

(1877) 12 CAL CK 0008

Calcutta High Court

Case No: None

In Re: Thomson's
Policy

APPELLANT

Vs

RESPONDENT

Date of Decision: Dec. 21, 1877

Acts Referred:

- Stamp Act, 1899 - Article 15, 34, 41

Citation: (1878) ILR (Cal) 348

Hon'ble Judges: Richard Garth, C.J; Markby, J; Ainslie, J

Bench: Full Bench

Judgement

Markby, J.

Even if we assume that the transfer of a policy of insurance is a conveyance of property situate in British India so as to be prima facie chargeable under Article 15, Schedule I of the Stamp Act (as to which we express no opinion), still the difficulty arises with regard to the endorsements which the Board of Revenue consider ought to be stamped as conveyances, that it is impossible to say that any specific sum was paid as consideration for either of these transactions.

2. u/s 34--q. v. supra ILR 3 Cal. 347 vendor and purchaser, in cases of sale, are both required to set forth truly in words the full consideration-money directly or indirectly paid or secured, &c., &c., under certain penalties for failure to do so. Section 11 is restricted in its application to bonds, mortgage-deeds or settlements; and in the case of a conveyance, an option as to the amount of stamp to be used with a corresponding limitation of the rights secured by the instrument, is not allowed.

3. It appears to us that no penalty could be imposed u/s 34, and that no Court could refuse to receive the instruments before us u/s 18.

4. The fact is, that the first (and presumably the third instrument) was only an assignment by way of collateral security without any consideration, capable of being

settled as a sum of money. The consideration for the assignment was apparently a promise to advance money, such loan being primarily secured by a bond separately chargeable with stamp duty. The money paid was not paid as purchase-money of the endorser's interest in the policy.

5. Nothing was intended to be paid as purchase-money; the whole sum paid was intended to be refunded to the payer. No doubt if the debtor should die before the repayment of the debt, and if the creditor should find it necessary to fall back on the policy for satisfaction thereof, it may be said that he will eventually pay the undischarged balance of the loan, plus the premia paid on the policy subsequent to its assignment, as the price of such assignment; but it is clear that in this view nothing was ever paid in respect of the first assignment, and no one could specify in respect of it or of the third endorsement at the date of its execution (which is the date on which the instrument must be stamped) that anything ever would or will be paid. It follows, that the penal provisions of Sections 18 and 34, which refer to an instrument not properly stamped at the time of execution, failed to touch such instruments, for no Court and no Collector can say that an instrument is improperly stamped unless it or he can state what the proper stamp should have been.

6. We, therefore, think that the first and third endorsements are not chargeable with stamp duty as conveyances." Nor do we consider that the second endorsement is chargeable as the acknowledgment of the satisfaction of debt. It is a retransfer of the policy, and nothing more. It merely recites the fact that the debt has been satisfied in order to explain under what circumstances the policy is retransferred.

7. As collateral instruments not otherwise provided for, the first and third endorsements are, supposing the transaction such as above stated, liable to a stamp of one rupee. The other endorsement is, in our opinion, not chargeable with stamp duty.

Garth, C. J.

8. I am of opinion that none of the instruments in question endorsed on the policy of assurance are chargeable with duty. I consider that they are not chargeable as "conveyances," because the policy of assurance which they purport to transfer, is not "property" within the meaning of the Stamp Act. It is merely a contract by the assured with the insurance office, which may or may not, according to circumstances, prove a beneficial one to the former. Such a contract, in my opinion, is not included in the definition "property existing in British India."

9. Even assuming that such a transfer were a conveyance of property within the meaning of the Act, I consider that it would not be chargeable with duty for the reasons given by my learned brothers.

10. As regards the second instrument, I think it is not chargeable as an acknowledgment of the satisfaction of a debt, because it does not appear that any

debt to the Bank had been satisfied, or that the claims alluded to were debts, or in the nature of debts, or that the amount of the claims, whatever they were, exceeded Rs. 20.

11. It is possible, no doubt, that the first and third instruments may have been collateral securities; but we have no information to guide us as to whether they do properly come under that description or not, and I feel very strongly that, in giving an opinion upon questions submitted to us by the Board of Revenue, which may serve in the future as "guide to the Board in imposing" taxes upon the public, we are bound to advise upon the actual facts before us, and have no right to speculate upon the possible nature of transactions, of which we have no certain knowledge.

[1]

[Section 34: (a) When any moveable or Immovable property is sold, the full consideration-money directly or indirectly paid or secured, or to be paid or secured, for the same, shall be stated in the instrument set forth in words at length in the principal or copy of the instrument whereby the property sold is conveyed to, or vested in, the purchaser or in any other person by his direction.

(b) When any property is sold and conveyed subject to any mortgage or bond or debt, or to any gross or entire sum of money, such sum shall be deemed the consideration-money or purchase-money. A part of the consideration-money (as the case may be) in respect whereof the duty chargeable under the 1st schedule to this Act shall be paid, notwithstanding the purchaser is not or does not become personally liable for such debt or sum, or does not agree to pay the same, shall to indemnify the seller against the same.

(c) If the full consideration-money is not set forth as aforesaid, the purchaser and seller shall each be liable to fine not exceeding five hundred rupees, and shall also pay a fine of five per cent. on the amount of the excess of duty with which such instrument would have been chargeable under this Act, if the full consideration-money had been duly set forth in such instrument, in addition to the duty actually paid for the same.

Section 41: (a) The Chief Controlling Revenue Authority may state any ease or difficulty arising under this Act and refer such case with its reference to the High Court. If the case arise in the Presidency of Madras, to the High Court of Madras, in St. George or the Presidency of Bombay, to the High Court of Bombay, and if it arise in any other part of British India, to the High Court at Fort William.

(b) Every such case shall be decided by at least three Judges of the High Court to which it is referred, and in case of difference the opinion of the majority shall prevail.

(c) If the High Court is not satisfied that the statements contained in the

sufficient to enable it to determine the questions raised thereby, the Court shall send the case back to the Revenue Authority by which it was stated to make suggestions thereunto or alterations therein as the Court may direct in that behalf.

- (d) The High Court upon the hearing of any such case shall decide the questions and shall deliver its judgment thereon containing the grounds on which such judgment is founded; and it shall send to the Revenue Authority by which the case was referred a copy of such judgment under the seal of the Court and the signature of the Registrar of the Revenue Authority shall, on receiving the same dispose of the case conformably with the judgment.]