1878

SMITH
v.
SECRETARY
OF STATE.

would not be entitled to a review. That, however, would be a matter entirely in the discretion of the learned Judge who hears the application, and we give no opinion upon it.

The appeal is dismissed with costs.

Appeal dismissed.

Attorney for the appellant: Mr. *Leslie.*

Attorney for the defendant: The *Government Solicitor* Mr. *Sanderson.*

APPELLATE CIVIL.

Before Sir Richard Garth, Kt., Chief Justice, Mr. Justice Markby, and Mr. Justice Ainslie.

IN THE MATTER OF THOMSON'S POLICY.*

1877
Dec. 21.

Stamp Act (XVIII of 1869), *ss.* 34, 41, *Sched II, cls.* 5, 20—*Policy of Assurance—Assignment and Retransfer by Endorsement.*

A policy of insurance bore three endorsements: the first, an assignment of all the right, title, and interest of the assured to the P Bank; the second, a retransfer from the P Bank to the assured, all claims having been satisfied; the third, an assignment by the assured similar to the first assignment to Messrs. B. R. S. and Company.

Held by MARKBY and AINSLIE, JJ., that the first and third endorsements were liable, as collateral instruments under Sched. II, cl. 20 of the General Stamp Act, to a stamp of one rupee, and that the second endorsement was not chargeable with stamp duty.

Held by GARTH, C. J., that none of the endorsements were chargeable with duty.

THIS was a reference made by the Board of Revenue, North-Western Provinces, to the High Court, under s. 41 of Act XVIII of 1869. The facts of the case were as follows:—A policy of assurance for Rs. 3,000, issued by the Indian Life Assurance Co.

* Reference from the Secretary to the Board of Revenue, N. W. Provinces, under s. 41 of Act XVIII of 1869, dated the 20th, August, 1877.

1877

IN THE MATTER OF THOMSON'S POLICY.

Limited, in favour of one William McGregor Thomson, bore the three following endorsements:—

"I do hereby assign all right, title, and interest in the within "Life Policy for Rs. 3,000 to the Punjab Bank, Limited.

(Sd.) W. McGREGOR THOMSON.

15*th March*, 1872.

"All claims of the Bank under this policy security having "been satisfied, it is hereby retransferred to Mr. William "McGregor Thomson as fully as if it had never been trans- "ferred to this Bank.

(Sd.) T. D. P. MASSON,

Punjab Bank, Limited.

1*st September*, 1874.

"I hereby assign all right, title, and interest in the within Life "Policy for Rs. 3,000 to Messrs. Bheem Ray Sons and Co.

(Sd.) W. McGREGOR THOMSON.

15*th March*, 1875."

The question for the consideration of the High Court was, whether these endorsements should be stamped, and, if so, what stamps they should bear?

The Advocate-General, offg. (Mr. *Paul*) and *the Legal Remembrancer* (Mr. *H. Bell*) for the Government.

The following judgments were delivered:—

MARKBY, J. (AINSLIE, J., concurring).—Even if we assume that the transfer of a policy of insurance is a conveyance of property situate in British India so as to be *primâ facie* chargeable under art. 15, Sched. I of the Stamp Act (as to which we express no opinion), still the difficulty arises with regard to the endorsements which the Board of Revenue consider ought to be stamped as conveyances, that it is impossible to say that any specific sum was paid as consideration for either of these transactions.

Under s. 34, vendor and purchaser, in cases of sale, are both required to set forth truly in words the full consideration-money directly or indirectly paid or secured, &c.,&c., under certain penalties for failure to do so. Section 11 is restricted in its application to bonds, mortgage-deeds or settlements; and in the case of a conveyance, an option as to the amount of stamp to be used with a corresponding limitation of the rights secured by the instrument, is not allowed.

It appears to us that no penalty could be imposed under s. 34, and that no Court could refuse to receive the instruments before us under s. 18.

The fact is, that the first (and presumably the third instrument) was only *an assignment by way of collateral security* without any consideration, capable of being settled as a sum of money. The consideration for the assignment was apparently a promise to advance money, such loan being primarily secured by a bond separately chargeable with stamp duty. The money paid was not paid as purchase-money of the endorser's interest in the policy.

Nothing was intended to be paid as purchase-money; the whole sum paid was intended to be refunded to the payer. No doubt, if the debtor should die before the repayment of the debt, and if the creditor should find it necessary to fall back on the policy for satisfaction thereof, it may be said that he will eventually pay the undischarged balance of the loan, plus the premia paid on the policy subsequent to its assignment, as the price of such assignment; but it is clear that in this view nothing was ever paid in respect of the first assignment, and no one could specify in respect of it or of the third endorsement at the date of its execution (which is the date on which the instrument must be stamped) that anything ever would or will be paid. It follows, that the penal provisions of ss. 18 and 34, which refer to an instrument not properly stamped *at the time of execution*, failed to touch such instruments, for no Court and no Collector can say that an instrument is improperly stamped unless it or he can state what the proper stamp should have been.

We, therefore, think that the first and third endorsements are not chargeable with stamp duty as 'conveyances.' Nor do we consider that the second endorsement is chargeable as the

1877

IN THE MATTER OF THOMSON'S POLICY.

acknowledgment of the satisfaction of debt. It is a retransfer of the policy, and nothing more. It merely recites the fact that the debt has been satisfied in order to explain under what circumstances the policy is retransferred.

As collateral instruments not otherwise provided for, the first and third endorsements are, supposing the transaction such as above stated, liable to a stamp of one rupee. The other endorsement is, in our opinion, not chargeable with stamp duty.

GARTH, C. J.—I am of opinion that none of the instruments in question endorsed on the policy of assurance are chargeable with duty. I consider that they are not chargeable as 'conveyances,' because the policy of assurance which they purport to transfer, is not 'property' within the meaning of the Stamp Act. It is merely a contract by the assured with the insurance office, which may or may not, according to circumstances, prove a beneficial one to the former. Such a contract, in my opinion, is not included in the definition "property existing in British India."

Even assuming that such a transfer were a conveyance of property within the meaning of the Act, I consider that it would not be chargeable with duty for the reasons given by my learned brothers.

As regards the second instrument, I think it is not chargeable as an acknowledgment of the satisfaction of a debt, because it does not appear that any debt to the Bank had been satisfied, or that the claims alluded to were debts, or in the nature of debts, or that the amount of the claims, whatever they were, execeeded Rs. 20.

It is possible, no doubt, that the first and third instruments may have been collateral securities; but we havę no information to guide us as to whether they do properly come under that description or not, and I feel very strongly that, in giving an opinion upon questions submitted to us by the Board of Revenue, which may serve in the future as "guide to the Board in imposing" taxes upon the public, we are bound to advise upon the *actual facts before us*, and have no right to speculate upon the possible nature of transactions, of which we have no certain knowledge.