

The Commissioners of Stamps - - - *Appellants,*

v.

The Queensland Meat Export Company
(Limited) - - - *Respondents,*

The Commissioners of Stamps - - - *Appellants,*

v.

The Australian Stock-Breeders' Company
(Limited) - - - *Respondents,*

FROM

THE SUPREME COURT OF QUEENSLAND.

JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE
OF THE PRIVY COUNCIL, DELIVERED THE 3RD AUGUST, 1917.

Present at the Hearing:

VISCOUNT HALDANE.

LORD DUNEDIN.

LORD SUMNER.

[*Delivered by* LORD SUMNER.]

After carrying on the business of meat preservers and graziers for a number of years, the Queensland Meat Export and Agency Company, Limited, decided in 1915 to separate its two concerns. The plan adopted was to wind up the old company, the Queensland Meat Export and Agency Company, and to incorporate two new companies, called respectively, the Queensland Meat Export Company, Limited, and the Australian Stock-Breeders' Company, Limited, and then the liquidator of the old company was, by contract with each of the new companies, to engage to transfer to them their respective shares of the assets for considerations, consisting principally of shares in the new companies. These shares he was then to distribute among the shareholders in the old company. This scheme was carried out.

In due course the question of stamp duties arose. The agreement between the old company and the Queensland Meat Export Company, Limited, which was dated the 18th Novem-

ber, 1915, provided that the former "shall transfer" and the latter "shall take over" sundry lands and buildings, shares in joint-stock companies, live stock, plant and stores, book and other debts, and the benefits of all pending contracts, of all outstanding consignments of meat and of all trade marks, and finally all other property of the old company, for a consideration, consisting, *inter alia*, of the allotment to the liquidator of the old company of 654,969 of the new company's fully-paid shares. No appropriation was made between these considerations, on the one hand, and the different classes of assets on the other, nor did the contract express how or when the transfers of each class of assets were to be effected. In time the real property was conveyed and the shares in the joint stock companies were transferred, and thereupon stamp duty *ad valorem* was duly paid, pursuant to the Stamp Act, 1894 (Queensland Statutes, 58 Vict., No. 8), § 53 (1), which provides that

"where property contracted to be sold for one consideration for the whole is conveyed to the purchaser in separate parts or parcels by different instruments, the consideration is to be apportioned."

The Commissioners of Stamps, however, further contended that stamp duty *ad valorem* was payable in respect of the live stock, stores, plant, and products on hand (all being chattels in the transferors' possession), and also in respect of the choses in action, namely, book debts and outstanding consignments, or, in other words, uncompleted transactions for the sale of meat consigned abroad, for if the purchasers became entitled to all these things, *in presenti*, by virtue of the execution of the agreement, duties became payable by them *ad valorem* as upon conveyances or transfers, and not merely, as the purchasers maintained, the 10s. duty appropriate to a deed.

The meaning of the expression conveyance or transfer is given by § 49 :—

"For the purposes of this Act the expression conveyance on sale includes every instrument . . . whereby any property, or any estate or interest in any property upon the sale thereof is transferred to or vested in a purchaser."

It is further provided by § 54 (1) that :—

"Any contract or agreement . . . , under hand and seal, or under seal only, or under hand only, for the sale of any equitable estate or interest in any property whatsoever, shall be charged with the same *ad valorem* duty to be paid by the purchaser as if it were an actual conveyance on sale of the estate, interest, or property contracted or agreed to be sold."

The question, therefore, is whether the instrument of the 18th November, 1915, is one "whereby any property is transferred to or vested in a purchaser," and whether it is "a contract for the sale of an equitable interest in any property." The answer depends upon the intention of the parties to be collected from the terms of the instrument under the circumstances of its execution.

It is plain that the instrument is not a contract for the sale of an equitable interest. All the subject-matters dealt with are meant to be sold out and out. The doubt is whether that sale is, as to any of them, a sale *in presenti*. Furthermore, it is plain that, as regards the real property at any rate, no estate or interest therein was vested in the purchasers or was intended to be vested in them on the execution of the deed. The agreement gave them a right to equitable relief in case the old company failed to convey, but in respect of the hereditaments it was a contract to sell only. Next it is urged that, by the terms of The Sale of Goods Act of 1896, (Queensland Statutes, 60 Vict., No. 6), § 21, "where there is an unconditional contract for the sale of specific goods in a deliverable state, the property in the goods passes to the buyer when the contract is made," and that the chattels at any rate passed under the contract to the buyer on its execution; but this is only "unless a different intention appears," and the question is whether that different intention, which clearly appears in regard to the hereditaments, does not also appear in regard to the chattels and the choses in action. The language employed and the scheme both of the consideration and of the drafting is clearly the same for all. By the judgments of the Supreme Court of Queensland, against which these appeals are brought, it was decided that such a contrary intention did appear. In these conclusions their Lordships concur.

The distinction between an agreement to sell and a sale, between an agreement to convey and a conveyance, is fundamental and familiar. It is also a familiar transaction to include in one agreement a bargain relating to hereditaments, choses in action, and chattels. Here all these subject-matters formed parts of one going concern, and it was the chief object of the transaction that the new company should continue the going concern, which the old company had carried on. The contract was entire. The considerations are not severed or appropriated. Their Lordships infer that the intention was to vest the different subject-matters, by the appropriate forms and assurances according to their nature, when, but not until, they could all be transferred together and the entire considerations could be exchanged against the collective transfers. So the contract is framed, but the inference does not depend simply on the frame of the contract. The consideration could not be severed or apportioned without some further agreement, which neither party could be required to make. Any other construction would impute to the one side or the other an intention to divest itself of something belonging to it, as an act of confidence and upon credit. It may well be that entire mutual confidence existed, but there is no discoverable convenience or business object in vesting the properties *seriatim*. There is, moreover, a clear advantage in so framing the transaction as to prevent the property in the chattels passing or the

title in the choses in action accruing on the bare execution of the deed. The Queensland Stamp Act, 1894, § 54 unlike the English Stamp Act of 1891, § 59 (1), contains no provision to the effect that a contract for the sale of an equitable interest in any property, or a contract for the sale of chattels other than goods, wares, or merchandise, shall be charged with the same *ad valorem* duty, to be paid by the purchaser, as if it were an actual conveyance on sale. It is not unreasonable to suppose that the parties were advised of this peculiarity, and intended, as they legitimately might, to take advantage of it to the direct benefit of one of them, and probably to the indirect benefit of the other.

It was admitted that in this view of the construction no other point arose in the case of the Australian Stock-Breeders' Company, Limited. Their Lordships will accordingly humbly advise His Majesty that the appeals in both cases should be dismissed with costs.



In the Privy Council.

THE COMMISSIONERS OF STAMPS

v.

THE QUEENSLAND MEAT EXPORT
COMPANY (LIMITED).

THE COMMISSIONERS OF STAMPS

v.

THE AUSTRALIAN STOCK-BREEDERS'
COMPANY (LIMITED).

DELIVERED BY LORD SUMNER.