

BOMBAY HIGH COURT

The Chief Controlling

Vs

The Maharashtra Sugar Mills

(M Chagla, C.J. Bhagwati, J.)

02.09.1947

JUDGMENT

M.C. Chagla, Acting C.J.

1. This is an appeal from a judgment of Mr. Justice Blagden and the facts leading up to it are really not in dispute. On March 22, 1945, the Maharashtra Sugar Mills, Ltd., executed a document in favour of the Central Bank of India for the purpose of borrowing a certain sum of money and the document was stamped with a stamp of Rs. 16-8-0 on the basis that the document was a deed of hypothecation. The document was sent in due course to the Registrar of Companies. The Registrar took the view that the document was not properly stamped and forwarded it to the Superintendent of Stamps. On April 4, 1945, the Assistant Superintendent of Stamps informed the Maharashtra Sugar Mills, Ltd. that the document which had been forwarded to them by the Registrar of Companies was not a deed of hypothecation but was a mortgage with possession and therefore it was not duly stamped. A reply was sent to this letter by the Maharashtra Sugar Mills, Ltd., on June 19, and they pointed out to the Assistant Superintendent of Stamps that the document was not and never intended by the parties to be a mortgage with possession and that it was an agreement of hypothecation, meaning a pledge without possession of stock. On July 19, the Assistant Superintendent of Stamps wrote to the solicitors of the Maharashtra Sugar Mills, Ltd., giving his decision that the document was a deed of mortgage with possession chargeable with a duty of Rs. 58,250. Us called upon the company to pay the sum of Rs. 56,233-8-0 on account of deficient duty and a penalty of Rs. 5,000. On the payment of these two sums the Assistant Superintendent of Stamps informed the company that the documents would be certified and returned to the Registrar of Companies. On August 9, the solicitors of the company informed the Assistant Superintendent of Stamps that they had filed a suit in this Court for the rectification of the document. Some correspondence followed and ultimately on December 9, 1945, the Assistant Superintendent of Stamps informed the solicitors to the Maharashtra Sugar Mills, Ltd., that the Collector of Bombay had been requested to recover the amount of extra duty and penalty in accordance with the provisions of Section 48 of the Stamp Act, and on January 9, 1946, the Assistant Superintendent of Stamps requested the

Collector to recover the amount from the Maharashtra Sugar Mills, Ltd. On January 11, 1946, the Collector made a demand for the sum of Rs. 61,233-8-0 from the Maharashtra Sugar Mills, Ltd.

2. The suit which had been filed came on before me, sitting on the original side, on January 25, 1946, and I passed a decree rectifying the document and holding that it was the common intention of the parties that the document should be a deed of hypothecation and not a mortgage with possession. In the decree that I passed I rectified the document to give effect to this common intention of the parties. On February 1, 1946, the company requested the Assistant Superintendent of Stamps to refer the matter to the Chief Controlling Revenue Authority under Section 58(2) of the Indian Stamp Act, because the stamp authorities took the view that notwithstanding the decree of rectification the company was liable to pay the duty which had been determined by the stamp authorities. Apparently the Assistant Superintendent of Stamps refused to make a reference to the Chief Controlling Revenue Authority under Section 53(2) of the Indian Stamp Act, There upon the company filed a petition before the Chief Controlling Revenue Authority on February 5, 1948, praying that the order made by the Assistant Superintendent of Stamps imposing a stamp duty of Rs. 53,250 and a penalty of Rs. 5,000 be rescinded, and, in the alternative, that the case may be referred under Section 57 of the Stamp Act for the opinion of the High Court. When this petition was filed an interim order for stay of the execution proceedings was obtained by the solicitors of the company. On July 4, 1946. the Chief Controlling Revenue Authority rejected the petition of the company and withdrew the order for stay. On that the company filed the present petition from which this appeal arises for issue of a writ of certiorari against the Chief Controlling Revenue Authority and in the alternative for an order under Section 45 of the Specific Relief Act either for the purpose of compelling the stamp authorities to forbear from further exercising any jurisdiction or doing any act or further taking or commencing or continuing to take or commence any proceedings in enforcement or execution of the order complained of or to compel them to refer the matter to this Court under Section 57 of the Indian Stamp Act as an important question of law was involved in the matter.

3. Mr. Justice Blagden who heard the petition took the view that no writ of certiorari could be issued against the stamp authorities, but made an order presumably under Section 45 upon those authorities to state a case under Section 57 of the Indian Stamp Act. In the appeal before us the question whether a writ of certiorari would lie or not has not been argued. The only question that has been argued before us is whether an order could be properly made under Section 45 of the Specific Relief Act on the stamp authorities in view of the provisions of the Indian Stamp Act.

4. In order to appreciate the contentions of the parties it would perhaps be better if one were to look at the material and relevant provisions of the Indian Stamp Act. Section 33 gives the power to certain persons to impound the documents insufficiently stamped which come to their notice. Section 40 deals with the Collector's power to stamp instruments which have been impounded. In Bombay, I may mention that the powers of the Collector referred to in the Act are exercised by the Assistant Superintendent of Stamps. Under Sub-clause (b) of Sub-section (1) of Section 40, if the Collector is of opinion that the instrument which has been impounded 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.

5. Under Section 45 when the penalty is paid under Section 35 or Section 40, the Chief Controlling Revenue Authority may, upon application in writing made within one year from the date of payment, refund such penalty wholly or in part, and under Sub-clause (2) of that section the Chief Controlling Revenue Authority has the power to refund stamp duty paid in excess of what is legally chargeable if the application in that behalf is made within three months of the order charging the same.

6. Under Section 48 all duties, penalties and other sums required to be paid under Chap. IV may be recovered by the Collector by distress and sale of the moveable 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.

7. Section 56(1) provides that the powers exercisable by a Collector under Chap, IV and Chap. V shall in all cases be subject to the control of the Chief Controlling Revenue Authority. Sub-clause (2) gives power to the Collector to draw up a statement of the case and refer it with his own opinion thereon for the decision of the Chief Controlling Revenue Authority, if he feels any doubt as to the amount of duty with which any instrument is chargeable.

8. Section 57(1) gives the power to the Chief Controlling Revenue Authority to state any case referred to it under Section 56, Sub-section (2), or otherwise coming to its notice, and refer such case, as far as we are concerned, to the High Court at Bombay.

9. Section 58 deals with the power of the High Court to call for further particulars relating to the case stated, and Section 59 provides that the High Court shall decide the question raised in the case stated and should deliver its judgment containing grounds on which such decision is founded. Then under Sub-section (2) the Court is to send its judgment to the revenue authority by which the case was stated and the revenue authority shall, on receiving such copy, dispose of the case conformably to such judgment.

10. The first point urged by the Advocate General on behalf of the stamp authorities is that no writ of mandamus should be issued or can be issued inasmuch as that would contravene the mandatory provisions of Section 226 of the Government of India Act. That section provides that until otherwise provided by the 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 or practice of the country or the law for the time being in force.

11. Now the short answer to this point is that under Section 59, when the High Court hears a case referred to it by the Chief Controlling Revenue Authority and decides it, it is not exercising original jurisdiction. Its jurisdiction is essentially advisory in character. On a case referred to it, it gives its opinion on the point referred to it and the revenue authorities are then to dispose of it in accordance with and in conformity with the opinion expressed by the High Court. The Advocate General has contended that in this case the machinery for collecting the stamp duty had already been set in motion before the petition was filed. He says that the process for the recovery of the duty was begun on December 9, 1945, when the Assistant Superintendent of Stamps informed the Maharashtra Sugar Mills, Ltd., that the Collector had been requested to recover the amount in accordance with the provisions of Section 46 of the Indian Stamp Act. In any case the process did start when the Collector made a demand on January 9, 1946, and the Advocate General says that if an order is made under Section 45 after the machinery for collecting the duty has been set in motion, the effect would be an interference by this Court with the collection of revenue. In our opinion, if the case is referred to the High Court, the only question that it would be called upon to determine would be whether the duty was rightly imposed on the document on the footing that it was a mortgage with possession or whether the contention of the petitioner that on the rectification of the document the rectification had effect from the date when the document was executed and not when the decree for rectification was passed was right. In determining this question the High Court would not be in any way interfering with the collection of revenue. What the consequences of any decision of the High Court might be is another matter altogether. Whether, assuming the High Court took the same view as contended for by the petitioner, the petitioner would be able to recover the amount of stamp duty if the stamp duty had been paid is also another matter. But the only jurisdiction that the High Court would be exercising if a case was referred to it as asked for by the petitioners, would be an advisory jurisdiction giving its opinion on a stated case with regard to a particular question of law that arose on the construction of the document itself and the effect of the decree for rectification on that document.

12. The same view of the effect of s, 226 of the Government of India Act has been taken by the Privy Council in *Alcock Ashdown & Co.v. Chief Revenue Authority, Bombay* . There, their Lordships were dealing with a similar section in an earlier Government of India Act which in terms is identical. In that case the High Court of Bombay had directed, under Section 45 of the Specific Relief Act, the Chief Revenue Authority to state a case under Section 51 of the Indian Income-tax Act, 1918, and one of the points urged before the Privy Council was that the order of the High Court offended against the provisions of the Government of India Act prohibiting the High Court from exercising original jurisdiction in matters of revenue. Their Lordships expressed the opinion that 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." With regard to the latter part of the clause their Lordships said that that part need not be considered, for the proceedings in the case before them had not to do with the collection of the revenue, but with the preliminary assessment to ascertain what that revenue was. In this case also, as I have said, we

are not concerned with the collection of the revenue but with the question whether the ascertainment of the stamp duty leviable on the document in question was a proper ascertainment or not.

13. But the main and substantial point urged by the Advocate General was that under Section 57(1) of the same Act the Chief Controlling Revenue Authority had the discretion to refer a case or not to the High Court and that there was no duty cast upon it to refer any such case, and there being no duty, he cannot be compelled by writ of mandamus to refer any case to this Court.

14. It is perfectly true that the language used in Section 57(1) is "may" and not "shall". It is also true that giving to that word its natural grammatical meaning it can never mean "shall" or "must." But the authorities to which our attention has been drawn and to which I shall presently refer have laid down that there are cases where a discretion given to a public officer may be coupled with a duty and that there may be circumstances to be determined in each case which may create a duty obliging the officer to do that which the particular statute empowers him to do. In order to decide whether the word "may" is potential or imperative, discretionary or carries with it an element of compulsion, whether it is permissive and enabling or obligatory, one must look at the object of the statute which vests this particular discretion and the intention of the Legislature to find out whether the discretion was coupled with a duty to be exercised in favor of a particular party. If the object for which the power is conferred is in order to give a right, then there would be a duty cast on the person to whom the power is given to exercise it for the benefit of the party to whom the right is given when required on his behalf.

15. The leading case on the point is the case of *Julius v. Lord Bishop of Oxford*¹ In that case the question that arose was the construction of Section 3 of the Church Discipline Act (3 & 4 Vic. c. 86). That section provided that where a clerk in holy orders was charged with any offence against Laws Ecclesiastical, it shall be lawful for the Bishop of the diocese within which the offence was alleged to have been committed to issue a commission for the purpose of making inquiry as to the ground of such charge or report made against the clerk, and the question that fell to be determined was whether the Bishop had a discretion to issue a commission or whether it was obligatory upon him to do so when a report was made to him. The House of Lords held that the Bishop had complete discretion to issue or decline to issue such commission, and the two considerations which moved their Lordships were, first, that as the statute stood it would be open to any subject of His Majesty whether he was a Christian or not to move the Bishop to issue such a commission, and, the second, was that no provision was made for costs and an innocent clerk would be ruined if the Bishop was compelled in every case however frivolous to issue a commission. In considering the words "it shall be lawful," Earl Cairnes, Lord Chancellor, said this which has now really become locus classical (p. 222): They confer a faculty or power, and they do not of themselves do more than confer a faculty or power. But 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.

16. The learned Lord Chancellor further observed that (p. 223):

the words 'it shall be lawful' being according to their natural meaning permissive or enabling words only, it lies upon those, as it seems to me, who contend that an obligation exists to exercise this power, to show in the circumstances of the case something which, according to the principles I have mentioned, creates this obligation.

17. And Lord Penzance at p. 229 said that the true question was not whether the words meant something different but whether regard being had to the person so enabled-to the subject matter, to the general objects of the statute, to the person or class of persons for whose benefit the power may be intended to have been conferred-they do, or do not, create a duty in the person on whom it is conferred, to exercise it. Lord Selborne said this (p. 235):The question whether a Judge, or a public officer, to whom a power is given by such words is bound to use it upon any particular occasion, or in any particular manner, must be solved aliunde and, in general, it is to be solved from the context, from the particular provisions, or from the general scope and objects, of the enactment conferring the power.

18. Therefore, it is clear from these observations that we have to seek the circumstances not in the section itself which creates the power but outside it, aliunde, and for that purpose we have to look to the scope and scheme of the statute and the object for which it was enacted. Lord Blackburn in the same case at p. 241 applied a somewhat different test:I do not think the words 'it shall be lawful' are in themselves ambiguous at all. They are apt words to express that a power is given; and as, prima facie, the donee of a power may either exercise it or leave it unused, it is not inaccurate to say that, prima facie, they are equivalent to saying that the donee may do it; but if the object for which the power is conferred is for the purpose of enforcing a right, there may be a duty cast on the donee of the power, to exercise it for the benefit of those who have that right, when required on their behalf. Where there is such a duty, it is not inaccurate to say that the words conferring that power are equivalent to saying that the donee must exercise it.

19. In, *In re Baker: Nichols v. Baker*²Section 125 of the Bankruptcy Act, 1888, gave the discretion to a Judge to transfer an insolvent estate from the Chancery Division to the Court of Bankruptcy and the Court of Appeal held that the Judge was not bound to exercise that discretion whenever an estate was shown to be insolvent. Lord Justice Cotton in his judgment stated (p. 270):I think that great misconception is caused by saying that in some cases "may" means "must." It can never mean "must" so long as the English language retains its meaning; but it gives a power, and then it may be a question in what cases, where a Judge has a power given him by the word "may", it becomes his duty to exercise it.

20. And in *Rex v. Mitchell: Liversey, ex parte*³ the question fell to be decided was the true meaning to be given to the word "may" in Section 9 of the Conspiracy and Protection of Property Act, 1875. By that section when a person was accused before a Court of summary jurisdiction of an offence punishable by that Act he had the right on appearing before that Court to object to being tried for such offence by a Court of summary jurisdiction. Thereupon the Court of summary jurisdiction may deal with the case in all respects as if the accused were charged with an indictable offence and not an offence punishable on summary conviction, and the offence may be prosecuted on indictment accordingly.

21. The Court of Appeal held that once the accused had exercised the option given to it by law it was obligatory upon the Court of summary jurisdiction to try the case as if the accused was charged with an indictable offence and the main ground on which this was decided was that it gave the accused a very important right, viz., the right of a trial by jury, and if the accused elected his own forum and refused to be tried by the Court of summary jurisdiction, it was not left to the discretion of the Court of summary jurisdiction whether to try the case or not but it must exercise the power vested in it by exercising it in favour of the accused and giving him the right of trial by jury. And it is important to note that Lord Justice Coleridge inquired what was the intention of the Legislature in enacting that particular provision and he said: "Can any one doubt that the intention of the Legislature was that the accused should have a right to trial by jury" ? And he further added: "In my view a statutory right to take objection to the jurisdiction of a tribunal in a matter involving the liberty of the subject ought prima facie to carry with it a right to have the objection entertained."

22. The principles of law then are really not in doubt. The question that presents difficulty, as it usually does, is the application of principles of law to given facts.

23. The Advocate General has very strenuously and with great ability contended that looking to the scheme and the object of the Stamp Act there is nothing in the provisions of that statute which shows that there are any circumstances from which it could be said that a duty was cast upon the Chief Controlling Revenue Authority to exercise the power conferred upon it in favour of the subject. The first contention of the Advocate General was that Section 57(1) was enacted not for the benefit of the subject at all but for the benefit of the Chief Controlling Revenue Authority. He said that it was left to the option of the Authority, whenever he so thought fit, to come to the High Court on a stated case, and if no right was created in favour of the subject, no question of duty arose. He is perfectly right when he says that before we can couple discretion with duty we have to find some right in the subject to come to this Court.

24. Now, the difference in language between Section 56(2) and Section 57(1) is very significant. Whereas the power of the Collector to refer a case to the Chief Controlling Revenue Authority is restricted to those cases where he feels doubt as to the amount of duty, the power of the Chief Controlling Revenue Authority is much wider. He may refer a case which the Collector has

referred to him under Section 56(2), but he may also refer any case which otherwise comes to his notice. These words are very wide, and in my opinion they do not merely cover cases where the revenue authority wants to move the High Court at his own instance but also cover cases where an application is made to it in that behalf by the subject.

25. Our attention has been drawn by the Advocate General to the fact that the subject has no right to challenge the decision of the stamp authorities by way of revision, review or appeal, and he is very likely right that in many respects there does not seem to be any remedy which the subject can have against a wrongful and arbitrary decision of the stamp authorities. Therefore, the question is whether no safeguard whatever is given to the subject under this statute against the stamp authorities at all. In my opinion, looking to the scheme of the statute, it is clear that the one solitary safeguard which the subject has is to get his liability to pay stamp duty determined by the High Court in certain cases. If he has the right to obtain the opinion of the High Court on questions of law, it undoubtedly is a very important right, and it could not possibly be maintained that if the Legislature wanted to give that right to the subject, it at the same time intended that that right should become completely nugatory by giving the power to the Chief Controlling Revenue Authority to refer a case to the High Court or not at his sweet will and discretion. The absence of other provisions in the Act safeguarding the right of the subject makes it all the more incumbent upon us that this particular safeguard given to him should be maintained unimpaired, and, as I have said, it would be no safeguard at all if we were to interpret Section 57(1) as giving a power to the revenue authority without any duty being coupled with it. Therefore, in our opinion, the subject has definitely a right given to it in certain cases to have a case referred to the High Court and that right makes it obligatory upon the revenue authority to exercise the power given to it for the benefit of the subject.

26. The Advocate General further argues that as the section stands there is no warrant for qualifying it by saying that it is only when an important or substantial question of law arises that the Chief Controlling Revenue Authority could be compelled by mandamus to refer a case to the High Court. Here again, as the authorities show, we must look to the object of the statute and the intention of the Legislature in enacting this particular piece of legislation. It could not be said that when the Legislature conferred this right upon the subject and empowered the revenue authority to refer cases to the High Court, the object was to invoke the jurisdiction of the High Court in all cases whenever the subject chose to apply to the revenue authority. The determination of the High Court can only be sought when important and substantial questions of law are involved. The Advocate General is right that in a sense we are imparting words in the section which do not find a place there. But if we do so, we are doing it in very good company, and that company is no less than that of the Privy Council which did the same thing in construing a section in the Income-tax Act which had a provision very similar to the one we are dealing with. That is the case to which I have already referred, *Alcock Ashdown & Co. v. Chief Revenue Authority, Bombay*. Their Lordships were concerned in that case with Section 51 of the Indian Income-tax Act, 1918, and Section 51 of that Act provided:

(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 frivolous or that a reference is unnecessary.

27. Now, it will be noticed that it is only when the Chief Revenue Authority is of the opinion that an application made by an assessee is not frivolous or that a reference is not unnecessary that he was bound under that section to make a reference to the High Court, and in this particular case the Chief Revenue Authority on the application made by the assessee was of that opinion. Therefore, the Privy Council was called upon to construe the first part of Section 51(1), which vested the revenue authority with a discretion, whether or not a reference should be made to the High Court, and the Privy Council held that when a serious question of law arose there was a duty cast upon the Chief Revenue Authority even under the first part to state a case to the High Court, and their Lordships applied the same test as was laid down in *Julius v. Lord Bishop of Oxford*. They say (p. 927): 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; and then they cite the passage which I have already referred to earlier in the judgment. Then their Lordships go on to say (p. 927): 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.

28. Therefore, according to the Privy Council, the duty only arises when a serious point of law is to be considered and the breach of duty lies in a failure to appreciate that there is a serious point of law involved. In this case before us also the point of law that arises is the effect on the document of the decree for rectification. It is undoubtedly a serious question of law, and the failure of duty on the part of the stamp authority lies in not appreciating that there is a serious question of law which should be referred to the High Court for its decision.

29. The Advocate General has drawn our attention to what he calls the marked dissimilarity between the provisions of the Indian Income-tax Act of 1918 and the Stamp Act, and he says that although there may be circumstances to be found in the various provisions of the Income-tax which would couple the power given to the revenue authority there with a duty to exercise it, when we compare the provisions of the Stamp Act, no such circumstances exist. It is perfectly true that in the Income-tax Act, 1919, the subject was given various safeguards. He had a right to be heard, he had a right of appeal and review, he had a right of all proceedings under the Income-tax Act to be deemed to be judicial proceedings, and the Advocate General says that considering

all this, if in the course of any assessment any question with reference to the interpretation of any provisions of the Act or of the rules thereunder arose, as mentioned in Section 51(1), it could be said that the subject had a right to have it determined by a judicial tribunal. In my opinion, if anything, a comparison of the provisions of the Stamp Act and the Income-tax Act strengthens me in my view that this particular provision in the Stamp Act with regard to a statement of a case to the High Court is a right given to the subject.

30. The one thought present to one's mind when one compares the provisions of the Income-tax Act and the Stamp Act is that while the Legislature provided the assessee with various safeguards in the course of his assessment, the Legislature did not choose to afford similar safeguards to the subject whose liability was being determined to pay stamp duty. But that does not mean, as I have pointed out earlier, that the only solitary safeguard left to the subject in the Stamp Act should also be effectively taken away by leaving it to the whim of the executive and not be constituted a right enforceable in a Court of law.

31. The Advocate General has also drawn our attention to a judgment of Mr, Justice Rangnekar reported in *Dewarkhand Cement Co. Ltd. v. Secretary of State*⁴ There a suit was filed on the Original Side for a declaration that the proper stamp to be chargeable was different from what had been charged and for a decree against the Secretary of State for India in Council for the excess sum paid under protest, and Mr, Justice Rangnekar, with respect, came to the only conclusion he could come to, viz., that the suit on the original side was barred under the then Section 108(2) corresponding to Section 226 of the Government of India Act. But the Advocate General has relied on certain observations of the learned Judge, but he frankly concedes that they are obiter. This is what the learned Judge says (p. 828):there is force in the contention that unfortunately the public have no remedy against what may turn out to be a wrong and arbitrary decision of the stamp authorities with regard to the payment of duty chargeable in respect of any particular document, save and except the somewhat doubtful remedy pointed out by Section 56 of the Indian Stamp Act, which, however, does not confer upon the public any right to compel the stamp authorities to refer the question arising in any particular case to the decision of the Court.

32. It is to be noted that the learned Judge refers to Section 56 and not Section 57 of the Indian Stamp Act, It is perfectly true that when a reference is made by the Superintendent of Stamps or the Collector under Section 56(2) when he feels any doubt, the Chief Controlling Revenue Authority may or may not refer such a case to the High Court. It is only with this power of the stamp authority that Mr. Justice Rangnekar was dealing. He did not consider the power conferred upon him in the latter part of Section 57(1) which provides, as I have pointed out, that the Chief Controlling Revenue Authority may also refer cases otherwise coming to its notice. This is the provision which gives a remedy to the public, and that seems to be the only remedy against a wrong and arbitrary decision of the stamp authorities. Therefore, with great respect, if Mr. Justice Rangnekar had considered this part of the section, he might not have been so pessimistic about

the rights of the subject.

33. No decision of any High Court has been cited before us on this particular question we are considering. The only decision which is of some help is the decision of the Calcutta High Court in *In re United Provinces Electric Supply Co. Ltd.* (1934) I.L.R. 61 Cal. 556. In that case the subject asked for a case to be stated under Section 57(1) of the Stamp Act. The stamp authorities refused to do so and the High Court of Calcutta issued a writ of mandamus compelling the stamp authorities to state a case. It is curious that although the Advocate General appeared for the Board of Revenue, no point was taken, as has been taken by the Advocate General before us, that the High Court had no right to issue a writ of mandamus and that under Section 57(1) it was purely discretionary on the part of the Revenue Authorities whether to refer a case or not. Although it is not a direct decision that the High Court has such a power, the case undoubtedly shows that the very learned Counsel who appeared, for the Board of Revenue did not think it worth while to urge such a point before the High Court of Calcutta, because the point was obvious, and if it was a good one or at least if it was thought to be a good one, it would have been taken by counsel for the Board of Revenue. In my opinion, therefore, the learned Judge below was right in the view that he took and in the decision he came to. In my opinion, when a serious question of law is involved, there is a duty cast upon the Chief Controlling Revenue Authority to state a case under Section 57(1) of the Stamp Act and also in my opinion the subject has a right to have such a case determined by the High Court. That duty can be enforced by Section 45 of the Specific Relief Act, and Mr. Justice Blagden in deciding what he did was exercising the jurisdiction of this Court under Section 45 and in my opinion he rightly exercised that jurisdiction.

34. Under the circumstances we dismiss the appeal with costs. Certificate granted under Section 205 of the Government of India Act. The Chief Controlling Revenue Authority to state the case within two months from today, Order as to costs in the trial Court to stand.

Bhagwati, J.

35. I agree with the conclusion reached in the judgment just delivered by my Lord the Chief Justice, and I do not think I need add anything to the reasoning of that judgment.