1924.

Present: Bertram C.J. and Jayewardene A.J.

In the Matter of the Application of V. COOMARASWAMY, Notary Public.

Stamps Ordinance—Dowry deed—Transfer of mortgage bonds—Ordinance No. 22 of 1909, schedule B.

Where a document in consideration of a sum of Rs. 1,500 agreed by the maker to be given as dowry to his daughter transferred to her a number of mortgage bonds.

Held, the document was chargeable with stamp duty, both as a deed of gift under item 30 of schedule B of the Stamp Ordinance and as a transfer of mortgage under item 51 of the schedule, and that the Crown was entitled to charge it at the higher rate of duty.

APPEAL from a decision of the Commissioner of Stamps upon an application made to him under section 30 of the Stamps Ordinance.

Arulanandan (with him *J. Joseph*), in support.

Akbar, S.-G. (with him *M. W. H. de Silva, C.C.*), *contra.*

September 12, 1924. BERTRAM C.J.—

This is an appeal brought against the decision of the Commissioner of Stamps upon an application made to him under section 30 of the Stamp Ordinance, No. 22 of 1909. The document under reference in consideration of the sum of Rs. 1,500 agreed by the maker to be given as dowry money to his daughter transfers to that daughter a number of mortgage bonds. The question is whether this is a deed of gift under item 30 of schedule B of that Ordinance. Mr. Arulanandan, who appears for the appellant, contends, and in my opinion contends rightly, that the instrument is a transfer of mortgages within item 51 of the same schedule. There is no question that it does transfer mortgages. But that does not conclude the matter. It may very well be a transfer of mortgages, but a transfer of mortgages may also be a deed of gift. It is settled law in England, and there appears to be no reason why we should not follow the principle obseved in England, that where a document is chargeable in the alternative under two categories, the Crown has a choice whether to charge it under the one or under the other—see *Speyer Brothers v. Commissioners of Inland Revenue.*[1]

[1] *(1908) A. C. 92.*

In the Court of Appeal in the same case the principle was expressed in another way. It was there said that in such a case the Inland Revenue authorities were entitled to charge the document at the higher rate of duty.

We have, therefore, to ask ourselves, notwithstanding the fact that the document does come under item 51, does it also come under item 30 of the same schedule. In determining this question we have to look at the terms of the document itself. We are precluded from making any inquiry into the circumstances under which it was given, and considering any evidence *aliunde* as to the nature and the purpose of the deed—see *In re A. K. Chellappa*[1] and *In re Abeyeratne*.[2]

We have, therefore, to ask ourselves whether upon the face of the document it is in substance a deed of gift. For that purpose it does not matter what it may be called. We have to determine from what appears within the four corners of the document its essential nature. Now the material words are, "In consideration," or as it is suggested it may be translated in the alternative, "in discharge of the sum of Rs. 1,500 agreed by me to be given as dowry money, I sell, assign, and convey all the right, title, and interest belonging to me in and to the under-mentioned mortgage bonds and otty bond."

Do these words in fact constitute the document a deed of gift? It was suggested by Mr. Arulanandan that they really point to two transactions, an initial agreement to give a sum of money as dowry, and a subsequent agreement vacating the original agreement; under which substituted agreement the mortgages were to be executed in lieu of the money originally provided for, and an assignment of these mortgages in pursuance of this substituted agreement. I think that if we look at the words of the document as they stand, there can be no doubt that this is in substance a deed of gift. It may be taken as settled by the decision of this Court (*In re Veeravagu*[3]) that a dowry deed, even though it is executed in pursuance of marriage and in consideration of marriage, is, in fact, in substance a gift by the parent or parents to the daughter.

Our Courts, indeed, have gone further, and in a subsequent case, not necessary here to consider (*In re Goonesekera*[4]), it has been held that even a payment which under the Muhammadan law is a matter of compulsory obligation is also for the purpose of the Stamp Act to be treated as a voluntary gift. Treating this as a dowry, as indeed in the nature of the case it is, what do these words come to? They recite that in consideration or in discharge of the promise to pay Rs. 1,500 dowry money, certain mortgages are transferred. It would be difficult to find plainer words to indicate that these mortgages were transferred by way of dowry and for the purpose

[1] *(1916) 19 N. L. R. 116.*
[2] *(1920) 22 N. L. R. 331.*
[3] *(1921) 23 N. L. R. 67.*
[4] *(1923) 24 N. L. R. 351.*

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of fulfilling the undertaking to give a dowry. Even if we accept the suggestion of Mr. Arulanandan and say that the words indicate or suggest first of all an agreement to pay money by way of dowry, and then afterwards a subsequent agreement to transfer mortgages in lieu of the money originally promised, even so it would only be a case of an agreement by which one form of gift was substituted for another.

It appears to me, therefore, that the decision of the Commissioner of Stamps was right. The transaction falls under both paragraphs, and the Crown is entitled to insist on its being treated as coming under item 30 (*b*), and on this view of the case, I am of opinion that the appeal must be dismissed with costs.

JAYEWARDENE A.J.—I agree.

Appeal dismissed.