Present : Porter and Schneider JJ.

1923.

In *re* the Application of GOONESEKERA, Notary Public.

Stamp duty—Deed executed by Muhammadan husband in favour of wife after marriage for Maggar.

A Muhammadan husband executed a deed in favour of his wife after the consummation of the marriage for the *Maggar*.

Held, that the document should be stamped under item 30 (*b*) of Stamp Amendment Ordinance, 1919.

M. W. H. de Silva, for the applicant.

Dias, C.C., for the respondent.

January 31, 1923. PORTER J.—

This is an appeal from a decision of the Commissioner of Stamps.

The sole question for us to decide in this case is whether deed No. 57 of July 27, 1922, should be stamped as coming under item 22 (*a*) or 30 (*b*) of the Stamp Amendment Ordinance.

By virtue of the ruling in *re* the application of K. S. Veeravagu, Notary Public, reported in *23 N. L. R. 67*, I am of the opinion that the document in dispute should be stamped under item 30 (*b*), and that the ruling of the Commissioner of Stamps is correct.

I would, therefore, dismiss this appeal, with costs.

1923.

Application of Goonesekera

SCHNEIDER J.—

The question raised by this appeal has been decided in *re* the application of K. S. Veeravagu, Notary Public.[1] It was there held that a transfer of land as a dowry in consideration of a marriage, although it had been contracted before the date of the deed, was in the nature of a settlement by the husband in favour of the wife, and must be stamped as a deed of gift.[2] The reasoning being that it was not a transfer within the meaning of the Stamp Amendment Ordinance, but a deed of gift, because a settlement is a gift of a particular kind.

Mr. de Silva, who appeared for the appellant, raised an ingenious argument. He contended that the deed (No. 57) under consideration in this application was executed by a Muhammadan husband in favour of his wife after the consummation of the marriage for the "Mahar," which, under the Muhammadan law, a husband is under obligation to pay to the bride, and that, therefore, the consideration for the deed was a debt due. He cited a number of authorities in support of his argument.[3]

He argued that as the consideration was debt, therefore the deed was a transfer, as it was for a pecuniary consideration. I am unable to uphold this contention. When an instrument is submitted in circumstances such as those in this appeal for the determination of the stamp duty, the instrument must be looked into, and the actual consideration for the transaction gathered from it. It is of no importance what the parties to it may call or describe the transaction. Apart from the authorities cited, sections 68, 72, and 78 of our Code of Muhammadan law make it clear that "Mahar" as the deed calls it, and "Maskawien or Maggar" as the Code calls it, is a settlement which the law requires should be made by a husband for a wife.

The real consideration for the deed in question is not money or its equivalent paid by the wife to the husband, but that with which the husband dowers the wife in consideration of her marriage. I am, therefore, unable to draw any distinction as to their nature between the instrument connected with this appeal and that which was the subject-matter of the decision mentioned above. I would, therefore, dismiss this appeal, with costs.

Affirmed.

[1] *(1922) 23 N. L. R. 67.*

[2] *Article 30, The Stamp Amendment Ordinance, No. 10 of 1919.*

[3] *Thyabji: Muhammadam Law, pp. 54, 60, and 119; V. D. S. Reports 162 and 196; 14 N. L. R. 276; and 25 Hals. Laws of England 448, section 811.*