

[IN REVISION.]

1922.

*Present : Bertram C.J.***WIJESURIYA v. SAMARASINGHE.***P. C. Colombo, 48,011.**Stamp duty—Lease—Mortgage affecting more lands than one embodied in leases—Ordinance No. 10 of 1919, Part I, Schedule B.*

Mortgages affecting more lands than one embodied in leases are chargeable with the full duty chargeable on mortgages, including the duty leviable in respect of additional lands, and they are not entitled to the benefit of the third proviso to paragraph 31A.

THE facts appear from the judgment.

J. S. Jayawardene.—Paragraph 31A of Part I of Schedule B of Ordinance No. 10 of 1919 provides that a lease should be stamped with the same stamp duty as on a mortgage bond. Now the proviso to that paragraph provides that no duty shall be paid in respect of any additional lands. This is a general provision, and must be taken to apply to all duties mentioned in this paragraph, so that it applies to a mortgage bond embodied in a lease as well as to the lease itself. There does not seem to be any ambiguity in the language of this proviso, but even if it is held to be ambiguous, it must be interpreted in favour of the subject.

M. W. H. de Silva.—Paragraph 31A deals only with the duty on leases, and in case of leases there is no extra duty for additional lands; but when a lease embodies a mortgage of land also the document has to be stamped as two separate documents, namely, a lease and a mortgage. The duty on the mortgage is provided for by paragraph 15; which provides that there shall be an extra stamp duty on each additional land. It is conceded that if the interpretation suggested by the appellant is adopted, a lease and a mortgage executed separately would be liable to more stamp duty than if they were embodied in the same document. But the second proviso to paragraph 31A shows that it should be the same.

This Ordinance was enacted to enable the registration duty to be collected at the time of the execution of the document itself and to prevent the non-registration of deeds. Under the old law there was an extra duty for the registration of every additional land in the case of transfers and mortgages of land, but not in the case of leases. The paragraph in question gave effect to this

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distinction, and the proviso must be taken as referring only to leases. The proviso to this paragraph must be read independently, and the duty referred to in the third proviso is the duty on leases only, and not the duties referred to in the other provisos.

September 1, 1922. BERTRAM C.J.—

This point is an obscure one, but Mr. de Silva has cleared it up beyond reasonable doubt. The question for consideration was this. Paragraph 31A of Part I. of Schedule B of the Stamp Ordinance, No. 10 of 1919, like the corresponding provision of the previous Stamp Ordinance, declares that a lease shall be stamped in the same manner as a mortgage. It then proceeds to enact three provisos. The first proviso limits the duty to what would be the duty for a lease for six years. The second proviso provides that where the lease also contains a mortgage, the mortgage shall be separately chargeable. The third proviso declares that no duty is leviable in respect of any additional lands. It is agreed that in this third proviso the word "is" should be construed as "shall be," and it is further agreed that the third proviso has reference to a new enactment introduced for the first time into our stamp legislation by Ordinance No. 10 of 1919. The new enactment referred to is to be found in the proviso to paragraph 15, which lays down a special scale of duties in the case of mortgages comprising more lands than one. Now the question to be determined is whether these three provisos are three independent provisos, or whether they are interdependent. If they are interdependent, it is argued that the exemption from duty contained in the third proviso affects all references to duties in paragraph. The paragraph provides for a duty upon leases. It also refers to the duty chargeable on mortgages and it is suggested by Mr. Jayawardene that, when the third proviso says that no duty is chargeable, it refers both to the duty on leases and to the duty on mortgages referred to in the two previous provisos.

The solution of the problem we have to solve will be found in the history of the enactment, and that history is as follows: Up to 1919 there was payable in respect of both transfers and mortgages affecting more lands than one, not only a duty under the Stamp Ordinance, but also a special registration duty. That registration duty is provided for by section 20 of the Land Registration Ordinance, No. 14 of 1891, and by the 5th schedule to that Ordinance. It appears to have been found inconvenient to levy these two duties separately, and accordingly it would seem to have been determined, when Ordinance No. 10 of 1919 was passed, to consolidate the two. It will be found, therefore, that, both in regard to transfers and in regard to mortgages, these registration duties are embodied in Part I of Schedule B to the New Stamp Ordinance (see paragraph

15, the proviso immediately following sub-paragraph 1 and paragraph 22, the proviso immediately following paragraph E). At the same time by an Ordinance bearing the next serial number, i.e., No. 11 of 1919, the registration duties on transfers and mortgages dealing with more lands than one were repealed. See section 2, Ordinance No. 11 of 1919, and paragraph 4 of section 3 of the same Ordinance.

Now there was no special registration duty in respect of leases comprising more than one property. The draughtsman, therefore, when he came to consider paragraph 31, which declared that the duty on leases shall be the same as that on mortgages, quite reasonably and naturally added a proviso, that no duty shall be leviable in the case of additional lands. It is thus clear that this proviso was intended to refer to the duty on leases. The consolidation of the stamp duties with the registration duties, in respect of transfers and mortgages affecting more lands than one, was not intended to be an increase of duty, but to leave the duties in the same position, except that, instead of being separate, they should be paid together. It is clear, therefore, that in the mind of the draughtsman, when the third proviso was enacted, the matter in contemplation was simply the duty on leases. With regard to the duty on mortgages, referred to in the same paragraph, that was a different matter. The second proviso to the paragraph simply says that mortgages contained in lease bonds shall be separately chargeable. Such mortgages, if they affected more lands than one, would have previously had to pay both the stamp duty and the registration duty under the law as it stood before the enactment of the new Stamp Ordinance. There was no reason why they should be exempted from the second of these duties now that it was consolidated with the first. That is the history of the enactment. In the light of this history we are in a position to interpret the third proviso. In the light of that history, it is clear that the three provisos are not interdependent but independent. It is clear that mortgages affecting more lands than one embodied in leases are chargeable with the full duty chargeable on mortgages, including the duty leviable in respect of additional lands, and that they are not entitled to the benefit of the third proviso to the paragraph. The conviction, therefore, is right, but the point was obscure, and I think that the fine should be the most nominal possible. I therefore reduce the fine from Rs. 5 to Re. 1, but otherwise dismiss the appeal.

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