Present: Ennis J. and Schneider A.J. 1916.

In re Application of V. COOMARASAMY, Proctor and Notary Public.

Stamp Ordinance, No. 22 of 1909—Settlement—Deed of gift.

A by a deed purported to "make over" four lands to his children in equal shares. The instrument recited that the grant was made as a "deed of distribution of *mudusam*, known as a deed of settlement." The children of A did not expressly signify their acceptance on the face of the deed.

Held, that the deed was a settlement, and had to be stamped accordingly under article 49 of Schedule B, Part I., of Ordinance No. 22 of 1909.

THE facts are set out in the judgment. The following translation of the deed in question was filed with the petition:—

Deed of Settlement. Rs. 1,500. Lands 4.

No. 150.

Know all men by these presents that we, Casynatar Sinnatampy and wife Annapillai, of Veemankamam, Jaffna, execute and grant deed of distribution of *mudusam* known as deed of settlement to our children. viz., Sinnatampy Saddanatar, Sinnatampy Gnanasary, Pooranam, daughter of Sinnatampy, Parimalam, daughter of Sinnatampy, Pakkyam, daughter of Sinnatampy, and the fetus in the womb of the

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second-named person of us, all of the same place, for the hereinbelow described properties, to wit:—

[Land Described.]

The total value being Rs. 1,500. The above-described four properties of the said value of One thousand Five hundred Rupees we make over in equal shares to the said Saddanatar, Gnanasary, Pooranam, Parimalam, Pakkyam, and the fetus in the womb of the second-named person. Hereby declaring that the said lands are not in any manner encumbered or alienated we execute and grant this deed of settlement.

In witness hereof we, the said grantors, set our signature before Ponnampalam Tampinatar, of Tellipallai West, and Sittampary Murukasu, of Veemankamam, the subscribing witnesses hereto, and before the hereinbelow-named Notary, at the office of the Notary at Tellippallai, on the 29th November, One thousand Nine hundred and Fifteen.

Signature of C. Sinnatampy.
Mark of Annapillai.

We the witnesses know well the name, residence, and occupation of the grantors.

Witnesses:
Signature of Tampinatar.
Signature of S. Murukasu.

Signature of V. Coomaraswamy, Notary Public.

Arulanandan, for petitioner.—By this deed in question the parents distributed their property among their children. The deed is therefore a settlement within the meaning of section 3 (24) of the Stamp Ordinance, 1909. Apart from the fact that the deed is called a settlement on the face of it, the provisions of the deed make it clear that it is a deed of settlement.

The deed has to be stamped under article 49 of the Schedule B, Part I., and not under article 30 as held by the Commissioner of Stamps. At any rate, it cannot be said to be free from doubt whether the deed has to be stamped under article 49 or under article 30. As the Ordinance imposes a pecuniary burden, a construction most favourable to the subject should be adopted (*Maxwell on Interpretation of Statutes 429—430*).

Garvin, S.-G., for Crown.—The term " settlement " is not known to our system of law. Under the Roman-Dutch law the deed in question would be a donation, and unless it is accepted it would not amount to a disposition of property. There being no valid disposition of property, the deed does not fall within the definition of term " settlement " in section 3 of the Stamp Ordinance. We cannot look beyond the deed for deciding the character of the deed. *In re Chellappa*,[1] Counsel cited *25 Halsbury 226*.

Arulanandan, in reply.—The Court need not consider the question whether the deed contains a valid disposition of property for the purpose of stamping of the document.

Cur. adv. vult.

[1] *(1916) 19 N. L. R. 116.*

August 29, 1916. ENNIS J.—

This is an application under section 32 of the Stamp Ordinance, No. 22 of 1909, by V. Coomaraswamy, Proctor and Notary Public, appealing against a decision of the Commissioner of Stamps determining that an instrument, submitted for his opinion as to the amount of duty with which it is chargeable, is chargeable under Schedule B, Part I., article 30, as a gift in which donees have not expressly signified acceptance of the gift.

The instrument in question, according to the official translation, purports to " make over " four lands to the children of the donors in equal shares. The instrument recites that the grant is made as a " deed of distribution of *mudusam*, known as a deed of settlement. "

For the appellant it is contended that the instrument is one chargeable with the duty prescribed in article 49 for an instrument of settlement.

It is to be observed that article 49 includes a deed of dower in an instrument of settlement. Section 3 (24) defines " settlement " as follows:—" Settlement means any non-testamentary disposition, in writing, of movable or immovable property made (*a*) in consideration of marriage; (*b*) for the purpose of distributing the property of the settlor among his family or those for whom he desires to provide, or for the purpose of providing for some person dependent on him; or (*c*) for any religious or charitable purpose; and includes an agreement in writing to make such a disposition. "

In England " settlement " has been defined (*25 Halsbury 526*) as an instrument whereby property is limited to or in trust for persons by way of succession.

In Ceylon the inclusion of a deed of dower with settlements for the purpose of duty, and the terms of the definition of settlement, which are wide enough to include direct gifts in certain cases, show that it was not the intention of the Legislature to limit the meaning of the term to the ordinary meaning when considering the character of a document for the purpose of duty. The rule for the construction of revenue laws is that they are to be read in favour of the subject, but so that effect is given to the intention of the Legislature (*Maxwell on the Interpretation of the Statutes, 4th ed., pp. 430 to 434*). The case of *Chellappa*[1] decided that the document only can be looked to determine its character, and that it must contain words to show that it was made for one of the purposes mentioned in section 3 (24) before it is chargeable with duty as a settlement. The present document contains such words; it is to effect a " distributing " of the property of the settlors among their " children ".

It was finally submitted by the Solicitor-General that an instrument of settlement under the terms of the definition is a " non-testamentary disposition of property "; that by Roman-Dutch law

[1] *(1916) 19 N. L. R. 116.*

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it would fall under the head of " donations ", and would not be complete until accepted. In other words, it would not be a disposition of property until accepted, and could not, therefore, fall within the definition of settlement given in the Stamp Ordinance. On the other hand, it has been pointed out that the words " non-testamentary disposition of property " have probably been used in the Stamp Ordinance in contradistinction to the words " testamentary disposition of property " used in the Wills Ordinance, and that a donation under a will purports to be a gift, notwithstanding that the legatee may decline to accept it. In my opinion an instrument is chargeable with duty when it falls within the character which it purports to have, apart from any question as to whether or not it is effective for the purpose. The settlors in the present case purport by the instrument to " make over " certain lands to their children, and this is a disposition of property by them. They have put it in the hands of others to complete the alienation or not. The acceptance may be inferred from conduct in the absence of an express acceptance, and the disposition operates from the date of the document just as a gift under a will operates from the death of the testator. There is in fact a " disposition " of property, notwithstanding that the " alienation " is complete.

In the circumstances, I am of opinion that the instrument before us in this case is a settlement within the meaning of the term as used in the Stamp Ordinance, and is chargeable with duty as such. I would allow the appeal.

SCHNEIDER A.J.—I agree.

Appeal allowed.