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Present: Garvin and Dalton JJ.

WICKREMESINGHE v. THE COMMISSIONER OF STAMPS.

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

*Stamps—Surrender of life interest—Deed of gift or transfer—Ordinance
No. 25 of 1909, 22 (a) and 30 (a).*

Where property was bequeathed by a person to his daughter subject to a life interest in his widow, and where the widow by deed "surrendered and yielded up" all her rights in the property with the "intent that her estate of life may be merged in the reversion vested in the daughter"—

Held, that the document amounted to a conveyance of the life interest in favour of the daughter and was liable to stamp duty as a deed of gift either under item 30 (a) or as a conveyance of property under item 22 (a) of the schedule to the Stamps Ordinance.

APPEAL from the decision of the Commissioner of Stamps as to the duty payable in respect of a certain deed bearing No. 508 dated May 10, 1927. The deed had reference to certain

allotments of land bequeathed by the husband of the grantor to their daughter, subject to the life interest of the grantor. The object of the deed was to pass the life interest reserved to the grantor to her daughter. The operative part of the deed was as follows:—"In consideration of the natural love and affection which the said A. E. C. . . . bears towards her daughter . . . the said F. T. P. . . . the said A. E. C. doth hereby surrender and yield up unto the said F. T. P. . . . all her rights in the aforesaid premises with the right to possess and enjoy the rents and profits arising therefrom to the intent that the estate of life of the said A. E. C. . . . in the said premises may be merged in the reversion now vested in the said F. T. P. . . . and be thereby extinguished." The Commissioner of Stamps held that the document was a deed of gift of property and liable to stamp duty under section 30 (a) of the schedule to the Ordinance.

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H. V. Perera (with M. C. Abeywardene), for appellant.—There is no conveyance of an interest, but the extinction of one. The transferee is the daughter of the transferor, and the last will devises the property on the daughter with a life interest in the widow. The deed in question cannot be considered a deed of gift because the "dominium" all along was in the transferee. What happened was that a portion of that "dominium" was carved out and vested in the transferor, who has by this deed surrendered it. The case might have been different if the transferee was a third party. In this case all that has happened is an extinction of rights. There is no transfer of rights. Section 4 of the Stamp Ordinance distinguishes rights as being, among others, those which create rights and those which extinguish rights. The Stamp Ordinance has recognized the difference between these two kinds of rights in making provision for the surrender of a lease. In effect the difference between a surrender of this nature and a gift may be scarcely distinguishable. But the legal results must be different.

The Court should not in questions of stamp duty consider the "effect" of an instrument. All that should concern the Court is the instrument itself (vide *Commissioner of Inland Revenue v. Angus*¹).

M. W. H. de Silva, C.C., for respondent.—The right dealt with by the document in question is the right to enjoy the property during the life of the widow. This is not a right which could be extinguished. The right to such enjoyment has now passed to the daughter by virtue of this document. It is clearly a transfer of the life interest from the widow to the daughter.

¹ 23 D. B. D. 579 at p. 539.

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It is immaterial whether the parties call the transaction a surrender or a transfer. The Court has to decide the nature of the transaction on a consideration of all its terms. The surrender or transfer in this case is made by way of gift. It, therefore, comes under item 30. See *Alpe*, page 151.

When a document falls under two items, then the Crown can select the item bringing the higher duty. *Application of V. Coomaraswamy*.¹

December 8, 1927. GARVIN J.—

This is an appeal from the decision of the Commissioner of Stamps as to the stamp duty payable in respect of a certain deed bearing No. 508 dated May 10, 1927. The Commissioner of Stamps has held that the document is a deed of gift of property and that it also embodies an agreement, and in pursuance of this decision he has directed the applicant to pay stamp duty upon the document as under item 30 (a) of the Stamp Ordinance in respect of the gift, and under item 4A in so far as it embodies an agreement.

It is not denied that the document is liable to additional stamp duty in respect of the agreement embodied in it. But it has been strongly urged that in other respects it is a deed or instrument not otherwise charged in the schedule and therefore chargeable under item 28 of the Stamp Ordinance. That the document recites that under the last will of one F. T. Coore, late of Kandana, the allotments of lands described in the schedule to this deed were bequeathed to his daughter subject to a life interest in favour of his widow, Adeline Eleanor Coore. The object and purpose of this document is that the life interest created in favour of Adeline Eleanor Coore should be passed to her daughter. The operative part of the deed is as follows:—

“ Now this indenture witnesseth that in pursuance of the aforesaid agreement and in consideration of the above premises and the natural love and affection which the said Adeline Eleanor Coore bears towards her daughter the said Felicia Theadora de Pinto and for diverse and various other considerations thereto moving her, the said Adeline Eleanor Coore doth hereby surrender and yield up unto the said Felicia Theadora de Pinto all her rights in the aforesaid premises, with the right to possess and enjoy the rent and profits and issues arising therefrom to the intent that the estate of life of the said Adeline Eleanor Coore in the said premises may be merged in the reversion now vested in the said Felicia Theadora de Pinto and be thereby extinguished.”

¹ 27 N. L. R. 62.

The language used by the notary has no doubt been carefully chosen for the purpose of supporting the contention now urged, that this is not a conveyance or transfer of the life interest of Adeline Eleanor Coore to her daughter, but is an instrument which operates as an extinction or abandonment of something in the nature of a burden upon the proprietary rights of Adeline Eleanor Coore.

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I feel, however, that I am unable to accept the contention that this document does not convey the rights in the life interest which were undoubtedly vested in Adeline Eleanor Coore. It is clear that moved thereto by her affection for her daughter the mother decided to give her daughter the rights comprised in the life interest. That, to my mind, involves a conveyance or the transfer of those rights from the one to the other and is implied in the words "surrender and yield up unto the said Felicia Theadora de Pinto."

I think, therefore, that the document is liable to be stamped either as a deed of gift under item 30 (a) or as a conveyance of property under item 22 (a). The duty in either case is the same, and we have not been invited to reverse the ruling of the Commissioner on the ground that it is a deed for consideration and not a gift.

For these reasons I would dismiss this application, with costs.

DALTON J.—I agree.

Appeal dismissed.