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force, and consequently the order made by the District Magistrate in the present case cannot stand.

I would, therefore, allow the application and quash the externment order that has been passed against the petitioner.

Petition dismissed.

Agent for the petitioner: *Ganpat Rai.*
Agent for the opposite party : *P. A. Mehta.*

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May 27

CHIEF CONTROLLING REVENUE AUTHORITY
AND
SUPERINTENDENT OF STAMPS
v.
MAHARASHTRA SUGAR MILLS LTD.

[SHRI HARILAL KANIA C. J., SAIYID FAZL ALI, PATANJALI SASTRI, MEHR CHAND MAHAJAN and MUKHERJEA J J.]

Indian Stamp Act (II of 1899), *ss.* 57, 59 (2)—*Reference to High Court—Nature of power .to refer—Duty to refer on request of party affected—Order directing Chief Controlling Authority to refer—Whether "matter concerning revenues"—Jurisdiction of Original Side of High Court—Government of India Act,* 1935, *s.* 266 (1).

The power conferred on the Chief Revenue Authority by Sec. 57 of the Indian Stamp Act, to make a reference to the High Court is not intended for the benefit of the Revenue Authority alone, but ensures, also for the benefit of the party affected by the assessment. It is therefore coupled with a duty to make a reference when he is called upon to do so by the party affected, and if he declines to do so, it is within the power of the Court to direct him to discharge that duty and make a reference to the Court.

Alcock Ashdown & Co., Ltd. v. *Chief Revenue Authority* (50 I.A. 227) and *Julius* v. *Bishop of Oxford* (5 A.C. 214) applied.

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The order of a High Court to a revenue officer to do his duty would not be the exercise of original jurisdiction in a matter concerning the revenue within the meaning of Sec. 226 of the Government of India Act, 1935, and the jurisdiction of the High Court to direct the Chief Controlling Revenue Authority to make a reference under Sec. 57 of the Stamp Act was not barred by Sec. 226 of the Government of India Act.

The fact that the proceedings had passed beyond the stage of enforcing payment does not prevent the High Court from directing the Revenue Authority to make a reference, for, if the opinion of the Court on the reference is against the Revenue Authority he will have to refund whatever has been recovered in excess, under Sec. 59 (2) of the Act.

APPEAL from the High Court of Judicature at Bombay : Civil Appeal No. XII of 1950.

This was an appeal from a judgment and order of the High Court of Bombay (Chagla, Acting C. J. and Bhagwati J.) dated 2nd September, 1947, in Appeal No. 60 of 1946. The facts are fully set out in the judgment.

C. K. Daphtary, Advocate-General of Bombay (*M. M. Desai,* with him) for the appellant.

M. C. Setalvad, Attorney-General for India (*S.S. Ragnekar,* with him) for the respondent.

1950. May 27. The judgment of the Court was delivered by

Kania C. J.

KANIA C. J.—This is an appeal from a judgment of the High Court at Bombay and it relates to the jurisdiction of the Court to direct the Chief Controlling Revenue Authority and the Superintendent of Stamps at Bombay to state a case for the opinion of the Court under section 57 of the Stamp Act.

The respondent company, for its business, borrowed money from the Central Bank of India Ltd. at Bombay. In order to secure the loan a document was executed on the 22nd of March, 1945, with a stamp of Rs. 16-8-0, on the footing that it was a deed of hypothecation without possession of the goods. When the deed was sent to the Sub-Registrar for registration he impounded the same and sent it to the Stamp Office. The Assistant Superintendent of Stamps

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wrote to the respondent that the document was a mortgage with possession, chargeable with duty under article 40 (a) of the Schedule and inquired why it was not duly stamped before execution. The respondent's solicitors in their reply contended that the document was not, and was never intended by the parties to be, a mortgage with possession. They pointed out that no possession of the property had been given or was intended to be given, except in certain contingencies and therefore the document was properly stamped. In reply the Assistant Superintendent intimated that the document was chargeable with duty of Rs. 56,250 and a penalty of Rs. 5,000 had been imposed. The respondents were asked to pay the amount forthwith. On the 27th July, 1945, the respondent filed a suit against the Central Bank contending that the document was not a mortgage with possession. It was alleged that since a doubt had arisen as to whether the document gave effect to the common intention of the parties the Court's directions were sought for and if the Court found that the document as framed did not give effect to the said common intention of the parties the instrument may be rectified. On 9th August, 1945, the respondent's solicitors informed the Assistant Superintendent that such a suit had been filed and requested that the demand for payment of stamp duty and penalty may not be pressed under the circumstances. In the further correspondence, on behalf of the appellant, the demand was reiterated and resort to the coercive procedure of section 48 of the Stamp Act was threatened. The Collector thereafter sent a letter to the respondents on the 17th January, 1946, demanding payment. On the 25th of January, 1946, the suit filed by the respondent was disposed of by the Court and the rectification as prayed was ordered. The respondent's solicitors immediately intimated the result of the suit to the Assistant Superintendent and sent a copy of the deed showing the rectifications made in the original document. A similar letter was also sent to the Collector of Bombay. On the 1st February, 1946, the respondent's solicitors enquired of

the Assistant Superintendent of Stamps whether he was agreeable to make a reference under section 56 (2) to the appellant, as the question of liability to pay the stamp duty and penalty involved important questions of law. A petition on behalf of the respondent to the appellant was also filed on the 5th of February in which it was prayed that either the order of the Assistant Superintendent of Stamps be rescinded or in the alternative a case may be referred under section 57 of the Stamp Act for the opinion of the High Court. This petition was rejected on the 4th July, 1946. The respondent thereupon filed a petition in the High Court on the 19th of July, 1946, praying that a writ of *certiorari* way be issued against the appellant, or an order may be made against him under section 45 of the Specific Relief Act, to cancel the levy of the stamp duty and penalty as claimed on behalf of the appellant or in the alternative the appellant may be ordered under section 57 of the Stamp Act to refer the matter to the High Court for its opinion. The matter came for hearing before Mr. Justice Blagden who did not grant the first relief but directed the appellant to state a case under section 57 of the Stamp Act to the Court for its opinion. The appellant filed an appeal but failed. He has now come in appeal to this Court.

Two points have been urged on behalf of the appellant. The first is whether under section 57 of the Stamp Act there is an obligation on the appellant to state a case, and if not whether the High Court had jurisdiction to give a direction to that effect. The second point is whether having regard to the terms of section 226 (1) of the Government of India Act, 1935, the High Court had jurisdiction to order the appellant to state the case, it being a matter relating to the revenue. Under this head it is also argued that the matter had proceeded beyond the stage of assessment and had reached the stage of recovery. Therefore, the High Court of Bombay had no jurisdiction to pass the order it did. The material part of section 57 of the Stamp Act runs as follows:

"57. (1) The Chief Controlling Revenue-authority

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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—

* * * *

(b) if it arises in the Province of Bombay, to the High Court at Bombay;....."

Section 226 (1) of the Government of India Act, 1935, runs as follows :—

"226. (1) Until otherwise provided by Act of the appropriate legislature, no High Court shall have any original jurisdiction in any matter concerning the revenue, or concerning any act ordered or done in the collection thereof according to the usage and practice of the country or the law for the time being in force."

On behalf of the appellant it is contended that the very words of section 57 of the Stamp Act show that it is a power given to the appellant to state a case and it is not an obligation. The section is framed and worded only to give the benefit thereof to the appellant and it is not for the benefit of any other party. The word "may" used in the section was deliberately used for that purpose. It was pointed out that under section 56 (2) of the Stamp Act if the Collector felt doubt as to the amount of duty with which the instrument was chargeable "he may draw up a statement of the case and refer it with his opinion for the decision of the Chief Controlling Revenue Authority". Similarly under section 60 if any Court felt doubt as to the amount of duty to be paid it was given power to draw up a statement of case for the opinion of the High Court. It was argued that both these sections gave only power to the Collector and the Court to make a reference for their own benefit. Section 57, it was argued, was on the same lines for the benefit of the appellant. In none of these, any other party had any right to insist on a reference. It was pointed out that under the Stamp Act a Collector could certify that the document was properly stamped, although it was not sufficiently stamped on a true construction, and when such a certificate was given the Controlling Authority could do nothing. He had not even the

power to refer that case to the Court to levy a higher stamp duty. For these reasons, it was contended that the scheme of the Stamp Act was materially different from the scheme of the Income Tax Act.

In our opinion the appellant's contentions are unsound. The first contention that section 57 of the Stamp Act gives only a discretion and does not cast a duty on the appellant to make a reference overlooks the fact that the appellant has not to make a reference only when he is in doubt about his decision or conclusion. In his conclusion the party liable to pay the assessed stamp duty is materially interested. The appellant's decision is not necessarily based only on the reading of the entries in the Schedule to the Stamp Act. As in the present case, the question under what item stamp duty is leviable may depend on the true construction of a document. It may also involve the decision of the question, as in the present case, as to what is the effect of the Court's order directing a rectification of the instrument. It does not appear, on principle, sound to hold that these difficult questions should be left under the Stamp Act to the final decision of the appellant, and if the party affected by the assessment has a grievance there is no relief at all in law for him. The construction of a document is not always an easy matter and on the ground that it is a substantial question of law, parties have been permitted to take the matter up to the highest Court. If so, it appears difficult to start with the assumption that because this is a Revenue Act the decision of the appellant should be considered final and conclusive. The provisions of section 56 (2) and section 60 giving power to the Collector and the Court to send a statement of case to the appellant and the High Court respectively, in our opinion, instead of helping the appellant, go against his contention. In those two sections this power is given when the referring authority has a doubt to solve for himself. The absence of the words "feels doubt as to the amount of duty to be paid in respect of an instrument" in section 57 supports the view that the reference contemplated under that section is not for the benefit of the appellant only but enures

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also for the benefit of the party affected by the assessment. In our opinion, the power contained in section 57 is in the nature of an obligation or is coupled with an obligation and under the circumstances can be demanded to be used also by the parties affected by the assessment of the stamp duty.

Our attention has been drawn in this connection to the decision of the Judicial Committee of the Privy Council in *Alcock, Ashdown & Co. Ltd.* v. *Chief Revenue Authority, Bombay* ([1]). In that case a question arose about an assessee's right to ask the Commissioner of Income Tax to state a case for the opinion of the Court under section 51 of the Indian Income Tax Act, 1918. The material part of that section was in these terms :—

"51. (1) If, in the course of any assessment under this Act or any proceeding in connection therewith other than a proceeding under Chapter VII, a question has arisen with reference to the interpretation of any of the provisions of this Act or of any rule thereunder, the Chief Revenue Authority may, either on its own motion or on reference from any Revenue officer subordinate to it, draw up a statement of the case, and refer it, with its own opinion thereon, to the High Court, and shall so refer any such question on the application of the assessee, unless it is satisfied that the application is frinolous or that a reference is unnecessary.

(3) 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, and 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 dispose of the case accordingly, or, if the case arose on reference from any Revenue-officer subordinate to it, shall forward a copy of such judgment to such officer who shall dispose of the case conformably to such judgment".

In that case, after the assessment was made and

([1]) 50 I.A.227.

the proceedings went to the Commissioner of Income Tax, the assessee requested that a case may be stated for the opinion of the Court under the aforesaid section, but the Commissioner refused to do so. Thereupon, a Rule was obtained from the High Court calling upon the Chief Revenue Authority, Bombay, to show cause why a case should not be so stated. It was argued before the High Court that the Court had no jurisdiction to order the Commissioner to state a case for its opinion. When the matter reached the Privy Council the objection to the jurisdiction was put more broadly. Before the High Court the only question raised was whether the Authority had a duty, in the circumstances, to state a case. The point raised before the Judicial Committee of the Privy Council took the form of saying that even if the Authority had a duty, the Court could not require him to exercise it; and for this purpose reliance was placed upon the well-known general purview of the Indian Legislation which excludes matter of revenue from the consideration of the ordinary civil Courts, the principle being exemplified in the case of *Spooner v. Juddow* (1) and upon section 106 (2) of the Government of India Act, 1915. The judgment of the Board consisting of Viscount Haldane, Lord Phillimore and Lord Carson was delivered by Lord Phillimore. In the judgment it is stated as follows :—"It is said that, though under this section, the Chief Revenue Authority may, if he thinks fit, draw up a statement of the case and refer it to the High Court he is not bound to do so even on the application of the person to be assessed, if he is satisfied that the application is frivolous or that the reference is unnecessary and that the Authority has in the present case shown that he is satisfied that the application was frivolous and the reference was unnecessary.". This argument was rejected by the High Court. Their Lordships of the Privy Council agreed with the view of the High Court that this was too narrow a construction of the section. They observed: "Take first the case which is last in the clause. If the assessee applies for a case the Authority must state it unless he can

(1) (1850) 4 Moo. I.A. 353.

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say that it is frivolous or unnecessary. He is not to wait for the court to order him to do it; it will be a misfeasance and a breach of the statutory duty if he does not do it." The judgment did not end by relying only on that portion of section 51 (1) of the Indian Income Tax Act, 1918. It proceeds to state as follows:—"Put that case aside. The rule here is supported upon the earlier part of the section. No doubt that part does not say that he shall state a case, it only says that he may. And as the learned counsel for the respondent rightly urged, 'may' does not mean 'shall'. Neither are the words 'it shall be lawful' those of compulsion. Only the capacity or power is given to the Authority. But when a capacity or power is given to a public authority there may be circumstances which couple with the power a duty to exercise it. To use the language of Lord Cairns in the case of *Julius* v. *Bishop of Oxford* (1): 'There may be something in the nature of the thing empowered to be done, something in the object for which it is to be done, something in the conditions under which it is to be done, something in the title of the person or persons for whose benefit the power is to be exercised, which may couple the power with a duty, and make it the duty of the person in whom the power is reposed to exercise that power when called upon to do so.' In their Lordships' view, always supposing that there is a serious point of law to be considered, there does lie a duty upon the Chief Revenue Authority to state a case for the opinion of the Court, and if he does not appreciate that there is such a serious point, it is in the power of the Court to control him and to order him to state a case."

This reasoning and conclusions, although they have not now the compelling force they had before the 26th of January, 1950, are entitled to great respect. Apart from that, we entirely agree with that line of reasoning and the conclusion. In our opinion, in the present case the power to make a reference under section 57 is not only for the benefit of the appellant.

(1) 5 A.C. 214, 222.

It is coupled with a duty cast on him, as a public officer to do the right thing and when an important and intricate question of law in respect of the construction of a document arises, as a public servant it is his duty to make the reference. If he omits to do so it is within the power of the Court to direct him to discharge that duty and make a reference to the Court.

Mr. Daphtary on behalf of the appellant tried to distinguish this case on the ground that the scheme of the Income Tax Act was different from the scheme of the Stamp Act. In our opinion, the observations quoted above and the principles underlying the same are applicable to the duty cast on the appellant under section 57 of the Stamp Act and minor points of distinction between the schemes of the two Acts are immaterial for the present discussion. In the words of Lord Cairns the very nature of the thing empowered to be done by the appellant and the conditions under which he has to fix the amount of the duty, couple the power with the duty to state a case for the opinion of the Court. The provisions of section 51 (1) and (3) run on the same lines as section 59 of the Stamp Act. Mr. Daphtary next pointed out that there was a difference in the scheme of the Act, because when the Collector issued a certificate under section 32, even though his assessment might be faulty and against the interest of the State, the State or the appellant had no remedy. This overlooks the provisions of the section empowering the Collector to issue the certificate. The scheme of the Stamp Act may be briefly noticed. Chapter II contains provisions about the liability of instruments to duty, of the time of stamping instruments, of valuations for duty and provisions as to the person by whom duty is payable. Chapter III which contains only two sections deals with the adjudication as to stamps. The first (section 31) is where an instrument, whether executed or not and whether previously stamped or not, is brought to the Collector with an application to have his opinion as to the duty with which it is chargeable. For obtaining that opinion the applicant has to pay a fee. The Collector may call for information and take evidence. After he has done so he determines the

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amount of the stamp duty and certifies under section 32 that the full duty with which it is chargeable has been paid. It is obvious that the party applying is interested in obtaining the opinion and therefore he cannot object to the certificate of the Collector. If the Collector himself is in doubt he has the power under section 56 (2) to ask for the opinion of the appellant. It is therefore clear that in respect of these two provisions under Chapter III no grievance could exist on either side. From section 33 and Chapter IV onwards there are provisions in which the opinion of the Stamp Officer and of the party interested in paying the stamp duty may come in conflict. The sections in Chapters IV, V and VI ending with section 61, deal with situations arising from such difference of opinion. Section 57 (1) falls under this heading. In our opinion, therefore, this contention of the appellant fails.

The next point urged was whether the High Court has jurisdiction to order the Revenue Authority to state a case in face of the provisions of section 226 of the Government of India Act, 1935. The argument was urged in two parts: Firstly, that this being a revenue matter, the jurisdiction of the Court was excluded. Secondly, that the matter had ceased to be in the stage of assessment but had reached the stage of collection of stamp duty. On that ground the present case was sought to be distinguished from *Alcock's* case (1). In our opinion this argument of the appellant must also fail. A similar argument based on the wording of the corresponding section 106 (2) of the Government of India Act, 1915, as mentioned above, was urged in *Alcock's* case (1). On that point their Lordships observed as follows:—"Upon the point thus broadly stated their Lordships have no difficulty in pronouncing a decision. To argue that if the legislature says that a public officer, even a revenue officer, shall do a thing and he, without cause or justification, refused to do that thing, yet the Specific Relief Act would not be applicable and there would be no power in the Court to compel him to give relief to the subject is to state a

(1) 50 I.A. 227.

proposition to which their Lordships must refuse assent." In dealing with the argument that because of section 106 (2) of the Government of India Act, 1915 the High Court had no jurisdiction to make the order, the Board observed as follows :—"In their Lordships' view the order of a High Court to a revenue officer to do his statutory duty would not be the exercise of original jurisdiction in any matter concerning the revenue." In our opinion, in the present case also the respondent seeks the Court's intervention to make the appellant perform his statutory duty to state a case. That is not exercising the original jurisdiction of the Court in any matter concerning the revenue. It is only asking the appellant to perform his statutory duty. The further argument that the proceedings in this case had passed beyond the stage of assessment and had reached the stage of enforcing payment is again irrelevant because by the relief granted by the High Court no attempt is made to obstruct the Revenue Authority in the discharge of his duties. At one stage an injunction was granted against the appellant but that has been cancelled. In fact, this aspect of the discussion is only academic because if payment is enforced and the opinion of the Court, on the statement of the case is against the appellant, he will have to act in conformity with that opinion under section 59 (2) of the Stamp Act and refund whatever may be held to be recovered in excess.

In our opinion therefore the contentions of the appellant fail and the appeal is dismissed with costs.

Appeal dismissed.

Agent for the appellant : *R. S. Narula.*
Agent for the respondent: *Tanubhai C. Desai.*