

1949 Present: Wijeyewardene C.J. and Gunasekara J.

MANUFACTURERS' LIFE INSURANCE CO. LTD. OF CANADA,
Appellant, and COMMISSIONER OF STAMPS, Respondent

IN THE MATTER OF A CASE STATED BY THE COMMISSIONER
OF STAMPS UNDER SECTION 31 OF THE STAMP ORDINANCE
AS AMENDED BY ORDINANCE NO. 47 OF 1941

Stamp Ordinance—Life insurance endowment policy—Mode of payment of sum payable at maturity—Option given to assured—Monthly instalments—Leading and principal object—Not right to periodical payment not before in existence—Principles of stamp duty—Ordinance No. 47 of 1941—Sections 23 and 31.

The appellant insured the life of one A under a policy of insurance which provided that a certain sum was payable on his death or on his reaching the age of 55. It also provided that, in the event of the assured reaching the age of 55, he could select one of three modes of payment of this sum, viz.:—

- (a) payment of £3,656 5s.
- (b) payment in one instalment of £1,558 6s. 8d. and 119 monthly instalments of £20 16s. 8d. each.
- (c) Payment of 119 monthly instalments of £20 16s. 8d. each and in addition a monthly income of £20 16s. 5d. during life.

The Commissioner of Stamps, on reference to him under section 31 of the Stamp Ordinance, held that the policy was chargeable with duty under section 23A and item 23 (2) of the Stamp Ordinance as being an instrument for the creation of an annuity or other right to a periodical payment not before in existence.

Held, that the rule as regards stamp duty was that an instrument should be stamped for its principal and leading object and that this stamp would cover everything accessory to that object.

Held, further, that the principal and leading object of the instrument in question was to effect a policy for the receipt of a sum of money at death or on attaining the age of 55 years. The provision as to the mode of payment was merely accessory to this principal object.

APPPEAL on a case stated by the Commissioner of Stamps.

H. V. Perera, K.C., with *S. J. Kadirgamar*, for the appellant.—The contention by the Commissioner of Stamps in the case stated by him is that the Insurance Policy No. 944727 is chargeable with duty under section 23A and item 23 (2) of the Stamp Ordinance (Chapter 189) as amended by Ordinance No. 47 of 1941. It is submitted that the contention of the Commissioner is clearly untenable.

It may be that the position taken up by the Crown is that the policy in question is not a policy of life insurance at all. [At this stage Mr. Weerasuriya for the Crown states that he is not contesting the position that the policy in question is a life insurance policy but that such policy was an instrument which came under section 23A and that, therefore, the Crown was entitled to charge the higher rate provided under section 23A and item 23 (2) of the Stamp Ordinance.]

The Commissioner's finding that the policy in question comes under section 23A can be shown to be wrong on two main grounds :

(1) If one examines section 23A and analyses the policy in question one finds that the policy does not come under 23A at all. The policy does not give a right to an annuity or periodical payment at all but gives only an option to obtain such right at some future time after various other conditions have been fulfilled. To come under section 23A the instrument itself must create the right. If the right is created by a later act by a party to the instrument then it does not come under section 23A. The words in the section "an instrument for the creation or sale", &c., make this clear.

(2) It is a well established rule in stamp duty matters that if a document is duly stamped for its leading and principal object then it is duly stamped for all matters which are accessory to its principal object.

See *Price v. Thomas*¹, *The Limmer Asphalt Company Limited v. Commissioner of Inland Revenue*², *The Prudential Insurance Company v. Commissioners of Inland Revenue*³.

There is no doubt that the leading and principal object of the document in question is to create a policy of Life Insurance. Counsel also cited *Gould v. Curtis*⁴, *Commissioners of Inland Revenue v. Angus & Co.*⁵, *Scoble and others v. Secretary of State for India*⁶, *Sothorn Smith v. Clancy*⁷.

H. W. R. Weerasuriya, Crown Counsel, for the Crown.—The question to be decided in this case is whether or not the policy in question is an instrument which comes within section 23A of the Stamp Ordinance. The instrument certainly confers rights to future periodical payments subject to certain conditions, conditions being the due payments of the premiums and insured being alive at maturity.

Under the policy in question the premium to be paid annually is greater than if it had been an ordinary life endowment policy. Annual premium on this policy is £239 1s. 6d. but annual premium on an ordinary life endowment policy is £145 2s. The difference between the two annual premiums is the consideration paid for the greater benefits under this policy, i.e., right to periodical payments. It is clear therefore that the instrument in question is one which comes within section 23A. See *Commercial Union Assurance Company, Limited v. Commissioners of Inland Revenue*⁸, *Great Northern Railway Company v. Commissioners of Inland Revenue*⁹.

As the policy in question is an instrument which falls under two categories, i.e., policy of life insurance and also an instrument for the creation of a right to periodical payments not before in existence, the Crown is entitled to charge the higher rate under section 23A and item 23 (2) of the Stamp Ordinance. See *In the matter of an Application of V. Coomaraswamy, Notary Public*¹⁰; *Speyer Brothers v. Commissioners of Inland Revenue*¹¹.

¹ (1831) 2 B. and Ad. 218.

² (1872) 41 L. J. Ex. 106 at 110.

³ L. R. (1904) 2 K. B. 658 at 662.

⁴ (1913) L. R. 2 K. B. 84 at 91 and 92.

⁵ (1889) L. R. 23 Q. B. D. 579.

⁶ (1903) L. R. 1 K. B. 494 at 504.

⁷ (1941) 1 A. E. R. 111 at 122.

⁸ (1938) 2 K. B. 551 at 557.

⁹ (1901) 1 K. B. 416 at 424.

¹⁰ (1924) 27 N. L. R. 62.

¹¹ (1908) L. R. 2 A. C. 92 at 95.

Clear words are necessary to tax the subject but it does not mean that in cases of taxation words must be unduly restricted against the Crown. One has to look fairly and squarely at the context and find out what it means. See *Henry Richardson Limited v. Inland Revenue Commissioner*¹. Under that test the policy in question comes under section 23A.

H. V. Perera, K.C., in reply.—The annual payment for an ordinary Life Endowment Policy is £145 2s., but this does not mean that the annual premium would have been the same if the policy did not contain an option for Life Income Settlement. The £145 2s. is the annual premium for a policy without profits, but the policy in question is policy with profits. Therefore the reason why a lower premium was quoted was because the inquiry was for a policy different from the policy in question.

Even if the policy in question can be construed so as to come within section 23A, consideration on the policy is only the first premium and the duty is payable on that sum only.

Cur. adv. vult.

June 27, 1949. WIJEWARDENE C.J.—

This is an appeal on a case stated by the Commissioner of Stamps under section 31 of the Stamp Ordinance as amended by the Stamp (Amendment) Ordinance, No. 47 of 1941.

The Manufacturers Life Insurance Co.—the appellants—insured the life of one B. W. J. Antony under the Policy of Insurance No. 944727. The following are the relevant particulars contained in the policy:—

1. *Plan of Insurance*: Endowment at age 55 with optional Life endowment.
2. (a) *Sum insured at Maturity*: £3,656 5s. which, together with interest, shall be payable in 120 consecutive monthly instalments commencing on November 1, 1960 (hereinafter called the maturity date) if the life insured is living and the policy is in force, the first instalment being £1,558 6s. 8d. and the remaining 119 instalments being £20 16s. 8d. each.
2. (b) *Sum insured at prior death*: £2,083 6s. 8d. or the cash value of the policy at the end of the policy year in which death occurs, whichever is the greater on the death of the life insured prior to the maturity date while the policy is in force.
4. *Premium payable*: £239 1s. 6d. payable yearly for 15 years or until prior death of the life insured.
6. *Insurance age*: 40 years.
7. *Surplus*: Apportioned annually in accordance with the Annual Dividend Options.
8. *Commuted value*: £3,656 5s. payable in lieu of the "sum insured at Maturity".

¹ (1947) 1 A. E. R. 275 at 277.

Paragraphs 11 and 12 of the Provisions forming a part of the contract read as follows :—

Commuted value : The insured may elect to receive at the maturity date, by written request prior to that date, the commuted value stated on the first page hereof, payable either in one sum or under one of the Optional Methods of Settlement.

Optional Life Income Settlement : On written request of the insured prior to the maturity date, the Company, in lieu of the first instalment payable under the terms of section 2 (a) will pay £20 16s. 8d. and in consideration of the retention of the balance of £1,537 10s. which shall become the property of the company, promises to pay an income of £20 16s. 8d. per month commencing one month after the last instalment has been paid and continuing until the payment preceding the date of the death of the life insured. The remaining 119 instalments described under section 2 (a) shall be paid as provided in the policy ;”.

One of the Annual Dividend Options is in the following terms :—

“ At the end of the first policy year upon payment in full of the premium for the second year and at the end of each subsequent policy year thereafter, provided this policy is in force, the Insured shall be entitled to receive the share of the surplus accruing to this policy, as ascertained and determined by the Company, in accordance with one of the following options :—

- (1) A participating bonus or paid-up addition to the sum insured.
- (2) A single cash payment.
- (3) A reduction of premium for the ensuing year.
- (4) Allow the cash payment to remain with the Company and accumulate to the credit of this policy at the rate of interest declared by the Company on such funds, guaranteed to be not less than three per cent. per annum. ”

In reply to a written request E made by the Commissioner under section 31 (3), the Proctors for the appellants wrote letter G informing him that “ the annual premium on an ordinary endowment Life Policy for £2,083 6s. 8d. maturing at 55 years or prior death in the case of an assured of 40 years is £145 2s. ”.

In the case stated by him, the Commissioner of Stamps set out his adjudication that the policy No. 944727 was “ chargeable with duty under section 23A and item 23 (2) being an instrument for the creation of an annuity or other right to a periodical payment not before in existence ”.

The appellant questioned the correctness of the Commissioner's adjudication and stated that the policy was only a Life Policy within the meaning of section 90.

At the argument before us the Crown Counsel conceded that the Policy was a Life Policy but contended that it was also “ an instrument for the creation of a right to a periodical payment not before in existence ” within the meaning of section 23 (a) and that it, therefore, became chargeable with the higher rate of duty provided under that section (vide *In the matter of an application of V. Coomaraswamy, Notary Public*¹).

¹ (1924) 27 N. L. R. 62.

The question for our decision, therefore, is whether Policy No. 944727 falls under section 23 (a) as "an instrument for the creation of a right to a periodical payment not before in existence".

The policy of insurance in this case is what is generally known "an endowment policy" providing for payment on the assured attaining a particular age or on his previous death. Under this policy a sum of £2,083 6s. 8d. or cash value of the policy would have been payable at his death. That would be the simplest form of Life policy. It also provides for the payment of a sum of £3,656 5s. on the assured reaching the age of 55 years. The instrument retains the character of a policy of insurance in spite of this provision. It is the mode of payment of this sum of £3,656 5s. which has given rise to the present question. The instrument contemplates three modes of payment of this sum :

- (a) payment of £3,656 5s. ;
- (b) payment in one instalment of £1,558 6s. 8d. and 119 monthly instalments of £20 16s. 8d. each ; or
- (c) if the assured so desires it, payment of 119 monthly instalments of £20 16s. 8d. each and in addition a monthly income of £20 16s. 8d. during life.

The principal and leading object of the instrument appears to me to be to effect a policy for the receipt of a sum of money at death or on attaining the age of 55 years. The instrument, no doubt, gives the assured the right to exercise an option as regards the mode of payment on his attaining the age of 55 years. That provision is merely accessory to the principal object.

By mentioning these different modes of payment, the insurance company appears to me to have merely adopted a legitimate means of inducing people to take a policy by describing the various advantages of such a policy. This provision has not, in my opinion, altered the true character of the instrument. Looking at the instrument fairly I do not find it possible to say that it is an instrument for the purpose of creating a right to a periodical payment not before in existence.

Mr. Weerasuriya pointed out that in letter G the appellants stated that the annual premium on an ordinary endowment life policy for £2,083 6s. 8d. maturing at 55 years or prior death in the case of an assured of 40 years was £145 2s. while the premium charged in the instrument considered in this case was £239 1s. 6d. He argued that the difference in the two premiums was due to the fact that the instrument in question created a right to a periodic payment besides effecting an insurance. There is, however, a fallacy in this argument. The present policy of insurance differs from the policy referred to in G with regard to the amount payable at death and provides also for the assured receiving a share of the surplus accruing to the policy in accordance with the Annual Dividend Option cited earlier in the judgment. The policy provides for the payment at death of £2,083 6s. 8d. or cash value of the policy, whichever is greater, and not merely £2,083 6s. 8d. as stated in G. It is, therefore, impossible to draw the inference which Mr. Weerasuriya

contends for, as the difference in the two premiums may be due to the differences indicated by me between this policy and the policy referred to in G.

It has been laid down in *Price v. Thomas*¹ and *The Liver Alkali Co. v. Johnson*² that "there is no better established rule as regards stamp duty than that all that is required is, that the instrument should be stamped for its leading and principal object and that this stamp covers everything accessory to this object". Following that principle I hold that the instrument in this case is not stampable as an instrument within the meaning of section 23 (a) of the Stamp Ordinance.

The appellants will be entitled to the costs of this appeal.

GUNASEKARA J.—I agree.

Appeal allowed.

1948

Present: Dias and Nagalingam JJ.

SEDIRIS, Appellant, and DINGIRIMENIKA *et al.*, Respondents

S. C. 436—D. C. Kegalla, 4,385

Prescription—Possession under jus retentionis—Not adverse—Right to tender compensation for improvements—Not barred by limitation.

Possession under a *jus retentionis* is not adverse possession and cannot found a title by prescription. Nor can the right to tender compensation for the improvements be barred by limitation.

APPPEAL from a judgment of the District Judge, Kegalla.

N. E. Weerasooriu, K.C., with *W. D. Gunasekera*, for plaintiffs appellants.

H. W. Jayewardene, for defendants respondents.

Cur. adv. vult.

November 12, 1948. DIAS J.—

By the final decree P1 dated July 5, 1926, in D. C., Kegalla, Partition Case No. 6,720, the land in dispute was allotted to K. M. Podimenika the first defendant to that action and to K. M. Tikirikumarhamy, the second defendant to that action. It was further ordered and decreed that these two persons should pay to R. D. Odirisa and K. Dingiriappu, who were the fifth and sixth defendants to that action, the sum of Rs. 156·25 in respect of certain plantations made by them.

¹ (1831) *Barnewell and Adolphus's Reports* 218.

² (1872) *41 Law Journal* 110.