

1940

Present : Soertsz and Keuneman JJ.

HIGHLAND TEA COMPANY, LIMITED v. COMMISSIONER
OF STAMPS.

D. C. (Inty.), 19.

Stamps—Joint stock company in liquidation—Liquidator authorised, after payment of debts, to distribute assets to contributories—Conveyance by liquidator—Stamp duty—Stamp Ordinance, Schedule A, Part I., items 23 (1) (b), 23 (4) and (8) (Cap. 189).

At an extraordinary general meeting of the Portmore Tea Company of Ceylon it was resolved that the said Company be wound up voluntarily and for that purpose a liquidator was appointed. The liquidator was authorized to pay the debts and liabilities of the Company and then to distribute in specie or kind amongst the contributories of the Company, in accordance with their respective rights and interests, the whole of the assets of the Company. The liquidator paid and satisfied all the debts and liabilities of the Company, and by deed No. 1379 dated November 29, 1939, the Company and the liquidator conveyed to the Highlands Tea Company certain lands and estates for the reason that the transferee was the registered owner of or otherwise beneficially entitled to all the issued shares in the Portmore Company.

Held, that the instrument of transfer did not fall for stamp duty under item 23 (1) (b) of Schedule A, Part I. of the Stamp Ordinance. It falls under either item 23 (4) or item 23 (8).

A PPEAL from an order of the Commissioner of Stamps. The facts are stated in the headnote.

H. V. Perera, K.C. (with him *E. F. N. Gratiaen*), for appellant.—The deed is a deed of transfer by a liquidator to the contributories and would attract duty under item 23 (4) of Part I. of Schedule A to the Stamp Ordinance. A liquidator is in the position of a trustee. (Cites *In re Leir & Company, Ltd.*¹; *Knowles v. Scott*²; *In re Windsor Steam Coal Co.*³.) There is no consideration for this transfer. If the deed does not come under item 23 (4) it will fall under item 23 (8), but not under item 23 (1) (b) because there is no consideration for the transfer. (Cites *Waharaka Investment Company v. Commissioner of Stamps*⁴.)

H. H. Basnayake, C.C., for respondent.—This deed should be stamped under item 23 (1) (b). There is consideration for the transfer. The contributor's right to receive the capital value of the shares is extinguished by the transfer. (Cites *In re Mahawila Rubber & Tea Co., Ltd.*⁵; *Huntington v. Commissioner of Inland Revenue*⁶.) The deed cannot fall for duty under item 23 (4) as a liquidator is not a trustee in the sense in which that expression is used in that item. The word trustee there means a real trustee (*1 Times of Ceylon Law Reports*, p. 250). A liquidator is only in the position of a trustee in certain circumstances (*Pahaw Company Precedents*, 15th ed., Vol. II., pp. 253 and 254, 818 and 819).

cur. adv. vult.

¹ (1919) 1 Ch. p. 416.

² (1891) 1 Ch. 717.

³ (1901) 98 L. J. (Chancery) 147 at 153.

⁴ 34 N. L. R. 266.

⁵ 3 Law. Rec. 152.

⁶ (1896) 1 Q. B. D. p. 422.

June 26, 1940. SOERTSZ J.—

The facts from which this appeal arises may be stated briefly as follows:—At an extraordinary general meeting of the Portmore Tea Company of Ceylon, Limited, it was duly resolved that the said Company be wound up voluntarily, and for that purpose, a liquidator was appointed. The liquidator was authorised to pay the debts and liabilities of the Company and then “to distribute in specie or kind amongst the contributories of the Portmore Company in accordance with their respective rights and interests therein the whole of the assets of the Portmore Company”. Accordingly, the liquidator paid and satisfied all the debts and liabilities of the Company and by deed No. 1379 dated November 29, 1939, the Company and the liquidator conveyed, assigned, transferred, set over, and assured unto the Highland Tea Company the lands and estates described in the schedule to the deed, for the reason that the transferee, that is to say, the Highland Tea Company was “the registered owner of or otherwise beneficially entitled to all the issued shares in the Portmore Company”. (See the first recital in the deed.) This deed was stamped with a ten-rupee stamp, and the Highland Tea Company thought fit to apply to the Commissioner of Stamps in terms of section 29 of the Ordinance, to have his opinion as to the duty with which the instrument is chargeable, and through their lawyers submitted it to him for that purpose.

The Commissioner by his letter of March 5/6, 1940, gave his opinion “that the instrument is a transfer of immovable property for consideration and is liable to a duty of Rs. 9,592 under item 23 (1) (b) of Schedule A, Part I. of the Stamp Ordinance”.

The Highland Tea Company is dissatisfied with this determination of the Commissioner of Stamps, and prefers the present appeal against it. The Commissioner has given no reasons for his opinion. It is suggested by Counsel that the opinion given has the quality of wishful thinking, and he submits that upon the correct view of the matter, this instrument falls under item 23 (4) or alternatively, under item 23 (8) of Schedule A, Part I. of the Stamp Ordinance and that it was rightly stamped with a ten-rupee stamp. It was not at all clear to me how Crown Counsel sought to make out that there was consideration. He seemed to contend that because this was not a deed of gift, there was some sort of consideration. That, however, is to overlook conveyances such as are contemplated by items 23 (4) and 23 (8).

The item under which the Commissioner of Stamps places this instrument is in these terms: “Conveyance or transfer of any immovable property for any consideration, where the purchase or consideration money therein or thereupon expressed, or if the consideration be other than a pecuniary one, or partly pecuniary and partly other than pecuniary, the value of the property shall be over Rs. 0 and not over Rs. 50 one rupee, &c. . . .”. The crucial words are “for any consideration” and “therein or thereupon expressed” and in the context, this word “consideration” bears the meaning “money” or “partly” money and “partly” other than money consideration. Now

in this instance there is no "purchase or consideration money" expressed in or upon the instrument, nor is any consideration "other than a pecuniary one, or partly pecuniary, and partly other than pecuniary", expressed in or upon the instrument, and, in my opinion, in this case, that fact alone takes the instrument out of class 23 (1) (b). But even if it is relevant to consider the question whether although no kind of consideration is expressed in or upon the deed, yet, in reality there was consideration, I reach the conclusion that the deed falls outside the class referred to on the ground that there was, in reality, no consideration for this deed.

It is clear that the word consideration as used in the Stamp Ordinance bears the meaning it has in English law. If authority is required for that proposition there is the case of *Waharaka Investment Co. v. Commissioner of Stamps*¹. In that case Macdonell C.J. dealing with item 22 (b) of Part I. of Schedule B of the then Stamp Ordinance which is identical with the present item 23 (2), Schedule A, Part I, observed as follows: "I would say that wherever in one of our Statutes the term 'consideration' occurs, there is a strong presumption that it must be given the meaning it has in English law, and indeed what other meaning can you give it, if it is a term peculiar to English law", and he went on to point out that the meaning generally given to that term in English law was stated in the case of *Currie v. Misa*² to be "some right, interest, profit or benefit accruing to one party or some forbearance, detriment, loss or responsibility given, suffered or undertaken by the other". Examined by that test, there was no "consideration" for the instrument before us. So far as the transferors are concerned, there is no right, interest, profit or benefit accruing to them, and in regard to the transferees there is not apparent or conceivable any forbearance given or shown, or any detriment or loss suffered, or any responsibility undertaken by them. Once the directors of the Portmore Tea Company resolved that the Company be wound up voluntarily, and appointed a liquidator for the purpose, the resulting position was that this Company held its assets in order that the debts and liabilities of the Company might be paid and thereafter distribution made of what remained in specie or in kind among the contributories of the Company. In other words, it might justifiably be said that the Portmore Tea Company held its remaining assets in trust for those beneficially entitled to them. It is not disputed that the Highland Tea Company of Ceylon were so entitled either as registered holders, or otherwise, to all the issued shares of the Portmore Company. The conveyance did no more than give unto the Highland Tea Company the things that were theirs.

In my view, this conveyance falls within item 23 (4). It is a conveyance of immovable property by a trustee to the person beneficially entitled to it. But, Counsel for the respondent contended that trustee in that context meant a trustee as understood in the Trusts Ordinance. Assuming that to be so, it seems to me that by virtue of section 96 of our Trusts Ordinance the Portmore Company stood in that capacity. But

¹ 34 N. L. R. 266.

² L. R. 10 Ex. 162.

quite apart from that view of the matter there are English cases in which the relationship between a company in course of liquidation and the shareholders has been placed on that footing, for instance in *Knowles v. Scott*¹, Romer J., while refusing to saddle a liquidator with the responsibility of a "trustee in the strict sense", went on to observe as follows: "in support of the plaintiffs' contention, reference has been made to dicta by distinguished Judges in various cases, which describe liquidators as trustees, or as holding assets of companies in trust. No doubt in a certain sense, and for certain purposes, a liquidator may fairly enough be described as a trustee A director is not a trustee for the shareholders of the company, though he is often referred to in various cases as a trustee, and no doubt, rightly enough for certain purposes". In the case before us, the transferors are the liquidators and the Portmore Tea Company, and in view of this participation of the Company as a transferor, I would refer to the case of *In re The Oriental Inland Steam Company, Ltd.*² in which Mellish L.J. said "under a winding up order, the legal estate in the property of the Company ordered to be liquidated was not taken from the Company, but the beneficial interest in the property was and a trust attached for the benefit of all creditors". That was a case concerning creditors.

It is not necessary, however, to pursue this matter any further for once it is held that this conveyance does not fall within 23 (1) (b), the question whether it falls within 23 (4) is academic. Crown Counsel concedes that if this conveyance is not in the class assigned to it by the Commissioner of Stamps, it must fall under 23 (4) or 23 (8) and, in either event, the duty chargeable is ten rupees.

In conclusion, I should wish to make it quite clear that my consideration of the question before us is based on the fact that all the averments and recitals in the deed in question are admitted by the Commissioner of Stamps. I understood Crown Counsel to say that. At any rate he did not dispute or question them. It is not, therefore, necessary to decide in this case what the position would have been in a case in which the Commissioner contended that although no consideration was expressed in or upon the instrument, that that was pure contrivance, and that there was, in reality, consideration as understood in English law.

In my opinion, this appeal is entitled to succeed and I hold that the duty payable on the deed is the duty that was paid on it. The appellant is entitled to the costs of the appeal.

KEUNEMAN J.—I agree.

Appeal allowed.

¹ (1891) 60 L. J. 284.

² (1874) 43 L. J. Ch. 699.