KRISHNA-SWAMI AYYAR v. SWAMINATHA AYYAR. — SRINIVASA AYYANGAR, J

I have come to the conclusion that there was no such right previous to 1909 it follows that no such right could have been obtained merely by reason of the merger of the Insolvency Court into the High Court under that Act. I therefore agree that the appeal fails and is liable to be dismissed.

K.R.

APPELLATE CIVIL—SPECIAL BENCH.

Before Mr. Charles Gordon Spencer, Kt., Officiating Chief Justice, Mr. Justice Kumaraswami Sastri, and Mr. Justice Krishnan.

1924, Oct. 15.

THE ACTING SECRETARY, BOARD OF REVENUE, SEPARATE REVENUE (PETITIONER), REFERENCER.

v.

THE AGENT, SOUTH INDIAN RAILWAY COMPANY, LD., TRICHINOPOLY RESPONDENT.*

Indian Stamp Act (II of 1819 and VI of 1923), art. 4 (c) or art. 30 of Sch. I-A—Lease—Licence—Distinction between—Test—Sole and exclusive possession, whether granted—Transfer of interest—Agreement executed to a consignee of coal to stack coal on a plot of ground in station yard, whether a lease or licence—Construction of document.

The test for determining whether a transaction is a lease or a licence is to see whether sole and exclusive occupation is given to the grantee, so as to amount to a transfer of an interest in immovable property to the grantee.

Frank Warr & Co. Limited v. *London County Council*, [1904] 1 K.B., 713; and *Sweetmeat Automatic Delivery Company* v. *Commissioners of Inland Revenue*, [1895] 1 Q.B., 484, referred to; *Seeni Chettiar* v. *Santhanathan Chettiar*, (1897) I.L.R., 20 Mad., 58 (F.B.) and *Mammikkutti* v. *Puzhukkal Edom*, (1906) I.L.R., 29 Mad., 353, followed.

* Referred Case No. 6 of 1924.

Where a Railway Company granted permission to certain consignees of coal to stack coal on certain plots of ground in the station yard prior to its removal by them, and it appeared that the former had no power to grant a lease without the sanction of the Secretary of State for India, and in the document evidencing the agreement, it was expressly stated that nothing therein contained should be construed to create a tenancy, but there were some clauses in it imposing conditions which would be ordinarily implied in a licence,

Held, on a proper construction of the document,

that it was a licence and not a lease; that the special provisions, though unnecessary in a licence, had been put in *ex abundante cautela*, and did not operate to make it a lease,

and that the document fell under article 4 (*c*) and not article 30 of Schedule I (*a*) of the Indian Stamp Act.

REFERENCE under section 57 of Act II of 1899 by the Acting Secretary to the Board of Revenue (Separate Revenue) in reference No. 59 (Mis.) for the decision of the High Court regarding stamp duty chargeable on a document which is termed an agreement between the South Indian Railway Company (Ld.) and the Chairman of Municipal Council, Chidambaram, by which the Company let out a piece of land to the Council for storing coal.

The material facts appear from the letter of reference, the material portions of which were as follows :—

1. The document is termed an agreement between the South Indian Railway Company and the Chairman, Municipal Council, Chidambaram. Under it the Company let out a piece of land to the Municipal Council for the purpose of storing coal imported by the Municipality subject to the rules of the Company; clause 6 of the deed provides for payment to the Company of a monthly rent of Rs. 7 8–0 per 100 feet by 25 feet of the plot assigned. Clause 12 says that "nothing herein contained shall be construed to create a tenancy in favour of the licensee of the said land, and the administration may of their motion upon the determination of this licence, re-enter upon and re-take and absolutely retain possession of the said land."

2. The Board is inclined to think that the above deed by which immovable property is let on a periodical rent is a lease

BOARD OF REVENUE v. SOUTH INDIAN RAILWAY CO., LD.

within the definition of that term in section 2 (16) of the Stamp Act and that it is chargeable to duty under sub-clause (viii) of article 30 (*a*) of Schedule I-A in the Stamp Act as the lease does not purport to be for any definite term. The Agent of the Railway, however, contends that the document is chargeable only as an "agreement not otherwise provided for" under article 4 (*c*) of Schedule I-A. He points out that the Company have not the legal right to lease out the Government lands in their occupation, that the document is only a licence permitting the Municipality to use the sites on payment of a nominal rent and that it has been drafted on the model fixed by the Government of India for such purposes. An extract of paragraph 6 of the Agent's letter and of the Railway Board's circular No. 3222 R.G., dated 26th November 1912, which accompanied it are enclosed for perusal. The Board does not agree with the Agent as it appears unnecessary for purposes of the definition of lease in the Stamp Act that the lessor should have the legal right to lease out the land nor does it consider that the document is a mere licence chargeable under article 4 (*c*) as an agreement to lease is chargeable as a lease under article 30 of Schedule I-A. As however the matter is not entirely free from doubt and the question is important as affecting several other similar documents executed by the Railway Company, the Board submits the case for favour of a ruling by the High Court.

The agreement was as follows :—

Agreement, dated 21st April 1922.

An agreement made this 21st day of April, 1922, between the South Indian Railway Company, Limited, hereinafter called "The Administration" of the one part, and the Chairman, Municipal Council, Chidambaram, hereinafter called "the Licensee" of the other part.

Whereby it is agreed as follows :—

1. The licensee shall have the use of the piece of land described in the schedule hereto for the purpose of receiving and storing thereon coal imported by Railway (inwards) subject to such rules, regulations and by-laws as may from time to time be made by or on behalf of the Administration, or on behalf of any local authority, in relation to the transport, discharge and storage of and subject to the conditions hereinafter contained.

2. The licensee shall not construct or put up any building erection or convenience on the said land.

3. The licensee shall not use the said land for transporting, discharging or storing any other goods than his own.

4. The licensee shall allow the General Traffic Manager for the time being of the Administration (hereinafter referred to as the Manager) or any one authorized by him in this behalf free access at all times to the said land.

5. The licensee shall pay a deposit of Rs. 10 per plot of 100 feet by 25 feet as a guarantee for the due and faithful performance of this licence and the said deposit shall be returned to the licensee on the termination of this licence, less any amount that may be found due to the Administration.

6. The licensee shall, from the 1st day of March 1922, pay to the Administration a rent of Rs. 7-8-0 per month or part of month per plot of 100 feet by 25 feet, which shall be paid in advance on or before the 1st day of the month for which the same shall become due.

7. The licensee shall, without notice from the Administration, forfeit the entire deposit money referred to in clause 5 hereof on his making default in complying with the terms in clause 6 hereof, and his licence shall be deemed cancelled and revoked as and from the 15th day of the month for which the rent became due and was not duly paid by him.

8. The licensee shall not remove from the said plot of land any of his goods stored thereon until all his dues to the Administration have been duly paid, and the said goods shall be liable to wharfage from the date of the cancellation of the licence referred to in clause 7 hereof, such wharfage being calculated as per scale laid down in the Goods Tariff published by the Administration from time to time.

9. The Administration shall, of their mere motion and without an order from a Court of Law, after the expiry of fifteen days' written notice to the licensee, have the right to sell by auction the goods of the licensee stored on the said plot or piece of land for the purpose of recovering all charges due to the Administration by the said licensee, the surplus of the sale-proceeds, if any, being rendered to the licensee.

10. The licensee shall not transfer or sub-let the privileges mentioned in clause 1 hereof without the consent in writing of the said Manager.

11. The said privileges in clause 1 hereof are granted on the express understanding that either party may be at liberty to determine and put an end to this licence by giving to the other of them at any time 15 days' notice in writing, and such privileges may be so determined by the Administration without any claim for compensation whatever on the part of the licensee, and on the expiration of such notice, the licensee shall

BOARD OF REVENUE v. SOUTH INDIAN RAILWAY CO., LD.

discontinue to use and shall yield up to the Administration the said plot or piece of land.

12. Nothing herein contained shall be construed to create a tenancy in favour of the licensee of the said land and the Administration may of their mere motion upon the determination of this licence re-enter upon and re-take and absolutely retain possession of the said land.

13. The licensee shall at all times keep the Administration indemnified against, and shall reimburse to the Administration all claims, demands, suits, losses, damages, costs, charges and expenses whatsoever which the Administration may sustain or incur by reason or in consequence of any injury to any person or to any property resulting directly or indirectly from the combustion or otherwise of the coal kept or placed by the licensee upon the said land or by the reason or in consequence of the non-observance or non-compliance on the part of the licensee with any rule, regulation or by-law referred to in clause 1 hereof.

14. The licensee shall pay all the costs of the stamping and execution of this licence.

S. S. Ramachandra Ayyar for the Company.—The agreement is not a lease. There is no transfer of interest in immovable property. See section 107 of the Transfer of Property Act for definition of "lease." No specific plot is transferred. Section 59 of the Indian Easements Act defines a "licence." It is a bare permission to do an act, which would otherwise be unlawful. It is revokable at any time. Mere occupation does not convey an interest in the property. See *Frank Warr & Co., Limited* v. *London County Council*(1).

The Government order says that the South Indian Railway Company had no power to lease. Paragraph 12 of the agreement expressly says it is not a tenancy. The grantee cannot here transfer or sub-let. Here power is reserved by grantor to control user by grantee; when control is not given up, there is no lease but only a licence: see *London and North Western Railway Co.* v. *Buckmaster*(2), *Taylor* v. *Caldwell*(3); *Sweetmeat*

(1) [1904] 1 K.B., 713. (2) (1874) 10 Q.B.D., 70 at 75.
(3) (1863) 3 B. & S., 826; 122 E.R., 309.

Automatic Delivery Company v. *Commissioners of Inland Revenue* (1), *Middlemas* v. *Stevens*(2), *Seeni Chettiar* v. *Santhanathan Chettiar*(3).

Government Pleader (*C. V. Anantakrishna Ayyar*) for Referring Officer.—Paragraph 4 of the agreement provides (1) that grantee should "*allow*" grantor to have access at all times to the land—which provision would be meaningless if it is not a lease and only a licence; (2) the agreement uses the term "rent" and not a "fee;" (3) the grantee is not to transfer, which again implies a lease; (4) notice in writing is stipulated for; (5) the grantee is to yield up the land under paragraph 11; (6) the grantor is given power "to re-enter upon" and re-take possession of the land. These provisions indicate that the grantor gave occupation or possession to the grantee. *Young & Co.* v. *Liverpool Assessment Committee*(4). When parties use a term of art, they are bound by its legal significance. See Norton on Deeds, Leases, page 51; *Glenwood Lumber Company* v. *Phillips*(5). *London and North Western Railway Co.* v. *Buckmaster*(6), is doubted in *Paris and New York Telegraphic Co.* v. *Penzance Union*(7). Statutes relating to rating are not relevant or conclusive on the present question. See *Holywell Union and Halkyn Parish* v. *Halkyn Drainage Company*(8).

JUDGMENT.

SPENCER, OFFG. C.J.—This is a reference made to us by the Board of Revenue under section 57 of the Stamp Act, and the question we are called upon to decide is whether certain documents entered into between the South Indian Railway Company and certain coal

(1) [1895] 1 Q.B., 484.
(2) [1901] 1 Ch., 574.
(3) (1897) I.L.R., 20 Mad., 58 (F.B.).
(4) [1911] 2 K.B., 195.
(5) [1904] A.C., 405.
(6) (1875) 10 Q.B.D., 444.
(7) (1884) 12 Q.B.D., 552.
(8) [1895] A.C., 117.

BOARD OF REVENUE v. SOUTH INDIAN RAILWAY CO., LD.

SPENCER, OFFG. C.J.

merchants, by which the latter are given leave to stack coal on small plots of land measuring 100 feet by 25 feet in station yards, are required to be stamped as leases under article 30 of Schedule I-A, or whether they are mere licences which fall within the description of agreements not otherwise provided for under article 4 (*c*).

Ordinarily a lease is a grant of property for a time by one who has a greater interest in the property, the consideration being usually the payment of rent. A licence, on the other hand, is a permission to do some act which, without such permission, it would be unlawful to do. All the cases to which we have been referred make the distinction between a lease and a licence to depend upon whether sole and exclusive occupation is given.

Now, the document in its terms contains a number of restrictions which might be consistent with the grant of a lease but which collectively indicate in my opinion that what was granted was a licence. The drawer of the document was evidently anxious to avoid giving a lease so as not to contravene the instructions of the Government of India that Railway Companies have no permission to lease lands in their possession without the concurrence of the Secretary of State. Throughout the document the person who is given possession is called a "licensee," and in clause 12 there is an express provision that "nothing herein contained shall be construed to create a tenancy in favour of the licensee." The fact that certain clauses of the agreement impose conditions which would be ordinarily implied by the grant of a licence but would be exceptions to the grant of a lease, does not necessarily indicate that it is a lease. These clauses were probably inserted *ex abundante cautela*; for instance, under clause 4

"The licensee shall allow the General Traffic Manager * * * or any one authorized by him in this behalf free access at all times to the said land."

Clause 1 makes the use of the land subject to any regulations or bye-laws as may from time to time be passed. Under clause 2 the licensee is prohibited from erecting any building on the land. Under clause 3 he cannot allow the land to be used for any other goods but his own. Under clause 6 there is an agreement to pay rent, but that of itself will not make the document a lease. It is simply a misuse of the term to call it "rent" instead of "fees," if it is not a lease. Clause 10 further provides for the "privileges," as they are termed, not being transferred or sub-let without the consent of the General Traffic Manager. Clause 11 provides for the licence being revokable on 15 days' notice on either side. Finally, the document is one signed by both parties to the agreement and is not a unilateral deed. All these terms which I have quoted indicate that the merchants were not given sole and exclusive occupation of the plots of the ground upon which they were to deposit the coal.

That being so, the intention of the parties as gathered from the document is against its being construed as a demise of an interest in property. The ground put forward by the Agent of the Railway for holding that the document is a licence rather than a lease, namely, that in every lease the lessor should have a legal right to lease out the land, does not affect my judgment. Even a person without a title to land may execute what purports to be a lease of that land. The test is not the right of the lessor to give the lease, but the interest intended by him to be created by the document. The fact however that the Railway Company is prohibited by orders of the Government of India from executing leases of lands in their possession is important for

BOARD OF REVENUE v. SOUTH INDIAN RAILWAY CO., LD.

SPENCER, OFFG. C.J.

understanding the intention of the framer of the document, as showing that the Company would be naturally averse to giving away any rights that ought to be reserved. A number of cases have been quoted before us, but the two which, to my mind, appear to have most bearing on the question are *Frank Warr & Co., Limited* v. *London County Council*(1), where the use of refreshment rooms was given by the lessees of a theatre, and *Sweetmeat Automatic Delivery Company* v. *Commissioners of Inland Revenue*(2), where automatic machines were placed on the platform of Railway Stations. In both these cases the permission given was held to fall short of a lease, for the reason that no interest in land was given by the agreements.

Coming now to decisions of this Court, both in *Seeni Chettiar* v. *Santhanathan Chettiar*(3), and in *Mammikkutti* v. *Puzhakkal Edom*(4), the test of whether a document was a lease or not was held to be whether it vested any exclusive interest in immovable property in the transferee or whether it gave him merely a right to enter on the property and to do something thereon.

For these reasons, I think, we must hold that the specimen document in the reference sent to us is not a lease but is an agreement not otherwise provided for.

KUMARASWAMI SASTRI, J.

KUMARASWAMI SASTRI, J.—I agree with my lord. The question is whether the document which is before us is a lease or only a licence. The document purports to be an agreement between the South Indian Railway Company and persons who got consignments of coal. The object of the document was to provide facilities for the unloading of coal and for its removal from the Railway Station. Ordinarily the coal would have to be removed as soon as it arrived or within the time allowed

(1) [1904] 1 K.B., 713.
(2) [1895] 1 Q.B., 484.
(3) (1897) I.L.R., 20 Mad., 58 (F.B.).
(4) (1906) I.L.R., 29 Mad., 353.

by the Railway ; otherwise demurrage would be charged. The object of the agreement was to allow the coal to remain stacked in the Railway premises and to be removed at the convenience of the consignees. A "lease" is defined in section 105 of the Transfer of Property Act, and a "licence" is defined by section 52 of the Easements Act. In both cases certain rights are conferred on the lessee or the licensee. In the case of a licence something may be paid as consideration for allowing a person to do an act on another man's land. Both have several elements in common but it seems to me that the difference between a lease and a licence is that, in the case of a licence, there is no interest in immovable property transferred to the licensee ; while in the case of a lease there is a transfer or carving out of the interest in favour of the person in whose favour the lease is granted. One chief consideration is whether there is any right of exclusive possession given. When a document is clear and unambiguous we cannot go outside its terms for the purpose of determining the stamp duty but where it is otherwise I think the question is whether, having regard to the purpose of the agreement and the terms in which it is expressed, the document can be said to confer any interest in the land on the licensees. Numerous cases have been cited on both sides, but I think the case which is most in point is the case reported in *Frank Warr & Co., Limited* v. *London County Council*(1). As observed by ROMER, L.J., in that case, where a document does not amount to a demise or to a parting, in respect of any portion of the premises, with the possession which the owner has when he executes the document, it would only amount to a licence and not a lease. Having regard to the purpose of the document, I think that the

(1) [1904] 1 K.B., 713.

BOARD OF REVENUE v. SOUTH INDIAN RAILWAY CO., LD.

KUMARASWAMI SASTRI, J.

purpose was simply to allow the consignees to store coal upon a portion of the land in the railway compound; and it could not have been the intention of the Railway Company to part with any interest in the property in favour of the lessee. It is important to note in this connection that, having regard to the orders of the Government of India, the Railway Company had no right to execute any lease of this property and it was with a view to protect themselves that they have inserted clause 12 in the agreement that it was not to be a lease of the property. It is no doubt true, as observed by the Privy Council in *Glenwood Lumber Company* v. *Phillips*(1) that, if the effect of the document is to give the holder an exclusive right of occupation of the land, it will be a demise of the land and that it is not a mere question of words but of substance. The mere calling a document a licence would not affect the question; but in arriving at a conclusion where the terms are not clear, one has to see what the circumstances are, to judge of the intention of the parties. Now, the Railway Company had no power to grant a lease, and it is hardly likely that they would, with the knowledge that they had no power, try to execute a lease or do something which would be *ultra vires* so far as they are concerned. We start, therefore, with the fact that the Railway Company had no power to grant a lease; I may add here that, if they executed a document the terms of which amount to a lease, want of power would not of itself decide the question. But in considering whether the document is a lease or a license, I think it is relevant to consider what the rights of the parties were and what the object of the agreement was. On both these points I think the considerations weigh in favour of the view taken by the Railway Company that they

(1) [1904] A.C., 405.

only intended to grant a licence and never intended to part with possession of the piece of land in the railway compound. My Lord has referred to the various terms of the document. I agree with him in thinking that some of those clauses were put in by way of abundant caution, and that the Railway Company did not intend to give up possession or part with possession of the property. I think clause I is a very important clause. It expressly reserves to the Railway Company a great measure of control as regards the transport, discharge and storage of the coal. It may be that the mere fact that there are restrictive covenants would not by itself make a lease a licence if the other terms are clear but in considering what the intention of the parties was, it is relevant to see what control the one party has over the property on which another party is allowed to do certain things. Here I think the Railway Company reserved to itself a very large measure of control; and, reading the document as a whole, I think it is merely a licence given to the grantees to keep the coal on the Railway premises for some time and to pay for the privilege which they have got.

I would answer the question by saying that the document is not a lease but would come under Article 4(*c*) as an agreement not otherwise provided for.

KRISHNAN, J.—In this case we have been called upon to express our opinion as to what the proper stamps are on three documents which have been referred to us by the Revenue Board. They are all more or less similar in terms; one of them alone has been printed and placed before us; it is the document executed by the South Indian Railway Company to the Chairman, Municipal Council, Chidambaram.

It is contended by the Railway Company that the document in question amounts only to a licence and falls

BOARD OF REVENUE v. SOUTH INDIAN RAILWAY CO., LD.

KRISHNAN, J.

under Schedule I-A, article 4 (*c*) and need be stamped only as an "agreement not otherwise provided for" under the Act. On the other hand, it is contended for the Revenue Board by the learned Government Pleader that the document amounts to a lease and should be stamped as such under article 30 of the same schedule. The question we have to decide is which view is correct.

The document is certainly drawn up in terms as a licence. It throughout speaks of the grantee under it as a "licensee." But I agree that the question is not a question merely of words but of substance and that parties cannot by the mere use of a term of art alter the truth as pointed out by HAMILTON, J., in *Young & Co.* v. *Liverpool Assessment Committee* (1). We have, therefore, to look at the substance of the arrangement between the parties and decide under what article the document really falls. I do not think that we should go outside the language of the document in deciding what the proper stamp is or pay any attention to the circumstances under which it was executed or to the authority of the grantor. We are not concerned with the title of the grantor, but we should decide the case with reference solely to the language of the document. That is my view. But taking that view I am glad to find myself in agreement with the learned Chief Justice and my learned brother in thinking that this document really amounts only to a licence and does not go far enough to be held to be a lease. There is an express clause in paragraph 12 of the document which says, "Nothing herein contained shall be construed to create a tenancy in favour of the licensee of the said land." Is there anything in the document which would lead us to throw overboard that statement and hold that the document is

(1) [1911] 2 K.B., 195.

still, by its character and by the terms agreed to between the parties under it, a lease? What it purports to give to the grantee, as I read it, is a right to stack coal on a plot of land in the station yard to be pointed out by the Railway Company; for though it refers to a schedule as describing the piece of land dealt with, no schedule is produced. It gives the right to the grantee to use the piece of land for the purpose of storing or stacking coal which he gets for his own use. His right to do that is itself subject to the rules, by-laws and regulations that the Railway Company may make from time to time as regards transport, discharge and storage of the coal, see paragraph 1. There is no particular plot of land whose possession can be insisted upon by the grantee, so far as I can gather from the document, for he is entitled only to get such plot of land as the Railway Company may point out for the storage of coal, and for that it is provided that he is to pay a certain consideration, namely, at the rate of Rs. 7-8-0 a month for a plot which is 100′ × 25′ in extent. He has also to pay a deposit of Rs. 10 for such a plot as a guarantee that he would perform his part of the contract properly. He may take one such plot or more than one, the rate being as stated above. Either party is given power to cancel the arrangment by 15 days' notice. This is clearly merely a licence, no interes being given in the land itself except to the right of limited user of it.

The learned Government Pleader has referred to certain terms of the document as supporting him in his argument that it is a lease. The first point he urged was that in clause 4 there was a special provision put in which said that

> "the licensee should allow the General Traffic Manager for the time being or any one authorized by him in this behalf free access at all times to the said land."

BOARD OF REVENUE v. SOUTH INDIAN RAILWAY CO., LD.

KRISHNAN, J.

He argues that, if the grantee was a mere licensee, there is no necessity for such a provision at all because it is always open to a licensor to have access, possession being with him and not transferred to the licensee under the law. This may be so, but, as observed by the learned Chief Justice, this provision might have been put in merely by way of abundant caution so that no disputes might arise in the future when the Railway Authorities require the land.

The next point referred to by the learned Government Pleader was the use of the word "rent" in clause (6). No doubt, that is not a happy word to have been used if the transaction was a licence; the proper word would have been "fee." But I do not think that we can draw any inference from the careless use of the word "rent"; for if it was used to connote a lease as argued by the learned Government Pleader, clause 12 of the document, which expressly says, ."Nothing herein contained shall be construed to create a tenancy in favour of the licensee" contradicts it.

The next point taken by the learned Government Pleader was with reference to the wording in clause 10 of the document. It says, "The licensee shall not transfer or sub-let the privileges mentioned in clause I without the consent in writing of the said Manager." Here again, no doubt, it is an unnecessary provision altogether if the arrangement is to be treated as a licence, for a licensee has no power under the law of transferring his privileges unless it is given to him by contract. Here again one may well accept the explanation given by the Railway Company that it was put in to avoid all disputes in the future.

The strongest point in the learned Government Pleader's favour is what is stated in clause 12 which says that

"upon the determination of the licence the Administration may of their mere motion *re-enter* upon and *re-take* and absolutely retain *possession* of the said land."

This would seem to indicate that possession had been given; but, as a matter of fact, no legal possession was intended to be given at all. The only right that the transferee was intended to have was the right to go upon this land to stack coal and nothing more. In fact, it seems to me that there is nothing in the document to prevent the Railway Company from changing, from time to time, the plot which the grantee was to have if the Railway Company desired it. When that is so, it seems to me that this case is very near the case of *Sweetmeat Automatic Delivery Company* v. *Commissioners of Inland Revenue*(1). There is really no lease of any particular plot of land at all but only a licence or permission granted to the grantee to store coal on a plot pointed out by the Railway Company. I have no doubt whatever that this is a case of a mere licence and not of a lease. In this connection the case in *Frank Warr & Co., Limited* v. *London County Council*(2), may also be consulted. There it was held by their Lordships that the use of certain rooms for the purpose of storing wine, etc., by the persons to whom the exclusive right of selling refreshments in a theatre was given did not give them a lease at all but only a licence, as the right to sell refreshments itself was a licence. The principles enunciated there might well be applied here. There are two cases in our High Court in *Seeni Chettiar* v. *Santhanathan Chettiar*(3), *Mammikkutti* v. *Puzhakkal Edom*(4), where the points of difference between a lease and a licence had to be considered. In both those cases it was

(1) [1895] 1 Q.B., 484.
(2) [1904] 1 K.B., 713.
(3) (1897) I.L.R., 20 Mad., 58 (F.B.).
(4) (1906) I.L.R., 29 Mad., 353.

BOARD OF REVENUE. v. SOUTH INDIAN RAILWAY CO., LTD.

KRISHNAN, J.

held that the right to cut and enjoy timber on a certain land did not amount to a lease but was only a licence.

Since the transaction in this case did not amount, in my view, to a lease, the only article under which the document before us can fall is article 4 (*c*) of Schedule I-A. It is true that there is no definition of the word "lease" in the Stamp Act as it contents itself with saying in section 2, clause (16) what a lease includes; it includes among other things (*b*) a Kabuliyat or other undertaking in writing, not being a counterpart of a lease, to cultivate, occupy, or pay or deliver rent for immovable property; but there is no definition ofthe word "lease." The present document cannot be brought under clause (*b*) either, as we cannot say that it is an "undertaking in writing to occupy, or pay or deliver rent for, immovable property." Although the document uses the word "rent," it is not used in the same sense as it is used in the statute. In the statute it is clearly used as meaning rent as defined in the Transfer of Property Act, i.e., as something which a tenant is bound to pay a landlord. The definition of "lease" given in the Transfer of Property Act is, I think, the proper definition to take in this case. The word "licence" is defined in the Easements Act and we are entitled to use that definition as the proper definition of the term for the Stamp Act.

In these circumstances, I agree with my Lord the Chief Justice and my learned brother in thinking that this document cannot be brought under the term "lease" and that we should answer the reference accordingly.

K.R.