1930

Present : **Garvin S.P.J. and Akbar J.**

40 (Inty.)—In the Matter of an Appeal under the Stamp Ordinance.

CROOS *v.* ATTORNEY-GENERAL.

Stamp Ordinance—Deed of gift—Property subject to lease and mortgage—Ordinance No. 22 *of* 1909, *Schedule B, Part I., item* 30 (*c*).

Property donated by a deed of gift was subject to a lease, under which the donor had received rent in advance, and was also subject to a mortgage.

Held, that in assessing the value of the property for purposes of stamp duty, a deduction should be made in respect of the lease but not in respect of the mortgage.

APPEAL under section 32 of the Stamp Ordinance from a ruling of the Commissioner of Stamps on the valuation placed upon certain lands which formed the subject of a deed of gift. It was contended that the value of a mortgage to which the land was subject should be deducted and also that

allowance should be made in respect of a lease to which the land was subject for a period of twelve years and in respect of which the donor had received a premium in advance.

Croos da Brera, for appellant.—Value of the property under the Stamp Ordinance means the value after making deductions on account of any encumbrances. It is really the value the property will fetch in the open market. In this case, the property is subject to a long lease which must appreciably affect the value. It is also subject to a mortgage of Rs. 100,000. The donor's right is merely the equity of redemption. It is this right which has been gifted. It cannot be said that the donee got the whole *corpus*. The Commissioner has made no deductions on account of the lease and mortgage. Section 23 suggests that it is only in the case of a sale that the value of a mortgage should be considered. In a deed of gift the true value at the time should be ascertained. Stamp Laws should be construed favourably to the subject.

Marshal Pulle, C.C., for the Commissioner of Stamps.—The Ordinance contemplates the full value of the property gifted without any deductions. The gift is subject to the donor's life-interest. The question of the lease does not come in. No deduction should be made on account of the mortgage. It does not in any way affect the value of the property. It is not a real interest. The donee has to redeem the mortgage. Section 23 applies only to a sale where the question of consideration comes in.

Croos da Brera, in reply.—The life-interest cannot be considered as it is created by the deed itself. In any event, the penalty should be nominal.

April 15, 1930. AKBAR J.—

This is an appeal under section 32 of the Stamp Ordinance by the appellant against the ruling of the Commissioner of Stamps, under which he has valued certain lands donated by the appellant's mother to him at the value of Rs. 156,054. The appellant contends that from this valuation should be deducted a mortgage on the lands for Rs. 100,000 said to have been executed prior to the deed of gift. The appellant further contends that one of the lands gifted is subject to a lease for a period of 12 years in respect of which the donor had received a premium in advance of a sum of Rs. 64,000. It is urged that these two items, namely, the lease and mortgage, in so far as they diminished the value of the lands should be deducted from the valuation made by the Commissioner of Stamps, and that the deed should be valued *ad valorem* for the sum of Rs. 30,000 which, he says, is the true valuation of the lands gifted, after making the deduction aforesaid.

The facts mentioned by me above are supported by an affidavit from the appellant executed and tendered in pursuance of section 30 (2). Admittedly the deed of gift, inasmuch as the life-interest is reserved to the donor, is stampable under item 30 (*c*) of the schedule of the Stamp Ordinance. The sole question we have to consider is as regards the meaning of the words " value of the property " in item 30 (*c*). The duty on a deed of gift is the same duty as on a conveyance or transfer for a pecuniary consideration equal to the value of the property as set forth in such instrument. This does not mean that the Commissioner of Stamps is bound by the value stated in the deed. If the deed is brought to him for adjudication under section 30 of the Stamp Ordinance, he may call for " such affidavit as he may deem necessary to prove that all the facts and circumstances affecting the chargeability of the instrument with duty, or the amount of the duty with which it is chargeable, are fully and truly set forth therein ". The Commissioner in this case did call for such affidavit, because, as I take it, he had doubts whether the property conveyed was worth Rs. 30,000. The affidavit furnished in this case discloses the lease

and the mortgage owing to which the appellant claimed that the value was diminished.

The letters of the Commissioner of Stamps filed in these proceedings clearly show that he made no allowance in respect of the mortgage or the lease. The first question we have to consider is whether any deduction should be made from the valuation of the lands in respect of the lease. Obviously a dónor has the right to gift any kind of property whether movable or immovable (see section 3 (22)). If therefore a donor has only a life-interest for himself and he wishes to donate it to some other person, such a deed will be stampable under item 30 (*a*) and duty will be payable not on the valuation of the whole land but only on the value of the interest conveyed. Similarly 'A' may be the owner of a land subject to a lease for a long term of years, say, 99 years, and the lease may be for a nominal rent ; if 'A' wishes to donate his interest to a donee, it will be inequitable to value the stamp duty on the valuation of the whole property. It is clear that in such an extreme case the stamp duty should be calculated on the market value of the interest conveyed. It cannot be argued that in such an extreme case the stamp duty should be calculated on the full value of the property. I fail to see therefore why the same principle should not be applied in the case of the lease to which this property is subject. It was argued for the Crown that as there was a life-interest reserved to the donor, no deduction should be made in respect of the lease, because it was possible that the donor will outlive the lease. There is a fallacy in this argument. It will be seen that item 30 is divided into 3 parts ; the first part refers to an ordinary deed of gift donating the whole property of the donor ; the second part refers to a gift in which a power of revocation is reserved to the donor. It will be clearly impossible to value a property which is subject to such a power of revocation. The value of a property in these circumstances would be almost nil. It was for this reason that the legislature has provided in item 30 (*b*) a scale of stamp duty without any reference, as it seems to me, to the power of revocation reserved. The stamp duty in such a case is payable at 3 per cent. on the value of the whole property without reference to the power of revocation. Similarly item 30 (*c*) provides for the stamp duty payable on a gift of property in which the grantor reserves a life-interest to himself. Whether a deed of gift contains a life-interest reserved or a power of revocation is only of importance to ascertain under which paragraph of item 30 the duty is to be levied. This seems to be the plain meaning of item 30. In this opinion it seems to me that the Commissioner of Stamps was wrong when he refused to make any allowance in respect of the deed of lease and the premium already received in respect of this lease. The second question, namely, whether any deduction should be made in respect of the mortgage, seems to me to be a more difficult question. There was no doubt at all as regards the principle under the old Stamp Ordinance, No. 3 of 1890. A gift or deed of gift was stampable with the same stamp duty and conditions as to calculation of duty as on a conveyance of property of the same value. With regard to conveyances, it was specially provided by a proviso that where the property transferred was subject to a mortgage, the duty was to be calculated on the actual value of the property conveyed free of the mortgage. So that if this deed had to be stamped under the old Ordinance, there could be no doubt that duty was payable irrespective of any deduction in respect of the mortgage. It is urged for the appellant that this principle has been changed in this Ordinance, and reference has been made to section 23 of Ordinance No. 22 of 1909. It will be seen, however, that that section refers to a transfer for consideration, and it is expressly provided in this section that where there is such a transfer in consideration of a debt due to the transferee, or where the property is subject

to the payment of money, the debt or money is to be deemed the whole or part of the consideration whereof the transfer is chargeable with *ad valorem* duty. The explanation to the section shows that only in the case of a sale of property subject to a mortgage or other encumbrance, the unpaid mortgage money or money charged is to be deemed part of the consideration for the sale. So that it will be seen that section 23 only relates to the method of calculating consideration in the case of transfers for consideration. A deed of gift can, therefore, not be subject to the rule stated in section 23. It seems to me that the law was left unchanged although it was put in a different way under the existing Ordinance No. 22 of 1909. Any other interpretation would lead to the possibility of an injustice being committed on the revenue. 'A' may have a property worth Rs. 150,000 but subject to a mortgage for Rs. 100,000 and he may donate this property to 'B'. If the law is as stated by the appellant, stamp duty must be calculated on a valuation of Rs. 50,000 for the property. After the deed of gift has been executed, the donor may pay off the mortgage of Rs. 100,000, in which case 'B' will really get a gift of property worth Rs. 150,000 on a deed of gift stamped on a valuation of Rs. 50,000. I do not think the contention of the appellant on this point is correct. It will be seen that the questions involved in this appeal are not free from doubt, and it is a point for the Commissioner to consider whether in re-valuing this property he should exact anything more than a nominal penalty from the appellant in view of the points raised by him in his application. The case should go back for a re-valuation of the stamp duty on the lines indicated by me above, namely, that the Commissioner should take into account the diminution which must reasonably follow from the existence of the lease. I would make no order as to the costs of this appeal.

GARVIN S.P.J.—I agree.