

**PART D- INSTRUMENTS NOT DULY STAMPED UNDER
THE INDIAN STAMP ACT, 1899.**

Attention is called to the provisions of sections 33 to 35 of the Indian Stamps Act, II of 1899, in regard to instruments, not duly stamped. The procedure laid down in these sections is mandatory and not discretionary; whatever discretion is permitted under the Act vests in the Collector alone, after the instrument is before him, and with that the civil courts have no concern.

Section 33 to 35 of the Indian Stamp Act are mandatory.

2. By section 33 of the Indian Stamp Act, 1899, all public officers, with certain exceptions, are required to examine every instrument chargeable with duty which comes before them in the performance of their official functions and to impound any instrument which appear not to be duly stamped. Every court impounding an instrument must forthwith note it as "impounded," such note being dated and signed with the ordinary full signature of the impounding officer.

Duty of public officers to examine and impound documents not duly stamped.

3. Under section 35 of the same Act, every such instrument, not being an instrument chargeable with a duty of one anna or half an anna only, or a bill of exchange or promissory-note, may be admitted in evidence in a civil court if the party desiring to use it shall pay the amount necessary to make up the proper stamp duty, together with a penalty of Rs. 5, or when ten times the amount of the proper duty or deficient portion thereof exceeds Rs. 5, then with a penalty of ten times such duty, or portion. Under clause (b) of section 35, however, an un-stamped receipt may be admitted in evidence against the person who has given it, on payment of a penalty of one rupee by the person tendering it.

Conditions on which a document not duly stamped may be admitted in evidence.

The amount realized under section 35 should be paid into the local treasury, sub-treasury, or branch of the State Bank of India, as the case may be, the same day or on the morning of the next day at the latest and the original treasury or bank receipt transmitted to the Superintendent of the Collector's Office together with an authenticated copy of

the impounded document as referred to in paragraph 5 and 6 below.

NOTE.- So far as the deposit of the amount realized under section 35 is concerned these orders may be relaxed in the case of courts which are situated at places where there is no treasury; sub-treasury; or branch of the State Bank of India. In such cases the amount may be deposited at the nearest treasury or sub-treasury twice a month or at such intervals as may be prescribed in the case of other deposits.

4. Section 42 requires that civil courts shall certify by endorsement on every instrument admitted in evidence under section 35 of that the proper duty and penalty have been levied in respect thereof, and shall also state the name and residence of the person paying them.

5. Section 38 requires every civil court to send to the Collector an authenticated copy of every impounded instrument admitted in evidence, with a certificate in writing stating the amount of the duty and penalty levied in respect thereof. The endorsement required by section 42 should be transcribed on such copy. When an impounded instrument has not been admitted in evidence whether from failure to pay the requisite duty and penalty, irrelevancy, want of registration or other cause it must be sent in original to the Collector. In such cases the provisions of section 46, sub-section (2), are applicable. The copy to be made under this section must be retained in the custody of the Court.

6. Section 42, sub-section (2), entitles any person tendering a document on which deficient stamp duty and penalty has been levied under section 35 to reclaim the same, but the proviso to that section directs that the court shall not, under any circumstances, deliver such documents before the expiration of one month from the date of impounding it. If the Collector has certified that the further detention of such document is necessary, the court shall not deliver it until such certificate is cancelled. It is obvious that the transmission of the copy to the Collector should be made with the least possible delay to enable him to make such inquiry as may be necessary within the month for which the instrument is to be detained. Every such copy should be

Certificate to be endorsed on a document admitted in evidence on payment of duty and penalty.

Duty of Court to send to Collector the impounded document or its copy in certain cases.

Return of documents admitted in evidence on payment of duty and penalty.

dispatched not later than 45 hours from the time when the original is impounded.

7. Any duty or penalty paid under sections 35, 37,40 or 41 by any person, which by agreement or under section 29 or any other law, another person was bound to pay, may be included in costs or otherwise recovered by the person paying such duty or penalty as provided in section 44.

Duty or penalty
paid may be
included in costs.