

1925.

Present : Schneider J and Dalton J.

In the Matter of an Appeal under Section 32 of the
Stamp Ordinance, No. 22 of 1909.

106—D. C. (Inty.), Colombo.

*Stamp duty—Deed of gift with reservation of life-interest to a third party—
Should it be stamped under items 30 (a) or 30 (c) of Part I. of
Schedule B—Ordinance No. 22 of 1909, s. 32.*

Where one of two donors on a deed of gift purports to convey to certain persons an allotment of land reserving to the other donor a life-interest therein,

Held, that the deed was properly stamped as a deed of gift of property under item 30 (a).

THIS was an appeal by a notary under section 32 of the Stamp Ordinance, No. 22 of 1909, against the order of the Commissioner of Stamps that a deed of gift submitted by him should be stamped under items 30 (a) and 30 (c) of Part I. of schedule B of the Stamp Ordinance, 1909.

Isabella Croos and Catherina Perera by a deed of gift purported to convey two lands to certain persons. The question arises with respect to one of these allotments only. Catherina Perera was the sole owner of this allotment, and she gifted the land reserving a life interest therein to Isabella Croos.

The learned Commissioner of Stamps directed the notary to stamp the instrument under items 30 (a) and 30 (c). The notary appealed.

Croos Da Brera, for notary, appellant.—The deed in question is deed No. 29,759 dated March 7, 1925. By this deed Isabella Croos and Catherina Perera gifted two properties to five persons. The question is with regard to the second allotment, in which the deed reserves to Isabella Croos a life-interest.

This deed is stampable under item 30 (a), but the Commissioner has ordered it to be stamped under items 30 (a) and 30 (c).

The learned Commissioner is clearly under a misconception of the scope of item 30 (c). That provision applies only where the donor reserves a life-interest to himself and not to a third party.

In the case of the allotment in question, Catherina Perera is the admitted owner. Isabella Croos has no interest therein, and a reservation of a life-interest therein in favour of Isabella Croos cannot be construed as being a life-interest in favour of the donor herself.

A donor is entitled in the same instrument without any other stamp duty than is necessary for a conveyance to distribute the various rights which make up the ownership to various persons as she pleases. Item 30 (c) steps in only when she reserves anything to herself.

Mervyn Fonseka, C.C., for the Commissioner of Stamps, respondent.—On a reference to the deed it is clear that the donors convey conjointly; therefore they must be considered as one entity. Even the consideration is a consolidated consideration. Hence a reservation of a life-interest in any one of them can be said to be a life-interest in the donor. This argument is strengthened by a reference to the Interpretation Ordinance, No. 21 of 1901. Wherever possible to do so, the singular will stand for the plural and *vice versa*.

The Commissioner is not expected to look into any deeds other than those immediately bearing on the matter which I have been placed before him. (*In re the application of J. J. Weinman, Notary Public*).*

Here the only other deed placed before the Commissioner is deed No. 268 of February 16, 1916. No life-interest has been reserved to Isabella in this deed, although the present deed recites that such an interest already exists. Hence the present deed must be deemed to be creating a new right.

The boundaries of the two allotments show that they are contiguous, and hence the conclusion is irresistible that they were deemed as one in the instrument.

The stamping should, therefore, be under items 30 (a) and 30 (c).

September 4, 1925. SCHNEIDER J.—

This is an appeal by a notary who is dissatisfied with the determination of the Commissioner of Stamps that an instrument submitted by him should be stamped under items 30 (a) and 30 (c) of Part I. of schedule B of the Stamp Ordinance, 1909 (No. 22 of 1909). The instrument in question is a deed of gift by one Isabella Croos and Catherina Perera of two allotments of land which are described in the schedule to the deed under separate boundaries. The donors purport in the operative words of the deed to convey the lands set out in the schedule. In the schedule the first land is described as that belonging to Isabella Croos and Catherina Perera by

* 26 N. L. R. 75.

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inheritance, and the second land as belonging to Catherina Perera upon a deed, the particulars of which are set out in the schedule. At the end of the description of the second land, there occur in a parenthetical clause, the words "subject to the life-interest of Isabella Croos." It is clear to my mind that the second allotment of land is conveyed by Catherina Perera alone. Therefore, the grantor, as far as that land is concerned in this deed, is Catherina Perera, and not Isabella Croos. If the words in the parenthetical clause be considered as sufficient to create a life-interest in the land donated in favour of Isabella Croos, it cannot be described as a reservation to the grantor of any life-interest in the property. It seems to me, therefore, that the Commissioner of Stamps is not justified in adjudicating that as regards the land in the second part of the schedule, the stamp duty should be calculated according to the provisions of item 30 (c). In my opinion the deed should be stamped under item 30 (a) as a deed of gift of property. As the appellant has succeeded in his contention, he is entitled to his costs under section 32 of the Ordinance.

DALTON J.—I agree.

Appeal allowed.

