

1944

Present: Keuneman and Cannon JJ.

WILLE, Appellant, and COMMISSIONER OF STAMPS,
Respondent.

No. 57—Case stated by the Commissioner of Stamps.

Stamps—Purchase of property by fifteen persons in the name of one of them—Subsequent formation of limited liability company wherein they were to be shareholders—Transfer of the property by the nominee to the Company—Ad valorem duty—Stamp Ordinance (Cap. 189), items 23 (1) (b), 23 (4) and 23 (8).

By deed No. 143 dated July 23, 1941, two estates "Kelaniya" and "Braemar" situated at Maskeliya were purchased in the name of one V. P. It would appear that fifteen persons paid the purchase money in equal shares and purchased the property in question in the name of one of them, namely, V. P., who thus held the property in trust for himself and the others. They worked the estates in partnership for two years and then in 1943, for the first time, it occurred to them to form and become shareholders in a Limited Company. In pursuance of this intention deed No. 4504 of May 15, 1943, was executed wherein it was agreed that V. P. should convey the property to the Company, when formed, without claiming any consideration for such conveyance. A further step in this direction was taken by the execution on June 25, 1943, of deed No. 212 wherein it was agreed that the fifteen persons were the beneficial owners of the two estates and that there should be allotted to them, in the said Company, shares in proportion to their respective contributions to the purchase price.

In August, 1943, the proposed "Kelaniya and Braemar Estates Limited Company" was formed and incorporated under the Companies Ordinance for the purpose of acquiring the estates "Kelaniya" and "Braemar". By deed No. 219 of September 9, 1943, V. P., after reciting, and in accordance with, the terms of the aforementioned deeds, conveyed and assigned to the Company the two estates.

Held, that the deed No. 219 was a conveyance chargeable with an *ad valorem* duty under item 23 (8) of Part I. of Schedule A of the Stamp Ordinance.

A PPEAL on a case stated by the Commissioner of Stamps under section 31 of the Stamp Ordinance. The facts appear from the head-note.

H. V. Perera, K.C. (with him *N. M. de Silva*), for the appellant.—The value of property conveyed in deed No. 219 is Rs. 330,00. If the deed is to be stamped on an *ad valorem* basis it would be liable to a duty of Rs. 5,280, whereas if it is a conveyance by a trustee to the beneficiary the duty would be Rs. 10.

It cannot be said that the conveyance was made for consideration. Consideration implies a prior agreement between the parties. A company cannot contract before it comes into existence. The allotment of shares took place in the present case in pursuance of an agreement to which the company was not a party. The contract between the promoters and V. P. was not a contract binding upon the company, for the company had then no existence, nor could it become binding on the company by ratification. The position is made clear in *Palmer's Company Precedents* (15th ed.), Part I., pp. 293-294. The case of *John Foster and Sons, Ltd. v. Commissioners of Inland Revenue*—on which the Commissioner of Stamps has relied cannot be applied to the facts of the present case. Deeds 4504 and 212 and the definition of "trust" in section 3 of the Trusts Ordinance (Cap. 72) establish beyond any doubt that the transfer to the company was only a conveyance by a trustee to the beneficiary.

H. H. Basnayake, C.C., for the Commissioner of Stamps, was not called upon.

Cur. adv. vult.

November 6, 1944. KEUNEMAN J.—

This is an appeal on a case stated by the Commissioner of Stamps, who has decided that the deed in question falls under item 23 (1) (b) of the Schedule to the Stamp Ordinance or in the alternative under item 23 (8). Speaking for myself, I am not sure that item 23 (1) (b) applies, namely that this deed is a conveyance on transfer of any immovable property for any consideration. I think there is great force in the argument of Mr. H. V. Perera that in this case there is no consideration moving from the company, who is the grantee, to the seller. However, I do not think it necessary to decide the point and I have not called upon Crown Counsel to support it.

As regards the contention of the appellant that the deed comes under item 23 (4), namely a conveyance or transfer of property without consideration to the person beneficially entitled to such property by the trustee, I think, on the documents and affidavits it is not possible to hold that the grantor was in fact a trustee. The Commissioner has looked at the facts fully and I agree with him on the point, that no trust in favour of the company has been established. The only other item which can apply is item 23 (8) which is of a general character. The Commissioner has rightly held that item 23 (8) is applicable in which case *ad valorem* duty must be paid.

In all the circumstances I think the order of the Commissioner must be upheld and the appeal dismissed with costs.

CANNON J.—I agree.

Appeal dismissed.