

1943

Present: Moseley S.P.J. and Jayetileke J.

DE SILVA & MENDIS, Appellants, and COMMISSIONER OF STAMPS, Respondent.

Case stated by the Commissioner of Stamps under Section 31 of the Stamp Ordinance (Cap. 189).

Stamps—Conveyance by trustees under will to persons beneficially interested—No consideration for conveyance—Stamp Ordinance (Cap. 189), s. 23(4).

Where a last will directed the trustees to convert an estate belonging to the testator into a Company in which the children of the deceased were to be allotted shares and where, in pursuance of the directions a Company was formed and the trustees transferred the property to the Company by deed,—

Held, that the deed came within the ambit of item 23 (4) of Part I., Schedule A of the Stamp Ordinance.

CASE stated by the Commissioner of Stamps under section 31 of the Stamp Ordinance as amended by Ordinance No. 47 of 1941.

H. V. Perera, K.C. (with him *N. M. de Silva*), for the appellants.

Walter Jayawardene, C.C., for the Commissioner of Stamps.

Cur. adv. vult.

September 2, 1943. MOSELEY J.—

One Adriel Henry Wijeyesekera by his last will made the following disposition :—

“4. I direct that the said Trustees should float the estate belonging to me called Walauwawatte into a Company and that each of my children should get shares in the following proportion :—one portion to each of my children including a child *en ventre sa mere* and three portions to my wife Pansy.

5. I further direct that my Trustee or Trustees aforesaid should hold the shares of each of my children in trust until they attain the age of thirty. Provided, however, it shall be within the discretion of the Trustees to transfer the shares to any of the said children after they attain majority if my Trustees consider it desirable or expedient.”

In pursuance of these directions a private company was formed and deed was drafted with the object of conveying the above-mentioned estate to the said company. The relevant portions of the draft deed are as follows :—

“And whereas the Trustees in pursuance of the directions given to them in and by the said Last Will and Testament on the twenty-sixth . . . day of October . . . One thousand nine hundred and forty-two incorporated a Private Company called “The Walauwawatte Estate Company, Limited” having a share capital of Rupees One hundred and twenty thousand (Rs. 120,000) divided into twelve thousand ordinary shares of Rupees Ten (Rs. 10) each for the purpose, *inter alia*, of purchasing, taking over, taking on lease or otherwise acquiring from the Executors of Adriel Henry

Wijeyesekere. deceased the said Walauwawatte Estate in order to give effect to directions, the wishes of the said deceased regarding the management and control thereof.

And whereas the Trustees are now desirous of transferring and conveying the said Walauwawatte Estate unto the said The Walauwawatte Estate Company, Limited, a Company duly incorporated under the Companies Ordinance, No. 51 of 1938, and having its registered office at No. 41, Alexandra place, Colombo, aforesaid (hereinafter called and referred to as "the Company" which term shall where the context so requires or admits mean and include the said The Walauwawatte Estate Company, Limited, its successors and assigns) free of all encumbrances whatsoever."

The draft was submitted to the Commissioner of Stamps for adjudication. The Commissioner held that the deed, when executed, would be liable to *ad valorem* duty in accordance with the scale laid down in item 23 (1) (b) of Part I. of Schedule A of the Stamp Ordinance (Cap. 189).

At the request of the proctors for the trustees the Commissioner has stated a case as provided by section 31 of the Ordinance as amended by section 13 of Ordinance No. 47 of 1941. The view put forward by the appellants is that the document should be stamped under item 23 (4) of the said Schedule, on the footing that it is a conveyance by trustees without consideration to the person beneficially entitled to the property conveyed.

Counsel for the Commissioner conceded that, if the direction contained in the above-quoted provisions in the will can be construed as a devise, the contention of the appellants is sound. He contended, however, that there is a direction to the trustees to *sell* the property to the company in consideration of the allotment by the company of shares to the testator's wife and children. The view advanced by Counsel for the appellants is that there is a devise to which are attached directions for carrying into effect the wishes of the testator as to the manner in which the beneficiaries shall enjoy the subject-matter of the devise. It must be admitted that the directions are not very happily framed, *e.g.*, the direction to "float the estate into a company," but it does not seem to me difficult to grasp what is meant, and I prefer the construction put forward on behalf of the appellants. If the company had been formed before the making of the will, as it might well have been, and a similar direction, *mutatis mutandis*, had been made, I do not think there could be any question that there was a devise to a company which would be the "person beneficially entitled". That the company was yet to be formed does not alter the situation. Nor is it of importance, as argued by Counsel for the Commissioner, that the company is not bound to accept a transfer. The position of the company in that respect does not differ from that of an ordinary devisee.

Counsel for the Commissioner further relied upon the expression "in consideration of the premises" as implying a transfer for valuable consideration but I do not think the expression can be regarded as anything more than a reference to the recitals in the deed. There has also been imported into the draft a quite unnecessary reference to the objects of the company which are described as being "for the purpose *inter alia*

of purchasing, taking over, taking on lease or otherwise acquiring” the estate. But, as pointed out by Mr. Perera, the material point is, not what the company may have had power to do, but what it has done.

In my view there is a clear direction to the trustees to convey the estate to the company—it is not a case of the trustees having *power* to do so—and I am satisfied that the company is the person beneficially interested, and that there is no consideration for the conveyance.

The deed therefore comes within the ambit of item 23 (4) and is liable to a duty of Rs. 10 only.

The appeal is allowed with costs.

JAYETLEKE J.—I agree.

Appeal allowed.

