COMMISSIONER OF AGRICULTURAL INCOME-TAX, BENGAL

v.

SRI KESHAB CHANDRA MANDAL

1950

May 9

[SAIYID FAZL ALI, PATANJALI SASTRI, MEHR CHAND MAHAJAN, MUKHERJEA and DAS JJ.]

Bengal Agricultural Income-tax Act, (IV of 1944), ss. 24, 57 — Rules under the Act, r. 11, Form No. 5—Return of illiterate assessee —Declaration signed by pen of son of assessee—Validity of return— Signature by Agent—Permissibility—"Qui facit per alium facit per se," *applicability of.*

The Rules framed under the Bengal Agricultural Income-tax Act, 1944, provided that the declaration in a return of income had to be signed "in the case of an individual, by the individual himself." A return of an illiterate assessee, Keshab Chandra Mandal, was signed in the vernacular as follows: "Sri Keshab Chandra Mandal Ba: Sri Jugal Chandra Mandal," the latter being the son of the assessee. The Appellate Tribunal referred to the High Court the question "whether in the circumstances of the case, the declaration in the form of return signed by the illiterate assessee by the pen of his son should be treated as properly signed and a valid return." The High Court answered the question in the affirmative. On appeal:

Held, per FAZL ALI, PATANJALI SASTRI, MUKHERJEA and DAS JJ. (MAHAJAN J. dissenting)—that the Bengal Agricultural Income-tax Act, 1944, and the Rules framed thereunder contained provisions indicating an intention to exclude the common law rule *qui facit per alium facit per se* in the matter of affixing signature to the return of income made by an assessee who was an individual, and, as it was abundantly clear on the records that there was no physical contact between the assessee and the signature appearing on the return, the return was not properly signed and was not a valid return.

MAHAJAN J.—As the question referred was whether the return "signed by the illiterate assessee with the pen of his son" was valid, it must be assumed that there was such contact, and as there was nothing whatsoever on the record to establish that the assessee did not touch the pen or the hand of the son when the signature was affixed, the High Court was right in answering the question in the affirmative.

Judgment of the Calcutta High Court reversed.

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APPEAL from the High Court of Judicature at Fort William : (Civil Appeal No. LXXXVIII of 1949.)

This was an appeal from the judgment and order of the High Court of Judicature at Calcutta dated 16th September, 1948, (G. N. Das and R. P. Mookerjee ,J.) in a Reference made to the High Court under section 63 (1) of the Bengal Agricultural Income-tax Act, 1944, by the Appellate Tribunal of Agricultural Income-tax, West Bengal. The facts are set out in the judgment.

K. P. Khaitan (*B. Sen*, with him) for the appellant.

The respondent was not represented.

1950. May 9. The following judgments were delivered :—

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DAS J.—There is no serious dispute as to the facts leading up to this appeal. They are shortly as follows :

In response to a notice issued under section 24 (2) of the Bengal Agricultural Income-tax Act, 1944, the assessee, who is the respondent before us, submitted a return showing his total agricultural income for the assessment year 1944-45 to be Rs. 335. This return is dated the 3rd April, 1945, and just below the declaration appears the following writing in vernacular :

"Sri Keshab Chandra Mandal."

On the 18th April, 1945, the Agricultural Income-tax Officer noted on the order sheet that the case would be taken up at Bankura Dak Bungalow on 6th May, 1945, and directed the office to inform the party to appear with all settlement records, vouchers etc. On the 6th May, 1945, the assessee filed a petition before the Agricultural Income-tax Officer who had gone to Bankura stating *inter alia* that he had been advised that the return which he had submitted before under the advice of a Headmaster of a school was not a proper return, that there were many mistakes in the return and many things had been omitted and that, therefore, it was absolutely necessary for him to submit a fresh return and praying for fifteen days' time for doing so and

also for a form of return. This petition was signed in vernacular as follows :—

"Sri Keshab Chandra Mandal ×

Ba : Sri Jugal Chandra Mandal".

Below that was the signature of his pleader H. Nandi. With this petition was attached a Vakalatnama signed in vernacular in the manner following :

"Sri Keshab Chandra Mandal ×

Ba : Sri Jugal Chandra Mandal of Balya."

It will be noticed that in both the signatures, against the name of Sri Keshab Chandra Mandal there was a cross mark. The vakalatnama contained the following entry :—

"I hereby appoint on my behalf Srijukta Babu Hangsa Gopal Nandi, Pleader, to do all works in connection with this case and as I do not know to read and write I put in × mark in the presence of the undermentioned persons as a token thereof."

His son Sri Jugal Chandra Mandal attested the cross mark in the vakalatnama.

On receipt of this petition the Agricultural Income-tax Officer allowed time for one day and fixed the case for the 7th May, 1945, at 10 a.m. The assessee was directed to submit a fresh return and to produce account books and other necessary papers. It was also stated in the order sheet that if the assessee failed to comply with the order, assessment would be made under section 25 (5) of the Act.

On the 7th May, 1945, the assessee did not appear personally. His son Jugal Chandra Mandal appeared with pleader Babu Hangsa Gopal Nandi. The son, Jugal Chandra Mandal, had not brought any letter of authority from the assessee. A return was submitted which was signed in vernacular as follows :—

"Sri Keshab Chandra Mandal Ba: Sri Jugal Chandra Mandal."

It will be noticed that in this last signature there was no cross mark.

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The Agricultural Income-tax Officer stated in his assessment order as follows :—

"A fresh return is submitted to-day. A remarkable difference is noticeable between the two returns. First return shows total agricultural income of Rs. 335 whereas the revised or the fresh one shows an income of Rs. 1,077-12-6. This is really strange. The first one appears to have been signed by the assessee himself but the second one has been signed by Jugal his son for the assessee. Under the circumstances, I can put no reliance on any of these returns. I do not make any assessment based on these returns."

The Agricultural Income-tax Officer thereafter immediately proceeded with the assessment and assessed Rs. 4,968-12-1 as the assessable income.

The assessee preferred an appeal from this order to the Assistant Commissioner, Agricultural Income-tax, Bengal. The Assistant Commissioner by his order dated the 14th August, 1945, dismissed the appeal and confirmed the assessment under section 35 (4) (a) (i).

The assessee thereupon preferred a further appeal before the Income-tax Appellate Tribunal. The Income-tax Appellate Tribunal on the 9th December, 1947, accepted the appeal on the ground, amongst others, that the return filed on the 7th May, 1945, was a proper return and should have been treated as such.

The Commissioner of Income-tax thereupon applied under section 63 (1) of the Act for a reference of certain questions of law to the High Court. The Appellate Tribunal by its order dated the 22nd April, 1948, referred the following question of law to the High Court :—

"Whether in the circumstances of this case, the declaration in the form of return signed by the illiterate assessee by the pen of his son should be treated as properly signed and a valid return."

The reference came up before a Bench of the Calcutta High Court (G. N. Das J. and R. P. Mookerjee J.) who, for reasons stated in their judgment

dated the 16th September, 1948, answered the question in the affirmative. The Commissioner thereupon applied to the High Court for a certificate under section 64 (2) of the Act which having been granted the appeal has now come up before us for final disposal. In this appeal we are only called upon to judge whether the answer given by the High Court to the question of law formulated by the Appellate Tribunal is well-founded. It is abundantly clear on the records that there was no physical contact between the assessee and the signature appearing on the return as filed on the 7th May, 1945, and the fact is referred to by the words "in the circumstances of this case" at the beginning of the question. Indeed the whole of the proceedings have proceeded on this footing. I desire to make it clear that in this appeal we are not concerned with the propriety of the Income-tax Officer in proceeding to assessment without giving the assessee a further opportunity to put his mark on the return.

The High Court quoted the following observations of Blackburn J. in *The Queen* v. *The Justices of Kent* (1):

"No doubt at common law, where a person authorises another to sign for him, the signature of the person so signing is the signature of the person authorising it; nevertheless, there may be cases in which a statute may require personal signature."

Then, after stating that the Courts ought not to restrict the common law rule *qui facit per alium facit per se*, unless the statute makes a personal signature indispensable, and referring to certain decided cases, enunciated the proposition that when the word sign" or "signature" is used by itself and unless there be a clear indication requiring the personal signature by the hand of the person concerned, the provision would be satisfied by a person signing by the hand of an agent. Applying this test the High Court came to the conclusion that there was not only not anything in the Act or the rules requiring the personal signature of the individual assessee

(1) (1846) L.R. 8 Q.B. 305 at p. 307.

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but that insistence on such a requirement would create an anomaly, in that while an assessee who is an individual will have to sign personally, the persons authorised to sign for the other categories of assessees, namely, a Hindu undivided family, a company, the Ruler of an Indian State, a firm or any other association will not be compellable to sign personally. The High Court took the view that to avoid such a patent anomaly which would inevitably result if the interpretation proposed by the department were to be accepted, the Court should follow the common law rule mentioned above. In the result, the High Court answered the point of law referred to them in the affirmative.

The learned Standing Counsel to the Government of Bengal (Mr. K. P. Khaitan) in the course of a fair and lucid argument contended before us that the Court should give effect to the plain meaning of the words of the statute and the rules which have statutory force whatever might be the consequences and that on a plain reading of the Act and the rules there could be no doubt that the legislature intended the return of an individual assessee to be signed by himself, *i.e.*, personally. Learned counsel referred us to a number of decisions, both Indian and English, where personal signature had been held indispensable.

There is no doubt that the true rule as laid down in judicial decisions and indeed, as recognised by the High Court in the case before us, is that unless a particular statute expressly or by necessary implication or intendment excludes the common law rule, the latter must prevail. It is, therefore, necessary in this case to examine the Act and the rules to ascertain whether there is any indication therein that the intention of the legislature is to exclude the common law rule.

Turning first to the Act, it will be found that by section 2 (14) the word "received" used with reference to the receipt of agricultural income by a person has been defined to include receipt by an agent or servant on behalf of a principal or master respectively. If the legislature intended that a signature by an agent would be permissible it could easily have defined the

word "sign" so as to include the signature by an agent. Section 25 (2) of the Act requires that if the Agricultural Income-tax Officer is not satisfied without requiring the presence of the person who made the return or the production of evidence that a return made under section 24 is correct and complete, he shall serve on such person a notice requiring him, on a date to be therein specified, either to attend at the Agricultural Income-tax Officer's office or to produce or to cause to be there produced any evidence on which such person may rely in support of the return. This section expressly permits production of evidence by an agent. Section 41 gives to the Agricultural Income-tax Officer, the Assistant Commissioner and the Appellate Tribunal for the purposes of Chapter V, and to the Commissioner for the purposes of section 37, the same powers as are vested in a Court under the Code of Civil Procedure, 1908, when trying a suit in respect of certain specified matters only namely, enforcing attendance of any person and examining him on oath or affirmation, compelling production of documents and issuing commissions for the examination of witnesses, and the proceedings before those officers are to be deemed to be "judicial proceedings" within the meaning of sections 193 and 228 and for the purposes of section 196 of the Indian Penal Code. Again, section 60 of the Act permits a notice or requisition under the Act to be served as if it were a summons issued by a Court under the Code of Civil Procedure, 1908, and specifies the person on whom such service may be effected. There is nothing in the Act making the provisions of the Code relating to the signing or verification of pleadings applicable to the returns to be filed by any assessee. If the Legislature intended that the return might be signed by the assessee or by his authorised agent there could have been no difficulty in inserting a section in the Act adopting the provisions of the Code relating to the signing and verification of pleadings as if the return was a pleading in a suit. Sections 35 and 58 expressly permit an assessee to attend before the Assistant Commissioner and the Appellate Tribunal or

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any Agricultural Income-tax authority in connection with any proceeding under the Act, otherwise than when required under section 41 to attend personally for examination, to attend by a person authorised by him in writing in this behalf, being a relative of, or a person regularly employed by, the assessee, or a lawyer or accountant or agricultural income-tax practitioner. It should be noted that even under this section any and every agent cannot represent the assessee but only certain specified kinds of agents can do so. To summarise, the omission of a definition of the word "sign" as including a signature by an agent, the permission under section 25 for production of evidence by an agent and under sections 35 and 58 for attendance by an agent and the omission of any provision in the Act applying the provisions of the Code of Civil Procedure relating to the signing and verification of pleadings to the signing and verification of the return while expressly adopting the provisions of that Code relating to the attendance and examination of witnesses, production of documents and issuing of commission for examination and for service of notices under sections 41 and 60 respectively, cannot be regarded as wholly without significance. The matter, however, does not rest there.

Section 24 of the Act requires the Agricultural Income-tax Officer to call for a return in the prescribed form and verified in the prescribed manner. Rule 11 of the Bengal Agricultural Income-tax Rules, 1944, framed under section 57 of the Act prescribes that the return required under section 24 must be in Form 5 and shall be verified in the manner indicated therein. There is a footnote in Form 5 to the following effect:

"The declaration shall be signed—

(a) in the case of an individual by the individual himself;

(b) in the case of a Hindu undivided family by the Manager or Karta;

(c) in the case of a company or the Ruler of an Indian State by the principal officer;

(d) in the case of a firm by a partner;

(e) in the case of any other association by a member of the association.

There is also a note that the signatory should satisfy himself that the return is correct and complete in every respect before signing the verification, and the alternatives which are not required should be scored out. It will be interesting to compare the requirements of rule 11 and Form 5 with those of other rules dealing with appeals and other proceedings. Section 34 allows an appeal from the Agricultural Income-Tax Officer to the Assistant Commissioner. Sub-section (3) of that section requires that the appeal shall be in the prescribed form and shall be verified in the prescribed manner. Likewise section 36 provides for a further appeal to the Appellate Tribunal and sub-section (4) of that section also requires that such an appeal must be in the prescribed form and be verified in the prescribed manner. Rule 13 prescribes the forms of appeals under section 34 and rule 14 prescribes the forms of appeals under section 63 of the Act. Rule 15 is as follows:—

"The forms of appeal prescribed by rules 13 and 14 and the forms of verification appended thereto shall be signed—

(a) in the case of an individual, by the individual himself;

(b) in the case of a Hindu undivided family, by the Manager or Karta thereof;

(c) in the case of a company, by the principal officer of the company;

(d) in the case of a firm, by a partner of the firm;

(e) in the case of a Ruler of an Indian State, by the principal officer of the State; and

(f) in the case of any other association of individuals, by a member of the association,

and such forms of appeal shall be also signed by the authorised representative, if any, of the appellant."

Rule 17 deals with applications for refund of tax. Sub-rule (2) requires every such application to be signed by the claimant and his authorised representative, if any, and allows such application to be presented by the applicant either in person or through

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such authorised representative. Rule 22 requires that where an application or memorandum of appeal is signed by an authorised representative, the latter must annex to it the writing constituting his authority and his acceptance of it. Under rule 25 an appeal to the Tribunal has to be presented in person or by an authorised representative and under rule 28 every such appeal has to be preferred in the form of a memorandum signed by the appellant and his authorised representative, if any, and verified by the appellant. Each of the forms, from Form 7 to Form 20, contains separate spaces for the signatures of the appellant or the applicant or the claimant as the case may be and the authorised representative, if any. Form 23 which is notice of hearing of appeal under section 36 requires the attendance of the appellant or respondent either in person or by an authorised representative. Rule 47 provides that, subject to certain special provisions, the provisions contained in Part II of the rules relating to the presentation, notices and hearing of an appeal before the Appellate Tribunal shall apply to the presentation, notices and hearing of a section 63 reference application as if it were an appeal. Rule 53 empowers the Tribunal, if it considers it necessary, to hear the applicant or his authorised representative. A perusal of the several rules referred to above will show that while rules 15, 17 (2), 28 and the forms thereunder require the appeal or application to be signed by the appellant or applicant or claimant as well as by his authorised representative, if any, rule 11 and Form 5 require only the signature of the assessee in the manner therein prescribed for different categories of assessees. Again rules 17 (2), 25 and 47 permit presentation of applications and appeals by the authorised representative of the assessee whereas there is no such provision for the presentation by an authorised agent of a return under rule 11 which could easily be inserted in the rules if the Legislature so intended. That wherever the assessee or the appellant or the applicant is required to sign he must sign personally, is also borne out by note (1) at the foot of Form 20 which is for refund of tax under section 48 (2). It runs as follows:

"In the case of a person not resident in British India, the above declaration shall be sworn (a) before a Justice of the Peace, a Notary Public, a Commissioner of Oaths, if the applicant resides in any part of His Majesty's Dominions outside British India, (b) before a Magistrate or other official of the State or a Political Officer, if he resides in a State in India, and (c) before a British Consul, if he resides elsewhere."

This does not mean that only the claimant for refund under section 48 (2) who resides outside India must sign his application personally and other assessees or appellants or applicants or claimants need not sign their return or appeal or application personally. All that it means is that such a claimant for refund under section 48 (2) must have his signature authenticated by certain public officers by swearing the declaration in their presence. This clearly indicates that personal signature of the assessee, the appellant or applicant is necessary in all cases wherever his signature is required and authentication of such signature is required only in the case of a claimant for refund of tax under section 48 (2). There are yet other reasons why personal signature of an assessee, appellant, applicant or claimant is necessary. It has been seen that under the Act and/or the rules several acts can be done by or through the authorised representative, namely, production of documents, presentation of appeal or application and attendance in proceedings before the authorities. The expression "authorised representative" is defined in rule 2 (a). It will be noticed that in each case the authorised representative has to be duly authorised in writing. Under rule 22 the authorised representative has to file the writing constituting his authority and his acceptance of it. If it were intended that the signature by an agent on a return or a memorandum of appeal or other application will suffice as the signature of the assessee or the appellant or the applicant or the claimant, there would certainly have been some rule for constitution of such agency in writing and for the filing of the writing constituting such agency and the agent's acceptance of it. If an agent for mere presentation of an appeal is expressly required by the

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rules to be duly authorised in writing and such writing has to be filed on record I cannot think that the Act or the rules contemplate or permit the employment of an agent to sign an important document, namely a return or an appeal or application without any written authority and that such agent may sign without producing any such written authority. And yet that would be the result, for there is no provision in that behalf in the Act or in the rules. On a consideration of the provisions of the Act and of the rules and the forms and for reasons stated above there appears to be many clear indications of an intention on the part of the Legislature to insist on the personal signature of the assessee, appellant or applicant whenever his signature is required by the Act or the rules and the common law rule *qui facit per alium facit per se* is excluded by necessary implication or intendment of the Act and the rules.

The Appellate Tribunal and the High Court have referred to certain difficulties in arriving at this conclusion which may now be considered. It is pointed out that to insist on the personal signature of an individual assessee will result in the anomaly that persons authorised to sign for the assessees of other categories will be free to get the returns signed by their own agents. This argument really begs the question. For reasons stated above none of the persons designated in the footnote to Form 5 are authorised to employ an agent to sign for him and therefore no anomaly can arise. If anything, the use of the word "himself" with reference to an individual makes the position clearer so far as such individual is concerned. There is an argument based on hardship or inconvenience. Hardship or inconvenience cannot alter the meaning of the language employed by the Legislature if such meaning is clear on the face of the statute or the rules. Further, there is no hardship or inconvenience. In the case of an illiterate person, he can put his mark which, by the Bengal General Clauses Act, is included in the definition of "sign." If claim Form 20 for refund of tax under section 48 (2) can be sent to a claimant abroad for his signature before certain public

officer for authentication, there can be no hardship or inconvenience in sending to him abroad the return in Form 5 for his signature without the necessity of any authentication thereof. It is said that such a construction will prevent a leper who, by reason of the loss of his fingers, cannot even put his mark. Such cases will indeed be rare and in any event it will be for the Legislature to rectify this defect. Not to insist on personal signature on returns or appeals or applications will let in signature by agent not duly authorised in writing and without production of such writing. In that case the provisions for penalty for filing false returns may quite conceivably be difficult of application. The omission of a definition of the expression "sign" so as to include the signature of an agent, the presence of the provisions permitting only certain specified acts, other than signing, to be done by or through an authorised agent are significant and indicate that the intention of the Legislature is not to permit signature by an agent so as to exclude the common law rule referred to above.

Turning now to the judicial decisions cited before us it will be found that Courts have insisted on personal signature even when there were not so many clear indications in the statutes under consideration in those cases as there are in the statute and the rules before us. Thus in *Monks* v. *Jackson*(1), which was a case under section 1 (3) of the Municipal Elections Act (38 and 39 Vic., c. 40) which required delivery of the nomination paper "by the candidate himself or his proposer or seconder to the Town Clerk" it was held that this requirement was not satisfied by the delivery of it by an agent. In *The Queen* v. *Mansel Jones*(2), it was held that a person charged with any corrupt or illegal practice at a municipal election who was entitled, under section 38 of the Corrupt and Illegal Practices Prevention Act, 1883, to be "heard by himself" was not entitled to be heard by his counsel or solicitor. In *In re Prince Blucher*(3), the English Court of Appeal held that a proposal of composition

(1) (1876) L.R. 1 C.P.D. 683 (2) L.R. 23 Q.B.D. 29
(3) L.R. (1931) 2 Ch. 70

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signed by the solicitors of a debtor, who was, by reason of his serious illness, unable to sign it, did not comply with the requirements of section 16 (1) of the Bankruptcy Act, 1914, which required "a proposal in writing signed by him." The Court of Appeal applied the principles of the decision in *Hyde* v. *Johnson*(1) and in *In re Whilley Partners Ltd.*(2). In *Luchman Buksh Roy* v. *Runjeet Ram Panday*(3), a Full Bench of the Calcutta High Court held that an acknowledgment by a Mooktear was not sufficient for the purposes of section 1 (5) of the Limitation Act (XIV of 1859) which required an acknowledgment signed by the mortgagee. Rankin C. J. held in *Japan Cotton Trading Co. Ltd.* v. *Jajodia Cotton Mills, Ltd.*(4) that a demand letter signed by the solicitors of the petitioning creditor was not a notice under section 163 of the Indian Companies Act which as it then stood required a demand "under his hand." A similar view was taken by the Rangoon High Court in *Manjeebhai Khataw & Co.* v. *Jamal Brothers & Co. Ltd.*(5) and *M. A. Kureshi* v. *Argus Footwear, Ltd.*(6). See also *Wilson* v. *Wallani*(7). In *C. T. A. C. T. Nachiappa Chettyar* v. *Secretary of State for India*(8), it was held that the registration of a firm on an application signed by the agent of the partners was *ultra vires* inasmuch as the rules framed under section 59 of the Income-tax Act required an application signed by at least one of the partners. In *Commissioner of Income-tax, Madras* v. *Subba Rao*(9), it was held that by reason of the word "personally" occurring in rule 6 of the Income-tax Rules framed under section 59 of the Income-tax Act, 1922, a duly authorised agent of a partner was precluded from signing on behalf of the partner an application under section 26-A of the Act for registration of the firm. In all these cases the common law rule was not applied, evidently because the particular statutes were held to indicate that the intention was to exclude that rule. This intention was gathered from the use of the

(1) (1836) 2 Bing. (N.C.) 776
(2) (1886) L.R. 32 Ch. D. 337
(3) (1873) 20 W.R. 375
(4) (1926) I.L.R. 54 Cal. 345
(5) I.L.R. 5 Rang. 483
(6) I.L.R. 9 Rang. 323
(7) (1880) L.R. 5 Ex. D. 155
(8) (1933) I.L.R. 11 Rang. 380
(9) I.L.R. (1947) Mad. 167

word "himself" or "by him" or "under his hand" or "personally." It is needless to say that such an intention may also be gathered from the nature of the particular statute or inferred from the different provisions of the statute and the rules framed thereunder. As already stated, there are many indications in the Bengal Agricultural Income-tax Act, 1944, and the rules made thereunder evidencing an intention to exclude the common law rule in the matter of the signature of the assessee, appellant or applicant on the return, appeal or application.

The High Court referred to the case of *In the matter of Commissioner of Income-tax, C.P. & U.P.* (1) and sought to find support for its views from the circumstance that the Court in that case rejected the return not on the ground that it was bad because it was signed by an agent but on the ground that the power of attorney did not authorise the agent to sign it. It is quite clear that the Court in that case found it easier to decide the case on the latter ground than to enter upon a discussion of the first ground. It is impossible to read that case as an authority for the proposition that the signature of an agent was permissible at all. The Full Bench decision of the Allahabad High Court in *Deo Narain Rai* v. *Kukur Bind*(2) referred to in the High Court judgment before us does not appear to militate against the views expressed above. On a construction of section 59 of the Transfer of Property Act it was held that there was nothing in the Act to exclude the application of the common law rule. The only provision of that Act on which reliance was placed in establishing such exclusion was section 123. Stanley C. J. pointed out that the language of the last mentioned section was elliptical and was not accurate draughtsmanship and, therefore, it could not be relied upon in construing section 59. The judgment of Banerjee J. also makes it clear that he found nothing in the Act to exclude signature by an agent and that the words "on behalf of" in section 123 were surplusage. It is quite true that when signature by an agent is permissible, the writing of the name of

(1) A.I.R. (1935) Oudh. 305 (2) (1902) I.L.R. 24 All. 319.

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the principal by the agent is regarded as the signature of the principal himself. But this result only follows when it is permissible for the agent to sign the name of the principal. If on a construction of a statute signature by an agent is not found permissible then the writing of the name of the principal by the agent however clearly he may have been authorised by the principal cannot possibly be regarded as the signature of the principal for the purposes of that statute. If a statute requires personal signature of a person, which includes a mark, the signature or the mark must be that of the man himself. There must be physical contact between that person and the signature or the mark put on the document.

The result, therefore, is that this appeal must be accepted and the question referred to the High Court must be answered in the negative. There will be no order for costs against the assessee and the appellant Commissioner must bear his own costs throughout.

Fazl Ali J. FAZL ALI J.—I agree.

Patanjali Sastri J. PATANJALI SASTRI J.—I agree.

Mukherjea J. MUKHERJEA J.—I agree.

Mahajan J. MAHAJAN J.—The question of law referred to the High Court and answered by it in the affirmative is in these terms :—" Whether in the circumstances of this case, the declaration in the form of return signed by the illiterate assessee by the pen of his son should be treated as properly signed and a valid return." The High Court was not called upon to answer the question whether an income-tax return could be validly signed by an agent in the name of the principal; on the other hand, the question as framed assumes that the return was signed by the illiterate assessee but that the pen affixing the signature was that of his son. The physical act of putting the mark was made by the pen or possibly by the hand of the son who was not the agent appointed by the father and was not otherwise authorised by him to sign for him.

No evidence was led and there is nothing whatsoever on the record to establish that this illiterate assessee did not touch the pen or the hand of the son when the signature was affixed on the return. No precise definition of the word "signature" is given in the Indian Income-tax Act or in any other law. In the General Clauses Act there is no exhaustive definition of the word. It merely says what the word "signature" shall include. It includes the affixing of a mark. In India it is a well known practice that when the executant of a document is illiterate he simply touches the pen wherewith someone else signs his name for him. Reference in this connection may be made to page 972, para. 1659, of Gour on The Law of Transfer. The signature made in these circumstances is personal signature of the executant. It is his autograph. No question of agency arises in such a situation. This is what seems to have happened here as one can guess from the frame of the question. Be that as it may, without any enquiry into the circumstances in which the pen of the son affixed the signature of the assessee on the return it could not be assumed that the son acted as the agent of the father and signed his name in that capacity. In my opinion the discussion of the question whether an agent can sign a return for an assessee was outside the scope of the question which the High Court was called upon to answer. The answer given in my view was a correct one.

After considerable thought I am disinclined to reverse the decision of the High Court by placing an interpretation on the question which it does not bear. In an *ex parte* hearing we had not the advantage of hearing any arguments in support of the view taken by the High Court as the respondent did not appear. It is unnecessary to express any opinion on the question whether an agent can sign for the principal a form of return under the Indian Income-tax Act as that enquiry is outside the scope of the question referred to the High Court as already pointed out.

In the absence of any material to the contrary I am satisfied that the assessee signed the return

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personally. If the Income-tax Officer felt that the assessee had not touched the pen or the hand of the person who put the signature on the return he should have called upon the assessee to appear before him and ascertain from him the circumstances in which the son's pen was used for the signature. In *In the matter of Commissioner of Income-tax, C.P. & U.P.*(1), it was observed that it is the duty of the Income-tax Officer before he accepts a return signed by an agent to satisfy himself about the authority of the agent to do so. In my opinion, it is equally the duty of an Income-tax Officer before he rejects a return of an illiterate assessee or a person such as a leper, to satisfy himself that there was no physical contact of the person with the mark or the signature put on the form. I agree with my brother Das that there should be physical contact between the person and the signature or the mark put on the document, but I am afraid I cannot agree with him that in this case that has not happened. The question to a certain extent assumes the contact of the assessee with the pen of his son when it states that the illiterate assessee's signature was put with the pen of the son. Be that as it may, that circumstance has not been eliminated in the case and that being so, the question cannot be answered in the manner proposed by my learned brother. I am further of the opinion that the Income-tax Officers should not while administering the law create unnecessary problems for the Courts. In the present case if there was any doubt in the mind of the Income-tax Officer, he should have called upon the illiterate assessee to put his mark in his presence on the return and he should not have acted hastily in assessing him under the penal provisions of the Act. Ignorant and illiterate people who are not well versed with the law of income-tax should be dealt with more sympathetically than was done here. They should not be penalised in the manner that the present assessee was penalised. In the result I would dismiss this appeal.

Appeal allowed.

Agent for appellant : *P. K. Bose.*

(1) A.I.R. 1935 Oudh. 305.