Present: De Sampayo J. and Schneider A.J.

1921.

In *re* the Application of K. S. VEERAVAGU, Notary Public.

Stamp duty—Dowry deed—Deed of gift—Settlement.

A dowry deed given in consideration of marriage has to be stamped under Article 30 as a deed of gift.

THE facts appear from the judgment.

Arulanandan, for appellant.—Under the *Tesawalamai* a dowry may be given either previous or subsequent to marriage. A past marriage is a good consideration for a dowry deed. *4 Thambyah 176; 1 C. W. R. 121.* The deed under discussion puts the matter beyond controversy, for it recites that the lands were conveyed "by way of dowry" and "in consideration of the marriage of Ratnavathy." The deed is, therefore, not a gift pure and simple, and cannot therefore fall within the purview of Article 30 of Part I. of Schedule B, which deals with "gift or deed of gift of any property." If a past marriage is a good and valid consideration, the deed in question falls under Article 22 (*a*) as a "conveyance or transfer of immovable property for any consideration."

Garvin, K.C., S.-G. (with him *Muttunayagam*).—The history of the amendments to the Stamp Ordinance indicates that it was meant to bring dowry deeds also under Article 30. Before the amendment this deed would have been classed under Article 49 as a "settlement." This article was deliberately omitted. A dowry deed is a deed of gift, and cannot be classed as a "bill of sale" or "writing" requiring registration under Ordinance No. 8 of 1871.

Arulanandan, in reply.

September 15, 1921. DE SAMPAYO J.—

This is an appeal from the decision of the Commissioner of Stamps with regard to the value of stamps payable on deed No. 11,326 dated May 8, 1920, and attested by the appellant as notary public. The deed is a gift of a number of lands by P. S. Nicholas, Mudaliyar, and his wife to their daughter Ratnavathy. The deed is in Tamil, and is on the face of it called "dowry deed," and in the operative portion it purports to convey the lands "by way of dowry in consideration of the marriage" of Ratnavathy. The donee had already been given in marriage, but as, under the customary law prevailing in Jaffna, a dowry may be given at, before, or after the marriage, the fact of the marriage being prior to the deed would not make it any the less a dowry, if, in fact, it was one.

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The appellant stamped the deed as one falling under Article 22 (*a*) in the Schedule to the Stamp Ordinance No. 22 of 1909, as amended by Ordinance No. 10 of 1919. That article provides for a certain scale of charges for deeds "where the purchase or consideration money therein or thereupon expressed, or if the consideration be other than a pecuniary one, or partly pecuniary and partly other than pecuniary, the value of the property shall be," and then follows a schedule of value. The contention on behalf of the appellant is that the consideration for the deed in question is the marriage of the donee which is a consideration other than pecuniary, and that therefore the deed should be stamped under Article 22 (*a*). But it should be noted that Article 22 (*a*) describes the deeds thereby provided for as "writing or bill of sale" by way of conveyance or transfer requiring registration under Ordinance No. 8 of 1871. A dowry deed, whatever else it may be, is not a "bill of sale" or "writing" requiring registration under Ordinance No. 8 of 1871. The Commissioner of Stamps decided that the deed should be stamped under Article 30 as a "gift or deed of gift." I think his decision is right. A dowry, though it may be given in consideration of marriage, is, nevertheless, a gift. The history of legislation shows that a dowry deed is now intended to be brought as a deed of gift under Article 30. The principal Ordinance No. 22 of 1909 by Article 49 provided for "instrument of settlement, including deed of dower," while it contained articles corresponding to Article 22 (*a*) and Article 30 of the amending Ordinance. Section 3 (24) defined "settlement" as meaning "any non-testamentary disposition, in writing, of movable or immovable property made (*a*) in consideration of marriage, &c." This being so, when the schedule to the principal Ordinance was in operation, a dowry deed would be stamped under Article 49 as a "settlement." But by the amending Ordinance No. 16 of 1917 section 3 (24) of the principal Ordinance defining "settlement" was wholly repealed, a new schedule was substituted, and the old Article No. 49 was entirely omitted. The present Ordinance likewise omits to make any separate provision for "settlements." Consequently a dowry deed, which is after all a gift, though it may be a gift of a special kind, must be stamped, as the Commissioner has decided, under Article 30.

This appeal should, I think, be dismissed, with costs.

Schneider A.J.—I agree.

Appeal dismissed.