

[FULL BENCH.]

1909.

November 25.

Present : The Hon. Sir Joseph T. Hutchinson, Chief Justice,
Mr. Justice Middleton, and Mr. Justice Grenier.

THE KING *v.* ABEYSEKERA.

D. C. (Crim.), Kegalla, 1,562.

*Deed of gift—Stamp duty—Ordinance No. 3 of 1890, s. 23—Ordinance
No. 1 of 1907, s. 29.*

A deed of gift of land must bear an *ad valorem* stamp.

A PPEAL from a judgment of the District Judge of Kegalla.
In this case the accused, a notary public, was charged under
section 23 of Ordinance No. 3 of 1890 with having executed a deed
of gift without having duly stamped it; and under section 29 of
Ordinance No. 1 of 1907, with having permitted one Ekneligoda to

¹ 16 S. C. 368 (*Nathan, vol. III., p. 1700*).

1909. execute the said deed, which was insufficiently stamped. The deed
November 25. of gift in question bore a stamp of Rs. 10, and was not stamped
according to the value of the land transferred by it. The learned
District Judge convicted the accused on both counts. He appealed.

Bawa (with him *Batuwantudawa*), for the appellant.—As this deed takes effect after the death of the person executing it, it amounts to a will, and requires no stamp. [C.J.—It takes effect immediately—on the execution of the deed.] This is a Kandyan deed of gift, and the donor reserves a life interest. It may be revoked at any time during the donor's lifetime.

If the deed cannot be treated as a will, the stamp duty payable on it is (according to the Stamp Ordinance) the same as on a conveyance of property of the same value.

Conveyances may be divided into three classes for purposes of stamp duty :—

- (a) Conveyances for pecuniary consideration.
- (b) Conveyances for other than pecuniary consideration (*i.e.*, partly pecuniary and partly other than pecuniary consideration).
- (c) Conveyances not provided for (covering cases which have no pecuniary consideration whatever).

Stamp duty on deeds of gift cannot fall under (a) or (b). It falls under (c).

Walter Pereira, K.C., S.-G., for the Crown.—It is clear that the intention of the law is that a deed of gift is to be stamped *ad valorem* as a conveyance. If the Legislature intended that a deed of gift should bear a stamp of Rs. 10 irrespective of value, nothing would have been easier than to have said so.

The term "consideration" in the schedule to the Stamp Ordinance must not be given a narrow interpretation; the term amounts to *causa*. See Tomlin's *Law Dictionary*. Consideration as used in the Stamp Ordinance is not restricted to valuable consideration. The meaning of consideration and *causa* has been explained in *Lipton v. Buchanan*.¹ See also *Van der Linden 1, 14, 1*.

Usage is in favour of stamping deeds of gift *ad valorem*.

Bawa, in reply.—Consideration is an English word, and we should follow the English meaning. We should not adopt the Roman-Dutch Law interpretation of *causa* in explaining the term "consideration." Counsel cited Stroud's *Judicial Dictionary*, 2 *Nathan's Common Law of South Africa*, and judgment of the District Judge (Ferdinands) in D. C., Colombo, 19,424, May, 1890.

Cur. adv. vult.

¹ 8 N. L. R. 49 and 10 N. L. R. 158.

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The appellant was indicted and convicted on the charges that (1) he, being a notary public, on February 19, 1908, executed a deed No. 10,946 dated February 14, 1908, without its being duly stamped, and thereby committed an offence under section 23 of Ordinance No. 3 of 1890; and (2) at the same time and place he permitted one Ekneligoda to execute the aforesaid deed, which was insufficiently stamped, and thereby committed an offence under section 29 (6) of Ordinance No. 1 of 1907.

At the trial there was no evidence that he was a notary, or that he ever executed any deed, and no deed was put in evidence, and, with the exception of his statement (presently mentioned), there was no evidence that he ever permitted any one to execute any deed. At the preliminary inquiry when he was charged with omitting to state the true value of the property conveyed in deed 10,946 of February 14, 1908, his statement to the Magistrate was: "I did not commit an offence under section 23 of Ordinance No. 3 of 1890. I acted *bona fide* in attesting the deed"; and he then argued that the deed was properly stamped. And the prosecution contends that that statement, which was put in evidence at the trial before the District Court, was an admission that he permitted Ekneligoda to execute the deed.

But how can I decide whether the deed is sufficiently stamped unless I see it, or at least a copy of it? It seems that the District Judge treated the documents which had been put in evidence at the preliminary inquiry as though they had been put in at the trial. But it would be very unsatisfactory to quash the conviction for this reason; if it were necessary, I should send the case back, so that the deed might be formally put in evidence; but I do not think it is necessary, and I will deal with the real question which is at issue, which is this: whether a deed of gift of land requires an *ad valorem* stamp?

The Judge says that the deed is a deed of gift; that it purports to be a transfer, in which the transferor, in view of his infirmity and old age and the desirability of a settlement, grants certain lands to his children; and that no consideration is mentioned in it. And the question is, whether such a deed requires to be stamped with an *ad valorem* stamp, *i.e.*, according to the value of the property, or whether it comes under the heading in the schedule to the Stamp Ordinance: "Conveyance or transfer of property of any kind whatsoever not charged in this schedule nor expressly exempted from stamp duty," which is to bear a stamp of Rs. 10. The schedule expressly says that on a deed of gift there shall be "the same duty and conditions as to calculation of duty as on a conveyance of property of the same value." And as to conveyances, the provisions are: "Conveyance or transfer of any property for any consideration,

1909. where the purchase or consideration money therein or thereupon
 November 25. expressed, or if the consideration be other than a pecuniary one, or
 HUTCINSON partly pecuniary and partly other than pecuniary, the value of the
 C.J. property shall be " so much, the duty shall be so much, according
 to scale. Then, after a special mention of conveyances by executors
 and administrators and trustees, it goes on: " Conveyance or
 transfer of property of any kind whatsoever not charged in this
 schedule nor expressly exempted from stamp duty, Rs. 10."

It seems to me that a conveyance by way of gift is not a conveyance
 " for any consideration " ; that, on the contrary, it is both in
 technical and non-technical language voluntary, gratuitous, without
 consideration. And yet what can the Legislature have meant by
 saying that a deed of gift shall bear the same duty as " a conveyance
 of property of the same value " ? If it is not a conveyance for any
 consideration, it is chargeable with a Rs. 10 stamp, whatever its
 value may be. Did the Legislature mean that it shall bear the
 same duty as a conveyance for a consideration ?

The Solicitor-General stated, in the course of the argument before
 me, that in practice deeds of this kind in Ceylon always bear an
ad valorem stamp. There is no evidence of this ; but, as the matter
 did not seem to me at all clear, and it is of considerable importance,
 I directed it to be argued again before a Full Court, and that has
 been done. I have now come to the conclusion that deeds of gift
 of land must be stamped *ad valorem*. I cannot accept the contention
 that the word " consideration " is used as equivalent simply to
 motive or reason. If that were so, every deed would be made for a
 consideration, and the special provision about deeds of gift was
 unnecessary. No doubt the word is used sometimes loosely in that
 sense, as where a man says that he makes a gift " in consideration
 of my advanced age," or " in consideration of my affection for
 the donee " ; but it is obviously here used of deeds made for a
 consideration in the ordinary technical sense, as opposed to those
 where there is no such consideration. And I do not see much force
 in the District Judge's remark that if deeds of gift were only liable
 to a Rs. 10 duty, there would be an easy method of evading succession
 duty ; for it is the fact that in England deeds of gift are and always
 have been liable to only a Rs. 10 stamp. But the provision in the
 schedule about deeds of gift is absolutely meaningless, unless we
 read it as meaning that they are to bear the same duty as " con-
 veyances for a consideration " of property of the same value ; and, as
 some meaning ought to be given to it, that is the meaning which I
 think we should hold that it bears.

I accordingly hold that this deed required to be stamped *ad
 valorem*. And there is evidence that the value of the land conveyed
 by it was such that a Rs. 10 stamp was insufficient. The appellant
 opens his petition of appeal with the statement that he is a notary
 public, and he stated to the Magistrate that he attested the deed.

There is no evidence that he executed the deed, but there is sufficient evidence that he committed the offence charged in the second count.

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The Court, besides imposing a fine, ordered the appellant to make good the deficiency of stamp duty, Rs. 122·50. I cannot find any jurisdiction for that order. I confirm the conviction on the second count with a fine of Rs. 12·50, and set aside the conviction on the first count and the order for payment of Rs. 122·50.

MIDDLETON J.—

The simple and only question before us in this case was whether a deed of gift of land requires an *ad valorem* stamp, or whether it comes under the heading in the schedule to the Stamp Ordinance, “conveyance or transfer of property of any kind whatsoever not charged in this schedule nor expressly exempt from stamp duty,” and is liable only to a stamp duty of Rs. 10.

In the present case the deed of gift in question reserves a life interest, and will therefore come under that part of the schedule which says, “gift or deed of gift of any property reserving to the grantor any life interest or estate in property: the same duty and conditions as to calculation of duty as on a conveyance of property of the same value.”

The difficulty is as to the meaning of the words in the last paragraph taken in conjunction with the rules as to a conveyance on consideration. The duty on a conveyance of property for any consideration is calculated either on the consideration money, if such is paid, or if it be other than a pecuniary one, or partly pecuniary and partly other than pecuniary, then on the value of the property.

It seems to me that the provision with regard to a deed of gift being stamped as a conveyance of property of the same value must have reference to the provision for the stamping of deeds made for a consideration other than pecuniary or partly pecuniary and partly otherwise, and so must be stamped on the value of the property. If this is not so, it seems difficult to give the provision as to gifts any meaning. This I understand has been the prevailing rule. No other expression of opinion is required of us in this case, I understand.

GRENIER J.—

I agree with the rest of the Court that the deed in question required to be stamped *ad valorem*. I have had the advantage of reading the judgment of my Lord and my brother Middleton, and there is nothing I can add to the reasons given by them for arriving at this conclusion.

Varied.