

*Judgment of the Lords of the Judicial Committee of
the Privy Council on the Appeal of Allen v.
Pullay and others, from the Supreme Court of
the Straits Settlements, division of Penang;
delivered January 24th, 1882.*

Present :

LORD BLACKBURN.

LORD WATSON.

SIR BARNES PEACOCK.

SIR ROBERT P. COLLIER.

SIR RICHARD COUCH.

SIR ARTHUR HOBHOUSE.

THE suit which is the subject of the present Appeal is brought upon an agreement made between the Plaintiff and the Defendants by which it was agreed that if the Plaintiff should obtain the contract for supplying the Dutch at Acheen, through Messrs. Katz Brothers of Penang, he was to hand over the contract to the Defendants, and that the Defendants were to pay to the Plaintiff a commission on all payments for supplies at the rate of $2\frac{1}{2}$ per cent.; and should the Defendants or any one of them get the contract, then they were to pay to the Plaintiff $2\frac{1}{2}$ per cent. commission on all payments for supplies; and further that if the Defendants or any one of the parties to the agreement should supply anything for the Dutch at Acheen, they agreed to pay to the Plaintiff a commission of $2\frac{1}{2}$ per cent. The Plaintiff's case was that the Defendants became the sub-contractors for the supply of cattle to Messrs. Katz for the Netherlands India Government at Acheen, and he claimed payment of the sum of \$8,420 for commission.

The Defendants, in the first instance, demurred

R 404. 125.—2/82. Wt. 5818. E. & S.

to the declaration, which demurrer was overruled, and they were allowed to plead; and having pleaded pleas which went to the merits of the case and denied the right of the Plaintiff to recover, but which are not material to be considered in this Appeal, the case came on for trial before one of the judges of the Supreme Court of the Straits Settlements, Division of Penang. At the trial the agreement was tendered in evidence; and it appeared upon the face of it to bear a stamp of 50 cents., with a cancellation only by the figures "10/8/75."

Now the Ordinance 8 of 1873, in force in the Straits Settlements, provides by section 12 that, "No instrument liable to stamp duty under " schedule A,"—which schedule included an agreement of this description,—" shall be deemed duly " stamped unless the official stamp be of not less " than the proper amount of duty required by " this ordinance, and unless such stamp shall " have been cancelled in the manner required " by this ordinance;" which manner is stated in the second sub-section to be " by the person who " shall first execute the instrument, or issue or " deliver it out of his hands, custody, or power, " writing or marking in ink on or across the " same his name or initials, or the name or " initials of his firm or principal, together with " the date of his so writing or marking, so that " every stamp shall be effectually cancelled and " rendered incapable of being used for any other " instrument." The omission was that, although the date of the cancellation appeared on the stamp, the initials had not been written.

The learned Judge adjourned the trial, and appears to have suggested that the parties might, if they thought fit, take some steps to remedy the defect under section 26 of the ordinance; and accordingly on the next day, the trial being resumed, the agreement was produced bearing

upon the face of it a stamp of five dollars with the date "27/9/77," the word "penalty," and signed "S. Jones," he being the collector.

Here it will be convenient to refer to the provisions of the ordinance which were made use of in getting this additional stamp affixed. Section 25, by reason of which the document was in the first instance refused to be received in evidence, provides, "Except as otherwise provided by this ordinance, no instrument for which any duty shall be payable under this ordinance shall be received as creating, transferring, or extinguishing any right or obligation, or as evidence in any civil proceeding in any court of justice in the colony, or shall be acted upon in any such court or by any public officer, or shall be registered in any public office or authenticated by any public officer, unless such instrument shall be duly stamped," with a proviso that it may be admitted in evidence in a criminal proceeding, although it may not have the stamp required by the ordinance. Then section 26 says, "If any instrument required by law to be stamped shall have been signed or executed by any person without its being duly stamped, and special provision to meet such case is not made in this ordinance, the collector of stamps, if satisfied that there was no intention to evade payment of the proper stamp duty, may direct such instrument to be properly stamped as follows:—If the instrument be produced to the collector within one week from the time of its execution, it may be properly stamped on payment of fine of five dollars, or double the amount of proper stamp duty if that amount does not exceed five dollars. If produced after one week but within three months, a fine of twenty dollars, or four times the amount of proper stamp duty

“ if that amount does not exceed twenty dollars.
“ If produced after three months, a fine of fifty
“ dollars, or ten times the amount of proper
“ stamp duty if that amount does not exceed
“ fifty dollars.” It was under the last clause
that the stamp of five dollars in this case was
affixed. Upon the agreement being so produced
before the learned Judge he held that it was
admissible in evidence; and finding against the
Defendants upon the questions raised by the
pleas, he gave judgement for the Plaintiff. From
that judgement there was an appeal to the
Supreme Court under a provision in the ordinances
which gives an appeal on a matter of law; and
the majority of the learned Judges of that Court,
there being two besides the Judge who originally
tried the case, held that the agreement was still
not admissible in evidence and reversed the
judgment for the Plaintiff, and directed a judg-
ment to be entered for the Defendants. From
that judgment the present Appeal is brought.

The sole question is, whether this was not a
case to which section 26 of the ordinance applied,
and whether the agreement was not, by reason of
the stamp having been affixed by the collector
under that section, properly admitted in evidence.
That section is, in its terms, apparently intended
to apply to all cases where the document has not
been duly stamped, and for which a special pro-
vision had not been previously made, there being
special provisions in the ordinance for bills of
exchange and other documents; and the words
“ without being duly stamped ” would include
not only cases where there was no stamp at all, or
where the stamp was an insufficient one, but
where, by inadvertence or accident, the stamp
had not been properly cancelled. There might
be many cases in which, from some mistake, there
would not be a cancellation strictly within the
terms of the section, and where it would be more

reasonable to give the parties an opportunity of remedying the defect in the stamp than even in cases where something had been done deliberately. Then, the words "not being duly stamped" being intended apparently to include all those cases, the section goes on to say that the collector, if satisfied that there was no intention to evade payment of the proper stamp duty, may direct such instrument to be properly stamped. If the word "properly" is to be read, as it may fairly be, as meaning, not a stamp of the proper amount but properly stamped in all respects, not only of the proper amount but properly cancelled, and stamped in such a way as to make it admissible in evidence, then what may be reasonably considered to be the intention of the ordinance, namely, that provision should be made for admitting documents which, through some cause or other, had not been properly stamped, admissible in evidence, would be carried out. On the other hand, if the word "properly" is to have a limited meaning, and is not to be read as being duly stamped, the effect would be this: that an opportunity is given to parties to go to the collector and to pay the penalty, get the document stamped, and then, when they have got it stamped, if the defect was want of cancellation, it still could not be used in evidence; but if the defect was the want of a stamp, it might perhaps be used. The object of this clause in the ordinance, coming as it does immediately after the 25th section, appears to their Lordships to be to provide for cases which it would be most reasonable to provide for; namely, that persons should not lose the power of suing upon an agreement or a document because there had been some omission with reference to the stamping of it; that if the penalty was paid, they could then make use of the document to enforce their rights. This

would further appear to have been the intention from what is done by section 30, because the legislature appears to have provided in cases of this kind two modes of remedying the defect. The parties may go to the collector, and on paying the penalty they may get a document stamped in such a way that it can be made use of; but if they omit to do that, if the defect is not discovered, as it may sometimes not be, until the document is actually produced in court, then it is provided that the Court may receive in evidence an instrument not bearing the stamp prescribed by the schedule on payment of the proper amount of stamp duty, to be determined by the Court. The Court may do what the collector might do, and it is observable here that the Court is empowered to receive the document in evidence upon payment of the amount of stamp duty, but it is not necessary before it is received in evidence that the stamp should be cancelled. There is a direction afterwards that the officer of the Court shall cancel it; but it is not a condition precedent to its being received in evidence. It would be properly received, and the omission afterwards to cancel it would not make it less receivable: it would have already been received. In the case of its being produced in court and the penalty being paid, it is to be received in evidence without the formal cancellation which it is said ought to have been made under section 26, and which could not be made. Why should there be any difference between the remedy given to the party in the one case and in the other? The whole scope of the provision appears to be this: that under section 25, the document being declared not to be receivable in evidence unless it is duly stamped, the legislature says, Now that being the state of things, a remedy shall be provided; and if the party pays the penalty which is prescribed and the stamp is affixed, then

the document may be made use of. The construction which was put upon the ordinance by the learned Judges of the Lower Court, instead of being a reasonable and natural construction of its provisions, is in reality a forced one; and some of their observations appear almost to show that they felt that to some extent it was a forced construction.

Their Lordships therefore are of opinion that the document was properly received in evidence by the learned Judge, and they will humbly advise Her Majesty that the judgment of the Court on the Appeal be reversed, and that the judgment of the first Judge do stand. The Respondents will pay the costs of the Appeal, and the Appellant will receive back his deposit.

