (AIR 1937 Mad. 259 (260, 261))

Where 200 shares were allotted in consideration of written agreement as regards transfer of business. Company submitted return as to allotment accompanied by agreement which formed consideration for allotment of 200 shares. Such an agreement held not conveyance. (AIR 1934 Lah. 533 (534) : 15 Lah. 509 (SB)).

An agreement to transfer property in the future cannot be treated as a "conveyance" (AIR 1934 Lah. 530 (532) : 15 Lah. 501 (SB) + AIR 1937 Mad. 259 (260) : ILR (1937) Mad. 259 (FB)

Contract constituting title of allottee not in writing. Under S. 104(2) of the Companies Act (1913) Prescribed particulars of such contract must be filed and these particulars must bear the same stamp duty which would have been payable if the contract had been reduced to writing. (AIR 1959 All 595 (597) ILR (1959) I All 652 (SB)).

4. Release deed between co-owners.

Benami transaction

An instrument whereby a *benamidar* sustains and declares the interest of the real owner and put such intention in writing and styles it as a release deed, it can only be interpreted and understood as release deed, pure and simple and cannot be a conveyance as it is popularly understood. If in a given case it is proved that a transaction is benami transaction and satisfies the well-known test which revolve round such transaction, it is a document whereby the benamidar concedes and accedes to the title of the real owner and it can attract duty only as a release deed and not as a conveyance. (AIR 1978 Mad. 242, AIR 1975 Mad. 161)

A court is not empowered to go behind the recitals and terms of the document before it and hold that the object of the transaction is something different from what the document discloses. (AIR 1977 Mad. 10).

A release by one co-owner of his interest in his share in the property in favour of other co-owners, is not a conveyance and does not fall under Art 19, Sch. IA, when there is no division of property by metes and bounds. (AIR 1955 Mad. 641 (642) : ILR (1955) Mad. 1133 (FB) (32 Bom. 505 (FB))).

5. Deed of dissolution of partnership.

In case of dissolution of a firm having two partners, one partner paying certain amount to the other his amount of capital alongwith his share of income upto the date of dissolution of the firm and also paying certain other amount being half share of the value of goodwill of the firm, the document in substance held to be one of dissolution of partnership and not one of conveyance except that portion of agreement relating to payment in respect of goodwill (AIR 1972, Pat. 277)

6. Stamp duty-When payable.

Stamp duty is payable on an instrument and not on the transaction which is embodied in the instrument, as such in the case of verbal transfer no stamp duty is required. (AIR 1945 Mad. 138 A/so see PLD 1977 S.C, 644)

7. Partnership—Transfer of share.

Partner, on dissolution of partnership, transferring by instrument his share in partnership to stranger with whom continuing partner might be disposed to enter into partnership. Instrument will amount to conveyance on sale. (1867) 2 Ex. 46 (50,53)

(II) "duly stamped", as applied to an instrument, means that the instrument bears an adhesive or impressed stamp of not less than the proper amount and that such stamp has been affixed or used in accordance with the law for the time being in force in Pakistan;

COMMENTS

1. Scope.

Proper amount of stamp duty required for an instrument has to be determined in accordance with the Act in force at the time of execution or first execution of the instrument and not at the time when the document is tendered in evidence. The words "the law for the time being in force" refer to the Act under which the instrument is chargeable under section 2(6): ('82) 5 Mad. 394 (396) (FB)+1885 Pun Re No. 7 p. 10 (10))

2. Duly stamped.

Where adhesive stamps have been affixed to the instrument of transfer but they have not been cancelled, the instruments are not 'duly stamped' and the company is justified in refusing registration of the shares concerned (AIR 1961 Cal. 528).

But where promissory note was written on impressed sheet and another blank impressed sheet attached to it to make up deficiency in stamp. Promissory note held inadmissible in evidence as not being duly stamped. (AIR 1914 Mad. 358 (359).

3. An instrument is duly stamped —

- (1) When it is written on a stamped paper of the amount required by the law or bears a stamp of the amount required by the law and is stamped in the manner required by the law i.e., the Act and the rules made thereunder (vide sections 3, 4, 5, 6, 20 to 26, and 28 and the articles in the Schedule),
 - (2) When the stamp is of the proper description (Sections 10 and 11)
 - (3) When the stamp is duly cancelled (section 12),
 - (4) When the instrument is written in accordance with the provisions of sections 13 and 14,
 - (5) When it is stamped at the proper time (sections 17, 18 and 19),
 - (6) When two or more impressed sheets are used and written as provided in rule 7 of the United Provinces Stamp Rules, 1942, (Ref. 23 All., 213).
4. The omission of a stamp vendor to endorse on stamped paper particulars required by the rules would not render

a document not duly stamped. (Ref. 11 Mad., 377).

5. The certificate of a Collector endorsed on a document under sections 32 (3) and 42 (2) makes a document duly stamped.

(12) "executed" and "execution", used with reference to instruments, mean signed and "signature" ;

COMMENTS

Meaning of the word "executed" explained:

The word "executed" in sub-section (12) of section 2 of the Stamp Act of 1899 means "signed" so that the word used with reference to instruments in the Stamp Act does not have the significance attached to it by the Court in case of 19 Bombay at page 635. The word executed must be construed according to the meaning assigned to it by the Act and to the context. Rule 11 of the Stamp Rules refers to an instrument being brought to the proper officer "before it is executed" that is before it is signed which means before it is signed by any one. The rule when compared with section 17 of the Act means that an instrument must be stamped before or at the time of "signature" so that when several persons have to sign it must be stamped before it is first signed. (Letter No. 1082, dated 28th April, 1924, from the Solicitor to Government, Bombay, to the Superintendent of Stamps, Bombay).

(13) "impressed stamp" includes—

- (a) labels affixed and impressed by the proper officer, and
- (b) stamps embossed or engraved on stamped paper;

✓ (14) "instrument" includes every document by which any right or liability is, or purports to be created, transferred, limited, extended, extinguished or recorded, and also includes any photograph, disk, tape, film, soundtrack in which images, songs, text or other data are embodied which can be reproduced, with or without the aid of same instrument or machine in visual, audible, or readable form.

COMMENTS

~~Section 2(14)~~ "Instrument" leviability of stamp duty.

Section 2(14) of the Stamp Act defines an instrument to include every document by which any right or liability is or purports to be, created, transferred, limited, extended, extinguished or recorded and in section 2(12) the term "executed" used with reference to instrument means "signed". It is, therefore, evident that only an instrument executed or signed between the parties is liable to stamp duty under any of the relevant provisions of the schedule to the Stamp Act. In the words of Hawkins, Judge "no document requires an agreement stamped unless it amounts to an agreement or memorandum of agreement. The mere fact that a document may assist in proving a contract does not render it chargeable with stamp duty; it is only so chargeable when the document amounts to an agreement of itself or to a memorandum of an agreement already made. A mere proposal or an offer until accepted amounts to nothing. If accepted in writing, the offer and acceptance together amount to an agreement; but if accepted by parole, such acceptance does not convert the offer into an agreement, unless, indeed, after the acceptance something is said or done by the parties to indicate that in future it is to be so considered." 2 LR (1892) 2 QBD 490.

~~Section 2(15)~~ (15) "Instrument of partition" means any instrument whereby co-owners of any property divide or agree to divide such property in severalty, and includes also a final order for effecting a partition passed by any Revenue-authority or any Civil Court and an award by an arbitrator directing a partition;

COMMENTS

Specification of the final order which will be an instrument of partition.

With reference to reference No. 241 from the Revenue Department, dated 8th January 1917, I have the honour to state as follows :-

✓ I understand that may opinion is sought on the question as to what is the final order for effecting a partition within the meaning of section 2 (15) of the Stamp Act where partition is brought about by a suit —

- (a) in the case of an estate assessed to the payment of revenue to the Government;
- (b) in the case of any other immoveable property or of moveable property.

In case (a) the court, in view of section 54 and Order 20, rule 18, of the Civil Procedure Code, can merely declare the rights of the several parties interested in the property. It has no jurisdiction to effect the partition, but must direct the same

to be made by the Collector. I am clearly of opinion that the decree containing such declaration and direction is not a final order for effecting a partition.

The final order in such a case is that of the Collector effecting the partition, for, be it noted, this order needs no confirmation by the court.

In case (b) if the court itself effects a partition without reference to a Commissioner or Commissioners (as it often does by consent), the decree giving effect to such partition is the final order.

On the other hand if the court does not itself effect a partition it merely passes a preliminary decree declaring the rights of the parties and issuing a Commission under Order 26, rule 13 of the Civil Procedure Code.

After the report of the Commissioner or Commissioners has been confirmed a decree is passed giving effect to the report.

It is this decree only which is the final order. (Opinion of the Hon'ble the Advocate General No. 9 dated 25th January 1917, Vide para 1 of G.O. No. 5488 dated 2nd May 1917. R.D.)

✓ (16) "lease" means a lease of immovable property, and includes also —

(a) a patta ;

(b) a kabuliyat or other undertaking in writing, not being a counterpart of a lease, to cultivate, occupy or pay or deliver rent for, immovable property;

(c) any instrument by which tolls of any description are let ;

(d) any writing on an application for a lease intended to signify that the application is granted ;

COMMENTS

1. Scope.

An instrument will be a lease for the purpose of the Stamp Act although it does not fall within definition in S. 105 Transfer of Property Act, if it is covered by any of the categories mentioned in clauses (a to d) (AIR 1933 All. 735).

2. Correspondence containing lease.

Correspondence containing agreement for lease complete in itself independently of draft of lease and engrossed lease. Correspondence requires stamp as lease even though engrossed lease is properly stamped. ('90) 17 Cal 548 (556)).

A letter written by a tenant to his landlord which is not a mere record of an antecedent transaction but which contains a binding undertaking to pay rent is a lease (AIR (1948) Bom 336 (336, 337) ILR (1948) Bom. 342 (DB)).

3. Sub-lease

There is nothing in the definition of a lease of immovable property to exclude a sub-lease or under-lease. Like instruments requires stamp paper under article 35 of the Stamp Act.

4. Document varying terms of lease.

After a complete lease has been executed, stamped and registered if another document is prepared and executed with a view to alter the first and substitute new terms so far as the rent is concerned, new document requires to be itself stamped with the stamp provided for a lease ('78) 20 Suth WR 36 37) (DB))

5. Lease-some instances :

Deeds executed either on behalf of local bodies or by contractors in respect of markets, slaughter houses, cart stands or other immovable property belonging to local bodies are leases. (('33) Mad S.M. p. 112).

A document executed by lessee covenanted that he would take certain permises from lease, make certain alterations

in premises at his own cost, pay certain amount a month as rent and period of occupation fixed as five years and provided that if he did vacate premises within five years he would be liable for rent of five years, document held lease as well as agreement. (AIR 1939 All 724 (725)).

The words "undertaking in writing" in clause (b) contemplate a composite agreement signed by both the lessor and lessee as an unilateral agreement signed by the lessee only. Where the document is covered by clause (b) as containing an undertaking to occupy or pay rent, it will be a lease for the purpose of this Act although the lessee has no interest in the immovable property and is only a licensee. (AIR-1933 All 435. AIR 1933 All 735).

6. Lease of immovable property defined in the Transfer of Property Act :

"A lease of immovable property" has been defined in section 105, Transfer of Property Act (IV of 1882), as "a transfer of a right to enjoy such property, made for a certain time, express or implied or in perpetuity, in consideration of a price paid or promised, or of money, or a share of crops, service, or any other thing of value to be rendered periodically or on specified occasions to the transferor by the transferee, who accepts the transfer on such terms :

The transferor is called the lessor, the transferee is called the lessee, the price is called the premium, and the money, share, service or other thing to be so rendered, is called the "rent."

7. Clause (c)— "Tolls" such as ferry, bridge, fairs, market, road, fisheries and harbour tolls.

8. Clause (d)— The word "granted" written on the margin of an application for a lease to indicate its acceptance would constitute the document a lease. (Syed Sufdar Raza v. Amzad Ali, 7 Cal., 703).

9. Where a proposal for renewal of a lease was approved in writing, it was held that the correspondence required to be stamped and penalty paid, before the same could be admitted in evidence. (Boyed v. Krieg, 17 Cal., 548). See proviso (c) to section 35.

10. In a licence no interest in immovable property is transferred to a licensee, while in a lease sole and exclusive occupation is given to the grantee, so as to amount to a transfer of an interest in immovable property to the grantee. (Madras Board of Revenue v. South Indian Railway, 48 Mad., 368).

11. But the above ruling was dissented from and a document in identical terms though styled as a licence was construed as a lease. It was an instrument purporting to be a licence by a railway company to an oil company conferring a right of temporary occupation of a piece of land for a petroleum storage installation. It was held that exclusive occupation was given and the document was a lease because under the Stamp Act the definition of lease was wider than that in the Transfer of Property Act. (In re. Burma Shell Oil Co., 55 All., 874).

12. An agreement to let or sub-let is chargeable as a lease even if a formal deed of lease may be in contemplation. (Ref. 17 Mad., 280). If a formal deed of lease is executed afterwards duty on it will not exceed the duty chargeable on agreement under article 5 (d) of the schedule as amended. (See Proviso to article 35 of the said schedule).

(16-A) "marketable security" means a security of such as description as to be capable of being sold in any stock market in Pakistan or in the United Kingdom ;

(17) "mortgage-deed" includes every instrument whereby, for the purpose of securing money advanced, or to be advanced, by way of loan, or an existing or future debt, or the performance of an engagement, one person transfers, or creates, to, or in favour of, another, a right over or in respect of specified property ;

COMMENTS

1. Mortgage has been defined in section 58 of the Transfer of Property Act (IV of 1882) as follows :

"A mortgage is the transfer of an interest in specific immovable property for the purpose of securing the payment of money advanced or to be advanced by way of loan, an existing or future debt, or the performance of an engagement which may give rise to a pecuniary liability.

The transferor is called a mortgagor, the transferee a mortgagee; the principal money and interest of which payment is secured for the time being are called the mortgage money and the instrument (if any) by which the transfer is effected is called a mortgage-deed."

2. The definition in the Stamp Act is more extensive because :

- (i) it includes movable property,
- (ii) the performance of an engagement is not limited to an engagement which may give rise to a pecuniary liability, and
- (iii) it includes charges. (Mulla and Pratt).

3. "Specified property" means property, both movable, and immovable described so that it may be readily recognized and identified. (Najibulla Mulla v. Nusir Mistri, 7 Cal., 196).

4. Transfer.

The term "transfer" provided for in this clause is a transfer valid in law. To make a document liable to stamp duty as a mortgage deed, it is not enough if the document purports to effect a transfer. It must be a legal "transfer". There can be no transfer unless the requirements of Transfer of Property Act, S.5, and Registration Act are satisfied. (AIR 1953 Mad. 764).

5. Consent decree—Charges created on immovable property—Property not subject of suit—Decree not compulsorily registerable.

An Act imposing taxation always has to be construed strictly, that is to say, the Government has to show that the tax in question is imposed upon a fair construction of the language used, and having regard to the fact that the schedule does not expressly refer to any decree of a Court except a decree for partition, and to the fact that the definition of "mortgage deed" does not in term clearly include a consent decree creating charge, coupled with the fact that section 29 seems to indicate that such a consent decrees of this nature are not liable to stamp duty. (Civil Ref. No. 7 of 1934 made by N.D. Upponi, First Class Sub-Judge. Vide G.R. R.D. No. 3903/33 dated 13th July 1935).

6. An instrument was styled as a deed of pledge of certain machinery and plant and a right was created in favour of the custodian : held, that the deed was a mortgage-deed within the meaning of this sub-section. [United Provinces Board's order in file no. 173 (16), letter no. 2055/V.S., dated September 8, 1924].

7. A certain mill appointed two men as its selling representatives for certain city. The latter deposited a security of rupees one lakh for the performance of the terms of the contract. Held, that the document was neither an indemnity bond nor a security bond but a mortgage. Duty was chargeable as on a mortgage deed with possession. [United Provinces Board's order in file no. 173 (21), Sl.. 192].

(18) "paper" includes vellum, parchment or any other material on which an instrument may be written ;

(19) "policy of insurance" includes—

(a) any instrument by which one person, in consideration of a premium, engages to indemnify another against loss, damage or liability arising from an unknown or contingent event ;

(b) a life policy, and any policy insuring any person against accident or sickness, and any other personal insurance;

COMMENTS

1. Meaning of insurance.

Insurance is a contract by which a person, company or society, in consideration of a gross sum or of a periodical payment undertakes to pay a large sum on the happening of a particular event. The consideration is termed the premium or premiums : the party entering into the undertaking, the assurer or insurer ; the party for whose benefit it is entered into the assured or insured; the happening of the event, the risk ; and the instrument containing the contract, the policy. (Merchantile Law by Smith).

2. Policy of insurance.

A policy of insurance is the formal document embodying a contract of insurance. (AIR 1944 Sind 98 (102), ILR (1943) Kar 491 (1925) 1925 App Cas639 (642): 94 JKB 712).

A contract of insurance must be a contract for the payment of a sum of money, or for some corresponding benefit to

become due on the happening of an event, which event must have some amount of uncertainty about it, and must be of a character more or less adverse to the interest of the person effecting the insurance [(1904) 1904-2 KB 658 (663,664) : 73 LJKB 734]

3. Policy of insurance and promissory note.

A policy of life insurance though it guarantees the payment of a certain sum of money, is not a promissory note as its objective not to merely convey such a promise but to embody a contract containing several stipulation of a complex nature (154 E R 1127)

(20) "policy of sea-insurance" or "sea-policy"

(a) means any insurance made upon any ship or vessel (whether for marine or inland navigation), or upon the machinery, tackle or furniture of any ship or vessel, or upon any goods, merchandise or property of any description whatever on board of any ship or vessel, or upon the freight of, or any other interest which may be lawfully insured in, or relating to, any ship or vessel; and

(b) includes any insurance of goods, merchandise or property for any transit which includes, not only a sea risk within the meaning of clause (a), but also any other risk incidental to the transit insured from the commencement of the transit to the ultimate destination covered by the insurance ;

Where any person, in consideration of any sum of money paid or to be paid for additional freight or otherwise, agrees to take upon himself any risk attending goods, merchandise or property of any description whatever while on board of any ship or vessel, or engages to indemnify the owner of any such goods, merchandise or property from any risk, loss or damage, such agreement or engagement shall be deemed to be a contract for sea-insurance ;

COMMENTS

Certificate of marine insurance.

A certificate of marine insurance has been held to be a 'policy of sea-insurance'. [19 Bom 130 (FB)]

It mentions the sum for which the assurer declares the name of the ship, the voyage and the premium, and provides for the losses being paid on its production in conformity with certain conditions in the possessions of the assurers, and lastly, it expressly guarantees the payment of losses and claims settled under it. The document on the face of its does not contemplate the necessity of any other document of a more formal character being passed to the assured, and read with the conditions to which it refers, is clearly the instrument upon which the assured is intended to enforce his claim. It is, therefore, a document by which the parties executing it engage to indemnify against losses arising from an unknown or contingent event [14 CB Rep NS 452].

(21) "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 ;

COMMENTS

1. Power of attorney.

"Power of attorney is defined by *Strouds*" as an authority whereby one is set in turne, stead or place of another to act for him. "Wharton in Law Lexicon, defines the expression as under :-

"A writing usually but not always necessarily, under seal authorising another person, who is called the attorney of the person appointing him, to do any lawful act in the stead of another, as to give seisin of lands, receive debts or sue a third person".

2. General power of attorney.

A power-of-attorney authorising the agent to act generally or in more than one transactions is known as a general power-of-attorney. [AIR 1916 Mad 601 (603) : 38 Mad 134 (DB)].

A power of attorney will not cease to be one merely because it authorises the agent to remunerate himself from the moneys he is asked to collect. [7 Bom H C R (AC) 10(17)].

(22) "promissory note" means a promissory note as defined by the Negotiable Instruments Act, 1881 ;

It also includes a note promising the payment of any sum of money out of any particular fund which may or may not be available, or upon any condition or contingency which may or may not be performed or happen ;

COMMENTS

1. As defined by the Negotiable Instruments Act, a "promissory note" is an instrument in writing (not being a bank note or a currency note) 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. [Section 4, Negotiable Instruments Act (XXVI of 1881)].

2. Promissory note— Essential requisits

An instrument which contains merely a bare promise to pay money is a promissory note. A statement of the consideration for the promise is not detrimental to the character of an instrument as a promissory note. Such a statement does not affect its essential character as the vehicle of a simple promise to pay. But whether what is stated is only the consideration or something more and whether it is such as to affect the essential character of the instrument must be determined on the language of each instrument and the facts and circumstances of the case. The test in each case is to see what is the dominant and the substantial effect of the instrument.

Where the instrument ran :-

"For my own need (that is to say as price of 8,000 baskets) I borrow from you a sum of RS. 13,750 on condition of repayment on demand".

Held, to be a promissory note. An unconditional acknowledgement of debt is not a feature foreign to the structure of a promissory note, for such acknowledgement implies a promise to pay. [PLD 1956 Dacca 14]

The essentials of promissory note are :-

1. It must contain an agreement for the payment of money.
2. The agreement must amount to an undertaking or promise.
3. Subject to the provisions of the second paragraph of this sub-section the undertaking must be unconditional.
4. The agreement must be for the payment of money and money only.
5. The sum payable must be certain.
6. The instrument must be signed by the maker of the instrument.
7. The money must be payable to or to the order of a certain person or to the bearer of the instrument.
8. The instrument must not be a bank-note or currency note.

3. Test of promissory note.

To determine that whether a document is a promissory note is to be seen as to what is the dominant, the substantial effect of the instrument. For this purpose two tests are applicable ;

1. Is the intention of the parties that the instrument should be a promissory note ? and
2. Is the document a promissory note, in the common acceptance of the term by businessmen ? [AIR 333 Mad 306]
3. The promise to pay will not be conditional when it is made dependent upon an event which is certain to happen at some time or other e.g., on the death of a certain person, or twelve months after notice or on the 1st January when a particular individual comes of age.
4. The sum payable must be money only, i.e. specie or other legal currency. It will not become uncertain if it includes future interest or is payable at an indicated rate of exchange or in instalments, and even if there is a provision that on default of payment of an instalment the balance unpaid shall become due. [Section 5, Negotiable Instruments Act (XXVI of 1881)]
5. "Certain person" means the person to whom it is clear that payment is to be made although he is misnamed or designated by description only.
6. "Promissory notes" are meant to include documents, the contents of which consist substantially of a promise to pay a definite sum of money and of nothing else. (*Ram Singh v. Perumal*, 32 I. C., 582).
7. A document which contains a promise to pay money and a certain quantity of grain is not a promissory note. (*Muttu Chetti v. Muttan Chetti*, 4 Mad., 296).
8. A document is a promissory note if, either from express words or by necessary implication, a promise to pay money can be gathered. (*Muthurabilic v. Dalpat*, 3 Bom. L. R., 839).

9. An instrument whereby the promisor undertakes to pay "maarfat" another person is a promissory note. (*Malaram v. Brij Lal*, 54 I. C., 976).
10. The promise to pay must be definite in its terms. (*Carter v Agra Savings Bank*, 5 All., 562).
11. A promissory note, in which no time for payment is specified is payable on demand. [Section 19, Negotiable Instruments Act (XXVI of 1881)].
12. The expressions "At sight", "on presentment" mean "on demand" [Section 21, Negotiable Instruments Act (XXVI of 1881)].
13. An acknowledgement of debt with stipulation to pay interest is not a promissory note. (*Ratan Singh v. Pirbhu Dayal*, 1931 A. L. J., 230).

Punjab Amendment:

[(22 A) "Public Office" includes a Government Office, a People's Local Council, a Local Authority, A Statutory Corporation or a similar body set up by the Central or Provincial Government, commercial or industrial concern whether singly owned or run through partnership having more than twenty employees, a body registered under the Companies Act, 1913 and a Co-operative Society;

(22 B) "Public Officer" includes an Officer-in-Charge of a Public Office. [Pb. Amendment Act, XXVI of 1973]

N.W.F.P. Amendment:

"[(22-A) 'Public officer' includes the Officer-in-charge of a Government Office, or any office of a Local Council a Local Authority, a Statutory Corporation or a similar body set up by the Federal or Provincial Government a Commercial or Industrial concern, whether singly owned or run through partnership having more than twenty employees, a body registered under the Companies Act, 1913, or a Cooperative Society]. [Inst. by N.W.F.P. Act, VII of 1977]"

Sindh Amendment:

(22-A) 'Public office' includes a Government Office or a Local Council, a Local Authority, a statutory corporation or a similar body set up by the Federal or Provincial Government or a commercial or industrial concern, whether singly owned or run through partnership, a body registered under the Company Law for the time being in force or a banking company as defined in the Banking Companies (Recovery of Loans, Advances, Credit and Finances) Act, 1997 or a co-operative society;

(22-B) 'Public officer' includes an Officer-in-charge of a public office. [The Stamp (Sindh Amendment) Act VII of 1985].

(23) "receipt" includes any note, memorandum or writing—

(a) whereby any money, or any bill of exchange, cheque or promissory note is acknowledged to have been received,

or

(b) whereby any other movable property is acknowledged to have been received in satisfaction of a debt, or

(c) whereby any debt or demand, or any part of a debt or demand, is acknowledged to have been satisfied or discharged, or

(d) which signifies or imports any such acknowledgment, and whether the same is or is not signed with the name of any person;

COMMENTS

Pay Slips if issued in form of receipts liable to stamp duty like receipts.

In my opinion the receipts issued by the Karachi Municipality should be stamped for they are in form and in fact receipts. It is open to the Karachi Municipality in cases where they are paid by pay slips merely to deliver a statement of the taxes in respect of which payment is made, but if that statement is in the form of a receipt, it must be stamped.

A pay slip though it may be treated as negotiable is not a bill of exchange, cheque or promissory note, consequently if A gives B a pay slip on a Bank in discharge of a debt due by A to B, B need not give a duly stamped receipt for the same to A. If however B does give a receipt to A such receipt must be stamped having regard to the provisions of section 2 (23) (c) of the Stamp Act, II of 1899. (Opinion expressed by the Advocate General, Bombay, in the letter No. 21, dated 22nd March 1915, on a reference made by the Superintendent of Stamps, Karachi, in letter No. 2531, dated 16 November 1914.)

(24) "settlement" means any non-testamentary disposition, in writing, of movable or immovable property made—

(a) in consideration of marriage;

(b) for the purpose of distributing property of the settler among his family or those for whom he desires to provide, or for the purpose of providing for some person dependent on him, or

(c) for any religious or charitable purpose;

and includes an agreement in writing to make such a disposition and, where any such disposition has not been made in writing, any instrument recording, whether by way of declaration of trust or otherwise, the terms of any such disposition; and

COMMENTS

1. Non-testamentary disposition—A disposition of property intended to take effect during the life-time of the disposer is not testamentary and an instrument recording the same falls within the definition of a settlement. (United Provinces Board's letter no. 628N/V.S.—99, dated July 4, 1882, to Commissioner of Stamps, United Provinces).

2. The reservation of a life interest does not of itself suffice to make the document testamentary. (Rajammal v. Authiammal, 33 Mad, 304).

3. Clause (a)— This will include deeds of dower as well as marriage settlements. (U. P. Stamp Manual, 1945).

4. Clause (b)— This will include a family settlement as well as a settlement in favour of one person. (U. P. Stamp Manual, 1945).

5. An instrument whereby a life interest in land is created in favour of the donee with reversion to the donor and his heirs is a settlement. (Ref. 21 Mad., 422).

6. A assigned some land to a widow to be enjoyed by her during her life time, and also promised to pay her Rs. 78 a year for maintenance. Held, that the deed was chargeable with duty as a settlement. [United Provinces Board's order in file no. 69 (18, Sl.. 29)].

7. S while proceeding on pilgrimage and intending to devote himself to a religious life made over all his property to his minor son under the guardianship of his mother. Held, that the deed was a settlement. [United Provinces Board's order in file no. 141 (16), letter no. 524/V.S., dated March 14, 1925].

8. Clause (c)— "Wakf" created by Musalmans, under the Musalman Wakf Validation Act, should be treated as a settlement for the purpose of stamp duty. [Circular endorsement no. 6/V.S.—173(8), dated August 12/13, 1916].

9. Certain properties were to be devoted for charitable purposes and the deed was to have immediate effect. It was stipulated that the executant would manage the properties during his life-time as a trustee and not as a proprietor. Held, that there was a disposition of property for charitable purposes and as such the instrument was a settlement [United Provinces Board's order in file no. 173(25), Sl.. 25].

10. "Includes an agreement in writing"— If a formal deed is subsequently drawn up and executed in pursuance of the agreement, the duty on the latter instrument shall not exceed four rupees (vide proviso to article 58 of the schedule as amended).

11. "Recording," i.e., recording the oral settlement already made.

12. Settlement and conveyance— A transfer of land, in pursuance of a compromise of a widow's suit for maintenance is a conveyance, as the consideration was other than that specifically mentioned above. (Ref. 21 Mad., 422).

13. Settlement and gift— If the primary object of an instrument is to make an unqualified and absolute gift, it is a gift, but if the object is to make provision for the donee it is a settlement. (Ref. 7 Mad., 350).

14. Settlement and will— If an instrument is intended to have immediate operation it is a settlement, but if it is to be carried into effect after the death of the executor, it is a will. (Ref. 20 Bom., 210).

15. If the document is not revocable it is not a will, but a settlement. (Rajammal v Authiammal, 33 Mad., 304)

16. Settlement and trust— Section 3 of the Trusts Act (II of 1882) runs as follows:

" A trust is an obligation annexed to the ownership of property, and arising out of a confidence reposed in and accepted by the owner, or declared and accepted by him, for the benefit of another, or of another and the owner."

17. Article 64 of the schedule as amended provides for a declaration of trust.

18. A large number of instruments styled as Trust deeds are covered by the definition of settlement. The words "By way of declaration of trust" were added by Act XV of 1904 to prevent evasion of stamp duty by recording that there had been an oral disposition of property.

19. It has been held, that even where there has been an oral disposition prior the Act of 1904 article 58 of the schedule would apply to the deed. (Jnve. Mansukhram, 7 Bom. L. R., 931).

20. Settlement not trust — A person transferred certain properties to the Board of Trustees and recorded that he would not be able to look after the trust personally. It was held to be a transfer of property for religious and charitable purposes and as such a settlement. [United Provinces Board's order in file no. 173(24), sls. 138 and 148].

21. A person executed a deed of waqf perpetuating the memory of his deceased father and provided for free medical treatment for the poor. Certain bye-laws framed for the management of the institution were also incorporated in the deed. The Collector agreeing with the Sub-Registrar was of opinion that portion of the document was chargeable as Articles of Association of a Company under article 10 of the schedule. Held, that article 10 applied to bye-laws under the Companies Act. The bye-laws incorporated in the settlement were ancillary to the main transaction and had no reference to any company. [United Provinces Board's order in file no. 173(29)/24,Sl..4].

22. A person created a trust in order to pay off his debts and appointed trustees to manage his property. After the debts were cleared off the properties were not to revert to the executant himself but to his son subject to the payment of Guzaras to certain persons mentioned in the deed. The executant also allowed his second wife to adopt a son if necessary. Held, that the document was a settlement as well as an adoption deed. (Section 5 of Stamp Act and 20 Bom., 210 followed). [United Provinces Board's order in file no. 173(25), sl. 6].

23. Settlement not release — A deed styled as a deed of release recorded that the executant had already created a trust of his properties for charitable purposes and by virtue of this deed relinquished all the claims to those properties. Held, that the document was a deed of settlement as recording the terms of the previous disposition. It fell within the definition of settlement under section 2 (24) and not under article 55 of the schedule which provided for a release. [United Provinces Board's order in file 173(25),sl. 77A].

(25) "soldier" includes any person below the rank of non-commissioned officer who is enrolled under the Indian Army Act, 1911 or the Pakistan Army Act, 1952.

CHAPTER II

STAMP-DUTIES

A.— Of the Liability of Instruments to Duty

9. Instruments chargeable with duty: Subject to the provisions of this Act and the exemptions contained in Schedule I, the following instruments shall be chargeable with duty of the amount indicated in that schedule as the proper duty therefore respectively, that is to say—

(a) every instrument mentioned in that Schedule which, not having been previously executed by any person, is executed in Pakistan on or after the first day of July, 1899;

(b) every bill of exchange payable otherwise than on demand or promissory note drawn or made out of Pakistan on or after that day and accepted or paid, or presented for acceptance or payment or endorsed, transferred or otherwise negotiated, in Pakistan; and

(c) every instrument other than a bill of exchange or promissory note mentioned in that Schedule, which, not having been previously executed by any person, is executed out of Pakistan on or after that day, relates to any property situate, or to any matter or thing done or to be done, in Pakistan and is received in Pakistan :

Provided that no duty shall be chargeable in respect of —

✓ (1) any instrument executed by, or on behalf of, or in favour of, the Government in cases where, but for this exemption, the Government would be liable to pay the duty chargeable in respect of such instrument;

(2) any instrument for the sale, transfer or other disposition, either absolutely, or by way of mortgage or otherwise, of any ship or vessel, or any part, interest, share or property of or in any ship or vessel registered under the Merchant Shipping Act, 1894, or under Act XIX of 1838, or the Registration of Ships Act, 1841, as amended by subsequent Acts.

COMMENTS

1. Classes of instruments :

Instruments are divided into three classes :

(a) those executed in Pakistan;

(b) foreign bills of exchange or promissory notes negotiated in Pakistan; and

✓ (c) all other instruments executed out of Pakistan but relating to property or matters in Pakistan.

There are three distinct methods of stamping these instruments under section 17, 18 and 19 of the Stamp Act.

2. Proviso (1) :

A corporation set up by the federal or Provincial Government can not be treated as Government and can not avail the exemption from the payment of stamp duty under proviso (1) to Section 3 of the Stamp Act:

"Finance Department reiterates its inability to allow exemption from the payment of stamp duty chargeable on the document/instrument executed by the Sindh Seed Corporation for obtaining loans from the State Bank, as the Sindh Seed Corporation is a corporate body established under Sindh Seed Corporation Act, 1976, and it can not be treated as Government". (Advice tendered by the Government of Sindh, Finance Department in the case of Sindh Seed Corporation).

4. Several instruments used in single transaction of sale, mortgage or settlement :

(1) Where, in the case of any sale, mortgage or settlement, several instruments are employed for completing the transaction, the principal instrument only shall be chargeable with the duty prescribed in Schedule I, for the conveyance, mortgage or settlement, and each of the other instruments shall be chargeable with a duty of four rupees instead of the duty (if any) prescribed for it in that Schedule.

(2) The parties may determine for themselves which of the instrument so employed shall, for the purposes of sub-section (1), be deemed to be the principal instrument :

Provided that the duty chargeable on the instrument so determined shall be the highest duty which would be chargeable in respect of any of the said instruments employed.

5. Instruments relating to several distinct matters : 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.

6. Instruments coming within several descriptions in Schedule I : Subject to the provisions of the last preceding section, an instrument so framed as to come within two or more of the descriptions in Schedule I, shall, where the duties chargeable thereunder are different, be chargeable only with the highest of such duties :

Provided that nothing contained in this Act shall render chargeable with duty exceeding one rupee a counterpart or duplicate of any instrument chargeable with duty and in respect of which the proper duty has been paid.

COMMENTS

For distinguishing between matters which are or are not distinct following rules may prove useful :

"(1) Any matter which if not expressed would be implied by law is not distinct.

(2) Any matter which is ancillary to the leading object of the instrument is not distinct.

(3) Where several parties execute, their parts of the instrument are not distinct if there is community of subject-matter either as to property or interest." (*Mulla and Pratt*).

7. Policies of sea-insurance :(1) No contract for sea-insurance (other than such insurance as is referred to in Section 506 of the Merchant Shipping Act, 1894) shall be valid unless the same is expressed in a sea-policy.

(2) No sea-policy made for time shall be made for any time exceeding twelve months.

(3) No sea-policy shall be valid unless it specifies the particular risk or adventure, or the time, for which it is made, the names of the subscribers or under-writers, and the amount or amounts insured.

(4) Where any sea-insurance is made for or upon a voyage and also for time, or to extend to or cover any time beyond thirty days after the ship shall have arrived at her destination and been there moored at anchor, the policy shall be charged with duty as a policy for or upon a voyage, and also with duty as a policy for time.

8. Bonds, debentures or other securities issued on loans under Act XI, 1879 : (1) Notwithstanding anything in this Act, any local authority raising a loan under the provisions of the Local Authorities Loan Act, 1879, or of any other law for the time being in force, by the issue of bonds, debentures or other securities, shall, in respect of such loan, be chargeable with a duty of one per centum on the total amount of the bonds, debentures or other securities issued by it, and such bonds, debentures or other securities need not be stamped, and shall not be chargeable with any further duty on renewal, consolidation, sub-division or otherwise.

(2) The provisions of sub-section (1) exempting certain bonds, debentures or other securities from being stamped and from being chargeable with certain further duty shall apply to the bonds, debentures or other securities of all outstanding loans of the kind mentioned therein, and all such bonds, debentures or other securities shall be valid, whether the same are stamped or not :

Provided that nothing herein contained shall exempt the local authority which has issued such bonds, debentures or other securities from the duty chargeable in respect thereof prior to the twenty-sixth day of March, 1897, when such duty has not already been paid or remitted by order issued by the Federal Government.

(3) In the case of wilful neglect to pay the duty required by this section, the local authority shall be liable to forfeit to the Government a sum equal to ten per centum upon the amount of duty payable, and a like penalty for every month after the first month during which the neglect continues.

9. Power to reduce, remit or compound duties : The Provincial Government may, by rule or order published in the official Gazette, —

(a) reduce or remit, whether prospectively or retrospectively, in the whole or any part of the territories under its administration, the duties with which any instruments or any particular class of instruments or any of the instruments belonging to such class, or any instruments when executed by or in favour of any particular class of persons, or by or in favour of any members of such class, are chargeable, and

✓ (b) provide for the composition or consolidation of duties in the case of issues by any incorporated company or other body corporate of debentures, bonus or other marketable securities.

✓ 9-A. Power to exempt certain instruments : The Provincial Government may, by notification in the official Gazette, generally exempt from payment of the whole or any part of the duties on any instrument executed by or in favour of a banking company in the normal course of its banking business.

Explanation : For the purpose of this section " Banking Company " shall have the same meaning as assigned in the Banking Tribunals Ordinance, 1984 (Inserted by the Sindh Laws (Amendment) Ordinance, 1984.)

COMMENTS

Important Notifications :

i) In exercise of the powers conferred by section 9-A of the Stamp Act, 1899, the Government of Sindh are pleased to exempt the following instruments executed by or in favour of banking companies from the payment of the stamp duty to the extent specified against each, namely :

DESCRIPTION OF INSTRUMENT

Extent of Exemption

- | DESCRIPTION OF INSTRUMENT | Extent of Exemption |
|---|--|
| 1. Any instrument for redeemable capital of a company as defined under the Companies Ordinance, 1984 (XLVII of 1984). | In full. |
| 2. Conveyance of any property to or by a banking company to or by its customer in pursuance of finance provided by such banking company under any mode of finance not based on interest. | Duty in excess of duty under Article 40 (c) of the Schedule 1 to Stamp Act, 1899. |
| 3. Mortgage deed not being an agreement relating to deposit of title deeds, pawn or pledge including mortgage deed providing for sharing of rent or other income of the property in favour of a banking company in pursuance of finance provided by such banking company under any mode of finance not based on interest. | - do - |
| 4. Instrument of further charge, i.e. any instrument imposing a further charge on property mortgaged as in item 3 above whether possession of property is given or agreed to be given or not. | -do- |
| 5. Lease of any property executed by a banking company to a customer in pursuance of finance provided by the banking company under any mode of finance not based on interest. | Any duty in excess of duty payable under clause (d) of Article 5 of Schedule 1 to the Stamp Act, 1899. |
| 6. Letter of credit including agreement for the opening of any letter of credit by a banking company. | Any duty in excess of duty payable under clause (d) of Article 5 of Schedule 1 to the Stamp Act, 1899. |
| 7. Power of attorney in favour of a banking company when given for consideration and authorising the attorney to sell any immovable property in pursuance of finance provided by the banking company, under any mode of finance not based on interest. | Duty in excess of duty payable under clause (d) of Article 48. |
| 8. Reconveyance of property including property mortgaged for finance providing for sharing of rent or other income of the property in favour of a banking company in pursuance of finance not based on interest. | Duty in excess of duty payable under Article 54 of Schedule 1 of Stamp Act, 1899. |
| 9. Any instrument of transfer of redeemable capital of a company as defined under the Companies Ordinance, 1984. | in full. |
| 10. Deed of trust in pursuance of any redeemable capital of a company as defined under the Companies Ordinance, 1984.
(Government of Sindh, Finance Department's Notification No. PA/DS(B)-Misc-1/84, dated 1st January, 1985). | in full. |
- ii) In exercise of the powers conferred by Clause (a) of Section 9 of the Stamp Act, 1899, the Government of Sindh are pleased to withdraw the exemptions from the payment of stamp duty appearing at Sl. No. 1, 9 and 10 of the Government of Sindh, Finance Department's Notification No. PA/DS(B)-Misc-1/84, dated 1.1.1985, with immediate effect (Government of Sindh, RS&EP Department's Notification No. SECY(RS&EP)/BOR/94-401, dated 4th July, 1994).
- iii) In exercise of the powers conferred by Clause (a) of Section 9 of the Stamp Act, 1899, the Government of Sindh are pleased to direct that with effect from 1st July, 1994, the stamp duty on debentures, bonds (including Participation Term Certificates, Term Finance Certificates or any other documents / instruments of debt or redeemable capital or of authorised saving schemes, issued by any person, company, Modarba or any corporate body, incorporated under any law for the time being in force) shall stand reduced to and will be charged at the rate of 0.15 per cent on first issue and 0.1 per cent on subsequent transfers, (Government of Sindh, RS&EP Department's Notification No. SECY (RS&EP)/BOR/94-392 dated 30th June, 1994).
- iv) In exercise of the powers conferred by Clause (a) of Section 9 of the Stamp Act, 1899, the Government of Sindh are pleased to withdraw the exemption from the payment of Stamp Duty appearing at Sl. No. 6 of the Government of Sindh, Finance Department's Notification No. PA/DS(B)-Misc-1/84, dated 1.1.1985, with immediate effect (Government of Sindh, RS&EP Department's Notification No. CIS/RS&EP/BOR/95-308, dated 2nd July, 1995).

v) In exercise of the powers conferred by clause (a) of sub-section (2) of Section 33 of the Bombay Co-operative Societies Act, 1925 (Bombay VII of 1925), and in supersession of Government notification in the Revenue Department No. 7599, dated the 28th May, 1923, the Government of Sindh is pleased to remit the stamp duty with which under the law for the time being in force, instruments other than those specified in the schedule hereto annexed, executed by or on behalf of any society for the time being registered under the said Act, or by any officer or member of any such society and relating to the business of such society are chargeable :-

SCHEDULE

(1) Bills of exchange, cheque, promissory notes, bills of lading, letters of credit, policies of insurance, proxis and receipts and any instrument chargeable with stamp duty under the Indian Stamp Act, 1899, and falling within item 57 in List I in the Seventh Schedule to the Government of India Act, 1935.

(2) Instruments executed by members of Urban Credit Societies Banks and other Financing Societies including the Sindh Provincial Co-operative Bank in respect of transactions relating to loans and advances and the value of which exceed Rs. 2,000 or where the said transactions are connected on the security of Agricultural produce, if their value exceeds Rs. 10,000. (Government of Sindh, Revenue Department's Notification No. R. 1937-59-8/H. (a) dated 14th June, 1939).

vi) In exercise of the powers conferred by section 9 of the Stamp Act, 1899 and sub-section (2) of section 33 of the Sindh Co-operative Societies Act, 1925, and in partial modification of the Government of Sindh, Revenue Department Notification No. R-1937-59-8/H(A), dated the 14th June, 1939, the Government of Sindh are pleased to withdraw, with effect from 1st July, 1977 the concession of remission of stamp duty granted under the said notification in respect of the documents executed by or on behalf of a Co-operative Housing Society. (Government of Sindh, Revenue Department's Notification No. 41-29-71-Bud(II) dated 30th July, 1977).

vii) In exercise of the powers conferred by Clause (a) of Section 9 of the Stamp Act, 1899 (Act II of 1899), the Government of Sindh are pleased to order that the Stamp Duty in respect of the instruments in Column 2 of the table below shall not be charged in excess of the amount mentioned against each in column 3 of the said table :-

TABLE.

Column 1.	Column 2	Column 3 Stamp Duty
(i)	Partition deeds in respect of agricultural land in rural areas;	Rs. 25/-
(ii)	Gifts in favour of legal heirs upto 64 acres of agricultural land in rural areas; and	Rs. 25/-
(iii)	Exchange upto 64 acres of agricultural land in rural areas	Rs. 25/-

(Government of Sindh, Revenue Department's Notification No. LR-141-75-Rev-I/837, dated 7th July, 1976).

viii) In exercise of the powers conferred by clause (a) of Section 9 of the Stamp Act, 1899 (Act II of 1899) the Government of Sindh are pleased to order that the stamp duty chargeable on transfer of shares under paragraph (a) of Article 62 of Schedule 1 to the said Act shall, at the second stage when the shares are redeemed from the Investment Corporation of Pakistan & Registered in the name of the original owners, stand remitted. (Government of Sindh Revenue Department's Notification No. 23-12-71-Bud (II) dated 9th December, 1972).

ix) In exercise of the powers conferred by clause (a) of Section 9 of the Stamp Act, 1899, the Government of Sindh is pleased to withdraw, with immediate effect, the exemption from the payment of stamp duty granted in respect of the instruments in the nature of a memorandum, agreement or security bond furnished to or made, or entered into with the Works Department or any other Department in connection with the execution of public works under clause (g) of item No. 68 of the Government of India, Finance Department (Central Revenues) Notification Stamps No. 6, dated the 12th September, 1931 and the said notification shall be deemed to have been amended accordingly. (Government of Sindh, RS&EP Department's Notification No. SECY(RS&EP)/BOR/90, dated 1st July 1990).

B.— Of Stamps and the mode of using them

10. Duties how to be paid: (1) Except as otherwise expressly provided in this Act, all duties with which any instruments are chargeable shall be paid, and such payment shall be indicated on such instruments by means of stamps.

- (a) according to the provisions herein contained; or
 - (b) when no such provision is applicable thereto — as the Provincial Government may by rule direct.
- (2) The rules made under sub-section (1) may, among other matters, regulate, —
- (a) In the case of each kind of instrument — the description of stamps which may be used ;
 - (b) In the case of instruments stamped with impressed stamps — the number of stamps which may be used;
 - (c) In the case of bills of exchange or promissory notes written in any Oriental language — the size of the paper on which they are written.

Provided that where a large number of stamps are required in respect of an instrument and it is not possible to make available the required number of stamps or stamps of required amount cannot be affixed on a particular instrument, the Chief Inspector of Stamps may, if he is satisfied that the amount of duty is proper, authorize the payment of such amount through challan in Government Treasury.

11. Use of adhesive stamps : The following instruments may be stamped with adhesive stamps, namely :-

- (a) instruments chargeable with a duty not exceeding twenty-five paise, except parts of bills of exchange payable otherwise than on demand and drawn in sets ;
- (b) bills of exchange, and promissory notes drawn or made out of Pakistan ;
- (c) entry as an advocate, vakil or attorney on the roll of a High Court ;
- (d) notarial acts; and
- (e) transfers by endorsement of shares in any incorporated company or other body corporate.

12. Cancellation of adhesive stamps : (1) (a) Whoever affixes any adhesive stamps to any instrument chargeable with duty which has been executed by any person shall, when affixing such stamp, cancel the same so that it cannot be used again ; and

(b) whoever executes any instrument on any paper bearing an adhesive stamp shall, at the time of execution, unless such stamp has been already cancelled in manner aforesaid, cancel the same so that it cannot be used again.

(2) Any instrument bearing an adhesive stamp which has not been cancelled so that it cannot be used again, shall, so far as such stamp is concerned, be deemed to be unstamped.

(3) The person required by sub-section (1) to cancel an adhesive stamp may cancel it by writing on or across the stamp his name or initials or the name of initials of his firm with the true date of his so writing, or in any other effectual manner.

COMMENTS

1. Cancellation — What amounts to.

Crossing a stamp by drawing a line and signing on the second adjacent stamp is not cancellation of the first stamp within the meaning of S. 12 of the Stamp Act. [U. Kyaw v. Hari Dutt. A.I.R. 1934 Rang 364.]

2. Cancellation of Insurance Stamps.

It is hereby notified that the adhesive stamps termed "INSURANCE" introduced under the Government of India, Finance Department No. 901-F., dated 21st March 1921, which are to be used on instruments (Policies of Insurance), chargeable with stamp duty under Article 47 of Schedule I of the Stamp Act II, of 1899, should, in future, be cancelled, under Section 12 (1) and (3) of the said Act, by the person using them by punching or defacing them with a rubber stamp so that they cannot be used again. (Vide Government Order, Revenue Department No. 1441, dated 25th May 1921 and Notice No. 863 dated 13th June 1921, issued by the Superintendent of Stamps, Karachi).

13. Instruments stamped with impressed stamps how to be written : Every instrument written upon paper stamped with an impressed stamp shall be written in such manner that the stamp may appear on the face of the instrument and cannot be used for or applied to any other instrument.

14. Only one instrument to be on same stamp : No second instrument chargeable with duty shall be written upon a piece of stamped paper upon which an instrument chargeable with duty has already been written :

Provided that nothing in this section shall prevent an endorsement which is duly stamped or is not chargeable with duty being made upon any instrument for the purpose of transferring any right created or evidenced thereby, or of acknowledging the receipt of any money or goods the payment or delivery of which is secured thereby.

15. Instrument written contrary to Section 13 or 14 deemed unstamped : Every instrument written in contravention of Section 13 or Section 14 shall be deemed to be unstamped.

16. Denoting duty : Where the duty with which an instrument is chargeable, or its exemption from duty, depends in any manner upon the duty actually paid in respect of another instrument, the payment of such last-mentioned duty shall, if application is made in writing to the Collector for that purpose, and on production of both the instruments, be denoted upon such first-mentioned instrument, by endorsement under the hand of the Collector or in such other manner (if any) as the Provincial Government may by rule prescribe.

COMMENTS

This section applies when the duty payable on an instrument depends on the duty payable on another instrument, for example :

- (1) A supplementary instrument under section 4;
- (2) Counterpart or duplicate chargeable under article 17;
- (3) Lease ;
- (4) An instrument of partition ;
- (5) Settlement ;
- (6) An instrument conveying property subject to a mortgage in favour of the mortgagee (vide proviso to the explanation to section 24); and

In all the above cases the production of both the instruments would be necessary to prove that the subsequent instrument is duly stamped or comes within the exemption. "To avoid this inconvenience provision is made in section 16 for the duty under the first instrument to be endorsed by the Collector on the second. No other manner has been prescribed." (*Mulla and Pratt*).

C.— Of the time of stamping Instruments

17. Instruments executed in Pakistan, etc : All instruments chargeable with duty and executed by any person in Pakistan shall be stamped before or at the time of execution.

Provided that where during the period referred to in section 23 of the Registration Act, 1908, the rate of stamp duty on the document presented for registration is enhanced such document shall not be accepted for registration unless the proper duty as in force at the time of its presentation is duly paid.

18. Instruments other than bills and notes executed out of Pakistan, etc.: (1) Every instrument chargeable with duty executed only out of Pakistan and not being a bill of exchange, or promissory note, may be stamped within three months after it has been first received in Pakistan.

(2) Where any such instrument cannot, with reference to the description of stamp prescribed therefor, be duly stamped by a private person, it may be taken within the said period of three months to the Collector, who shall stamp the same, in such manner as the Provincial Government may by rule prescribe, with a stamp of such value as the person so taking such instrument may require and pay for.

19. Bills and notes drawn out of Pakistan, etc : The first holder in Pakistan of any bill of exchange, payable otherwise than on demand or promissory note drawn or made out of Pakistan shall, before he presents the same for acceptance or payment, or endorses, transfers or otherwise negotiates the same in Pakistan affix thereto the proper stamp and cancel the same :

Provided that,—

(a) if, at the time any such bill of exchange, or note comes into the hands of any holder thereof in Pakistan the proper adhesive stamp is affixed thereto and cancelled in manner prescribed by Section 12 and such holder has no reason to believe that such stamp was affixed or cancelled otherwise than by the person and at the time required by this Act, such stamp shall, so far as relates to such holder, be deemed to have been duly affixed and cancelled;

(b) nothing contained in this proviso shall relieve any person from any penalty incurred by him for omitting to affix or cancel a stamp.

D. — Of Valuations for Duty

20. Conversion of amount expressed in foreign currencies :

(1) Where an instrument is chargeable with ad valorem duty in respect of any money expressed in any currency other than that of Pakistan, such duty shall be calculated on the value of such money in the currency of Pakistan according to the current rate of exchange on the day of the date of the instrument.

(2) The Federal Government may, from time to time, by notification in the official Gazettee, prescribe a rate of exchange for the conversion of British or any foreign currency into the currency of Pakistan for the purposes of calculating stamp duty, and such rate shall be deemed to be the current rate for the purposes of sub-section (1).

21. Stock and marketable securities how to be valued :

Where an instrument is chargeable with *ad valorem* duty in respect of any stock or any marketable or other security, such duty shall be calculated on the value of such stock or security according to the average price or the value thereof on the day of the date of the instrument.

22. Effect of statement of rate of exchange or average price :

Where an instrument contains a statement of current rate of exchange, or average price, as the case may require, and is stamped in accordance with such statement, it shall, so far as regards the subject-matter of such statement, be presumed, until the contrary is proved, to be duly stamped.

23. Instruments reserving interest :

Where interest is expressly made payable by the terms of an instrument, such instrument shall not be chargeable with duty higher than that with which it would have been chargeable had no mention of interest been made therein.

23-A Certain instruments connected with mortgages of marketable securities to be chargeable as agreements:

(1) where an instrument (not being a promissory note or bill of exchange) —

(a) is given upon the occasion of the deposit of any marketable security by way of security for money advanced or to be advanced by way of loan, or for an existing or future debt, or

(b) makes redeemable or qualifies a duly stamped transfer, intended as a security, of any marketable security,

it shall be chargeable with duty as if it were an agreement or memorandum of an agreement chargeable with duty under Article No. 3(e) of Schedule.

(2) A release or discharge of any such instrument shall only be chargeable with the like duty.

24. How transfer in consideration of debt, or subject to future payment, etc., to be charged : Where any property is transferred to any person in consideration, wholly or in part, of any debt due to him, or subject either certainly or contingently to the payment or transfer of any money or stock, whether being or constituting a charge or incumbrance upon the property or not, such debt, money or stock is to be deemed the whole or part, as the case may be, of the consideration in respect whereof the transfer is chargeable with *ad valorem* duty :

Provided that nothing in this section shall apply to any such certificate of sale as is mentioned in Article 11 of Schedule.

Explanation : In the case of a sale of property subject to a mortgage or other incumbrance, any unpaid mortgage-money or money charged, together with the interest (if any) due on the same, shall be deemed to be part of the consideration for the sale: Provided that, where property subject to a mortgage is transferred to the mortgagee, he shall be entitled to deduct from the duty payable on the transfer the amount of any duty already paid in respect of the mortgage.

Illustrations

(1) A owes B Rs. 1,000. A sells a property to B, the consideration being Rs. 500 and the release of the previous debt of Rs. 1,000. Stamp duty is payable on Rs. 1,500.

(2) A sells a property to B for Rs. 500 which is subject to a mortgage to C for Rs. 1,000 and unpaid interest of Rs. 200. Stamp duty is payable on Rs. 1,700.

(3) A mortgages a house of the value of Rs. 10,000 to B for Rs. 5,000. B afterwards buys the house from A. Stamp duty is payable on Rs. 10,000 less the amount of stamp duty already paid for the mortgage.

25. Valuation in case of annuity, etc. : Where an instrument is executed to secure the payment of an annuity or other sum payable periodically, or where the consideration for a conveyance is an annuity or other sum payable periodically, the amount secured by such instrument or the consideration for such conveyance, as the case may be, shall, for the purposes of this Act, be deemed to be, —

(a) where the sum is payable for a definite period so that the total amount to be paid can be previously ascertained—such total amount ;

(b) where the sum is payable in perpetuity or for an indefinite time not terminable with any life in being at the date of such instrument or conveyance — the total amount which, according to the terms of such instrument or conveyance, will or may be payable during the period of twenty years calculated from the date on which the first payment becomes due; and

(c) where the sum is payable for an indefinite time terminable with any life in being at the date of such instrument or conveyance — the maximum amount which will or may be payable as aforesaid during the period of twelve years calculated from the date on which the first payment becomes due.

26. Stamp where value of subject-matter is indeterminate : Where the amount or value of the subject-matter of any instrument chargeable with *ad valorem* duty cannot be, or (in the case of instrument executed before the commencement of this Act) could not have been, ascertained at the date of its execution or first execution, nothing shall be claimable under such instrument more than the highest amount or value for which, if stated in an instrument of the same description, the stamp actually used would, at the date of such execution, have been sufficient :

Provided that, in the case of the lease of a mine in which royalty or a share of the produce is received as the rent or part of the rent , it shall be sufficient to have estimated such royalty or the value of such share, for the purpose of stamp-duty —

(a) when the lease has been granted by or behalf of the Government, at such amount or value as the Collector may, having regard to all the circumstances of the case, have estimated as likely to be payable by way of royalty or share to the Government under the lease, or,

(b) when the lease has been granted by any other person, at twenty thousand rupees a year ;

and the whole amount of such royalty or share, whatever it may be, shall be claimable under such lease :

Provided also that, where proceedings have been taken in respect of an instrument under Section 31 or 41, the amount certified by the Collector shall be deemed to be the stamp actually used at the date of execution.

27. Facts affecting duty to be set forth in instrument :

The consideration (if any) and all other facts and circumstances affecting the chargeability of any instrument with duty, or the amount of the duty with which it is chargeable , shall be fully and truly set forth therein.

COMMENTS

1. The procedure to be followed by the officers in determining stamp duty on instruments where the consideration and other facts are not given.

In the case of such an agreement as that executed by P.R.H. to H.R.A. for a term of 11 years stipulating to pay annually 4 khandis of Doka or Ghonsaivel rice in husk and 1,050 bundles of hay, the stamp duty should be fixed by the Collector under paragraph 3 of Article 39 (a) of Schedule 1 of the Stamp Act in accordance with what he considers to be 'the value of the average annual rent reserved.'

The practice followed by the officers of the Registration Department in cases of instruments like the one in question is to draw the attention of the parties presenting such deeds to section 27 of Act 1 of 1879 which requires that the 'consideration (if any) and all other facts and circumstances affecting the chargeability of any instrument with duty shall be fully and truly set forth therein' and to the penalties imposed by Section 63 of the same Act. This leads to the defect in document being supplied, that is, the value of the consideration is shown therein and the stamp duty determined accordingly. In cases in which the parties refuse to express the money value, the documents are forwarded to the Collector of the district for the adjudication of the proper stamp duty being leviable thereon. This is a very reasonable practice. (L.R. No. 10-B dated 26th January 1883, and G.R. No. 1238, dated 16th February 1883).

2. How to determine the Stamp Duty on a deed of gift where the value of property is not set forth.

On a reference as to how to determine of the stamp-duty on a deed of gift where the value of the property was not set forth, the Board directed that "the attention of the executant if alive, may be drawn to Ss. 27, 61 and 63 (now Ss. 27, 62 and 64) of the Stamp Act, and he be required to set forth the value of the property gifted. Should he refuse to supply the defect he must be proceeded against under S. 63 (now S. 64). If the executant be dead, the grantee should be asked the value of the property and the deed stamped accordingly. If the grantee refuses to stamp the deed, it should be impounded, and the

grantee warned that the deed may be held of no avail, if not properly stamped. There is now way in which he can be compelled to stamp the deed, not being liable under section 29 of the Stamp Act." [Bom: Reg: Cir No. 2 of 1880].

3. Instrument has to be stamped according to true intent and meaning of bargain-Accused himself principal mortgagee purchasing benami certain land subject to incumbrance. Incumbrance as part consideration deliberately omitted in sale-deed. Amount mentioned for below real consideration. Stamp chargeable is on amount due under mortgage plus amount mentioned in sale-deed-Party omitting to do so is guilty under S. 64 (b). (See note under S. 64 (b).)

Sindh Amendent :

27.-A. Valuation of Urban Immovable Property: Where any instrument is chargeable with advalorem duty under Article 23 or Article 31 of Schedule I, the value of the property involved shall be calculated according to the valuation table notified by the Collector in respect of properties situated in a particular area or locality :

Provided that where the value given in the valuation table, when applied to any property, appears to be excessive, the Commissioner may, on application made to him by the aggrieved person, determine its correct value and for that purpose the provisions of section 31 and section 32 shall apply mutatis mutandis. (Inserted by Sindh Finance Act, 1986).

27.-B. Valuation of rural immovable property :

Where any instrument is chargeable with advalorem duty under Article 23 or Article 31 or Article 33, of Schedule I, the value of the property involved shall be calculated according to the valuation table notified by the Collector in respect of properties situated in particular rural areas :

Provided that where the value given in the valuation table, when applied to any property appears to be excessive, the Commissioner may on application made to him by the aggrieved person, determine its correct value and for that purpose the provisions of section 31 and section 32 shall apply mutatis mutandis. (Inserted by Sindh Finance Ordinance, 2000).

27.-C. Where any conveyance deed executed in pursuance of a power of attorney is presented for registration, the registering authority shall before registering the deed, satisfy itself by the documentary evidence that the consideration has been paid to the original owner and executant of the power of attorney, otherwise the power of attorney shall be deemed to be a power given for consideration and shall unless already stamped according to Article 48 of Schedule I, be impounded and sent to the Collector for adjudication and recovery of proper duty under section 27-A. (Inserted by the Stamp (Sindh Amendment) Ordinance, 2000).

COMMENTS

Valuation Table of urban and rural properties:

The Valuation Table of urban and rural properties of entire Sindh Province can be seen at Appendix-I of this book.

28. Direction as to duty in case of certain conveyance :

(1) Where any property has been contracted to be sold for one consideration for the whole, and is conveyed to the purchaser in separate parts by different instruments, the consideration shall be apportioned in such manner as the parties think fit, provided that a distinct consideration for each separate part is set forth in the conveyance relating thereto, and such conveyance shall be chargeable with *ad valorem* duty in respect of such distinct consideration.

(2) Where property contracted to be purchased for one consideration for the whole, by two or more persons jointly, or by any person for himself and others, or wholly for others, is conveyed in parts by separate instruments to the persons by or for whom the same was purchased, for distinct parts of the consideration, the conveyance of each separate part shall be chargeable with *ad valorem* duty in respect of the distinct part of the consideration therein specified.

(3) Where a person, having contracted for the purchase of any property but not having obtained a conveyance thereof, contracts to sell the same to any other person and the property is in consequence conveyed immediately to the sub-purchaser, the conveyance shall be chargeable with *ad valorem* duty in respect of the consideration for the sale by the original purchaser to the sub-purchaser.

(4) Where a person, having contracted for the purchase of any property but not having obtained a conveyance thereof, contracts to sell the whole, or any part thereof, to any other person or persons and the property is in consequence conveyed by the original seller to different persons in parts the conveyance of each part sold to a sub-purchaser shall be chargeable with *ad valorem* duty in respect only of the consideration paid by such sub-purchaser, without regard

to the amount of value of the original consideration ; and the conveyance of the residue (if any) of such property to the original purchaser shall be chargeable with *ad valorem* duty in respect only of the excess of the original consideration over the aggregate of the considerations paid by the sub-purchasers :

Provided that the duty on such last-mentional conveyance shall in no case be less than one rupee.

(5) Where a sub-purchaser takes an actual conveyance of the interest of the person immediately selling to him, which is chargeable with *ad valorem* duty in respect of the consideration paid by him and is duly stamped accordingly, any conveyance to be afterwards made to him of the same property by the original seller shall be chargeable with a duty equal to that which would be chargeable on a conveyance for the consideration obtained by such original seller, or, where such duty would exceed five rupees, with a duty of five rupees.

E--Duty by whom payable

29. In the absence of any agreement to the contrary, the expense of providing the proper stamp shall be borne in the case of any instrument described in any of the following Articles of Schedule namely:-

- No.1. (Acknowledgment and Receipt) by the person(s) executing the same.
- No.2. (Affidavit or declaration) by the deponent(s).
- No.3. (Agreement or Memorandum of an Agreement (a) and (b) by the purchaser(s) by the person(s) in whose favour the reconveyance is executed, (d) by the partner(s); and (e) by the executants(s),
- No.4. (Allotment Order or Transfer of Allotment Order) by the persons (s) in whose favour it is issued.
- No.6. (Bank Guarantee) by the person(s) in whose favour it is issued.
- No.7. (Bill of Entry) by the executant(s).
- No.8. (Bill of Exchange) by the executant(s).
- No.9. (Bill of Lading) by the consignee(s).
- No.10. (Bond) by the executant(s).
- No.11. (Certificate of Sale) by the purchaser(s).
- No.12. (Certificate or other document) by the company or body corporate issuing such certificate or document.
- No.13. (Charter Party) by the charterer.
- No.15. (Contract) by the contractor.
- No.16. (Conveyance) vendee or transferee.
- No.17. (Counterpart or Duplicate of an instrument) equally by the executants except in case of the lease by the lessee.
- No.18. (Exchange of Property Instrument) by the parties in equal share.
- No.19. (Financing document) by the borrower.
- No.20. (Gift Instrument) by the donee(s)
- No.21. (Lease including an under-lease or sub-lease, an agreement to let or sub-let and the surrender of a lease) by the lessee.
- No.22. (Letter of Credit) by the person(s) in whose favour it is drawn.
- No.23. (Mortgage deed or a deed of further charge) by the mortgagee.
- No.23-A. (Mortgage deed or any other financing document) by the mortgagee.
- No.24. (Notarial Act) by the Notary Public.
- No.25. (Partition instrument) by the parties in their respective shares or for the execution of order by court arbitrator as directed by the court or arbitrator.
- No.26. (Policy of Insurance) by the person(s) in whose favour the policy is issued.
- No.27. (Power of Attorney) by the Attorney otherwise by the Principal.
- No.28. (Promissory Note) by the executant(s).
- No.29. (Release) by the person renouncing a claim upon another person or against any specified property.
- No.30. (Settlement) by the person(s) making the settlement.
- No.31. (Transfer) by the transferee.

COMMENTS

Consent decree-Charges created on immoveable property - Property not subject of suit-Decree not compulsorily Registerable;

An Act imposing taxation always has to be construed strictly, that is to say, the Government has to show that the tax in question is imposed upon a fair construction of the language used, and having regard to the fact that the schedule does not expressly refer to any decree of a Court except a decree for partition, and to the fact that the definition of "mortgage-deed" does not in terms clearly include a consent decree creating a charge, coupled with the fact that section 29 seems to indicate that such consent decrees of this nature are not liable to stamp duty. (Civil Ref. No. 7 of 1934 made by N.D. Uppenri, First Class sub-Judge. Vide G.R.R.D No. 3909 33 dated 18th July 1935)

30. Obligation to give receipt in certain cases : Any person receiving any money exceeding twenty rupees in amount, or any bill of exchange, cheque or promissory note for an amount exceeding twenty rupees, or receiving in satisfaction or part of satisfaction of a debt any movable property exceeding twenty rupees in value, shall, on demand by the person paying or delivering such money, bill, cheque, note or property, give a duly stamped receipt for the same.

Any person receiving or taking credit for any premium or consideration for any renewal of any contract of fire-insurance, shall, within one month after receiving or taking credit for such premium or consideration, give a duly stamped receipt for the same.

CHAPTER III ADJUDICATIONS AS TO STAMPS

31. Adjudication as to proper stamp : (1) When any instrument, whether executed or not and whether previously stamped or not, is brought to the Collector, and the person bringing it applies to have the opinion of that officer as to the duty (if any) with which it is chargeable, and pays a fee of such amount (not exceeding five rupees and not less than fifty paise) as the Collector may in each case direct, the Collector shall determine the duty (if any) with which, in his judgement, the instrument is chargeable.

(2) For this purpose the Collector may require to be furnished with an abstract of the instrument, and also with such affidavit or other evidence as he may deem necessary to prove that all the facts and circumstances affecting the chargeability of the instrument with duty, or the amount of the duty with which it is chargeable, are fully and truly set forth therein and may refuse to proceed upon any such application until such abstract and evidence have been furnished accordingly :

Provided that —

- (a) no evidence furnished in pursuance of this section shall be used against any person in any civil proceeding, except in an enquiry as to the duty with which the instrument to which it relates is chargeable ; and
- (b) every person by whom any such evidence is furnished shall, on payment of the full duty with which the instrument to which it relates is chargeable, be relieved from any penalty which he may have incurred under this Act by reason of the omission to state truly in such instrument any of the facts or circumstances aforesaid.

COMMENTS

✓ 1. Time limit.

Although this section prescribes no time limit for making an application for adjudication as to the proper stamp-duty, but if the instrument is brought to the Collector within one month of its execution the applicant would be entitled to have the Collector's certificate endorsed on the instrument on payment of the deficit duty, if any, but without having to pay the penalty. But if he seeks the Collector's adjudications after the expiry of one month, the Collector has to proceed under S. 33 to impound the document and to determine under S. 40 whether the instrument is duly stamped and in case he is of opinion that it is not duly stamped the applicant will have to pay the deficit duty together with the prescribed penalty. The time limit given in proviso (a) to S. 32 does not govern application under this section. [AIR 1946 Mad 437 (440); ILR (1947) Mad 141 (DB)].

2. Refund of excess duty paid through erroneous adjudication.

As the excess duty was paid through an erroneous adjudication of the stamp duty by the Collector's Office, it was ordered by Government that refund of such duty may be paid (G.R. R. D. No.806/33 dated 23rd June 1933)

3. Meaning of Collector for purposes of the Stamp Act.

Memorandum from the Remembrancer of Legal Affairs (Mr. G. Davis, I.C.S.), No. 6416, dated the 30th November 1934:-

In this case a deed of settlement was executed by the parties in the district of Surat and was presented for adjudication to the Collector of Surat under section 31 of the Stamp Act. The Collector determined that in his judgement the instrument was chargeable with a duty of Rs. 300. The duty was paid and the Collector under section 32 certified by endorsement on the instrument that the full duty with which the instrument was chargeable was paid. It is stated that the property which was conveyed by the instrument was situate in the city of Ahmedabad. In view of section 18 of the Bombay Finance Act, 1932, which amends the Stamp Act, the instrument which related to the immoveable property situate within the limits of the city of Ahmedabad was chargeable with the duty of Rs. 499. The questions which arise for consideration are :-

- (1) whether the Collector of Surat had jurisdiction to adjudicate the amount of duty, and whether the certificate of adjudication given by him is legal and final; and
- (2) whether the deficit duty can be recovered.

2. In regard to the first question, it does not appear that section 31 of the Stamp Act prescribes any limit of jurisdiction either territorial or otherwise within which the Collector has to make adjudication. That section provides that when an instrument is brought to the Collector and the person bringing it applies to have the opinion of that officer as to the duty with which it is chargeable and pays a fee prescribed for such certificate, the Collector shall determine the duty with which in his judgement the instrument is chargeable. The section was enacted as it was realised that in this country there was greater

ignorance than in England on the part of those who had to execute documents, as to the requirements of the stamp law, it was very desirable that a person should have the opportunity without liability to any fine and on payment of a very small adjudicated fee fixed by law, of resolving all honest doubts as to the amount of duty with which the instrument might be chargeable. (See Mr. Cockerell's speech in the Council, extract published in Desai's Stamp Act, p. 127). The effect of sections 31 and 32 is to constitute the Collector to be an officer empowered to give advice to the public regarding the amount of duty to which any instrument which is brought to him is chargeable. The Commissioner, Northern Division, contends that in view of the use of the article 'the' instead of 'a' before the word 'Collector' in section 31, the words 'the Collector' means the Collector of the District where the property is situate. This contention is not correct. The instruments which are chargeable to stamp duty under the Stamp Act, 1899, are not only instruments which relate to immovable property, but also moveable property and to matters in which no property is involved but which give rise to merely jural relations (see Policy of Insurance, article 47, Power of Attorney, article 48, Memorandum of Association of a Company, article 39, Entry as an Advocate). It does not, therefore, appear that any words can be read with section 31 and 32 which would limit the jurisdiction of the Collector to any territorial limits or in any other manner. The Collector of Surat has therefore jurisdiction to receive the deed for adjudication and the certificate given by him is valid and final in all places where section 31 and 32 are in force. It may be noted in this connection that sections 31 and 32 were enacted in an all India Act of 1899. When these sections were enacted, there were no local amendments of the Act nor were such amendments contemplated.

3. Under section 32 (3) the instrument which bears the Collector's endorsement under section 32 (2) shall be deemed to be duly stamped. Under section 56 the Chief Revenue authority has no power to interfere with the decision of the Collector (I.L.R. 25 Mad. 751) given under section 32 which is in Chapter III. The Court has also to accept the decision of the Collector under section 32 as conclusive. Although, therefore, the Collector's adjudication is erroneous in the present case, it is binding and conclusive and no action can be taken in respect of the instrument under section 33 to recover the deficit duty. (G.R. No. 1419/33, R.D., dated the 11th January 1935).

✓ 32. Certificate by Collector : (1) When an instrument brought to the Collector under Section 31, is in his opinion, one of a description chargeable with duty and —

- (a) the Collector determines that it is already fully stamped, or
 - (b) the duty determined by the Collector under Section 31, or such a sum as, with the duty already paid in respect of the instrument, is equal to the duty so determined, has been paid, the Collector shall certify by endorsement on such instrument that the full duty (stating the amount) with which it is chargeable has been paid.
- (2) When such instrument is, in his opinion, not chargeable with duty, the Collector shall certify in manner aforesaid that such instrument is not so chargeable.
- (3) Any instrument upon which an endorsement has been made under this section, shall be deemed to be duly stamped or not chargeable with duty, as the case may be ; and, if chargeable with duty, shall be receivable in evidence or otherwise, and may be acted upon and registered as if it had been originally duly stamped :

Provided that nothing in this section shall authorise the Collector to endorse —

- (a) any instrument executed or first executed in Pakistan and brought to him after the expiration of one month from the date of its execution or first execution, as the case may be ;
- ✓ (b) any instrument executed or first executed out of Pakistan and brought to him after the expiration of three months after it has been first received in Pakistan or ;
- (c) any instrument chargeable with a duty not exceeding twenty-five paise or any bill of exchange or promissory note, when brought to him, after the drawing or execution thereof, on paper not duly stamped.

COMMENTS

1. Impounding of document — Collector has no jurisdiction.

The Collector has no power to impound an instrument presented to him under this section. Where a document comes into the possession of a Collector under S. 31 for his opinion within one month of its execution and the Collector determines the proper duty payable thereon, the Collector has no jurisdiction to impound the document under S. 33 if the party refuses to pay the deficient duty. [AIR 1961 SC 787 AIR 1951 All 851 (Pr. 9-10): ILR (1952) All 870 (DB)].

Where an instrument which has already been "executed" within the meaning of that term as defined in S. 2 (12) is presented before the Collector for his opinion under S. 31 of the Act, the Collector cannot, if he is of opinion that the instrument requires

stamp duty which has not been paid or has only partly been paid, impound the instrument under S 33. [AIR 1956 All 453 (457): ILR (1956) All 687 (FB)]

2. Certificate of Collector-Finality of

Where a Collector, under S 32 of the Stamp Act, treats a document as being of a particular character, and levies duty on it as such, his decision is final and cannot be challenged in a Court of Law, except under S. 57 of the Stamp Act on reference by the Chief Controlling Revenue Authority. [Gangaram Shewakram v. Mallik Nur Ahmed. 28 S.L.R. 266].

3. Certificate granted by Collector under Section 32 — Validity who can challenge.

When a certificate is granted by the Collector under Section 32, its validity can only be challenged under Section 57 on a reference by the Chief Controlling Revenue Authority to a High Court and not by the trial judge. (Firm of Parsram Hirji V. Firm of Parsram Hassanand. 94 I.C. 747=A.I.R. 1926 Sind 211).

4. Forms of Certificate under Section 32. (Specimen).

- (1) Certified under Section 32 (1) (a) of Act II of 1899 that this instrument is duly stamped.
- (2) Certified under Section 32 (1) (b) of Act II of 1899 that the full duty of Rs..... has been paid in respect of this instrument.
- (3) Certified under Section 32 (2) of Act II of 1899 that this instrument is not chargeable with stamp duty.

CHAPTER IV INSTRUMENTS NOT DULY STAMPED

33. Examination and impounding of Instruments : (1) Every person having by law or consent of parties authority to receive evidence, and every person in charge of a public office, except an officer of police, before whom any instrument, chargeable in his opinion, with duty, is produced or comes in the performance of his functions, shall, if it appears to him that such instrument is not duly stamped, impound the same.

(2) For that purpose every such person shall examine every instrument so chargeable and so produced or coming before him in order to ascertain whether it is stamped with a stamp of the value and description required by the law in force in Pakistan when such instrument was executed or first executed :

Provided that—

- (a) nothing herein contained shall be deemed to require any Magistrate or judge of a Criminal Court to examine or impound, if he does not think fit so to do, any instrument coming before him in the course of any proceeding other than a proceeding under Chapter XII or Chapter XXXVI of the Code of Criminal Procedure, 1898 ;
- (b) In the case of Judge of a High Court, the duty of examining and impounding any instrument under this section may be delegated to such officer as the Court appoints in this behalf.
- (3) For the purpose of this section, in cases of doubt—
 - (a) the provincial Government may determine what offices shall be deemed to be public offices; and
 - (b) the Provincial Government may determine who shall be deemed to be persons in charge of public offices.

COMMENTS

1. Chapter IV - the procedure for impounding and effecting recovery in the case of documents not duly stamped has been summarized and laid down in the Punjab Stamp Manual, 1934, as under:-

"By S.33 all public officers, with certain exceptions, are required to examine every instrument chargeable with duty which comes before them in the performance of their official functions, and to impound any instrument which appears not to be duly stamped. Under S.35 the instrument may be admitted in evidence in a Court, if the party desiring to use it, shall pay the necessary stamp duty together with a penalty of Rs.5 or when ten times the deficiency exceeds Rs. 5 then a penalty of ten times such amount. If the Court is doubtful about the amount of stamp duty leviable, it may proceed under S.60 when such a document is admitted in evidence—and the decision of the Court in this matter is final (S.36). The Court should certify (S.42) by endorsement on the instrument that the duty and penalty have been paid, and the name and residence of the person paying them. An authenticated copy of the impounded instrument admitted in evidence similarly endorsed together with the money should then be sent to the Collector (S.38). If the instrument has not been admitted in evidence for reason it should be sent in original to the Collector after an authenticated copy has been prepared (S.38) (2), and retained by the Court, for the officer impounding is not responsible for any damage in transit. The instrument should be returned to the Court by the Collector after he has done what is required of him by the Act S. 40 (3). Section 42 (2) entitles the person concerned to reclaim the impounded instrument, but the Court shall not, in any circumstances, deliver it before the expiration of one month from the date of impounding it, and if the Collector has certified S.43 that its further detention is necessary, it shall not deliver it so long as such certificate is not cancelled.

Officers who are not authorised to receive evidence should send the impounded instrument to the Collector in original S.38 (2) in the manner indicated above.

On receipt of a copy of an instrument which has been impounded and admitted in evidence, the Collector should satisfy himself that the proper stamp duty has been realized, and if it has not, he may proceed under S.61 to obtain a declaration to this effect from the Court to which appeals ordinarily lie from the impounding Court, and thereafter proceed as described in that section. The Collector should also decide whether the person concerned ought to be prosecuted in the interests of the stamp law Ss.43, 61, 70, and conversely whether the penalty realized or any portion of it should be refunded S.39. When the Collector receives an instrument impounded but not admitted in evidence, he should decide whether stamp duty is leviable or whether the instrument is duly stamped already. He should certify accordingly and his decision is final S. 40. If stamp duty be leviable, he should require it to be paid together with the penalty provided for in S. 40 (1) (b). Under S. 41 the Collector may certify an instrument brought to him in the circumstances stated in the section. All duties, penalties and other charges may be recovered under S. 48. The Collector should return the document when he has done with it to the officer from whom he received it S. 40 (3). It should be noted that all instruments with the exceptions of receipts chargeable with the duty of one anna, two annas and four annas, are excluded from the provisions of Ss. 35, 40 and 41 and the Collector cannot certify the impounded document after levying a penalty or after prosecuting the offender.

Section 34 permits an audit officer to have an unstamped receipt stamped in the course of an audit of a public account, and S. 35 (b) allows an unstamped receipt to be admitted in evidence on payment by the person tendering it of a penalty of rupee one.

2. Procedure to be adopted by the Court :

If a document is brought, the Court should determine whether a document is sufficiently stamped, if not it should give finding under what provision of the Stamp Act the document is liable to stamp duty and then determine exact amount of deficiency payable and call upon the party who wants the document to be admitted, in evidence to pay up the deficiency with ten times penalty. [Law Notes 1973 Lah. 511].

3. "Impound"

The word "impound" according to the Oxford Dictionary means "to take legal or formal possession of " ; according to Webster, "to shut up and place in a pound; hence to seize and hold in the custody of the law" ; according to Wharton's Law Lexicon, "to place a suspected document in the custody of the law."

4. In order to attract provision of S. 33 (1) three conditions must be fulfilled.

- (i) the authority empowered to impound a document must be the authority specified therein.
- (ii) the instrument in question is not stamped according to the provisions of this Act.
- (iii) the instrument is produced or comes in the performance of his functions. [AIR 1959 Pat 353]

5. It may be noted that the impounding of document and imposition of penalty is not warranted before it is admitted in evidence.

Where a Division Bench of the High Court not only impounded an insufficiently stamped document produced before it in appeal but assessed the amount of the penalty and sent it to the Collector for realising the amount it was held that the judgment relating to the assessment of penalty was not warranted by the provisions of the Stamp Act and did not constitute a bar to hearing the matter by the Full Bench in reference under S. 55 after the assessment of penalty by the Collector. [AIR 1955 Hyd. 17 (Pr. 6) : ILR 1954 Hyd. 562 (FB)].

6. The word "produce" means produced in the ordinary course of law and not *produced under compulsion*. Hence, the mere production of a document in compliance with an illegal demand will not confer authority to impound. Where, however, on receiving the complaint against a person for having committed offences under Ss. 64 (c) and 68 (c) of this Act a Magistrate issues a search warrant under which a number of insufficiently stamped document are seized, the Magistrate can impound them as the word "come" in this section is sufficiently wide to include the production of documents under a search warrant. [AIR 1942 Lah. 265 : 25 Mad 525]

7. Similarly where document was voluntarily tendered by a party as part of his evidence and it was not withdrawn when the Inspector of Stamps raised a question regarding the sufficiency of stamp and the party contested the matter and argued that the stamp affixed thereon was sufficient. Held, that those facts were enough to constitute 'production' within the meaning of the section. [AIR 1958 All 659]

8. Where the Inspector of Stamps, while inspecting the records in the record room of the District, noticed an award and a decree passed in terms of the award which documents, in his opinion should have been stamped, and sent a report to that effect to the Chief Inspector of Stamps and a copy thereof to the District Judge it was held that if the District Judge was on perusal of the report of the Inspector of Stamps, of the opinion that the decree and the award had not been duly stamped he had power under this section to impound the same. [AIR 1955 All 615 (615)]

9. Where parties fail to furnish requisite stamps for a final decree for partition the Court cannot draw up the decree on insufficiently stamped paper and impound it under this section. [AIR 1956 Mad. 207]

10. Proviso.

Where a Court has collected the deficiency in stamp duty and penalty and has admitted a document in evidence under Proviso (a) to S.35 and granted a certificate under S.42 (1) it is not open to the Collector, on the document being subsequently produced before him, to impound it under S.33 (1). Where a document is brought under S.31 before a Collector for adjudication as to proper stamp duty after the period of one month prescribed by S. 32 (3), proviso (a), the Collector has to impound the document under this section if he is of opinion that it is not duly stamped. [AIR 1941 Lah. 65: AIR 1946 Mad.437]

11. It is optional to a Magistrate or Judge of a criminal Court to examine or impound the document if he thinks fit so to do. [AIR 1916 Cal. 310]

12. A Collector, in pursuance of directions to curtail activities of money lenders lending money at exorbitant rates of interest instructed a Tahsildar to make certain inquiries. The Tahsildar thereupon summoned certain money lenders to produce their chittas. On their production, the Tahsildar impounded them as they were insufficiently stamped. It was held that the documents could not be said to be produced before the Tahsildar in the performance of his functions and hence he had no power to impound them. [AIR 1945 Pat 96]

13. The Court collected deficiency in stamp duty and penalty and admitted document in evidence under proviso (a) to S.35 and granted certificate under S.42 (1)—Collector on document being subsequently produced before him cannot impound it under S.33 (1). [AIR 1941 Lah. 65 (68)]

14. A mere handing over of a document, even if it is as a result of a summons from Court, cannot be said to be production. There must be volition on the part of the person bringing it into Court to use it for some purpose. The mechanical act of carrying the document as a result of an order of Court and handing it over to the officer of Court would not be production though such act would come within the meaning of the term 'comes before the Court in the performance of its judicial function'. [AIR 1953 Nag 698 (701)]

15. "Duly stamped"

The expression is defined in S.2 (11) of this Act. The duty chargeable on an instrument must be decided with reference to the Act in force at the date of the execution of the document. [1885 Pun Re No.7 (Rev)]

16. Impounding takes place when word "impounded" is endorsed on document and signature of presiding officer is affixed to endorsement so as to show that nature of custody of document had changed and that it is to be treated thereafter as "Impounded" document. Document is considered to be impounded not when oral order is given but when it is actually taken into custody by officer of Court in pursuance of its order. [AIR 1942 Lah 257 (260)]

17. When the document is filed and the question of proper stamp is raised, the Court is competent to impound it. The only purpose of an unstamped letter of cover is to found a claim for delivery of policy and nothing else. Such letter of cover is not chargeable with duty as such under the Act but if it bears the stamps prescribed by the Act for a policy of insurance, then it will shed its inability and will become a competent document on which a claim for loss could be made. Such a document could not be subsequently impounded and stamped after its execution or penalty realised. [AIR 1958 All 659 (660) (DB); AIR 1961 Andh Pra 424 (427); AIR 1961 Cal 48 (51, 52) (DB)]

18. Suo Motu objection

Even if a party takes no objection to the insufficiency of stamp or withdraws such objection, the Court or officer before whom the document is produced is bound suo motu to raise such objection and to impound the document if not duly stamped. [AIR 1925 Lah. 552 (554)]

19. Mere filing of document without attempt to tender it in evidence or prove it does not attract provisions of S.33.

Mere production of a copy of a document or its transliteration without an attempt to prove it or without an attempt to tender it formally in evidence does not amount to the production of document before person concerned nor does the document under such circumstances come before the person concerned in the performance of his functions so as to attract the provisions of S.33. [Ujjal Singh Sunder Singh v. Ahmad Yar Khan A.I.R. 1936 Lah 985]

20. Bills of Exchange already cashed-whether they can be impounded under Section 33 and duty recovered.

The bills of exchange have already been cashed. They cannot, therefore, be impounded under section 33 of the Act since that section refers only to instruments which come before a person in charge of public office in performance of his functions. The authorities mentioned in section 33 have not, therefore, the power to take action against instruments which do not come before them in the performance of their functions or have once passed through their hands (see Thakur Das v. The Crown I.L.R. Lah 745 Mulla's Stamp Act, 2nd Ed. page 106). And though there are provisions in Chapter VII of the Act for prosecuting a person who fails to pay stamp duty, there is no provision in the Act which empowers Government to recover unpaid stamp duty except in the manner expressly provided in the Act i.e. under section 35 or 37. No suit will, therefore, lie for recovery of stamp duty in this case. (Opinion of Remembrancer of Legal Affairs letter No 3873 dated 3rd July 1935. Vide G. R. R. D. No. 3798/33 dated 6th August 1935).

21. Impounding-Insufficiency of Stamp. Collector to make final decision.

Where a court find a deficiency of stamp in a document, the procedure laid down in S.33 and 38 of the Stamp Act is to be followed. The document must first be impounded under S.33 and on payment of penalty it can be admitted in evidence. The final decision whether it is insufficiently stamped rests with the Collector alone. [Peary Lal v. Sukhan Ram. A. I. R. 1926 All 478]

22. The period during which instruments remain impounded cannot be deducted in computing the period of limitation under Registration Act.

The period during which an instrument remains impounded under the provisions of Chapter IV of the Stamp Act, 1879, cannot be deducted in computing the period of limitation mentioned in Section 34 of the Registration Act 1877. In the case of all impounded instruments forwarded to the Collector by Registrar and Sub-Registrar under Section 33 of the Stamp Act the adjudication should be made by the Collector with as little delay as possible. (L.R. No. 1524, dated 22nd December 1881, Vide G. R. 128, dated 10th January 1882).

23. Where a Collector has received an executed document and given his opinion under section 32, and the presenter of the document thereafter declines to pay the full sum adjudged, the Collector may consider the instrument as having been produced before him under this section. (Cf. Government of India Resolution no. 6336, dated November 11, 1875).

24. Senior Inspector of Stamps and the Inspectors of Stamps of the Board of Revenue declared to be persons incharge of public offices for the purpose of this section:

In exercise of the powers conferred by clause (b) of sub-section (3) of Section 33 of the Stamp Act, 1899, the Governor of West Pakistan is pleased to declare the Senior Inspector of Stamps and the Inspectors of Stamps of the Board of Revenue to be persons incharge of public offices for the purpose of Section 33 of the said Act. (Government of West Pakistan, Revenue Department's Notification No.9199-64/303-St., dated 9th February, 1965).

34. **Special provision as to unstamped receipts :** Where any receipt chargeable with a duty not exceeding twenty-five paise is tendered to or produced before any officer unstamped in the course of the audit of any public account, such officer may in his discretion, instead of impounding the instrument, require a duly stamped receipt to be substituted therefor.

35. **Instruments not duly stamped inadmissible in evidence etc., :** No instrument chargeable with duty shall be admitted in evidence for any purpose by any person having by law or consent of parties authority to receive evidence, or shall be acted upon, registered or authenticated by any such person or by any public officer, unless such instrument is duly stamped: *

Provided that—

- (a) any such instrument not being an instrument chargeable with a duty not exceeding twenty-five paise only, or a bill of exchange or promissory note, shall, subject to all just exceptions, be admitted in evidence on payment of the duty with which the same is chargeable, or in the case of an instrument insufficiently stamped, of the amount required to make up such duty, together with a penalty of five rupees, or when ten times the amount of the proper duty or deficient portion thereof exceeds five rupees, of a sum equal to ten times such duty or portion;
- (b) where any person from whom a stamped receipt could have been demanded, has given an unstamped receipt and such receipt, if stamped, would be admissible in evidence against him, then such receipt shall be admitted in evidence against him on payment of a penalty of one rupee by the person tendering it;
- (c) where a contract or agreement of any kind is effected by correspondence consisting of two or more letters and any one of the letters bears the proper stamp, the contract or agreement shall be deemed to be duly stamped;
- (d) nothing herein contained shall prevent the admission of any instrument in evidence in any proceeding in a Criminal Court, other than a proceeding under Chapter XII or Chapter XXXVI of the Code of Criminal Procedure, 1898;
- (e) nothing herein contained shall prevent the admission of any instrument in any Court when such instrument has been executed by or on behalf of the Government, or where it bears the certificate of the Collector as provided by Section 32 or any other provision of this Act.

COMMENTS

1. Document not duly stamped.

Under S.35 of the Stamp Act an instrument not duly stamped is not admissible in evidence for any purpose including collateral purpose. It must be taken to be non-existent. An unstamped document cannot be admitted for any purpose, it must mean that it cannot be admitted under any circumstances in a civil suit. A sale deed bearing deficient stamp duty cannot be admitted in evidence or used to corroborate the oral evidence of the fact of the sale.

However, an instrument not duly stamped is not invalid. Such a document is only subject to the disabilities mentioned in S.35 of the Stamp Act namely that the document cannot be admitted in evidence or registered or authenticated or acted upon by any public officer. However, an original instrument not duly stamped can be admitted in evidence on payment of deficit duty and penalty. [PLD 1971 Lah 938]

Bar to the admissibility, etc., of an instrument under this section does not depend on an objection by a party. [AIR 1925 Lah 552 (554)]

An unstamped instrument may be a "valuable security" within the meaning of S.477, Penal Code. [(89) 12 Mad 148 (150)]

Where mortgages evidenced by unstamped documents suppressed by defendant the prohibition in this section will come into play. [AIR 1946 Mad 457 (458)]

Final decree for partition not drawn on proper stamp is not admissible in evidence. [AIR 1946 Mad 534 (535)]

Merely because an instrument cannot be admitted in evidence for any purpose as because it cannot be acted upon by the persons specified in the section, does not mean that such an instrument is invalid, and it is not irrelevant to observe here that the words have to be construed strictly, because they are to be found in a provision of a penal nature. Therefore, it would be against all canons of construction to enlarge the meaning of these words, so as to render invalid instrument which fall within the mischief of the section. After all, instruments, which are not duly stamped, are executed every day, and most persons, who incur obligations under such instruments, honour their liabilities under such instruments, regardless of the provisions of section 35. In any event, this section is attracted only when an instrument is produced before the persons specified in the section. But, for example, an instrument would be produced in evidence only when there is a dispute about it, therefore, if the intention of the Legislature had been to render invalid all instruments not properly stamped, it would have made express provision in this respect, and it would also have provided some machinery for enforcing its mandate in those cases in which the parties did not have occasion to produce unstamped instruments before the persons specified in the section. Additionally, there is nothing in the section which would support the plea that an instrument becomes invalid, if it falls within the mischief of the section. After all, if an instrument is invalid, it must be invalid for all purposes, but proviso (d) to the section expressly saves unstamped instruments in most criminal proceedings, while the other provisos to the section enable the parties to overcome the disabilities attached to an instrument not properly stamped by paying the requisite duty together with a penalty, therefore, this would suggest that the object of the section is to protect public revenue. Again, if an instrument is invalid, it should not be admissible in evidence, and it is so stated in section 35. But the next section prescribes that if an instrument has been admitted in evidence, howsoever erroneously, its admissibility cannot be questioned at any stage thereafter, and even the appellate Court's powers to entertain an objection about the admissibility of documents have been removed by section 61, which instead empowers the appellate Court to collect the duty payable on the unstamped instrument together with a penalty. These provisions as well as other provisions in Chapter IV of the said Act, such as sections 33, 38, 39 and 40, can only lead to the conclusion that the object of the Legislature in enacting the said Act was to protect public revenues and not to interfere with commercial life by invalidating instruments vital to the smooth flow of trade and commerce. [PLD 1978 SC 279]

2. Stamps affixed not cancelled.

So far as an uncanceled stamp is concerned the instrument to which it is affixed shall be deemed to be unstamped. So where a pronote requiring four annas stamp bears only three cancelled one anna stamps and one uncanceled one anna stamp it should be considered as insufficiently stamped. Where an instrument is insufficiently stamped and inadmissible in evidence under section 35 of the Stamp Act. Consequently no decree can be passed on the basis of the pronotes which are inadmissible in evidence. [PLD 1963 Kar. 905 (p. 906)].

Where a pronote contained eight one anna adhesive stamps one of which remained uncanceled held the stamp cannot be cancelled at the appellate stage. Further held, if the eight stamp is to be ignored then the pronote remains insufficiently stamped as it was short by a stamp of one anna, and thus inadmissible in evidence under S. 35 of the Stamp Act. [PLD 1977 Lah. 763 (p. 778); 20 DLR 196 DISSENTED FROM]

If a pronote is stamped with several adhesive stamps, all the stamps must be cancelled. If any one stamp is not cancelled the instrument cannot be deemed to be duly stamped and is inadmissible in evidence. [PLD 1964 Kar. 172+AIR 1933]

Lah. 148+AIR 1934 Lah 606]

3. 'Is duly stamped'.

The wording in S. 35 shows that unless a document is properly stamped, it cannot be admitted to evidence. The words 'unless such instrument is duly stamped' in S. 35 are clear to convey that meaning. However, in determining the nature of an instrument for stamp duty the Court must only consider the instrument as it is and should not look at extraneous circumstances. [('58) 24 Cut L Tim 144 (145): AIR 1937 Rang 392 (394) : AIR 1937 Rang LR 196 (DB)]

4. Adhesive court-fee stamps and impressed stamps.

Adhesive court-fee stamps as well as impressed stamps used under the General Stamp Act or Court Fees Act can legally be used by persons other than whose name they bear as purchaser. [PLD 1975 Lah. 1276]

5. Stamp objection —Duty of the Court.

If an objection is taken to the admissibility of a document on the ground that it is not stamped and registered, the Court must first decide both the questions. If it finds that the document requires registration and therefore is inadmissible, being unregistered, the document itself will have to be rejected. The Court cannot first ask the document to be stamped and thereafter decide whether it would required registration. [('55) 1955-1 Mad. L. Jour 457 (457, 458)]

It is the duty of the Court to determine the question of admissibility judicially, as soon as it is tendered and before it is marked as exhibit. [AIR 1961 SC 1655]

If an unstamped document marked as exhibit in the case and used by parties in examination and cross-examination of witness — Order admitting document in evidence is not liable to be reviewed or reversed. [AIR 1961 SC 1655 (Pr 4). +AIR 1957 Raj 47, (Reserved)].

6. Refreshing memory.

A document though inadmissible in evidence may be used to refresh the memory of a witness while under examination. [AIR 1935 Pat 375 (376)]

7. Cross-examination.

A party cannot be cross-examined as to the contents of a document not admissible for want of a stamp. [(1858) 175 ER 723 (724, 725) : 115 RR 906.]

8. Corroboration.

An unstamped instrument of partition cannot be used for corroborating oral evidence for the purpose of determining even the factum of partition as distinct from its items. [AIR 1946 P.C. 51]

9. Proxy.

Where the proxy is not properly stamped or stamp on it not cancelled, vote given by person holding proxy cannot be held valid. [AIR 1928 Bom. 80]

10. Counterpart

An unstamped counter part of a partnership deed which is executed at the same time as the original does not stand on the same footing as the copy of the original and therefore it is admissible in evidence on payment of duty and penalty even though no proof of loss of the original deed on a proper stamp paper is given. [AIR 1951 Punj 441 (Pr. 13)]

11. Promissory note inadmissible being not properly stamped — Lender can fall back on original consideration.

Where the pronotes on the basis of which suits were filed were not properly stamped and were thus not admissible in evidence under section 35, Stamp Act, 1899, on the question whether the lender can fall back on original consideration by adducing evidence other than the pronotes and claim decree for money lent on that basis, held, that if the promissory note embodies all the terms of the contract and the instrument is improperly stamped, no suit on the debt will lie in view of the bar of section 91, Evidence Act, 1872 and section 35, Stamp Act, 1899. But if it does not embody all the terms of the contract the true nature of the transaction can be proved and the lender's claim can be decreed on that basis. The fact that the execution of the promissory note is contemporaneous with the borrowing cannot exclude the possibility of the instrument having been given as collateral security or by way of conditional payment. Whether a suit lies on the debt apart from the instrument, therefore, depends on

the circumstances under which the instrument was executed. In those cases where an instrument has been given as collateral security or by way of conditional payment, a suit on the debt would lie and there would be a cause of action independent of the instrument for its recovery. Since, in the case, the promissory notes in question did not embody all the terms of the contract, neither section 91 of the Evidence Act, 1872 nor section 35 of the Stamp Act, 1899 would be a bar in the way of the lender to file a suit for the recovery of the debt alleged to have been advanced by him as loan. [PLD 1963 Kar. 905 (pp. 918, 919)]

12. Inadmissibility in evidence of an unstamped Promissory note payable otherwise than on demand.

Where a promissory note, payable otherwise than on demand, was unstamped, the Legal Remembrancer gave it as his opinion that the promissory note referred to, not having been duly stamped before or at the time of the execution, was absolutely null and void for all purposes from the very first, the defect which rendered it so being, under the exception in the 1st proviso of S. 34 incurable by any subsequent payment of duty and penalty ; and that it cannot be said that there is any revenue due to Government which ought to be recovered on account of stamp duty chargeable. And in the opinion of the Advocate General, the defect cannot afterwards be remedied and the document cannot be admitted in evidence ; the Collector is not entitled to demand the stamp duty which ought to have been paid on such an instrument. (G.R. No. 7569 dated 30th October 1882).

13. Promissory note in form but attested by two witnesses — Not a bond.

A document which purports to be a promissory note in form and to be payable to order, is a promissory note even though it is attested by two witnesses and not a bond and cannot be validated according to S. 35 (a) of the Stamp Act. [Govinda v. Hari Bhao A.I.R. 1933. Nag. 391]

14. Applicability—Foreign promissory note not stamped as such—Admissibility.

A foreign promissory note which is not stamped as such is not excluded by S. 35 of the Stamp Act from being admitted in evidence in a suit filed by the promisee against the maker of the note for recovery of the amount due on the instrument . [Gangaram Shewakram v. Mullik Nur Ahmed. 28 S. L. R. 266].

15. Proviso (a) of S. 35 is co-extensive with the main provision of Section 35 just as no instrument chargeable with duty can be admitted into evidence or acted upon, registered or authenticated so the proviso stipulates that if there is no proper stamp or there is deficiency of the stamp that may be affixed afterwards on payment of penalty and the instrument after payment of the duty and penalty becomes effective and can be acted upon. [PLD 1970 Azad J & K 66+AIR 1924 PC 221]

16. Penalty.

Penalty payable in such a case is 10 times of the duty in accordance with the provisions of clause (a) of the proviso to section 35 of the Stamp Act. The Court has no discretion in the matter to award lesser penalty. [1969DLC314 (p. 317)]

If the above deficit amount plus penalty is paid no objection can be made as to the instrument insufficiently stamped. [PLJ 1975 Kar. 235] on payment of a duty and penalty document can not only be admitted in evidence but also acted upon. [AIR 1952 All 996 + AIR 1921 Cal 613].

17. Promissory note.

Although a promissory note payable on demand is liable to duty as a "bond", it cannot be treated as a "bond" for the purposes of this section and must be held to be inadmissible even on payment of penalty. [AIR 1945 Mad 42 (42)]

18. Instrument chargeable with duty of one anna or half anna (not exceeding twenty five paise):

Such instrument are accepted under proviso (a) to this section, therefore, if an instrument is chargeable with a duty of one anna or half an anna, if not duly stamped, are totally inadmissible and cannot be admitted in evidence even on payment of duty and penalty. An acknowledgment contemplates a pre-existing debt. Where it is not the contention of the plaintiff that the entry in his bahi was on the settlement of previous account the entry is not an acknowledgment and is not hit by S. 35 and does not require to be stamped with one anna stamped. [AIR 1933 All 577 ('61) 1961 Jab Lj. 477 (477)]

Although a "receipt" is chargeable with duty of one anna, it is admissible in evidence on payment of penalty, as provided under proviso (b). An instrument containing acknowledgment of debt not covered by Art I, will, if not duly stamped, be admissible on payment of penalty. [AIR 1933 All 179]

19. Burden of paying

Burden of paying the deficit duty and penalty under this section falls in the first instance on the person who seeks to have the document admitted in evidence. [('80) 30 All 271 (272) (DB)]

20. *tamps used not of proper description.*

In such a case the value of stamps cannot be taken into account in calculating deficit duty. [19 Mad 1]

21. *Certificate of sale.*

Certificate of sale once granted without stamp, the Court is not bound to grant another certificate on proper stamp in order to enable purchaser to avoid penalty under this section. [9 Bom 526]

22. *Suit already disposed of.*

Suits already disposed of and decrees signed and sealed — Provisions of this section are wholly inapplicable—Court cannot levy deficient stamp duty and penalty on any instrument admitted in evidence. [AIR 1927 Cal 472 (473)]

23. *Proviso (b)*

Under this proviso, an unstamped receipt is admissible on payment of a penalty of Rs. 1. A person tendering the receipt in evidence cannot be required to pay the duty on it in addition to the penalty of Rs. 1. [Ind. Rul 1932 Lah. 624 :24 All 374]

24. *Proviso (c).*

This proviso is applicable in those cases where a contract or agreement is affected by correspondence. Correspondence containing complete agreement independently of subsequent draft and engrossed lease which lessor refuses to execute—Correspondence must be stamped and penalty, paid before it can be admitted in evidence. [('90) 17 Cal 548 (556)]

Where an agreement refers to another document, so that the two papers in fact form only one agreement, it is sufficient if one of the papers only bears an agreement stamp. [(1834) 149 ER 1145 (1146)]

25. *Proviso (d)*

The prohibition as laid down in the first part of S. 35 does not apply to the proceedings in a Criminal Court, except proceedings under Chapter XII or Chapter XXXVI of the Criminal Procedure Code. Therefore, with the exceptions to these proceedings, a Magistrate is not justified in excluding from consideration a document on the ground of its not being duly stamp. [AIR 1916 Cal. 310]

26. *Document bearing Collector's certificate :*

Under proviso (e) of this section, an instrument bearing certificate of the Collector under section 32 is admissible in evidence though not duly stamped. [3 All 115]

27. *Party succeeding on stamp objection.*

A party winning the case merely on the strength of a stamp objection may be deprived of his costs. [1911 1 K.B. 137]

36. *Admission of instrument where not to be questioned :*

Where an instrument has been admitted in evidence, such admission shall not, except as provided in Section 61, be called in question at any stage of the same suit or proceeding on the ground that the instrument has not been duly stamped.

COMMENTS

1. There are two stages relating to documents filed in Court. One is the stage when all the documents are filed by the parties in Court. The next stage is when the documents are formally proved and tendered in evidence. It is after the document is formally proved that the endorsement referred in rule 4 of O. 13 of the Code of Civil Procedure is to be made and the document is thus admitted and the admissibility of the document cannot thereafter be questioned : Where on the date of the institution of the plaint the Court ordered the plaintiff to pay the proper stamp duty and penalty on the suit document, it cannot be said that the document has been admitted on that even if the plaintiff has paid the duty and penalty and it is open to the defendant to raise in his written statement an objection to the admissibility of the document in evidence. [('59) ILR (1959) 9 Raj 1165 (1166)]

2. Where the Court finds in course of the judicial proceeding that the document is admissible, it is really admission for the purpose of S. 36 and cannot be called into question. It is not correct to argue that the order of the Court merely declares

admissibility, and is not equivalent to admission simply because the officers of the Court take some time to note the particulars and put the mechanical marks. [AIR 1961 Madh Pra 6 (Pr 5)]

3. Under this section, it matters nothing whether the document was admitted wrongly or rightly or admitted without objection or after hearing or without hearing such objection. [AIR 1939 All 588 (590: ILR 1939 All 846 (DB)+AIR 1958 Pat 434:PLD 1971 Sc. 516)]

4. This section refers to all instruments that have been admitted in evidence, whether on payment of the deficit duty and penalty or on the ground that they have been duly stamped or are not chargeable with stamp duty. It contemplates all cases of erroneous admission in evidence. [AIR 1952 All 996 (Pr 32) : ILR (1952) 2 All 984 (DB).]

5. Stamping—Matter of revenue :

Section 36 of the Stamp Act, 1899 is categorical in its terms and no limitation can be read into it more particularly as the limitation intended by the Legislature has been incorporated therein. Stamping is a matter of revenue with which the parties are unconcerned and if the Legislature in categorical terms states that once a document is admitted it cannot be questioned later on at any stage of trial such categorical language must be given effect to. It is possible to take the view that if the purport of section 35 was to impose a duty such a purpose must be given effect to and not allowed to be set at naught by section 36 but its effect being only limited to safe-guarding revenue due to the State, it is a matter of no concern to the parties. [PLD 197 Kar. 49=PLJ 1977 Kar. 74+AIR 1961 SC 1965+AIR 1934 Mad 500+ILR 13 Bom. 449 + PLD 1956 Dacca 14+PLD 1961 Dacca 596+1975 SCLR 167]

6. Initial of the Judge.

Instrument tendered in evidence having on it office note with number of exhibit — Word "Judge" written below for Judge's signature — Judge not signed nor initialed it—Instrument held could not be said to have been "admitted in evidence". [AIR 1946 Sind 194 (194):ILR (1940) Kar 195 (DB)]

37. Admission of improperly stamped instruments :

The Provincial Government may make rules providing that, where an instrument bears a stamp of sufficient amount but of improper description, it may, on payment of the duty with which the same is chargeable, be certified to be duly stamped, and any instrument so certified shall then be deemed to have been duly stamped as from the date of its execution.

COMMENTS

1. Stamp of improper description.

The expression 'improper document' does not include a description of stamp appropriate for purposes altogether outside the Stamp Act, but must be confined to a stamp which is used for the purpose of denoting the stamp duty chargeable on an instrument, but which is improper in a particular case, having regard to the Act and the Rule. [(1911) 23 All 213 (215) (SB) (Disapproved on another point in AIR 1929 PC 219).]

2. Use of Postage, Telegraph or Court fee stamp.

I am directed to acknowledge receipt of your letter No. 42/XIII 630 A, dated the 3rd February 1900, enquiring whether instruments, such as a receipt bearing postage or telegraph or court fee stamps, can be dealt with a bearing "a stamp of sufficient amount but of improper description," under section 37 of the Stamp Act, 1899 and Rule 16. I.G. Notification No. 786. S. R., dated 17th February 1899, that is to say, whether such an instrument can be certified to be duly stamped on payment of the duty with which it is chargeable, or under certain circumstances, without such further payment. In reply I am to say that Government of India agree with the view of the Board of Revenue that a stamp of "improper description" within the meaning of section 37 of the Act must be one of the stamps described in the Stamp Act. The contrary view is not, however, entirely untenable, and it would be well if a Judicial ruling could be obtained. In the absence of such a ruling it should be held that the instrument described do not come within the meaning of section 37 of the Act. (Letter No. 2412. S. R., 22nd May 1900, from the Under Secretary to the Government of India, to the Secretary to the Government of N.W.F.P. and Oudh), (G.B. Resolution No. 3770, dated 14th June 1900.)

38. Instruments impounded how dealt with :

(1) When the person impounding an instrument under Section 33 has by law or consent of parties authority to receive evidence and admits such instrument in evidence upon payment of a penalty as provided by Section 35 or of duty as provided by Section 37, he shall send to the Collector an authenticated copy of such instrument, together with a certificate in writing, stating the amount of duty and penalty levied in respect thereof, and shall send such amount to the Collector, or to such person as he may appoint in this behalf.

(2) In every other case, the person so impounding an instrument shall send it in original to the Collector.

COMMENTS

1. Scope.

Section 38 provides the procedure to be following by the person impounding an instrument under s. 33. If he has authority to receive evidence and admits the instrument in evidence on payment of duty and penalty, he has to adopt the procedure as laid down in subsection (1) of this section, in other cases the procedure as laid in subsection (2) would be adopted. [AIR 1926 All 478]

Mere placing of document on record does not mean that the document has been admitted in evidence. Therefore, a document, not admitted in evidence, can be impounded under S. 33 and the matter can be referred to the Collector under S.38 (2) for action under S.40 of the Stamp Act, 1899. [PLD 1967 Lah. 564]

2. Sub-section (1).

When an instrument not duly stamped is tendered in Court the duty of the Court is to follow the procedure laid down in S. 35 , Proviso (a) and this subsection i.e., to receive the deficiency and penalty and admit the document in evidence and to other things mentioned in this subsection. The Court cannot, in such a case refuse to admit the instrument in evidence and follow the procedure in subsection (2) of this section. [AIR 1926 All 478]

It has been held that the jurisdiction to decide the question of stamp duty and penalty conferred by the proviso to section 35 is only incidental to the reception of a document in evidence. If the party at whose instance the document was brought to the Court and who wanted it to have it as part of his evidence in the case wanted first an adjudication by the Collector as to the proper stamp duty and penalty leviable on it, the Court has only to accede to that request and not impose a decision which the party did not want. Even where the party has first invited the Court to decide the matter, if, before the Court pronounced its order, the party has resiled from it, the Court has only to follow the procedure prescribed in Sections 33 and 38 (2). [AIR 1953 Trav-Co. 539 (Pr. 6)]

Where a document is merely produced before Court and the petitioner does not seek to get the document admitted in evidence the case is plainly one to which this sub-section applies so that the Court should send the document in original to the Collector. [AIR, 1959 Mys 172 (172); ILR (1957) Mys. 175]

When a document is not sent to the Collector under this sub-section, there is no case pending before the Chief Revenue Authority and that Authority cannot state a case itself for the opinion of the High Court and cannot similarly be asked to state a case for the opinion of the High Court. [AIR 1960 Cal. 1340 (344)]

3. Impounding of document .

Once an insufficiently stamped document comes before a Court or an officer entitled to take evidence under the law or by consent of the parties, it has to be impounded under section 33 of the Stamp Act, and under section 35, of the same Act it shall be admitted in evidence on the payment of the deficiency and the penalty. After that, the procedure prescribed in sub-section (1) of section 38 of the Stamp Act comes into play. The procedure outlined in sub-section (2) of section 38 would apply in other cases. The fact that the stage at which the insufficiently stamped document comes to the notice of the Court is not one of recording evidence makes no difference to the procedure to be observed with regard to the impounding of the document and the levying of the deficiency of duty and the penalty thereon. It is clear, therefore, that once the Court has impounded them under section 33 of the Stamp Act, the procedure prescribed in section 35 of the same Act comes into play, and if that happens, then subsequently action has to be taken under sub-section (1) of section 38 and not sub-section (2) thereof. If the document is filed and the party wants it to be admitted in evidence, then the Court can collect the duty and penalty and then admit it in evidence. But if the party instead of requiring the document to be admitted in evidence merely wants the Court to send it to the Collector to be dealt with under S. 38 (2) the Court cannot compel the party to pay duty and penalty and have it admitted in evidence. [PLD 1963 Kar 962 (p. 968) AIR 1975 Andh Pra 96].

39. Collector's power to refund penalty paid under Section 38, sub-section (1) :

(1) When a copy of an instrument is sent to the Collector under Section 38, sub-section (1), he may, if he thinks fit, refund any portion of the penalty in excess of five rupees which has been paid in respect of such instrument.

(2) When such instrument has been impounded only because it has been written in contravention of Section 13 or Section 14, the Collector may refund the whole penalty so paid.

COMMENTS

1. This section deals only with cases falling under Section 38 (1). Those falling under Section 38 (2) are dealt with in Section 40.
2. Sub-section (1) provides for a partial refund of penalty in cases where the penalty recovered is more than Rs. 5.
3. Sub-section (2) provides for total refund. In both cases it is in the discretion of the Collector to refund the penalty or not.

40. Collector's power to stamp instrument impounded :

(1) When the Collector impounds any instruments under Section 33, or receives any instrument sent to him under Section 38, sub-section (2), not being an instrument chargeable with a duty not exceeding twenty-five paise only or a bill of exchange or promissory note, he shall adopt the following procedure—

- (a) If he is of opinion that such instrument is duly stamped, or is not chargeable with duty, he shall certify by endorsement thereon that it is duly stamped, or that it is not so chargeable, as the case may be ;
- (b) If he is of opinion that such instrument is chargeable with duty and is not duly stamped, he shall require the payment of the proper duty or the amount required to make up the same, together with a penalty of five rupees ; or if he thinks fit, an amount not exceeding ten times the amount of the proper duty or of the deficient portion thereof, whether such amount exceeds or falls short of five rupees :

Provided that, when such instrument has been impounded only because it has been written in contravention of Section 13 or Section 14, the Collector may, if he thinks fit, remit the whole penalty prescribed by this section.

(2) Every certificate under clause (a) of sub-section (1) shall, for the purposes of this Act, be conclusive evidence of the matters stated therein.

(3) Where an instrument has been sent to the Collector under Section 38, sub-section (2) the Collector shall, when he has dealt with it as provided by this section, return it to the impounding officer.

COMMENTS

1. Scope.

Section 40 lays down the procedure to be adopted by the Collector when he himself impounds the instrument under S. 33, or receives an instrument under S. 38 (2). According to S. 40 (1) (b) if the Collector is of the opinion, that such instrument is chargeable with duty and is not duly stamped, he shall require the payment of the proper duty or the amount required to make up the same, together with a penalty of five-rupees ; or, if he thinks fit (an amount not exceeding) ten times the amount of the proper duty or of the deficient portion thereof, whether such amount exceeds or falls short of five rupees. The Semi-Colon after the words together with a penalty of five rupees" is somewhat misleading and might lead to the conclusion that the Collector shall require payment of an amount not exceeding 10 times of the proper duty or of the deficient duty, inclusion of the proper duty or the deficient duty. But that is not so. The section empowers the collector to require payment of the proper duty or deficient duty and penalty equal to 10 times the proper duty or deficient duty in addition. A document not admitted in evidence can be impounded under S. 33 and the matter can be referred to the Collector under S. 38 (2) for action under this section. [PLD 1960 W.P. (Rev) 70 PLD 1967 Lah. 564]

It is the Collector alone who has the power to assess the penalty, though the Court or any other officer having the authority by law may impound the document. [AIR 1955 Hyd. 17]

The Stamp Act does not provide anywhere that the Collector can cancel his orders once passed under S. 40 (1) (a) or (b). [AIR 1957 Raj. 211]

2. Procedure

The Collector is bound under S. 40 to determine whether the instrument is properly stamped. If he finds that it is not properly stamped, he has to pass an order requiring the payment of the duty as well as a penalty the minimum of which is Rs. 5/- and the maximum ten times the proper duty. [PLD 1960 Lah 211]

Where a Collector considering an instrument to be insufficiently stamped, levies the deficient stamp duty and penalty but subsequently, before endorsing his certificate on the instrument comes to know that the instrument is sufficiently stamped

he may certify that the instrument is fully stamped and refund the sums collected under his erroneous orders, as sums levied by mistake. [(33) Mad SM p. 41]

The Collector or his successor can refund the duty collected in excess of the correct duty and penalty. [(33) Mad. S.M. 41]

3. Certificate of the Collector — Finality.

Where the Collector certifies under clause (a) of sub-section (1) about the chargeability of the instrument or that it is duly stamped. Such a certificate is conclusive. The correctness or validity of such certificate cannot be questioned. Question of stamp cannot be reopened by a reference to the High Court under S. 57. [AIR 1941 Lah. 65 : ILR 1940 Lah 628 AIR 1938 Oudh 226+AIR 1918 All 181]

Power of interference by the Chief Revenue Authority under S. 56 (1) can only be exercised before the Collector has endorsed certificate on the instrument. [AIR 1932 Cal 736: 25 Mad 752]

Until the Collector certifies by endorsement the required payment under S. 42 (2), the Chief Revenue authority has full scope to interpose its control under S. 56 (1) 58 (1) at the instance of the party concerned or otherwise and require the Collector to exercise his power as it directs. [('02) 25 Mad 752 (760, 761) (SB) ('33) 34 Pun LR 630 (631)].

Before the Collector has occasion to give any certificate under S. 42 an order passed by the Collector under sub-s. (1) (b) can be interfered with by the Chief Revenue authority directly under S. 56 or indirectly, by making a reference to the High Court under S. 57. [('02) 25 Mad 752 (760, 761) (SB) AIR 1932 Lah 495 (496) : 13 Lah 745 (SB) + AIR 1936 Lah 449 (450)]

The conclusive presumption under the sub-section, is not applicable where the Collector endorses the certificate on instrument which has been accepted under this section, as such as certificate is without jurisdiction [AIR 1926 All 359]

If order of the Collector is wrong, it is subject to revision and if it is contrary to law, it is subject to the jurisdiction of the High Court as provided under the Constitution. [AIR 1957 Andh. Pra 237]

4. Jurisdiction of the Civil Court.

A Civil Court has jurisdiction to entertain a suit for refund of stamp duty and penalty illegally realised by the Collector from the plaintiff under the Stamp Act. [AIR 1959 Orissa 144 (148): 6LR (1959) Cut 16 (DB)]

5. Person who can be compelled to pay stamp duty/penalty.

According to Allahabad High Court, it is the person who wishes a document to be admitted in evidence in Court, who primarily is the person from whom the requisite duty and penalty should be recovered. [30 All 271]

6. Notice to the executant

Section 40 does not specifically provide for notice to the executant of the document. But it is expected that the Collector, before he decides whether the instrument is properly stamped or not, would give notice to the executant so that he may put forward his point of view before the Collector, in case he desires to do so. [AIR 1957 Raj 211 (212) : ILR (1956) 6 Raj 224 (DB)]

The principles of natural justice require that a notice should be given to the parties concerned. [AIR 1957 Andh Pra 237 (242)]

7. Document placed on record — Does not amount to be admitted.

The document is admitted in evidence only when it is proved in accordance with the provisions of the Evidence Act and is exhibited and there is a chain of authorities to support the view that mere placing of the document on the record does not mean that the document has been admitted in evidence. [AIR 1922 Lah 401 (2): AIR 1935 Mad 888: PLD 1961 Dacca 596: AIR 1927 Lah 115]

Where the document has not been admitted the only order that can be passed by the trial Court is to impound the document under S. 33 of the Stamp Act and to have deferred action under section 35 Proviso (a) till such time the document is sought to be admitted in evidence by either party. In case this eventuality does not arise the Court is empowered under the provisions of Section 38 (2) to refer the matter to the Collector for action under section 40 of the Stamp Act. [PLD 1967 Lah 564]

Where a document is merely produced before the Court and the petitioner does not seek to get it admitted, the case

is plainly one to which S. 38 (2) applies and the Court should send the document in original to the Collector [A I R 1959 Mys 172 (172) : ILR (1957) Mys 175]

8. Impounded instruments when no duty and penalty levied, how to be dealt with.

Memorandum from the Remembrancer of Legal Affairs No. 1758 dated 30th May 1927 :—

"The intention of the legislature appears to be that if documents other than instruments chargeable with a duty of one anna or half anna or bills of exchange or promissory notes, which are insufficiently stamped are produced before an officer entitled to receive evidence, he may accept them in evidence (section 35) after levying the deficit duty and penalty. If they are produced before any other officer, he may impound them (sec. 38) and send them to the Collector who will return them after levying the deficit duty and penalty (sec. 40). Instruments chargeable with a duty of one anna or half an anna, bills of exchange and promissory notes, if insufficiently stamped, are treated differently. The defect in the case of such documents is intended to be irremediable. They cannot be received in evidence (sec. 35) nor can the Collector levy deficit duty and penalty on them. The intention appears to be that such documents should be permanently impounded. This is in itself sufficient punishment, even if there is no prosecution." (Vide G. R. R. D. No.8765/24 dated 7th June 1927).

9. Forms of certificates under Section 40. (Specimen).

- (1) Certified under Section 40 (1) (a) of Act II of 1899 that this instrument is duly stamped.
- (2) Certified under Section 40 (1) (a) of Act II of 1899 that this instrument is not chargeable with stamp duty.
- (3) Received from.....insufficient stamp duty Rupees,

Certified under Section 40 (1) (b) of Act II of 1899 that the proper/additional stamp duty Rs..... and penalty Rupees.....have been paid in respect of this instrument.

"40.-A (1) Where on examination of a copy of an instrument or otherwise it is detected that particular instrument is not duly stamped, the matter shall be reported to the Collector.

(2) On receipt of a report under sub-section (1), the Collector shall by notice require the person who is liable to pay the proper duty to produce the original instrument before him within the period specified in the notice.

(3) The Collector shall, on receipt of the original instrument under sub-section (2) or copy of such instrument or otherwise, notwithstanding anything contained in this Act, deal with the instrument or make order in respect thereof as provided in section 40". (Inserted by the Stamp (Sindh Amendment) Ordinance, 2000).

41. Instruments unduly stamped by accident : If any instrument chargeable with duty and not duly stamped, not being an instrument chargeable with a duty not exceeding twenty five paise only or a bill of exchange or promissory note, is produced by any person of his own motion before the Collector within one year from the date of its execution or first execution, and such person brings to the notice of the Collector the fact that such instrument is not duly stamped and offers to pay to the Collector the amount of the proper duty, or the amount required to make up the same, and the Collector is satisfied that the omission to duly stamp such instrument has been occasioned by accident, mistake or urgent necessity, he may, instead of proceeding under Section 33 and 40, receive such amount and proceed as next hereinafter prescribed.

COMMENTS

Under this section the Collector can receive duty or deficit duty without levying any penalty in cases where the omission to stamp an instrument has been occasioned by accident, mistake or urgent necessity. But the document must be produced by the person concerned within one year.

42. Endorsement of instruments on which duty has been paid under Section 35, 40 or 41 :

(1) When the duty and penalty (if any) leviable in respect of any instrument have been paid under Section 35, Section 40 or Section 41, the person admitting such instrument in evidence or the Collector, as the case may be, shall certify by endorsement thereon that the proper duty or, as the case may be, the proper duty and penalty (stating the amount of each) have been levied in respect thereof, and the name and residence of the person paying them.

(2) Every instrument so endorsed shall thereupon be admissible in evidence, and may be registered and acted upon and authenticated as if it had been duly stamped, and shall be delivered on his application in this behalf to the person from whose possession it came into the hands of the officer impounding it, or as such person may direct:

Provided that—

(a) no instrument which has been admitted in evidence upon payment of duty and a penalty under Section 35, shall be so delivered before the expiration of one month from the date of such impounding, or if the Collector has certified that its further detention is necessary and has not cancelled such certificate;

(b) nothing in this section shall affect the Code of Civil Procedure, Section 114, Clause 3.

COMMENTS

1. Certificate by Collector—Conclusive.

A certificate issued by the Collector under this section is conclusive as regards question of stamp duty. It is not competent for a Civil Court to go behind it. [AIR 1941 Lah 65]

After the Collector has endorsed the certificate under this Section, the Chief Revenue authority cannot exercise its powers of control under S. 56 (1) nor can it refer the case to the High Court under S. 57. [AIR 1958 All 417 (419): ILR (1958), 2 All 246 (SB)]

Where a Sub-Registrar makes a reference and a certificate under this section is issued, the matter is concluded so far as he is concerned and he has to register the document. The word "may" in this context has the same force "as shall". If the executive authorities are dissatisfied with the order of the Collector their remedy is by way of a revision to the Chief Revenue authority under S. 56 (1) of the Act. [AIR 1957 Raj 211]

Where a document purports to be a deed of adoption but is in reality a deed of gift and is stamped as an authority to adopt, if the Collector validates and certifies it under section 42, his decision is final and binding and cannot be set aside by a Civil Court. 7 N. I. R. 26 relied on. [Ajodhya Prasad v. Parashram A.I.R. 1929 Nag. 272.]

2. Forms of Certificates under S. 42 (Specimen)

- (1) Certified under Section 42 of Act II of 1899 that the proper stamp duty or additional stamp duty Rupees has been paid in respect of this instrument.
- (2) Received from insufficient stamp duty and penalty Rupees. Certified under Section 42 of Act II 1899 that the proper stamp duty Rupees and penalty Rupees have been paid in respect of this instrument.

43. Prosecution for offence against Stamp Law : The taking of proceedings or the payment of a penalty under this Chapter in respect of any instrument shall not bar the prosecution of any person who appears to have committed an offence against the Stamp Law in respect of such instrument :

Provided that no such prosecution shall be instituted in the case of any instrument in respect of which such a penalty has been paid, unless it appears to the Collector that the offence was committed with an intention of evading payment of the proper duty.

COMMENTS

1. Opportunity to pay.

An opportunity must be given to a party to pay the penalty before the Collector exercise his discretion of sanctioning a prosecution under S. 70. [(83) 7 Bom 82 (SB) (DB), (82) 8 Cal 259 (261) (DB)]

Where no opportunity was given to accused to pay duty and penalty he being free from any criminal intent, his conviction will be set aside. [AIR 1921 Pat 233 (234)]

2. Proviso.

The Proviso to this section is mandatory in its terms and before a prosecution is sanctioned in respect of an instrument covered by this section the Collector must come to the clear finding that there exists an intention to evade the payment of proper duty. [AIR 1921 Pat 233 (234)+(28)29 Cri L Jour 397 (399)]

3. The question of intention of evading the Stamp-law is one exclusively for the determination of the Collector and the Criminal Court is bound to convict upon the mere proof of the facts, i.e. on the production of an unstamped or under stamped document and the evidence that it was executed by the accused person. [United Provinces Board's Circular Letter No.3/V.S.—33(4), of 28-11-1918.] [See also section 61(4).]

44. Persons paying duty or penalty may recover same in certain cases :

(1) When any duty or penalty has been paid, under Section 35, Section 37, Section 40, or Section 41, by any person in respect of an instrument, and, by agreement or under the provision of Section 29 or any other enactment in force at the time such instrument was executed, some other person was bound to bear the expense of providing the proper stamp of such instrument, the first-mentioned person shall be entitled to recover from such other person the amount of the duty or penalty so paid.

(2) For the purpose of such recovery any certificate granted in respect of such instrument under this Act shall be conclusive evidence of the matters therein certified.

(3) Such amount may, if the Court thinks fit, be included in any order as to costs in any suit or proceeding to which such persons are parties and in which such instrument has been tendered in evidence. If the Court does not include the amount in such order no further proceedings for the recovery of the amount shall be maintainable.

COMMENTS

1. Person bound to pay stamp duty can not recover the same under this section :

If a person who had to pay deficit duty any penalty was bound by law to provide the proper stamp duty, he has no right to recover the same under sub-section (1) of this section (Purshotam Ram v. Mangal Ram, 1936, A. L. J., 187)

2. Under this section deficit duty and penalty can be recovered from the person who is liable to pay duty under section 29 or by agreement. If such a person is not a party to the suit the recovery can be made by a separate suit, but if he is a party to the suit the court may include the amount of deficit duty and penalty paid by the plaintiff in the costs of the suit and in the decree made in the plaintiff's favour. If the court does not do the plaintiff cannot thereafter sue for the recovery of the amount paid by him from the defendant. (Secretary of State for India in Council v. Basharat Ullah, 30 All., 271), (Ram Singh v. Man Singh, 49 All., 501).

45. Power to Revenue authority to refund penalty or excess duty in certain cases :

(1) Where any penalty is paid under Section 35 or Section 40, the Chief Revenue Authority may, upon application in writing made within one year from the date of the payment, refund such penalty wholly or in part.

(2) Where, in the opinion of the Chief Revenue Authority, stamp-duty in excess of that which is legally chargeable has been charged and paid under Section 35 or Section 40, such authority may, upon application in writing made within three months of the order charging the same, refund the excess.

COMMENTS

1. Who can apply.

A party on whom the penalty has been imposed has the only remedy of applying for refund under this section. [(80) 5 Cal 311 (314) (DB)]

2. Section 61.

Section 61 of the Act has no application when refund of the excess duty or penalty is asked for by the person tendering the document in evidence. This section provides the only remedy to the aggrieved party. [AIR 1951 Pat 625 (Pr 3)]

3. Civil Suit.

A Civil Court has jurisdiction to entertain a suit for refund of stamp duty and penalty illegally realised by the Collector from the plaintiff under the Stamp Act. [AIR 1959 Orissa 144 (145, 146); ILR (1959 Cut 16 (DB)]

4. Exceptions made by executive order.

Whatever the restrictions imposed by the Act, it is open to the Provisional Government to make exceptions by passing an executive rule. (I.G. Reso : No. 125 dated 14th January 1881).

46. Non-liability for loss of instruments sent under Section 38 :

(1) If any instrument sent to the Collector under Section 38, sub-section (2), is lost, destroyed or damaged during transmission, the person sending the same shall not be liable for such loss, destruction or damage.

(2) When, any instrument is about to be so sent, the person from whose possession it came into the hands of the person impounding the same, may require a copy thereof to be made at the expense of such first-mentioned person and authenticated by the person impounding such instrument.

47. Power of payer to stamp bills and promissory notes received by him unstamped.—

When any bill of exchange or promissory note chargeable with the duty of five paisas, or fifteen paisas is paid for payment unstamped, the person to whom it is so presented may affix thereto the necessary adhesive stamp and upon cancelling the same in manner here in before provided, may pay the sum payable upon such bill or note, and may charge the duty against the person who ought to have paid the same, or deduct it from the sum payable as aforesaid, and such bill or note shall, so far as respects the duty, be deemed good and, valid :

Provided that nothing herein contained shall relieve any person from any penalty or proceeding to which he may be liable in relation to such bill or note.

COMMENTS

Section 47 which is an enabling one cannot be interpreted as permitting the bill being stamped by an intermediate holder of the bill who is neither the drawer nor the drawee in order to validate such bill and thereby enable himself or a subsequent holder of the bill to sue the drawer. [AIR 1925 Sind 241 (241)]

48. Recovery of duties and penalties :

All duties, penalties and other sums required to be paid under this Chapter may be recovered by the collector by distress and sale of the movable property of the person from whom the same are due, or by any other process for the time being in force for the recovery of arrears of land-revenue.

COMMENTS

1. According to Madras High Court the solution of the question as to who is the person against whom the collector could proceed under Ss. 40 and 48 has to be searched for elsewhere than in Ss. 29 and 44, and the true solution lies by following the provision of S. 17 and 62. Ss. 17 and 62 show that the agreement between the parties and the provisions of S.29 & 44 are applicable only between the parties leaving the Collector's right under Ss. 40 and 48 unaffected. [AIR 1956 MAD 454 (458); ILR (1956) Mad 1074 (DB). (30) All 271 and AIR 1940 Lah 315, Dissented from)]

2. According to the High Court of Andhra Pradesh, agreeing with Lahore view, where several persons jointly executed a document, the Collector can proceed, under Ss. 40 and 48, against any of them, as they are all jointly and severally liable. He is not bound to collect the pro rata shares from each. [AIR 1956 Mad 454 (458) : ILR (1956) Mad 1074 (DB)]

3. A deed was executed by three persons two of whom are not traceable. The third objected to the payment of duties - and penalty, imposed by the Collector, on the ground that the deed was filed against him in the court by one of the untraced persons. Held that the duty and penalty could be realised from the person present who could after making the payment recover the proportionate share payable by the other two executants under section 44 of the Stamp Act. [U. P. Board's order No. 173(28), Sis. 125 and 145.]

4. Where an agreement was tendered in evidence and a decree was passed on its basis without deficiency and penalty are being realized, it was held that the amount could be realized under this section by the Collector (Baldeo Prasad V Ajodhya Prasad, 12 Lk., 752, relying on Ketra Mohan Saha V. Jamini Kanta Dewan, 54 Cal., 445).

5. Powers conferred for the purpose of recovery of stamp duty :

In exercise of the powers conferred by Sub-Section (2) and (3) of Section 16 of the Sindh Land Revenue Act, 1967, the Board of Revenue, Sindh is pleased to confer the powers of Assistant Collector Grade I, under the said Act on Mr. Muhammad Ismail Memon, Senior Inspector of Stamps, Board of Revenue, Sindh for the purpose of recovery of stamp duty/dues as arrears of Land Revenue under the said Act. Such powers are to be exercised by him subject to the control of the Collector concerned from the date of issue of this notification (Government of Sindh, Revenue Department's Notification No. 27-12-1994-Estt: IV, dated 7th April, 1994).

Note : The powers conferred under this Notification, when read with Section 48 of the Stamp Act, 1899, correspond to the powers of the Collector as defined in Clause (b), Sub-section (9) of Section 2 of the said Act, for the purpose of recovery stamp duty/dues.

CHAPTER V.

ALLOWANCES FOR STAMPS IN CERTAIN CASES

General orders.

1. The Collector cannot delegate any of his powers to any subordinate to him, nor any one can sign "for" him. (See notes under S 2 (9). Page 5).

2. Appeal against Collector's order.

The powers exercised by the Collector under this Chapter shall in all cases be subject to the Control of Chief Revenue Authority. [Section 56 (1)]

3. Inherent Powers of Government to sanction refunds.

1. But whether section 51 or 54 applies Government have inherent powers to refund any amount paid for stamp duty if they consider that a proper case has been made out, without any bar as to limitation. It will be for Revenue Department to consider whether a proper case has been made out. (Opinion of the Remembrancer of Legal Affairs, No. 2119 dated 12th April 1934; G. R. R. D. No. 2417/33 dated 16th May 1934.)

2. Government have, however, an inherent power to grant refunds provided they are satisfied that a proper case has been made out. The power of Government is not limited to cases actually provided in Chapter V of the Stamp Act, II of 1899. (Memo from the Remembrancer of Legal Affairs, No. 4107, dated 23rd July 1934; G. R. R. D. No. 2417/33 dated 28th August 1934).

4. In cases of doubt, the Superintendent of Stamps, Karachi to be consulted.

It will be sufficient, if all the Collectors in Sindh should consult the Superintendent of Stamps, Karachi in doubtful cases before granting refunds or renewals of unused or spoiled Non-judicial and Court-fee stamps. (Letter No. 3534 dated 8th October 1914 from the Commissioner in Sind).

5. Evidence as to circumstances of claim to refund or renewal.

The Collector may require any person claiming a refund or renewal under Chapter V of the Act, or his duly authorised agent, to make an oral deposition on oath or affirmation, or to file an affidavit, setting forth the circumstances under which the claim has arisen, and may also, if he thinks fit, call for the evidence of witnesses in support of the statement set forth in any such deposition or affidavit. (Rule 19 of the Stamp Rules, 1925).

6. Payment of allowances in respect of spoiled or misused stamps or on the renewal of debentures.

When an application is made for the payment, under Chapter V of the Act, of an allowance in respect of a stamp which has been spoiled or misused, or for which the applicant has not immediate use, or on the renewal of a debenture, and an order is passed by the Collector sanctioning the allowance or calling for further evidence in support of the application then, if the amount of the allowance or the stamp given in lieu thereof is not taken, or if the further evidence required is not furnished, as the case may be, by the applicant within one year of the date of such order, the application shall be struck off, and the spoiled or misused stamp (if any) sent to the Superintendent of Stamps or other officer appointed in this behalf by the Local Government for destruction. (Rule 20 of the Stamp Rules, 1925).

7. Application for refund or renewal exempt from Court fee, and appeal to the Chief Revenue Authority not exempt.

When an application is presented to a Collector for refund of the amount paid to the Government for stamps which have become spoiled or unfit for use, or are no longer required for use and for renewal of stamps which have become spoiled or unfit for use is exempt from payment of court fee stamps under general exemptions of the Court Fees Act, VII of 1879. But an application for refund addressed to the Chief Revenue Authority is virtually an appeal from a Collector's order and therefore does not come within the exception cited and it must bear the proper court fee stamp

8. Provisions not applicable to Court Fee Stamps.

The provision of Chapter V refer to non-judicial (impressed and adhesive) stamps and have no bearing to Court Fee (impressed and adhesive) stamps, therefore refund or renewal of Court Fee stamps cannot be governed by these provisions. For Court Fee stamps there are separate rules.

9. Specimen forms of orders sanctioning refund or exchange of stamps under Chapter V.

(I) Refund.

Refund of Rupees (800/-) eight hundred only on account of spoiled Non-judicial stamps worth Rs. 20 and Hundi Stamps worth Rs. 24/- sanctioned under Section 49 (a) and (c) (1); 50 (2) (3) and 53 (c) of the Stamp Act, II of 1899.

(II) Exchange.

Exchange for Rupees (5/-) five only in respect of a Non-Judicial stamps worth Rs. 5/- sanctioned under Section 49 (d) (2), 50 (3) and 53 (a) or (b) of the Stamp Act, II of 1899.

10. Refund or renewal when sanctioned, stamps to be defaced.

When the Collector sanctions a refund or renewal, he shall then and there record his reasons for granting such refund or renewal, and shall punch or mark the stamp paper in such a way that it can never be presented again, and shall forward it for destruction to the Superintendent of Stamp (Government of India Notification No. 3767, dated 23rd October 1873).

11. Refund when refused, procedure to be adopted.

When applications for the refund of the value of spoiled stamps are rejected in accordance with the rules laid down in the Stamp Manual, the words "refund refused" should be written across each stamp. In the case of stamps for which there is no immediate use (Section 54 of the Stamp Act) the endorsement should be so made as not to cancel the value of the stamps and preclude their being used subsequently if the owner so desires. [Madras Board B.P. Mis. No. 165/1105-R, 7th September 1912].

12. Refund or exchange should be allowed in reasonable time.

In the course of audit of refund schedules of a Treasury, it was observed that Non-Judicial stamps worth Rs.8/4/- has been tendered for refund on 10th December 1934, and refund allowed after more than two years. It was pointed out that why such a delay had occurred in granting the refund when it could have been granted within a week's time as the case was not a complicated one. In another case it was also pointed out where a Non-judicial stamp worth Rs.10/- was tendered for refund on 14th November 1935 and refund order passed on 10th February 1937 that there has been an inordinate delay. In order to allow refunds in reasonable time the Treasury Officer was asked to instruct all Mukhtiarkars to see that there should be no delay in granting refunds or renewals of spoilt stamps. [Letter No.1042 dated 14th May 1937 from the Superintendent of Stamps, Karachi].

49. Allowances for spoiled stamps : Subject to such rules as may be made by the Provincial Government as to the evidence to be required, or the enquiry to be made, the Collector may, on application made within the period prescribed in Section 50, and if he is satisfied as to the facts, make allowance for impressed stamps spoiled in the cases hereinafter mentioned, namely :—

(a) the stamp on any paper inadvertently and undesignedly spoiled, obliterated or by error in writing or any other means rendered unfit for the purpose intended before any instrument written thereon is executed by any person;

(b) the stamp on any document which is written out wholly or in part, but which is not signed or executed by any party thereto;

(c) in the case of bills of exchange payable otherwise than on demand or promissory notes—

(1) the stamp on any such bill of exchange signed by or on behalf of the drawer which has not been accepted or made use of in any manner whatever or delivered out of his hands for any purpose other than by way of tender for acceptance: provided that the paper on which any such stamp is impressed does not bear any signature intended as or for the acceptance of any bill of exchange to be afterwards written thereon;

(2) the stamp on any promissory note signed by or on behalf of the maker which has not been made use of in any manner whatever or delivered out of his hands;

(3) the stamp used or intended to be used for any such bill of exchange or promissory note signed by, or on behalf of, the drawer thereof, but which from any omission or error has been spoiled or rendered useless, although the same, being a bill of exchange, may have been presented for acceptance or accepted or endorsed, or being a promissory note, may have been delivered to the payee : provided that another completed and

duly stamped bill of exchange or promissory note is produced identical in every particular, except in the correction of such omission or error as aforesaid, with the spoiled bill or note :

(d) the stamp used for an instrument executed by any party thereto which—

- (1) has been afterwards found to be absolutely void in law from the beginning ;
- (2) has been afterwards found unfit, by reason of any error or mistake therein, for the purpose originally intended;
- (3) by reason of the death of any person by whom it is necessary that it should be executed, without having executed the same, or of the refusal of any such person to execute the same, cannot be completed so as to effect the intended transaction in the form proposed;
- (4) for want of the execution thereof by some material party, and his inability or refusal to sign the same, is in fact incomplete and insufficient for the purpose for which it was intended;
- (5) by reason of the refusal of any person to act under the same, or to advance any money intended to be thereby secured, or by the refusal or non-acceptance of any office thereby granted, totally falls of the intended purpose;
- (6) becomes useless in consequence of the transaction intended to be thereby effected being effected by some other instrument between the same parties and bearing a stamp of not less value;
- (7) is deficient in value and the transaction intended to be thereby effected has been effected by some other instrument between the same parties and bearing a stamp of not less value;
- (8) is inadvertently and undesignedly spoiled and in lieu whereof another instrument made between the same parties and for the same purpose is executed and duly stamped :

Provided that, in the case of an executed instrument, no legal proceeding has been commenced in which the instrument could or would have been given or offered in evidence and that the instrument is given up to be cancelled.

Explanation : The certificate of the Collector under Section 32 that the full duty with which an instrument is chargeable has been paid is an impressed stamp within the meaning of this section.

COMMENTS:

1. Scope.

According to Stamp Manual, 1934 "Impressed" stamps only are referred to in this section which term includes impressed labels as well as sheets (section 2 (13) and an unstamped document certified under section 32. In connection with clause (c) no refund can be granted in the case of bills of exchange which have been used as cover and sent to firms in England or home partners or directors, although such bills may not have been negotiated (Government of India Resolution No. 2696, dated 7th June, 1889). Refunds under sub-clause (6) of clause (d) of this section are allowable independently of the refund rules in and under the Act itself in the case of stamps rendered useless solely in consequence of changes of law or rule. Sub-clause (7) of clause (d) makes it clear that a person who throws aside an insufficiently stamped deed, and gets a new deed in the same terms drawn up and properly stamped, is entitled to get a refund made to him of the duty which is first of all paid upon the insufficiently stamped and superseded deed. Registration does not ipso facto affect the right to refund the value of a stamp of a document which has been registered, and when refund is made in such a case the registration office should be informed. The spoiled stamps in cases referred to in subsection (d) 6, 7 and 8 must be produced before the Collector. The rules applicable are rule 19 and 20 of the Stamp Rules, 1925.

[Pb. S.M. Para 36, Part I-B, Chap. 3]

2. Impressed stamps.

The provision as to allowance for spoiled stamps under this section is restricted to impressed stamps, and does not apply to adhesive stamps. [("33) Mad S. M. p. 50]

3. Void in Law.

An agreement not enforceable by law is said to be void. [The Contract Act IX of 1872. S. 2 (9)]. Every agreement, of which the object or consideration is unlawful, is void. The consideration or object of an agreement is said to be unlawful, if it is forbidden by law ; or is of a such nature that, if permitted, it would defeat the provisions of any law ; or it is fraudulent ; or involves or implies injury to the person or property of another ; or the court regards it as immoral or opposed to public policy. (The Contract Act. IX of 1872, S. 23).

4. Explanation of Section 49.

Refund or renewal can be granted under this section only when the stamped papers alleged to be spoiled fall clearly within one of the several clauses of the section, and application is made within the time prescribed in section 50 Clause (a) provides for the case of stamps inadvertently and undesignedly spoiled before any instrument has been executed on them. Clause (b) for the stamps on any document which written wholly or in part, but which is not signed or executed by any party thereto. Clause (c) for the cases of spoiled stamps used for executed bills of exchange or promissory notes. Clause (d) for any other spoiled impressed stamps on which an instrument has been duly executed.

5. Inadvertently or wrongly endorsed stamps by stamp vendors.

- (i) If an incorrect endorsement has been inadvertently made by a stamp vendor, the stamp should be considered as spoiled under section 49 (a).
- (ii) Stamped papers wrongly endorsed by the licensed stamp vendor may be treated by the Collector as spoiled and exchange allowed. Such papers need not remain long in the hands of vendor who should as early as practicable apply to the Collector for exchange. (Letter of Inspector General of Registration and Stamps, Bombay No : 1238 of 1884).

6. Clause (c). Bills of exchange are drawn in parts, each part is numbered and contains a provision that it shall continue payable only so long as the others remain unpaid ; but the whole set constitutes only one bill and is extinguished when one of the parts, if a separate bill would be extinguished (see Sec. 132 of of Negotiable Instruments Act XXVI of 1881).

7. Refund on bills of exchange used as covers.

Refund of the value of stamps affixed to bills of exchange which have been used as covers and sent to home firms and home partners or directors who are payees should not be granted. (G. of I.F. & C, No : 2696; dated 7th June 1889 vide G.R. No: 4967, dated 11th July 1889).

8. Presentation for acceptance :

Cl. (c) (1) — A certain firm drew a bill of exchange in a set of three bills in their own favour upon another firm, signed the bills as drawees and blank endorsed them as payees. They then discovered an error in the bills, and drew a fresh set of bills in lieu of the spoiled set, and applied for refund of the stamp duty. Held, that as the bills did not leave the hands of the drawers, the value of the spoiled stamps may be refunded under S. 51 (b) now S. 49 (c) (1), [Mad Bd's Pro. No. 137 dated 10th January 1884].

9. Interpretation of clause (c) (3)

But, now the corresponding clause (a) of the present Act applies of stamps rendered unfit by an error in writing or any other means, as the undermentioned ruling was brought to the notice of the Government of India in view to the section being amended in consequence of the hardship caused to the public by following the interpretation of the High Court of section 51 (a) Act 1 of 1879.

"Section 51 (a) of the Stamp Act (1879), which permits the allowance being made for spoiled stamps, applies only to cases of accidental spoiling of the paper of which the stamps is made, and does not cover cases of the use of the paper in an ordinary way in which mistake has been made."

The Government of India replied that, in particular case referred to, if the bill of exchange (which was rendered unfit for use through a clerical error in filling it up) was not executed a refund was admissible under section 51 (a) (now S. 49 (a)); if it was executed but not delivered to the payee or deposited as security or in any way negotiated, issued, put in circulation or otherwise made use of and if it had not been accepted by the drawee a refund was claimable under section 51 (b) (now 49 (c) (1)) and if the instrument had been presented for acceptance or accepted or endorsed, a refund might be claimed under section 51 (c) (now Section 49 (c)) provided another complete and duly stamped instrument was produced. (I.G. Letter No: 3227.S.R. dated 27th July 1896).

10. Clause (d)

Sub-clause (1). In the Act of 1879, this clause was so framed as to be applicable to documents which had been "found by a competent Court to be void in law from the beginning." In the present Act all reference to the Court has been omitted, vide extract from speech of the Hon'ble Sir James Westland.

"There is one change which has been made in this Chapter to which it is necessary to draw attention because I think that the present provisions of the Act are based upon a misunderstanding. The provisions of the English Act, from which the

Indian law is taken, are that if a document is found to be void in law from the beginning, the parties who executed it can claim refund of the duty which they have paid upon it, provided no legal proceedings have been commenced in which the document would have been given in evidence. As adopted in the Act of 1879 this section was worded so as to apply to documents which have been found by Court of law to be void. This reference to the English Act will show to be a mistake. If a document is found by a Court to be void, it must have been produced in evidence before that Court and must have been made use of by the party producing it. There is no reason why duty should in such a case be refunded. We have therefore amended the existing Indian Law in this respect so as to bring it into conformity with the English Law."

11. Clause (d) (6) — Same parties.

Where a sale-deed executed in favour of A, but A died before registration of document — Second sale-deed on stamp of same value executed in favour of A's widow — Second document may be considered to have been executed between same parties and refund can be granted under sub-clause (d) (6) [('33) Mad S.M. p. 52]

Refunds under this sub-clause are allowable independently of the refund rules in and under the Act itself in the case of stamps rendered useless solely in consequence of change of law or rule. [('34) Punj. S M Part I-B, Ch. 3]

12. Clause (d) (7).

Sub-clause (7) of clause (d) of S. 49 makes it clear that a person who throws aside an insufficiently stamped deed, and gets a new deed in the same terms drawn up and properly stamped, is entitled to get a refund made to him of the duty which he first of all paid upon the insufficiently stamped and superseded deed. [('34) Punj. S M Part I-B, Ch. 3]

13. Sub-clause (7). Insufficiently stamped paper.

(1) The Act of 1879 did not provide for refund or renewal of stamp in cases in which it was of less value and used inadvertently, even when a second instrument was executed upon full stamp and now this defect has been removed as the present clause makes it clear that the person who throws aside an insufficiently stamped deed, and gets a new deed in the terms drawn up and properly stamped, is entitled to get a refund made to him of the duty which he first of all paid upon the insufficiently stamped and superseded deed [vide also para 19 of the speech of the Hon'ble Sir James Westland, dated 21st March 1898]

(2) We have inserted a new sub section (7) because a doubt has arisen whether the existing sub-section (6) covers the case of the second instrument being executed solely because the stamp on the original instrument was of insufficient value. [Select Committee's Report 19th March 1898 para 14].

14. Sub-section (d) relates to stamps spoiled or rendered useless after execution on account of—

- (1) being found (by the parties not by a court) to be void in, or
- (2) mistake in drafting, or
- (3) death of a necessary party, or
- (4) refusal to execute, or
- (5) refusal to act, or
- (6) execution of another instrument for the same purpose, or
- (7) deficiency in stamp duty, or
- (8) the stamp being accidentally spoiled.

15. Documents ceased to be required.

The guarantee letters, indemnity bonds and powers of attorney and the like which have ceased to be required for the purpose for which they were executed and bearing proper stamp duty, cannot be admitted under section 49 (d) for the purpose of refund or exchange.

16. Collector to administer an oath while making enquiries regarding the refunds of the value of spoilt stamps.

The Collector being a person empowered by law (viz. by the Stamp Act and the Rules made under it) to take evidence has authority under section 4 of the Oaths Act, 1873, to administer an oath. The proceeding before the Collector under section 51 of the Stamp Act may not perhaps be a judicial proceeding within the meaning of section 193 of the Penal Code. That section, however, is not confined to cases of giving false evidence in judicial proceedings, and in the opinion of His Excellency the Governor

General in Council, the punishment provided for giving false evidence in cases other than judicial proceedings is likely to be ample for the purposes of the enquiry regarding the refunds of the value of spoilt stamps. (G. I., F & C, No. 2698 dated 13th September 1879, vide G. R. No. 5212 dated 29th idem).

17. Collector cannot delegate his authority to his subordinates to grant refunds or to make enquiry.

- (1) The Collector alone can grant refunds of the value of stamps. Officer-in-charge of the Treasury must accordingly refer to him for separate orders in each case (G. of I. No. 3767, dated 23rd October 1873).
- (2) Where a person had applied for a refund and the Collector made over the application for inquiry to a Deputy Collector, it was held that the Deputy Collector was not entitled to put the witnesses produced on their oaths, and consequently in reference to the statements of such witness, no charge of making a false statement or giving false evidence was sustainable, the Collector himself being the officer and no other, to whom power is given to make inquiries into the applications for allowances for spoilt stamps to take evidence in reference thereto, and to grant or refuse such application. He cannot delegate his authority in the matter. (Empress vs. Niazali 5. All. 17).

18. Cancellation and destruction of spoilt stamps.

- (1) When the Collector of a District sanctions a refund or renewal he should then and there record his reasons for granting such refund or renewal, should punch or mark the stamped paper in such a way that it can never be presented again, and should then forward it for destruction to the Superintendent of Stamps, (G. I. F. D. No. 3767 dated 23rd October 1873, vide G. R. No. 6077 dated 4th November 1873).
- (2) Stamp sold to the public when returned will generally be more or less spoiled or disfigured and should not be reissued. If a refund of the value of any such stamp is granted the Collector should follow the course laid down in G. of I. Circular No.3767 dated 23rd October 1873, (G. of I.F.D. No. 6592, dated 16th November 1874 vide G. R. No. 6429 dated 5th December 1874).

19. Right of refund of heir of the deceased person.

The heir of the deceased person has a right to claim a refund on a spoilt stamped paper which has come into his possession as heir (G. R. No. 1073 dated 15th February 1882).

20. Refund of stamp duty paid on Fire Insurance Policies taken out for long period but cancelled after a short duration.

In reply I am to forward a copy of a letter from the Government of Bombay, No.825, dated the 8th February 1901 (with enclosure) from which it will be seen that the difficulty complained of by the Calcutta Insurance Companies has been satisfactorily met in Bombay. The companies there do not pay the stamp duty on policies issued less than twelve months but in cases in which they have been paid the duty and the policy is cancelled before it has been current for twelve months, the whole duty is deducted from the premium for the unexpired period of the policy before the refund is made. The Governor General-in-Council is not aware of any reason why a similar practice should not be adopted in Calcutta without disturbing the custom by which the stamp duty on all Fire Insurance policies is paid by the companies. Before refunding the premium for the unexpired period of the policy which has been cancelled, the companies can deduct the difference between the stamp duty actually paid and the proper duty for the period during which the policy has been in force. The companies thus have the remedy in their own hands and the Government of India do not think it necessary to undertake legislation on the subject. (Government of India Letter No.1735-K, dated 29th March 1901 vide B.G.R. No. 2490, dated 17th April 1901).

21. Grant of the refund of the value of missing spoiled stamps on the production of Collector's Certificate.

- (i) (Paragraph 4 of Letter No.3007, dated 22nd October 1896, from the Collector of Broach).

"The Superintendent of Stamps, Bombay now suggests that a certificate should be submitted in lieu of the missing paper and I am prepared to certify that the stamped paper was duly cancelled in this office and has since been lost. I have therefore the honour to request that the Government may be moved to direct the acceptance of such a certificate by me as sufficient voucher for the refund."

Resolution. In the circumstance stated the Collector's Certificate may be accepted as a voucher for the refund. Care should however be taken that the refund is not admitted a second time on the production of the missing stamped paper. (G.R.R.D. No. 9902 dated 7th December 1896).

- (ii) Letter No.1364 dated 9th February 1897 from the Collector of Khandesh.

"The Huzur Deputy Collector, Khandesh, tells me that the daily sheet of the 19th October 1896 of Chopda Taluka was

either mis-sent or lost somewhere together with the voucher which accompanied it, and has not been traced yet. Amongst the vouchers were two stamped papers and two receipt for the refund of the value of the stamps. I send herewith a copy of a letter from the Superintendent of Stamps, to the Huzur Deputy Collector. In this letter the Superintendent says that the refund for two stamped papers of eight annas each alleged to have been lost in transit cannot be passed unless the sanction of Government is obtained, the loss of the papers being certified by me."

Resolution. The refund applied for should be sanctioned on the Collector certifying the fact of the loss of the stamped papers. (G.R.R.D. No. 2035 dated 15th March 1897).

22. Adhesive Label.

Section 49 of the Stamp Act refers to impressed stamps and labels, while section, 52 and 54 refer to all kinds of stamps dealt with in the Act. It follows therefore that adhesive labels are excluded from the operation of S. 49, and consequently, refunds can be made in their case if they are misused or not used, but not if they are spoiled.....Since these labels are not intended to be written upon as impressed stamps are, they were purposely excluded from the operation of S. 49.....Refunds in respect of spoiled adhesive labels under any circumstances mentioned in section 49 of the Stamp Act should not be granted. (G.R.R.D. No. 3687 dated 29th March 1915).

23. Refund of Stamp duty endorsed under section 42 of the Stamp Act, II of 1899.

There seems to be no doubt that the present case is one in which the stamp duty ought to be refunded, and although, according to the explanation in section 49, the only certificate which is mentioned as equivalent to an impressed stamp is a certificate under section 32, I think that Government would, in view of the above decision, be justified in authorizing the refund. There is no difference in the effect of a certificate issued under section 32 and one issued under section 42, although the wording of the sections is not quite the same. In the former section an instrument which has been certified shall be deemed to be duly stamped and shall be receivable in evidence and acted upon and registered as if it had been originally duty stamped, while under section 42 an instrument which has been certified shall thereupon be admissible in evidence, and may be registered and acted upon and authenticated as if it had been duly stamped. Under section 2 (11) "duly stamped" means that the instrument bears an adhesive or impressed stamp of not less than the proper amount. I do not think that the explanation to section 49 should be necessary treated as exhaustive and consequently the above mentioned decision would apply to a case under section 42, if Government were disposed to adopt it. [Para 5 of Letter No. 306, dated 11th February 1925, from the Solicitor to Government, G.R., R.D., No. 3045/24, dated 20th March 1925].

24. Refund of Stamps rendered useless in consequence of the subsequent changes in the law.

1. I am directed to request that with the permission of—you will issue necessary instructions with a view to the renewal or refund of the value of the old stamps which had been issued for use previous to the introduction of the General Stamp Act XVIII of 1869 and which have been rendered useless in consequence of the subsequent changes in the rates of duty prescribed by that Act.
2. * * * * *
3. As there seems to exist some misapprehension with regard to the application of section 45 of the General Stamp Act XVIII of 1869 (now section 49 of the Stamp Act II of 1899), I am to take this opportunity of explaining that the rules under that section apply exclusively to cases in which stamps have become unfit for the purpose for which they were procured through some act or omission on the part of the person possessing them, and not to cases in which stamps obtained for use under the old law have been rendered useless in consequence of the subsequent changes in the law. (Circular No. 811 dated 28th May 1870 from Government of India to all Local Governments and Administrations.)

50. Application for relief under Section 49 when to be made :

The application for relief under Section 49 shall be made within the following periods, that is to say—

- (1) in the cases mentioned in clause (d) (5), within two months of the date of the instrument ;
- (2) in the case of a stamped paper on which no instrument has been executed by any of the parties thereto, within six months after the stamp has been spoiled ;
- ✓ (3) in the case of a stamped paper in which an instrument has been executed by any of the parties thereto, within six months after the date of the instrument, or, if it is not dated, within six months after the execution thereof by the person by whom it was first or alone executed ;

Provided that—

- (a) when the spoiled Instrument has been for sufficient reasons sent out of Pakistan the application may be made within six months after it has been received back in Pakistan ;
- (b) when, from unavoidable circumstances, any instrument for which another instrument has been substituted cannot be given up to be cancelled within the aforesaid period, the application may be made within six months after the date of execution of the substituted instrument.

COMMENTS

1. Explanation.

The Provisions of S.50 apply to the application for relief made under S. 49. Clause (1) refers to cases mentioned in sub-clause (5) of S. 49 (d); clause (2) refers to cases mentioned in sub-clauses (a) and (b) of S. 49 and the period under this clause had been extended to two years under G. R. R. D. No. 9525 dated 19th September 1908; clause (3) refers to all other sub-clauses of S. 49 (c) and (d) which refer to executed documents. It should particularly be noted that the provisions of (a) and (b) to clause (3) to S. 50 refer to executed instruments and specially proviso (b) should be read with sub-clauses (6 to 8) to S. 49 (d).

2. Refund in case of torn, spoiled stamps etc. When applied for after six months.

I am directed to acknowledge the receipt of your letter No. 6099, dated the 27th July 1892, and of its enclosures, regarding an application from Messrs.....for refund of the value of certain spoiled stamps amounting to Rs.283.

"Under the law, applications for refund should be made within six months from the date on which the stamps were purchased, spoiled or rendered useless. In order to meet cases of undue hardship, this period was extended to twelve months by the Resolution in this Department No.125 dated 14th January 1881. In the present case, it appears that the stamps were spoiled or rendered unfit for use in each case more than one year, and in some instances more than six years, before an application for refund was made to the Collector of..... and no satisfactory explanation is given of the cause of delay. In many cases too, the stamps have become useless merely because by careless keeping they were torn or spoiled. Such a case as this is not of the kind contemplated when provision was made for the refund of the value of spoiled or useless stamps, and the Governor General in Council is unable to sanction the refund applied for. (G.I.F. & C. No. S. R. 3314 dated 10th August 1892 : vide G.R. No. 7042, dated 5th September 1892.)

3. Powers of Local Governments and subordinate revenue authorities to deal with and entertain applications for refund or renewal of stamps.

Under Chapter VI of the Stamp Act, 1879 (now Chapter V of Act II of 1899), provision is made for renewal or refund of the value of the stamps spoiled or rendered useless, or which for any reasons are not required by the possessor, on the condition that the application for such renewal or refund shall be made within six months from the date on which it was rendered useless or on which it was purchased.

Instances have occurred in which this limit has operated as a serious hardship. Without any fraudulent motive holders of spoiled or useless stamps are sometimes unavoidably prevented from applying for refund or renewal within the prescribed period and so cannot under the provisions of the Act, obtain any relief. In such cases an order of the Government of India is now necessary before the refund can be sanctioned. For the future the Governor General in Council authorizes the Local Governments to allow, or in their discretion to delegate power to any subordinate Revenue Authority not below the rank of the Collector or Deputy Commissioner of the District to allow refunds or renewals of spoiled or useless stamps or the repurchase of stamps not required, subject to such time limit not exceeding two years as may appear to them suitable.

(Government of India Resolutions)

- No : 125 dated 14th January 1881.
- No : 5468 S. R. dated 14th December 1898.
- No : 6982 Exc, dated 19th December 1905.
- No : 4738. Exc ; dated 14th August 1908

(Bombay Government Resolutions)

- No. 601, dated 28th January 1881,
- No : 464 dated 20th January 1899.
- No : 1028, dated 3rd February 1906
- No : 9525, dated 19th September 1908

The Commissioners in this (Bombay) Presidency, the Collectors including the Collectors and Deputy Commissioners in Sind, the Collector and Superintendent of Stamps, Bombay and the Political Resident Aden are empowered to deal with applications for refund or renewal of spoilt or useless Non-Judicial stamps provided that the application for renewal or refund is made within two years from the date on which the stamps were spoiled or rendered useless. [Government Resolution Revenue Department, No : 9525 dated 19th September 1908)

It may be noted that though the Deputy and Assistant Collectors incharge of Sub-divisions, the Huzur Mukhtiar-kars and the Mukhtiar-kars have been declared under Section 2 (9) of the Stamp Act, II of 1899 to perform the functions of the Collector under Chapter V of the said Act, they are not the Collectors of districts, therefore they are not competent to entertain applications for refund or renewal of spoiled or useless Non-judicial stamps under the provisions of Government Resolution, R. D. No. 9525 dated 19th September 1908.

4. Intention of G.R. R. D. No. 9525, dated 19th September 1908.

The period of two months prescribed in Section 50 (1) for cases falling under section 49 (d) (5) of the Stamp Act, II of 1899 is not affected by G.R.R.D. No. 9525, dated 19th September 1908, the extension of the period of refund to two years is meant to apply in special cases of hardship and covers those cases for which the period prescribed is six months (in respect of spoilt and useless stamp) i.e. with the exception of those falling under Section 54 of the Act. (Letter No. 886 dated 23rd May 1932 from the Superintendent of Stamps, Karachi to the Collector of Larkana.)

5. Refund of the value of spoiled stamps purchased 3-1/2 years before.

1. I beg to submit that the question as to the refund of the stamps of Rs. 2/-, may, it appears, be disposed of under the latter part of clause (a) of section 51 (now 49) of the Stamp Act, 1879.
2. Although it is doubtful, as the Collector of Broach suggests, if the circumstances of the case under consideration could bring it within the first part of this clause, which refers to "the stamps on any paper inadvertently spoiled or obliterated", it seems clear that the latter part of the clause, i.e., the words, by any means rendered unfit for the purpose intended., before any instrument is executed "by any person" could be applied to the present case.
3. The document intended to be written on the stamp paper in question was incomplete and remained unexecuted. The evidence taken on enquiry under section 51 (now 49) is not found by the Collector to be unreliable, but a doubt only is suggested that, to avoid the effect of section 54 (now also 54) (as the stamp was purchased some 3-1/2 years before), the holder of the stamp may possibly have restored to a sham mortgage.
4. As for the point raised in para 3 of the Commissioner, Northern Division's Memorandum, it appears from the facts stated that the intended transaction was broken off and that there was no prospect of its ever being completed. Moreover it does I think necessarily follow that, "the purpose intended" [vide the said clause (a)] was execution of that particular document. The words seem to be used generally and to include the writing of any instrument which might be executed upon a stamp of that value. It is clear that this partially used stamp paper was rendered unfit for the writing of any other instrument.
5. If this view be correct then clauses (a), (b) and (c) of section 51 (now 49) would cover cases of unexecuted spoiled or incompleated documents [clauses (b) and (c) applying specifically to bills of exchange, cheques and promissory notes] while clause (d) would apply to stamps used for executed instruments.
6. In the absence, therefore, of any finding that the evidence was unsatisfactory and disclosed a sham transaction it must be held that the case falls under latter part of clause (a) section 51 (c/o the opinion of the Punjab Financial Commissioner referred to by the Collector). Accordingly I would submit that the refund claimed may be allowed, if the claim was made within six months after the stamp had been spoilt or rendered unfit. (L.R. No. 380, dated 20th March 1897, vide G.R. No. 3843, dated 21st May 1897).

6. Time fixed for making allowance :

All applications for allowances must be made within a fixed time. The Act prescribes a period of six/two months, calculated from different dates, as shown below :-

i) Spoiled stamps (Section 49):

- a) If the stamped paper has not an executed instrument written on it, or if it has no instrument written on it from the date of spoiling.
- b) Otherwise — from the date of instrument ; or if it is not dated, the date of first execution.

ii) Substituted instrument (Proviso (a) to Section 50) :

If from unavoidable circumstances any spoiled instrument for which another instrument has been substituted can not be given up to be cancelled within the aforesaid period — from the date of exeuction of the substituted instrument.

iii) Instruments received from abroad (Proviso (b) to Section 50) :

If the spoiled stamp instrument has been sent out of Pakistan — from the date it has been received back in Pakistan.

iv) **Mis-used or useless stamps (Section 52) :**

In the case of mis-used or useless stamps — from the date of the instrument; or if it is not dated, the date of first execution.

v) **Stamps not required for use (Section 54) :**

In the case of stamps not required for use — from the date of purchase of stamps.

vi) **Cases falling under Section 49 (d) (5) :**

In cases falling under Section 49 (d) (5) — prescribing the period of two months — from the date of the instrument.

51. Allowance in case of printed forms no longer required by Corporations:

The Chief Revenue Authority or the Collector if empowered by the Chief Revenue Authority in this behalf may, without limit of time, make allowance for stamped papers used for printed forms of instruments by any banker or by any incorporated company or other body corporate, if for any sufficient reason such forms have ceased to be required by the said banker, company or body corporate: provided that such authority is satisfied that the duty in respect of such stamped papers has been duly paid.

COMMENTS

1. Delegation of powers of Chief Revenue Authority under Section 51 of the Stamp Act, 1899, to certain officers:

The Assistant Superintendent of Stamps, Karachi has been empowered to exercise the powers of the Chief Revenue Authority under Section 51 of the Stamp Act, 1899, within the limits of Karachi Division. (Order No. 388, dated 19th February, 1917, issued by the Commissioner-in-Sindh).

In exercise of the powers conferred by section 51 of the Stamp Act, 1899, the Board of Revenue, Sindh is pleased to delegate the powers of the Chief Revenue Authority under the said section to all the Collectors/Deputy Commissioners in Sindh, except Karachi, where the Assistant Superintendent of Stamps is already exercising the powers as aforementioned. (Board of Revenue, Sindh's Notification No. STAMPS/86/35, dated 22nd January, 1986).

2. Cyclostyled documents come within the definition of "printed" :

The Investment Corporation of Pakistan is a body corporate having come into existence by virtue of the Investment of Corporation of Pakistan Ordinance 1966 (Ordinance No. IV of 1966). As such the present matter is covered by Section 51 of the Stamp Act.

Letter of the Deputy Commissioner addressed to the Secretary, Board of Revenue indicates that the claim of Investment Corporation was rejected on the ground that according to the then Deputy Commissioner, the cyclostyled Stamp papers did not come within the definition of printed forms as stated in Section 51 of the Stamp Act.

It appears that the Deputy Commissioner has given too narrow an interpretation to the word "printed" as used in Section 51 of the Stamp Act. As is evident from the ordinary dictionary meaning the word "Print" can be used for writing on paper by various mechanical processes. Cyclostyle is also a mechanical process of printing on papers, as such the non-judicial stamp papers printed by cyclostyle are covered by the word "printed" as used in Section 51 Stamp Act. The Deputy Commissioner therefore, took an erroneous view that the claim of Investment Corporation was time barred. The case may be re-processed under Section 51 of the Stamp Act (Government of Sindh, Law Department's U.O. letter No. 15 (84)/75-256/232, dated 21st June, 1975).

52. Allowance for misused stamps :

(a) When any person has inadvertently used, for any instrument chargeable with duty, a stamp of a description other than that prescribed for such instrument by the rules made under this Act, or a stamp of greater value than was necessary, or has inadvertently used any stamp for an instrument not chargeable with any duty; or

(b) when any stamp used for an instrument has been inadvertently rendered useless under Section 15, owing to such instrument having been written in contravention of the provisions of Section 13 ;

the Collector may, on application made within six months after the date of the instrument, or if it is not dated, within six months after the execution thereof by the person by whom it was first or alone executed, and upon the instrument, if chargeable with duty, being re-stamped with the proper duty, cancel and allow as spoiled the stamp so misused or rendered useless.

COMMENTS

1. Scope :

This section affords relief in cases where a mistake has been made either in description or in the value of the stamp, or where the provisions of section 13 have been violated (U.P. Stamp Manual, 1945).

2. Application of sections 52 and 54 to all kinds of stamps.

Ss. 52 and 54 apply to all kinds of stamps (impressed as well as adhesive) used under the Act, but great caution should be used in refunding the value of adhesive labels. Stamped labels are a class of impressed stamps (I.G. letter to the Government of Bombay, No. 911 dated 6th June 1879).

3. Section 49 and section 52 distinguished.

Section 49 deals with cases in which the impressed stamp has been rendered unfit for the purpose intended, whereas section 52 deals with the cases, in which the stamp, impressed as well as adhesive, has been rendered useless by failure to observe the provisions of the Act and the rules framed thereunder. The section empowers the Collector to grant refunds in following cases:-

- (1) When the wrong description of stamp has been inadvertently used.
- (2) When there has been a mistake in the writing of the instrument on the stamp paper, so that under sections 13 and 15 it is as though it were unstamped.
- (3) When there was no need of a stamp, or for a stamp of so high a value as was used.

4. Use of stamp of less value required.

It will be observed that amongst the cases of misused stamps for which allowance may be made under section 52, is that when a person has inadvertently used a stamp of greater value than was necessary. Application by persons who have inadvertently used a stamp of less value than that prescribed by the Act have sometimes been made under this section. For the proper procedure in such a case, see section 49 (d) (7).

53. Allowance for spoiled or misused stamps how to be made :

In any case in which allowance is made for spoiled or misused stamps, the Collector may give in lieu thereof—

- (a) other stamps of the same description and value; or
- (b) if required and he thinks fit, stamps of any other description to the same amount in value; or,
- (c) at his discretion, the same value in money, deducting ten per centum of that value.

COMMENTS

Renewal of stamps damaged by fire to stamp vendors.

The Governor in Council is pleased to direct the issue to the stamp vendors in question of other stamps of the same description and value in lieu of those damaged by fire. The damaged stamps should be forwarded to the Superintendent of Stamps, with a view to their being destroyed under the personal supervision of the Assistant Superintendent of Stamps. Their value should be written off the account. (G.R. No. 4965, dated 18th July 1899).

54. Allowance for stamps not required for use :

When any person is possessed of a stamp or stamps which have not been spoiled or rendered unfit or useless for the purpose intended, but for which he has no immediate use, the Collector shall repay to such person the value of such stamp or stamps in money, deducting ten per centum of that value, upon such person delivering up the same to be cancelled, and proving to the Collector's satisfaction —

- (a) that such stamp or stamps were purchased by such person with a *bona fide* intention to use them; and

(b) that he has paid the full price thereof; and

(c) that they were so purchased within the period of six months next proceeding the date on which they were so delivered:

Provided that, where the person is a licensed vendor of stamps, the Collector may, if he thinks fit, make the repayment of the sum actually paid by the vendor without any such deduction as aforesaid.

COMMENTS

1. "Not required for immediate use".

In the case of an impressed stamps which has been spoiled by an agreement having been written upon it which the person who was to have executed that agreement in his own name subsequently refused to sign. The proper course is to deal with the case under Section 54 of the Stamp Act. That section applies to stamps for which the owner has no immediate use and which have not been spoiled or rendered unfit or useless for the purpose intended. This is precisely the case in question. The stamps spoiled and rendered unfit and useless for any other purpose, but not for the purpose for which it was intended to be used, and the owner of it has no immediate use of it. Probably this section was primarily intended to apply when stamp has not been used or spoiled at all, but it is so worded — perhaps intentionally — as to cover both cases. (L.R. No. 278 dated 1st march 1881; vide G. R. No. 1480, dated 12th idem).

2. Use of stamps purchased more than six months ago is valid though a person cannot get back his money under this section. [AIR 1943 Oudh 314]

3. Explanation of proviso.

A proviso has been added by the present Act to this section to make special provision for a case of licensed vendors of stamps. (Statement of Objects and Reasons).

Refund of the sum actually paid by a licensed stamp vendor can only be made under the proviso when the licensed vendor does not require stamps because there is no demand for them.

4. Allowance to Stamp vendors.

Allowance to stamp vendors is made according to the orders contained in G. of I.No. 307 S. R. dated 23rd January 1893 and G.R. No. 1451 dated 22nd February 1893 :-

When stamps are returned into Collector's stores on :-

(1) resignation of the vendor's licence,

(2) revocation of license for any fault of the licensee,

(3) death of the vendor,

(4) application of the vendor for leave to restore any stamps, the stamps should be taken back at their full value less a deduction of ten per centum in the rupee, but that when they are returned on —

(5) expiration of license.,

(6) recall of stamps by Government,

(7) revocation of license for any other cause than that mentioned in (2), they should be taken back at their full value less only discount allowed on the sale to the licensed vendor.

5. Limit of the period within which the refund of the value of unused stamp returned by licensed stamp vendors to be made.

If the sanction for the value of unused stamps returned by a licensed vendor who resigns his license, or whose license is cancelled by a competent authority, or by the legal heir or representative of a deceased stamp vendor, is not acted upon

within 12 months, it should be considered to have lapsed, until it is renewed by the Collector on sufficient cause shown. (G. R. No. 7064 dated 13th July 1908).

6. Stamps returned by licensed stamp vendors to be placed in store.

The stamps, however, which are taken back from a stamp vendor or his heirs may be placed in stores and re-issued. (G.R. 6429 dated 5th December, 1874.) Note. Spoilt or otherwise damaged stamps returned by the licensed stamp vendors are not to be kept in stock or re-issued, but they should be dealt with as spoilt stamps tendered by the public in general.

7. Renewal of stamps "not required for immediate use" not allowed.

Section 54 permits only payment in money for stamps not required for immediate use, hence no renewal i.e. exchange can be made.

8. Section 54 applies to all kinds of stamps.

Section 52 and 54 of the Stamp Act, 1879, apply to all kinds of stamps used under that Act, but great caution should be used in refunding the value of "adhesive labels". (G.I. F. D. No. 91 dated 6th June 1879, vide G.R. NO. 3300, dated 23rd idem.).

9. Adhesive stamps returned by persons for refund.

"Adhesive stamps" (i.e. Share Transfer, Insurance, Foreign Bill, Agreement, Broker's Note, Notarial and Revenue) which have been tendered by the public for refund, if fit for re-issue should be taken into store, if they are in quarter sheets or multiples thereof, of stamps of the anna values, and block of 10 labels or labels thereof, of rupee values, and all loose labels should be destroyed. (G.R.R.D. No. 4016 dated 7th July 1937).

10. Application of G.R.R.D. No. 9525 dated 19th September 1908 to Section 54.

The orders issued in Government Resolution R.D. No. 9525 dated 19th September 1908 apply to refunds or renewals of spoilt or useless Non-judicial stamp under Section 49 in certain cases and not to S. 54 which deals with stamps which have not been spoiled or rendered useless or unfit. (Vide Letters No. 727 dated 20th March 1925 and 828 dated 26th March 1927 from the Superintendent of Stamp, Karachi to the Collector of Sukkur).

55. Allowance on renewal of certain debentures:

When any duly stamped debenture is renewed by the issue of a new debenture in the same terms, the Collector shall, upon application made within one month, repay to the person issuing such debenture, the value of the stamp on the original or on the new debenture, whichever shall be less:

Provided that the original debenture is produced before the Collector and cancelled by him in such manner as the Provincial Government may direct.

Explanation: A debenture shall be deemed to be renewed in the same terms within the meaning of this section notwithstanding the following changes :

- (a) the issue of two or more debentures in place of one original debenture, the total amount secured being the same;
- (b) the issue of one debenture in place of two or more original debentures, the total amount secured being the same;
- (c) the substitution of the name of the holder at the time of renewal for the name of the original holder ; and
- (d) the alteration of the rate of interest or the dates of payment thereof.

COMMENTS

1. Object.

The section is new and is intended to give facilities to companies in respect of renewals of debentures. (Statement of Objects and Reasons).

2. Explanation:

"We have also for the facility of business connected with debentures provided in the Act itself for the renewal of debentures without the payment of any extra duty. At present, when a company wants to renew debentures, it has to pay the same duty upon them as upon the originally issued debentures. We have provided that when debentures are renewed they shall not be chargeable with any new duty, and we allow also for certain alterations in the terms of the debentures being affected without new payment of duty. (The Hon'ble Sir James Westland's speech, 15th October, 1897, paragraph 14).

3. Mode of cancelling original debentures.

When the Collector makes a refund under section 55 of the Act, he shall cancel the original debenture by writing on or across it the word "cancelled" and his usual signature with the date thereof — (Rule 21 of Stamp Rules, 1925).

4. Refund of Stamp duty affixed on trust deed in respect to converted debentures.

The claim of the Larkana Jacobabad (Sind) Light Railways, Limited, for refund of stamp duty paid on the mortgage deed of 29th January 1926 does not fall under any section in Chapter V of the Stamp Act, 1899. Section 49 (d) (6) is inapplicable because the subsequent mortgage deed of 2nd October 1933 cannot be said to effect the same transaction which was intended to be effected by the earlier deed. Section 55 also is inapplicable. It applies only to debentures. It appears that separate debentures are issued in terms of the mortgage deed of 1926 (styled trust deed by the parties) and exemption from full stamp duty is enjoyed under the exemption in Article 27 in schedule I to the Stamp Act. The exemption makes a distinction between a mortgage deed and debentures issued in terms thereof. The mortgage deed cannot therefore, be regarded as itself a debenture. As there is no specific provision under which the claim of the Company fails they have no legal right to claim refund. Government have, however, an inherent power to grant refunds provided they are satisfied that a proper case has been made out (Vide Golaupmonce Dasee v. Prosonomayi Dasee, I. Ben L. R. 373, also Rememberancer of Legal Affairs' opinion Nos 1192, dated 3rd July 1923, 1469, dated 22nd July 1924, 528, dated 9th February 1927, 2119, dated 12th April 1934 and 3621, dated 26th June 1934). The power of Government is not limited to cases actually provided in Chapter V of the Stamp Act, 1899. (Memo from R. L. A. No. 4107, dated 23rd July 1934 Vide G.R.R.D. No. 2417/33, dated 28th August 1934.)

CHAPTER VI REFERENCE AND REVISION

56. Control of and statement of case to, Chief Revenue Authority :

(1) The powers exercisable by a Collector under Chapter IV and Chapter V and under clause (a) of the first proviso to Section 26 shall in all cases be subject to the control of the Chief Revenue Authority.

(2) If any Collector, acting under Section 31, Section 40 or Section 41, feels doubt as to the amount of duty with which any instrument is chargeable, he may draw up a statement of the case, and refer it, with his own opinion thereon, for the decision of the Chief Revenue Authority.

(3) Such authority shall consider the case and send a copy of its decision to the Collector, who shall proceed to assess and charge the duty (if any) in conformity with such decision.

COMMENTS

1. Sub-Section (1) :

The Lahore High Court has held, although section 56 only grants power to the Chief Revenue Authority to exercise control over the Collector, it cannot be regarded as a matter of arbitrary discretion with the Chief Revenue Authority to entertain a petition or not. When powers are granted for a particular purpose, there is a duty cast on the person empowered to act in furtherance of that purpose. It is to be observed that against the order of the Collector the only remedy available (apart from a civil suit which may lie in a case of lack of jurisdiction) is under section 56. If the Collector imposes a penalty of ten times the stamp duty, the only authority that can reduce that penalty is the Chief Revenue Authority. The Chief Revenue Authority cannot refuse to exercise its jurisdiction i.e., it cannot refuse to consider a case, though after considering a case it may pass such orders as it thinks fit. [PLD 1960 Lah 211 (p. 217)]

Where in a revision question relating to interpretation of certain provisions of Stamp Act and the question of interpretation of document is involved, the Board has no power to decide the matter itself but to refer the case to the High Court. [AIR 1975 Mad. Pra 209]

Where a document is impounded and sent to the Collector and the Collector acting under S. 40 (1) (b) calls upon the executant to pay up the deficiency and the penalty the order can be revised by the Chief Revenue Authority under S. 56 (1) before the stamp duty so demanded is paid, as the matter must be deemed as pending before the Collector till the certificate of payment of duty and penalty is endorsed on the document under S. 42. Likewise if a Collector acting under S. 40 (1) (b) requires the payment of stamp duty from a wrong person his order is open to revision under section 56 (1). [AIR 1932 Lah. 495 30 All 271]

2. Cancellation of licence of vendor.

Order of Collector cancelling the licence of a stamp vendor does not come either under Chapter IV or V and this order cannot be set aside by the Chief Revenue Authority under S. 56 (1). [('42) 1942 Nag L Jour 544 (545)]

3. No revision made.

Where no revision against order of Collector was filed to the Board of Revenue but the latter was asked its opinion whether the order of the Collector was without jurisdiction it was held that the opinion of Board was not a decision by it but mere expression of opinion on a question of law. [('54) 1954 All L Jour 520 (522)]

4. Subsection (2).

Sub-section (2) confers upon the Board of Revenue power to deal with instruments which are already in existence and which have been made the subject of action by the Collector acting under Ss. 31, 40 and 41 and not with instruments which may or may not hereafter come into existence. [AIR 1915 All 33 (34) : 37 All 125 (SB)]

Making of the reference under Sub-s. (2) is in the discretion of the Collector and the public cannot compel him to refer the question arising in any particular case to the decision of the Chief Revenue Authority. [AIR 1939 Bom 215 (217)]

Reference under sub-s. (2) is to be made by the Collector if he feels doubt as to the amount with which any instrument

is chargeable. [('33) Mad S.M. p. 55]

Where in an application under S. 37 in respect of certain hundis which were sufficiently but improperly stamped, the Collector refused to give the promissory certificate, on the erroneous view that there were no Stamp Rules in existence, and on an application under S. 56 (1) the matter was referred to the High Court, it was held, that the Board of Revenue where the matter was pending was entitled to revise the order of the Collector and to pass an order in conformity with the Stamp Rules and dispose of the application before it under its powers under S. 56 (1). [AIR 1956 Raj 155 (158)]

The distinction between a case where an excess duty and penalty were levied by the Collector and paid by the party which resulted in the issue of a certificate under S. 42 and a case where the duty, though levied, was not paid is on the basis of the terms of S. 56 (1) which appears to give right of appeal only in regard to a case where the powers exercisable by the Collector under Chapter IV and V are exercised. [AIR 1960 Mad 21 (24)]

5. Writ jurisdiction.

Even though a person aggrieved by an order of attachment and sale of his property under S. 48, has his remedies under the Act by way of a revision to the Board of Revenue or by an application to it to make a reference to the High Court, he can move the High Court under the Constitution, for a writ of certiorari since the remedies under the Act are not speedy, effective and adequate. [AIR 1956 Mad 454 (457)]

The powers of High Court to issue writ to direct reference under S. 57 (1) Stamp Act does not depend upon pendency of case. [AIR 1960 Mad 21]

6. Sub-Section (3).

The decision of the Chief Revenue Authority is final and can not be interfered with by the High Court. (U.P. Stamp Manual, 1945).

57. Statement of case by Chief Revenue Authority to High Court :

(1) The Chief Revenue Authority may state any case referred to it under Section 56, sub-section (2), or otherwise coming to its notice, and refer such case, with its own opinion thereon,—

(a) Omitted.

(b) if the case arises in any province, to the High Court of that province.

(2) Every such case shall be decided by not less than three Judges of the High Court to which it is referred, and in case of difference the opinion of the majority shall prevail.

COMMENTS

1. Scope.

When an application is made under S. 57 (1) and it involves a substantial question of law whether the case is pending or not the Authority is bound to state the case in compliance with its obligation. Power to make a reference under S. 57 is not only of the benefit of the authority, but it is also coupled with a duty cast on it as a public officer to do the right thing. When an important and intricate question of law in respect of the construction of a document arises, as a public servant, it is its duty to make the reference. If it omits to do so it is within the power of the Court to direct it to discharge that duty and make a reference to the Court regardless of the fact that the matter had ceased to be in the stage of assessment but had reached the stage of collection of stamp duty. [AIR 1978 Delhi 162; AIR 1950 SC 218]

The Chief Revenue Authority is bound to make a reference to High Court at the instance of a party even when it had expressed a final opinion on merits on the questions involved. [AIR 1974 Delhi 155]

A reference to High Court under S. 57 (1) (b) can be made only when there is a case pending which is to be disposed by the Revenue Authority on receipt of the judgment of the High Court. A reference to the High Court on a mere abstract question when there is no case pending before the Revenue Authority for disposal is not competent, [(34) Pb.S. Manual Pr.44]

The section invests the Chief Revenue Authority with a discretionary power to make a reference to the High Court in the following cases, namely (i) doubtful cases referred to it by the Collector acting under Ss. 31, 40 or 41 and (ii) cases coming to its notice otherwise than on a reference under S. 56 (2). [AIR 1957 Raj 125 (126)] [LR (1957) 7 Raj 570 (SB)]

2. Opinion In general nature.

Section 57 cannot be used as a means for the obtaining of an opinion from the High Court on questions of a general nature. [AIR 1929 Cal 799 (800) : 57 Cal 869 (SB)]

Opinion expressed by a Bench of High court under S. 59 on a reference under S. 57 is in the advisory nature and cannot be subject matter of appeal. [PLD 1960 Kar 893]

3. Case Involving Intricate question of law.

The power conferred under section 57, Stamp Act is for the benefit of resolving important questions of law arising in matters connected with the construction of documents. This power no doubt is to be exercised if there is doubt about the nature of particular document. It is both for the benefit and advantage of the Revenue Department and the public at large and if such circumstances exist, the authority concerned is bound to exercise this power on application of a person affected. Where what was described as a deed of trust, in which a substantial portion of the property involved originally belonged to the beneficiaries themselves, and where the Chief Revenue Authority had omitted to discharge the duty cost upon him as a public officer of referring the case to the High Court under S. 57, Stamp Act, holding that the document was a deed of settlement rather than a trust deed, and where the Revenue Authority had burdened the executant with the stamp duty and penalty. Held, that the case involved an important and intricate question of law in respect of the construction of the document, and the executant was thus justified in seeking the aid of the High Court, under its writ jurisdiction, to call upon the Revenue Authority to state the case under section 57 of the Stamp Act. [PLD 1959 Kar 1]

When a serious question of law is involved, there is a duty cast upon the Chief Revenue Authority to state a case under S. 57 (1) and the subject has definitely a right to have such a case determined by the High Court. The breach of duty lies in a failure to appreciate that there is a serious question of law involved and it can be enforced by an order under S. 45, Specific Relief Act. [AIR 1948 Bom 254 (259, 260, 261) : ILR (1948) Bom 672 (DB)]

4. S. 45 Specific Relief Act.

Where a reference is made under S. 57 in compliance with an order under S. 45, Specific Relief Act, the competency of the reference cannot be questioned on the ground that there had already been an adjudication by a competent authority as to the stamp duty payable on the instrument. [('48) ILR (1948) 2 Cal 323 (330)]

5. In case of a doubt as to stamp duty the matter should be referred to High Court and not to Government.

When a doubt arises as to the liability of any class of documents to stamp duty the proper course is to refer a test case under Section 46 (now section 57) of the Stamp Act to the High Court and not to Government, which can give no binding orders on the subject. (L.R. No. 690, dated 20th May 1887, vide G.R. No. 4021, dated 2nd July, 1887).

6. Abstract question cannot be referred by the Chief Revenue Authority.

The Chief Revenue Authority cannot refer an abstract question when there is no pending case before it. It can refer a case only when under section 57 there is a case pending before it which is to be disposed of by it on receipt of High Court's judgment. 7 N. L. R. 26 and 23 All. 213 (F.B.) Ref. [Usuf Dadbhoy v. Chand Mohammad. 27 Bom. L. R. 1273. 91 I.C. 299. (1926)]

7. Applicability—Opinion on questions of general nature—Whether can be called for from High Court—Question as to how particular kind of Marine Insurance Policy should be stamped—Reference whether maintainable.

Section 57 of the Stamp Act cannot be used for obtaining of an opinion from the High Court on questions of a general nature not arising out of any particular case. If the Government desires legal advice upon a general question it can obtain it by consulting the law officers of the State or by obtaining such other advice as may be desirable. Where the Board of Revenue made a reference whether a certain type of document called Marine Insurance Policy represented by a blank form attached to the statement of affairs should be stamped with duty payable under Art. 47.A (i) (ii) of Sch. I to the Stamp Act or of duty under Art. 62-C of the said Sch. or with some other or what duty, held that the reference was incompetent. (Re Marine Insurance Policies. 33 C. W. N. 1174; A.I.R. 1929 Cal 799).

8. Reference to High Court under—Competency of Collector's order under S.31 as to proper duty payable on Instrument which has been executed.—Instrument not impounded for failure to pay duty—Application by party affected to Board—Reference by Board on—"or otherwise coming to its notice"—in S. 57—Effect of—

A document, after it had been executed, was brought to the Collector under S. 31 of the Stamp Act. He made an order to the effect, that the document was chargeable under a particular provision of the Stamp Act with a specified amount, without

paying under S. 32 of the Act what the Collector required of having the Collector exercise his powers under S. 33 to impound the instrument and commence proceedings or under S. 40 to compel payment of the amount chargeable, the party concerned applied to the Board of Revenue to over-ride the ruling of the Collector, and the Board purported to make a reference to the High Court under S. 57 of the Act. Held that the reference was not competent. (Cooke and Kelvey in re. A.I.R. 1932, 736).

Chief Revenue Authority—Interference with Collector's order and making reference to Collector under S. 33—Power—Order of Collector on, for payment of deficiency in stamps together with penalty. Revision petition preferred to a Chief Revenue Authority against, without paying amount. Chief Revenue Authority has power to interfere with the Collector's order under S. 56 and also to make a reference to High court under S. 57.

9. Decision under S. 61 at the instance of Collector—Reference to the High Court under S. 57.—Competency.

Where an order is obtained under S. 61 of the Stamp Act at the instance of the Collector and no steps are taken to have it set aside, no decision given by the High Court in a reference under S. 57 can have any effect in law as the decision at the instance of the Collector is final. There is no case within the meaning of S. 57 (1) for the term "case" in S. 57 (1) refers only to a case as yet undecided by a competent authority, and the decision to be given by the High Court under S. 61 (2) must clearly be a decision on which action can be taken if thought fit. [Mubarik Ahmed v. Faqir Ahmed. 151 I. C. 458 (1) A. I. R. 1934 Lah. 666 (S.P.)]

10. Certificate granted by Collector under Section 32. Validity who can challenge.

When a certificate is granted by the Collector under Sec. 32, its validity can only be challenged under Sec. 57 on a reference by the Chief Revenue Authority to a High Court and not by the trial judge. (Parsram v. Parsram. 94. I. C. 747 A. I. R. 1926 Sind 211).

An instrument having been adjudicated and stamped by the Collector as bond, his decision could not be challenged before a Court, but by a reference to the Chief Revenue Authority. (Gangram Shewaram (a firm) v. Nur Ahmed and another 28 S. L. R. 266).

11. Collector's certificate that document duly stamped—Reference by Board of Revenue to High Court—Jurisdiction of High Court.

A Collector finding a sale-deed being insufficiently stamped under section 40 (1) of the Stamp Act, levied the deficit together with the penalty provided by law which fact was endorsed on the document and the Board of Revenue then referred the question as to the stamp duty, if any payable on the document to the High Court under S. 57 of the Act. Held that the High Court had no jurisdiction to decide the question. 26 Mad. 752 foll. [In the Matter of Khubchand 40 All 128' 16 A. L. J. 49; 47 I. C. 299 (F. B.) (1918)].

58. Power of High Court to call for further particulars as to case stated :

If the High Court is not satisfied that the statements contained in the case are sufficient to enable it to determine the question raised thereby the Court may refer the case back to the Revenue authority by which it was stated, to make such additions thereto or alterations therein as the Court may direct in that behalf.

59. Procedure in disposing of case stated :

(1) The High Court upon the hearing of any such case, shall decide the questions raised thereby, and shall deliver its judgment thereon containing the grounds on which such decision is founded.

(2) The Court shall send to the Revenue-authority by which the case was stated a copy of such judgment under the seal of the Court and the signature of the Registrar; and the Revenue-authority shall, on receiving such copy, dispose of the case conformably to such judgment.

COMMENTS

Opinion of the High Court :

The case under this section means a case that has not already been finally disposed by the Collector. [(34) P6. St. Manual Pr. 45]

The opinion expressed by the High Court is of advisory nature and cannot be made subject matter of appeal. [PLD 1960 Kar 893]

60. Statement of case by other Courts to High Court:

(1) If any Court, other than a Court mentioned in Section 57, feels doubt as to the amount of duty to be paid in respect of any instrument under proviso (a) to Section 35, the Judge may draw up a statement of the case and refer it, with his own opinion thereon, for the decision of the High Court to which, if he were the Chief Revenue Authority, he would, under Section 57, refer the same.

(2) Such Court shall deal with the case as if it had been referred under Section 57, and send a copy of its judgment under the seal of the Court and the signature of the Registrar to the Chief Revenue Authority and another like copy to the Judge making the reference, who shall on receiving such copy, dispose of the case conformably to such judgment.

(3) References made under sub-section (1), when made by a Court subordinate to a District Court, shall be made through the District Court, and, when made by any subordinate Revenue Court, shall be made through the Court immediately superior.

COMMENTS

1. Sub-section (3).

Under sub-section (3) of S. 60 reference by a Court subordinate to a District Court is to be made through the District Court. Where the Judge of the Subordinate Court feels no doubt as to the amount of duty to be paid and does not ask the District Court to have the case referred to the High Court, the District Court cannot, itself, make the reference under sub-section (1) of this section. [II Mad 38]

2. S. 35, Proviso (a).

As laid down in the Punjab Stamp Manual, 1934, the reference under this section can only be made in the circumstances specified in it. The Judge must feel doubt as to the amount of duty to be paid in respect of any instrument under proviso (a) of S. 35. As such this section does not deal with a case where reference has been made to a Collector and his adjudication obtained. Where a suit is dismissed without being called to hearing no reference can be made as to a document produced in Court by plaintiff with his plaint. This section does not apply to instruments excepted in proviso (a) to S. 35 of the Stamp Act. [177 I.C. 733]

61. Revision of certain decisions of courts regarding the sufficiency of stamps:

(1) When any Court in the exercise of its civil or revenue jurisdiction or any Criminal Court in any proceeding under Chapter XII or Chapter XXXVI of the Code of Criminal Procedure, 1898, makes any order admitting any instrument in evidence as duly stamped or as not requiring stamp, or upon payment of duty and a penalty under Section 35, the Court to which appeals lie from, or references are made by, such first-mentioned Court may, of its own motion or on the application of the Collector, take such order into consideration.

(2) If such Court, after such consideration, is of opinion that such instrument should not have been admitted in evidence without the payment of duty and penalty under Section 35, or without the payment of a higher duty and penalty than those paid, it may record a declaration to that effect, and determine the amount of duty with which such instrument is chargeable, and may require any person in whose possession or power such instrument then is, to produce the same, and may impound the same when produced.

(3) When any declaration has been recorded under sub-section (2), the Court recording the same shall send a copy thereof to the Collector, and, where the instrument to which it relates has been impounded or is otherwise in the possession of such Court, shall also send him such instrument.

(4) The Collector may thereon, notwithstanding anything contained in the order admitting such instrument in evidence, or in any certificate granted under Section 42, or in Section 43, prosecute any person for any offence against the Stamp Law which the Collector considers him to have committed in respect of such instrument:

Provided that —

- (a) no such prosecution shall be instituted where the amount (including duty and penalty) which, according to the determination of such Court, was payable in respect of the instrument under Section 35, is paid to the Collector, unless he thinks that the offence was committed with an intention of evading payment of the proper duty;
- (b) except for the purposes of such prosecution, no declaration made under this section shall affect the validity of any order admitting any instrument in evidence, or of any certificate granted under Section 42.

COMMENTS

1. Scope

Section 61 provides revision of the decision of Court regarding sufficiency of stamp duty paid on instruments. This is the only section in the Act under which the admission of an instrument in evidence can be called in question on the ground that it has not been properly stamped. [AIR 1921 Cal 613]

2. Object

The object of S. 61 is the protection of the Government revenue. For the protection of its revenue Government empowers an appellate Court or a Court of reference, of its own motion or on the application of the Collector, to take into consideration the order of a subordinate Court and to ascertain whether the Government revenue has suffered and whether a higher duty and penalty than that required by the Court of first instance ought to have been demanded from the person filling the instrument. [25. Mad. 752]

3. Application

Section 61 only applies to instruments admissible under section 35 on payment of duty and penalty. As such it does not apply to promissory notes etc. which are expected under proviso (a) to S. 35 and which, if not duly stamped, cannot be admitted in evidence even on payment of penalty. [AIR 1935 All 410]

4. Application by Collector

A letter from the Collector is a sufficient compliance with the requirement of this section and a declaration will be given thereon. [AIR 1942 All 147 (148); ILR 1942 All 157 (FB)]

5. Order under subsection (2)-Finality

The orders made under this section are not final. The High Court can entertain a revision under S. 115 C.P. C against the order of declaration of the lower Court made under this section. [AIR 1943 Oudh 169]

6. When the Collector receives the copy of the declaration and the instrument, he may proceed to prosecute the person liable to pay, the duty and penalty as adjudged by the appellate Court if he does not pay the same; or even when he makes such payment, if the Collector thinks that person has committed an offence against the Stamp-law with an intention of evading payment of the proper duty. [(02) 25 Mad 752 (757, 758, 759) (SB)]

7. Reference under —Procedure — Duty of Collector.

When a case is reported under S. 61 Stamp Act, the Collector must first insist on the payment of the deficiency reported by the Civil Court, and unless he decides to move the High Court to revise the declaration made by the reporting Court, he must proceed to decide on the penalty. He may also very properly give notice that unless the deficiency is paid in reasonable time to be fixed by him, the maximum penalty will be assessed. (Faqr Ahmed v. Emperor 13 Lah. L.T. 32 (1935)]

CHAPTER VII CRIMINAL OFFENCES AND PROCEDURE

62. Penalty for executing, etc., Instrument not duly stamped :

(1) Any person —

- (a) drawing, making, issuing, endorsing or transferring, or signing otherwise than as a witness, or presenting for acceptance or payment, or accepting, paying or receiving payment of, or in any manner negotiating, any bill of exchange payable otherwise than on demand or promissory note without the same being duly stamped; or
- (b) executing or signing otherwise than as a witness any other instrument chargeable with duty without the same being duly stamped; or
- (c) voting or attempting to vote under any proxy not duly stamped;

shall for every such offence be punishable with fine which may extend to five hundred rupees :

Provided that, when any penalty has been paid in respect of any instrument under Section 35, Section 40 or Section 61, the amount of such penalty shall be allowed in reduction of the fine (if any) subsequently imposed under this section in respect of the same instrument upon the person who paid such penalty.

(2) If a share-warrant is issued without being duly stamped, the company issuing the same, and also every person who, at the time when it is issued, is the managing director or secretary or other principal officer of the company, shall be punishable with fine which may extend of five hundred rupees.

63. Penalty of failure to cancel adhesive stamps :

Any person required by Section 12 to cancel an adhesive stamp, and failing to cancel such stamp in manner prescribed by that section shall be punishable with fine which may extend to one hundred rupees.

64. Penalty for omission to comply with provisions of Section 27:

Any person who with intent to defraud the Government, —

- (a) executes any instrument in which all the facts and circumstances required by Section 27 to be set forth in such instrument are not fully and truly set forth; or
- (b) being employed or concerned in or about the preparation of any instrument, neglects or omits fully and truly to set forth therein all such facts and circumstances; or
- (c) does any other act calculated to deprive the Government of any duty or penalty under this Act;

shall be punishable with fine which may extend to five thousand rupees.

COMMENTS :

1. Intention — Proof — Necessity — Presumption.

Fraudulent intention has necessarily to be established for a conviction under S. 64 of the Stamp Act. There is a strong presumption that a person will not expose himself to the penalty for fraud in a case in which he is not interested. It has also to be presumed that what is done openly is not done fraudulently. [Nihalchand v. Emperor. 13 Lah. L.T. 18 (1935).]

2. Transferring of shares in blank not a fraud.

The practice of blank transfers obtains in England, and the Select Committee on Act I of 1879 decided not to interfere with the practice prevailing in India. Moreover, in the opinion of the Governor General in Council there is no transfer so long as the name of the purchaser is not inserted in the instrument and under the Companies Act, VI of 1882, Schedule I, Table A, the execution of the instrument by the purchaser is necessary to effect a transfer or conveyance of the shares. A transfer in blank, therefore, is not a conveyance or transfer of shares within the meaning of section 27 and 63 of Act I of 1879. Under these circumstances the practice of transferring shares in blank does not appear to the Government of India a fraud on the revenue. (G.I.F. & C. No. 4245, dated 8th November 1883; vide G.R. No. 8691, dated 27th November 1883).

3. Scope.

Person in whose favour the document is executed is not hit by S. 64 (a). [Panchanan Roy v. Emperor. 1929 Cal 723. (1929).]

4. Proof of intent.

For a conviction under S. 64-A proof of intent to defraud is necessary. [Maya Shah v. Emperor. A.I.R. 1933 Lah. 959.]

5. Instrument has to be stamped according to true intent and meaning of bargain — Accused himself principal mortgagee purchasing benami certain land subject to incumbrance — Incumbrance as part consideration deliberately omitted in sale deed — Amount mentioned for below real consideration — Stamp chargeable is on amount due under mortgage [plus amount mentioned in sale-deed-Party omitting to do so is guilty under S. 64 (b).

An instrument has to be stamped according to the true intent and meaning of the bargain which it represents. An accused person, as principal mortgagee and thus interested in prevention of merging of incumbrance, purchased benami in the name of his brother certain property which was subject to incumbrance. In the deed of sale the amount mentioned was far below the real consideration and the incumbrance as part consideration was not set forth as required by Ss. 24 and 27. The stamp prefixed was only on the amount mentioned in the sale deed. Held: that the stamp chargeable was on the amount due under the mortgage plus the amount mentioned in the sale deed. Hence the party omitting to do so was guilty under S. 64 (b): A.I.R. 1931 Cal 193 (F.B.); 5 Mad 18 and A.I.R. 1935 Rang 243. Reld on A.I.R. 1924 Bom. 524, Disting. [In re. Trimber Madhov Kashirsagar A.I.R. 1937 Nagpur 57.]

6. Instrument drawn on a paper bearing a stamp of insufficient value persons executing or receiving liable to prosecution.

If any instrument liable to stamp duty under the existing stamp law, and in which the value or amount of consideration money is expressed in Sicca rupees, be drawn on a paper bearing a stamp insufficient to cover the same value or amount of consideration money if expressed in Government rupees, then every person or firm making, signing or receiving payment of such instrument, if it be of the nature of a bill of exchange, promissory note, cheque or similar instrument, and any person making, executing, or signing otherwise than as a witness such instrument if it be of any other nature, is liable to the penalties provided in the case of frauds against the stamp revenue and upon information will be prosecuted with the utmost rigour of the law. (G.R.No. 1063, dated 23rd February, 1870).

7. If other circumstance connected with the instruments of exchange, gift etc, are not set forth, the matter to be reported.

The policy adopted by the Legislature in Act I of 1879 with respect to instruments of exchange, gift and partition is to make the amount of stamp duty leviable upon such instruments depend upon the value of the property concerned as set forth in the instrument (vide Schedule I, Articles 35,36 and 37). By Section 27 of the Act it is provided that all facts and circumstances affecting the chargeability of any instrument with duty, or the amount of the duty with which it is chargeable, shall be fully and truly set forth therein, and Section 63 renders failure to comply with this requirement a punishable offence. The means chosen by the Legislature for securing generally a proper valuation is the prosecution of persons who, with intent to defraud the Government of any duty, understate or neglect to state the value of the property in any instrument to which they are parties. Whenever, therefore, any public officer has reason to think that a conviction could be obtained under Section 63 of the Stamp Act, it is his duty to communicate with the proper authorities for this purpose. (L.R. No. 875, dated 17th July 1880; vide G.R. No. 4003, dated 31st idem).

8. Creditor obtaining instruments not duly stamped.

Merely receiving an unstamped document may not amount to an offence, but when a creditor himself intentionally procures the signing of an improper entry in his own account book, he commits a substantive offence under S. 62, and is punishable under S. 64 (c) which is not *ejusdem generis* with the other sub-section. (Chhagganlal v. Emperor. A.I.R. 1934 Nag. 261).

9. Omission to stamp document. Fraudulent intent.

Mere non-payment of the proper stamp duty does not make a person liable to prosecution under S. 64 of the Stamp Act, unless it is proved that he had an intention to defraud the Government of its stamp revenue. [Brojendra Nath Bakshi v. Emperor 45 I.C. 275; 19 Cr. L.J. 515 (1918)].

65. Penalty for refusal to give receipt, and for devices to evade duty on receipts : Any person who —

- (a) being required under Section 30 to give a receipt, refuses or neglects to give the same ; or
- (b) with intent to defraud the Government of any duty, upon a payment of money or delivery of property exceeding twenty rupees in amount or value, gives a receipt for an amount or value not exceeding twenty rupees, or separates or divides the money or property paid or delivered ;

shall be punishable with fine which may extend to one hundred rupees.

66. **Penalty for not making out policy, or making one not duly stamped :**

Any person who —

- (a) receives, or takes credit for, any premium or consideration for any contract of insurance and does not, within one month after receiving, or taking credit for such premium or consideration, make out and execute a duly stamped policy of such insurance ; or
- (b) makes, executes or delivers out any policy which is not duly stamped, or pays or allows in account, or agrees to pay or allow in account, any money upon, or in respect of, any such policy ;

shall be punishable with fine which may extend to two hundred rupees.

67. **Penalty for not drawing full number of bills of marine policies purporting to be in sets:**

Any person drawing or executing a bill of exchange payable otherwise than on demand or a policy of marine insurance purporting to be drawn or executed in a set of two, or more, and not at the same time drawing or executing on paper duly stamped the whole number of bills policies of which such bill or policy purports the set to consist, shall be punishable with fine which may extend to one thousand rupees.

68. **Penalty for post dating bills, and for other devices to defraud the revenue:**

Any person who —

- (a) with intent to defraud the Government of duty, draws, makes or issues any bill of exchange or promissory note bearing a date subsequent to that on which such bill or note is actually drawn or made; or
- (b) knowing that such bill or note has been so post-dated, endorses, transfers, presents for acceptance or payment or accepts, pays or receives payment of, such bill or note, or in any manner negotiates the same; or
- (c) With the like intent, practises or is concerned in any act, contrivance or device not specially provided for by this Act or any other law for the time being in force ;

shall be punishable with fine which may extend to one thousand rupees.

COMMENTS:

1. Post dated hundis issued to evade stamp duty— Person drawing or accepting liable to prosecution.

It having been brought to the notice of Government that a practice has been introduced of issuing post-dated hundies or bills, the object being apparently to evade stamp duty by thus making a hundi appear as a bill payable on demand, while in reality it is not so, the Governor General in Council deems it advisable to warn the public that as post-dated bills are not bills payable on demand, they require a stamp prescribed for bills payable otherwise than on demand, and that any person making, signing, issuing, or (except as provided in Section 26 of the General Stamp Act, 1869) accepting, endorsing, paying or receiving payment of any such bill, without the same being duly stamped, will be liable to the penalties in Section 29 of the said Act (G.I. Notn No. 1264, dated 28th February 1871, republished in the Bombay Government Gazette, dated 9th March 1871, page 295).

2. Post dated hundis —Officers to watch the practice of —and prosecute the persons where conviction can be obtained.

Local officers should watch carefully against the practice of post-dating hundis or bills in order to evade payment of stamp duty, and institute prosecution in all cases in which convictions can be obtained under the Stamp Act. (G.I.F. D. No. 4045, dated 25th November 1872; vide G.R. No. 6006, dated 5th December 1872).

69. **Penalty for breach of rule relating to sale of stamps and for unauthorised sale:**

- (a) Any person appointed to sell stamps who disobeys any rule made under Section 74; and
- (b) any person not so appointed who sells or offers for sale any stamp (other than a five palsa, fifteen palsa and twenty-five palsa stamp);

shall be punishable with imprisonment for a term which may extend to six months, or with fine which may extend to five hundred rupees, or with both.

COMMENTS

1. To demand more than the face value of stamp is a penal in a stamp vendor.

To demand or accept for any stamp a consideration exceeding its value is a penal in a stamp-vendor. (I.G. Not No. 2944 dated 10th September 1877).

2. Prosecution of persons for selling stamps who are not stamp vendors

On reference to the High Court, under Section 438 of the Criminal Procedure Code of a case in which a person was convicted by a Second Class Magistrate of selling a stamp without authority to do so under section 68 of Act I of 1879, and sentenced to pay a fine of Rs. 15 or in default to suffer one month's rigorous imprisonment, the following order was passed by that Court.

"As the accused is not a person appointed to sell stamps, and has sold a stamp, the conviction under Section 68 of Act I of 1879 is quite legal." (G.R. No. 1125, dated 19th February 1887).

3. Impressed stamps purchased by one man can be used by some other person.

The writing of the name of the purchaser and other particulars on the back of stamp is required in the case of impressed stamps by the rules for the sale of stamps. The rules go no further then to require these endorsement to be made by the stamp vendors, and there is no provision of the Acts or of any Rule made under them that a stamp so endorsed may only be used by or on behalf of the person whose name is so endorsed. The purpose of the rules requiring the endorsement seems merely the provisions of a means of ascertaining when, where and by whom a stamp has been purchased, but there is nothing to prevent an impressed stamp purchased by one person being used by some other person.

Adhesive court fee stamps as well as impressed stamps used under the General Stamp Act or Court Fees Act can, therefore, legally be used by persons other than whose names they bear as purchasers. (L.R. No. 1105, dated 23rd August 1884, vide G.R. No. 7199, dated 9th September 1884).

4. Person's admission that he at licensed vendor's request made endorsement on, and entries in sale register in respect of stamps sold is not evidence of abetment of offence of breach of Rule 11 framed under section 74.—Penal Code Section 107.

Admission of a person, who is not a licensed vendor that he at the request of licensed vendor, made endorsement on and entries in sale register in respect of stamps sold by the latter is not sufficient evidence to hold that he abetted the offence of a breach of Rule 11 framed under S.74, within the meaning of S. 107 Penal Code. [Verumal Vishindas v. Emperor. A.I.R. 1929 Sind 118].

70. Institution and conduct of prosecutions:

(1) No prosecution in respect of any offence punishable under this Act or any Act hereby repealed shall be instituted without the sanction of the Collector or such other officer as the Provincial Government generally, or the Collector specially, authorises in that behalf.

(2) The Chief Revenue Authority, or any officer generally or specially authorised by it in its behalf, may stay any such prosecution or compound any such offence.

(3) The amount of any such composition shall be recoverable in the manner provided by section 48.

71. Jurisdiction of Magistrate:

No Magistrate other than a Magistrate whose powers are not less than those of a Magistrate of the Second Class, shall try any offence under this Act.

72. Place of trials:

Every such offence committed in respect of any instrument may be tried in any district in which such instrument is found as well as in any district in which such offence might be tried under the Code of Criminal Procedure for the time being in force.

CHAPTER VIII SUPPLEMENTAL PROVISIONS

73. Books, etc, to be open to inspection:

(1) Every public officer having in his custody any registers, books, records, papers, documents or proceedings, the inspection whereof may tend to secure any duty, or to prove or lead to the discovery of any fraud or omission in relation to any duty, shall at all reasonable times permit any person authorised in writing by the Collector to inspect for such purpose the registers, books, papers, documents and proceedings, and to take such notes and extracts as he may deem necessary, without fee or charge.

(2) Where any person obstructs the Chief Inspector of Stamps, Board of Revenue or any person acting on his behalf in the discharge of his functions under this Act, or conceals the correct information, as aforesaid the Chief Revenue Authority may impose on such person, a penalty which may extend to twenty thousand rupees in the case of obstruction and a penalty which may extend to twenty thousand rupees or fifteen percent of the amount concealed whichever is more in the case of concealment to be recovered as arrears of land revenue.

(3) Where any person repeats the offence under sub-section (2), the Chief Revenue Authority shall impose a penalty twice the maximum amount prescribed for the offence.

COMMENTS

1. Returns accounts and documents under the Income Tax Ordinance declared as confidential. Inspectors of Stamps can inspect such records and impound documents:

I am directed to invite your kind attention to clause (g) of sub-section (3) of section 150 of the Income Tax Ordinance, 1979, and to inform you that according to the provision of the said clause the public servants exercising lawful powers under the Stamp Act, 1899 are empowered to impound the insufficiently stamped documents. Accordingly the Inspectors of Stamps of the Provincial Board of Revenue who are exercising the powers under the Stamp Act can have access to such documents. Further the Central Board of Revenue vide letters No. 4 (11)-ITP/62, dated 25.10.1962 and C.No. 19 (2)-Stamps/62, dated 10.12.1962 (copies enclosed) had allowed the Stamp Auditors, now the Inspectors of Stamp to exercise their powers under the Stamp Act to inspect documents furnished by the assesseses.

According to the provisions of the Stamp Act, the Inspectors of Stamps during the course of conducting inspections of public Offices are required to impound the insufficiently stamped documents and to forward them (in original) to the Collector for taking further action. However, in the cases where the parties have not furnished the original documents but copies thereof are available on the record, then no such action can be taken on the copies. To protect Government revenue, criminal proceedings can be taken against the executants of the documents which have not been furnished in original under the Stamp Act. No criminal proceedings against any person can be taken in the Court of Law without the sanction of the Collector. To obtain such sanction, it is necessary to place photostat of the copies of the documents before the Collector. In short, the insufficiently stamped document is to be impounded and sent to the Collector for further action or in the alternate a photostat of the copy of such document is to be placed before the Collector for obtaining sanction to prosecute executants.

The Inspector of Stamps, Karachi Circle has reported that while conducting inspection of the Offices of Income Tax Officers, Companies Circles, Central Zone 'C' Karachi, he was facing hardship to have access to the record in the said Offices and to impound and obtain photostat of the copies of the documents. Any hinderances in performing functions of the Inspectors of Stamps under the Stamp Act adversely effect the Government interest concerning the stamp revenue collections. In the light of the above position, it is requested that all the subordinate offices in your zone may kindly be instructed to :-

- i. allow the Inspectors of Stamps to have access to the record in the subordinate Offices under your control for the purpose of conducting inspections, so as to enable them to impound insufficiently stamped documents from the record and send the same (in original) to the Collector for taking further action.
- ii. Supply the Inspectors of Stamps photo-stat of the copies of the insufficiently stamped documents furnished by the assesses on the basis of which sanction to prosecute the offenders can be obtained from the Collector.

This may kindly be treated as URGENT. (Letter No. 27-87-83-Estt:VI, dated 5th September, 1983 from the Board of Revenue, Sindh to Commissioner of Income Tax, Central Zone, "C", Karachi.).

2. The office of M/S A.B.C. situated at Karachi though in the memorandum and articles of association the registered office has been shown at Hubb (Baluchistan) - whether the Inspector of Stamp of the Government of Sindh at Karachi has got power to inspect the record of the said office:

The office of M/S. A.B.C. is situated at Karachi i.e. within the local limits of Sind Government, therefore, the relevant Provincial Government would be the Sind Government for only inspection of records of the office of M/S A.B.C., as contemplated under Section 73 of the Stamp Act and relevant rules.

Since the office is situated in Karachi the management of the industry may enter into any transaction involving payment of Stamp Duty chargeable on account of disposition of any right, title or interest in a property etc. within the Province of Sind. The Inspector of Stamps Karachi will certainly confine the scope of his probe/inquiry/inspection to the extent of his jurisdiction. He being duly authorised in that behalf is competent to conduct inspection of record in custody of such firm situated within the Province. The office of the M/S. A.B.C. Limited can not be treated as an island of Baluchistan within Sind Province. The stand taken by Board of Revenue vide para 6 of reference is therefore correct. (Government of Sind, Law Department's U.O. letter No. OP: 8 (68)/86/411, dated 4th December, 1986, to the Board of Revenue, Sindh).

4. Whether the Inspectors of Stamps can inspect the offices of various Private Commercial and Industrial concerns and whether the obstruction in the performance of their functions amounts to offence under Section 186 of the Pakistan Penal Code:

OPINION NOTE

Points under consideration are:

1. Whether the Inspectors of Stamps are legally authorised to inspect the offices of various Private Commercial or Industrial concerns?
2. Whether due to obstruction caused in the performance of the function of Inspector of Stamps, as provided under section 73 of the Stamps Act, the provisions of Section 186 of PPC would be attracted?

Point No. 1. Section 73 of the Stamps Act lays down that a person authorised in writing by the Collector is empowered to inspect the documents in custody of a 'Public Officer' and the 'Public Officer' will have to permit that person to inspect the documents. 'Public Officer' as defined under clause (22-B) of Section 2 of the Stamp Act, means an officer-in-charge of a 'Public Office' and the 'Public Office' as defined under clause (22-A) of Section 2 ibid includes a commercial or industrial concern having more than 20 employees.

Under these circumstances Inspector of Stamps duly authorised by the Collector is competent to visit M/S X.Y.Z. Industries if it has more than 20 employees and officer-in-charge of the concern is bound to permit the Stamps Inspector to inspect the registers, books, papers, documents etc.

In view of the above, an Inspector of Stamps, if duly authorised by the Collector, is competent under Section 73 ibid to inspect a 'Public Office' as defined in Section 2 and the officer-in-charge of such concern is bound to permit him to inspect the relevant documents.

Point No. 2. Refusal of an Officer-in-charge of an industrial concern having more than 20 employees, from allowing access to the records in his custody, to the Inspector of Stamps, authorised by the Collector in writing to conduct the inspection, amounts to an obstruction to a public servant in the discharge of his public functions. Therefore in such a case provisions of Section 186 PPC would be attracted.

(Government of Sindh, Law Department's U.O. letter No. OP: 8 (34)/88, dated 30th August, 1988, to the Board of Revenue, Sindh).

74. Powers to make rules relating to sale of stamps:

The Provincial Government may make rules for regulating—

- (a) the supply and sale of stamps and stamped papers,
- (b) the persons by whom alone such sale is to be conducted, and
- (c) the duties and remuneration of such persons:

Provided that such rules shall not restrict the sale of five paise, fifteen paise and twenty-five paise stamp.

75. Power to make rules generally to carry out Act:

The Provincial Government may make rule to carry out generally the purposes of this Act, and may by such rule prescribe the fines, which shall in no case exceed five hundred rupees, to be incurred on breach thereof.

76. Publication of rules:

- (1) All rules made under this Act shall be published in the official Gazette.
- (2) All rules published as required by this section shall, upon such publication, have effect as if enacted by this Act.

76-A. Delegations of certain powers:

The Provincial Government may by notification in the official Gazette delegate—

- (a) all or any of the powers conferred on it by Sections 2(9), 33 (3) (b), 70(1), 74 and 78 to the Chief Revenue Authority, and
- (b) all or any of the powers conferred on the Chief Revenue Authority by Sections 45(1) ,(2), 56(1) and 70 (2) to such subordinate Revenue-authority as may be specified in the notification.

77. Saving as to court-fees:

Nothing in this Act contained shall be deemed to affect the duties chargeable under any enactment for the time being in force relating to court-fees.

78. Act to be translated and sold cheaply:

Every Provincial Government shall make provision for the sale of translations of this Act in the principal vernacular languages of the territories administered by it at a price not exceeding twenty-five paise per copy.

79. [Rep. by the Repealing and Amending Act, 1914 (X of 1914), S. 3 and Schedule II.]

GOVERNMENT OF SINDH, BOARD OF REVENUE, (RS&EP) WING
79-PAK SECRETARIAT, KARACHI.

NOTIFICATION

Karachi, dated 18th November, 2006

No.CIS/SW/BOR/2006-1110:- In exercise of the power conferred by Section 27-A of the Stamp Act, 1899, read with clause(x) of Section 2 of the Sindh Local Government Ordinance, 2001 and in partial modification of the Board of Revenue Notification No.CIS/BOR/S.W-4/2002/818 dated the 5th August, 2002, the Chief Inspector of Stamps is pleased to notify all lands located within the limits of the City District Government Karachi borne in Village Form VII and not already included in the categories of the properties mentioned in Appendix-A shall for the purpose of stamp duty be valued at the rate applicable to lowest category of residential open plots as prescribed in the following table.

(rate per acre in rupees)

S.NO.	NAME OF DEH	RATE PER ACRE
1.	Moach	720,000
2.	Mochko	360,000
3.	Gund Pass	360,000
4.	Gabo Pat	24,000
5.	Chhatara	24,000
6.	Mandhiari	24,000
7.	Allah Bano	24,000
8.	Mann	24,000
9.	Lal Bakhar	480,000
10.	Gadap	60,000
11.	Hunder Wah	60,000
12.	Shahi Chip	84,000
13.	Langhaeji	72,000
14.	Karmatiani	30,000
15.	Shoring	24,000
16.	Bolahari	36,000
17.	Konkar	240,000
18.	Kharkharo	360,000
19.	Tore	480,000
20.	Thado	240,000
21.	Kathore	120,000
22.	Chouhar	240,000
23.	Khadeji	60,000

24	Abdar	30,000
25	Boil	30,000
26	Amillano	180,000
27	Darsano Chano	180,000
28	Math	240,000
29	Bazar	180,000
30	Taiser	960,000
31	Nangan	600,000
32	Shah Mureed	480,000
33	Bijar Bhatti	480,000
34	Nara Thar	180,000
35	Allah Phihal	480,000
36	Mokhi	480,000
37	Mahyo	90,000
38	Mandhro	90,000
39	Laharko Langh	90,000
40	Mithi Ghar	90,000
41	Mangho Pir	600,000 (Excluding area already in valuation table)
42	Sujani	720,000 (Excluding area already in valuation table)
43	Bund Murad	240,000
44	Hub	60,000
45	Halkani	180,000
46	Jam Chakro	240,000
47	Molan	96,000
48	Mai Charhi	60,000
49	Moidan	24,000
50	Jang Kand	24,000
51	Khar	24,000
52	Shore Kandi	24,000
53	Kand	24,000
54	Wan Kand	24,000
55	Lusar	24,000
56	Badh	24,000
57	Tarari	24,000
58	Shondi	24,000
59	Jhunghar	24,000
60	Mehar Jabal	60,000
61	Landhi	480,000 (Excluding area already in valuation table)
62	Sanhiro	240,000

63.	Gangiaro	480,000 (Excluding area already in valuation table)
64.	Ibrahim Hyderi	720,000
65.	Rehri	480,000
66.	Khakhar	180,000
67.	Khanto	720,000 (Excluding area already in valuation table)
68.	Joreji	660,000 (Excluding area already in valuation table)
69.	Ghaghar	120,000
70.	Dhabeji	72,000
71.	Koteriro	360,000
72.	Dhandho	48,000
73.	Mehran	180,000 (Excluding area already in valuation table)
74.	Thano	already in valuation table
75.	Safooran	240,000 (Excluding area already in valuation table)
76.	Sharafi	840,000 (Excluding area already in valuation table)
77.	Dih	6,000,000 (Excluding area already in valuation table)
78.	Phahai	4,800,000 (Excluding area already in valuation table)
79.	Drigh	Already in valuation table
80.	Drig Road	6,000,000 (Excluding area already in valuation table)

This Notification shall come into force at once.

Note:-

1. Stamp Duty shall be charged on the value according to the valuation table or the value shown in the document, which ever is higher.
2. Land used subservient to residential purpose shall be charged in the adjacent lowest category of the annexure-A.

CHIEF INSPECTOR OF STAMPS,
BOARD OF REVENUE, SINDH, KARACHI.

GOVERNMENT OF SINDH BOARD OF REVENUE
(RS & EP) WING 79-SINDH SECTT. KARACHI.

Dated 14th December, 2000

NOTIFICATION

NO. IGS / BOR / RS & EP / 2000-1455. In exercise of the powers conferred under section 27-B of the stamp Act, 1899, the Collector / Chief Inspector of Stamps is hereby pleased to notify that the value of rural immovable properties for the purpose of stamp duty shall be calculated at the rate of Rs. 300/- per Produce Index Unit (PIU) located within the Province of Sindh as indicated in the Annexure-I with effect from 1st, July, 2000.

*Collector / Chief Inspector of Stamps
Board of Revenue, Sindh, Karachi.*

HYDERABAD DISTRICT ضلع حیدرآباد		Mode of Irrigation طریقہ آبیاری	Produce Index پروڈیوس انڈیکس
Taluka تعلقہ	Mode of Irrigation طریقہ آبیاری	Produce Index پروڈیوس انڈیکس	Produce Index پروڈیوس انڈیکس
Hyderabad (Barrage)	Flow	فلو	42
	Combined	کمپائند	36
	Lift	لِفٹ	29
Hyderabad (Non-Brrage)	Flow	فلو	39
	Combined	کمپائند	32
	Lift	لِفٹ	26
Tando Alahyar (Barrage)	Flow	فلو	40
	Combined	کمپائند	34
	Lift	لِفٹ	26
Hala (Barrage)	Flow	فلو	40
	Combined	کمپائند	34
	Lift	لِفٹ	26
Hala (Non-Barrage)	Flow	فلو	39
	Combined	کمپائند	32
	Lift	لِفٹ	26
Matli (Barrage)	Flow	فلو	40
	Combined	کمپائند	34
	Lift	لِفٹ	26
Matli (Non-Barrage)	Flow	فلو	26
	Combined	کمپائند	22
	Lift	لِفٹ	17
Tando Bago (Barrage)	Flow	فلو	37
	Combined	کمپائند	31
	Lift	لِفٹ	25
Tando Bago (Non-Barrage)	Flow	فلو	26
	Combined	کمپائند	22
	Lift	لِفٹ	17
Tando Muhammad Khan (Non-Barrage)	Flow	فلو	26
	Combined	کمپائند	22
	Lift	لِفٹ	17
Badin (Non-Barrage)	Flow	فلو	26
	Combined	کمپائند	22
	Lift	لِفٹ	17
NAWAB SHAH DISTRICT ضلع نواب شاہ			
Nawabshah (Barrage)	Flow	فلو	34
	Combined	کمپائند	29
	Lift	لِفٹ	22
Moro (Barrage)	Flow	فلو	34
	Combined	کمپائند	29
	Lift	لِفٹ	22

NAWAB SHAH DISTRICT—concl'd. ضلع نواب شاہ ختم			
Taluka	تعلقہ	Mode of Irrigation طریقہ آبیاری	Produce Index پروڈیوس انڈیکس
Moro (Non-Barrage)	مورو (نان بیرج)	Flow	فلو 17
		Combined	کمپائند 15
		Lift	لِفٹ 12
Naushahro (Barrage)	نوشہرہ (بیرج)	Flow	فلو 34
		Combined	کمپائند 29
		Lift	لِفٹ 22
Naushahro (Non-Barrage)	نوشہرہ (نان بیرج)	Flow	فلو 17
		Combined	کمپائند 15
		Lift	لِفٹ 12
Kandiaro (Barrage)	کنڈ یارو (بیرج)	Flow	فلو 34
		Combined	کمپائند 29
		Lift	لِفٹ 22
Kandiaro (Non-Barrage)	کنڈ یارو (نان بیرج)	Flow	فلو 14
		Combined	کمپائند 11
		Lift	لِفٹ 9
Sakrand	سکرند	Flow	فلو 35
		Combined	کمپائند 29
		Lift	لِفٹ 24
LARKANA DISTRICT ضلع لاڑکانہ			
Larkana	لاڑکانہ	Flow	فلو 34
		Combined	کمپائند 29
		Lift	لِفٹ 22
Dokri	ڈوکری	Flow	فلو 34
		Combined	کمپائند 29
		Lift	لِفٹ 22
Ratodero	رائٹوڈی رو	Flow	فلو 34
		Combined	کمپائند 29
		Lift	لِفٹ 22
Kambar	کمبر	Flow	فلو 34
		Combined	کمپائند 29
		Lift	لِفٹ 22
Warah	وارہ	Flow	فلو 34
		Combined	کمپائند 29
		Lift	لِفٹ 22
Shahdadt	شاہ داد کوٹ	Flow	فلو 30
		Combined	کمپائند 25
		Lift	لِفٹ 20
Miro Khan	میرو خان	Flow	فلو 34
		Combined	کمپائند 29
		Lift	لِفٹ 22
DADU DISTRICT ضلع دادو			
Dadu	دادو	Flow	فلو 30
		Combined	کمپائند 25
		Lift	لِفٹ 20
Johi	جوہی	Flow	فلو 30
		Combined	کمپائند 25
		Lift	لِفٹ 20

DADU DISTRICT ضلع دادو			
Tafuka	تعلقہ	Mode of Irrigation طریقہ آبیاری	Produce Index پروڈیوس انڈیکس
Kakar	کا کر	Flow	فلو 30
		Combined	کمپائند 25
		Lift	لٹ 20
Mahar	میہر	Flow	فلو 30
		Combined	کمپائند 25
		Lift	لٹ 20
Sehwan	سہوان	Flow	فلو 30
		Combined	کمپائند 25
		Lift	لٹ 20
Kotri (Non-Barrage)	کوٹری (نان بیرج)	Flow	فلو 26
		Combined	کمپائند 22
		Lift	لٹ 17
THARPARKAR DISTRICT ضلع تھارپاکر			
Mirpur Khas	میرپور خاص	Flow	فلو 37
		Combined	کمپائند 31
		Lift	لٹ 25
Samaro	سماور	Flow	فلو 37
		Combined	کمپائند 31
		Lift	لٹ 25
Jamesabad	جہمڑ آباد	Flow	فلو 37
		Combined	کمپائند 31
		Lift	لٹ 25
Digri	ڈگری	Flow	فلو 37
		Combined	کمپائند 31
		Lift	لٹ 25
Umerkot	عمرکوٹ	Flow	فلو 37
		Combined	کمپائند 31
		Lift	لٹ 25
Mithi (Barrage)	مٹھی (بیرج)	Flow	فلو 36
		Combined	کمپائند 31
		Lift	لٹ 25
Diplo (Barrage)	ڈپلو (بیرج)	Flow	فلو 36
		Combined	کمپائند 31
		Lift	لٹ 25
SUKKUR DISTRICT ضلع سکھر			
Sukkur (Barrage)	سکھر (بیرج)	Flow	فلو 30
		Combined	کمپائند 25
		Lift	لٹ 20
Sukkur (Non-Barrage)	سکھر (نان بیرج)	Flow	فلو 34
		Combined	کمپائند 29
		Lift	لٹ 22
Shikarpur (Barrage)	شکارپور (بیرج)	Flow	فلو 30
		Combined	کمپائند 25
		Lift	لٹ 20
Shikarpur (Non-Barrage)	شکارپور (نان بیرج)	Flow	فلو 34
		Combined	کمپائند 29
		Lift	لٹ 22

SUKKUR DISTRICT ضلع سکھر			
Taluka	تعلقہ	Mode of Irrigation طریقہ آبیاری	Produce Index پروڈیوس انڈیکس
Rohri (Barrage)	روہڑی (بیرج)	Flow	فلو 34
		Combined	کمپائند 29
		Lift	لِفٹ 22
Rohri (Non-Barrage)	روہڑی (نان بیرج)	Flow	فلو 30
		Combined	کمپائند 25
		Lift	لِفٹ 20
Garhi Yasin (Barrage)	گڑھی یاسین (نان بیرج)	Flow	فلو 34
		Combined	کمپائند 29
		Lift	لِفٹ 22
Garhi Yasin (Non-Barrage)	گڑھی یاسین (نان بیرج)	Flow	فلو 30
		Combined	کمپائند 25
		Lift	لِفٹ 20
Pano Akil (Non-Barrage)	پانو آکل (نان بیرج)	Flow	فلو 26
		Combined	کمپائند 22
		Lift	لِفٹ 17
Ubauro (Non-Barrage)	اُبورو (نان بیرج)	Flow	فلو 26
		Combined	کمپائند 22
		Lift	لِفٹ 17
Mirpur Mathelo (Non-Barrage)	میرپور مٹھیلو (نان بیرج)	Flow	فلو 26
		Combined	کمپائند
		Lift	لِفٹ
UPPER SIND FRONTIER DISTRICT اپر سندھ فرنیئر ڈسٹرکٹ			
Jacobabad (Barrage)	جیکب آباد (بیرج)	Flow	فلو 34
		Combined	کمپائند 29
		Lift	لِفٹ 22
Jacobabad (Non-Barrage)	جیکب آباد (نان بیرج)	Flow	فلو 34
		Combined	کمپائند 29
		Lift	لِفٹ 22
Kandhkot (Barrage)	کاندھکوٹ (بیرج)	Flow	فلو 30
		Combined	کمپائند 25
		Lift	لِفٹ 20
Kandhkot (Non-Barrage)	کاندھکوٹ (نان بیرج)	Flow	فلو 30
		Combined	کمپائند 25
		Lift	لِفٹ 20
Thul (Barrage)	تھل (بیرج)	Flow	فلو 30
		Combined	کمپائند 25
		Lift	لِفٹ 20
Thul (Non-Barrage)	تھل (نان بیرج)	Flow	فلو 30
		Combined	کمپائند 25
		Lift	لِفٹ 20
Kashmore (Barrage)	کاشمور (بیرج)	Flow	فلو 30
		Combined	کمپائند 25
		Lift	لِفٹ 20
Kashmore (Non-Barrage)	کاشمور (نان بیرج)	Flow	فلو 30
		Combined	کمپائند 25
		Lift	لِفٹ 20
Garhi Khairo (Barrage)	گڑھی خیرو (بیرج)	Flow	فلو 30
		Combined	کمپائند 25
		Lift	لِفٹ 20

SANGHAR DISTRICT ضلع سانگر			
Taluka	تعلقہ	Mode of Irrigation طریقہ آبیاری	Produce Index پروڈیوس انڈیکس
Sanghar	سانگر	Flow	فلو 31
		Combined	کمپائند 26
		Lift	لٹ 21
Khipro	کھپرو	Flow	فلو 37
		Combined	کمپائند 31
		Lift	لٹ 25
Sinjharo (Barrage)	سنجھورو (بیرج)	Flow	فلو 34
		Combined	کمپائند 29
		Lift	لٹ 22
Shahdadpur	شہداد پور	Flow	فلو 39
		Combined	کمپائند 32
		Lift	لٹ 26

Correction Slip No. 1 P.I., dated 2-3-1957.

Correction Slip No. 2 P.I., dated 15-8-1957.

Produce Index pamphlet of the Hyderabad and Khairpur Divisions

In supersession of C.S. No. 1 P.I., dated the 26-3-57 the following should be added to the foot note to the pamphlet:

- Note:**
- Chahi soil wherever it exists in all the districts of the Hyderabad and Khairpur Divisions should be treated as flow soil.
 - Sailabi Kacha soil wherever it exists in all the districts of the Hyderabad and Khairpur Divisions should be accorded half the produce value of the flow soil.
 - Barani soil wherever it exists in all the districts of Hyderabad and Khairpur Divisions should be accorded one-fourth of produce value of flow soil.
 - Banjar Jadid, Banjar Qadim and Ghair-mumkin soil wherever they exist in all the districts of Hyderabad and Khairpur Divisions should be a valuated at one-fourth, one-eight and one-sixteenth of flow soil of the Taluka concerned respectively.

APPENDIX-II
CHAPTER 1.
REMISSIONS AND REDUCTIONS
(Amended upto date)
REVENUE DEPARTMENT.
Bombay Castle, 29th September 1931.

No.S. 18/4— The following notification by the Government of India, Finance Department (Central Revenues), is republished:-

“Stamps”

No. 6, dated Simla, the 12th September 1931.

In exercise of the powers conferred by clause (a) of section 9 of the Stamp Act, 1899 (II of 1899), and in supersession of all previous Notification issued from time to time under the said clause of the said section, the Governor General in Council is pleased to reduce, to the extent set forth in each case, the duties chargeable under the said Act in respect of the instruments hereinafter described under Nos. 3, 4, 10, 21, 23, 25, 48, 74, 89, 90, 91, 98, 102, 109, 110 and 111, and to remit the duties so chargeable in respect of instruments of the other classes hereinafter described :-

A — Land Revenue
General

1. Lease or counterpart thereof executed at the time of settlement made directly by the Government with the existing occupant of land, whether a zamindar or a tenant, and whether self-cultivating or not;

Provided that no fine or premium is paid in consideration of the lease.
2. Agreement of the kind described in the Dekkhan Agriculturists Relief Act, 1879 (XVII of 1879) section 43.
3. Promissory note payable on demand to a certain person, and not to order or bearer, when such note is executed by an agriculturist, and is attested at the time of execution by a Village Registrar, under section 57 of the Dekkhan Agriculturists Relief Act, 1879 (XVII of 1879) — Duty reduced to one anna.
4. Promissory note payable otherwise than on demand, and not payable at more than one year after date or sight, to a certain person, and not to order or bearer, when such note is executed by an agriculturist, and is attested at the time of execution by a Village Registrar, under section 57 of the Dekkhan Agriculturists Relief Act, 1879 (XVII of 1879) — Duty reduced to the amount chargeable under Article No. 13 (b) of Schedule I of the Stamp Act, 1899 on a bill of exchange for the same amount.
5. Instrument executed for the purpose of securing the repayment of a loan made, or to be made, under the Land Improvement Loans Act, 1883 (XIX of 1883) or the Agriculturist Loan Act, 1884 (XII of 1884) including an instrument whereby a landlord binds himself to consent to the transfer, in the event of default in such repayment, of any land, or interest in land, on the security of which any such loan is made to his tenant.
6. Receipt given by a person, for advances exceeding Rs. 20 received by him from the Government under the Agriculturists Loan Act, 1884 (XII of 1884).

In Bombay (including Sindh)

7. Agreement respecting the occupancy of land, whether surveyed or not, and the payment of the land-revenue therefore, executed under the Bombay Land Revenue Code, 1879 (Bombay Act, V of 1879), or any rules made under that Act.
8. Lease granted under Rule 56 of the Rules published by the Government of Bombay under the Bombay Land Revenue Code, 1879 (Bombay Act, V of 1879).

Note: Serial No. 9 not applicable in Pakistan.

10. Agreement or memorandum of an agreement, whereby the owner or occupier of land in a village in the Bombay Presidency agrees to relinquish his rights therein to the Government and to accept rights in other land in exchange for

(B / 1)

the rights so relinquished — Duty reduced to four annas.

11. Instrument executed by an Inamdar in the Bombay Presidency where by he undertakes to suspend or remit rent due from a tenant or tenants in consideration of a suspension or remission granted by the Government in respect of his own judi or quit rent.

12. Instrument executed by a landlord in the Bombay Presidency whereby he agrees to remit rent due from a tenant in consideration of a remission granted by the Government in respect of his own rent.

Note: From serial No. 13 to 23 not applicable in Pakistan.

In the Punjab and the North West Frontier Province.

24. Copy of the map or plan certified to be a true copy of a map or plan prepared or maintained under Chapter IV of the Punjab Land Revenue Act, 1887 (XVII of 1887) whether such copy is granted under Rule 71 of the Rules under the said Act or Rule 3 (iv) of the Financial Commissioner's Standing Order No. 5:

Provided that the copy is supplied for the private use of the person applying for it, and that it is not used or intended to be used as evidence in a Court of justice or before any public officer.

25. Mortgage deed executed afresh in lieu of a previous mortgage deed for the purpose of giving effect to the provisions of section 9, sub-section (2), of the Punjab Alienation of Land Act, 1900 (XIII of 1900) — So much of the duty remitted as is not in excess of the duty already paid in respect of the previous mortgage deed.

26. Instrument of the kind referred to in section 8, sub-section (1), clause (b) of the Punjab Laws Act, 1872 (IV of 1872) and in section 30, sub-section (1), clause (b) of the North-West Frontier Province Law and Justice Regulation 1901 (VII of 1901).

Note: From serial No. 27 to 30 not applicable in Pakistan.

B — Opium Excise and Hemp Drugs.

Note: Serial No. 31 not applicable in Pakistan.

32. Bond when executed by the surety of a middleman (lambardar or Khattadar) taking an advance for the cultivation of the poppy for the Government.

33. Agreement or memorandum of agreement made by a ralyat or by middleman (lambardar or khattadar) for the cultivation of the poppy for the Government.

34. Power-of-attorney executed in favour of a lambardar or khattadar by an opium cultivator, who does not attend personally to receive an advance or to enter into a contract for the cultivation of the poppy for the Government.

35. Instrument of the nature of a mortgage deed when executed by the surety of a middleman (lambardar or khattadar) taking an advance for the cultivation of the poppy for the Government.

Note : from Serial No. 36 to 39 not applicable in Pakistan.

C — Forest Department.

40. Agreement or security bond required to be executed, under the rules to regulate the training and appointments in the Subordinate Forest Service, by a student and his surety previous to his entry into a Forest School or College in British India.

41. Instrument in the nature of a conveyance by the Government of standing trees or any other forest produce in a Government forest; and also the following instruments:-

Note:- Item (1) not applicable in Pakistan.

(2) In Bombay (including Sindh).

(i) Agreement for the felling, conversion, collection and transport of forest produce;

- (ii) Agreement for the felling, collection, removal and purchase of timber, fire-wood etc.;
- (iii) Agreement for the collection, removal and purchase of minor forest produce;
- (iv) Agreement for the cutting, removal and purchase of grass;
- (v) Agreement for the cutting, collection, pressing and storage of grass;
- (vi) Agreement for the grazing of cattle;
- (vii) Agreement for the manufacture and purchase of minor forest produce;
- (viii) Agreement for the purchase and resale to the public of firewood;
- (ix) Agreement for the lease of forest land;
- (x) Agreement for constructing roads and buildings;
- (xi) Agreement for the supply of clothing articles for forest subordinates;
- (xii) Agreement for leasing private buildings and land for Government officers, depots, residences of Government servants and other purposes, of a like nature.

Note. Item (3) and (4) not applicable in Pakistan.

D — Scholarships, Stipends etc.

42. Agreement, bond or security bond required to be executed by or on behalf of the holder of a scholarship or stipend awarded by Government.

Note : Serial No. 43 not applicable in Pakistan.

44. Security bond taken under the authority of the Government from a Military Medical student of the Assistant Surgeon or Sub-Assistant Surgeon Branch of the Indian Medical Department or from a woman stipendiary of the Government School of Indian Medicine, Madras, or from the surety of any such student or woman stipendiary.

Note : Serial No. 45 not applicable in Pakistan.

E — Educational Institutions.

Note : Serial No. 46 and 47 not applicable in Pakistan.

48. Trust deed entered into in compliance with the rules for the time being in force in the Bombay Presidency, the Punjab, Bangal, Bihar and Orissa and Assam regulating grants-in-aid made by the Government for building purposes to schools and colleges in those Provinces. Duty reduced to the amount payable in respect of a bond for like amount or value or to Rs. 15 whichever shall be less.

F — Medical Department

Note : Serial No. 49 not applicable in Pakistan.

50. Agreement executed by a private medical practitioner on a acceptance of service under the Secretary of State for India in Council as a surgeon to His Majesty's Force with the temporary ranks of Lieutenant in the Indian Medical Service.

51. Agreement executed by an indoor patient at a Government hospital in the Bombay Presidency or his friend or relative for the payment of the hospital fees and other hospital charges for the treatment of such patient.

G — Posts and Telegraph Department.

54. Letter which a person depositing money in a Post Office Savings Banks, as security to the Government or a local authority for the due execution of an office or for the fulfilment of a contract or for any other purpose, is required to address to the Postmaster in charge of the Post Office Savings Bank agreeing to special conditions with respect to

the application and withdrawal of the money deposited and the payment of interest accruing due thereon.

55. Receipt given by or on behalf of, a depositor in a Post Office Savings Bank for a sum of money withdrawn from any such Bank.
56. Receipt endorsed by the payee on a Postal Money Order or given by the payee to the Post Office for a sum paid to him in adjustment of a short or wrong payment of such an Order.
57. Receipt endorsed by the holder of a Post Office Cash Certificate at the time of its discharge.
58. Receipt given by an officer of the Indian Post and Telegraph Department in respect of a sum paid to him by the Government as advance for the purchase of railway or steamer tickets.

H — Railways and Inland Steamer Companies.

59. Agreement made with a Railway Company or Administration or an Inland Steamer Company for the conveyance of goods.
60. Agreement or indemnity bond given to a Railway authority or an Inland Steamer Company by a passenger permitted to travel without payment of fare, indemnifying such authority or Company from any claim for damages in case of accident or injury.
61. Agreement or indemnity bond given to a Railway authority or an Inland Steamer Company by a consignee (when the Railway receipt or bill of lading is not produced) in respect of the delivery of articles carried at half parcels rates or at goods rates, namely: fresh fish, fruits, vegetables, bazar baskets, bread, meat, ice, and other perishable articles.
62. Agreement made with the Railway Company or Administration which purports to limit the responsibility of the Company or Administration as declared by the Indian Railways Act, 1890 (IX of 1890), section 72, sub-section (1) and is in a form approved by the Governor-General in Council under sub-section (2) of that section.
63. Receipt or bill of lading issued by a Railway Company or Administration or an Inland Steamer Company for the fare for the conveyance of passengers or goods, or both, or animals, or for any charges incidental to the conveyance thereof or given to such Company or Administration or Inland Steamer Company for the refund of an overcharge made in respect of such fare or charges.
64. Receipt given by a Railway Company or Administration or an Inland Steamer Company for money received by it from another Railway Company or Administration or Inland Steamer Company, or from a Tramway Company or other Carrying Company on account of its share of fares or freight for the conveyance in through traffic of passengers or goods or both or of animals.

J — Government Officers and Contractors.

65. Agreement paper passed by a contractor of the Supply and Transport Corps where his security deposit is transferred to a Post Office Savings Bank.
66. Instrument in the nature of a memorandum or agreement furnished to, or made or entered into with a Supply and Transport Officer by a contractor.
67. Agreement or declaration by which a tender made to a Supply and Transport officer is accepted as a contract, where the deposit of the contractor as security for his contract is made in Government of India Promissory Notes or in cash.
68. Instrument in the nature of a memorandum, agreement or security bond furnished to or made, or entered into with :-
 - (a) the Ordnance Department, or
 - (b) the Army Clothing Department, or
 - (c) the Military Farms Department, or
 - (d) the Opium Department, or

- (e) the Forest Department, or
- (f) the State Railway Department, or
- (g) the Public Works Department, or any other administrative department empowered to execute public works or

Note (1) Exemption under item (g) withdrawn by the Government of Sindh with effect from 1.7.1990.

Note (2) : Items (h), (i) and (j) not applicable in Pakistan.

Note : Serial NO. 69 and 70 not applicable in Pakistan.

71. Instrument furnished to or made or entered into with any of the Departments mentioned in item 68 by a contractor under which the due performance of any contract is secured by the deposit of money or of Government or other securities; and (except in Burma) an instrument under which materials belonging to a contractor are mortgaged as security for an advance made to him by any such Department.
72. Mortgage deed executed by an officer of Government in Civil or Military employ for securing the repayment of an advance received by him from the Government for the purpose of constructing, purchasing or repairing a dwelling house for his own use.
73. Instrument of re-conveyance of mortgaged property executed by Government in favour of an officer in Civil or Military employ on the repayment of an advance received by him from the Government for the purpose of constructing, purchasing or repairing a dwelling house for his own use.
- 73.A. Instrument of re-conveyance executed by Government in respect of property mortgaged by an officer of Government or his surety as security for the due execution of an office or the due accounting for money or other property received by virtue thereof.
74. Agreement which has been or may be entered into in compliance with the rules prescribed in Appendix XXII-A of Regulations for the Army in India for regulating the deposits of regimental funds with private banks or firms or such other rules for that purpose as may hereafter be in force — Duty reduced to the amount payable in respect of a bond for like amount or value, or to Rs. 5, whichever shall be less.
75. Mortgage deed or agreement executed by an officer of the Government for securing the repayment of an advance received by him from the Government for the purpose of purchasing a motor car, a motor boat, a motor cycle, a horse, a cycle, or a typewriter.
76. Agreement executed by an officer of the Government relating to the repayment of an advance received by him from the Government for defraying the cost of passages for himself or his family or both.
77. Receipt given for pension or allowances paid by Government to an heir of a deceased non-commissioned officer or soldier in respect of service in His Majesty's Army or his Majesty's Indian Army.
78. Authority in writing executed under rule 1, Order XXVIII of the Code of Civil Procedure, 1908 (Act V of 1908), by any officer or soldier actually serving the Government in military capacity authorising any person to sue or defend in his stead in a Civil Court.

K — Other Documents.

79. Bill of exchange drawn in Mysore, on which the full rate of stamp duty has been paid there, where the same is negotiated in British India.
80. Receipt given for payment of interest on Government of India Promissory Notes.
81. Letter of authority or power-of-attorney executed for the sole purpose of authorising one or more of the joint-holders of a Government security to give on behalf of the other or others of them, or any one or more of them, a discharge, for interest payable on such security or on any renewed security issued in lieu thereof.
82. Power-of-attorney furnished to a relative, servant, or dependant under the Dekkhan Agriculturists' Relief Act, 1879 (XVII of 1879), section 68.

83. Copy of an instrument which a Village Registrar has to deliver to a party under the Dekkhan Agriculturists' Relief Act, 1879 (XVII of 1879) section. 58.

84. Sanad of Jagir or other instrument conveying land granted to an individual by the Government otherwise than for a pecuniary consideration.

85. Instrument of exchange executed by a private person, where land is given by him for public purposes in exchange for other land granted to him by the Government.

86. Transfer by endorsement of a mortgage of rates and taxes authorised by any Act for the time being in force in British India.

Note : Serial No. 87, 88 and 88-A not applicable in Pakistan

89. Agreement executed for service or for performance of work in any estate not less than ten acres in extent, whether held by one person or by more persons than one as co-owners, and whether in one or more blocks, and situated in British India (excluding Coorg and Assam) or in Mysore, which is being prepared for the production of, or actually produces, tea, coffee, rubber, pepper, cardamom or cinchona, where the advance given under agreement does not exceed fifty rupees. — Duty reduced to one anna.

Note: Serial No. 90 and 91 not applicable in Pakistan.

92. Instrument of transfer of shares registered in a branch register in the United Kingdom under the provisions of section 41 of Indian Companies Act, 1913 (VII of 1913), which has paid the stamp duty leviable thereon in accordance with the law for the time being in force in the United Kingdom.

93. Receipt given by a gangman on a famine relief work in the Bombay Presidency in respect of sums exceeding Rs. 20 paid to him on account of the wages of relief workers.

Note : Serial No. 94, 95 and 96 not applicable in Pakistan.

97. Agreement or counterpart of an agreement entered into by the owner of a 'token' animal and the Government in pursuance of any rules for the time being in force under section 30 of the Punjab Military Transport Act, 1916 (Punjab Act I of 1916).

98. Attested instrument evidencing an agreement relating to the hypothecation of moveable property where such hypothecation has been made way of security for the repayment of money advanced or to be advanced by way of loan, or of an existing or future debt - Duty reduced to the amount chargeable on a bill of exchange under Article No. 13 (b) of Schedule I of the Stamp Act, 1899, for the amount secured, if such loan or debt is repayable on demand or more than three months from the date of the instrument ; and to half that amount, if such loan or debt is repayable not more than three months from the date of the instrument.

99. Unattested instrument evidencing an agreement relating to the hypothecation of moveable property, where such hypothecation has been made by way of security for the repayment of money advanced or to be advanced by way of loan or of an existing or future debt.

Note : Serial No. 100 not applicable in Pakistan.

101. Instrument of entry as an Advocate or Vakil of the High Court of Judicature at Lahore of a pleader of the first grade, who has, as such pleader paid stamp duty aggregating Rs. 1000/- or more for certificates issued or renewed in his favour under Section 7 of the Legal Practitioners Act, 1879 (XVIII of 1879).

101-A. Instrument of entry as an Advocate or Vakil of the Court of the Judicial Commissioner of Sind of a Pleader who has, as such pleader, paid fee aggregating Rs. 500/- for certificates issued or renewed in his favour under the rules of that Court.

102. Instrument of entry as an Advocate or Vakil of the High Court of Judicature at Lahore, of a pleader of first grade who has, as such pleader, paid for certificates issued or renewed in his favour under Section 7 of the Legal Practitioners Act, 1879 (XVIII of 1879), stamp duty aggregating more than Rs. 500/- but less than Rs. 1,000/— Duty reduced to the sum which, together with the aggregate stamp duty already paid, shall make up Rs. 1,000/-

102-A. Instrument of entry as an Advocate or Vakil of the Court of Judicial Commissioner of Sind who has, as such pleader, paid fees aggregating less than Rs. 500/- under the rules of that Court — Duty reduced to that which together with the aggregate amount already paid shall make up Rs. 500/-

103. Instrument of transfer of Government Stock registered in the book debt account.
104. Instrument of release referred to in section 48 of the Indian Merchant Shipping Act, 1923 (XXI of 1923).
105. Decision or award of the Registrar of co-operative Societies for the Central Provinces and the award of arbitrators in any dispute in which a cooperative society in British India is a party.
106. Receipt or bill of lading issued by the Commercial Carrying Company Ltd., for the fare for the conveyance of passengers or goods or both or receipt given by the said Company for the refund of an over-charge made in respect of such fare.

Note : Serial.No. 107 not applicable in Pakistan.

108. Agreement between an employer and a workman employed by or under him regarding the payment of compensation under the Workmen's Compensation Act, 1923 (VIII of 1923).

Note : Serial No. 109 not applicable in Pakistan.

110. Mortgage deed being collateral or auxillary or additional security or being by way of further assurance — Duty reduced to Rs. 20 in the Presidency of Bombay, to Rs. 15 in the Presidency of Madras or in the Province of the Punjab and to Rs. 10 in the Presidency of Bengal, the Central Provinces and the Province of Bihar and Orissa provided that the duty paid on the principal or primary security exceeds the amount specified for that presidency or province.

111. Proxy empowering a person to vote at a meeting of creditors. —Duty reduced to the rate chargeable on a proxy empowering a person to vote at any meeting of members of an incorporated Company.

112. Instrument cancelling a Will.

113. Renewal of any of the Foreshore securities issued by the Trustees of the Port of Bombay under the provisions of section 30 of the Bombay Port Trust Act, 1879 (Bombay Act VI of 1879).

114. Indemnity Bond executed in pursuance of paragraph 8 of the Royal Air Force Instructions (India) No. 53 of 1935 by a non-entitled person under-taking passenger flight in accordance with clause (iii) of paragraph 7 thereof.

Note : Serial No. 115 not applicable in Pakistan.

116. Agreement or memorandum of agreement relating to the hire of a bicycle for a period of less than a week.

Note : The need of Serial No. 117 no more exists.

THE STAMP RULES, 1925.

(Amended upto date)

REVENUE DEPARTMENT

Bombay Castle, 5th June 1925.

No. S. 18/4 — The following notification by the Government of India, Finance Department (Central Revenues), is republished

Stamps.

No. C-63-Stamps/25, dated Simla, the 5th May 1925.

In exercise of the powers conferred by the Stamp Act, 1899 (II of 1899), and in supersession of the notification of the Government of India in the Finance Department No. 1140-F., dated the 14th August 1914, and of all notifications amending the same, the Governor General in Council is pleased to make the following rules, namely :-

RULES UNDER THE STAMP ACT, 1899.

CHAPTER I.

PRELIMINARY.

1. *Short title.* — These rules may be called the Stamp Rules, 1925.
2. *Definitions.* — In these rules
 - (a) 'The Act' means the Stamp Act, 1899 (II of 1899).
 - (b) 'Section' means a section of the Act.
 - (c) 'Schedule' means a schedule of the Act.
 - (d) 'Superintendent of Stamps' means the Superintendent of Stamps, Karachi, and any officer appointed by the Provincial Government to perform the functions of a Superintendent of Stamps.
 - (e) 'Proper Officer' means the Superintendent of Stamps and any other officer empowered by the Provincial Government to affix and impress or perforate labels under the Act.
3. *Description of Stamps.* — (1) Except as otherwise provided by the Act or by these rules,—
 - (i) all duties with which any instrument is chargeable shall be paid, and such payment shall be indicated on such instrument, by means of stamps issued by Government for the purposes of the Act, and
 - (ii) a stamp which by any word or words on the face of it is appropriated to any particular kind of instrument, shall not be used for an instrument of any other kind.
 (2) There shall be two kinds of stamps for indicating the payment of duty with which instruments are chargeable, namely:-
 - (a) impressed stamps, and
 - (b) adhesive stamps.

CHAPTER II. OF IMPRESSED STAMPS.

4. *Hundis.* — (1) Hundis, other than hundis which may be stamped with an adhesive stamp under section 11, shall be written on paper as follow namely :—

- (a) A hundi payable otherwise than on demand, but not at more than one year after date or sight, and for an amount not exceeding rupees thirty thousand in value, shall be written on paper on which a stamp of the proper value bearing the word 'hundi' has been engraved or embossed.
 - (b) A hundi for an amount exceeding rupees thirty thousand in value, or payable at more than one year after date or sight, shall be written on paper supplied for sale by the Government, to which a label has been affixed by a Superintendent of Stamps, and impressed by him in the manner prescribed by rule 11.
- (2) Every sheet of paper on which a hundi is written shall be not less than $8\frac{5}{8}$ inches long and $5\frac{1}{8}$ inches wide and no plain paper shall be joined thereto.
- (3) The provisions of sub-section (1) of rule 7 shall apply in the case of hundis.

Note — Hundi Stamped papers when two or more used for a single instrument. When two or more hundi stamped papers are used by the public to make up the amount of duty chargeable, the instrument is in many instances written only on one hundi stamped paper and no part of the instrument is written on the hundi paper which is attached to it to make up the amount of duty chargeable. This procedure is contrary to the provisions of Rule 6 (1) of the rules published in Notification No. 3632—Exc. dated the 26th June 1906 of the Government of India, Finance Department, and is likely to result in fraud on the stamp revenue. I request that you will take such steps as you may consider necessary to ensure compliance with the provisions of the rule above referred to. (Circular No. 13/1820 dated 11th November 1913 from the Superintendent of Stamps, Karachi to the District Officers in Sindh).

5. *Promissory notes and bills of exchange.* — A promissory note or bill of exchange shall, except as provided by section 11 or by rules 13 and 17 be written on paper on which a stamp of the proper value, with or without the word 'hundi' has been engraved or embossed.

6. *Other instruments.* — Every other instrument chargeable with duty shall, except as provided by section 11 or by rules, 10, 12 and 13, be written on paper on which a stamp of the proper value, not bearing the word 'hundi' has been engraved or embossed.

7. *Provision where single sheet of paper is insufficient.* — (1) Where two or more sheets of paper on which stamps are engraved or embossed are used to make up the amount of duty chargeable in respect of any instrument, a portion of such instrument shall be written on each sheet so used.

- (2) Where a single sheet of paper, not being paper bearing an impressed hundi-stamp, is insufficient to admit of the entire instrument being written on the side of the paper which bears the stamp, so much plain paper may be subjoined thereto as may be necessary for the complete writing of such instrument :

Provided that in every such case a substantial part of the instrument shall be written on the sheet which bears the stamp before any part is written on the plain paper subjoined.

8. *One anna and two annas impressed stamps.* — The duty on any instrument which is chargeable with a duty of one anna under the Act or of two annas under articles 5, 19, 36, 37, 43, 49 and 52 of Schedule I, may be denoted by a coloured impression marked on a skeleton form of such instrument by the Superintendent of Stamps.

9. Omitted.

10. *Affixing and impressing of labels by proper officer permissible in certain cases.* — Labels may be affixed and impressed or perforated by the proper officer in the case of any of the following instruments, namely :—

- (i) those specified in Appendix II, and the counterparts thereof other than instruments on which the duty is less than two annas; and
- (ii) those specified in Appendix III, when written in any European language, and accompanied, if the language is not English, by a translation in English :

Provided that the Provincial Government may direct that this rule shall apply subject to any conditions which it may prescribe, to any of the instruments specified in Appendix III, other than Bills of Exchange, when written in any oriental language.

II. *Mode of affixing and impressing labels.* — (1) The proper officer shall, upon any instrument specified in rule 10 being brought to him before it is executed, and upon application being made to him, affix thereto a label or labels of such value as the applicant may require and pay for, and impress or perforate such label or labels by means of a stamping-machine or a perforating machine and also stamp or write on the face of the label or labels the date of impressing or perforating the same. In the case of instruments written on parchment, the labels shall be further secured by means of metallic eyelets.

Note — Application to Collector for affixing impressed labels to instruments under Act 1 of 1879 or 11 of 1899. The law does not require that applications made to Collectors for affixing impressed labels to instruments, under the Stamp Act 1 of 1879 should be stamped under cl (b) of Art 1 Sch. II, of the Court Fees Act, VII of 1870; These are made to the Collector in his capacity as Superintendent of Stamps for the District for a special purpose; and not as a Collector or Revenue Officer. Any Application written on plain paper made to a Collector in the former capacity should be accepted. (G. of I. letter No. 2033 dated 9th May 1896)

Note — Incomplete instruments cannot be stamped with Special adhesive stamps. Whenever an incomplete document is presented at Bombay Stamp Office for being stamped with special adhesive stamps, it is as a rule returned to the applicant asking him to produce an unexecuted complete document and this practice is of a long standing. (Letter No. 2638 dated 20th June 1931 from the Superintendent of Stamps, Bombay to the Superintendent of Stamps, Karachi.)

- (2) On affixing any label or labels under this rule, the proper officer shall, where the duty amounts to rupees five or upwards, write on the face of the label or labels his initials, and where the duty amounts to rupees twenty or upwards, shall also attach his usual signature to the instrument immediately under the label or labels.
- (3) The Assistant Superintendent of Stamps, Karachi, or in his absence, the Office Superintendent of the Central Stamp Office Karachi, or any other officer appointed by the Provincial Government may discharge the functions of the proper officer under sub-rule (2).

12. *Certain instruments to be stamped with impressed labels.* — (1) Instruments executed out of Pakistan and requiring to be stamped after their receipt in the province (other than instruments which, under section 11 or rule 13, may be stamped with adhesive stamps) shall be stamped with impressed labels.

- (2) Where any such instrument as aforesaid is taken to the Collector under section 18, sub-section (2), the Collector, unless he is himself the proper officer, shall send the instrument to the proper officer, remitting the amount of duty paid in respect thereof; and the proper officer shall stamp the instrument in the manner prescribed by rule 11, and return it to the Collector for delivery to the person by whom it was produced.

CHAPTER III.

OF ADHESIVE STAMPS.

13. *Use of adhesive stamps on certain instruments.* — The following instruments may be stamped with adhesive stamps, namely :-

- (a) Bills-of-exchange payable otherwise than on demand and drawn in sets, when the amount of duty does not exceed one anna for each part of the set.
- (b) Transfers of debentures of public companies and associations.
- (c) Copies of maps or plans, printed copies and copies of or extracts from registers given on printed forms when chargeable with duty under Article 24 of Schedule I.
- (d) Instruments chargeable with duty under Articles 5 (a) and (b) and 43 of Schedule I.
- (e) Instruments chargeable with stamp duty under Article 47 of Schedule I.
- (f) Instruments chargeable with stamp duty under Articles 19, 36, 37, 49 (a) (ii) and (iii) and 52 of Schedule I.

13.A. Notwithstanding anything contained in these rules whenever the stamp duty payable under the Act in respect of any instrument cannot be paid exactly by reason of the fact that the necessary stamps are not in circulation, the amount by which the payment of duty shall on that account be in defect shall be made up by the affixing of one-anna and half-anna adhesive stamps such as are described in rule 16, provided that a Provincial Government may direct that instead of such stamps adhesive court-fee stamps shall be used for the purpose.

14. *Supply of deficient duty on transfer of share.* — When any instrument of transfer of shares in a Company or Association is written on a sheet of paper on which a stamp of the proper value is engraved or embossed, and the value of the stamp so engraved or embossed is subsequently, in consequence of a rise in the value of such shares, found to fall short of the amount of duty chargeable under article 62 (a) of Schedule I, one or more adhesive stamps bearing the words 'Share Transfer' may be used to make up the amount required.

15. *Enrolment of Advocates, Vakils or Attorneys.* — When adhesive stamps are used to indicate the duty chargeable on entry as an Advocate, Vakil or Attorney on the roll of any High Court such stamps shall be affixed under the superintendence of a gazetted officer of the High Court, who shall obtain the stamp from the Superintendent of Stamps, or other officer appointed in this behalf by the Provincial Government and account to him for it. Such gazetted officer shall, after affixing the stamp, write on the face of it his usual signature with the date thereof.

16. Except as otherwise provided by the rules, the adhesive stamps used to denote duty shall be the requisite number of stamps bearing the words "Pakistan Revenue" and the words "Four annas" or "Two annas" or "One anna" or "Half anna".

17. *Special adhesive stamps to be used in certain cases.* — The following instruments when stamped with adhesive stamps shall be stamped with the following descriptions of such stamps, namely :-

- (a) Bills-of-exchange, cheques and promissory notes drawn or made out of Pakistan and chargeable with a duty of more than one anna : with stamps bearing the words "Foreign Bill".
- (b) Separate instruments of transfer of shares and transfers of debentures of Public Companies and Associations : with stamps bearing the words 'Share Transfer'.
- (c) Entry as an Advocate, Vakil or Attorney on the roll of any High Court : with stamps bearing the word 'Advocate,' 'Vakil' or 'Attorney', as the case may be.
- (d) Notarial acts : with foreign bill stamps bearing the word 'Notarial.'
- (e) Copies of maps or plans, printed copies and copies of or extracts from registers given on printed forms certified to be true copies; with court-fee stamps.
- (f) Instruments chargeable with stamp-duty under Articles 5 (a) and (b) or 43 of Schedule I : with stamps bearing the words 'Agreement' or 'Brokers Note' respectively.
- (g) Instruments chargeable with stamp-duty under Article 47 of Schedule I : with stamps bearing the word "Insurance."

CHAPTER IV. MISCELLANEOUS.

18. *Provision for cases in which improper description of stamp is used.* — When an instrument bears a stamp of proper amount, but of improper description, the Collector may, on payment of the duty with which the instrument is chargeable, certify by endorsement that it is duly stamped :

Provided that where the stamp borne on the instrument is a postage stamp and the proper description of stamp is a stamp bearing the words 'India Revenue' or the words 'Bombay Revenue' the Collector shall so certify if the instrument was executed before, and shall not so certify, if it was executed on or after, the 1st April 1935.

- 18-A. (i) Any person or body liable to collect stamp duty under the Act shall deposit the duty so recovered in the Government Treasury within thirty days of its recovery.
- (ii) A statement showing the recovery of stamp duty and its payment in the Government Treasury during a month shall be submitted to the Collector at the close of that month.
- (iii) The failure to pay or recover stamp duty as aforesaid shall be punishable with a fine not exceeding five hundred rupees for each breach.

19. *Evidence as to circumstances of claim to refund or renewal.* — The Collector may require any person claiming a refund or renewal under Chapter V of the Act, or his duly authorised agent, to make an oral deposition on oath or affirmation, or to file an affidavit, setting forth the circumstances under which the claim has arisen, and may also, if he thinks fit, call for the evidence of witnesses in support of the statement set forth in any such deposition or affidavit.

20. *Payment of allowances in respect of spoiled or misused stamps or on the renewal of debentures.* — When an

application is made for the payment, under Chapter V of the Act, of an allowance in respect of a stamp which has been spoiled or misused or for which the applicant has no immediate use or on the renewal of a debenture, and an order is passed by the Collector sanctioning the allowance or calling for further evidence in support of the application, then, if the amount of the allowance or the stamp given in lieu thereof is not taken, or if the further evidence required is not furnished, as the case may be, by the applicant within one year of the date of such order, the application shall be struck off, and the spoiled or misused stamp (if any) sent to the Superintendent of Stamps or other officer appointed in this behalf by the Provincial Government for destruction.

21. *Mode of cancelling original debenture on refund under section 55.*— When the Collector makes a refund under section 55, he shall cancel the original debenture by writing on or across it the word 'Cancelled' and his usual signature with the date thereof.

22. *Rewards.* — On the conviction of any offender under the Act, the Collector may grant to any person who appears to him to have contributed thereto a reward not exceeding such sum as the Provincial Government may fix in this behalf.

1. It has been brought to the notice of Government that a practice obtains in certain districts of this Presidency of evading the stamp law by drawing hundies ostensibly payable at sight and affixing there to a one-anna stamp, but after a certain number of days indicated in the corner thereof. His Excellency the Governor General in Council is, therefore, pleased to notify for general information that any person affording such information as will lead to the conviction of any person so offending will receive half of the fine imposed, unless the Magistrate trying the case for reasons recorded by him thinks fit to withhold the reward. (G. N. No. 6213, dated 21st October 1881).

2. Whereas it has been brought to the notice of Government that certain Marvadi firms carrying on exchange business in the Native Town of Bombay have made it their practice to obtain foreign bill stamps from other towns where such stamps can be purchased by merchants at a higher rate of discount; and whereas such stamps have been introduced into Bombay and unlawfully sold by means of private agents or through licensed stamp vendors in league with the aforesaid persons; and whereas certain persons have been prosecuted and convicted before the Magistrate for selling without a license such stamps in contravention of the provisions of Section 68 of the Stamp Act, 1879.

Notice is hereby given, for general information, that His Excellency the Governor in Council in exercise of the powers conferred by Rule 18 of the Rules made under Section 9 of the Indian Stamp Act by the Government of India, and published in their Notification No. 1288 of 3rd March 1882, at pages 195 of Part I of the Bombay Government Gazette of 16th March 1882, is pleased to direct that any person who shall furnish such information as shall lead to the prosecution and conviction of any offender in the manner herein above described receive a reward equal to one-half the fine imposed, unless the Magistrate trying the case shall see fit, for reasons recorded by him to withhold such reward. (G.N. No. 7711, dated 3rd November 1882).

3. With reference to No. 19 of the Rules made under the Stamp Act, 1879, by the Governor General of India in Council and published in the Government of India's Notification No. 2170, dated 22nd May 1891, the Governor in Council is pleased to direct that the limit of the reward which any Magistrate convicting an offender under Chapter VIII of the said Act may grant to any person who may have contributed to the conviction shall be one-half of the amount of fine, if any, which the Magistrate imposed on the offender. (G. N. No. 385, dated 19th January 1892).

Note — Whenever, a Magistrate chooses to serve an offender to imprisonment only, it may be taken as a case in which he for some reasons withholds the reward. (G.R. No. 385, dated 19th January 1892).

APPENDIX I (Omitted)

APPENDIX II.

LIST OF INSTRUMENTS REFERRED TO IN RULE 10 (I)

			No. of Artical in Schedule-1
1.	Administration-bond	...	2
2.	Affidavits	...	4
3.	Appointments made in execution of a power	...	7

4.	Articles of Association of a Company	...	...	10
5.	Articles of clerkship	...	...	11
6.	Bills-of-lading	...	...	14
7.	Charter parties	...	...	20
8.	Declarations of trust	...	...	64A
9.	Instruments evidencing an agreement relating to (1) the deposit of title-deeds or instruments constituting or being evidence of the title to any property whatever (other than a marketable security) or (2) the pawn or pledge or hypothecation of moveable property.	...	...	6
10.	Leases partly printed or lithographed in an Original language, when the written matter does not exceed one-fourth of the printed matter	...	...	35
11.	Memoranda of Association of Companies	...	...	39
12.	Mortgages of crops	...	...	41
13.	Notes of protest by Masters of Ships	...	...	44
14.	Revocations of trust	...	...	64B
15.	Share-warrants issued by a Company in accordance with section 43 of the Indian Companies Act, 1913 (VII of 1913)	...	...	59
16.	Warrants for goods	...	...	65
17.	Note or memorandum when the duty payable exceeds two annas	...	...	43B
18.	Transfers of description mentioned in article 62 clause (a) and (b) of schedule I, when the duty payable and exceeds Rs. 10.			

APPENDIX III.

LIST OF INSTRUMENTS REFERRED TO IN RULE 10 (ii)

1.	Agreements or memoranda of agreements which, in the opinion of the proper officer, cannot conveniently be written on sheets of paper on which the stamps are engraved or embossed ...	...	...	5
2.	Instruments engrossed on parchment and written in the English style which, in the opinion of such officer, cannot conveniently be written on sheets of paper on which the stamps are engraved or embossed	...	...	...
3.	Awards	...	...	12
4.	Bills-of-exchange payable otherwise than on demand and drawn in Pakistan ...	...	...	13 (b) Schedule-and (c
5.	Bonds	...	...	15, 16, 26, 34, 56 & 57
6.	Certificates of sale	...	...	18
7.	Composition-deeds	...	...	22
8.	Conveyances	...	...	23
8.A.	Debentures	...	...	27
9.	Instruments imposing a further charge on mortgaged property	...	...	32
10.	Instruments of apprenticeship	...	...	9

11.	Instrument of co-partnership	...	...	46A
12.	Instruments of dissolution of partnership	...	...	46B
13.	Instruments of exchange	...	...	31
14.	Instruments of gift	...	...	33
15.	Instruments of partition	...	...	45
16.	Leases	...	...	35
17.	Letters of license	...	...	38
18.	Mortgage deeds	...	...	40
19.	Powers-of-attorney	...	...	48
20.	Reconveyances of mortgaged property	...	...	54
21.	Releases	...	...	55
22.	Settlements	...	...	58
23.	Transfers of the description mentioned in Article 62, clauses (c), (d) and (e) of Schedule I ... 62 (c) (d) & (e)			

APPENDIX-IV

SINDH STAMPS SUPPLY AND SALES RULES, 1940.

In exercise of the powers conferred by section 34 of the Court-Fees Act, 1870 (VII of 1870), and section 74 of the Stamp Act, 1899 (II of 1899), and in supersession of Government notification in the Revenue Department, No. 142/28, dated the 10th May 1934, as subsequently amended up to Government notification, Revenue Department No. 142/28 dated the 28th June 1935, the Governor of Sindh is pleased to make the following rules for regulating the supply and sale of stamps, for determining the persons by whom such sale is to be conducted and for prescribing the duties and remuneration of such persons, namely:-

1. These rules may be called the Sindh Stamps Supply and Sale Rules, 1940.
2. In these Rules unless there is anything repugnant in the subject or context—
 - (1) 'Schedule' means Schedule appended to these rules;
 - (2) 'Vendor' means a stamp vendor appointed under these rules.

PART I.
RULES FOR THE SALE OF STAMPS USED IN PAYMENT OF DUTY UNDER
THE STAMP ACT, 1899.

3. For the purposes of these rules stamps are divided into —
 - (1) Impressed stamps, including —
 - (a) Labels affixed and impressed by the proper officer,
 - (b) Stamps embossed or engraved on stamped paper.
 - (2) Adhesive stamps—

Stamps of Class I (a) can be obtained only at the Office of the Superintendent of Stamps, Karachi, and such labels shall be affixed and impressed as laid down in rules 9 to 12 of the rules published in the notification of the Government of India in the Finance Department, No. C-63-Stamps/25, dated 5th May 1925. Stamps of Class I (b) and Class 2 shall be sold to the public by ex-officio or licensed vendors in the manner hereinafter prescribed.

4. Adhesive stamps shall be sold as follows:-
 - (a) Half anna, one anna, two annas and 4 annas revenue stamps, Insurance, Foreign Bill and Share Transfer stamps by ex-officio and licensed vendors.
 - (b) High Court Advocate, Notarial, Agreement and Broker's Note Stamps by ex-officio vendors only.
5.
 - (1) The Provincial Government may appoint certain officers to be ex-officio vendors.
 - (2) Ex-officio vendors shall, subject to rules 3 and 4, sell such stamps as may be directed.
 - (3) The treasurer of each local Treasury and Sub-Treasury shall be an, ex-officio vendor.
 - (4) Officers in charge of post offices, at which letters are received for, despatch, shall be ex-officio stamp vendors for the sale of half anna, one anna, two annas and four annas revenue stamps.
6.
 - (1) The Collector or an officer specified in Schedule A or any other officer empowered by the Provincial Government in this behalf may appoint certain persons to be licensed vendors.
 - (1-A) A licence granted under these rules shall be valid for a period of one year which shall be renewable for the same period by the authority granting the licence if it is satisfied that the performance of the licenced vendor during the preceding year has remained satisfactory.
 - (1-B) A licence granted before the commencement of this sub-rule shall not be continued for more than ninety days from such commencement unless it is renewed within the said period.

NOTE — Licence should not be granted to a firms or in the joint names of one or more persons or to give an agent to the license holder.

NOTE — In order that the public may be provided with every facility for readily obtaining stamps in outlying localities where otherwise stamps might not always be easily available, licenses for the sale of stamps of every description may

be granted to any respectable and reasonably substantial person who wishes to sell them, either as a special business or an addition to some other business which he carries on. At district and sub-divisional head-quarters, and in large towns where vendors are readily found, the number of them shall be such as to offer reasonable facilities to the public, but shall be limited so as to allow of a moderate income from the sale of stamps being derived by each.

(2) Licensed vendors shall, subject to rules 3 and 4, sell such stamps of such values as may be specified in their licenses.

7. Whenever it is deemed necessary for the convenience of the public that a licence should be granted for the sale of stamps embossed or engraved on stamped paper exceeding in value Rs 2,000, the sanction of the Provincial Government shall be obtained.

8. Every licence granted under rule 6 shall be in the form in Schedule B.

9. Every licence shall be revocable at any time by the Provincial Government or by the authority granting it.

10. (1) The rates of discount specified in Schedule C shall be allowed to licensed vendors.

(2) Licensed vendors shall not be allowed any discount on the purchase of stamps embossed or engraved on stamped paper exceeding in value Rs. 2,000 each.

(3) No discount on the sale of stamps shall be granted to the public.

11. Every licensed vendor shall keep in a conspicuous position, outside his place of vend, a signboard bearing in English and in the vernacular language of the district, his name and the words "Licensed Vendor of Stamps". He shall also have in his place of vend, copies of the Stamp Act, 1899 and of the rules thereunder, in English and the said vernacular, with copies of all notifications of the Central Government modifying the stamp duties so placed that they can readily be seen and read by purchasers.

12. (1) Every *ex-officio* or licensed vendor shall, with his own hand, write, on the face of every stamp embossed or engraved on stamped paper which he sells, just below the stamp impression, a serial number, the date of sale, the name and residence of the purchaser (i.e., of the persons for whom the stamp is bought) the value of the stamp in full in words and his own ordinary signature; at the same time, he shall make corresponding entries in a register to be kept by him in the form in Schedule D.

(2) No *ex-officio* or licensed vendor shall knowingly make a false endorsement on the stamp sold or a false entry in his register.

13. (1) Notwithstanding anything contained in rule 12, when an *ex-officio* vendor, or a licensed vendor authorised under sub-rule (2), sells more than 50 stamps embossed or engraved on stamped paper of any one description and value on one and the same day to one and the same purchaser, the date of sale, name and residence of the purchaser and the value of each such stamp may, instead of being written by such vendor, be printed or stamped on each such stamp.

(2) In the City of Karachi, the Superintendent of Stamps, and elsewhere the Collector, is empowered to authorise *ex-officio* vendors and licensed vendors to sell stamps under this rule.

14. (1) Every *ex-officio* or licensed vendor, shall, whenever any person purchases a stamp embossed or engraved on stamped paper, require the purchaser to affix his thumb-impression under such vendor's endorsement of sale on the stamp and also opposite the entry relating to the sale in the register kept under rule 12 (vide Instructions in Schedule E).

(2) No new license to sell stamps embossed or engraved on stamped paper shall be granted and no expired license shall, after a time to be specified in this behalf, be renewed, except on satisfactory proof that the applicant or licensee is able to take a clear thumb-impression.

15. (1) Whenever application is made to an *ex-officio* or licensed vendor for stamps embossed or engraved on stamped paper of a specified value and not exceeding the highest value which such stamp vendor is authorised to sell, he shall, if he is able, furnish a single stamp of the required value.

NOTE — The word "application" used in Rule 16 of the Bombay Stamp Supply and Sale Rules of 1934 so far the licensed stamp vendors are concerned, means to apply for stamps in writing or by a 'verbal demand'. An application in writing is necessary only in cases where stamps are purchased from the *ex-officio* stamp vendors of the local or branch depots, wherein a purchaser has to specify in writing the kind and value of the stamps required by him. Attention in this respect is invited to Rule 18 of the Subsidiary Rules for the Supply, Custody and Sale of Stamps.

Rule 16 of the Bombay Stamps Supply and Sale Rules pertain only to the stamps embossed or engraved on stamped papers, whereas Rule 18 of these rules refers to all kinds of stamps (stamped papers as well as adhesive stamps). It is therefore for the licensed stamps vendors to sell stamps on a verbal demand or on an application in writing. In the latter case he has to maintain such application on his record. (Vide Letter No. 169, dated 26th January 1935, from the Superintendent of Stamps, Karachi, to the Treasury Officer, Mirpurkhas).

(2) If such vendor is unable to furnish a single stamp embossed or engraved on stamped paper of the required value, he shall supply the purchaser with the smallest number of such stamps which he can furnish so as to make up the required value.

NOTE:— It has come to notice that the lower denominations of Non-Judicial stamps are often issued in large numbers by the licensed stamp vendors to make up the higher duty required for single instrument. This may be due to (1) failure on the part of Sub-Treasury officer to keep in their stock a sufficient number of stamps of every denomination to meet the needs of the stamp vendors under their control or (2) failure on the part of the stamp vendors to indent on treasuries or sub-treasuries for the requisite number of stamps of higher values. Whatever be the cause, it is desirable that the purchasers of stamps should be supplied with the smallest possible number of stamps so as to bring the required value up to Rs. 300 (Letter No. 521, dated 26th March 1936, from the Superintendent of Stamps, Karachi to all Treasury Officers in Sindh.)

16. (1) All stamps exceeding Rs. 2,000 in value required for a single instrument shall be purchased direct from the Treasury or Sub-treasury, as the case may be.

(2) No licensed vendor shall sell to the public two or more stamps of lower value for use in place of one of a value higher than Rs. 2,000 required for the purpose of stamp duty on a single instrument.

NOTE — Further no licensed vendor may sell to the public two or more stamps of lower value for use in place of one of a value higher than Rs. 2,000 and required for the purpose of stamp duty on a single instrument. Clauses (1) and (3) of Rule 17. should also be kept in view by the stamp vendors. (Letter No. 521, dated 26th March 1936 from the Superintendent of Stamps, Karachi, to all Treasury Officers in Sindh).

(3) Every licensed vendor shall hang up a notice in his place of vend showing that stamps exceeding Rs. 2,000 in value or an aggregate of stamps exceeding Rs. 2,000 in value required for the purpose of stamp duty on a single instrument shall be purchased from a Treasury or Sub-treasury, as the case may be, and licensed vendors are forbidden to sell two or more stamps of lower value for use in place of one of a value higher than Rs. 2,000 required for the purpose of stamp duty on a single instrument.

17. Every licensed vendor shall, without delay, deliver any stamp which he has in his possession for sale on demand by any person tendering the value thereof in any currency which would be accepted on behalf of the Provincial Government by the Collector. A licensed vendor shall not demand or accept for any stamp any consideration exceeding the value of such stamp.

18. No *ex-officio* or licensed vendor shall sell any stamps the use of which has been ordered by competent authority to be discontinued.

19. The accounts to be kept and rendered by licensed vendors shall be in accordance with the forms prescribed by the Provincial Government.

20. No licensed vendor shall at any time offer any objection or resistance to the inspection of his register kept under the rule 12 or the examination of this stock of stamps by any officer duly authorised by the Collector or by the Provincial Government to make such inspection or examination.

21. (1) A licensed vendor —

(a) may deliver up any stamps in his possession either on application for leave to do so or on resigning his license, and

(b) shall deliver up all stamps embossed or engraved on stamped paper remaining in his possession on demand made at any time by the Collector or other officer duly authorised by the Provincial Government in this behalf.

(2) Payment of the value of stamps paid for by a licensed vendor and delivered up, shall be made subject to deductions as follows, namely:-

(a) A deduction of one anna in the rupee or a fraction of a rupee of the full value of all stamps delivered up in the following circumstances, viz:-

(D / 3)

- (i) On resignation by the vendor of his license;
 - (ii) On revocation of the license for any fault on the part of the licensed vendor;
 - (iii) On application by the licensed vendor for leave to return any stamps in his possession.
- (b) A deduction only of the discount, if any, allowed on purchase by the vendor on stamps delivered up in the following circumstances, viz:-
- (i) On the expiration of the License ;
 - (ii) On the re-call of the stamps by the Provincial Government ;
 - (iii) On the revocation of the license for any cause other than a fault on the part of the licensee;
 - (iv) On the death of the Licensed Stamp Vendor.

Provided that the application for refund of stamps delivered up under this rule shall ordinarily be entertained by the Officer mentioned in Schedule A within 6 months of the date of the resignation or death of the licensed vendor or revocation of the license, but in special cases the Collectors and the Superintendent of Stamps, Karachi, may accept an application made within two years of such date.

NOTE. — If the sanction for the value of unused stamps, returned by a licensed vendor who resigns his license or whose license is cancelled by a competent authority, or by the legal heir or representative of a deceased stamp vendor, is not acted upon within 12 months, it should be considered to have lapsed, unless it is renewed by the Collector on sufficient cause shown.

22. A licensed vendor shall be permitted to exchange any stamps which are, in the opinion of the Collector or Officer specified in Schedule A or other officer duly authorised by the Provincial Government in this behalf, fit for use but for which there is no immediate demand, for other stamps of a like aggregate value.

23. Every licensed vendor shall keep an adequate supply of four, two, and half anna revenue stamps for sale to the public.

PART II.

STAMPS USED IN PAYMENT OF FEES UNDER THE COURT-FEES ACT, 1870.

RULES FOR THE SALE OF THE COURT-FEE STAMPS.

24. Court-fee stamps shall be sold at all Treasuries and Sub-treasuries in Sindh, Central Stamp Office, Karachi, and by such persons as may be licensed to sell stamps by the Collector or other officer empowered by the Provincial government to grant licenses. The Treasurer of each Treasury and any salaried persons as may be appointed by the Provincial Government shall be *ex-officio* vendors of Court-fee stamps.

25. (1) *Ex-officio* vendors shall not be required except in the City of Karachi to sell Court-fee stamps of the value not exceeding as five hundred rupees each. Court fee stamps of lower value shall be sold by the licensed vendors.

(2) No licensed vendor shall sell any impressed Court-fee stamps of the value exceeding five hundred rupees except under a license granted to him in this behalf with the previous sanction of the Provincial Government.

26. (1) The Collector or any officer specified in Schedule A or any other officer empowered by the Provincial Government in this behalf may appoint certain persons to be licensed vendors.

(2) Every license shall be revocable at any time by the Provincial Government or by the authority granting it. Every license shall specify the name of the licensee, the description of stamps which may be sold under the license and the place of vend; and it shall be signed by the authority granting it. The licence shall be in the form in Schedule B.

27. Court-fee stamps shall be sold by *ex-officio* vendors to the public for cash or on presentation by the vendee of the receipted challan from the Imperial Bank of India in those places where there is a branch of the Imperial Bank.

28. Licensed vendors of Court-fee stamps shall receive the following rates of discount :—

Kind of stamps.	Discount in the city of Karachi	Discount at other places
	Per cent Rs. a. p.	Per cent Rs. a. p.
On stamp of the value of Re.1 or less	0 11 0	0 15 0
On stamp of the value for more than Re.1. but less than Rs. 50 each	0 8 4	0 11 3

29. Licensed vendors will be required to pay cash for Court-fee stamps purchased by them. No discount shall be given on account of the purchase by a vendor of any stamp of Rs. 50 or upwards in value.

NOTE — The rule sanctioned by Government Resolution No. 6463, dated 5th September 1883, for regulating the sale of Impressed Court-fee stamps by licensed vendors does not require that a person who has to pay a court-fee of Rs. 50 or upwards shall obtain all the Impressed stamps or labels necessary to represent the fee from an *ex-officio* vendor or from a stamp vendor holding a special license. And the rule is not transgressed if a person, in a transaction requiring a Court-fee stamps say of the value of Rs. 67-8-0 after having purchased an Impressed paper of the value of Rs. 60 (the highest suitable value at the time obtainable) from the local *ex-officio* vendor uses in order to make up the fee of Rs. 67-8-0 labels which he purchased either then expressly or at any previous time from a licensed stamp vendor. No can it be said that the licensed stamps vendor transgressed the rule if he sold labels to the person for Rs. 7-8-0 knowing that he intended to use them for the above purpose because he was bound to enquire what purpose the labels were to be put to. The rule merely prohibits the sale, by a licensed stamp vendor, of any Impressed Court-fee stamps of the value of Rs. 50 or upwards except under a special license. (G.R. No. 2821, dated 14th April 1886).

30. Every licensed vendor shall have at all times posted in a conspicuous position outside his place of vend, a signboard bearing the name of the vendor with the words "Licensed vendor of Court-fee stamps" in English and in the vernacular of the district. He shall also have in the place of vend the Acts, of the legislature and the schedules referring to the stamps sold by him, together with these rules in English and the said vernacular, so placed that they can readily be seen and read by purchasers.

31. (1) In case of court-fee adhesive stamps every *ex-officio* or licensed vendor shall write with his own hand in the blank space provided for in the body of the stamp the name of the purchaser, the date of sale and his signature.

Provided that *ex-officio* vendors at the Central Stamp Office may not write the names of purchasers on such stamps.

(2) In the case of Court-fee impressed stamp, every *ex-officio* or licensed vendor shall write on the back of every such stamps which he sells, the date and sale and name of the purchaser, and the value of stamp in full words and his own ordinary signature.

NOTE — It is observed that Court-fee Impressed stamps are endorsed by the vendors on the front of the stamps just below the impressed stamp instead of at the back as required rule 48(2) of the Rules of Bombay Stamps Supply and Sale Rules, 1934. This mistake should be corrected immediately. (Letter No. 521, dated 26th March 1936, from the Superintendent of Stamps, Karachi, to all Treasury Officers in Sind)

(3) He shall at the same time make corresponding entries in respect of Court-fee adhesive and impressed stamp in a register to be kept by him on the form prescribed in rule 37. No such vendor shall knowingly make a false endorsement on the stamps sold or a false entry in his register.

32. Every licensed vendor of Court-fee stamps shall, without delay delivery any stamps which he has in his possession for sale on demand by any person tendering the price thereof.

33. No *ex-officio* or licensed vendor shall sell any stamps the use of which has been ordered by a competent authority to be discontinued. On returning such stamps to the Depot within six months from the date of such order of discontinuance he shall be entitled to receive back the value thereof, less any discount which may have been allowed.

34. Every vendor shall keep and render such accounts as may be prescribed by the Provincial Government and shall allow the Collector or any officer duly authorised by such Collector or by the Provincial Government at any time to inspect such account and the Register which he is required to keep under rule 37 and to examine the stock of stamps in his possession.

35. (1) Every vendor —

- (a) shall on demand made at any time by the Collector or other officer duly authorised by the Provincial Government, and
- (b) may —
 - (i) on application for leave to do so, or
 - (ii) on resigning his license,deliver up all stamps remaining in his possession.

(2) Payment of the value of stamps which have been paid for by a vendor and delivered up, shall be made subject to deductions as follows:-

- (a) A deduction of one anna in the rupee or a fraction of a-rupee of the full value of all stamps delivered up in the following circumstances, viz :-
 - (i) on resignation by the vendor of his license;
 - (ii) on revocation of the license for any fault on the part of the licensed vendor;
 - (iii) on application by the licensed vendor for leave to return any stamps in his possession.
- (b) A deduction only of the discount, if any, allowed on purchase by the vendor on stamps delivered up in the following circumstances:-
 - (i) on the expiration of the license;
 - (ii) on the revocation of the license for any cause other than a fault on the part of the licensee;
 - (iii) on the death of the licensed stamp vendor :

Provided that application for refund of the value of stamps delivered up under this rule shall ordinarily be entertained by the officers mentioned in Schedule A within six months of the date of the resignation or death of the licensed vendor or the revocation of the licence but in special cases, the Collector or the Superintendent of Stamps, Karachi, may accept an application made within one year of such date.

NOTE — Vide note under rule 21.

36. A licensed vendor shall be permitted to exchange any stamps which are in the opinion of the Collector or an officer specified in Schedule A or other officer duly authorised by the Provincial Government in this behalf fit for use but for which there is no immediate demand, for other stamps of a like aggregate value.

NOTE to rules 35 and 36.-

No Court-fee adhesive stamp shall be received back into store, unless in cases where the value of each label is not less than Rs. 5, there are at least two such labels which have never been detached from each other, and in case where the value of each label is less than Rs. 5, unless there are at least four such labels which have never been detached from each other. Permission may be given to dispose of the detached labels on which no refund is admissible.

This shall not be applicable to Court-fee stamps of Rs. 10 and Rs. 15 and Rs. 20 denomination.

37. The register required to be kept under rule 31 shall be in the form in Schedule D.

38. Court-fees stamps of one anna, two annas and eight annas may be issued for sale to Revenue Officers when on tour. The stamps so issued should be considered as a portion of the stock of the Treasury (local or branch depot) from which they are taken and should be represented there by the receipt of the Revenue Officer until they are returned or accounted for.

A separate receipt in the form in Schedule F should be filled in and signed for each denomination of stamps so issued to a Revenue Officer. The receipt on being received in the Treasury should be placed among the stock of stamps from which the supply acknowledged is withdrawn.

SCHEDULE A.

(RULES 6, 21, 22, 26, 35 AND 36).

Officers empowered to appoint, grant leave, and sanction refund or exchange of non-judicial and Court-fee stamps under rules 6, 21, 22, 26, 35 and 36.

Designation of Officer	Jurisdiction
The Assistant Superintendent of Stamps, Karachi. The Assistant and Deputy Collectors incharge of Sub-Divisions or Talukas.	Within the Municipal and Cantonment limits of Karachi. Within their jurisdiction.
The Huzur Mukhtiarkars The Mukhtiarkars	At District Head Quarter Towns, Within their jurisdiction and in the case of refund or exchange when the value of the stamps does not exceed Rs. 50.

SCHEDULE B.

[RULES 8 AND 26 (2).]

LICENSE NO:

GRANTED UNDER THE STAMP ACT, 1899,
AND COURT-FEES ACT, 1870.

Karachi 199

To,

You are hereby authorised to sell stamps of the following descriptions (that is to say) :-

- (1) Adhesive stamps (Foreign Bill, Insurance and S. Transfer).
- (2) Stamped papers (Hundi and Non-Judicial upto Rs. 2,000).
- (3) Court-fee adhesive and Impressed (upto Rs. 500) stamps.
- (4) All-Indian Revenue stamps of 1/2 anna, 1 anna, 2-annas and 4 annas.

at _____ in the _____

subject to the provisions of the Stamp Act, 1899, and the Court Fees Act, 1870, and the rules from time to time, in force there-under and if you disobey any rule made under section 74 of the Stamp Act, 1899, you will be liable to be dealt with under section 69 of the said Act.

COLLECTOR [OR OTHER OFFICER EMPOWERED UNDER RULES 6 AND 26 (1)]

SCHEDULE B-I. [RULE 13 (2)]

FORM OF LICENSE UNDER RULE (13) (1)

To,

Authority is hereby given under rule 13 (1) of the Sindh Stamp Supply and Sale Rules 1940, to the effect that when you sell more than 50 Non-judicial/Hundi stamps of any one description and value on one and same day to one and the same purchaser, the date of sale the name and the residence of the purchaser and the value of each such Non-Judicial/Hundi stamp, instead of being written by you be printed or stamped on each such stamp, and signed under your ordinary signature under rule 12 (1) of the said rules. It may be noted that you are not authorized to have the document printed along with the endorsement.

Date & Place

Suprintendent stamps, Karachi
Collector of the district

(D/7)

SCHEDULE C.
(RULE 10)
RATES OF DISCOUNT TO BE ALLOWED TO LICENSED VENDORS

SCHEDULE—E.

Kind of stamp 1	Discount in the City of Karachi Per cent 2	Discount at other places	
		Where stamps are sold by ex-officio vendors. Per cent 3	Where stamps are not sold by ex-officio vendors. Per cent 4
GENERAL STAMPS	Rs. a. p.	Rs. a. p.	Rs. a. p.
Adhesive Stamps			
On stamps not exceeding in value 8 annas each, in quantities of not less than Rs. 5 in amount.	2 1 4	2 13 0	3 12 0
On stamps exceeding in value 8 annas each, but not exceeding in value Rs. 5 each, in quantities of not less than Rs. 50 in amount.	1 0 8	1 6 6	1 16 0
On stamps exceeding in value Rs. 5 each, but not exceeding in value Rs. 50 each, in quantities of not less than Rs. 100 in amount	0 11 0	0 15 0	0 15 0
Impressed Stamps			
on Stamps embossed or engraved on stamped paper including such stamps bearing the word "Hundi".	2 1 4	2 13 0	3 12 0

SCHEDULE D.
(SEE RULES 12 AND 37)
FORM OF REGISTER

Date	Serial No.	Descriptions of Stamps	Value of Stamps	Name of Purchaser	Residence of Purchaser	Signature or left thumb mark of the purchaser or his agent.

NOTE. — Thumb-impression should not be obtained in case of adhesive stamps and court-fee Impressed Stamps.

SCHEDULE — E

(SEE RULE 14)

INSTRUCTIONS TO VENDORS IN CONNECTION WITH THE TAKING OF THE THUMB IMPRESSIONS OF PURCHASERS OF STAMPED PAPERS.

1. Every purchaser of stamp embossed or engraved on stamped paper should be invited to affix the rolled impression of the ball of his left thumb on the stamp itself below the vendor's endorsement of the sale, in the case of Hundi stamped paper, on the reverse of the top and in the case of other stamps, on the face of the stamp and also opposite the sale entry in the Vendor's sale register.

Provisio — No impression should be taken in the following cases :-

- (a) When the purchaser is literate and is personally known to the stamp vendor.
- (b) When the purchaser is a person of position regarding whose identification there can be no doubt or room for suspicion.

NOTE — Pardanashin ladies also should in all cases be invited to affix the impression of their thumb mark.

2. If a purchaser has lost his left thumb or if his left thumb is so deformed or diseased that he cannot use it the impression of the ball of his right thumb or of any finger may be taken instead. In such cases a note should be made below the impression stating which finger of the left hand, or thumb or finger of the right hand, has been used in making it and explaining why the impression of the left thumb was not taken. The fingers of the hand should be described (commencing with that next the thumb) as the first or forefinger, the second or middle finger, the third or ring finger, and the fourth or little finger.

3. In the case of the purchasers at the Central Stamp Office, Karachi, when the purchaser is recognised as a representative of, or is a peon, bringing a written order from, a public body or known firm, it will be sufficient if the representative's or peon's thumb mark is taken in the register and it will not be necessary to take it on the stamps. When the purchaser is not so known, his impression should be taken both in the register and on the stamp.

4. *Ex-officio* vendors will be supplied by the Stationery Department on indent with one or two tin plates, a roller and printing ink. A drop or two of printing ink should be put on the plate and by means of the roller and with the aid of a drop or two of kerosene oil it should be spread over the plate evenly. The layer of ink should not be so thick as not to allow the colour of the plate to show through it. The purchaser's left hand should be taken and the ball of the thumb after being wiped should be laid on the inked plate and rolled from side to side (not rubbed) and pressed gently but firmly with the operator's own hand until sufficiently inked, and the inked thumb should then be placed and lightly and carefully rolled on the paper on which the impression is to be taken in such a way that the pattern of the whole ball of the thumb from side to side is clearly impressed on it. The thumb should be inked afresh for each impression. It must be specially borne in mind that any reserve movement either at the time of applying or removing the thumb will cause a smudge and spoil the impression.

5. The affixing of a thumb impression should be carried out under the immediate personal supervision of the vendor, who should affix his initials against each impression.

6. The roller must, when not in use, be hung up by the handle the barrel not touching anything and kept in cool place. In the morning following the day on which the roller has been used it should be cleaned by being first washed in water with washing soda dissolved in the latter and finally by being washed in water alone.

SCHEDULE - F

(SEE RULE 38)

FORM OF RECEIPT

Receipt for stamps issued to Revenue officer

Received from the Treasury Officer
mentioned supply of stamps under rule 38:-

the under

Number	Description	Denomination Value

Dated 194

Signature and designation of Receiving Officers.

(G.R., R. D., N.R., 1938 -59-14, H.(a), dated 8th June 1940.)

**RULES REGARDING
DISPOSAL OF SPOILT, CANCELLED AND
UNSERVICEABLE STAMPS**

Spoilt, cancelled and unserviceable non-postal stamps fall into the following four categories :-

- (a) Stamps which are spoiled or are missused or are not required for use and for which an allowance has been made by the Collector under —
- (1) Chapter V of the Stamp Act, 1899 (in respect of General Stamps).
 - (2) Government Resolutions, Revenue Department, Nos. 819, dated the 6th February 1888, and 4467, dated the 16th July 1900 (in respect of the refund of Court-fee Stamps).
 - (3) Rule 7 of the rules regulating the renewal of Court-fee Stamps issued under Government Resolution, Revenue Department No. R-1938-59-14-H. (a) dated 20th December 1939.
 - (4) Rules 10 and 11 of the rules under the Bombay Entertainment Duty Stamps issued under the Government of Bombay, Revenue Department, notification No. 4345-E/III, dated 25th January 1923.
- (b) Stamps falling under (a) above, in respect of which an application was made for the payment of an allowance but for which no refund or exchange was taken within one year from the date of the Collector's order.
- (c) Stamps which are, through any cause, rendered unfit for issue from a local or branch depot at any time after receipt.
- (d) Stamps which immediately on receipt at a local or branch depot are found unfit for issue due to faulty manufacture.

NOTE — 'Faulty manufacture' includes defective printing, defective paper, insufficient gumming, bad perforation and cutting.

2. Stamps falling under categories (a) to (c) in rule 1 above should be sent for destruction to the Superintendent by the Treasury Officers as shown below:-

- (i) Those falling under rule 1 (a) monthly, with a refund schedule.
- (ii) Those under rule 1 (b) (c): Once every quarter, with a forwarding letter, stating reasons.

The stamps falling under rule 1 (d) should be returned as soon as they are received to the Controller.

NOTE — Necessary entries on account of stamps falling under rule 1 (c) and (d) should be made in the Memorandum.

3. Stamps falling under categories (a) to (c) of rule 1 at the Central Stamp Office, Karachi, shall be burnt once every month in the presence of the Assistant Superintendent of Stamps. The stamps sent by the Treasury Officers under rule 2 shall, on receipt in the office of the Assistant Superintendent, be first examined with a view to ascertain whether refund or exchange has been allowed according to the rules, whether the stamps are actually spoilt or unserviceable (if any stamps are found to be serviceable they should be returned), they shall then be entered in the register of spoilt, cancelled and unserviceable stamps and destroyed by being torn into pieces and burnt in the presence of the Assistant Superintendent of Stamps, who should furnish to the officer from whom the stamps have been received, a certificate in the Form No. 6 shown in the appendix.

FORM NO. VI
(Referred to in rule 3)

STAMP DEPARTMENT
CENTRAL STAMP OFFICE

DESTRUCTION CERTIFICATE

No. of 199

Karachi, 199

RECEIVED from _____ the undermentioned stamps as per his Letter No. _____ dated, _____
Schedule

Description of Stamps	Denomination	Quantity		Value	Remarks
	Rs.	Sheet	L	Rs.	

(E/2)

Certified that I have destroyed the above noted stamps in face value to Rupees _____

Assistant Superintendent of Stamps, Karachi.

(G. R., R.D., No. R.-1938-59-14-H (a), dated 3rd May 1940)

**RULES REGULATING THE GRANT OF REFUND
AND RENEWAL OF COURT FEE STAMPS,**

(1) REFUNDS.

Resolution in supersession of all existing orders on the subject the Governor General in Council is pleased to authorize the refund of the value of impressed Court-fee stamps and of Court-fee adhesive labels in accordance with the following rules :-

1. (a) When any person is possessed of impressed Court-fee stamps for which he has no immediate use, or which have been spoiled or rendered unfit or useless for the purpose intended, or
- (b) When any person is possessed of two or more (or, in the case of denomination below Rs. 5, four or more) Court-fee adhesive labels which have never been detached from each other and for which he has no immediate use.

Note — Refund should be allowed on single adhesive court fee stamps of the value of Rs. 10, Rs. 15 and Rs. 20, subject to the usual rebate of one anna in the Rupee. (G.R.R.D. No. 7483/24, dated 11th October 1926).

the Collector shall, on application, repay to him the value of such stamps or labels in money, deducting one anna in the rupee, upon such person delivering to the same to be cancelled and proving to the Collector's satisfaction that they were purchased by him with a bonafied intention to use them, that he has paid the full price thereof and that they were so purchased or, in the case of impressed Court-fee stamps, so purchased, spoiled or rendered useless, within the period of six months preceding the date on which they are so delivered. Provided that Local Government may, in special cases, allow refunds when application is made within one year from the date of purchase of the stamps or labels, or, also in the case of impressed Court-fee stamps, within one year from the date on which the stamps were spoiled or rendered useless. The Local Governments may at their discretion delegate this power to any subordinate authority.

2. When a licensed vendor surrenders his license or dies the Collector may, at his discretion, if he considers that the circumstances justify the application, repay to him or his representatives, as the case may be, the value of stamps and labels, not spoiled or rendered unfit for use returned into the Collector's stores, deducting one anna in the rupee; or he may issue stamps and labels of other values in exchange, provided that, in case of adhesive Court-fee labels, their value may not be refunded nor stamps and labels of other values issued in exchange, unless, in cases where the value of each label is not less than Rs. 5, there are at least two such labels which have never been detached from each other and in case where the value of each label is less than Rs. 5 unless there are at least four such labels which have never been detached from each other.

3. When adhesive labels are attached to impressed sheets of Court fee stamps in accordance with the directions contained in Notification by the Government of India in this Department No. 361, dated the 18th April 1883, such labels should be regarded as impressed stamps for the purposes of refund under these rules. (G.O. I No. 132, dated 11th January 1888, vide G.R. 819, dated 6th February 1888).

2. RENEWALS

No. In exercise of the powers conferred by clause (c) of section 27 of the Court Fees Act, 1870 (VII of 1870) and in supersession of the rules published under notification of the Government of Bombay in the Revenue Department No. 142/28, dated the 27th August 1935, at pages 734-735 of Part IV of the *Bombay Government Gazette* of 29th August 1935, the Government of Sindh are pleased to make the following rules regulating the renewal of damaged or spoiled court fee stamps, namely :-

Rules Regulating the Renewal of Damaged or Spoilt Court Fee Stamps.

1. A court-fee stamp shall be deemed to be damaged or spoiled if.-
 - (a) by an accident happening to the same it is rendered spoiled and unfit for use;
 - (b) because of some error in the drawing or copying of any writing upon it, or to which it is affixed, the writing is rendered of no avail;
 - (c) by reason of death or from any other cause, a transaction which is intended to be effected by a writing duly stamped with the proper fee, is not completed and the writing becomes of no avail;
 - (d) the transaction intended by such writing to be effected has been effected by some other instrument on which the proper fee has been paid ;

- (e) from any error or informality in the drawing up or in the signing of any writing on which the proper court-fee stamp has been duly affixed and cancelled by any officer of any Judicial or Magisterial Court, or any public officer duly appointed to perform the same, the writing is returned or rejected by the court or public office to which it was sent or addressed, and the stamp has thereby become unfit for use.

Explanation — When an impressed stamp and an adhesive stamp are used in combination in accordance with any rules for the time being in force and either of them is damaged or spoiled in any manner specified in this rule, the other stamp may also, at the option of the applicant, be deemed to have been damaged or spoiled.

2. An application for the renewal of damaged or spoiled court-fee stamps shall be made
- (a) in the City of Karachi, to the Assistant Superintendent of Stamps, Karachi;
 - (b) in all other headquarter towns, to the Collector, or the Huzur Mukhtarkar, as the case may be; and
 - (c) elsewhere to the Mukhtiarkar or Mahalkari, as the case may be, where the value of the stamp does not exceed Rs. 50 and in any other case to the Assistant Collector or Deputy Collector, as the case may be, in charge of the sub-division or the Collector.
3. Any person desiring to have any stamp which has been damaged or spoiled renewal may make an application for the purpose to the officer specified in rule 2. Such application shall be made within six months from the date on which such stamp was damaged or spoiled. On receipt of such application, the officer, shall, if satisfied that the stamp has been damaged or spoiled, cancel such stamp and supply to the applicant at his option in lieu thereof one or more stamps equal in aggregate value to the damaged or spoiled stamps.
4. Notwithstanding anything contained in rule 3, in the City of Karachi, the Superintendent of Stamps, Karachi, and elsewhere the Collector may, for any special reasons, entertain any application for the renewal of any damaged or spoiled stamp within one year from the date on which such stamp was damaged or spoiled.
5. The Officer, to whom an application is made under rule 3 or 4, may require the applicant to make an oral deposition on oath or affirmation, or to file an affidavit, setting forth the circumstances under which the claim has arisen, and may also, if such officer thinks fit, call for the evidence of witnesses in support of the statement set forth in any such deposition or affidavit.
6. When on application for the renewal of any damaged or spoiled stamp an order is passed sanctioning the renewal or calling for further evidence in support of the application, then if the stamp given in lieu thereof is not taken, or if such further evidence is not furnished, by the applicant within one year from the date of such order, the application shall be struck off.
7. All damaged or spoiled stamps cancelled under rule 3, or in respect of which further evidence is not furnished as required under rule 6 shall be forwarded for destruction, in Sindh to the Superintendent of Stamps, Karachi.

[G.R.R. D. No. R. 1938-59-H (a), dated the 20th December 1939.]

**RULES REGULATING THE REFUND OF THE
VALUE OF COURT FEE STAMPS AFFIXED TO DOCUMENTS UNNECESSARILY
OR IN EXCESS OF LEGAL REQUIREMENTS.**

In supersession of all existing orders on the subject, Government are pleased to prescribe the following *rules regulating the refund of the value of Court-fee Stamps affixed to documents unnecessarily or in excess of legal requirements.*

1. Every officer presiding over a Court or Office and receiving documents liable to stamp duty under the Court Fees Act, VII of 1870, whether written on impressed stamp paper or stamped with Court fee adhesive stamps should, if he finds that the stamps used or affixed to document are unnecessary or in excess of legal requirements, punch them.
2. He should then, if he is of opinion that stamps in excess of the value of Rupees three have been affixed unnecessarily or in excess of legal requirements through bona fide mistake or urgent necessity, issue a certificate under his signature and seal, if any used by him, that the Court Fee Stamps of the value of rupees () affixed to the petition or document in petition or case No. of 194 are unnecessary or in excess of legal requirements and that they have been punched and cancelled and continue affixed on the said document which is filed in the record of the case or correspondence.
3. The certificate so granted shall then be taken with an application within ninety days from the date of certificate, in Karachi to the Assistant Superintendent of Stamps, and elsewhere in Sindh, to the Huzur Mukhtiarkar of the same district who shall grant refund less one anna in the rupee or a fraction of a rupee.
4. The certificate will become null and void after the expiry of the ninety days and refund will not be admissible thereafter.
5. As soon as refund has been allowed, the certificate should be cancelled by the officer granting the refund. The cancelled certificate should be included in the refund schedule for spoilt and damaged stamps sent to the Superintendent of Stamps, Karachi, for destruction in accordance with rule 34 (I) of the Sind Subsidiary Supply, Custody and Sale of Non-Postal Stamps Rules, 1940.

(GRRD No.2112-H(a) dated the 27th May 1940)

APPENDIX-VIII

**THE WEST PUNJAB STAMP INSPECTION AND AUDIT
RULES, 1949**

(Applicable in all Provinces of Pakistan)

In exercise of the powers conferred by section 75 of the Stamp Act, 1899, the Governor of West Punjab is pleased to make the following rules for the inspection of registers, books, records, papers, documents and proceedings as contemplated by section 73 of the said Act :-

1. *Short title and commencement* — (1) These rules may be called the West Punjab Stamp Inspection and Audit Rules, 1949.

(2) These rules shall come into force with immediate effect.

2. *Definitions* — In these rules the references to "the Stamp Act, 1899" and "the Court Fees Act, 1870" wherever occurring mean references to the Acts as adapted for the Dominion of Pakistan.

3. *Appointment of Stamp Auditors* — There shall be appointed a Stamp Auditor for each circle with the jurisdiction and the headquarters as described in Appendix I hereto for the purpose of audit of documents requiring stamp duty which are presented to a public officer or a court of law other than a High Court, and the accounts mentioned in Appendix II hereto.

4. *Controlling Authority* — The Financial Commissioner as the Chief Controlling Authority may alter the territorial limits of a circle or the headquarters of an Auditor.

5. The Auditor shall be under the *general supervision* of the Commissioner of the division in which his circle is situated for the time being and shall in terms of section 73 of the Stamp Act, 1899, be authorised by the Collector of the district concerned in writing in form A. 7, given in Appendix III, to inspect the record for audit.

6. *Tour programme of the Auditor* — (a) The Auditor shall undertake the audit of various districts under his charge by rotation, in accordance with the circle tour programme given in Appendix IV.

(b) The Auditor shall prepare a monthly programme and submit it for approval to the Assistant Secretary to the Financial Commissioners so as to reach him at least two weeks before the expiry of his previous tour programme and after obtaining the approval of his forthcoming visit give due notice to the Collector of the district concerned and the Commissioner of the division.

(c) A copy of the approved tour programme should simultaneously be sent to the Motor Mobile Patrol Inspector concerned.

(d) The Stamp Auditor should observe the approved tour programme strictly and make no departure therefrom without obtaining previous permission from the Assistant Secretary to the Financial Commissioners. All references in this matter should be made through the Collector of the district in which he is operating.

(e) In preparing his tour programme the Auditor should bear in mind that any tendency to make long journeys in one direction will not be allowed except for special reasons.

(f) The Auditor shall spend the least possible time on travelling and the maximum time on actual audit work. He shall visit each district in his charge once a quarter. Normally it should be possible for him to finish the audit work at a District headquarters in about a fortnight and of Sub-Divisional and Tehsil Offices in four or five days. These periods will of course vary according to the quantity of work at each place.

(g) On his visit to the district the Stamp Auditor should complete the audit in every office to the satisfaction of the officer-in-charge, thereof the Collector, as the case may be and on no account should any court or office be left unaudited except for every special reasons which should be reported to the officer concerned and to the Assistant Secretary to the Financial Commissioners.

(h) The Collectors presiding officers of courts and other officers-in-charge of the documents, records or accounts to be audited should have the relevant records arranged before audit of their courts and offices. Such an arrangements is necessary for carrying out the audit smoothly without loss of the Auditor's time.

7. *Scope of audit* - (a) The Auditor shall, on visiting a district, audit the records of all fresh institutions made, documents filed and files pending in the offices etc., mentioned in Appendix II hereto from the date on which the last audit terminated. He shall, in particular see that the stamps used are genuine and have not been removed from any document or file and reused.

Occasional trips by Stamp Auditors in Mobile Patrol lorries. —

(b) The Stamp Auditor should make occasional trips in Motor Mobile Patrol lorries in company with the Motor Mobile Patrol Inspector to gain practical knowledge of work regarding audit and inspection of motor vehicles licensing and registration work. The trips should however, be confined only to journeys which the Auditor would otherwise have to make by rail. The Commissioner of the division should impress upon him the necessity of making these trips as frequently as possible, as such trips are desirable both in the interest of the Auditor's own duties and economy. The Stamp Auditor should submit his reports regarding such trips to the Assistant Secretary to the Financial Commissioners in the same way as the other audit and inspection notes and include them in his monthly report.

8. *Maintenance of register of stamps deficiencies.* — Every person described in section 33 of the Stamp Act and every public officer referred to in section 6 of the Court Fees Act shall maintain a record of stamp deficiencies in Civil Register XVIII (Appendix V). The Collector shall, in addition to the said register maintained by him in respect of his own court, maintain in form S.A. 5 (Appendix VI) a register of documents sent to him under section 38 (2) of the Stamp Act. These registers shall be maintained in respect of all deficiencies whether found in audit or independently.

Note — The presiding officers of court and heads of offices shall be responsible to see that these registers are properly maintained by their staff and any neglect in maintaining these registers will be taken serious notice of.

9. *Checking of registers by the Auditor.* — The Auditor shall examine Civil Register No. XVIII maintained by the Court or officer with a view to seeing that it is properly maintained and the collections are made not only on account of deficiencies detected in audit but also on account of deficiencies detected independently. He shall also examine the register maintained by the Collector in Form S.A. 5.

10. *Deficiencies in stamps to be notified to the Collector* — Once a case has been decided and consigned to the record-room deficiency in court-fees is not recoverable under the existing law. The officers concerned should, therefore, see that plaints, petitions etc. are properly stamped. Personal responsibility should be enforced against the ministerial staff and presiding officers for deficiencies in court-fees as may be brought to light in the general record-rooms. Deficiencies in stamp duty may be brought to the notice of the Collector of the district with a view to action being taken under section 61 of the Stamp Act, 1899.

11. *Help to be rendered to the Auditor by the courts and offices* — The presiding officers of all courts and heads of offices shall give the Auditor access to all records, accounts, etc., and, so far as lies in the power, assist him in the performance of his duties.

12. *Auditor to draw attention of officers as to their powers and duty regarding insufficiently stamped documents.* — In the course of his audit the Auditor shall draw the attention of presiding officers of courts and heads of offices to documents before them which are insufficiently stamped and shall advise them where necessary in relation to their powers and obligations as follows :-

(i) Under the Stamp Act, 1899 :-

- (a) To impound documents under section 33 of the Stamp Act.
- (b) To admit unstamped documents in evidence after compliance with the provisions of section 35.
- (c) To dispose of impounded documents under section 38. The Collector may also ask the Auditor to note on cases coming before him under sections 39 to 43 and also seek any other assistance which he may consider necessary.

(ii) Under the Court Fees Act, 1870 :-

To determine correct fee leviable on any document. The Auditor if necessary will discuss the point at issue with the presiding officer and, if required by him, be present at the discussion in court before orders are passed.

13. *Maintenance of register S.A. 1.* — (1) A register in form S.A. 1 (Appendix VII) for each district will be maintained in the Stamp Branch of the Financial Commissioners' office in which each deficiency in stamp duty and court-fee discovered by the Auditor will be recorded. The recoveries will, however, be made by courts and Collectors at the instance of the Auditor.

(2) Reminders to Courts and Collectors for submission of recovery statements will issue at regular intervals from the Stamp Branch of the Financial Commissioner's office.

14. *Office to whom copy of the audit note is to be sent* — (1) After discussion of his preliminary notes with the

presiding officer or head of office, the Auditor shall prepare a manuscript audit note and shall within four days from the date of completion of audit send it to the Superintendent, Stamp Branch, in the office of the Financial Commissioners. The Superintendent will get it typed and forward to the presiding officer or the head of the office, as the case may be, and to the Collector of the district concerned. This note will include a statement in form S.A. 3 of deficiencies discovered, and columns 1 and 6 to 15 of the statement will be left blank. The Stamp Auditor should write his manuscript audit note in clear, bold and legible hand and also avoid using unapproved abbreviations.

(2) Copies of audit notes on revenue courts and offices, including Sub-Registrars, should also be sent to the Commissioner of the division. In the case of civil courts where the audit discloses some serious defects, a copy of the audit note should be sent to the District Judge through the Collector of the district.

15. *Action to be taken on audit note— Form S.A. 3.*— (1) The presiding officer of the court or the head of the office shall transfer column 2 to 5 of form S.A. 3 (Appendix IX) to Civil Register No. XVIII (Appendix V) and proceed to take necessary action on the note. In cases where he does not agree with the Auditor or where he considers it necessary to hear the party concerned before passing orders, he shall, where possible discuss the matter with the Auditor. The presiding officer or head of the office will return the form S.A. 3 to the Auditor after completing columns 1 and 6 to 8, and noting in column 15, the cases, if any, in which he disagrees with the Auditor but without necessarily completing columns 9 — 14. The Auditor after completing his Register S.A. 1 will return the form to the court or the office concerned and report to the Collector any case in which the presiding officer or head of the office has been unable to take the advice of the Auditor. The Collector if he thinks fit and after consulting the Financial Commissioner, if necessary, will take action under section 61 of the Stamp Act, 1899, or, in the case of the Court-fees Act, 1870, draw the attention of the appellate court, or take other appropriate action in the case of other offices.

(2) The Collector should impress upon all the subordinate revenue courts, Sub-Registrars and Magistrates, in his district, and the District Judge upon all the civil courts, under his control, the necessity of punctual submission of recovery statements in form S.A. 3.

17. *Posting of recoveries in proper register and writing off irrecoverable items.* — (1) All courts and offices shall, in addition to the account of recoveries effected by them in Civil Register No. XVIII, show recoveries effected at the instance of the Stamp Auditor in columns 10 and 11 of the said Register and also in form S.A. 3. Irrecoverable loss of stamp revenue is required to be written off under serial No. 3, paragraph 20-17, page 320 of the Punjab Financial Rules. Volume I and shall be entered in columns 18 and 19 of Register No. XVIII and columns 11 and 12 of form S.A. 3. They shall also send to the Auditor at the end of each month, their copies of form S.A. 3, so that he may complete his returns of recoveries made at his instance from time to time and of irrecoverable items written off, after which he will return the form to the court or office concerned. If the court or office has sent a document to the Collector under section 38 of the Stamp Act, 1899, it will have no concern with columns 9 to 12.

(2) The following officers have been empowered to sanction the writing off of the irrecoverable loss of stamp revenue to the extent noted against each :-

- (1) Deputy Commissioner ... Up to a limit of Rs. 5 in each individual case.
- (2) Commissioner ... Up to a limit of Rs. 50 in each individual case.
- (3) Financial Commissioner ... Up to a limit of Rs. 250 in each individual case.

Provided the loss does not disclose —

- (i) a defect of system the amendment of which requires the orders of higher authority;
- (ii) serious negligence on the part of some Government servant or servants which might possibly call for disciplinary action requiring the orders of higher authority.

(3) During the course of his audit, the Stamp Auditor should collect as many statements in form S.A. 3 as possible and where the recoveries are still pending, impress upon the officers concerned to have them expedited. The extent of recoveries made out of the total deficiencies pointed out and the penalty suggested by him should invariably be mentioned by the Stamp Auditor in his audit and inspection notes.

(4) The presiding officers of courts and offices shall take a personal interest in the regular submission of recovery statements pertaining to their courts and offices each month.

17. *Action to be taken by the auditor re: pauper suits — Register S.A. 8.*— Special attention shall be paid by the Auditor to pauper suits and all their stages carefully examined. After their disposal, the Auditor shall draw the attention of the Collector of the district to the court-fees realizable, if any, and shall suggest to him what steps will ensure early realization. When a court fails to pass an order for costs, the Auditor shall advise the Collector to move the court concerned under Order XXXIII, rule 12, Civil Procedure Code. The Auditor shall keep a register of all such cases in form S.A. 8 contained in Appendix X.

Notes — The audit notes of pauper suits accounts should always contain the total number of cases in which recoveries have to be effected.

18. *Auditor to check applications for refund of value of stamps and register of stamp vendors.*— (1) The Auditor shall, at the time of his visit to a district, inspect the applications for grant of refund of the value or renewal of spoilt and unused court-fee and non-judicial stamps and the register maintained by the Refund Clerk and report the result of his inspection to the Collector of the district.

(2) The Auditor shall also inspect the registers of stamp vendors and check their stock of stamps.

Defect in the vend arrangements to be brought to the notice of Collector

19. The Auditor shall bring to the notice of the Collector defect in the vend arrangements and make suggestions, where necessary, for improvement of the arrangements.

20. *Submission of monthly reports by the Auditor in form S.A. 4.*— (1) The Auditor shall submit monthly reports by districts to the Assistant Secretary to the Financial Commissioners through the Collector and Commissioner. In these reports the Auditor should give details of the period spent, and of the work done on each date. He should also state the total number of cases examined by him and note separately for each district of the total amount of deficient stamp duty discovered and recovered at his instance under the following heads :-

1. plaints;
2. applications;
3. copies;
4. process fees;
5. objection petitions;
6. powers-of-attorney;
7. security bonds;
8. miscellaneous petitions in the English record; and
9. documents filed by the parties.

(2) The report shall be accompanied by a statement in form S.A. 4 (Appendix VIII) showing district totals, and also by copies of the audit notes on the courts and offices audited.

Note (i) — The monthly report (in triplicate) with a statement in form S.A. 4, recovery statements, and copies of the relevant audit and inspection notes, shall be submitted to the Collector of the district for transmission to the Assistant Secretary to the Financial Commissioners, through the Commissioner of the division.

Note (ii)— The Stamp Auditor should submit the monthly report to the Collector of the district concerned on or about the 18th of the month following that to which the report relates. Similarly the Collector will submit to the Commissioner of the division on or about the 24th of the month and the Commissioner to the Assistant Secretary to the Financial Commissioners on or about the 30th of that month. The Commissioner should see that the dates so prescribed are strictly enforced and no undue delay is allowed in the submission or transmission of the monthly reports.

21. *Certificate in form S.A. 6 to be attached to travelling allowance bills by the Auditor*— In support of his claims for travelling allowance, the Auditor shall obtain from presiding officers of courts and heads of offices, as the case may be, a certificate in form S.A. 6 (Appendix XI) duly signed and sealed, and attach it to his monthly travelling allowance bill.

22. *Supply of stationery to Stamps Auditors*— The Deputy Commissioners will supply the Stamp Auditor with such stationery as he may require when he visits the districts.

23. *Contents of Audit Note* — In his audit and inspection notes the Stamp Auditor should invariably mention (a) name of the presiding officer of the court or the head of the office and of the reader and ahmad, (b) period of detailed audit, (c) date of audit, (d) number of cases examined, and (e) result of inspection under the following heads :-

- (i) Deficiencies —
- (a) Plaints or appeals;
 - (b) Applications;
 - (c) Copies;
 - (d) Process fees;
 - (e) Powers-of-attorney;
 - (f) Inspection fees;
 - (g) Penal documents.
- (ii) Punching and cancellation of court-fee labels.
- (iii) Civil Register No. XVIII (Appendix V).
- (iv) Inspection Register in form R-22.
- (v) Action taken on the last audit note.
- (vi) Recoveries made by court or office since last audit.
- (vii) General

24. *Stamp Auditor to mention the name of the place of issue of correspondence. — The Stamp Auditor should invariably write below his signature the place of issue of the correspondence.*

APPENDICES

APPENDIX I
(Referred to in rule 3)

LIST OF THE DISTRICTS WITHIN THE JURISDICTION OF EACH STAMP AUDITOR AND HIS HEADQUARTERS

S. No.	Name of Circle/Division	Division / Districts Forming Jurisdiction	Headquarters
1.	Senior Inspector of Stamps	Karachi Division	Karachi (S)
1-A.	Inspector of Stamps Karachi (East) Circle.	Karachi East	Karachi (E)
1-B.	Inspector of Stamps, Karachi (West) Circle	Karachi West	Karachi (W)
1-C.	Inspector of Stamps, Karachi (Central) Circle.	Karachi Central	Karachi (C)
2.	Inspector of Stamps, Hyderabad Circle.	Hyderabad Division	Hyderabad
3.	Inspector of Stamps, Sukkur Circle	Sukkur Division	Sukkur
4.	Inspector of Stamps, Larkana Larkana Circle.	Larkana Division	Larkana

Note: The Stamp Auditors have been re-designated as Inspectors of Stamps.

(H/5)

APPENDICES

APPENDIX II

(Referred to in rules 3 and 7)

LIST OF COURTS AND OFFICES AND OTHER ACCOUNTS SUBJECT TO STAMP AUDIT

1. Civil Courts and connected offices.
2. Revenue Courts and connected offices.
3. Criminal Courts and connected offices.
4. Accounts of Stamp Vendors.
5. Motor Licensing and Taxation Accounts.
6. Arms Licensing Accounts.
7. Pauper Suits Accounts.
8. Stamp Refund Accounts.
9. Copying Agencies Accounts under the control of the Financial Commissioners, Commissioners, Deputy Commissioners and District and Sessions Judges.
10. Registration of money Lenders Accounts.
11. Official Receiver's Stamp Accounts.
12. Marketing Committee's Accounts.
13. Registration Offices.
14. Record Rooms.
15. All other Government offices not included above.

APPENDIX III

(Referred to in rule 5)

FORM S.A. 7

In exercise of the powers conferred by section 73 of the Stamp Act, 1899, I, _____,

Collector _____ District, hereby authorise

Mr. _____, Inspector of Stamps, _____ Division/Circle

to inspect records, registers, books, papers, documents and proceedings of all public offices in the _____

District, as required by rule 5 of the West Punjab Stamp Inspection and Audit Rules, 1949, as made applicable to the Province of Sindh.

Dated _____.

Collector,

_____ District.

Court Seal

APPENDIX IV

(Referred to in rule 6)

Note : Appendix IV not applicable in Sindh.

APPENDIX V

(Referred to in rules 8 and 9)

Register of stamp deficiencies to be maintained by court and offices

District _____

Court or Office _____

Serial No.	No. of suit	Brief Particulars of suit or case			Description of documents in which deficiency in stamp duty or court-fees has been discovered.	If discovered in audit, state date and serial No. in form S. A. 3 (See Rules and Orders, Volume IV, Chapter 4-F)	Duty recoverable under section 35 Stamp Act, 1899, or under the Court Fees Act	Penalty imposed under section 35 Stamp Act	Amount Recovered		
		Name of plaintiff	Name of defendant	Nature and amount of claim					Duty	Penalty	Total
1	2	3	4	5	6	7	8	9	10	11	12
							Rs. P.	Rs. P.	Rs. P.	Rs. P.	Rs. P.

Name of party paying duty and penalty	Date of Payment		Signature of the presiding Officer of Court or Collector	If sent to Collector under section 38 of Stamp Act, state exact date	Amount written off as irrecoverable by competent authority		Balance		Remarks (Brief reasons for levying the duty and penalty)
	In court	Into the treasury and No. of Treasury receipt			Duty	Penalty	Duty	Penalty	
13	14	15	16	17	18	19	20	21	22
					Rs. P.	Rs. P.	Rs. P.	Rs. P.	

APPENDIX VI

(Referred to in rules 8 and 9)

FORM S.A. 5

District _____

Register of deficiencies in stamp duty dealt with by the Collector

Serial No.	Brief Particulars of suit or case			Section under which sent	Description of document impounded and nature of deficiency	Name and address of the person presenting the document.	If discovered in audit, state date and serial No. in Register S. A. 1	Demand	
	Name of plaintiff or applicant.	Name of defendant or respondent	Court of office from which sent					Duty	penalty
1	2	3	4	5	6	7	8	9	10

Recovered			Written off as irrecoverable			Balance		REMARKS
Duty	Penalty	Name of treasury or sub-treasury with No. and date of treasury receipt	Duty	Penalty	Authority	Duty	Penalty	
11	12	13	14	15	16	17	18	19
Rs. P.	Rs. P.		Rs. P.	Rs. P.		Rs. P.	Rs. p.	

APPENDIX VII
(Referred to in rules 13)
FORM S.A. 1

District _____

Register of stamp deficiencies discovered by the Auditor (Auditor's register)

Serial No.	Court or office and name of Presiding officer	No. of suit	Brief particulars of suit or case	Deficiency in stamp duty or court-fees discovered	State if case has been sent to Collector under section 38 of Stamp Act
1	2	3	4	5	6

Penalty, if any, under section 35 of the Stamp Act	By Court or office		By Collector				REMARKS
	Amount recovered at the instance of the Auditor		Amount recovered at the instance of the Auditor		Amount written off as irrecoverable by competent authority		
	Duty	Penalty under section 35 of Stamp Act	Duty	Penalty under section 35 or 40 of Stamp Act	Duty	Penalty	
7	8	9	10	11	12	13	14

APPENDIX VIII
(Referred to in rules 20)
FORM S.A. 4

Statement showing deficiencies in stamp duty and court-fees disclosed by _____ Stamp Auditor and recoveries made by courts and Collectors of the _____ districts during the month of _____ 19

(To be submitted by the auditors to the Financial Commissioners monthly)

District	Deficiencies in court-fees and stamp duty discovered during the month		Deficiencies in court-fees and stamp duty discovered during the previous month		Total of columns		Recoveries made by courts and collectors at the instance of the auditor during the month	
	Duty	Penalty	Duty	Penalty	2 and 4	3 and 5	Duty	Penalty
					Duty	Penalty		
1	2	3	4	5	6	7	8	9

Recoveries made during previous months		Amount written off as irrecoverable during the month		Amount written off as irrecoverable during the month		Total of columns		Balance		REMARKS
Duty	Penalty	Duty	Penalty	Duty	Penalty	8, 10, 12 and 14	9, 11, 13 and 15	Columns 6-16	Columns 7-17	
						Duty	Penalty	Duty	Penalty	
10	11	12	13	14	15	16	17	18	19	20

APPENDIX IX

Note of deficiencies discovered in the audit to be submitted to court or office concerned with his inspection note by the Auditor

Districts _____

Court or office _____

No. of suit	Serial No. in Civil Register No. XVIII	Brief particulars of suit or case	Deficiency in stamp duty or court-fees	Serial No. in Register S.A.I.	State if sent to Collector under section 33 of Stamp Act	Duty recoverable under section 35 of stamp Act or under the Court Fees Act	Penalty imposed under section 35 of Stamp Act
1	2	3	4	5	6	7	8

Recovered		Written off as Irrecoverable by competent Authority		Balance		REMARKS
Duty	Penalty	Duty	Penalty	Duty (Columns 7, 9 and 11)	Panalty (Columns 8, 10 and 12)	
9	10	11	12	13	14	