1936 *Present :* **Macdonell C.J. and Poyser J.**

In re APPEAL UNDER SECTION 32 OF ORDINANCE No. 22 OF 1909

SOMASUNDERAM *v.* ATTORNEY-GENERAL

S. C. 63—(Inty.)

Stamp Ordinance—Agreement for sale of tea coupons—Sale of future goods—Not liable as conveyance—Ordinance No. 22 of 1909, Schedule B, item 4 (a).

An agreement for the sale of tea coupons is liable to stamp duty as an agreement or contract under item 4 (*a*) of Schedule B of the Stamp Ordinance and not as a conveyance under item 22 (*b*).

APPEAL from an order of the Commissioner of Stamps.

P. Tiyagaraja, for appellant.

H. H. Basnayake C.C., for Commissioner of Stamps, respondent.

Cur. adv. vult.

March 30, 1936. MACDONELL C.J.—

This was an appeal as to the stamp necessary for a document worded as follows :—

"This indenture made and entered into between Daniel Dias Gunasekera of Diyatalawa (of the first part) and Valiappa Chettiar Somasunderam of Badulla (of the other part).

"Witnesseth.

"1. The party of the first part for and in consideration of the payment to him of the sum of Rupees Five hundred (Rs. 500), lawful money of Ceylon, and the due performance of the convenants and conditions hereinafter mentioned by the party of the second part solemnly agrees to transfer, sell, and assign the entire quantity of the tea coupons issued to him (the party of the first part) by the Tea Export Controller in respect of the tea property called Galenpaninawatta and Dambagasulpota bearing Registered No. T. W. 223.

"2. The coupons shall be assigned from date hereof for the full period during which tea restriction shall be in force in this Island and the party of the first part undertakes to nominate and appoint the party of the

second part his nominee with absolute and irrevocable powers for the purpose of receiving the tea coupons directly from the Tea Export Controller.

"3. The party of the second part shall convert the tea coupons into cash and after deducting therefrom three cents on each pound of tea coupons shall be entitled to appropriate the balance amount in liquidation of the Rupees Five hundred (Rs. 500) paid in advance at the execution of these presents and of the interest and principal due to him from the party of the first part upon mortgage bond intended to be executed to-day provided however (*a*) that the coupons shall not be sold by the party of the second part for a price lower than that prevailing in the coupon market on the day on which the coupons came into his hands and (*b*) provided this agreement for the assignment of the coupons shall continue to be in force for the full period aforesaid whether the amount due to the party of the second part from the party of the first part shall have been liquidated or not.

"4. It is further agreed by and between the parties that this agreement shall bind themselves and their respective heirs, executors, and administrators and that the party in default in the performance of any one or more of the above covenants shall be bound to pay to the party of the other part the sum of Rupees Five hundred (Rs. 500) as liquidated damages.

"In witness whereof the parties of the first and second parts above named have hereunto and to two others of the same tenor and date as these Presents set their hands at Badulla on this Twenty-fourth day of July, One thousand Nine hundred and Thirty-four.

"*Schedule of property affected by this agreement.*

"Tea coupons in respect of tea holding bearing Registered No. T. W. 223."

The maker of this document claimed through his Proctor to stamp it under item 4 (*a*) of Schedule B of the Stamp Ordinance, No. 22 of 1909, as being an "Agreement or contract, or any minute or memorandum of any agreement in this Island (and not otherwise charged nor expressly exempted from all stamp duty) whether the same shall be only evidence of a contract, or obligatory upon the parties, from its being a written instrument." The Commissioner, on application being made to him, ruled that it should be stamped under item 22 (*b*) of the same Schedule as a "Conveyance or transfer of any movable property for any consideration," and it is from this ruling that the present appeal is brought. The words agreement and contract are not defined in Ordinance No. 22 of 1909, but in section 3 (9) "Conveyance" is defined as follows:—

> "'Conveyance' includes a conveyance on sale and every instrument by which property, whether movable or immovable, or any interest or estate in any property, is transferred *inter vivos*, and which is not otherwise specifically provided for under this Ordinance."

The document in question is clearly intended to secure to the second party payment of Rs. 500 which he advanced to the first party subject to certain restrictions safeguarding the first party from the tea coupons being sold too cheap, but subject to this also, that the second party shall have transferred to him all the tea coupons issued in respect of the property mentioned in the deed as long as the restrictions imposed by Ordinance No. 11 of 1933 are in force, even though the debt of Rs. 500 has been paid off sooner.

What is a tea coupon ? It is the creation of Ordinance No. 11 of 1933, section 26 of which says that the registered proprietor of an estate or small holding shall be entitled to receive from the Controller in respect of any period of assessment, that is a period of twelve months, the first of which periods commenced on an appointed day in the year 1933, Tea Coupons representing the amount determined to be the exportable maximum of that estate or small holding for that period, and the same section legalizes a transfer or sale of tea coupons by one person to another. Section 27 says in effect that a person possessed of tea coupons shall be entitled to obtain from the Controller in exchange for them an export licence authorizing the export from the Island of an amount of made tea equal to the amount represented by such coupons, and the same section makes it legal for one person to transfer or sell export licences to any other person.

It follows then that these tea coupons are not in themselves licences to export tea but are in the nature of permits in exchange for which the possessor can obtain a licence to export tea. Without such licence a person cannot export and without a tea coupon he cannot obtain a licence to export. Presumably they will come within the definition of movable property.

It will be noticed that this movable property, tea coupons, which the first party " agrees to transfer, sell, and assign " to the second party seem to be future coupons, not those already in existence, and the second party is constituted irrevocable agent of the first party to receive them from time to time from the Controller. If they are future goods or movables not yet in existence, then we find that there is nothing in the same Ordinance No. 22 of 1909, providing for the stamping of future goods, and the learned Crown Counsel arguing this appeal admitted that he had not been able to find any authority saying how future goods should be dealt with in matter of stamping. Rather he laid stress on the definition of " Conveyance " in section 3 (9) and claimed that this was an instrument by which movable property was transferred *inter vivos*. There seems a practical difficulty about conveying or transferring something not yet in existence ; you may agree to transfer the next litter of a lady dog but until that litter arrives there seems a physical difficulty about making a conveyance or transfer of it, which words mean a handing over. The document itself says " agree to transfer ", and the phrase " agreement to transfer " applies more aptly than the term conveyance to a making over of future property not yet in existence. Some guidance in this difficulty is perhaps given by section 60 of the English Stamp Act of 1891, which is as follows : " Where upon the sale of any annuity or other right not before in existence such annuity or other right is not created by actual grant or

conveyance, but is only secured by bond, warrant of attorney, covenant, contract, or otherwise, the bond or other instrument, or some one of such instruments, if there be more than one, is to be charged with the same duty as an actual grant or conveyance, and is for the purpose of this Act to be deemed an instrument of conveyance on sale".

Now the reason for the insertion of the above section 60 seems clear. The legislator was anxious to obtain the *ad valorem*, and therefore higher, stamp duty on agreements to transfer rights not yet in existence, which higher duty he could charge if those agreements really were conveyances, but he was doubtful whether an agreement to transfer rights not yet in existence could be described as a conveyance, and he therefore inserted this section 60 so that there might be no doubt that these agreements would have to be stamped as conveyances even though, strictly speaking, they might not themselves be conveyances. Presumably the legislator felt that without this section it would be difficult to hold that an agreement to transfer something not yet in existence, could be described as a conveyance. There is no similar section that I can discover in our own Stamp Ordinance and, reasoning from section 60 of the English Act set out above, I conclude that such an agreement as the present remains an agreement merely and cannot be described as a conveyance since the legislature has not seen fit to insert the appropriate section declaring that it is to be considered a conveyance even though it purports only to transfer future goods.

If this be the correct inference from the fact that there is no such section in our own Ordinance, then the law to be applied is clear. *Per* Parke B. in *In re Micklethwait*[1]—"It is a well established rule that the subject is not to be taxed without clear words for that purpose; and also that every Act of Parliament must be read according to the natural construction of its 'words'"; and *per* Lord Cairns in *Partington v. Attorney-General*[2]—"As I understand the principle of all fiscal legislation, it is this: if the person sought to be taxed comes within the letter of the law he must be taxed, however great the hardship may appear to the judicial mind to be. On the other hand, if the Crown, seeking to recover the tax, cannot bring the subject within the letter of the law, the subject is free, however, apparently within the spirit of the law the case might otherwise appear to be". *Per* Collins M.R. in *Attorney-General v. Selborne*[3]—"The Crown fails if the case is not brought within the words of the statute; interpreted according to their natural meaning, they must fail; and if there is a case which is not covered by the statute so interpreted, that can only be cured by legislation, and not by an attempt to construe it benevolently in favour of the Crown".

The present case seems to fall within the principle enunciated in the above quotations. On the natural meaning of the word there cannot be a conveyance, that is a handing over, of something not yet in existence. The English Act of 1891 saw this difficulty and provided for it by the section 60 quoted above. Our law has not seen fit to include a similar section. Therefore we must take the words according to their natural meaning, and so tested, an agreement to transfer something not yet in

[1] *11 Ex. 456.* [2] *L. R. 4 H. L. 100.* [3] *(1902) 1 K. B. 388.*

existence cannot be a conveyance. This deed must therefore be stamped under item 4 (*a*) of Schedule B as being an agreement or contract, but does not require to be stamped under item 22 (*b*) as being a conveyance.

When this matter was argued to us, a preliminary objection was taken by the Crown that the appellant, namely, the second party to the deed, had no right to appeal since it was the Notary who had written to the Stamp Commissioner and the Notary who had received the ruling from the Commissioner, and stress was laid on the words in section 30 (1) of Ordinance No. 22 of 1909, allowing the person bringing the instrument to obtain the opinion of the Commissioner as to how it should be stamped. He, it was argued, was the only person entitled to appeal, and in this case it would be the Proctor. There did not seem to be anything in this objection and it was over-ruled. Perfectly true, all the necessary action in this matter was taken by the Proctor, but in what capacity did he take it ? Clearly as law agent of the second party to the deed, the real appellant. This preliminary objection was therefore over-ruled.

For the foregoing reasons I am of opinion that this appeal must be allowed with costs, which, at the argument before us, were agreed at Rs. 52.50.

POYSER J.—I agree.

Appeal allowed.