

1932

*Present : Dalton S.P.J. and Poyser J.*APPUHAMY *v.* APPUHAMY.5—*D. C. Kurunegala, 15,311.*

Bill of sale—Deed of gift of stock-in-trade and good will—No delivery—Registration—Ordinance No. 23 of 1927, ss. 17 and 18.

A deed of gift of the stock-in-trade and good will of a business is a bill of sale within the meaning of section 17 of the Registration of Documents Ordinance.

A PPEAL from a judgment of the District Judge of Kurunegala.

Croos Da Brera, for plaintiff, appellant.

N. E. Weerasooria, for defendants, respondents.

Cur. adv. vult.

December 7, 1933. DALTON S.P.J.—

The plaintiff claimed a declaration that he is entitled to the stock-in-trade, good will, and book and other debts of the business carried on at 65, Bazaar street, Kurunegala, and for damages. One Tinanhamy, the maternal grandfather of the plaintiff, had been the owner of the property now claimed, and plaintiff pleaded that Tinanhamy, by the deed P 1 of August 8, 1926, conveyed the property in question to him.

The defendants are son and mother, the first defendant claiming Tinanhamy as an uncle. They say that Tinanhamy in return for services rendered donated the property in dispute to them by deed D 1 of October 8, 1928. The deed P 1 has not been registered, but D 1 was registered on October 9, 1928.

The question raised in the issues tried is whether the deed D 1 obtains priority over deed P 1, by reason of the registration of the former.

The trial Judge has found that plaintiff never obtained possession on his deed, since Tinanhamy remained thereafter in charge of the business. Although the deed P 1 purports on the face of it to have been a transaction by way of sale, the trial Judge also finds that no money passed, and that it was in fact a gift. The deed D 1 is stated to be a deed of gift, and there is no question raised as to that. On the execution of this deed D 1 the trial Judge also finds that the first defendant obtained possession of the property donated to him. On these questions of fact we have not been asked to interfere with the learned Judge's conclusions. The principal question raised on the appeal is whether the deed P 1 is a bill of sale and as such requires to be registered under the Registration of Documents Ordinance, No. 23 of 1927. The meaning of the term "bill of sale" is set out in section 17 of the Ordinance, and it is conceded that, so far as the deed purports to convey choses in action, it is not a bill of sale. The plaintiff is therefore entitled to the book and other debts. Is a gift of the stock-in-trade and good will of the business a bill of sale of movable property within the Ordinance? Mr. Weerasooria for defendants urges that it is a "transfer" of these interests, and also an "assurance" of movable property within the meaning of those terms as used in section 17 (1) of the Ordinance.

The purport underlying the requirement of 17 & 18 Vict. c. 36 and of the Bills of Sale Acts of 1854 and 1878 was to prevent false credit being given to people who are allowed to remain in possession of goods which apparently are theirs, the ownership of which they have parted with (*Charlesworth v. Mills*¹). The Acts, further, are stated to strike at documents and not at the transactions themselves (*Chalmers' Sale of Goods, Appendix I, p. 181*). The definition of "bill of sale" in section 17 (1) of the local Ordinance includes, however, documents, and perhaps transactions, e.g., pledge, which do not come within the definition of bill of sale in the English Act of 1878. The controlling words of section 4 in the latter Act are "other assurance of personal chattels", and no document can come within the Act unless it is an assurance on which the title claimed depends (*Halsbury's Laws of England, Vol. III., pp. 9 and 10, ss. 14 and 15*). In the local Ordinance, however, a pledge or conventional hypothecation is included in the definition; hence it is difficult to see how one can apply English decisions on this point, since the title to the goods would not depend upon such a document, and there would appear to some extent to be a radical departure in the local Ordinance from the idea underlying the English Statutes. It has, however, been held that the word "assurance" in section 17 (1) includes a conveyance (*Gunatileke v. Ramasamy Pulle*²). In *ex parte Hubbard*³ Lord Esher expressed the opinion that the word "transfer" in section 4 means a document which, though not in form a bill of sale, assumes to transfer the property in goods in the same way as a bill of sale would. This conclusion was presumably reached, having regard to the controlling words of the section.

With regard to the document P 1, however, it certainly purported to convey title in movable property, whilst possession of that property was not given to the transferee, since the evidence shows the transferor retained

¹ (1892) A. C. 231, at p. 235.

² 6 C. W. R. 125.

³ 17 Q. B. D. 690.

possession of it and, I think it may be assumed from his actions, intended to remain in possession. To this extent then, it would come within the term "transfer" as construed in section 4 of the English Act. There is much to be said in support of the contention that a document making a gift, not accompanied by the delivery of the article, can hardly come within the idea underlying the term "bill of sale", since there is nothing of a sale or transfer for value in the transaction; but I think the transaction here falls within the term "transfer" as used in the section and, except in so far as it refers to the book debts and other debts, does not come within any of the exceptions of section 17 (2). I would therefore hold, but with some amount of hesitation, that on the evidence the trial Judge was entitled to hold that the document P 1 was a bill of sale and required to be registered, and therefore is not valid or effectual under the provisions of section 18 of the Ordinance, except in so far as it related to the book and other debts of the business. I wish to make it clear that it is not necessary to consider the nature of the document D 1.

The plaintiff is entitled to the declaration he seeks in respect of the book and other debts, but in regard to the other property his claim must be dismissed. The appeal is therefore allowed to that extent. Under all the circumstances I would order that each party pay his own costs in both Courts.

POYSER J.—I agree.

Judgment varied.

