

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

Stock and marketable securities how to be valued.

22. 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.

Effect of statement of rate of exchange or average price.

23. 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.

Instruments reserving interest.

1. In the case of a transfer subject to a mortgage, interest must be included for purposes of stamp duty—*vide* explanation to section 24 *infra*.

2. A bond secured an amount of Rs. 10 as principal money, and as regards interest, it provided that "interest on this sum amounts to Rs. 2-28-0". It was held that the bond should be stamped as for Rs. 10 only and that the provisions about interest should be left out of consideration for the purpose of the Indian Stamp Act, 1899.

[3 Bombay L.R. 133]

[B.P. Ms. No. 1878, dated 27th September 1962.]

[G.O. Ms. No. 4365, Revenue, dated 26th November 1962.]

[B.P. Ms, No. 165, dated 30th January 1965.]

§[23-A. (1) Where an instrument (not being a promissory note or bill of exchange)—

Certain instruments connected with investigations of marketable securities to be chargeable as agreements.

(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

1 Inserted by section 3 of Act XV of 1904.

(b) make redeemable or qualifies a duly stamped transfer intended as security of any Marketable security it shall be chargeable with duty as if were an agreement or memorandum of an agreement chargeable with duty under Article 5(1) of Schedule I (.....)

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

1. State credit bonds providing for the deposit of Government promissory note a security for the payment of duty are chargeable with a stamp duty of 8 annas under section 23-A and Article 5 (c), Schedule I of the Stamp Act.

[B. Ps. 3594-S., 13th November 1908 ; 3832-S., 8th December 1908.]

2. An agreement entered into by the Corporation of Madras and a building contractor provided for the deposit by the contractor of certain Government promissory notes as security for the due performance of the contract and for the reimbursement from the deposit of the sum that may become payable by the contractor in the course of the contract. Held, that the agreement fell under section 23-A of the Stamp Act,

[B.P. 1680, Mis, 7th December 1909.]

24. 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.

How transfer of property subject to mortgage to be charged.

Illustrations:

A mortgages a house to B for Rs. 5,000 . A afterwards sells the house to B. The market value of the house at the time of sale is Rs 10,000 Stamp duty is payable on Rs 10,000 less the amount of stamp duty already paid for the mortgage.

1. The stamp duty payable on a certificate of sale is governed not by section 24 but by the express provisions of Article 18, Schedule I, which declare that the amount of purchase money is the measure of the consideration on which the duty is payable (Referred Case No. 1 of 1881).

[B. P. 1474, 7th June 1882, I. L. R. 5 Madras, 18]

2 Substituted by section 3 of Act I of 1912 for " Article 5 (b) ".

3 The expression "or Article 4 (c) of Schedule I-A as the case may be" inserted by section 8 of the Madras Stamp (Amendment) Act, 1922 (Madras Act VI of 1922) was omitted by section 8 of the Indian Stamp (Madras Amendment) Act, 1958 (Madras Act XIV of 1958).

2. Regarding the scope and application of proviso to the explanation clause, the Board held that instrument evidencing the conveyance of mortgaged property by the mortgagor to a transferee in the second degree of the rights of the original mortgagee as well as those relating to the purchase of mortgaged property from the mortgagor by purchase, or entitled to the benefit of the concession given in the proviso on the grounds that in both the cases the first transaction of mortgage is really part of the final transaction of transfer.

On the analogy of these rulings, the Board considered that a document evidencing the transfer of the mortgage property to the son and successor of a mortgagee by a person who, subsequent to the mortgage, purchased the property from the original mortgagors at a private sale would come within the proviso, observing "If the property is to be given a liberal interpretation, it will apply to conveyances where the transferors or the transferee or both, are persons who have either by act of parties or by operation of law succeeded to the rights of the original of the mortgagor or mortgagee". The Advocate-General, Madras, gave his opinion as follows :

the ruling of the Boards . . . are correct in law. . . The same principle applies to the transfer of the mortgaged property to the son and successor of a mortgagee by a person who subsequently to the mortgage purchased the property from the original mortgagor. The case provided for in the proviso to section 24 of Act II of 1889 is "Where property subject to a mortgage as transferred to the mortgagee". The word "mortgagee" here means the mortgagee for the time being, cannot be restricted to the original mortgagee. It is quite immaterial whether the transferor is the original mortgagor or not

(B.P. 140/B4-R. Mis. 3rd June 1901.)

3 The Advocate-General, Madras, has held that the proviso to the explanation to section 24 applies even when a portion of the property subject to a mortgage is sold to the mortgagee. (I.L.R., 29 Bom. (1905), 203 not followed.)

(B. P. 250/1458; R.M's., 14th November 1911.)

4. In the case of the sale of a property subject to a mortgage or other incumbrance that portion of the mortgage or other incumbrance and the interest on it which are wiped out by "scaling down" under the Madras Agriculturists Relief Act, 1938, do not fall under the category of "unpaid mortgage money or money charged or interest due on the same" referred to in the Explanation to section 24, and cannot therefore be deemed to be part of the consideration for the sale.

(G.O. Ms. No. 1717, Revenue, 7th July 1938 ; B.P.No. 85, Press, 4th August 1938.)

¹ The stamp duty was one rupee and fifty paise with reference to Madras Act XIV of 1958 which was increased to one and half times by Madras Act 8 of 1962.

² The expression of Article 16 of Schedule I-A as the case may be inserted by section 9 of Article VI 8922 was omitted by section 9 of Act XIV of 1958.

³ Substituted by section 2 of the Indian Stamp (Madras Amendment) Act 1967 (Act 24 of 1967).

25. Where an instrument is executed to secure the payment of an annuity or other sum payable periodically, ¹[] the amount secured by such instrument ²[] shall, for the purposes of this Act, be deemed to be,—

Valuation in case of annuity, etc.

(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 the total amount which, according to the terms of such instruments 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 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. Where the amount or value of the subject-matter of any instrument chargeable with *ad valorem* duty cannot be, or (in the case of an 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 :

³[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

¹ The words " or where the consideration for a conveyance is an annuity or other sum payable periodically " and

² the words " or the consideration for such conveyance as the case may be " were omitted by sec. 3 of the Indian Stamp (Madras Amendment) Act, 1967 (Act 24 of 1967).

³ Substituted by section 4 of Act XV of 1904 for the former proviso.

The rent, it shall be sufficient to have estimated such royalty or value of such share for the purpose of stamp duty,—

(a) when the lease has been granted by or on behalf of [the Government]¹, at such amount or value as the Collector may having regard to all 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 sections 31 or 41, the amount certified by the Collector shall be deemed to be the stamp, actually used at the date of execution.

1. In 1895 *A* (for himself and on behalf of his sons) executed a mortgage in favour of *B* who assigned it to *C*. In 1899 *A* (for himself and on behalf of his sons), *C* and *D* entered into another agreement whereby the former mortgage was transferred by *C* to *D* and the instrument also related to the accountability of *A* who was the cashier of *D* to *D*, and constituted a mortgage execute as security for the due fulfilment of *A*'s duties as cashier, and for the repayment of any sum that *A* might be found liable for, as cashier, to an extent not exceeding Rs. 6,000. At the date of suit, *A* was liable to *D* in a sum of over Rs. 8,000 which *D* claimed. Held that section 26 had no application to the case, the transfer of mortgage being liable to a fixed duty under Article 62 (c) of Schedule I and the duty payable in respect of the other portion of the instrument being also a fixed sum under Article 57 (b). Though the later instrument contained a promise by *A* to pay *D* the amount payable by him under the previous mortgage, this was not a fresh contract entered into for consideration, but must be understood to operate only as an admission that what *C* had purported to transfer was a subsisting debt due by *A*. As the sustenance of the present claim did not involve giving effect to the promise in the latter document, the claim was unaffected by it even if it could have been treated as one requiring the payment of an *ad valorem* duty.

[I.L.R., 27 Mad. (1903), 71.]

2. The word "Claimable" in section 26 means "Claimable in a Court of Justice".

[I.L.R. 31 Cal. (1904), 807.]

3. A mortgage bond, intended to secure future advances up to the sum of Rs. 10,000 at a time, was executed on a stamped paper of Rs. 50, and under it altogether more than Rs. 10,000 was privately realized by the mortgagee on different occasions. Held that there was nothing in section 26 to prevent the mortgagee from suing to recover the balance of the debt due on the mortgage.

[I.L.R. 31 Cal. (1904), 807.]

¹ Substituted by the Apdation of Laws Order 1950 for "the Crown".

4. Section 26 extends only to cases of instruments chargeable with *ad valorem* duty. It could have no application to the case of a security bond executed by a cashier as security for the due fulfilment of his duties as such, and for the repayment of any sum he might be found liable for to an extent exceeding Rs. 6,000 which would be chargeable under Article 57 (b).

[I.L.R. 27 Mad., 71.]

5. In the case of a lease chargeable according to the amount payable under the first year it has been held that where the amount of the rent reserved for the first year or indeed for any year of the term is at the time of the execution of the instrument incapable of ascertainment, it would be unjust to deprive the parties of their rights under the instrument, because they have failed to estimate the highest amount that might be recoverable in any year of the term, and that sufficient effect would be given to section 26 by holding that, in the first year of the term, no more could be recovered than the amount on which the stamp duty was computed, but that, in any subsequent year, the amount recoverable is to be determined by the terms of the instrument.

[I.L.R. 3 Mad., 342.]

6. Where a document provided for the payment of Rs. 25 as earnest money to secure the supply of 21 maunds of unrefined sugar, on which the grower was to receive a profit of 9 annas per maund over the prices fixed at the meeting of growers, plus the payment of a sum which could not have been ascertained at the time the deed was executed owing to the price not having been then fixed, it was held that as to the sum which could not have been ascertained section 26 applied.

[I.L.R. 9 All., 585.]

27. The consideration (if any) and the market value * 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.

Facts affecting duty to be set forth in instrument.

When a deed of gift does not set forth the value of the property, the attention of the executant, if alive, should be drawn to sections 27, 62 and 64 of the Act and he should be required to set forth the value of the property gifted and if he fails to do so should be proceeded against under section 64. If the executant is not alive the value should be ascertained from the grantee and the deed stamped accordingly. If the grantee refuses to stamp the deed he cannot be compelled to do so, but the document should be impounded and the grantee warned that the deed may be held of no avail if not properly stamped.

[B.P. 500. 25th August 1887.]

28. 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 market value of the property which is the subject-matter of

*Direction as to duty in case of certain conveyances.

*Inserted by Section 4 of the Indian Stamp (Madras Amendment) Act, 1967 (Act 24 of 1967).

**Substituted by Section 5 *ibid.*

conveyance 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 market-value of the property which is the subject matter of conveyance, or, where such duty would exceed five rupees with a duty of five rupees.

29. In the absence of an agreement to the contrary the expense of providing the proper stamp shall be borne—
 Duties by whom payable of borne—

(a) in the case of any instrument described in any of the following articles of Schedule I¹ [. . . .] namely :—

- No. 2 (Administration Bond),
- ²[No. 6 (Agreement relating to Deposit of Title-deeds, Pawn or Pledge).]
- No. 13 (Bill of Exchange),
- No. 15 (Bond),
- No. 16 (Bottomry Bond),
- No. 26 (Customs Bond),
- No. 27 (Debenture),
- No. 32 (Further charge),
- No. 34 (Indemnity Bond),
- No. 40 (Mortgage-deed),
- No. 49 (Promissory-note),
- No. 55 (Release),
- No. 56 (Respondentia Bond),
- No. 57 (Security-Bond or Mortgage-deed),
- No. 58 (Settlement),
- No. 62 (a) (Transfer of shares, in an incorporated company or other body corporate),

¹The expression "or the corresponding articles of Schedule I-A, as the case may be" inserted by section 10 of the Madras Stamp (Amendment) Act, 1922 (Madras Act VI of 1922), was omitted by section 10 of the Indian Stamp (Madras Amendment) Act, 1958 (Madras Act XIV of 1958).

²Substituted by section 15 of Act XV of 1904 for "No. 6 [Agreement to Mortgage]."

No. 62 (b) (Transfer of debentures, being marketable securities, whether the debenture is liable to duty or not, except debentures provided for by section 8),

No. 62 (c) (Transfer of any interest secured by a bond, mortgage-deed or policy of insurance),—by the person drawing, making or executing such instrument ;

¹[(b) in the case of a policy of insurance other than fire-insurance—by the person effecting the insurance ;

(bb) in the case of a policy of fire-insurance—by the person issuing the policy ;]

(c) in the case of a conveyance (including a re-conveyance of mortgaged property),—by the grantee ; in the case of a lease or agreement to lease—by the lessee or intended lessee ;

(d) in the case of a counterpart of a lease—by the lessor ;

(e) in the case of an instrument of exchange—by the parties in equal shares ;

(f) in the case of a certificate of sale—by the purchaser of the property to which such certificate relates ; and

(g) in the case of an instrument of partition—by the parties thereto in proportion to their respective shares in the whole property partitioned, or when the partition is made in execution of an order passed by a Revenue-authority ; or Civil Court or arbitrator in such proportion as such authority, Court or arbitrator, directs.

1. In the case of a surrender of a lease chargeable with duty, it was represented that as the lessee pays the stamp on a lease, when the operation is reversed by surrender of the lease, the lessor to whom it is surrendered ought to pay. The Collector was of opinion that, in the absence of an agreement between the parties, the case being of the nature of a re-conveyance, the grantee or original lessor ought to pay. But when documents are impounded and sent to the Collector or Divisional Officers, under section 38 all that the Collector or Divisional Officers need do is to look for payment of the penalty and insufficient stamp duty to the person from whose custody the documents came into the hands of the impounding officer. The Board held the Collector to be right.

[B.P. 15, 6th January 1880.]

¹ Substituted by section 4 of Act V of 1906, for the original clause (b).

2. In the absence of any provision to the contrary, the grantor should be held liable for the duty on the duplicate or counterpart of a deed of conveyance.

[B.P. 715, 26th May 1880.]

3. In the absence of an agreement between the persons concerned, the duty on a counterpart of a duly stamped mortgage deed should be borne by the mortgagee.

[B.P. 2472, 10th October 1882.]

30. 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 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.

¹ [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.]

1. Inserted by section 5 of Act V of 1906.

2. Vide note 1 to section 2 (23) supra.

3. A Bank had granted a duplicate receipt to another Bank on unstamped paper although the original receipt was stamped with a duty of one anna, and the money for which the original receipt was granted was required to be accounted for to a party other than the depositor. The Advocate-General, Bengal, on being referred to as to whether the duplicate receipt should be stamped, stated as follows: "A receipt for money is an instrument within the meaning of the Stamp Act II of 1899. It follows that a duplicate receipt is liable to a stamp of one anna under Article 25, Schedule I" (Proceedings, Government of India, No. 2153, 20th July 1883.)

[B.P. 2504, 24th August 1883.]

CHAPTER III

ADJUDICATION AS TO STAMPS.

31. (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

¹ Substituted by section 11 of the Indian Stamp Madras Amendment) Act, 1958 (Madras Act XIV of 1958) for the words "not less than eight annas". (Fifty paise)