

[FULL BENCH]

Present: Ennis, Shaw, and De Sampayo JJ.DE MEL *v.* JORONIS APPU *et al.*

° 259—D. C. Colombo, 48,381.

Stamp—Cancellation—Date—Ordinance No. 22 of 1909, s. 9.

Where the makers of a note wrote across the stamp their names but did not write on it the date—

Held, that the stamp was properly cancelled.

THE facts appear from the judgment.

A. St. V. Jayawardene, for appellants.—Sub-section (1) of section 9 of the Stamp Ordinance, No. 22 of 1909, is imperative as regards the cancelling of the stamp. The words used are “shall cancel the same so that it cannot be used again.” But sub-section (3), which indicates one of the methods of cancelling, is not imperative, but merely directory. It merely indicates one of the many methods of effectually cancelling a stamp. Otherwise an illiterate person can never cancel a stamp if he is required to write his name and put the true date.

The Indian Act is very clear on this point. The English Act, 54 and 55 Vict., c. 39 s. 8, states that a stamp is properly cancelled if the name or initial is put on it with the true date, or otherwise effectively cancelled or proved that the stamp was affixed at the proper time.

In *Hettiarachy v. Wilfred*¹ an undated stamp was dated by the Commissioner and the document admitted.

Counsel cited *Kistnappa Chetty v. Silva*;² 28 Bom. 432.

Zoysa (with him *Croos-Dabrera*), for respondent.—The wording of the section in the Indian Act is different from ours. The Indian Act has, in addition, the words “or in any other effective manner.”

In the case *Ralli v. Caramalli Faza*³ it was held that where the mark of cancellation on the stamp was a portion of the first letter of the signature the cancellation was bad, and that the document was unstamped. In the case of *Bhawanji Harbhun v. Devji Punja*⁴ it was held that as the cancellation of a stamp was a merely mechanical operation, it will be sufficient if done by the directions, express or implied, of the person affixing it. Therefore, no hardship would

¹ (1918) 20 N. L. R. 183.

² (1911) 14 N. L. R. 458.

³ I. L. R. 14 Bom. 102.

⁴ 19 Bom. 635.

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arise in the case of illiterate persons if it is held that the provisions of the section are imperative. Under the Ordinance people are bound to cancel stamps, but they are not under obligation to follow any particular method. But sub-section (3) gives one clear method of cancelling a stamp, and a party using this method should do so in its entirety. He should put his initials and the true date. The omission to put the date makes the cancellation defective, because it falls short of the method provided by the Ordinance.

Cur. adv. vult.

February 12, 1919. ENNIS J.—

The only question for determination in this appeal is whether a stamp on a promissory note has been duly cancelled. The stamp is an adhesive one for six cents, and has written across it the names of the two makers of the note. Section 9 of the Stamp Ordinance, No. 22 of 1909, prescribes that (sub-section (1)) whoever affixes an adhesive stamp to any instrument chargeable with duty shall, when affixing the stamp, cancel the same so that it cannot be used again; sub-section (2) of that section says that an instrument bearing an adhesive stamp which has not been so cancelled shall be deemed to be unstamped; and sub-section (3) says that a person affixing an adhesive stamp may cancel it by writing in ink, on or across the stamp, his name and the true date, so as effectually to obliterate and cancel the stamp, and so as not to admit it being used again. It has been urged that sub-section (3) is imperative, and that that is the only method by which a stamp can be cancelled. In support of this proposition the case of *Nakuran v. Ranhamy*¹ has been cited. That case does not go so far. It merely says that, in the absence of any judicial authority sanctioning the proposition that a stamp can be cancelled without bearing on the face of it the date of its alleged cancellation, the Appeal Court was not prepared to differ from the decision of the learned Judge on the question. In *Kistnappa Chetty v. Silva*,² Lascelles C.J. held that the Stamp Ordinance prescribes no particular method of cancelling a stamp; and further held that the language of sub-section (3) in section 9 was optional, and not imperative. Middleton J. expressed the same opinion. Inasmuch as the Stamp Ordinance in certain matters is a penal Ordinance, e.g., section 58 penalizes the execution of instruments which are not duly stamped, it would seem that sub-section (3) of section 9 cannot be read as imperative, for to do so it would be necessary to construe the word "may" in that section as "shall." I imagine the reason why great attention is paid to sub-section (3) is due the fact that it is practically impossible to comply strictly with the sub-section (1) and cancel a stamp so that it cannot be used again. The matter would depend entirely upon the skill of the person desiring to use it again. If the cancellation prescribed imperatively in sub-section (1) is an

¹ (1917) 20 N. L. R. 135.² (1911) 14 N. L. R. 458.

impossibility, the only loophole in the section is the method of cancellation made permissible by sub-section (3). But even so there is some difficulty, because sub-section (3) also provides that the cancellation by writing the name and date on the stamp is to be such as not to admit of the stamp being used again, so that in construing these words some reasonable meaning must be given to them. In the Indian case reported in *28 Bombay, at page 532*, it was said that there should be something on the stamp to show that it had been used before. In that case it is to be observed that the Court held that two parallel lines was not sufficient. It seems to me that some reasonable construction must be placed on sub-section (1), and if the stamp is cancelled so that it cannot be used again, without the fact that it has been used before being easily liable to detection, there would have been a compliance with the section. In the present case there is no reasonable prospect of any normal person being misled into thinking that the stamp had not been used and using it again. Some expert in fraud might so tamper with it that the fact that it had once been used might not be apparent, but no person of ordinary skill could do so. I would hold, therefore, that, for the purpose of section 9, the stamp now in question has been duly cancelled. It must be remembered that illiterate persons, and even, literate persons who have lost the power of writing, may have to cancel stamps, and not be in a position to cancel them in the optional way prescribed by sub-section (3). Whether the means they adopt were in fact effectual for the purpose would be a matter for determination in each case, and where the possibility of a fraudulent re-use is remote, I imagine the leaning of the Courts would be towards admitting the document.

In the circumstances I would allow the appeal, set aside the decree, and send the case back for further hearing, with a direction that the document be admitted in evidence. The appellant to have the costs of the appeal.

SHAW J.—

I agree. This point has already been distinctly decided by this Court in *Kistnappa Chetty v. Silva* ¹ with which decision I am in entire accord. It is apparent from the judgment in *Nakuran v. Ranhamy* ² that the decision in that case would not have been what it was had the attention of the Court been called to the previous case that I have mentioned. For the purpose of reading the direction in sub-section (3) of section 9 as imperative, it is necessary to change the word " may " contained in that section into the word " shall. " As my brother Ennis has mentioned, the Stamp Ordinance is, to some extent, a penal statute, and renders persons liable to heavy penalties if they do not carry out the terms of the Ordinance. It

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¹ (1911) 14 N. L. R. 458.

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is impossible in legislation of this character to change the wording in such a manner as to render something an offence when the wording of the Ordinance, as it stands, does not render the act penal. It has been argued that sub-section (1) of section 9 may mean that the stamp should be so cancelled that it is physically impossible to use it again. But it is impossible to place such an interpretation on that sub-section. It is possible for any one to use a stamp again, though it is cancelled, and it is possible for any expert criminal to alter almost any ordinary commercial cancellation of a stamp in such a way as to prevent an ordinary observer noticing that the stamp has been cancelled. It cannot mean that a person using such a stamp should be liable to pay some penalty. In my opinion the sub-section means that the stamp shall be cancelled in such a way that to an ordinary observer looking at it it should be apparent that it has been previously used. Whether the Indian decision referred to goes too far I need not express my opinion at the present time. But in my view any cancellation, either by writing the name and date or other word across the stamp, or by making lines or crosses to signify to an ordinary observer that the stamp had been previously used, is sufficient to comply with the requirements of section 9; and the provision of sub-section (3) of that section is merely a direction as to the most convenient method for effecting the cancellation, and one which should be followed by persons who do not desire that the cancellation of the stamp shall be questioned at some later period.

DE SAMPAYO J.—

I am of the same opinion. I took part in the decision of *Nakuran v. Ranhamy*,¹ but now that the same point has been more fully argued, I agree that the insertion of the date on the stamp is not always necessary, provided the stamp is cancelled in such a manner as effectually to obliterate the same, and so as not to admit of it being used again, within the meaning of section 8 of the Stamp Ordinance.

Appeal allowed.

¹ (1917) 20 N. L. R. 135.