1935 *Present :* **Macdonell C.J. and Poyser J.**

DE SILVA *v.* COMMISSIONER OF STAMPS.

D. C. (Inty.), 146.

Stamp Ordinance—Agreement to give cash dowry—Transfer of property in lieu of cash—Unaccepted gift—Ordinance No. 22 of 1909, item 30 (b), Part I., Schedule B.

Where A, in pursuance of a written promise to pay her daughter a cash dowry of Rs. 5,000, transferred to her son-in-law after marriage a certain property in satisfaction of a sum of Rs. 4,000 of the promised amount,—

***Held,* that the conveyance was liable to stamp duty as an unaccepted gift under item 30 (b) of Part I, of Schedule B of the Stamp Ordinance.**

APPEAL from a decision of the Commissioner of Stamps under section 32 of the Stamp Ordinance. The Commissioner ruled that the deed propounded, No. 471 of July 16, 1934, was liable to duty as an unaccepted gift and not as a conveyance for consideration.

Rajapakse (with him *Kariapper*), for the appellant. This is not a dowry deed by a mother to a daughter, which is essentially a gift made *on the occasion* of her marriage, as in the case of *In re Veeravagu* [1]. This is a conveyance made in redemption of a promise in writing to pay a sum of money, which promise could have been enforced by an action.

The document must be construed by a reference to its own contents and no recourse can be had to extrinsic evidence to alter its character. See *In re A. K. Chellappa* [2]. In the construction of revenue laws, they are to be read in favour of the subject, *Maxwell pp. 430-434.*

Basnayake, C.C., for the respondent.—Assuming, but not conceding, that the document can be chargeable either as a gift or as a conveyance, the Commissioner has a choice to charge in the way most favourable to him; see *Speyer Bros. v. Commissioner of Inland Revenue* [3].

This is a deed in discharge of a promise to gift by way of dowry, and as such it is really a gift. The case is on all fours with *In re Coomaraswamy* [4].

It has been held that a deed executed by a Muhammadan husband, after the marriage, for the Maggar due, is a gift. See *In re Gunasekere* [5].

Rajapakse, in reply.—*In re Coomaraswamy* (*supra*) refers to a gift by a mother to a daughter, not to induce her to marry, but on the occasion of her marriage. The dowry or the promise to dower made to her daughter is voluntary and therefore it was a gift. But it is different where the promise is made to a prospective bridegroom. The promise there is an inducement for him to marry the promisor's daughter. That is valuable consideration, and a conveyance in redemption of such promise is one for valuable consideration.

[1] *23 N. L. R. 67.*
[2] *19 N. L. R. 118.*
[3] *(1908) A. C. 92.*
[4] *27 N. L. R. 62.*
[5] *24 N. L. R. 35.*

February 6, 1935. MACDONELL C.J.—

This was an appeal under section 32 of the Stamp Ordinance, No. 22 of 1909, as to the article in the Schedule under which the deed propounded, No. 471 of July 16, 1934, ought to be stamped.

The facts were these. On a certain intended marriage the mother of the lady to be married promised in writing to her intended son-in-law to pay him *inter alia* Rs. 5,000 in cash on his marrying her daughter. His marriage to the daughter duly took place. The bride's mother finding herself unable to produce the Rs. 5,000 in cash which she had promised, gave the son-in-law certain immovable property in lieu of Rs. 1,000 of that sum, and in satisfaction of the remaining Rs. 4,000 executed the deed propounded, No. 471. This deed after reciting her right to certain properties and the written promise to pay the Rs. 5,000 on the marriage taking place, and likewise her inability to provide cash to that amount, as also her gift of immovable property in lieu of the Rs. 1,000, goes on to say "Now Know Ye and these Presents Witness that the said vendor (*i.e.*, the mother-in-law) for and in consideration of the sum of Rupees Four thousand (Rs. 4,000) (the receipt whereof the said vendor doth hereby admit and acknowledge) doth hereby give, grant, convey, sell, assign, transfer, and set over and do, by these presents, give, grant, convey, sell, assign, transfer, and set over unto the said vendee (*i.e.*, the son-in-law), his heirs, executors, administrators, and assigns, all her right, title, and interest in, to, and over the lands and premises described in the schedule hereto, with the buildings thereon, together with all and singular the rights, ways, privileges, easements, servitudes, advantages, and appurtenances whatsoever thereof, or thereunto in anywise belonging or usually held, occupied, used, or enjoyed therewith, or reputed or known as part and parcel thereof and all the estate, right, title, interest, property claim, and demand whatsoever of the said vendor in, to, upon, or out of the said lands and premises and every part thereof." There then follows the usual habendum, a covenant that the vendor has not encumbered or alienated, and a covenant for further assurance, likewise the schedule of properties. The deed was notarially executed. It was in form therefore a valid conveyance for value of the lands set out in the schedule. It does not contain any statement by the vendee (*i.e.*, the son-in-law) that he accepts the properties thereby conveyed. The parties concerned claimed that it ought to be stamped under Article 22 (*a*) of Part I. of Schedule B to the Stamp Ordinance, No. 22 of 1909, as being a "conveyance or transfer of immovable property where the purchase or consideration money therein or thereupon expressed or if the consideration is other than a pecuniary one the value of the property" is Rs. 4,000, and so requiring stamps to the value of Rs. 72. Their notary asked under section 30 of the Ordinance for a ruling from the Commissioner of Stamps on the question. In reply the Commissioner of Stamps ruled that the deed was liable to duty as an unaccepted gift under item 30 (*b*) of the same Schedule B, Part I., whereby it would require stamps to the value of Rs. 149. It is from this ruling that the present appeal is brought.

It was claimed for the appellant that this was a conveyance for value pure and simple. There was a previous binding contract in writing to pay Rs. 5,000 on the man marrying the daughter. He did marry her and therefore gave good and valid consideration for the promise made to him, and deed No. 471 was a conveyance to him of certain lands in satisfaction of the balance of a binding promise to pay him Rs. 5,000. Cases were cited to us in support of this argument, *In re Chellappa* (*19 N. L. R. 116*) and *In re Coomaraswamy* (*19 N. L. R. 171.*) In the former of these cases de Sampayo J. pointed out that "A notary or party who wishes to bring an instrument within a particular description for the purpose of regulating the stamps must see that the instrument itself discloses its nature." In that case a gift by husband and wife to the daughter by way of *mudusam* was described as a "settlement", but the deed did not show by way of recitals or otherwise that it could fall within the definition of "settlement" in section 3 (24), as it then stood, of the Stamp Ordinance. In the latter case the instrument did recite that the grant was a deed of distribution of *mudusam* "known as a deed of settlement", and it was ruled that the deed was stampable as a settlement and not as a gift. These cases however were decided before the alteration of the law by the amending Ordinance No. 16 of 1917, and the present law on the matter will be found in the case *In re Veeravagu* (*23 N. L. R. 67*). There, de Sampayo J., after stating that the deed was on the face of it called a dowry deed and in the operative portion purported to convey lands "by way of dowry in consideration of marriage", went on to say, at page 68, "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 article 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 'settlement'. 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 judgment, then, decided on the plain words of the statute that it was no longer possible to claim that a dowry deed or conveyance or gift in consideration of marriage, whatever we may call it, could be stampable as a 'settlement', since the special item 'settlement' had by the amending Ordinance No. 16 of 1917 been taken out of the law. Such a deed should be stamped therefore as a gift, and in the case just cited de Sampayo J. decided that it must be stamped as such.

Suppose it be argued, as it very well can, that the deed now before us is in all respects a conveyance for value. Such an argument seems to be effectively met by the decision in *In re Coomaraswamy* (*supra*) where at page 63, Bertram C.J. says as follows: "We have, therefore, to ask ourselves whether upon the face of the document it is in substance a deed of gift. For that purpose it does not matter what it may be called. We have to determine from what appears within the four corners of the document its essential nature. Now the material words are, 'In consideration', or as it is suggested it may be translated in the alternative, 'in discharge of the sum of Rs. 1,500 agreed by me to be given as dowry money, I sell, assign, and convey all the right, title, and interest belonging to me in and to the under-mentioned mortgage bonds and otty bond'. Do these words in fact constitute the document a deed of gift? It was suggested by Mr. Arulanandan that they really point to two transactions, an initial agreement to give a sum of money as dowry, and a subsequent agreement vacating the original agreement; under which substituted agreement the mortgages were to be executed in lieu of the money originally provided for, and an assignment of these mortgages in pursuance of this substituted agreement. I think that if we look at the words of the document as they stand, there can be no doubt that this is in substance a deed of gift. It may be taken as settled by the decision of this Court (*In re Veeravagu*) that a dowry deed, even though it is executed in pursuance of marriage and in consideration of marriage, is, in fact, in substance a gift by the parent or parents to the daughter". The effect of this ruling interpreted most favourably for the appellant in this case is that a deed such as the present, even though it may be in the eye of the general law a conveyance for value, is none the less under the provisions of the Stamp Ordinance a gift, and therefore to be stamped under Article 30 of the Schedule. If it be urged for the appellant that this deed being a conveyance he can stamp it as such, he is met by another passage in this judgment of *In re Coomaraswamy* (*supra*), which adopts the principle that rules in England (*Speyer Brothers v. Commissioners of Inland Revenue*[1]) "that where a document is chargeable in the alternative under two categories, the Crown has a choice whether to charge it under the one or under the other". In effect, granting to the full, if you wish, that this deed No. 471 was a conveyance for value, still, by virtue of decisions which are binding upon us, it is also a gift which has not been accepted and therefore, if the Crown wishes to stamp it with the higher duty chargeable under Article 30 (*b*) of the schedule, it is entitled to do so. If that is so, then the ruling of the Commissioner of Stamps is correct, and this appeal must be dismissed.

As the Crown consents to waive its claim to costs, this appeal will be dismissed without costs.

POYSER J.—I agree.

Appeal dismissed.

[1] *(1908) A. C. 92.*