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Judgment  
②, 1965

IN THE PRIVY COUNCIL

No. 22 of 1964

ON APPEAL

FROM THE SUPREME COURT OF HONG KONG

B E T W E E N :

JOSEPH EDWARD HOTUNG

Appellant

- and -

THE COLLECTOR OF STAMP REVENUE

Respondent

RECORD OF PROCEEDINGS

DARLEY CUMBERLAND & CO.,  
36 John Street,  
Bedford Row, W.C.1.  
Solicitors for the Appellant.

CHARLES RUSSELL & CO.,  
37 Norfolk Street,  
London, W.C.2.  
Solicitors for the Respondent.

P.C.  
~~GMB G.2~~

UNIVERSITY OF LONDON  
INSTITUTE OF ADVANCED  
LEGAL STUDIES  
- 4 FEB 1966  
25 RAYNOR SQUARE  
LONDON, W.C.1.

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IN THE PRIVY COUNCILNo.22 of 1964ON APPEALFROM THE SUPREME COURT OF HONG KONGB E T W E E N :

JOSEPH EDWARD HOTUNG

Appellant

- and -

THE COLLECTOR OF STAMP REVENUE

RespondentRECORD OF PROCEEDINGSINDEX OF DOCUMENTS

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DOCUMENTS NOT TRANSMITTED  
TO THE PRIVY COUNCIL

Description of Document	Date
Notes of Argument	
Correspondence including letters dated 3rd December 1962 and 20th December 1962	December 1962 to June 1963

DOCUMENTS TRANSMITTED TO THE PRIVY  
COUNCIL BUT NOT DUPLICATED.

Description of Document	Date
Bond filed in Court by Banque Nationale Pour Le Commerce Et L'Industrie and Joseph Edward Hotung	--- 21st February 1964

IN THE PRIVY COUNCIL

No.22 of 1964

ON APPEAL

FROM THE SUPREME COURT OF HONG KONG

B E T W E E N:

JOSEPH EDWARD HOTUNG

Appellant

- and -

THE COLLECTOR OF STAMP  
REVENUE

Respondent

RECORD OF PROCEEDINGS

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NO.1

CASE STATED BY THE COLLECTOR  
OF STAMP REVENUE

IN THE DISTRICT COURT OF HONG KONG

In the District  
Court of Victoria

HOLDEN AT VICTORIA

CIVIL JURISDICTION

No. 1

STAMP APPEAL NO.1 of 1963

BETWEEN:

JOSEPH EDWARD HOTUNG

Appellant

- and -

Case Stated by  
the Collector of  
Stamp Revenue  
9th May 1963

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THE COLLECTOR OF STAMP  
REVENUE

Respondent

IN THE MATTER of Head 21 in the  
Schedule to the Stamp Ordinance  
Chapter 117

CASE STATED

1. By Deed (Sic) of Agreement dated 27th  
August 1962 (a copy of which is annexed  
hereto) made between Mary Ketterer (herein-  
after called "the Vendor") and Joseph Edward

In the District  
Court of Victoria

No.1

Case Stated by  
the Collector of  
Stamp Revenue  
9th May 1963  
continued

Hotung (hereinafter called "the Purchaser"), reciting a prior agreement dated 30th March 1962 made between Eric Hotung the Purchaser, the Vendor, Antonia Hotung and the Hong Kong and Shanghai Bank, Hong Kong (Trustee) Ltd. regarding the division of divers leasehold properties forming part of the residuary estate of the late Sir Robert Hotung, the Vendor agreed to sell and the Purchaser agreed to purchase for the sum of \$10,800,000.00 (Dollars ten million eight hundred thousand) various leasehold properties as specified in Parts I and III of the Schedule thereto, with the exceptions of items (1) and (2) in Part I of the said Schedule. This Agreement further provided that the purchase price of \$10,800,000.00 should be paid in manner following: as to \$450,000.00 (Dollars Four hundred and fifty thousand) upon the completion of the assignment of the properties and as to the balance thereof by 23 (twenty three) equal consecutive annual instalments of \$450,000.00 (Dollars four hundred and fifty thousand) each, commencing on 27th October 1963 and on the 27th day of October in each succeeding year. This Agreement further provided that no security of any nature whatsoever should be afforded or given by the Purchaser to the Vendor to secure the said annual instalments and also that the Purchaser should be entitled to discharge the balance of the purchase price earlier than by the aforesaid instalments if he should so desire. The Purchaser agreed to pay to the Vendor interest on the balance of the purchase price for the time being outstanding at the rate of 1 per cent per annum such interest to be paid quarterly on the 31st day of March, the 30th day of June the 30th day of September and the 31st day of December in each year.

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2. By Deed of Assignment dated 1st November 1962 (a copy of which is annexed hereto) made between the Hong Kong & Shanghai Bank, Hong Kong (Trustee) Ltd. (hereinafter called "the Trustee") Mary Ketterer (hereinafter called "the Vendor") and Joseph Edward Hotung (hereinafter called "the Assignee") in pursuance of the Agreement dated 27th August 1962 and in consideration of the sum of \$10,800,000.00

(Dollars ten million eight hundred thousand) agreed to be paid by the Assignee to the Vendor in accordance with the said agreement, the Trustee at the request and by the direction of the Vendor assigned and the Vendor assigned and confirmed unto the Assignee the leasehold properties as follows: Section C of I.L.No.454 (known as 1-9 First Street), the R.P. of I.L. No.454 (known as 11-23 First Street), H.H.I.L. No.433 (formerly known as H.H.I.L. No.216 R.P.) (known as 165-175 Wuhu Street) and the Vendor assigned unto the Assignee the leasehold properties as follows : I.L. No. 1409, I.L. No. 1611 and Farm Lot No. 64 (known as 6-8 Seymour Road).

In the District Court of Victoria

No.1

Case Stated by the Collector of Stamp Revenue 9th May 1963 continued

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3. The Deed of Assignment dated 1st November 1962 was submitted to the Collector of Stamp Revenue (hereinafter referred to as "the Collector") on 28th November 1962 for assessment of Stamp Duty.

4. The Collector assessed the duty with which the Assignment was, in his opinion, chargeable under the Stamp Ordinance, Cap.117 as follows :-

Under Head 21 of the Schedule to the Stamp Ordinance:	
2% of \$10,800,000.00 -	\$216,000.00

In accordance with Section 6 of the Stamp Ordinance:	
Excess Stamp Duty -	
3% of \$10,800,000.00 -	<u>\$324,000.00</u>

\$540,000.00

5. On 30th November 1962, Messrs. Lo and Lo on behalf of the Appellant, paid to the Collector the sum of \$540,000.00 in settlement of the stamp duty as assessed and, at the same time, notified the intention of their client to appeal against the assessment.

6. The Deed of Assignment dated 1st November 1962 was re-submitted to the Collector on 29th December 1962 for formal adjudication in accordance with Section 17 of the Stamp Ordinance, Messrs. Lo & Lo, in accordance with Section 18 (1), then confirmed their client's

In the District  
Court of Victoria

No. 1

Case Stated by  
the Collector of  
Stamp Revenue  
9th May 1963  
continued

intention to appeal against the assessment and requested the Collector to state a case for this purpose.

7. The Appellant contends that :-

(i) Under the Assignment as drawn, the consideration is not the sum of \$10,800,000.00 simpliciter but is expressed to be the sum of "\$10,800,000.00 agreed to be paid by the assignee to the Vendor in accordance with the said Agreement." The Agreement makes provisions for \$450,000.00 to be paid upon completion of the assignment and it is not disputed that the 5% ad valorem duty is payable on that amount. Paragraph 3 of the Agreement, however, makes provisions for the balance to be paid over a period of 23 years. For the purpose of Stamp duty under Head 21 of the Schedule to the Stamp Ordinance, Cap. 117 the amount or value of the consideration must be reckoned on the day of the date of the Assignment. The balance of the consideration must, therefore, be discounted in order to arrive at the value of the consideration as at the time of execution; and

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(ii) the consideration over a period of 24 years is \$10,800,000.00 together with interest at the rate of 1% per annum on the outstanding amount. Therefore, the consideration at the time of execution must be far less than \$10,800,000.00 and this lesser sum is the proper sum on which the stamp duty ought to be calculated in that that is the value of the consideration as on the day of the date of the instrument.

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8. The Collector contends that :-

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(i) the amount of the consideration for the sale of the various properties is clearly expressed to be the sum of \$10,800,000.00. Moreover, this sum does not include any element of



interest since separate provisions are made under Clause 4 of the Agreement dated 27th August 1962 whereby the Purchaser agrees to pay interest on the balance of the purchase price for the time being outstanding at the rate of 1 per cent per annum. The instalments of the purchase price to be paid over a period of 23 years must form part of the consideration for sale as at the date of the instrument as provided by Section 36 of the Stamp Ordinance Cap.117, and

In the District  
Court of Victoria

-----  
No.1

Case Stated by  
the Collector of  
Stamp Revenue  
9th May 1963  
continued

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- (ii) the stamp duty with which the Deed of Assignment dated 1st November 1962 is chargeable has been correctly assessed as set out in paragraph 4 hereof.

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9. The Question submitted for the opinion of the Court is whether or not stamp duty is properly chargeable on the sum of \$10,800,000.00 appearing in the Deed of Assignment dated 1st November 1962. If this sum is not the amount or value of the consideration for which stamp duty is chargeable under Head 21 of the Schedule to the Stamp Ordinance Cap.117, what is the amount or value of the consideration as on the day of the date of the assignment.

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10. The Appellant having duly expressed dissatisfaction with my decision as being erroneous in point of law and having duly required the Collector to state and sign a case for the opinion of the District Court, this Case is stated and signed accordingly.

Dated this 9th day of May 1963.

(Sd) Illegible  
Collector of Stamp Revenue.

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In the District  
Court of Victoria

NO.2

No.2

AGREEMENT BETWEEN MARY KETTERER  
AND THE APPELLANT  
(ANNEXURE TO CASE STATED)

Agreement  
between Mary  
Ketterer and  
the Appellant  
27th August 1962  
(Annexure to  
Case Stated)

Duplicate	Stamp
\$2.00	HK\$3.00
28.8.62	28.8.62

A N A G R E E M E N T made the 27th day of August One thousand nine hundred and sixty two BETWEEN MARY KETTERER the wife of Robert Ketterer, formerly of No.1053 Oakland Court, Teoneck; New Jersey in the United States of America, but now of No.4F Headland Road in the Colony of Hong Kong (hereinafter called "the Vendor") of the one part and JOSEPH EDWARD HOTUNG of Room No.604 Wing On Life Building Victoria aforesaid, Company Director (hereinafter called "the Purchaser") of the other part:

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WHEREAS :-

- (1) By an Agreement dated the 30th day of March 1962 and made between Eric Hotung of St. George's Building Victoria aforesaid of the first part the Purchaser of the second part the Vendor of the third part Antonia Hotung otherwise known as Mother Mary Myrna Citizen of the United Kingdom and Colonies and now temporarily residing at Macau of the fourth part and the Hong Kong and Shanghai Bank, Hong Kong (Trustee) Limited having its registered office at No.1 Queen's Road Central Victoria aforesaid (hereinafter called "the Trustee") of the fifth part the leasehold properties listed in either part of the Schedule thereto were agreed to have been divided into two separate portions of equal value and under the said Agreement the properties listed in the Schedule hereto were appropriated to the Vendor and the Purchaser in equal undivided shares as therein provided. 40
- (2) By an Assignment dated the 9th day of July 1962 and made between the Trustee of the first part the Purchaser of the second part and the Vendor of the third part the leasehold properties listed in Part III of the

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Schedule hereto and known as Nos.6 and 8 Seymour Road and registered in the Land Office as Inland Lot No.1409 Inland Lot No.1611 and Farm Lot No.64 were assigned by the Trustee to the parties hereto as tenants in common in equal shares as therein provided.

In the District  
Court of Victoria

No.2

Agreement  
between Mary  
Ketterer and  
the Appellant  
27th August 1962  
(Annexure to  
Case Stated)  
continued

- 10 (3) The properties listed in Part I of the Schedule hereto have been appropriated by the Trustee to the Vendor and are of equal value to the properties listed in Part II of the Schedule hereto which have been appropriated by the Trustee to the Purchaser.

IT IS HEREBY AGREED between the parties hereto as follows:-

20 1. The Vendor agrees to sell and the Purchaser agrees to purchase for the sum of Hong Kong DOLLARS TEN MILLION EIGHT HUNDRED THOUSAND (HK\$10,800,00.00) (hereinafter called "the purchase price") ALL THAT the right title and interest of the Vendor of and in the leasehold properties specified in Parts I and III of the Schedule hereto other than those listed under items (1) and (2) in Part I of the said Schedule (hereinafter called "the properties").

2. The purchase shall be completed on the 27th day of October 1962.

30 3. The purchase price shall be paid in manner following: as to Hong Kong DOLLARS FOUR HUNDRED AND FIFTY THOUSAND (HK\$450,000.00) thereof upon the completion of the Assignment to the Purchaser of the Vendor's right title and interest in the properties and as to the balance thereof by twenty three (23) equal consecutive annual instalments of Hong Kong DOLLARS FOUR HUNDRED AND FIFTY THOUSAND (HK\$450,000.00) each commencing on the 27th day of October 1963 and on the said 27th day of October in each succeeding year PROVIDED that no security of any nature whatsoever shall be afforded or given by the Purchaser to the Vendor to secure the said annual instalments and PROVIDED also that the Purchaser shall be entitled to discharge the balance of the purchase price earlier than by the

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In the District Court of Victoria

No.2

Agreement between Mary Ketterer and the Appellant 27th August 1962 (Annexure to Case Stated) continued

aforsaid instalments if he shall so desire.

4. The Purchaser will pay to the Vendor interest on the balance of the purchase price for the time being outstanding at the rate of 1 per cent per annum such interest to be paid quarterly on the 31st day of March, the 30th day of June, the 30th day of September and the 31st day of December in each year the first of such payment shall be such proportion of one such quarterly payments as the number of days remaining in that quarter bears to the total number of days in that quarter.

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5. Should the Purchaser default in the payment of any part of the purchase price or interest thereon as herein provided the Vendor would be entitled forthwith to declare all the sums payable by the Purchaser as herein provided become immediately due and payable and the exercise of this right shall not be a bar to action by the Vendor against the Purchaser on this Agreement.

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6. The Vendor shall not assign negotiate or deal with in any way whatsoever her rights under this Agreement and any such assignment negotiation or dealings shall be null and void and without any effect whatsoever.

7. All stamp duty on the Assignment shall be payable as to 3% thereof by the Purchaser and as to 2% thereof by the Vendor.

8. All legal costs fees and expenses payable in pursuance of or consequent upon this Agreement shall be borne entirely by the Purchaser.

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IN WITNESS whereof the parties hereto have hereunto set their hands the day and year first above written.

THE SCHEDULE above referred to

PART I

(1) Section C of Inland Lot No.2820, R.P. (Hua Nan Motors).

(2) Inland Lot No.2414 (Hotung Building).

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- (3) Hunghom Inland Lot No.433 (formerly known as H.H.I.L. No.216, R.P.) (Wuhu Street). In the District Court of Victoria
- (4) The Remaining Portion and Section C of Inland Lot No.454 (First Street). No.2

PART II

Agreement between Mary Ketterer and the Appellant 27th August 1962 (Annexure to Case Stated) continued

- (1) Section C and the Remaining Portion of Section A of Inland Lot No.18A and Sections B and D of Inland Lot No.18 (D'Aguilar Street and Wellington Street).
- 10 (2) Kowloon Inland Lot No.8219 (formerly known as K.I.L. No.527, R.P.) (Hankow, Ashley, Middle and Peking Roads).
- (3) Inland Lot No.352 (Hollywood Road).
- (4) Inland Lot No.4572 (Li Yuen Street West).
- (5) Hunghom Inland Lot No.265 (Lo Lung Hang).
- (6) Hunghom Inland Lot No.262 (Malacca Street).

PART III

- 20 (1) Inland Lot No.1409 }  
 (2) Inland Lot No.1611 }  
 (3) Farm Lot No.64 } "Idlewild" (Seymour Road).

SIGNED by the Vendor in the presence of : } (sd.) Mary K. Ketterer.

(sd.) T.S.Lo  
Solicitor,  
Hong Kong.

30 SIGNED by the Purchaser in the presence of : } (sd.) Joseph E. Hotung.

(sd.) T.S. Lo,  
Solicitor,  
Hong Kong.



In the District  
Court of Victoria

NO.3

No.3

ASSIGNMENT FROM THE HONG KONG AND  
SHANGHAI BANK HONG KONG (TRUSTEE)  
LIMITED TO MARY KETTERER AND THE  
APPELLANT.

(ANNEXURE TO CASE STATED)

Assignment from  
the Hong Kong and  
Shanghai Bank  
Hong Kong  
(Trustee) Limited  
to Mary Ketterer  
and the Appellant  
1st November 1962  
(Annexed to  
Case Stated)

THIS INDENTURE made the 1st day of November  
One thousand nine hundred and sixty two  
BETWEEN THE HONG KONG AND SHANGHAI BANK,  
HONG KONG (TRUSTEE) LIMITED having its  
registered office at No.1 Queen's Road Cen-  
tral Victoria in the Colony of Hong Kong  
(who and whose successors in title are where  
not inapplicable hereinafter included under  
the designation "the Trustee") of the first  
part MARY KETTERER wife of Robert Ketterer  
of No.4F Headland Road in the said Colony of  
Hong Kong (who and whose executors and Admin-  
istrators are where not inapplicable herein-  
after included under the designation "the  
Vendor") of the second part AND JOSEPH EDWARD  
HOTUNG of Room No.604 Wing On Life Building  
Victoria aforesaid, Merchant (who and whose  
executors administrators and assigns are where  
not inapplicable hereinafter included under  
the designation "the Assignee") of the third  
part WHEREAS by a Crown Lease dated the 1st  
day of July 1898 and made between Her Late  
Majesty Queen Victoria of the one part and  
Chan Ut Chin and Tse Kit Man of the other part  
Her said late Majesty demised unto the said  
Chan Ut Ching and Tse Kit Man their executors  
administrators and assigns inter alia All  
Those pieces or parcels of ground more partic-  
ularly described in the now reciting lease  
and registered in the Land Office of Victoria  
aforesaid as Section C and the Remaining  
Portion of Inland Lot No.454 except and  
reserved as was therein excepted and reserved  
from the 4th day of August 1855 for the term  
of 999 years subject to the rent and covenants  
therein reserved and contained AND WHEREAS by  
a Crown Lease dated the 12th day of October  
1899 and made between Her late Majesty Queen  
Victoria of the one part and the late Sir  
Robert Hotung K.B.E., LL.D., late of Victoria  
aforesaid (hereinafter called "the Testator")

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of the other part Her said late Majesty demised unto the Testator his executors administrators and assigns inter alia All That piece or parcel of ground more particularly described in the now recited lease and registered in the Land Office of Victoria aforesaid as The Remaining Portion of Hunghom Inland Lot No.216 except and reserved as was therein excepted and reserved from the 14th day of September 1897 for the term of 75 years subject to the rent and covenants therein reserved and contained AND WHEREAS the above recited premises were vested for the residue of their respective terms of 999 years and 75 years at his death in the Testator AND WHEREAS by his Will dated the 4th day of July 1955 and Four Codicils thereto not material hereto the Testator appointed the Trustee to be executor and trustee thereof and after bequeathing divers specific and pecuniary legacies and annuities provided by Clause 14 therein as to one moiety of his residuary estate to pay the income thereof to his son Ho Shai Kim during his life and after his death Upon Trust as to both capital and income for the child or children of his said son Ho Shai Kim who being male attained the age of twenty one years or being female attained that age or married and if more than one in equal shares absolutely and as to the other moiety of his residuary estate Upon Trust to pay the income thereof to his son Ho Shai Lai during his life and after his death Upon Trust as to both capital and income for the child or children of his said son Ho Shai Lai who being male attained the age of twenty one years or being female attained that age or married and if more than one in equal shares absolutely AND WHEREAS the Testator died on the 26th day of April 1956 and his said Will and Codicils were proved by the Trustee in the Supreme Court of Hong Kong on the 26th day of May 1956 AND WHEREAS the said Ho Shai Kim died on the 2nd day of July 1957 leaving Eric Hotung of St. George's Building Victoria aforesaid, the Assignee, the Vendor and Antonia Hotung of Macau his only children him surviving all of whom have attained the age of twenty one years AND WHEREAS the above recited premises have been inter alia

In the District  
Court of Victoria

No.3

Assignment from  
the Hong Kong and  
Shanghai Bank  
Hong Kong  
(Trustee) Limited  
to Mary Ketterer  
and the Appellant  
1st November 1962  
(Annexed to  
Case Stated)  
continued

In the District  
Court of Victoria

No.3

Assignment from  
the Hong Kong and  
Shanghai Bank  
Hong Kong  
(Trustee) Limited  
to Mary Ketterer  
and the Appellant  
1st November 1962  
(Annexed to  
Case Stated)  
continued

appropriated by the Trustee under the provisions of Clause 27 of the said Will of the Testator to the said Eric Hotung, the Assignee, the Vendor and the said Antonia Hotung as tenants in common in equal shares in part satisfaction of their respective interests in the estate of the Testator but the legal estate in the said premises have not been transferred to them AND WHEREAS by a Deed of Surrender dated the 27th day of February 1962 the residue of the term of the said premises registered in the Land Office of Victoria aforesaid as the Remaining Portion of Hunghom Inland Lot No.216 (hereinafter called "the surrendered property") was surrendered to Her Majesty Queen Elizabeth II by the Trustee as executor and trustee of the Testator and the Trustee as executor and trustee of the Testator is now in possession of or otherwise entitled to the surrendered property which is now registered in the Land Office of Victoria aforesaid as Hunghom Inland Lot No. 433 under and in accordance with certain Conditions of Regrant being Conditions of Regrant No.97/589/52 BL25/3092/48 (hereinafter called "the said Conditions") and is entitled to a Crown Lease thereof for a term of 150 years from the 14th day of September 1897 AND WHEREAS by an Agreement dated the 30th day of March 1962 and made between the said Eric Hotung, the Assignee, the Vendor, the said Antonia Hotung and the Trustee a division was made of divers leasehold properties being part of the said residuary estate of the Testator and pursuant to the request contained in a letter dated the 3rd day of July 1962 addressed to the Trustee by the Vendor and the Assignee the Trustee has appropriated inter alia the above recited premises to the Vendor AND WHEREAS by a Crown Lease dated the 17th day of September 1897 and made between Her late Majesty Queen Victoria of the one part and Charles Frederick Moore Cleverly of the other part Her said late Majesty demised unto the said Charles Frederick Moore Cleverly his executors administrators and assigns All That piece or parcel of ground more particularly described in the now reciting lease and registered in the Land Office of Victoria aforesaid as Inland Lot No.1409 except and reserved as was therein excepted and

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In the District  
Court of Victoria

                      
No.3

Assignment from  
the Hong Kong and  
Shanghai Bank  
Hong Kong  
(Trustee)Limited  
to Mary Ketterer  
and the Appellant  
1st November 1962  
(Annexed to  
Case Stated)  
continued

reserved from the 8th day of March 1858 for  
the term of 999 years subject to the rent and  
covenants therein reserved and contained AND  
WHEREAS by a Crown Lease dated the 2nd day  
of January 1902 and made between His late  
Majesty King Edward VII of the one part and  
Cheung Ching Yung of the other part His said  
late Majesty demised unto the said Cheung  
Ching Yung her executors administrators and  
assigns All That piece or parcel of ground  
more particularly described in the now recit-  
ing lease and registered in the Land Office  
of Victoria aforesaid as Inland Lot No.1611  
except and reserved as was therein excepted  
and reserved from the 26th day of December  
1901 for the term of 75 years with such right  
of renewal for a further term of 75 years as  
therein provided subject to the rent and  
covenants therein reserved and contained AND  
WHEREAS by a Crown Lease dated the 24th day  
of December 1901 and made between His late  
Majesty King Edward VII of the one part and  
Cheung Ching Yung of the other part His said  
late Majesty demised unto the said Cheung  
Ching Yung her executors administrators and  
assigns All That piece or parcel of ground  
more particularly described in the now recit-  
ing lease and registered in the Land Office  
of Victoria aforesaid as Farm Lot No.64 except  
and reserved from the 8th day of March 1858  
for the term of 999 years subject to the rent  
and covenants therein reserved and contained  
AND WHEREAS all of the last three preceding  
recited premises are vested for the residue of  
their respective terms of 999 years, 75 years  
with the said right of renewal and 999 years  
in the Vendor and the Assignee as Tenants in  
Common in equal shares AND WHEREAS by an  
agreement dated the 27th day of August 1962  
and made between the Vendor and the Assignee  
the Vendor agreed for the sale of the above re-  
cited Inland Lot No.454, Sec. C and R.P.,  
Hunghom Inland Lot No. 433 formerly known as  
the Remaining Portion of Hunghom Inland Lot  
No. 216 and her share in Inland Lot No.1409,  
Inland Lot No. 1611 and Farm Lot No. 64 to the  
Assignee for the price of HK\$10,800,000.00  
NOW THIS INDENTURE WITNESSETH that in pursu-  
ance of the said agreement and in consideration  
of the said sum of Hong Kong DOLLARS TEN

In the District  
Court of Victoria

No.3

Assignment from  
the Hong Kong and  
Shanghai Bank  
Hong Kong  
(Trustee) Limited  
to Mary Ketterer  
and the Appellant  
1st November 1962  
(Annexed to  
Case Stated)  
continued

MILLION EIGHT HUNDRED THOUSAND (HK\$10,800,000.00)  
agreed to be paid by the Assignee to the Vendor  
in accordance with the said Agreement the  
Vendor hereby requests and directs the Trustee  
to assign to the Assignee the properties herein-  
after assigned by the Trustee to the Assignee  
and the Vendor assigns to the Assignee the prop-  
erties hereinafter assigned by her to the  
Assignee and the Trustee at the request and by  
the direction of the Vendor DOTH hereby  
assign and the Vendor DOTH hereby assign and  
confirm unto the Assignee FIRST ALL THAT the  
said piece or parcel of ground registered in  
the Land Office of Victoria aforesaid as  
SECTION C OF INLAND LOT NO. 454 TOGETHER with  
the messuages erections buildings thereon known  
at the date hereof as Nos.1, 3, 5, 7 and 9  
First Street SECONDLY ALL THAT the said  
piece or parcel of ground registered in the  
Land Office of Victoria aforesaid as THE  
REMAINING PORTION OF INLAND LOT NO.454  
TOGETHER with the messuages erections and  
buildings thereon known at the date hereof as  
Nos.11, 13, 15, 17, 19, 21 and 23 First Street  
and THIRDLY ALL THAT the said piece or  
parcel of ground registered in the Land Office  
of Victoria aforesaid as HUNGHOM INLAND LOT  
NO. 433 formerly known as The Remaining Portion  
of Hunghom Inland Lot No.216 TOGETHER with  
the messuages erections and buildings thereon  
known at the date hereof as Nos. 165, 167, 169,  
171, 173 and 175 Wuhu Street and all rights,  
rights of way (if any) privileges easements  
and appurtenances thereto belonging or apper-  
taining AND all the estate right title in-  
terest property claim and demand whatsoever of  
the Trustee and the Vendor therein and thereto  
except and reserved as in the said Crown Lease  
and the said Conditions is excepted and reserv-  
ed TO HOLD the premises hereby assigned unto  
the Assignee for the residue now to come and  
unexpired of the said respective terms of 999  
years and 150 years SUBJECT to the existing  
lettings and tenancies thereof (if any) and the  
existing rights of way (if any) and to the pay-  
ment of the rent and the performance of the  
several covenants by the lessee and conditions  
in and by the said Crown Lease and Conditions  
reserved and contained AND the Trustee here-  
by covenants with the Assignee that it the

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In the District  
Court of Victoria

                      
No.3

Assignment from  
the Hong Kong and  
Shanghai Bank  
Hong Kong  
(Trustee) Limited  
to Mary Ketterer  
and the Appellant  
1st November 1962  
(Annexed to  
Case Stated)  
continued

covenants with the Assignee that notwithstanding any act deed matter or thing by the Vendor done or knowingly omitted or suffered the rent reserved by and the lessee's covenants and conditions contained in the said Crown Leases have been paid performed and observed up to the date of these presents and that the said Crown Leases are now good valid and subsisting AND that the Vendor now has good right and full power to assign the said premises as aforesaid free from incumbrances AND that the said premises may be quietly entered into and during the residue of the said respective terms of 999 years, 75 years with such right of renewal as aforesaid and 999 years held and enjoyed without any interruption by the Vendor or any person or persons claiming through under or in trust for the Vendor AND that the Vendor and all persons claiming under or in trust for the Vendor shall during the residue of the said respective terms of 999 years, 75 years with such right of renewal as aforesaid and 999 years at the request cost and charges of the Assignee do all acts and execute and sign all such assurances and things as may be reasonably required for further or better assuring all or any of the said premises unto the Assignee AND the Assignee hereby covenants with the Vendor that the Assignee will during the residue of the said respective terms of 999 years, 75 years with such right of renewal as aforesaid and 999 years pay the rent and perform the covenants and conditions by and in the said Crown Leases conditions reserved and contained and indemnify the Vendor against all actions suits expenses claims and demands on account of or in respect of the non-payment of the said rent or the non-performance of the said covenants terms and conditions or any of them being the intention of the parties that the Assignee should in favour of a purchaser or mortgagor deal with the properties free from any claims which the Vendor may have on account of the unpaid purchase money the Vendor hereby waives all her equitable lien on the properties hereby assigned IN WITNESS whereof the Trustee has hereunto caused its Common Seal to be hereto affixed and the Vendor and Assignee have hereunto set their hands and seals the

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day and year first above written.

In the District Court of Victoria

No.3

SEALED with the Common Seal of the Hong Kong and Shanghai Bank, Hong Kong (Trustee) Limited and SIGNED by Robert Campbell Gairdner a Director and John Neville Cotton its Secretary in the presence of:

(sd) R.C. Gairdner Director. (sd) J.N.Cotton Secretary.

Assignment from the Hong Kong and Shanghai Bank Hong Kong (Trustee) Limited to Mary Ketterer and the Appellant 1st November 1962 (Annexed to Case Stated) continued

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(sd.) T.S.Lo, Solicitor, Hong Kong.

(Seal of Hong Kong & Shanghai Bank, Hong Kong (Trustee) Ltd.)

SIGNED SEALED AND DELIVERED by the Vendor in the presence of :

(sd.) Mary Ketterer (L.S.)

(sd.) T. S. Lo, Solicitor, Hong Kong.

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SIGNED SEALED AND DELIVERED by the Assignee in the presence of :

(sd.) Joseph E.Hotung (L.S.)

(sd.) T. S. Lo, Solicitor, Hong Kong.



In the District  
Court of Victoria

NO.4

No.4

JUDGMENT OF HIS HONOUR JUDGE A.M.  
McMULLIN DISTRICT JUDGE.

Judgment of  
District Judge  
25th July 1963

IN THE DISTRICT COURT OF HONG KONG

HOLDEN AT VICTORIA

CIVIL JURISDICTION

STAMP APPEAL NO.1 OF 1963

BETWEEN:

JOSEPH EDWARD HOTUNG

Appellant

- and -

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THE COLLECTOR OF STAMP  
REVENUE

Respondent

Coram: McMullin, D.J.

J U D G M E N T

This is an appeal by way of case stated under Section 18 of the Stamps Ordinance, Cap. 117 of the Laws of Hong Kong, in which the appellant, Joseph Edward Hotung, seeks to set aside the assessment made by the Collector under Section 17 on the 1st November, 1962 of duty chargeable on a certain Deed of Conveyance under which certain properties were assigned to the said Joseph Edward Hotung by the Vendor, Mary Ketterer, pursuant to a prior agreement between the parties dated the 27th August 1962. The history of these properties and the circumstances subsequent to the assessment thereof out of which this appeal arises are set forth explicitly in the case stated by the Collector under Section 17 of the Ordinance and it is needless to set them out afresh. The sole matter in controversy is whether the Collector was right in regarding the amount of the consideration for the sale (i.e. \$10,800,000) stated in the Deed of Conveyance as being the figure on which falls the duty provided by Section 6 and Head 21 of the Schedule to the Ordinance, notwithstanding the

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provisions of Clause 3 of the Agreement of Sale between the parties whereby the stated purchase price is to be paid by 23 annual instalments of \$450,000 each plus a down-payment of the like amount on the execution of the Deed. It is agreed by both sides that the one per cent interest annually chargeable on the outstanding balance of the purchase price is not a part of the controversy in this appeal, since the Collector does not seek to charge such additional sums with any duty. The precise point at issue turns upon the meaning to be given to the words prescribing the method of calculation of duty in Head 21. These words read as follows :-

"21. CONVEYANCE ON SALE, the duty to be calculated on the amount of value of the consideration on the day of the date of the instrument."

In the District  
Court of Victoria

No.4

Judgment of  
District Judge  
25th July 1963  
continued

20 No difficulty would arise, at least in such a case as this, if it had been stipulated simply that the duty was to be assessed on the amount of the consideration, but Mr. Litton, for the appellant, maintains that the actual formula is specifically designed to permit the Collector to look past the capital sum stated as consideration where the mode of payment is by instalments over a period and to assess the duty on what may be termed the  
30 real value of that consideration on the day of the date upon which the instrument was executed. This value, he says, is something considerably less than \$10,800,000; it is in fact such sum as prudently invested now will yield an annuity of \$450,000 each year for the next 23 years. The consideration, in other words, is not, as he puts it, \$10,800,000 simpliciter. If it were, there could be no question as to the correctness  
40 of the assessment, but in fact it is \$450,000 on the day of the date of the instrument and another sum which can be readily calculated by anyone moderately skilled in the agreeable art of making money breed. It is, I understand, agreed by both parties that the capital sum necessary today to purchase an annuity of \$450,000 for 23 years is \$4,250,000 and it is this latter figure,

*the "or"*

In the District  
Court of Victoria

No.4

Judgment of  
District Judge  
25th July 1963  
continued

therefore, plus the initial down-payment of \$450,000 which the appellant claims is the figure upon which ad valorem duty is to be imposed. 2 per cent under Head 21 and 3 per cent under Section 6 of the Ordinance. In the upshot, if this method of calculation be accepted, the Collector would be compelled to return to the appellant a sum of \$328,500 out of the total assessment of \$540,000 already paid in accordance with the provisions of Section 18.

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To all this, Mr. Sneath, for the Respondent, replies that the wording of Head 21 and of Clause 1 of the Agreement for Sale is clear and unambiguous. The parties to the agreement have chosen to express a definite figure as the purchase price. That is the amount of the consideration and that is the amount expressly recited as the consideration in the Deed of Assignment. If a down-payment plus an annuity for 23 years had been contemplated as consideration, it was open to the parties by appropriate words to make that clear. In other words, when on a Conveyance, the consideration is stated as a certain sum of money that sum is both the amount and the value of the consideration on the day of the date of the instrument.

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In the course of the argument, reference was made by both sides to analogous provisions in the English law. Mr. Litton pointed out that the equivalent Head of Charge in the English Stamp Act, 1890, though it has reference to the amount or value of the consideration, does not contain the words "on the day of the date of the instrument." He sought to correlate this difference with a further difference, viz.: the fact that our legislation has no provision corresponding to Section 56 of the English Act which makes quite explicit provision for the manner in which consideration consisting of periodical payments is to be charged with ad valorem duty. Both parties agreed that these differences rendered decisions under the English provisions of little value in determining the scope and intendment of the local legislation, but it was Mr. Litton's contention that the very reason why

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In the District  
Court of Victoria

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No.4

Judgment of  
District Judge  
25th July 1963  
continued

Head 21 of Chapter 117 contains the additional clause is that there is lacking from the Ordinance any provision corresponding with Section 56 of the Act of 1890. Since that Section provides for precisely the sort of circumstances disclosed in this case, and since there is no doubt that, were it applicable here, it would be fatal to the appellant's argument, it is worth considering this contention a little more closely. The proposition is presented also in an inverted form and the appellant says that, in view of the provisions of Section 56, it was not possible to include in the conveyance or transfer Head in the English Act the words "on the day of the date of the instrument." It is in this form that the argument appears to disclose a significant weakness. The inclusion of those words would only conflict with the tenor of Section 56, if the phrase "amount or value of the consideration" (which appears in both the Ordinance and the Act) had reference solely to the type of consideration dealt with by Section 56. But Sections 55 and 57 of the Act (corresponding to Sections 35 and 36 of the Ordinance) provide for forms of consideration, other than money, which will necessarily require a valuation for purposes of charge and to which, as Mr. Sneath has pointed out, the words "or value" would seem specifically designed to apply. Moreover, Section 6 of the English Act gives the method of calculating ad valorem duty in precisely these cases and also in the case of foreign currency, and this Section makes specific mention of the day of the date of instrument as the day upon which the value of any foreign currency or stock or marketable security is to be estimated. The English legislation, in other words, makes certain matters abundantly clear. Firstly, that where a money consideration is payable by instalments, duty must fall on a sum calculated as the aggregate of the instalments, secondly, that where the stated consideration is in the form of foreign currency or else is any stock or marketable security, and is therefore in need of evaluation in term of legal currency, its value is to be established by reference to the day of the date of the instrument. These latter words are omitted from the head of charge not because they would conflict with

In the District  
Court of Victoria

No.4

Judgment of  
District Judge  
25th July 1963  
continued

Section 56, but presumably, because, being included in the section where it was logical to place them, i.e. Section 6, they did not require repetition. Mr. Litton has certainly put his finger on what appears to be, at any rate, a weakness in the local legislation, and, notwithstanding that both sides claim that the local formula is unambiguous, it cannot be denied that the provisions relating to consideration on conveyance or sale are less unambiguously framed than are the corresponding provisions of the English Act. Framed as they are, they are at least susceptible of the interpretation which Mr. Litton seeks to give them. If one has regard to those principles of taxing law, which he has, with a most persuasive eloquence, urged upon me and which relate to the parity before the law of the Crown and of its subjects, and to the propriety of favouring the latter in case of ambiguity, he would, I think, be entitled to this Court's decision if this peculiarity of the Ordinance to which I have referred as a weakness could also be regarded as an ambiguity, not merely of style, but of intention. I think, however, that these differences between the local and the English law are to be explained more readily as a draftsman's economy than as the expression of a positive inclination on the part of the local legislature to provide a method of calculation at odds with that provided by the law in England. The presence in Head 21 of the words "on the day of the date of the instrument" on which Mr. Litton places such emphasis may more reasonably be regarded as an alternative method of making such provision as that which appears in the English Section 6, than as setting up in relation to, money considerations qualified as to mode of payment, a method of calculation virtually the opposite of Section 56. To put it more shortly, I do not think that the absence of those words from the English Head is to be explained by the presence of Section 56 in the English Act nor is their presence in Head 21 of our Ordinance to be construed as a positive exclusion of the manner of calculation expressed in Section 56 of that Act. I have dealt with some length on this point, because

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I think the appellant places considerable reliance upon it. The differences between the parrel legislation are obvious but they are no clear guide to the intention of the local legislature. The most that can be said is that the appellant proposes a mode of calculation which is, in express terms, prohibited by the English legislation. It does not follow from that that such a method is necessarily allowable here.

In the District  
Court of Victoria

No.4

Judgment of  
District Judge  
25th July 1963  
continued

It is, in my view, easier to measure the value of the appellant's contention by considering the alternative mode in which Mr. Litton presented his argument. The assignment, he says, is an unusual one in that the vendor has parted with all the interest in the properties assigned, on a down-payment of \$450,000 plus a promise to pay the like sum every year for 23 years. That is the consideration, a sum certain in the present coupled with a promise for the future which has a value susceptible here and now of a calculation which will yield a figure differing in quantum from the aggregate of the sums stated in the Agreement.

To this contention, the simple and final answer appears to be that given by Mr. Sneath for the Respondent. Neither in the Deed of Assignment, nor in the Agreement which is its basis have the parties chosen to disclose any intention to give and receive the property on anything other than a simple, stated money consideration. A form of words might well have been used to show that the consideration was to be an unspecified sum of money sufficient to purchase an annuity if such had been their intention. The parties are required by the provisions of Section 10 of the Ordinance to disclose, in the instrument of assignment itself, all facts and circumstances affecting the liability of the instrument to duty. What they have disclosed is simply an intention to effect a transfer of the property in return for the payment of the sum of \$10,800,000 by a series of instalments. A capital sum does not become an annuity merely because it is so payable (see judgment of Romer, L.J. in *Commissioners of Inland Revenue v. Ramsay*, 20 Tax Cases at p.98). It would

In the District  
Court of Victoria

No.4

Judgment of  
District Judge  
25th July 1963  
continued

be strange, indeed, if the Law were such as to compel the Collector to make his assessment on a basis which the parties do not themselves suggest in the written record of their agreement.

This disposes of the substance of the appeal but I think I should make specific mention of a subsidiary argument put forward on behalf of the appellant, which arose out of the correspondence between the parties concerning this assessment on dates between December 1962 and June 1963, and which was handed in by consent in the course of the hearing. In particular, the letters dated 3rd of December and 20th of December were cited by Mr. Litton as strong evidence against the Respondent's contention that where a purchase price is expressed as a sum of money then the Collector must take that figure as it stands and not move further into inquiries concerning its value. These letters, he maintains, show that in practice the Collector does not take the purchase price as he finds it. If, therefore, the Collector is entitled to question the money value of a consideration, why should this right be denied to the subject?

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There is, in this contention, a confusion between the value of the property conveyed and the value of the consideration stated therefor. Where a stated money consideration seems disproportionately small, having regard to the nature of the property conveyed, it is open to the Collector to question the adequacy of the consideration under the provisions of Subsection 4 of Section 27 of the Ordinance. But this query does not relate to the value of the consideration in Se. In making his query, the Collector is not interested to discover whether £X is worth more or less than £X on the day of the date of the instrument: he is trying to establish simply whether a certain piece of land is worth more than £X on that date. When he comes to the conclusion that the transfer, at the stated price, confers a substantial benefit on the purchaser he may then, by reason of the inadequacy of the consideration, treat the transaction as a

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voluntary disposition inter vivos and calculate the duty, not in relation to the value of the consideration but in relation to the value of the property.

In the District  
Court of Victoria

\_\_\_\_\_  
No.4

Judgment of  
District Judge  
25th July 1963  
continued

10 In view of these provisions one might, indeed, say that the appellant would have been caught for precisely the amount of the present assessment however he had chosen to express this present consideration. If, valuing the property at \$10,800,000 he had expressed the consideration as such sum as would purchase an annuity of \$450,000 over a period of 23 years, this sum, (roughly \$4,000,000) being the value of the consideration on the day of the date of the instrument would be open to query under Section 27 and the whole transaction consequently in danger of being treated as a voluntary disposition inter vivos.

20 In the result I hold that the words "or value" appearing in the phrase "amount or value of the consideration on the day of the date of the instrument" in Head 21 are apt to provide a method of calculation solely in relation to considerations other than money consideration, and that, where a consideration is expressed as a sum of money ascertainable as to its amount and whether payable immediately or over a period, it is the  
30 amount of such consideration on which the duty must fall. In this case, that amount is the stated sum of \$10,800,000.

The appeal is dismissed. The assessment of the Collector is confirmed and there shall be payable to the Collector the costs incurred by him in relation to this appeal, which is agreed at \$1,000.00.

(A.M. McMullin)

District Judge.

40 25th July 1963.

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In the District  
Court of Victoria

No.5

Notice of Motion  
for Appeal in  
Full Court  
29th October 1963

NO.5

NOTICE OF MOTION FOR  
APPEAL IN FULL COURT

IN THE SUPREME COURT OF HONG KONG

APPELLATE JURISDICTION

CIVIL APPEAL NO.39 OF 1963

BETWEEN:

JOSEPH EDWARD HOTUNG

Appellant

- and -

THE COLLECTOR OF STAMP  
REVENUE

Respondent

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NOTICE OF MOTION

To: The Registrar of the Supreme Court and  
to the abovenamed Respondent and to  
the Attorney-General.

TAKE NOTICE that the Full Court will be  
moved at ten o'clock in the forenoon on  
Tuesday, the 26th day of November 1963 or so  
soon thereafter as counsel can be heard, by  
Mr. Henry Litton, counsel for the abovenamed  
Appellant for an order that the judgment given  
by His Honour Judge A.M.McMullin at the  
Victoria District Court on the 25th July 1963  
whereby the Appellant's appeal against the  
assessment to stamp duty made by the Respon-  
dent under Head 21 of the Schedule to the  
Stamp Ordinance Cap.117 was dismissed be re-  
versed and for an order that the said assess-  
ment be set aside and that the excess of duty  
paid in conformity with the said assessment  
be repaid to the Appellant and FURTHER for  
an order that the Respondent do pay the costs  
of this appeal.

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AND FURTHER TAKE NOTICE that the grounds  
of this appeal are :-

- (1) That the learned District Judge was  
wrong in law in upholding the said  
assessment to stamp duty made by the  
Respondent.



In the  
Supreme Court  
of Hong Kong

No.6

Judgment of the  
Honourable Sir  
Michael Hogan -  
President  
25th January 1964  
continued

From the case stated, under section 18 of Cap.117, to the judge in the court below it appears that the assignment was made on the 1st November, 1962, in pursuance of an agreement dated the 27th August, 1962 whereby Mary Ketterer agreed to sell to Joseph Edward Hotung (the appellant before us) various leasehold properties forming part of the residuary estate of the late Sir Robert Hotung for the sum of \$10,800,000 to be paid "as to \$450,000.00 upon the completion of the assignment of the properties and as to the balance by twenty three equal consecutive annual instalments of \$450,000.00 each, commencing on 27th October, 1963". It was also agreed that no security would be provided for the annual instalments and that the purchaser would be entitled to discharge the balance at any time if he so wished, but that he would pay interest on the balance outstanding at the rate of 1% per annum. On default in payment of any part of the purchase price, the Vendor was entitled to declare the whole of the balance to be payable immediately.

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The appellant contends that, under the assignment, the consideration is not the sum of \$10,800,000 simpliciter but the sum of \$10,800,000 agreed to be paid over a period of 24 years, that consequently the consideration payable on the day of the date of assignment was much less than \$10,800,000 and that this lesser sum is the proper sum on which stamp duty should be calculated. The Collector on the other hand contends that the amount of the consideration on the sale as stated in the deed of assignment is simply the sum of \$10,800,000 and that this is the proper figure on which to assess the stamp duty. In the case stated he went on to say that the sum did not include any element of interest, as separate provision was made for payment of interest on the outstanding amount, but in the course of argument before us Mr. Sneath, counsel for the Collector, said that this was a concession and that the interest should strictly be included as part of the consideration attracting duty.

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Both counsel agreed before us that



10     £10,800,000 payable immediately would represent a considerable over-valuation of the properties and that an annuity at the rate of £450,000 per annum for 23 years could be purchased from a reputable insurance company for an immediate payment of £4,250,000. Mr. Litten for the appellant maintains that this and the £450,000 paid at the time of assignment together form the sum on which the stamp duty should be assessed.

Before considering in detail the arguments of counsel it is convenient to set out the legislation to which we have been referred.

In England the Act of 1850 (13 and 14 Victoria Cap.97) imposed stamp duty on a

20     "CONVEYANCE .....upon the Sale of any Lands....; where the purchasē or Consideration Money therein or thereupon expressed....."

This was replaced by the 1870 Act (33 and 34 Victoria Cap.97) where the expressions were :-

"CONVEYANCE or TRANSFER on sale, of any property.....  
....."

Where the amount or value of the consideration for the sale does not exceed .....

30     For every £50 ..... of such amount or value....."

40     This Act however made provision (s.71) for the valuation of stock or security forming the consideration or part of the consideration for a conveyance on sale and dealt specifically (s.72) with a consideration or part of a consideration in the form of money payable periodically for a definite period or indefinitely. The former attracted duty on the "total amount" payable whilst the latter attracted it only on the "total amount" payable over a period of 20 years after the date

In the  
Supreme Court  
of Hong Kong

No.6

Judgment of the  
Honourable Sir  
Michael Hogan -  
President  
25th January 1964  
continued

In the  
Supreme Court  
of Hong Kong

No.6

Judgment of the  
Honourable Sir  
Michael Hogan -  
President  
25th January 1964  
continued

of the instrument.

This Act was replaced in 1891 by the statute now in force (54 and 55 Victoria Cap. 39) but there is no material difference in the relevant provisions, apart from an alteration applying the twenty year limitation to periodic payments for a definite as well as an indefinite period (s.56).

In Hong Kong, the Stamp Ordinance of 1866 made provision for this type of duty in item 13 of the schedule which reads as follows - 10

"13. Conveyance, assignment ... executed for the transfer for valuable consideration either by way of mortgage or otherwise 25 cents for every \$100 ... of the consideration money or amount secured.."

This was repealed and replaced by the 1884 Ordinance which made the following provision: 20

"14. Conveyance or assignment on sale, to be levied on the amount or value of the consideration money, such consideration money to include any sum payable by the purchaser in respect of any mortgage or other debt ....."

The Ordinance enacted in 1886 contained similar provisions but they have now been replaced by Cap.117, in the Schedule to which Head 21 reads as follows :- 30

"21. CONVEYANCE ON SALE, (a) \$2 for every the duty to be calculated on the amount or value of the consideration on the day of the date of the instrument. (b) See also section 6, as to excess stamp duty. (c) \$100 or part thereof of the amount or value of the consideration. .... " 40

There are no provisions for periodic payments corresponding to those in the English legislation.

The option given to the purchaser to accelerate his payments and the provision relating to default figured only briefly in the arguments before us. The Crown was but little concerned with them because in Mr. Sneath's main argument payment early or late made no material difference. Mr. Litton, in support of his contention that they were of no help to the Crown in the present case, placed reliance on the case of Western United Investment Co.Ltd. v. Inland Revenue Commissioners (1) where it was held that when assessing duty under section 56(2) of the English Act of 1891, on a purchase price payable over a period, duty ought to be assessed on the assumption that the terms of sale were performed, not broken. That decision, although not directly in point would certainly seem to lend support to the view, which I propose to adopt that in the present case the stamp duty should be assessed on the basis that the balance of the purchase price will be spread over 23 years, without speculating on what prospect, if any, there may be that a portion or all of it will be paid at an earlier date either by the purchaser exercising his option to accelerate payment or by reason of the default provision.

Both counsel for the appellant and counsel for the Crown contend that item 21 of Cap.117, contemplates a different method of measurement being applied if amount rather than value is used as the basis for the calculation. The Crown argues that, in the circumstances, the proper criterion is that based on amount because this is the primary basis of measurement adopted in the legislation and, when it is applicable, there is no need to revert to the secondary measure of 'value'. The Crown also seeks to sustain this argument by reference to s.9 of the Ordinance which states that when an instrument is chargeable under more than one head in the schedule it shall be charged under that head which imposes the highest duty. This the Crown argues, clearly indicates that where alternative assessments are possible even within the same head or item, the higher duty should be imposed.

In the  
Supreme Court  
of Hong Kong

No.6

Judgment of the  
Honourable Sir  
Michael Hogan -  
President  
25th January 1964  
continued

(1) (1958) 1 A.E.R., 257.

In the  
Supreme Court  
of Hong Kong

No.6

Judgment of the  
Honourable Sir  
Michael Hogan -  
President  
25th January 1964  
continued

The main weight of Mr. Sneath's argument rested however on amount being the natural and primary basis of measurement and he supported it by reference to Sergeant On Stamp Duties (4th Ed.p.106) where the author, referring to the head of charge in the English 1891 Act corresponding to item 21 of our Ordinance, says:

"Although the head of charge refers to 'the amount or value' of the consideration the words 'or value' do not import that ad valorem duty is payable in respect of the consideration given in the instrument regardless of whether it is money or otherwise. These words have been inserted because for the purpose of the Stamp Act, 1891, the consideration for a sale may be not only money, but foreign or colonial currency (s.6), stock, including shares and units under a unit trust scheme..... marketable and other securities (s.55), and debts and transfers either certainly or contingently of any money or stock (s.57) ..."

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Mr. Litton says that if the calculation is based on amount then the only amount payable, under the conveyance, "on the day of the date of the instrument" is \$450,000 and the balance would have to be valued anyway. If on the other hand the calculation of the Crown be adopted in applying the measurement contemplated by the word 'amount' then, Mr. Litton argues, there is no justification, either under s.9 or otherwise, for taking the resulting figure as being the correct assessment of the duty when the application of the measurement contemplated by the word 'value' produces a smaller figure. In such circumstances, he says, since the statute is a taxing statute, the lower and not the higher figure should be adopted, as there is no occasion to apply s.9 which refers only to the duties imposed under different heads or headings.

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Mr. Litton supported these arguments by reference to a number of cases beginning with Clifford & Another v. Commissioners of Inland Revenue (2).

(2) (1896) 2 Q.B. 187.

In that case the Commissioners of Inland Revenue were concerned with the application of a head in the Stamp Act 1891 which imposed stamp duty on a "Bond, Covenant, or Instrument of any kind whatsoever." The instrument before them required a hotel manager to pay to the owner of the hotel £108:18/- per week in addition to a further £5 if she did not use certain rooms set aside for her. The Commissioners contended that this was an instrument providing for a yearly sum although the actual payments were being made weekly; consequently, they said it fell within that portion of the heading which referred to the principal or primary security

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"for any annuity ... or for any sum or sums of money at stated periods ....."

and imposed duty on

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"...every £5 .. of the annuity or sum periodically payable ..."

The court rejected this contention and, in the course of his judgment, Pollock, B. said (at p.192):

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"It is stated in Maxwell on Statutes .... that 'Statutes which impose pecuniary burdens are subject to the rule of strict construction. It is a well settled rule of law that all charges upon the subject must be imposed by clear and unambiguous language, because in some degree they operate as penalties. The subject is not to be taxed unless the language by which the tax is imposed is perfectly clear and free from doubt.' For this proposition several decisions and dicta are cited, and there is no doubt as to its being a correct statement of the law. Of course the learned author does not mean to say that where the plain language of a statute imposes a tax or duty any court is to construe it according to any other principle than they would apply to the construction of another statute. Again, the statute must be so construed as to carry out the

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In the  
Supreme Court  
of Hong Kong

          
No.6

Judgment of the  
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President  
25th January 1964  
continued

In the  
Supreme Court  
of Hong Kong

No.6

Judgment of the  
Honourable Sir  
Michael Hogan -  
President  
25th January 1964  
continued

plain object of the Act. But if the statute is so indefinite and uncertain that it can be treated in two ways, and the true construction of it is open to two views, the one more favourable to the Crown and the other to the subject, then the latter construction should be adopted."

But both Pollock B. and Bruce J. in reaching the conclusion that it was the weekly payment and not the annual amount that was contemplated by the expression "the sum periodically payable" seem to have relied more on their view that the meaning of the provision was clear than on any element of ambiguity. The statement of principle enunciated by Pollock B. was, however, fully endorsed by Lord Hanworth M.R. in *Hennell v. Inland Revenue Commissioners* (3) where he said :

" Mr. Stamp called our attention to the passage in the speech of Lord Loreburn in the House of Lords in *Speyer Brothers v. Inland Revenue Commissioners*, (1908) A.C. 92, 95, which showed that, where there is a clear alternative given to the Crown to tax under one head or another, the right of choice would belong to the Crown; but it has been for a number of years an unbroken rule of the Courts that, where there is a charging section or charging Act, the meaning of which is in doubt, it ought to be construed in favour of the subject. Pollock C.B. in *Gurr v. Scudds*, 11 Ex. 190, 191, said: 'If there is any doubt as to the meaning of the Stamp Act, it ought to be construed in favour of the subject, because a tax cannot be imposed without clear and express words for that purpose.'

The King's Bench Division in Clifford's case; (1896) 2 Q.B. 187, followed that rule, which was once more stated, that when the true construction is open to two views, the one more favourable to the Crown and the other to the subject, then the latter construction should be adopted. We, therefore, in

considering this passage in the Schedule have to bear in mind that if there is a doubt it ought to be resolved in favour of the subject."

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Mr. Litton has also relied on the well known passage in the case of *Cape Brandy Syndicate v. Inland Revenue Commissioners* (4) where Rowlatt J. said (at p.71):

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continued

10 "It is urged by Sir William Finlay that  
in a taxing Act clear words are necessary  
in order to tax the subject, Too  
wide and fanciful a construction is  
often sought to be given to that maxim,  
which does not mean that words are to be  
unduly restricted against the Crown, or  
that there is to be any discrimination  
against the Crown in those Acts. It  
simply means that in a taxing Act one  
has to look merely at what is clearly  
20 said. There is no room for any intend-  
ment. There is no equity about a tax.  
There is no presumption as to a tax.  
Nothing is to be read in, nothing is to  
be implied. One can only look fairly  
at the language used."

Mr. Sneath has, on the other hand,  
directed attention to the case of *Commissioners of Inland Revenue v. Ramsay* (5) which  
has been relied upon by the judge in the court  
30 below. In that case Romer, L.J. (at p.98)  
said:

" If a man has some property which he  
wishes to sell on terms which will re-  
sult in his receiving for the next  
twenty years an annual sum of £500, he  
can do it in either of two methods. He  
can either sell his property in consider-  
ation of a payment by the purchaser to  
him of an annuity of £500 for the next  
40 twenty years, or he can sell his proper-  
ty to the purchaser for £10,000, the  
£10,000 to be paid by equal instalments  
of £500 over the next twenty years. If  
he adopts the former of the two methods,  
then the sums of £500 received by him  
each year are exigible to Income Tax.

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If he adopts the second method, then the sums of £500 received by him in each year are not liable to Income Tax, and they do not become liable to Income Tax by it being said that in substance the transaction is the same as though he had sold for an annuity. The Vendor has the power of choosing which of the two methods he will adopt, and he can adopt the second method if he thinks fit, for the purpose of avoiding having to pay Income Tax on the £500 a year. The question which method has been adopted must be a question of the proper construction to be placed upon the documents by which the transaction is carried out." 10

Mr. Litton sought to meet this case by arguing that the Income Tax Legislation under consideration in it differs materially from the Stamp Ordinance which we are now considering and the construction of one is no guide to the construction of the other. Certainly the consequences of distinctions such as that drawn by Romer, L.J. in the application of the Income Tax Acts to capital and income would not encourage their extension to other fields where they are not directly applicable. I do not think that the passage in question necessarily compels us to construe this portion of the Stamp Ordinance in the manner suggested by the Crown. 20 30

In dealing with the question put to us I have also considered the proposition to which Harman, L.J. referred in Littlewoods Mail Order Stores, Ltd. v. Inland Revenue Commissioners(6) when he said:

" Now, in stamp duty cases it is the substance of the case which has to be looked at; authority for that is to be found in the observations of Lopes, L.J. in Great Western Ry. Co. v. Inland Revenue Comrs., (1894) 1 Q.B. at p.513. His Lordship says: 40

' It is an established rule in cases under the Stamp Acts that the substance of the transaction is



alone to be looked at in determining the question whether an instrument is liable to stamp duty."

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This statement must however be read in the light of the observations subsequently made in the same case, when it reached the House of Lords, by Viscount Simonds, (7) where he said:

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10

"I do not find, and never have found, it easy to reconcile the familiar propositions, first, that instruments not transactions are stamped, and, second, that the substance alone of the transaction is to be looked at."

20

In the circumstances it is perhaps not surprising that neither counsel has relied on either of these propositions, nevertheless it seems to me that in seeking an answer to the question of how the broad terms of item 21 should be applied to an instrument which is not readily related to the general language used, the true nature of the transaction should be kept in mind.

There seems to be little in the earlier legislation, either in England or in Hong Kong, to strengthen or detract from the arguments on either side.

30

40

Mr. Sneath was at one time disposed to argue that the terms of the successive enactments in England indicated that so long as the legislature purported to concern itself solely with a consideration expressed in terms of money there had been no recognition of, and indeed no need to recognise, any "valuation" of the consideration, and that this process was only introduced to meet the situation which arose when, for stamp duty purposes, express recognition was given to the possibility of securities etc. forming part of the consideration. Subsequently, however, he indicated that he did not think this argument could be sustained in Hong Kong where the 1884 Ordinance introduced the reference to value without giving any express recognition to the possibility of securities replacing money as the consideration or part

(7) (1962) 2 A.E.R. at p.284.

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of the consideration on a conveyance for sale.

At first sight, the appearance of the words 'consideration money or amount' in the Hong Kong Ordinance of 1866 might seem to suggest that to the legislature, at any rate at that time, the term 'consideration money' and 'amount' did not necessarily mean the same thing and that some distinction should be drawn between them but it seems to me that the appearance of the word 'amount' in the relevant provision is probably due to the following reference to a mortgage and does not necessarily imply any recognition of an essential distinction between the two.

10

The earlier legislation does however suggest that the legislature has not attached to any of these words a meaning so sharp and exactly defined, and limits so narrow, as to make them mutually exclusive in all circumstances.

20

Coming to the current enactment, one is, of course, faced with the type of problem that emerges so frequently in interpreting the English language, whether the words "on the day of the date of the instrument", which appear under Head 21, apply not only to the noun which follows the disjunctive "or" but also the noun which precedes it. Efforts are sometimes made to clarify the intention by putting a comma before the words in question. No such aid has been provided here. Nevertheless, in the context of the Ordinance, I think the words "on the day of the date of the instrument" should be construed as applying not only to the word "value" but also to the word "amount".

30

In effect both sides rely on alternative contentions. Whilst accepting that in the present instance the amount and the value of the consideration are not the same, Counsel for the Crown relies primarily on the contention that, when the duty is imposed in the alternative manner adopted in Head 21, then the proper measure to adopt is that of amount, because it is simpler, more direct and more apt to describe and express the consideration

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10 in this way, and also because this word ap-  
peared at an earlier stage in this type of  
legislation for the purpose of measuring the  
very kind of consideration with which we are  
here concerned, long before the concept of  
value had been introduced by the legislature.  
In addition, however, he also puts forward  
the argument that where the amount and the  
value differ then the Crown, in accordance  
with the intention revealed in s.9 dealing  
with charges under separate heads, should be  
entitled to exact the higher figure.

20 Counsel for the appellant, on the other  
hand, relies primarily on the contention that  
in the present case the only amount payable  
on the day of the date of the instrument was  
\$450,000 and the balance of the consideration  
would have to be valued - a method of assess-  
ment which would avoid any conflict between  
the measurements of amount and value - but,  
if this was not accepted, then he maintained  
that, as between the alternatives of amount  
or value suggested by the Crown, only the  
lesser and not the larger sum was payable.

30 I can see no clearly established prin-  
ciple which would support the Crown's conten-  
tions in this matter. The position might  
well have been different if the duty had been  
imposed in such a manner as to bring the  
instrument within both the measurements men-  
tioned. In such circumstances the approach  
adopted by Lord Loreburn, L.C. in Speyer  
Brothers v. Inland Revenue Commissioners(8)  
might properly be followed; but Head 21  
sets them out as alternatives and in a manner  
which seems to indicate no preference for the  
measurement expressed in the word 'amount'  
rather than that of value. The fact that it  
is mentioned first or that it appeared in  
40 this type of legislation at an earlier date  
than the expression 'value' would not, in my  
view, be sufficient to give it preference nor  
would the fact that it may involve a more  
direct and more simple calculation. Nor  
does s.9 of the Ordinance appear to help the  
Crown in this case. Indeed its mere pre-  
sence would seem to imply that without some  
such substantive provision the higher duty

(8) 1908 A.C. at p.93.

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would not be exigible though, as already indicated, the Crown might have been in a better position when, as in the case of separate heads, the instrument was expressed to be liable to more than one duty. Here the duty is expressed in the alternative and consequently it seems to me that the liability can be discharged by payment of either. The principles enunciated by Pollock, B. and subsequently so clearly endorsed by Lord Hen-  
worth would appear to support that contention.

10

Having reached that conclusion it is unnecessary to decide, as between the alternative contentions of the appellant, which is correct, since, whether the consideration is measured by valuing the whole of it or only that part of it which is deferred and adding the \$450,000, the result is the same. Being satisfied that if the calculation based on the word "amount" produces a sum greater than that based on value the liability can be discharged by payment of the latter, it is unnecessary to determine whether the Crown's or the appellant's application of the word "amount" is correct and I would propose to leave it for further argument and decision in a case in which the decision turns upon it.

20

For the reasons indicated I would be disposed to reverse the decision of the judge in the court below and to accept the contention of the appellant in the present case that either the consideration should be valued or the amount measured in the manner he suggests. In such valuation or measurement, however, I would include the interest expressed to be payable, as this part of the sale price.

30

This construction of the relevant provision seems to me consistent with its express terms and it has the merit of exacting a duty which is based on the true value of the consideration passing and not on an inflated and untrue value; a result more equitable and consistent with common sense. S.27 of the Ordinance would appear to safeguard the Revenue where any consideration measured in this fashion would not represent the true value of the property.

40

(Michael Hogan)  
President.

50

25th January, 1964.

NO.7  
 JUDGMENT OF THE HONOURABLE  
 MR. JUSTICE IVO CHARLES CLAYTON  
 RIGBY - APPEAL JUDGE.

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In the  
 Supreme Court  
 of Hong Kong

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No.7

IN THE SUPREME COURT OF HONG KONG  
(APPELLATE JURISDICTION)

CIVIL APPEAL NO.39 OF 1963

Judgment of the  
 Honourable Mr.  
 Justice Ivo  
 Charles Clayton  
 Rigby - Appeal  
 Judge  
 25th January 1964

BETWEEN: JOSEPH EDWARD HOTUNG Appellant

- and -

10 THE COLLECTOR OF STAMP  
 REVENUE Respondent

---

Coram: Rigby, J.

J U D G M E N T

This is an appeal from a decision of a District Judge upon a case stated to him by the Collector of Stamp Revenue under s.18 of the Stamp Ordinance, confirming the assessment of the Collector.

20 The facts are relatively simple. By an agreement dated the 27th August, 1962 the appellant agreed to purchase by way of assignment certain properties for the sum of \$10,800,000. The agreement provided that the purchase price was to be paid in the following manner :-

\$450,000 upon the completion of the assignment of the properties and the balance thereof by 23 equal consecutive annual instalments of \$450,000.

30 The agreement further provided that no security was to be given by the purchaser to cover due payment of the annual instalments, and the purchaser was entitled to discharge the balance of the purchase price earlier than provided for by the instalments, if he so desired. One per cent interest was to be payable quarterly on the outstanding balance of the purchase price, and in default of payment of any part of the

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Judge  
25th January 1964  
continued

amount due and owing the Vendor was to be entitled to declare the whole amount due and payable forthwith and the exercise of that right was not to be a bar to action by the Vendor against the Purchasers on the agreement itself.

By a Deed of Assignment dated the 1st November, 1962, the Vendor, in pursuance of the said agreement and in consideration of the sum of \$10,800,000 agreed to be paid by the Assignee (the present appellant) to the Vendor in accordance with the said agreement "assigned all her rights and interests in the property to the assignees and directed the trustees to complete and to give effect to the Assignment".

10

Head 21 of the Schedule to the Stamp Ordinance - being the Head under which the Indenture is admittedly chargeable with duty - provides as follows :-

" 21. CONVEYANCE ON SALE, the duty to be calculated on the amount or value of the consideration on the day of the date of the instrument."

20

Upon the document being presented for payment of stamp duty the appellant contended that the consideration for the conveyance "on the day of the date of the instrument" was not \$10,800,000 but \$450,000 plus a promise to pay the fixed amount of \$450,000 per annum, together with one per cent per annum interest thereon, for the next 23 years. He argued, therefore, that the true amount or value of the consideration "on the day of the date of the instrument" was very substantially less than \$10,800,000 that it was in fact \$450,000 plus such capital sum which, if prudently invested, would bring in an annuity of \$450,000 per annum for the next 23 years. Such a sum would undoubtedly be less than \$10,800,000. Indeed, it was agreed by both parties before the District Judge that the capital sum necessary to purchase an annuity of \$450,000 for 23 years is \$4,250,000. It is upon this sum, plus the initial down payment of \$450,000, that the appellant contended the stamp duty at an admitted ad valorem rate of 5% is payable.

30

40

The Collector, on the other hand, maintained that the monetary consideration for the transfer and sale of the properties was clearly stated on the face of the conveyance itself as \$10,800,000 and that that was the amount on which stamp duty was chargeable. The learned District Judge, upon the matter coming before him and after having heard the full arguments of Mr. Litton for the appellant and Mr. Sneath for the Commissioner of Stamp Duties, in a careful and lucid judgment confirmed the decision of the Collector of Stamp Duties.

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No.7

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Honourable Mr.  
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continued

I find myself so entirely in agreement with the admirably expressed judgment of the learned District Judge that there is little that I would wish to add. The sole question for determination is the construction to be placed upon the words "on the amount or value of the consideration on the day of the date of the instrument", appearing in Head 21 of the Schedule to the Ordinance which provides the basis on which ad valorem duty on a conveyance on sale is to be charged.

The ad valorem duty on a conveyance is payable on the amount or value of the consideration (for the sale) and not, as is the case with voluntary dispositions under s.27 of the Ordinance, on the value of the property conveyed or transferred. If the Collector considers that by reason of the inadequacy of the sum paid as consideration the conveyance or transfer confers a substantial benefit on the Purchaser or Transferee, he may treat it as a voluntary disposition inter vivos and himself assess the ad valorem duty on the value of the property. In the case where the amount of the consideration is expressly stated in a specific sum of Hong Kong dollars that amount remains constant and unchanged and no difficulty can arise in calculating the ad valorem duty to be paid thereon. Consequently the words "on the day of the date of the instrument" in relation to a sale for a specific amount of a currency of the Colony are meaningless and can have no practical value in assisting the Collector to calculate the ad valorem duty payable. On the other hand, where the consideration for the sale, whether wholly or in part, consists of

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continued

foreign currency or stock or marketable securities it is clear that the value thereof may fluctuate, whether by appreciation or depreciation, according to exchange rates or current market value between the day on which the agreement for sale is signed and the date of payment of the purchase price, if these dates should differ from the actual date of the transfer. What date, then, is the Collector to select for the purpose of calculating the duty? Head 21 provides the answer by stipulating that the relevant date shall be "the day of the date of the instrument". Mr. Sneath contended, and I agree, that in accordance with the ordinary canons of construction the words "amount" or "value" are to be read disjunctively the former relating to a money consideration, clearly stated in figures as the purchase price, and the latter to "money's worth" where the consideration for the purchase price, whether wholly or in part, is stated as something other than money, e.g. foreign currency, stock or marketable securities. In the former instance the duty is to be calculated on the monetary "amount" stated by the parties themselves as the consideration for the sale; in the latter case the duty is to be calculated on the "value" of the property passing from the Purchaser to the Vendor as consideration for the sale, and it is to be calculated on the "value" of such property "on the day of the date of the instrument".

In my view the words "on the day of the date of the instrument" contained in Head 21 logically and necessarily refer to those instances where the "value" of the consideration is expressed in foreign currency, stock or marketable securities the worth of which is susceptible to fluctuation.

In truth the manner of payment of the consideration stated, \$10,800,000 payable over 23 years, may reduce the present value of the consideration, but it does not reduce the amount. "It is a case in which a capital lump sum has been stipulated as the price of a piece of property, and it is none the less so because the payment of the sum is to be made by instalments, ....."\*.

\* per Lord Wright in C.I.R. v.  
Ramsay, 20 T.C., 79 at p.120.



Those were the words of Lord Wright used in a different context and with regard to the consideration of the effect of Income Tax legislation. But they appear to me not inappropriate to the facts of this case. Here a capital sum has been stipulated by the parties themselves in the instrument of sale as the price of the property sold. The fact that, for the mutual convenience of the parties, payment is to be made by instalments may detract from the value of the purchase price but not from the amount expressly stated as the consideration for the sale. It was not disputed by Mr. Sneath, on behalf of the Collector, that the consideration stated of \$10,800,000 is in fact a considerable over-valuation of the properties included in the conveyance. Mr. Sneath contended, however, that that did not affect the basis of valuation for purposes of stamp duty and that if the parties, to suit their own convenience, expressly chose to state a purchase price in excess of the true value but payable over long term instalments and with a very low interest rate of payment the Collector, in accordance with the terms of Head 21, was not duly entitled, but indeed, bound to assess the duty payable on the amount of the consideration stated. He submitted that the parties, if they had wished, could have agreed the purchase price at a much lower figure payable in the same instalments but with a much higher rate of interest than the one per cent in fact agreed upon. The method which they chose was a matter for their own selection and discretion, but where they deliberately chose to express a purchase price to be charged by the Vendor and paid by the Purchaser, the Collector was bound to act upon the consideration stated and assess the ad valorem duty accordingly. I agree with those arguments.

I would accordingly dismiss this appeal with costs.

(I.C.C. Rigby)  
Appeal Judge.

25th January 1964.

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In the  
Supreme Court  
of Hong Kong

No.7

Judgment of the  
Honourable Mr.  
Justice Ivo  
Charles Clayton  
Rigby - Appeal  
Judge  
25th January 1964  
continued

In the  
Supreme Court  
of Hong Kong

NO.8  
ORDER OF THE FULL COURT  
DISMISSING APPEAL.

No.8

Order of the  
Full Court  
dismissing  
Appeal  
25th January 1964

IN THE SUPREME COURT OF HONG KONG  
APPELLATE JURISDICTION  
CIVIL APPEAL NO.39 OF 1963.

BETWEEN:       JOSEPH EDWARD HOTUNG               Appellant  
                  - and -  
                  THE COLLECTOR OF STAMP  
                  REVENUE                               Respondent 10

BEFORE THE FULL COURT (THE HONOURABLE SIR  
MICHAEL HOGAN, KT., C.M.G., CHIEF JUSTICE  
AND THE HONOURABLE MR. JUSTICE IVO CHARLES  
CLAYTON RIGBY) IN COURT.

O R D E R

Dated the 25th day of January 1964.

Upon reading the Notice of Motion on behalf of the above named Appellant dated the 29th day of October 1963 and the Case Stated dated the 9th May 1963 and upon hearing Counsel for the Appellant and Counsel for the Respondent IT IS ORDERED that this appeal be dismissed and that the judgment of His Honour Judge Arthur Michael McMullin dated the 25th day of July 1963 in Stamp Appeal No.1 of 1963 be deemed to be the judgment of the Full Court AND IT IS FURTHER ORDERED that there be no order as to costs.

20

(sd) P.K.SPRINGALL

Deputy Registrar.

LS.

NO.9

NOTICE OF MOTION FOR LEAVE TO APPEAL  
TO HER MAJESTY THE QUEEN IN COUNCIL.

In the  
Supreme Court  
of Hong Kong

IN THE SUPREME COURT OF HONG KONG

APPELLATE JURISDICTION

CIVIL APPEAL NO.39 OF 1963

No.9

Notice of Motion  
for leave to  
appeal to Her  
Majesty the  
Queen in Council  
4th February  
1964.

BETWEEN: JOSEPH EDWARD HOTUNG Appellant

- and -

THE COLLECTOR OF STAMP  
REVENUE

Respondent

10

Motion for Leave to appeal to Her Majesty the  
Queen in Council.

TAKE NOTICE that this Honourable Court  
will be moved on the 8th day of February 1964,  
at 9.30 o'clock in the forenoon or as soon  
thereafter as Counsel can be heard by Mr. Henry  
Litton Counsel for and on behalf of the above-  
named Appellant for leave to appeal to Her  
Majesty the Queen in Council from the judgment  
of this Honourable Court delivered in the above-  
mentioned Civil Appeal on the 25th day of Janu-  
ary 1964, the Appellant undertaking to comply  
with the Provisions of the Rules and Instruc-  
tions concerning Appeals to Her Majesty the  
Queen in Her Privy Council.

20

Dated at Hong Kong this 4th day of  
February 1964.

30

(Sd.) Lo and Lo  
Solicitors for the Appellant  
Jardine House, Hong Kong.

(Sd.) C.M. Stevens,  
Registrar,  
Supreme Court.

To: The Collector of Stamp Revenue  
and  
The Registrar of Supreme Court.

Order 2  
of The  
Judicial  
Committee  
Rules,  
1957.

In the  
Supreme Court  
of Hong Kong

NO.10

ORDER OF THE FULL COURT GIVING  
LEAVE TO APPEAL TO HER MAJESTY  
THE QUEEN IN COUNCIL

No.10

Order of the Full  
Court giving  
leave to appeal  
to Her Majesty  
The Queen in  
Council  
8th February  
1964

IN THE SUPREME COURT OF HONG KONG

APPELLATE JURISDICTION

CIVIL APPEAL NO.39 OF 1963

BETWEEN: JOSEPH EDWARD HOTUNG Appellant

- and -

THE COLLECTOR OF STAMP REVENUE Respondent 10

BEFORE THE FULL COURT (THE HONOURABLE SIR  
MICHAEL HOGAN, KT., C.M.G., CHIEF JUSTICE  
AND THE HONOURABLE MR. JUSTICE IVO CHARLES  
CLAYTON RIGBY) IN COURT.

O R D E R

Dated the 8th day of February 1964

Upon the application of the Appellant and upon reading the Notice of Motion filed herein on the 4th day of February 1964 and upon hearing Counsel for the Appellant and Counsel for the Respondent IT IS ORDERED that the Appellant have leave to appeal to Her Majesty the Queen in Her Privy Council on condition that the Appellant within 60 days from the date hereof enter into good and sufficient security to the satisfaction of the Registrar of the Supreme Court in the sum of \$15,000.00 for the due prosecution of the appeal and the payment of all such costs as may become payable to the Respondent in the event of the Appellant not succeeding in the appeal and on the further condition that the Appellant prepare and despatch the record to England within 60 days from the date hereof; Liberty to apply for enlargement of time with regards preparation and despatch of the record; And that the costs of these proceedings be costs in the cause. 20 30

(sd) J.R.OLIVER

Deputy Registrar. 40

IN THE PRIVY COUNCIL

No. 22 of 1964

ON APPEAL

FROM THE SUPREME COURT OF HONG KONG

B E T W E E N :

JOSEPH EDWARD HOTUNG

Appellant

- and -

THE COLLECTOR OF STAMP REVENUE

Respondent

RECORD OF PROCEEDINGS

DARLEY CUMBERLAND & CO.,  
36 John Street,  
Bedford Row, W.C.1.  
Solicitors for the Appellant.

CHARLES RUSSELL & CO.,  
37 Norfolk Street,  
London, W.C.2.  
Solicitors for the Respondent.