

STAMP ACT REFERENCE.

*Before Sir Arthur Page, Kt., Chief Justice, Mr. Justice Mya Bu, and
Mr. Justice Mosely.*

THE FINANCIAL COMMISSIONER, BURMA

v.

C.R.M.M.L.A. CHETTIAR FIRM.*

1935

June 12.

Stamp duty—Amount or value of consideration—Terms of the instrument determine duty—Conveyance of land in satisfaction of debt—Waiver of portion of debt—Waiver not independent of the instrument—Duty leviable on the whole amount of debt—Stamp Act (II of 1899), s. 24, art. 23.

The stamp duty payable upon an instrument must be determined by referring to the terms of the document, and the Court is not entitled to take into consideration evidence *dehors* the instrument itself.

Ramen Chetty v. Mahomed Ghouse, I.L.R. 16 Cal. 432; *Ramprasad v. Balmukund*, 27 B.L.R. 1122; *Shankar v. Ramchandra*, I.L.R. 27 Bom. 279—*referred to*.

The charging words in art. 23 of the Stamp Act "where the amount or value of the consideration for such conveyance as set forth therein" do not mean that revenue authorities must have regard only to what the parties to the instrument have elected to state the consideration to be, but that the duty must be assessed upon the amount or value of the consideration for the transfer as disclosed upon an examination of the terms of the instrument as a whole.

A debtor conveyed a parcel of land to his creditor in full satisfaction of his debts. The document contained a waiver or release of a certain sum due in respect of interest, and the creditor contended that stamp duty was payable only on the unwaived portion of the debt, this alone being the consideration in the document.

Held, that, having regard to the terms of the instrument, the consideration for the conveyance as set forth therein was the cancellation of the whole debt, the principal sums and a portion of the interest being treated as having thereby been repaid, and the transferee agreeing upon the due execution of the conveyance to waive or release the balance of the interest. There was no waiver or release of the portion of interest independently of the instrument, and the stamp duty leviable was on the whole amount of the debt.

A. Eggar (Government Advocate) for the Crown.
The deed of conveyance in the present case relates that a certain property is transferred in consideration

* Civil Reference No. 4 of 1935.

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of part of a debt owed by the debtor-transferor, the balance of the debt being expressly mentioned to be waived. Article 23 of the Stamp Act states that the stamp duty is on the consideration as set forth in the deed.

[PAGE, C.J. What is the consideration as set forth in the document?]

The wiping out of the whole debt.

[PAGE, C.J. The answer to the question propounded appears to be simple; the stamp duty is on the whole consideration, including the waived debt, for which the property was transferred.]

Yes. The Financial Commissioner bases his reasoning on s. 24 of the Act which lends further support to this view. It states that where property is transferred in consideration of the whole of a debt or part of a debt, such debt, whether wholly or in part, shall be deemed to be the consideration for purposes of stamp duty. Illustration (1) makes the meaning clear.

The wording of ss. 27 and 31 indicate that the real meaning of the term "as set forth therein" in art. 23 is that stamp duty is assessable having regard to the consideration and all other facts and circumstances affecting the chargeability of the instrument to duty as found therein, and not merely on the amount which is stated to be the consideration by the parties. The Court has, of course, no power to travel outside the instrument to determine the stamp duty, and for this reason the parties are enjoined to state the consideration fully and truly on pain of a penalty. Sections 27 and 64.

Sakharam v. Ramchandra (1); *Ramen Chetty v. Mahomed Ghose* (2); *Emperor v. Rameshar Das* (3); *Reference under Stamp Act, s. 46* (4); *In the matter of Muhammad Muzaffar Ali* (5).

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Aiyangar for the respondent. Under s. 63 of the Contract Act no consideration is necessary for the waiver of a debt by a creditor. Moreover, the deed was not executed by the creditor. The question to be determined is whether the property is transferred for Rs. 300 as stated in the deed or for the whole debt. In fact the property is worth only Rs. 300. It was only by way of recital that the waiver of the balance of the debt is mentioned; the parties need not have incorporated it in the deed. A recital has no relevancy in assessing the stamp duty payable on an instrument. *Reference from the Board of Revenue* (6); *Reference under s. 46 of the Indian Stamp Act* (7).

PAGE, C.J.—The following questions have been referred for determination by the High Court in a case stated by the Financial Commissioner, Burma :

“ (1) In the deed of conveyance under reference wherein only a specified portion of a debt is named as the consideration for the transfer, the remainder of the debt being waived, does section 24 of the Indian Stamp Act require that in spite of the waiver the consideration should, for the purpose of the assessment of stamp duty on the conveyance, be deemed to be the whole of the debt, or is it permissible to treat only the portion of the debt specified in the deed as the consideration and to disregard the waived portion ?

(2) If the answer to the first question is in the sense of the second alternative, is the waiver of a portion of the debt, as

(1) I.L.R. 27 Bom. 279.

(2) I.L.R. 16 Cal. 432.

(3) I.L.R. 32 All. 171.

(4) I.L.R. 20 Mad. 27.

(5) I.L.R. 44 All. 339.

(6) I.L.R. 10 Cal. 92.

(7) I.L.R. 7 Mad. 421.

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expressed in the document, a release on account of which additional stamp duty should be charged under article 55 of the First Schedule to the Stamp Act?"

In my opinion the case is free from difficulty. Under section 24 it is provided that

"where any property is transferred to any person in consideration, wholly or in part, of any debt due to him . . . such debt . . . is to be deemed the whole or part, as the case may be, of the consideration in respect whereof the transfer is chargeable with *ad valorem* duty.

Illustration.

(1) *A* owes *B* Rs. 1,000. *A* sells a property to *B*, the consideration being Rs. 500 and the release of the previous debt of Rs. 1,000. Stamp duty is payable on Rs. 1,500."

Under Article 23 a conveyance as defined in section 2 (10) is chargeable "where the amount or value of the consideration for such conveyance as set forth therein" exceeds Rs. 200 but does not exceed Rs. 300 with the stamp duty of Rs. 4-8 and where the consideration exceeds Rs. 400 but does not exceed Rs. 500 the stamp duty leviable is Rs. 7-8.

It is well settled that the stamp duty payable upon an instrument must be determined by referring to the terms of the document, and that the Court is not entitled to take into consideration evidence *dehors* the instrument itself. [*Ramen Chetty v. Mahomed Ghouse and another* (1) ; *Sakharam Shankar and others v. Ramchandra Babu Mohire* (2) and *Ramprasad Shivlal v. Shrinivas Balmukund* (3).]

But, in my opinion, the charging words in Article 23 "where the amount or value of the

(1) (1889) I.L.R. 16 Cal. 432. (2) (1902) I.L.R. 27 Bom. 279.

(3) 27 B.L.R. 1122.

consideration for such conveyance as set forth therein" do not mean that Revenue authorities must have regard only to what the parties to the instrument have elected to state the consideration to be, but that the duty must be assessed upon the amount or value of the consideration for the transfer as disclosed upon an examination of the terms of the instrument as a whole. The document under consideration is a conveyance of immoveable property consisting of paddy and garden land. The consideration passing to the transferor for executing the conveyance is therein stated to be

"a total sum of Rs. 300 made up of Rs. 250 being the total of two items of principal sum and Rs. 50 being the balance of interest arrived at by waving, (literally reducing), Rs. 145-14-0 out of Rs. 195-14-0, the total of two items of interest."

The details of the transaction are then set out, from which it appears that there were two loans, one of Rs. 150 in respect of which there was interest due at the date of the execution of the conveyance amounting to Rs. 119-8-0, and the other of Rs. 100 upon which the interest then due was Rs. 76. It is thus seen that the benefit which would accrue to the transferor as the result of duly executing the conveyance was that he would obtain in substance and effect the cancellation of the whole debt of Rs. 445-14-0 which was due from him to the transferee, that debt consisting of the following items :

- Rs. 150, principal on the first loan ;
- Rs. 100, principal on the second loan ;
- Rs. 50 part of the interest due on the two loans,
- and

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Rs. 145 being the balance of the interest which the transferee on the conveyance being duly effected agreed to release.

In the instrument it is further provided that the transferor

"undertook to see that there shall not be any litigation, objection or interference by anyone. Except to the creditor C.R.M.M.L.A. money-lending firm the said lands have not been previously mortgaged or sold or given to anyone else. We declare that the said lands are free from other debts. Should there be an interference or objection hereafter we also agree that promissory notes shall stand as they did originally, and that the creditor shall have a right to demand and recover principal and interest as he likes, without waiving the amount of interest that has been waived . . . The creditor agreeing to the proposal accepts the offer of surrender."

Now, under section 63 of the Contract Act, a creditor may in whole or in part dispense with the payment of a debt due to him from his debtor. But in the present case the agreement by the transferee to release the balance of the interest due at the time when the instrument was executed was part of the consideration that passed to the transferor for executing the conveyance. At the hearing the learned advocate for the respondent was asked by the Court whether he contended that there was any waiver or release of the Rs. 145-14-0 due in respect of interest independently of the instrument, and he replied—as indeed he was bound to reply—in the negative; and in such circumstances it is manifest that the agreement to release the balance of the debt formed part of the consideration passing to the transferor for executing the conveyance.

I am of opinion, having regard to the terms of the instrument, that the consideration for the conveyance as set forth therein was the cancellation

of the whole debt, the principal sums and Rs. 50 due as interest thereon being treated as having thereby been repaid and the transferee agreeing upon the due execution of the conveyance to waive or release the balance of the interest.

For these reasons I would answer the first question propounded by saying that the amount of stamp duty leviable in respect of the instrument in question was upon Rs. 445-14-0. The second question does not arise.

MYA BU, J.—I agree.

MOSELY, J.—I agree.

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CRIMINAL REVISION.

Before Mr. Justice Dunkley.

ALI BHAI v. MAUNG NYUN.*

1935
 June 24.

Ferry, public—Carriage of passengers "between points within, or within two miles from, the limits of a public ferry"—Sanction of superintendent, or exemption by Government notification necessary—Unauthorized carriage of passengers between landing stage and launch in mid-stream—Landing stage within limits of public ferry—"Points" from bank to bank—Launch, whether a point—Burma Ferries Act (Burma Act II of 1898), ss. 15, 27.

S. 15 of the Burma Ferries Act prohibits a person from conveying for hire any passenger or goods "between points within, or within two miles from, the limits of a public ferry," except with the sanction of the superintendent or of the lessee of such ferry, or unless he is a person exempt from the operation of the section by notification of the Local Government. In contravention of the section the applicant plied his sampan for hire to carry passengers between a certain landing-stage on the Twante Canal and launches stopping in mid-stream for embarkation and disembarkation of passengers. The landing stage was within two miles of the western limit of a public ferry on the canal, and the applicant was fined for his offence under s. 27 of the Act. He contended that the "points" referred to in s. 15 of the Act meant points on either bank of the stream and not launches proceeding down the middle of the stream.

* Criminal Revision No. 304B of 1935 from the order of the Special Power Headquarters Magistrate of Hanthawaddy in Criminal Regular Trial No. 18 of 1935.