

Mar. 10, 1910

Present: Mr. Justice Grenier.

LLOYD'S GREATER BRITAIN PUBLISHING
COMPANY v. DIAS.

C. R., Colombo, 16,115.

*Stamp—Agreement to allot space in a book and for sale of the book—
Ordinance No. 3 of 1890, Schedule B, Part I.*

Plaintiff sued the defendant on an agreement contained in the following document, which was unstamped:—

“ Please allot me space in your work not to exceed one-quarter page, for which I agree to pay you the sum of Rs. 142 This order carries a copy of the above-named book

“ (Signed) HENRY DIAS.”

Held, that the agreement could be read in evidence, as it is exempt from stamp duty.

THE plaintiff company sued the defendant on an unstamped agreement, the material portions of which were as follows:—

“ Please allot me space in your work (‘ Twentieth Century Impressions of Ceylon ’) not to exceed one-quarter of a page, for which I agree to pay you the sum of Rs. 142 This order carries a copy of the above-named book.—(Signed) HENRY DIAS.”

On objection taken by the defendant, the learned Commissioner ruled that the agreement could not be read in evidence, as it was unstamped. After trial the plaintiffs’ action was dismissed.

The plaintiffs appealed.

Hayley, for appellants.—The agreement P 1 relates to the sale of goods, and comes under the exemptions in the Schedule to the

Stamp Ordinance. This is an agreement for the sale of future goods. See Ordinance No. 11 of 1896, sections 5 and 59. Counsel cited *Lee v. Griffin*.¹

If there be any doubt about the construction of the Stamp Ordinance, it ought to be read in the way most beneficial to the subject, as the Ordinance is one which imposes a tax (*Kartigesar v. Katherkamer* ²).

B. F. de Silva (with him *Cooray*), for the respondent.—Even in the plaint the agreement is not treated as an agreement for the sale of goods (see paragraph 3). The real agreement is for the allotment of space; the sale of the book is a subsidiary contract. The primary agreement was for doing work for the defendant's benefit. Such an agreement is not within the exception (*Fielder v. Ray*³). An agreement partly for the sale of goods and partly for the sale of a goodwill was held to require a stamp (*South v. Finch*⁴). In *Clay v. Yate*⁵ it was held that a contract for printing and publishing did not come within the exception. Counsel cited *Alpe's Law of Stamp Duties*, 57.

Cur. adv. vult.

March 10, 1910. GRENIER J.—

The only question argued on this appeal was whether document P 1 requires a stamp. It was contended for the appellants, who are the plaintiffs, that the case falls within the exemption clause in the Stamp Ordinance, whereby a memorandum, letter, or agreement for or relating to the sale of any goods, wares, or merchandise is exempted from stamp duty. On reading the document I think it is clear that whether you call it an "agreement" or a "letter" it relates to the sale of a book called "The Twentieth Century Impressions of Ceylon," which the plaintiffs were bringing out, and which the defendant agreed to pay for in two instalments. In ordering the book the defendant, whose signature is at the foot of the document, requested the plaintiffs to allot him a space in their work not exceeding one-quarter page, for what the defendant's counsel stated was intended to be a personal advertisement of the defendant. Primarily, perhaps, the defendant agreed to pay the sum of Rs. 142 for this small space in the book, but as the order for the allotment of the space carried with it an order for a copy of the work, it is reasonable to suppose that what was in the contemplation of the defendant at the time he gave the order was that the plaintiffs were to sell him the book with an advertisement of himself in it. The defendant in reality agreed to pay for the book, and placed his order with the plaintiffs for it, and so document P 1 amounts to nothing more than a letter or agreement relating to the sale of

¹ (1861) 30 L. J. Q. B. 252.

² (1883) 5. S. C. C. 123.

³ (1829) 4 C. & P. 61.

⁴ (1837) 3 Bingham's New Cases 506.

⁵ (1856) 25 L. J. Ex. 237.

Mar. 10, 1910

Lloyd's
Greater
Britain
Publishing
Company v.
Dias

Mar. 10, 1910 the book, and readily falls within the exemption in question. Even if the point were doubtful, I should be inclined to favour the contention for the plaintiffs, because the defendant has no merits, and his defence rests upon an alleged evasion of stamp duty, for which he was more responsible than the plaintiffs, because the order was signed by him, and he agreed that it was not to be subject to cancellation. It was his duty, if a stamp were necessary, to have affixed it in the first instance, instead of waiting till he was sued to raise any objection on that account. But I hold that no stamp duty is leviable on this document.

GRENIER J.
 Lloyd's
 Greater
 Britain
 Publishing
 Company v.
 Dias

It was contended for the defendant that the agreement was one for doing some work for the defendant's benefit in a book that was to be published, and that an agreement for work and labour done was within the exception (*Fielder v. Ray*¹). There was no agreement here for any work and labour to be done by plaintiffs for the defendant. There can be no question that the bringing out of a work of the character under notice necessarily involves a good deal of work and labour, but they were not for the sole benefit of the defendant. The allotment of a small space for an advertisement of the defendant was not the result of a contract independent of the order for the book. The principal element in document P 1 was the order, the allotment of space being altogether an incidental and subsidiary matter. The work of printing and bringing out the book would have gone on even if no space had been allotted to defendant. I take it that what the defendant really intended by signing document P 1 was that when the book came out a copy of it should be sent him, and in that sense it seems to me that the allotment of a small space in it was only a secondary consideration connected in only a remote manner with the order for the book. I find there was an issue framed in the Court below as to whether or not the plaintiffs had fulfilled the terms of the agreement as embodied in P 1. And the Commissioner has decided that issue against the respondent. He has expressly found that the plaintiffs have fulfilled the terms of the agreement, and if P 1 were admissible in evidence, they would be entitled to recover the amount claimed in this action. Practically, therefore, the defendant has not the shadow of a defence on the merits. The plea of prescription which was raised at the trial incidentally but not in the form of an issue cannot be entertained at this late stage of the proceedings. The defendant's counsel beyond suggesting that the claim was prescribed, if the agreement was to be construed as one for the sale of goods, does not appear to have pressed the matter any further, and I see no reference to it in the judgment of the Commissioner.

The judgment of the Court below must be set aside, and this appeal allowed with costs.

Appeal allowed.

¹ (1829) 4 C. & P. 61.