

1952

*Present* : H. A. de Silva J.

F. GAEBELE, Petitioner, and COMMISSIONER OF STAMPS,  
Respondent

*S. C. 333—Application for revision in M. C. Colombo, 26,290*

*Stamp Ordinance (Cap. 189)—Sections 26 (a), 27, 51—Agreement to convey—Duty by whom payable—Interpretation of statute—Specific provision governs the general.*

In the absence of an agreement to the contrary, section 26 (a) of the Stamp Ordinance has the effect of making the grantee or transferee liable to stamp duty in respect of an agreement or contract to convey as though it were an actual conveyance provided for in section 27. Section 51 of the Stamp Ordinance, being a general clause, does not control the specific enactment contained in sections 26 (a) and 27.

**A**PPPLICATION to revise an order of the Magistrate's Court, Colombo.

*Joseph St. George*, for the petitioner.

*N. T. D. Kanakarathne*, Crown Counsel, for the Attorney-General.

*Cur. adv. vult.*

November 27, 1952. H. A. DE SILVA J.—

This is an application by the Commissioner of Stamps to recover a sum of Rs. 2,206·90 being the amount of deficiency of stamp duty Rs. 2,131·90 due under Part I, Schedule A and penalty Rs. 75 under section 41 (1) (b) of the Stamp Ordinance, Cap. 189, from the respondent who is the petitioner in respect of an agreement dated 1st September, 1945, between the Calcutta Metal Syndicate and the Ceylon Navigation and Salvage Co., Ltd.

The learned Magistrate after trial ordered the respondent who is the petitioner to pay the said sum. The respondent has applied to this Court in revision to have the said order set aside. To this application the Commissioner of Stamps has been named Respondent. I shall hereafter refer to the Commissioner of Stamps as the respondent, and the respondent to the application before the Magistrate as the petitioner.

In this application the construction and application of certain sections of the Stamp Ordinance, Cap. 189, come up for consideration. It will be necessary to state the facts briefly before I proceed to consider the points of law that were argued before me. By agreement dated the 1st September, 1945, between the Calcutta Metal Syndicate and the Ceylon Navigation and Salvage Co., Ltd., the former agreed to convey to the latter their business for a certain consideration. The petitioner, Frederick Gaebele, signed the agreement on behalf of the Calcutta Metal Syndicate. The stamp duty and the penalty referred to above were sought to be recovered from the petitioner. Although in the original Court a contention among others was put forward that it was not the petitioner who was liable in any event, but the firm known as the Calcutta Metal Syndicate, that contention was abandoned in this Court by learned Counsel for the petitioner. The stamp duty on this agreement had not been paid either by the Calcutta Metal Syndicate or the Ceylon Navigation and Salvage Co., Ltd. Therefore steps were taken by the Commissioner of Stamps to recover the stamp duty and the penalty from the petitioner.

The quantum of duty and penalty is not in dispute. The only dispute is as to who is liable to pay the stamp duty and penalty, the petitioner as contended for by the Commissioner of Stamps, or the Ceylon Navigation and Salvage Co., Ltd., as contended for by the petitioner. Section 27 of the Stamp Ordinance, Cap. 189, is headed duties by whom payable. Section 27 runs thus, "In the absence of an agreement to the contrary the expense of providing the proper stamps shall be borne (a) in the case of any of the following instruments, namely:—". Sixteen instruments of various kinds are enumerated and thereafter the following phrase appears, "by the person drawing, making, or executing such instruments". Thereafter section 27 runs thus, "(b) in the case of a policy of insurance, by the person effecting the insurance; (c) in the case of a conveyance, by the grantee;". It is not necessary to reproduce in this case the rest of section 27. It is abundantly clear that in the absence of an agreement to the contrary in the case of a conveyance the obligation to pay the stamp duty rests on the grantee. Section 27 as it stood, makes only an actual conveyance liable to stamp duty and not an agreement to convey. The Stamp Ordinance was later amended for the purpose of making an agreement or contract for the conveyance or transfer liable to stamp duty by Ordinance No. 47 of 1941. By section 10 of the said Ordinance two new sections were introduced to the principal Ordinance to have effect as sections 26 (a) and 26 (b) respectively. Section 26 (a) provides thus—"any agreement or contract for the conveyance or transfer of any business or share in any business . . . shall be charged with the same *ad valorem* duty, to be paid by the grantee or transferee, as if it were an actual conveyance or transfer of the business, or share in the business, or such other property, as the case may be, agreed or contracted to be conveyed or transferred".

The above amendment thus has the effect of making an agreement or contract to convey any business or share in any business liable to stamp duty as though it were an actual conveyance as provided for in section 27 of the principal Ordinance.

The grantee is clearly the Ceylon Navigation and Salvage Co., Ltd. It has been argued by learned Counsel for the petitioner that the party liable was not the petitioner or the firm whom he represents, but the Ceylon Navigation and Salvage Co. Ltd. Learned Crown Counsel who appeared for the Commissioner of Stamps has argued that under section 51 of the Stamp Ordinance (Cap. 189) every person executing an instrument chargeable with stamp duty is liable to pay to the Commissioner of Stamps the stamp duty and penalty. He also argues that under section 51 (3) a person who pays the stamp duty and penalty is entitled to recover from some other person the said stamp duty and penalty if by agreement or otherwise such other person was bound to pay the stamp duty. Section 27 of the Stamp Ordinance has made specific provision for the parties to arrive at an agreement as to who is liable to pay the duty. In the absence of such an agreement the law clearly provides as to the person who is bound to pay the stamp duty. In the various instruments enumerated in section 27, A1-16, the person drawing, making, or executing such instrument is made liable to pay the stamp duty. In the case of a conveyance the grantee is made liable. What is contained in the principal Ordinance is repeated in section 26 (a) which was introduced by Ordinance No. 47 of 1941. It must be borne in mind that section 51 of the Stamp Ordinance (Cap. 189) was an introduction to the principal Ordinance by amending Ordinance No. 18 of 1930. The principal Ordinance is No. 22 of 1909 which has certain amendments introduced from time to time. The amending Ordinance No. 47 of 1941 was enacted after the amending Ordinance No. 18 of 1930.

There is no evidence in this case that the two parties to this instrument came to an agreement as to who was liable. That being so it is necessary to find out upon a construction of the various provisions of the Stamp Ordinance as to who is liable. I have had the advantage of the various arguments urged on behalf of the respective parties. Learned Counsel for the petitioner has urged that in construing a Fiscal Statute if two constructions of the said Statute are equally possible and reasonable, the construction more favourable to the subject must be enforced. He has cited the following authorities for consideration :—*Dewar v. Commissioner of Inland Revenue*<sup>1</sup>. Lord Hanworth observed thus :—

“ Now I desire to make two observations in reference to Income Tax and Sur-Tax generally. As has often been pointed out, if the subject is within a charging section, he must pay ; if he is not within the charging section he has not to pay ”.

It is argued that sections 27 and section 26 (a) of the Stamp Ordinance are the charging sections, and that section 51 is merely the recovering section. Learned Crown Counsel lays great store upon section 51 to justify the steps taken by the Commissioner of Stamps by virtue of the powers conferred by that section. Learned Crown Counsel's argument is

<sup>1</sup> (1935) 2 *K.B.D.* 351 at 359.

that by virtue of section 51 it is open to the Commissioner to proceed against one or the other of the parties to this agreement to recover the stamp duty and penalty, if any, notwithstanding the clear provisions of sections 26 (a) and 27. There is undoubtedly a conflict between sections 26 (a) and 27 on the one side and section 51 on the other. That being so it is necessary to find out when there are conflicting provisions in the same statute which provisions shall prevail. Craies on Statute Law, 5th Ed., page 205, has been cited to me. The learned author has reproduced at page 205 a dictum of Romilly, M. R., in *Pretty v. Solly*<sup>1</sup>. The learned Judge has stated the principle thus:—

“ The general rules which are applicable to particular and general enactments in statutes are very clear ; the only difficulty is in their applications. The rule is, that whenever there is a particular enactment and a general enactment in the same statute, and the latter taken in its most comprehensive sense, would overrule the former, the particular enactment must be operative, and the general enactment must be taken to affect only the other parts of the statute to which it may properly apply ”.

The rule of law referred to by Romilly, M. R., in *Pretty v. Solly*, has been stated by the Master of the Rolls in *De Winton v. The May, &c., of Brecon*<sup>2</sup>. The Master of the Rolls has stated thus,

“ When an Act of Parliament contains two sets of provisions one being specific, with precise directions to do particular things, and the other being general, prohibiting certain acts, which in their general sense will include the particular acts in the statute, the general clause does not control the specific enactment ”.

It is argued that section 51 (1) and (3) of the Stamp Ordinance are general sections and that sections 26 and 27 are specific sections which are not controlled by the general sections.

The following cases cited at the argument afford guidance and assistance in the construction of these sections of the Stamp Ordinance. 1936 *A. I. R. Calcutta Series, page 814, at page 815*. The judgment runs thus,

“ In applying the rules deducible from the provisions contained in section 5, Stamp Act, to which reference has been made above the canons of construction applicable to Fiscal's Statutes must be kept in view and in case of doubt, the construction of a Fiscal's Statute should be construed strictly in favour of and beneficial to the subject. There cannot be any equitable construction of a Fiscal's Statute ; and the Crown seeking to recover a tax must bring it within the letter of the law ; otherwise the subject is free.” *Vide* the following:—1938 *A. I. R. Madras Series, page 498, at page 499*. Venkatsubba Rao J., has observed thus,

“ The Court-fees Act is a taxing statute and it is settled law that the intention to impose a charge upon the subject must be shown by clear and unequivocal language ”.

<sup>1</sup> (1859) 26 *Beav.* 606 at 610.

<sup>2</sup> 28 *L. J. Ch.* 598 at 604.

In *Re Estate of Margaret Wernham* <sup>1</sup> Bonser, C.J., stated that in interpreting an Ordinance imposing burdens on the subject, it must be construed favourably to the subject. This principle has been emphasized in the various authorities that have been cited before me. Vide *Bhama Makan v. Emperor, 1936 A. I. R., Bombay Series, page 256*, where the rule of law has been stated thus,

“ Where there is a specific provision in a statute as well as a general one and the case is covered by the specific provision, it is the specific provision, which must govern the case and not the general ”.

Learned Crown Counsel referred me to *Speyer Bros. v. Commissioner of Inland Revenue* <sup>2</sup>. I do not think this authority has any application to the point under discussion. What was decided in that case was that where a document comes within each of two categories chargeable with duty under the Stamp Act of 1891, the Crown is entitled to only one of the duties but it may choose the higher.

The principles governing the construction of a statute such as this have been laid down in no uncertain terms and I have come to the conclusion after consideration of the sections 26 (a), 27 and 51 of the Stamp Ordinance that the contention of the learned counsel for the petitioner must be upheld.

The order of the learned Magistrate is set aside and the application of the Commissioner of Stamps is disallowed.

*Order set aside.*

