

**Lap Shun Textiles Industrial Company Limited**     —     —     *Appellant*

v.

**The Collector of Stamp Revenue**     —     —     —     —     —     *Respondent*

FROM

**THE SUPREME COURT OF HONG KONG  
(APPELLATE JURISDICTION)**

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JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF  
THE PRIVY COUNCIL, DELIVERED THE 2ND MARCH 1976

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*Present at the Hearing :*

LORD WILBERFORCE

VISCOUNT DILHORNE

LORD FRASER OF TULLYBELTON

[*Delivered by* LORD WILBERFORCE]

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This is an appeal from the Supreme Court of Hong Kong (Appellate Jurisdiction) which has upheld a judgment of Garcia D. J. in the District Court. It concerns the amount of Stamp Duty to be charged on a Conveyance on Sale dated 8th February 1973 by which certain land in the New Territories was conveyed by the Chartered Bank to the appellant for a stated consideration of \$16,465·68.

This conveyance was presented for stamping in the normal way and on 21st February 1973 was stamped with \$330·00, being \$2·00 per \$100 on the stated consideration, the appropriate rate for a "conveyance on sale".

Several months later, however, the District Officer assessed the value of the property at \$76,800 and, on the basis of this, the respondent, whose statutory duty it is to collect the stamp duties, took the view that the stated consideration (\$16,465·68) was inadequate. He accordingly applied s.27 (4) of the Stamp Ordinance, Cap. 117, under which the document became liable to be charged as a conveyance operating as a voluntary disposition *inter vivos*. On this basis on 2nd October 1973 he claimed duty at 2% on the assessed value—namely \$1,536·00.

On 19th October 1973 the appellant appealed against the assessment and requested the respondent to state a case. Later the District Officer revised his valuation to a figure of \$37,500, which the respondent accepted. This would give rise to a liability of \$750·00.

In the case which was signed on 26th March 1974, the respondent expressly stated that he did not intend to challenge the appellant's contentions that the stated consideration of \$16,465·68 was the whole consideration, that such sum was reached by way of an arms' length

bargain, based on a price of 15 cents per square foot, and that the appellant acted in good faith. On its side the appellant, for the purpose of this case, does not dispute the value of \$37,500.00 put upon the property by the District Officer. Thus the appeal raised the question whether when a sale has been made between parties at arms' length, in good faith, for an agreed consideration, it is open to the Collector to charge the conveyance as one operating as a voluntary disposition *inter vivos*, with duty based upon what he considers to be the true value of the property.

It is now appropriate to set out the relevant statutory enactment. This is contained in s.27 (1), (1A), (2), and (4) of the Stamp Ordinance:

"27. (1) Subject to subsection (1A), any voluntary disposition *inter vivos*, and any conveyance or transfer operating as a voluntary disposition *inter vivos*, shall be chargeable with stamp duty under head 53 in the Schedule.

(1A) Any transfer, including a letter of renunciation, operating as a voluntary disposition *inter vivos* of shares or marketable securities shall be chargeable with duty under head 48 (1) in the Schedule.

(2) Notwithstanding anything in section 17, the Collector may be required to express his opinion under that section on any conveyance or transfer operating as a voluntary disposition *inter vivos*, and no such conveyance or transfer shall be deemed to be duly stamped unless the Collector has expressed his opinion thereon in accordance with that section.

....

(4) Any conveyance or transfer (not being a disposition made in favour of a purchaser or incumbrancer or other person in good faith and for valuable consideration) shall for the purposes of this section be deemed to be a conveyance or transfer operating as a voluntary disposition *inter vivos*, and (except where a marriage is the consideration) the consideration for any conveyance or transfer shall not for this purpose be deemed to be valuable consideration where the Collector is of opinion that by reason of the inadequacy of the sum paid as consideration or other circumstances the conveyance or transfer confers a substantial benefit on the person to whom the property is conveyed or transferred."

Under Head 53 (2) a voluntary disposition *inter vivos* of land or other property, and a conveyance or transfer of land or other property operating as a voluntary disposition *inter vivos*, is chargeable with duty at the rate of \$2 per \$100 of the value of the land or other property.

It is reasonably clear what s.27 was intended to achieve. In the first place it charges voluntary conveyances, *i.e.* conveyances for which no valuable consideration is given, with ad valorem duty based on the value of the property conveyed. In the second place it prevents evasion of this duty by presenting what may in substance be a voluntary disposition as a conveyance for valuable consideration through the insertion of a nominal consideration, or an inadequate consideration. The question is whether in addition to these objectives it achieves another, namely the charging on a value basis of conveyances on sale where the consideration is inadequate. The question whether this was intended cannot be answered *a priori*; it can only be answered upon a consideration of what subsection (4), fairly construed as a whole, can be found to achieve.

As to this, their Lordships are in no doubt: the subsection is clear and lacking in ambiguity. Having, in the initial parenthesis, excepted from its grasp dispositions in good faith and for valuable consideration, it continues in the second limb to remove from this exception certain particular cases. One such case is composed of the following elements: (i) inadequacy of consideration (ii) the opinion of the Collector that by

reason of this inadequacy a substantial benefit is, by the conveyance or transfer, conferred on the transferee. Another such case, not directly relevant to the present case, depends upon the existence of "other circumstances" instead of inadequacy of consideration.

If this is the correct analysis, there can be no doubt that the conveyance of 8th February 1973 comes squarely within the charge, as both courts in Hong Kong have held.

The consideration is inadequate because it is less than 50% of the real value. The Collector, by reason of this inadequacy, has formed—and has material upon which to form—the opinion that the conveyance confers a substantial benefit on the transferee.

The appellant seeks to answer this argument by suggesting another reading of the subsection. This it endeavours to reinforce by an enumeration of the consequences, described as alarming, which would follow if the Collector's view is right.

The reading of the subsection which the appellant suggests is not easy to state in textual terms. It is described as giving to the second limb a subjective rather than an objective meaning, so as to confine it to cases where the transferor *intends* to confer a substantial benefit upon the transferee. Thus there would be excluded from the subsection all cases where the intention, assuming that this was in good faith, was to enter into a sale: the subsection would only deal with cases of intended gifts including those for which some nominal or inadequate consideration was given.

Their Lordships cannot accept this submission. It runs counter, in their opinion, to the plain wording of the subsection which, contrary to the argument, indicates that the tests by which the Collector is to be guided are objective. When the section refers to inadequacy of consideration, and when it refers to the conveyance conferring, in the opinion of the Collector, a benefit, it is clearly stating factual elements whose existence, or nonexistence, appears on the face of the transaction. It cannot require the Collector to investigate whether an evident inadequacy, or an evident benefit, is deliberate or intended: such a requirement, if it were to be imposed, would have to be stated in clear words. The stamp duty legislation generally proceeds by way of stamping documents according to their nature and effect, and not by reference to parties' intentions, and any departure from this principle would require clear indication.

Their Lordships would add, in this part of the argument, that the English authorities cited by the appellant on the identical s.74 of the Finance Act 1909–10 (*Baker v. Inland Revenue Commissioners* [1924] A.C. 270, *Wigan Coal & Iron Co. Ltd. v. Inland Revenue Commissioners* [1945] 1 All E. R. 392), dealing as they were with quite different situations from the present, do not provide any support for its argument. Indeed the opinions expressed in the House of Lords in the former case clearly support what has been called the "objective" approach to the second part of the subsection rather than the subjective. And, as was said by Lord Sumner, the construction of the section is very plain and decisive.

In view of the clarity and lack of ambiguity of the statutory language, as their Lordships understand it, it is not perhaps strictly necessary to examine the supposed difficulties, in practice, to which, if the respondent's contentions are right, it is said to give rise. The statutory language must in any event prevail. But there are some observations which may be necessary in order that the implications of the present decision may be understood.

First, it does not in the least follow, that if the Collector succeeds in the present case, every conveyance or transfer on sale will require an official valuation of the property or an adjudication of the stamp duty. Any

stamp authority has to start from the point that valuation of much, if not most, property is a matter of judgment and is only possible within fairly broad limits, and that sound, if not the best, evidence of value is to be found in *bona fide*, arms' length dealings. It is for this reason, that when s.27 (4) authorises the substitution for the agreed consideration of the "real" value, it requires that a substantial benefit for the transferee should be found to exist. In the great majority of cases the normal procedure of presentation for stamping and routine stamping according to the stated consideration will continue to be followed: such cases as the present will continue to be exceptional. Thus their Lordships on this account do not envisage any dislocation of the normal process of stamping.

On the other hand there is another type of difficulty, which may well arise and which gives their Lordships some concern. Under the Ordinance (s.5 (4) and Heads 19 and 53) all executing parties to a conveyance are civilly liable for the duty, and moreover (s.5 (5)), if the instrument is not duly stamped, each is deemed to commit an offence. The Schedule further requires instruments to be stamped within a specified period (30 days after execution). These consequences, which do not arise in the United Kingdom, seem to have been imposed in Hong Kong by legislation posterior to the enactment of s.27.

It appears that their effect may be to impose a civil and criminal liability upon parties such as those concerned in the instant transaction, who have entered into a genuine commercial transaction and *bona fide* presented a document for stamping and had it stamped, if, as the result of investigation, the Collector is able to invoke the provisions of s.27. Their Lordships accept of course that the Collector, a public official, would desire to act reasonably, but he can only do so within the limits of his statutory duty and the parties may remain uncomfortably at risk. It may well be that the interaction of these legislative provisions requires examination.

A third head of possible difficulty was said to relate to matters of title. But their Lordships were not satisfied of the reality of this difficulty under the system prevailing in Hong Kong. The dictum of Eve J. in *re Indo-China Steam Navigation Co.* ([1917] 2 Ch. 100, 106) suggesting that registration of a transfer while inadequately stamped would not bring about a legal transfer does not appear to their Lordships to be correct. On the other hand some difficulty may arise in applying s.7 (2) of the Ordinance to instruments such as the present if the duty is liable to be increased through the application of s.27.

Such difficulties as these—to which their Lordships hope that some consideration may be given—cannot however lead to a different interpretation of the section such as the appellant contends for. Their Lordships will humbly advise Her Majesty that the appeal be dismissed. The appellant must pay the costs of the appeal.



**In the Privy Council**

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**LAP SHUN TEXTILES  
INDUSTRIAL COMPANY LIMITED**

**v.**

**THE COLLECTOR OF STAMP  
REVENUE**

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**DELIVERED BY  
LORD WILBERFORCE**