

## APPELLATE CRIMINAL.

Before Mr. Justice West and Mr. Justice Pinhey.

EMPRESS-v. JANKI.\*

1882  
November 2.

*Stamp Act I of 1879, Secs. 34, 37, 40, 61 and 69—Execution of unstamped instrument—Receipt of unstamped instrument—Sanction by Collector to prosecute—Abetment.*

A. executed to B. on plain paper an instrument which should have been executed on a paper bearing a four-anna stamp. B. filed a suit against A. in the Civil Court and produced the instrument in evidence. The Civil Court called upon A. to pay the duty and penalty and, on B.'s refusal to pay, impounded the instrument and sent it to the Collector. The Collector, concurring with the opinion of the Civil Court, sanctioned the prosecution, in the Criminal Court, of both A. and B., but without requiring the payment of the duty and penalty. The prosecution resulted in the conviction of A. under section 61 of the Stamp Act I of 1879 and of B. of abetment of A.'s offence.

*Held* that the convictions were illegal, inasmuch as the Collector failed to allow an opportunity of paying the duty and penalty.

*Held*, further, that mere receipt of an unstamped instrument did not constitute the offence of abetment of the execution of such an instrument.

UNDER the provisions of section 296 of the Code of Criminal Procedure (Act X of 1872) the following case was submitted by R. E. Candy, District Magistrate of Kanara, for the orders of the High Court.

On the 17th of April, 1880, one R. V. Komarpaik executed a  *kabulayat*  in favour of Janki kom Vyankatesh, agreeing to pay her as rent 3  *kumbhs*  and 9  *khandis*  of paddy on account of certain fields taken up for cultivation from her. In this instrument a further stipulation was made to pay the arrears of the previous year's rent,  *viz.* , 10  *khandis*  of paddy with interest of  $2\frac{1}{2}$   *khandis* . The document was drawn up on plain paper and produced in evidence in a suit filed by Janki against the tenant to recover the dues under the document in the First Class Subordinate Judge's Court at Karwar. The Subordinate Judge held that the document operated as a bond as well as a counterpart of a lease and was chargeable in consequence with a duty of 4 annas under article 13 of schedule I of Act I of 1879, the value of the outstanding rent being Rs. 25 according to the rate given in the plaint

\* Criminal Reference, No. 122 of 1882.

by Janki. Janki's pleader having declined to pay the proper duty and penalty under section 34 of the Stamp Act, the Subordinate Judge impounded the instrument and sent it to the Collector under paragraph 2 of section 35. The Collector thereupon issued his sanction for the prosecution of the tenant under section 61 of Act I of 1879 and of Janki under section 61 of Act I of 1879 and section 109 of the Indian Penal Code.

The case was tried by Rao Saheb Mangeshrao Anant, Second Class Magistrate, Karwar, who recorded a conviction against each of the parties and sentenced them to pay a fine of Rs. 5 each, or, in default, each to suffer seven days' simple imprisonment. The fines have been paid. Against her conviction and sentence Janki appealed; and Mr. H. Ingle, Magistrate (1st Class), who heard the appeal, has reversed the conviction and sentence.

There was no appearance in the High Court on either side.

The judgment of the Court was delivered by

WEST, J.—The effect of sections 37 and 40 of the Stamp Act I of 1879 is that every one must be allowed an opportunity of paying the penalty before the Collector exercises his discretion under section 69. In many cases there may be a reasonable question as to whether any penalty is payable or not, and the duty may be recovered by an order which would be lost by a prosecution. He ought, at any rate, to do what the law commands as his duty before exercising a mere discretion. It is not abetment of the execution of an unstamped instrument to receive it, any more than acceptance of stolen property is abetment of theft. The Court is of opinion that the decision of Mr. Ingle is right.

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