1941 *Present :* **Moseley S.P.J. and Keuneman J.**

JOSEPH *v.* COMMISSIONER OF STAMPS.

103—(Inty.) Stamps.

Conveyance of Insurance policy—Transfer in contemplation of marriage—Conveyance not a gift—Stamp Ordinance (Cap. 189), Schedule A., Part I., items 54 and 23 (2).

A transfer by a person to his prospective bride of a policy of insurance in consideration of the intended marriage is liable to duty as a conveyance under item 54 of Part I., Schedule A, to the Stamp Ordinance read with item 23 (2) of the same schedule.

PPEAL from an order of the Commissioner of Stamps.

M. M. I. Kariapper, for appellant.—It is submitted that the instrument in question should be stamped under item 54 as dutiable under 23 (2)

[1] *22 N. L. R. 243.*

of Part I. of Schedule A of the Ordinance. The transaction embodied in this instrument is not a *gift* or *donation,* which is dutiable under item 32 (2), but it is a conveyance of a policy for some valuable *consideration.* The word *"consideration"* must be given its meaning in English law, *Wataraka Investment Co. v. Commissioner of Stamps*[1], which in the sense of the law may consist in some right, interest, profit or benefit accruing to one party or some forbearance, detriment, loss or responsibility given, suffered or undertaken by the other (*Currie v. Missa*[2]). What is the consideration for this instrument? It is the contemplated marriage between the parties to the instrument and marriage in English law is a valuable consideration, *5 N. L. R. 230; 8 Simon 253* (*Spackman v. Timbrell*). The words of item 54 are wide enough to include a *consideration* of this nature, viz., marriage, for the words used are *"any consideration"*, and further item 23 (2) under which item 54 is dutiable contemplates consideration being of different kinds including one of a non-pecuniary one. Marriage being good and valuable consideration is chargeable under item 54.

The existence of a consideration for the instrument, altogether takes it out of the category of gifts or donations; which are dutiable under item 55 as in 32 (2). The word *gift* is not defined in the Ordinance and one may look at Text books for its definition. See definition of *"Gift" Forms and Precedents (Encyclopœdia)*, Vol. 6, pages 120 and 121. Gift is a gratuitous transfer.

H. H. Basnayake, C.C., for respondent.—The instrument before the Court is liable to stamp duty under item 55 of Schedule A, Part I, of the Stamp Ordinance. It is a gift although it recites that there is consideration. The principle that should guide one in deciding the proper item under which to stamp this instrument is to be found in the cases in *In re Veeravagu*[3]; *In re Gunasekera*[4]; *In re Coomarasamy*[5]; and especially in *de Silva v. Commissioner of Stamps*[6]. The true test for stamping deeds of this nature is laid by Macdonell C.J. in *de Silva v. Commissioner of Stamps* (*supra*). It may be taken as settled by the decision of this Court (*In re Veeravagu*) that a dowry deed, even though it is executed in pursuance of marriage and in consideration of marriage, is, in fact, in substance a gift by the parent or parents to the daughter. The effect of this ruling interpreted most favourably for the appellant in this case is that a deed such as the present, even though it may be in the eye of the general law a conveyance for value, is none the less under the provisions of the Stamp Ordinance a gift, and therefore to be stamped under Article 30 of the Schedule.

M. M. I. Kariapper, in reply.—There is no case applicable to the facts of the present case. All the decided cases are distinguishable and inapplicable. They are concerned with deeds of gifts from parents to their children on a marriage. Even the case of *Re Goonesekere* needs reconsideration.

Cur. adv. vult.

[1] *34 N. L. R. at 272.*
[2] *L. R. 10 Exch. 162.*
[3] *23 N. L. R. 67.*
[4] *24 N. L. R. 351.*
[5] *27 N. L. R. 62.*
[6] *36 N. L. R. 396.*

February 5, 1941. MOSELEY S.P.J.—

A client of the appellant on the eve of his marriage executed in favour of his prospective bride a deed whereby he transferred all his right, title and interest in a certain policy of life assurance of the present surrender value of Rs. 2,432. The consideration for the transfer is expressed in the document to be the intended marriage. The appellant considered the document to be a transfer of a policy of insurance for consideration, and therefore dutiable under item 54 of Part I., Schedule A to the Stamp Ordinance (Cap. 189), which provides that the duty on such a document shall be the same as on a conveyance under item 23 (2) of the same part of the Schedule. He therefore affixed stamps to the value of Rs. 25, which, if his estimate of the nature of the document be accepted, would be the proper duty.

The document, however, came to the notice of the Registrar of Lands, who found it to be a transfer of the policy by way of gift, within the meaning of item 55, and to be dutiable under item 32 (2) (*a*). Under the last-mentioned item the proper duty would be Rs. 75.

The matter was then referred for adjudication, as provided by section 29 of the Ordinance, to the Commissioner of Stamps who endorsed the view held by the Registrar of Lands. Against that adjudication the appellant now appeals.

It cannot, I think, be disputed that a conveyance in consideration of marriage is for valuable consideration. In *Fernando v. Fernando*[1] Lawrie A.C.J. expressed the view that "if a land be conveyed before marriage by a bridegroom to his bride or to marriage settlement trustees, or if the parents of the bride convey land to her and to the bridegroom or to trustees in consideration of the marriage, then such conveyance would be for valuable causes". In the same case Moncreiff J. referred to the case of *Spackman v. Timbrell*[2] in which it was held that, where a person settled property upon his wife and children in consideration of marriage, the settlement was for valuable consideration. This case *Fernando v. Fernando* (*supra*) does not purport to be an authority in respect of stamp duty. The question of the nature of such a document, as we have before us, has been considered in a number of cases brought to our notice by Counsel for the respondent. In the case of *In re the Application of K. S. Veeravagu, Notary Public*[3] De Sampayo J. observed that a dowry, though it may be given in consideration of marriage, is, nevertheless a gift. He traced the history of the relevant legislation and came to the conclusion that "a dowry deed, which is after all a gift, though it may be a gift of a special kind, must be stamped under Article 30" (now 32). In *de Silva v. Commissioner of Stamps*[4], Macdonell C.J. after considering the last-mentioned authority summarized his views as follows:—"In effect granting to the full, if you wish, that this deed was a conveyance for value, still by virtue of decisions which are binding upon us, it is also a gift which has not been accepted and therefore, if the Crown wishes to stamp it with the higher duty chargeable under Article

[1] *5 N. L. R. 230.*
[2] *5 Sim. 261.*
[3] *23 N. L. R. 67.*
[4] *36 N. L. R. 393.*

30 (*b*) of the Schedule, it is entitled to do so". The authority for the Crown's privilege to select the higher rate of duty is *Speyers v. Commissioner of Inland Revenue* [1].

None of the authorities to which I have so far referred, nor any of the decisions reviewed therein, is in respect of a gift by a husband to a wife, either before or after marriage. All are in connection with deeds of dowry as I think they are understood in this country and perhaps in most countries. As Hutchinson C.J. observed in *Jayesekere v. Wanigaratna et al.* [2], the dowry is almost always the consideration or part of the consideration for the man taking the woman as his wife. The only authority which has come to our notice in connection with a deed executed by a husband in favour of his wife is *In re the Application of Goonesekera, Notary Public* [3]. This was a case where a Muhammadan husband, after the marriage had been consummated, executed a deed in favour of his wife, in pursuance of an obligation which, it was contended, the Muhammadan law imposes upon a husband. Each of the learned Judges who decided the appeal relied upon *In re the Application of K. S. Veeravagu, Notary Public* (*supra*). Schneider J. for reasons which I may say, with the greatest respect, are not clear to me, drew no distinction between the nature of the instrument which the Court had before it and that which was the subject matter in *Veeravagu's* case. Porter J. contended himself with accepting the ruling in the latter case. The Court held that the document should be stamped under item 30 (*b*) (now 32).

It does not seem to me that there is any authority applicable to the case before us. As I have already observed the authorities, with one exception, are cases in which a deed of dowry, executed by the parents of the bride in accordance with time-honoured custom, was the subject. The exceptional case was decided upon the footing that the transaction was one required by law. Neither factor appears in the present case.

In the *Encyclopaedia* of the *Laws of England* with *Forms and Precedents* (2nd ed.) at page 371 the following passage occurs :—

"The distinguishing feature of a gift is that consideration is not an element in it. The donor gets nothing for the property he conveys or transfers". In Halsbury's *Laws of England* (1st ed.), Vol. XV. at page 399 a gift 'inter vivos' is defined as the transfer of any property from one person to another gratuitously, and at the same page, note (b) the learned commentator quotes, from 2 Bl. Com. 440, the observation that "gifts are always gratuitous, grants are upon some consideration or equivalent. Accepting the principle that marriage is a valuable consideration I am unable to comprehend that a transaction of the nature of that which we are considering can be regarded as a gift. In my view the document in question was properly stamped by the appellant under item 23 (2) of the Schedule. I would therefore allow the appeal with costs.

KEUNEMAN J.—I agree.

Appeal allowed.

[1] *(1908) A. C. 92.* [2] *12 N. L. R. 364.* [3] *24 N. L. R. 351.*