

(1922) 01 CAL CK 0027**Calcutta High Court****Case No:** None

Bidhuranjan Mozumdar

APPELLANT

Vs

Mangan Sarkar

RESPONDENT

Date of Decision: Jan. 17, 1922**Acts Referred:**

- Stamp Act, 1899 - Section 2(5)(b)

Citation: AIR 1922 Cal 452 : 67 Ind. Cas. 780**Hon'ble Judges:** John Woodroffe, J; Greaves, J; Ghose, J**Bench:** Full Bench**Judgement**

John Woodroffe, J.

This is a Reference u/s 60 of the Indian Stamp Act. No appearance has been made by the person liable to pay the stamp. The learned Government Pleader has rightly pointed out to us that as the penalty has already been levied, it may be a question whether the learned Judge was right in making this Reference; but seeing that the learned Judge states in his Reference that "pending the decision on this Reference the plaintiff in this suit has preferred to pay the stamp duty and penalty," I think that the inference is that before the penalty was levied, the learned Judge had determined to make this Reference; and all that happened was that the Reference was actually framed later on. Upon the facts submitted to us, I think that the attestation referred to in Section 2 Sub-section (5) Clause (b) of the Indian Stamp Act means attestation on the face of the instrument. In this connection I may refer to Reference under Stamp Act I of 1579, Section 49 17 A. 211; (1895) A.W.N. 61 : 8 Ind. Dec. 460 . The decision in the case of Jagannath Khan v. Bajrang Das Agarwala 62 Ind. Cas. 97 : 48 C 61 to which the learned Judge has referred, is not, I think, in point. It does not hold that the person who signs as writer of an instrument must be regarded as an attesting witness, but that a person who is present and witnesses execution of a mortgage-bond and whose name appears in the document though he is therein described merely as a writer of the deed is a competent witness to

prove the execution of the mortgage bond. Inasmuch as the words "attested by the witness" refer to attestation on the face of the instrument the findings on the evidence are, in my opinion, irrelevant for the purpose of determining the stamp payable. On this view of the case it is unnecessary to decide any other question to which the learned Judge has referred and I would answer the Reference by saying that the stamp payable on the document in question was one anna and, therefore, the document was properly stamped.

Greaves, J.

2. I agree.

Ghose, J.

3. I agree.