

1929.

*Present* : Drieberg and Akbar JJ.

COMMISSIONER OF STAMPS *v.* BANDA.

64—D. C. (*Inty.*), *Avissawella*, 71.

*Stamps—Security bond by administrator—Liability to duty—Ordinance No. 22 of 1909, Schedule B, Part I.*

A security bond given by an administrator is liable to stamp duty under item 15 (b) of Part I. of Schedule B of the Stamps Ordinance.

**A** PPEAL from an order of the District Judge of Avissawella.

The respondent was on January 21, 1928, ordered by the District Court of Avissawella to give security by bond in Rs. 750 for the due administration of the estate of a deceased person under section 538 of the Civil Procedure Code. The question is whether the bond was liable to be stamped under the Stamps Ordinance, No. 22 of 1909.

The learned District Judge held that bonds executed in testamentary proceedings were free from stamp duty.

*M. W. H. de Silva, C.C.*, for Commissioner of Stamps.—Section 4 of Ordinance No. 22 of 1909 imposes a duty on every instrument in the Schedule B, which not having been previously executed, is executed in Ceylon. A bond by an administrator in form 90 is a bond within the meaning of that word in item 15 of the schedule. It is therefore subject to the duty stated in that item unless especially exempted. Under Ordinance No. 82 of 1919 a bond by an administrator fell under Part I. as well as Part

III. By the amending Ordinance No. 19 of 1927 bond has been removed from Part III. with the result that it now falls under Part I. only. The learned District Judge was wrong in considering the intention of the Legislature, in omitting the word "bond" from Part III. The intention of the Legislature is relevant only when there is an ambiguity. In the present case there is no such ambiguity at all.

The District Judge has treated Part III. as exhaustive of the duties in testamentary proceedings. He has apparently misread the words "not falling under any of the following heads" at the end of the first sentence in the beginning of Schedule B. These words qualify only the words "on other instruments, matters, and things." Further, the words "not falling under" clearly mean "not appearing in" "or not included under." The words appearing against Part I., Part II., Part III., &c., are merely words describing the contents of such parts. The description of Part V., as "miscellaneous" clearly shows that the words "falling under" cannot be construed as "which should fall under," and shows that the parts are not intended to be exhaustive.

Before the amendment of 1927 the Crown could elect to charge duty under either Part I. or Part III. See the case of *In re v. Coomaraswamy, Notary Public*.<sup>1</sup> The result of the amendment is to confine the Crown to the first part of the schedule.

The fact that in Part II. the words "Bail bond or other bond or recognizance. The same duty as a mortgage bond for the same amount" appear is immaterial. The result would have been the same whether these words had been inserted or not.

An instrument cannot be exempted from duty by implication. It is clear from item 15 (a) that no bond of any kind was intended to be exempted from duty.

*H. V. Perera*, for respondent.—The District Judge is correct in regarding Part III. as exhaustive of duties in testamentary cases. The practice has been only to charge duty on the items stated in that part. When an item which had been there is omitted the implication is that it was intended to free it from duty. The intention is therefore relevant as the act of omitting this item made the enactment ambiguous.

It is the duty of the Legislature to speak clearly especially in cases where the tax is to be imposed on the subject.

The contention that the words "not falling under any of the heads" qualify only the words "on other instruments, &c.," is based on a mere semicolon. Marks of punctuation are not a part of the statute. Those words must be taken with the earlier words as well as the later words. In item 15 (a) the words this schedule must be construed as this part of the schedule.

<sup>1</sup> (1927) 27 N. L. R. 62.

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The matter for decision is whether a security bond by an administrator is liable to stamp duty under the Stamp Ordinance of 1909.

The value of the estate is Rs. 4,250 and the respondent was ordered to give security in a sum of Rs. 750. The bond executed for this purpose is in the form 90 of the second schedule of the Civil Procedure Code; by it the administrator is bound to the Secretary of the District Court in a certain sum, the condition of the bond being that it should be void on the administrator duly completing the administration of the estate.

A bond of this nature undoubtedly falls under Part I. of the schedule to the Stamp Ordinance and is subject to an *ad valorem* duty. In Part II. of the schedule, which deals with the duties in land proceedings, provision is made for a "bail bond or other bond or recognizance," the duty being the same as for a mortgage bond for the same amount. Until the amending Ordinance No. 19 of 1927 bonds were mentioned in Part III., which deals with the duties in testamentary proceedings, and were liable to duty according to the class of the proceeding, those in Class I., under Rs. 2,500, being with other documents free of duty. By Ordinance No. 19 of 1927 a new table of duties was substituted in testamentary proceedings, the class free of duty being raised to Rs. 5,000; from this table bonds are omitted.

The learned District Judge considered the question from the point of view of the intention of the Legislature in making this amendment and, as it was thought, altering the law; the report of the Taxation Committee was referred to, and he has given his reasons for holding that the recommendation of the Committee that bonds should be deleted from Part III. and allowed to be subject to the *ad valorem* duty was not carried into effect by the mere omission of bonds from Part III. in Ordinance No. 19 of 1927 and that bonds executed for the purpose of testamentary proceedings are now free from duty.

There is no reason for inquiry into the intention of the Legislature, for the provisions of the Ordinance are clear. The scheme of arrangement in Schedule B, which enumerates all instruments and documents which are chargeable with stamp duty, is this: In Part I. are two groups of instruments and documents; the first group consists of instruments of conveyance, contract, obligation, security for money, and deeds in general; the second group consists of "other instruments, matters, and things" *i.e.*, other than those previously stated, and of these those which fall under Parts II., III., IV., and V., are excluded from duty under Part I. The words "not falling under any of the following heads" does not apply to what I have referred to as the first group.

The bond in question, whether it be regarded as an instrument of contract, obligation, or of security for money, is within the first group and it would not cease to be chargeable under Part I. if it fell under any one of the other Parts II., III., IV., or V.

When it fell under Part III., as it did before the amendment in 1927, it did not for that reason cease to be chargeable under Part I.; it was liable under both heads and the Crown could elect under which it should be charged. The fact that it is now omitted from Part III. cannot, as I have pointed out, affect its liability under Part I.

The appeal is allowed, but without costs either in this Court or in the Court below.

AKBAR J.—

The appeal in this case is on a simple point of law. The respondent was on January 21, 1928, ordered by the District Court, Avissawella, to give security by bond in Rs. 750 for the due administration of the estate of a deceased under section 538 of the Civil Procedure Code. The question for decision is whether this bond is liable to be stamped under the Stamp Ordinance, No. 22 of 1909. Schedule B of the Stamp Ordinance is divided into 5 parts; Part III. contains the duty in testamentary proceedings. The word "bond" appeared in Part III. of Schedule B before the Ordinance was finally amended by an Ordinance of 1927. This Ordinance of 1927 re-enacts Part III. of the schedule, but the word "bond" is omitted from Part III. The question is whether bonds under section 538 of the Civil Procedure Code are exempt from stamp duty or liable to be stamped under any one of the other parts of Schedule B. A certain paragraph of a Sessional Paper XX. of 1927, being a report of the Taxation Committee of the Legislative Council, was quoted in the District Court to prove the intention of the Legislature in omitting the item "bond." This, of course, was clearly wrong because the Ordinance must be interpreted within its four corners. An examination of the Ordinance shows the following things:—The liability to stamp instruments and documents in Schedule B is provided for by section 4 of the Ordinance. At the top of Schedule B the different parts are enumerated and Part I. is as follows:—"Containing the duties of instruments of conveyance, contract, obligation, and security for money; on deeds in general and on other instruments, matters and things not falling under any of the following heads." It is contended for the Crown that this bond being an ordinary bond providing security for money (see form 90 in the Civil Procedure Code) is liable to be stamped under item 15 (b) of Part I. of Schedule B of Ordinance No. 22 of 1909. It is further argued that the words "not falling under any of the following heads" at the top of Schedule B only

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limit the words " other instruments, matters, and things." This appears to be the obvious intention of the Legislature. Therefore this bond will be liable to be stamped under item 15 (b) of Part I. of the schedule. I am further inclined to hold that the words " not falling under any of the following heads " mean " not falling under any of the items enumerated in Parts II., III., IV., and V." This seems to be the only possible interpretation because Part V. is headed " Miscellaneous " and obviously " Miscellaneous " does not mean everything in this world, but only the items enumerated under Part V. The matter is concluded beyond any doubt if the whole of item 15 of Part I. is carefully scrutinized. Item 15 is as follows:—" Bond of any kind whatever not otherwise charged in this schedule nor expressly exempted from all stamp duty, Rs. 10." Obviously the word " schedule " in this item refers to the whole Schedule B (see in this connection item 2, Part I.). Therefore the intention of item 15 in Part I. is to catch up all bonds and make them liable to stamp duty. It has been held by this Court in the case of *In the Matter of the Application of V. Coomaraswamy, Notary Public*,<sup>1</sup> that whenever a document is liable to be stamped under more than one head, the Crown can elect to levy the highest duty chargeable under any one of these heads. I think, therefore, that the omission of the word " bond " by the amending Ordinance of 1927 has the effect of making this bond liable to be stamped under item 15 (b) of Part I. The District Judge has thought otherwise, because at the bottom of Part II. of the schedule we find the words " Bail bond or other bond or recognizance. The same duty as a mortgage bond for the same amount." He was of opinion that because there were no such item enumerated in Part III. by the Ordinance of 1927 amending the Stamp Ordinance, therefore the intention of the Legislature was to repeal the duty on bonds in testamentary proceedings. I do not think the District Judge's reasoning is sound. If the item referred to by the District Judge in Part II. was not inserted, the effect would be to make such bonds chargeable under any one of the sub-heads of item 15. The words " The same duty as a mortgage bond for the same amount " were inserted to make it clear that the bond was to be stamped under item 15 (a) or 15 (b) and not under any other sub-head of item 15. For these reasons I am of opinion that the learned District Judge was wrong. I would, therefore, hold that such bonds are liable to be stamped under item 15 (b) of Part I. of Schedule B of the Stamp Ordinance. The appeal is allowed, but I would give no costs either in this Court or for the argument in the lower Court.

*Appeal allowed*

<sup>1</sup> (1927) 27 N. L. R. 62.