

4, 1976

(i)

32

OF 1975

IN THE PRIVY COUNCIL

NO.

OF 1975

ON APPEAL
FROM THE SUPREME COURT OF HONG KONG
(APPELLATE JURISDICTION)
STAMP APPEAL NO.1 OF 1974

(On appeal from Victoria District Court Jurisdiction Stamp Appeal No.5 of 1973)

B E T W E E N

LAP SHUN TEXTILES INDUSTRIAL COMPANY LIMITED

Appellant

- and -

THE COLLECTOR OF STAMP REVENUE

Respondent

RECORD OF PROCEEDINGS
INDEX OF REFERENCE

| No. | Description of Documents | Date | Page |
|-----|--------------------------|------|------|
|-----|--------------------------|------|------|

PART I

IN THE DISTRICT COURT OF HONG KONG
HOLDEN AT VICTORIA
CIVIL JURISDICTION
STAMP APPEAL NO.5 OF 1973

- | | | | |
|----|-------------------------------------------------------------------------------------------------------|--------------------|---|
| 1. | Notice Requiring the Collector of Stamp Revenue to State a Case for the Opinion of the District Court | 19th October 1973 | 1 |
| 2. | Affidavit of John Richard Wimbush | 22nd February 1974 | 2 |

(ii)

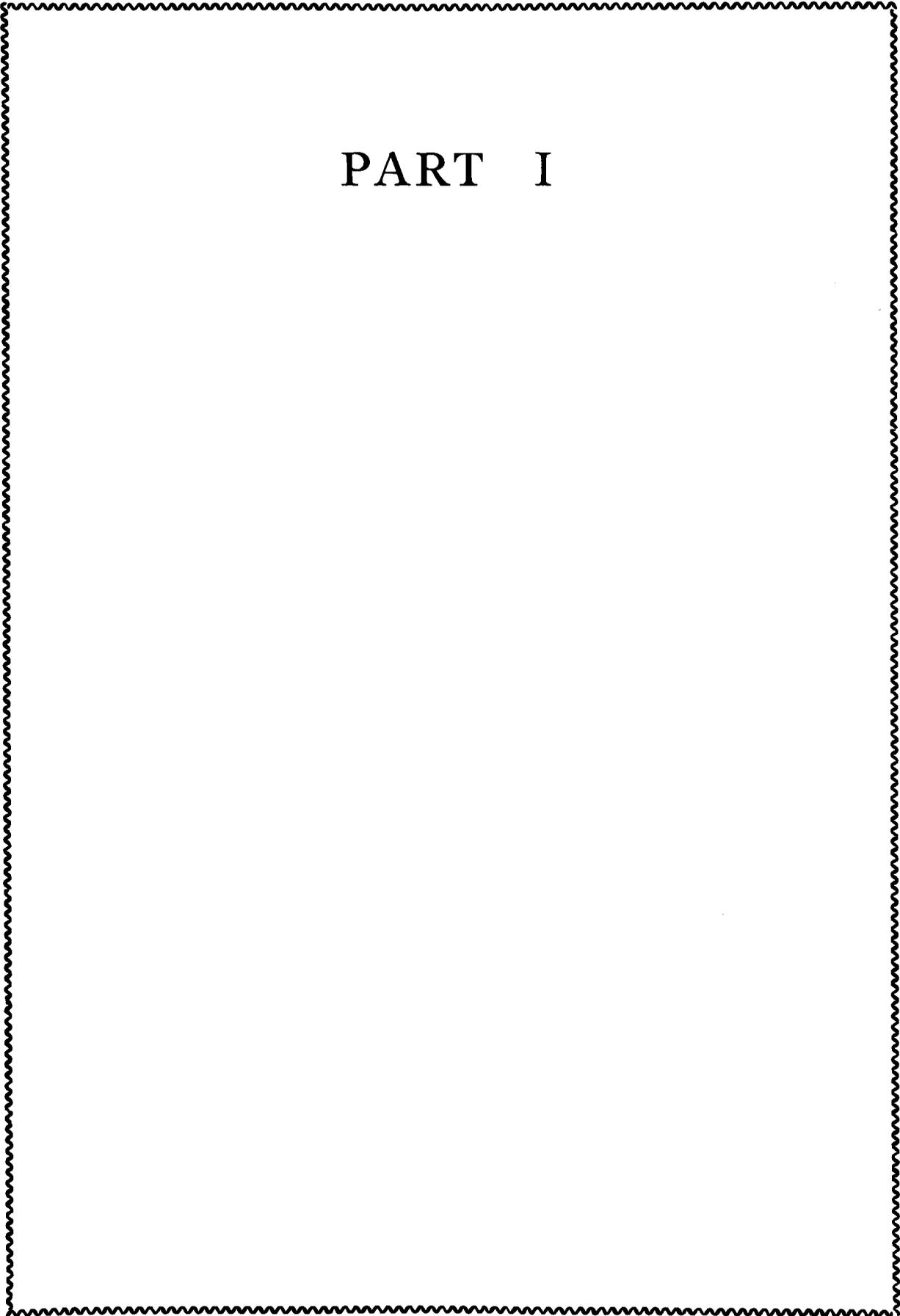
INDEX OF REFERENCE (Contd.)

| No. | Description of Documents | Date | Page |
|-----|-----------------------------------------------------------------------------------------------|------------------|------|
| 3. | Case Stated by the Collector of Stamp Revenue | 26th March 1974 | 9 |
| 4. | Notes of Evidence of the Hon. Judge Garcia | 21st June 1974 | 16 |
| 5. | Judgment of the Hon. Judge Garcia | 31st July 1974 | 22 |
| 6. | Summons Inter-Partes for Leave to Appeal to the Full Court | 7th August 1974 | 29 |
| 7. | Order of the Hon. Judge Garcia in Chambers upon hearing of the Summons of the 7th August 1974 | 14th August 1974 | 30 |

PART II

IN THE SUPREME COURT OF HONG KONG
 APPELLATE JURISDICTION
 STAMP APPEAL NO. 1 OF 1974

| | | | |
|-----|-------------------------------------------------------------------------------------------|-------------------|----|
| 8. | Notice of Appeal | 19th August 1974 | 31 |
| 9. | Judgment of the Full Court Appeal | 24th January 1975 | 33 |
| 10. | Order of the Full Court dismissing the Appeal | 24th January 1975 | 51 |
| 11. | Notice of Motion for Conditional Leave to Appeal | 28th January 1975 | 53 |
| 12. | Amended Order of the Full Court Granting Conditional Leave to Appeal to the Privy Council | 6th March 1975 | 54 |



PART I

In the
District
Court of
Hong
Kong
Holden at
Victoria

IN THE DISTRICT COURT OF HONG KONG
HOLDEN AT VICTORIA
APPEAL NO. 5 OF 1973

BETWEEN LAP SHUN TEXTILES INDUSTRIAL CO. LTD. Appellant

and

The Collector of Stamp Revenue Respondent

No. 2
Affidavit
of John
Richard
Wimbush

I, JOHN RICHARD WIMBUSH of 26 Shouson Hill Road,
Shouson Hill, in the Colony of Hong Kong, Solicitor, make oath
and say as follows :

- 10 1. I am a partner in Messrs. Deacons and have the conduct of this appeal on behalf of the Appellant Lap Shun Textiles Industrial Company Limited.
- 2. This appeal arises as a result of an assessment made by the Collector of Stamp Duty on the 2nd October 1973, a copy of this assessment is now produced to me and marked "JRW-1".
- 3. Since the date of the filing of this appeal my firm has pressed the Collector of Stamp Duty to state and sign a case in accordance with his statutory obligations set out under Section 18 of the Stamp Duty Ordinance (Cap.117).No such statement has yet been delivered.
- 20 4. On the 13th February 1974 my firm received a letter dated the 12th February 1974 from the Stamp Duty Office enclosing a new assessment copies of which are now produced to me and marked "JRW-2" and "JRW-3".
- 5. The directions of the Court are sought as to whether the assessment marked "JRW-3" is a valid assessment and the manner in which this appeal should be determined.

SWORN at the Kowloon District
Court Registry, Hong Kong this
22nd day of February, 1974

Sd. John Richard Wimbush

30 Before me,
Sd. Ho Yu Ho
Commissioner for oaths.

This Affidavit is made on behalf of the Appellant.

In the District Court of Hong Kong Holden at Victoria

5-248001 Ext.15
6738/SDO/A/11 (S.O.K1297)

This is the exhibit marked "JRW-1" referred to in the Affidavit of John Richard Wimbush Sworn before me this 22nd day of February, 1974. Sd. Ho Yu Ho
A Commissioner for oaths.

I.R.S.D. Form No.35
INLAND REVENUE DEPARTMENT
Stamp Duty Office
Club Lusitano Building,
G/F., Ice House Street,
Hong Kong.

Lap Shun Textiles Industrial Co. Ltd.
Nos. 682-684, Castle Peak Road,
Kowloon.

No. 2

10

Affidavit of John Richard Wimbush

Sir/Madam,

Assignment dated 8.2.73 of Lot Nos.365,397, 681 & 1125 in D.D. 125 - The Chartered Bank to Lap Shun Textiles Industrial Co. Ltd.

(Contd.)

I have to advise you that the Commissioner of Rating & Valuation has assessed the value of the above property at \$76,800.00.

The stated consideration is not therefore deemed to be valuable consideration for the purpose of Section 27(4) of the Stamp Ordinance, as I am of the opinion that, by reason of the inadequacy of the sum paid as consideration, the conveyance or transfer confers a substantial benefit on the transferee. The conveyance or transfer is therefore deemed to operate as a voluntary disposition inter vivos within the meaning of this Section.

20

In conformity with Section 27(2), I am of the opinion that this document attracts the following duty assessed in accordance with Section 17(3):-

| | |
|-----------------------------------------------------------------------------------|-------------------|
| Under Head 53(2) in the Schedule to the Stamp Ordinance - 2% of \$76,800.00 | \$1,536.00 |
| Less already paid | 330.00 |
| | <u>\$1,206.00</u> |
| | ===== |

I shall be obliged if you will kindly forward cheque for the above amount, together with the document, which will then be duly stamped and returned.

30

If you are dissatisfied with this assessment you may, within twenty-one days from the date hereof and on payment of the duty in conformity herewith, appeal against the assessment in accordance with Section 18 of the Ordinance.

Yours faithfully,
Sd. Wong Moon-son
For Collector of Stamp Revenue

WMS/jc

In the District Court of Hong Kong Holden at Victoria

Section 18. (1) Any person who is dissatisfied with the assessment of the Collector may, within twenty-one days after the date of the assessment and on payment of duty in conformity therewith, appeal against the assessment to the court and may for that purpose require the Collector to state and sign a case, setting forth the question upon which his opinion was required and the assessment made by him.

Appeal against assessment.
54 & 55
Vict. c.39
s. 13.

No. 2
Affidavit of John Richard Wimbush

(2) The Collector shall thereupon state and sign a case and deliver the same to the person by whom it is required and the case may, within seven days thereafter and after service thereof upon the Attorney General, be set down by such person for hearing. (Amended, 20 of 1948, s. 4)

10

(Contd.)

(3) Upon the hearing of the case the court shall determine the question submitted, and if the instrument in question is in the opinion of the court chargeable with any duty, shall assess the duty with which it is chargeable.

(4) If it is decided by the court that the assessment of the Collector was erroneous, any excess of duty which may have been paid in conformity with the erroneous assessment, together with any fine or penalty which may have been paid in consequence thereof, shall be ordered by the court to be repaid to the appellant with or without costs as the court may determine.

20

(5) If the assessment of the Collector is confirmed, the court may make an order for payment to the Collector of the costs incurred by him in relation to the appeal.

(6) In this section, "court" means "district court". (Replaced, 16 of 1961, s. 4)

Section 27. (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.

30

In the
District
Court of
Hong Kong
Holden
at
Victoria

This is the exhibit marked "JRW-2"
referred to in the Affidavit of
John Richard Wimbush Sworn before
me this 22nd day of February 1974
Sd. Ho Yu Ho
A Commissioner for oaths

STAMP DUTY OFFICE,
INLAND REVENUE DEPARTMENT,
Club Lusitano Building,
1st Floor,
Ice House Street,
Hong Kong.

TEL. NO.5-248001

No. 2

6738/SDO/A/11
(S.O. KL297)

Affidavit
of John
Richard
Wimbush

Your Ref. AITW:JRW:NC
71/2982

10

12 FEB 1974

(Contd.)

Messrs. Deacons,
Solicitors & Notaries,
1418 Tung Ying Bldg.,
Nathan Road,
Kowloon.

Gentlemen,

Assignment (Conveyance on Sale)
dated 8.2.73 of Lot Nos.365, 397,
681 & 1125 in D.D. 125 The
Chartered Bank to Lap Shun Textiles
Industrial Co. Ltd.

20

Please refer to previous correspondence resting on your
letter dated 8th February 1974.

*..... The District Officer, Yuen Long has reconsidered the
valuation of the above lots. I am pleased to inform you that
his fresh valuation as at 8th February 1973 is \$37,500.00. I
enclose herewith copy of a fresh valuation issued to your clients.

If your clients are not satisfied with the fresh
assessment they may within twenty one days from the date thereof,
appeal against the assessment in accordance with Section 18 of
the Ordinance.

30

In the
District
Court
of Hong
Kong
Holden
at
Victoria

I shall be glad if you will ask your clients to forward the stamped deed of assignment to me so that arrangements can be made to refund the excess duty to them.

Yours faithfully,

Sd. Kwok Kam-shing
for Collector of Stamp Revenue

No. 2

Affidavit KKS/ck
of John * Encl.
Richard
Wimbush

(Contd.)

In the District Court of Hong Kong Holden at Victoria

This is the exhibit marked "JRW-3" referred to in the Affidavit of John Richard Wimbush Sworn before me this 22nd day of February, 1974

Sd. Ho Yu Ho

A Commissioner for oaths

5-248001
6738/SDO/A/11 (S.O. K1297)

I.R.S.D. Form No.35
INLAND REVENUE DEPARTMENT
Stamp Duty Office
Club Lusitano Building,
1st Floor, Ice House St.,
Hong Kong.

No. 2 Affidavit of John Richard Wimbush

10 Lap Shun Textiles Industrial Co. Ltd.
Nos.682-684 Castle Peak Road,
Kowloon.

(Contd.)

Sir/Madam,

Assignment dd. 8.2.73 of Lot Nos.365, 397
681 & 1125 in D.D. 125 - The Chartered Bank
to Lap Shun Textiles Industrial Co., Ltd.

I have to advise you that the Commissioner of Rating & Valuation has assessed the value of the above property at \$37,500.00.

20 The stated consideration is not therefore deemed to be valuable consideration for the purpose of Section 27(4) of the Stamp Ordinance, as I am of the opinion that, by reason of the inadequacy of the sum paid as consideration, the conveyance or transfer confers a substantial benefit on the transferee. The conveyance or transfer is therefore deemed to operate as a voluntary disposition inter vivos within the meaning of this Section.

In conformity with Section 27(2), I am of the opinion that this document attracts the following duty assessed in accordance with Section 17(3) : -

| | | |
|----|-----------------------------------------------------------------------------|-----------|
| 30 | Under Head 53(2) in the Schedule to the Stamp Ordinance - 2% of \$37,500.00 | \$ 750.00 |
| | Less total duty already paid | 1,536.00 |
| | Excess duty refundable | \$ 786.00 |
| | | ===== |

In the
District
Court of
Hong
Kong
Holden at
Victoria

I shall be obliged if you will kindly forward your cheque for the above amount, together with the document, which will then be duly stamped and returned.

If you are dissatisfied with this assessment you may, within twenty-one days from the date hereof and on payment of the duty in conformity herewith, appeal against the assessment in accordance with Section 18 of the Ordinance.

No. 2

Yours faithfully,

Affidavit
of John
Richard
Wimbush

Sd. Kwok Kam-shing
for Collector of Stamp Revenue

10

(Contd.) .

c.c. M/s. Deacons,
/ck

In the
District
Court of
Hong
Kong
Holden at
Victoria

IN THE DISTRICT COURT OF HONG KONG
HOLDEN AT VICTORIA
CIVIL JURISDICTION
STAMP APPEAL NO. 5 OF 1973

LAP SHUN TEXTILES INDUSTRIAL CO. LTD. Appellants
and
THE COLLECTOR OF STAMP REVENUE Respondent

No. 3

Case stated
by the
Collector
of Stamp
Revenue

IN THE MATTER of Section 18 of
the Stamp Ordinance, Cap.117.

CASE STATED

10

1. On the 10th day of February, 1973 a Conveyance on Sale (hereinafter called "the assignment") was presented on behalf of the Appellants to the Kowloon Branch Office of the Respondent for stamping.
2. A copy of the assignment is annexed hereto and marked Exhibit "A". It is dated the 8th day of February, 1973 and made between The Chartered Bank of one part and the Appellants of the other part.
3. The assignment was stamped with \$330.00, being stamp duty at the rate of \$2.00 per \$100.00 or part thereof of the stated consideration of \$16,465.68 in accordance with Head 19(2) of the Schedule to the Stamp Ordinance (hereinafter called "the Ordinance"). 20
4. On the 14th day of June, 1973 and on the 30th day of July, 1973 I informed Messrs. Deacons, Solicitors for the Appellants (hereinafter called "the Solicitors"), that the District Officer, Yuen Long, had valued the property comprising the assignment at \$76,800.00. I pointed out to the Solicitors that it would therefore appear that the consideration of \$16,465.68 stated in the assignment was inadequate for the purposes of Section 27(4) of the Ordinance. They were invited to comment before an assessment calling for additional duty to be assessed under Section 27(1) of the Ordinance was issued. 30
5. The Solicitors replied on the 23rd day of July, 1973 to request me to set aside the matter for 28 days while they sought instructions from the Appellants.

In the
District
Court
of Hong
Kong
Holden
at
Victoria

No. 3

6. No further communication had since been received from the Solicitors. I therefore issued an assessment under Section 27(1) of the Ordinance to the Appellants on the 2nd day of October, 1973, calling for additional duty of \$1,206.00 calculated as follows :-

| | |
|--------------------------------------------------------------------------------|-------------------|
| Under Head 53(2) in the Schedule to the Stamp Ordinance - 2% of \$76,800.00 | \$1,536.00 |
| Less already paid | 330.00 |
| Balance payable | <u>\$1,206.00</u> |
| | ===== |

Case
stated
by the
Collector
of
Stamp
Revenue

(Contd.)

A copy of the assessment is annexed hereto and marked Exhibit "B" and is referred to as part of this case. 10

7. On the 17th day of October, 1973 the Solicitors remitted a cheque for \$1,206.00 in satisfaction of the additional duty as aforesaid. On the 19th day of October, 1973 they required me to state and sign a case in accordance with the provisions of Section 18(1) of the Ordinance with reference to the assessment of the duty on the assignment.

8. The Solicitors informed me that the purpose of the appeal is to test whether Section 27(4) of the Ordinance has any application to a transaction between a Vendor and a Purchaser in good faith and for valuable consideration. The Appellants contend that in such a purchase I have no power to raise any additional assessment over and above an assessment on the amount or value of the consideration actually paid as shown in the assignment. 20

9. I do not intend to challenge the Appellants' contention that :-

(i) The consideration of \$16,465.63 set out in Exhibit "A" is the whole consideration paid by the Appellants to the Vendor.

(ii) Such sum was reached by way of an arms length bargain and is based on a price of 15 cents per square foot. 30

(iii) The Appellants acted in good faith.

10. I contend :-

(a) that the assignment conferred a substantial benefit on the Appellants by reason of the inadequacy of the sum paid as consideration.

In the District Court of Hong Kong Holden at Victoria

(b) that the consideration of \$16,465.68 stated in the assignment was correctly deemed not to be valuable consideration for the purposes of Section 27(4) of the Ordinance and the assignment was accordingly correctly deemed to operate as a voluntary disposition inter vivos within the meaning of the same Sub-section.

No. 3

11. The District Officer, Yuen Long, has since reviewed the valuation of the property comprised in the assignment. He has revised the valuation to \$37,500.00. The Solicitors were advised of the revised valuation on the 12th day of February, 1974. On the basis of the revised valuation the assignment would attract the following duty assessed in accordance with Section 17(3) of the Ordinance : -

10

Case stated by the Collector of Stamp Revenue

| | |
|-----------------------------------------------------------------------------|------------------|
| Under Head 53(2) in the Schedule to the Stamp Ordinance - 2% of \$37,500.00 | \$ 750.00 |
| Less total duty already paid | 1,536.00 |
| Excess duty refundable | <u>\$ 786.00</u> |
| | ===== |

(Contd.)

12. The questions submitted for the opinion of the Court are -

- (1) Whether in the circumstances as aforesaid, the \$16,465.68 referred to above shall or shall not be deemed to be valuable consideration for the purposes of Section 27 of the Ordinance.
- (2) Whether or not the assignment conferred a substantial benefit on the Appellants within the meaning of Section 27 of the Ordinance.
- (3) Whether the assignment is chargeable with duty as assessed by me.
- (4) If not, with what duty is it chargeable.

20

13. The Appellants having duly expressed their dissatisfaction with my decision as being erroneous in point of law and having duly required me to state and sign a case for the opinion of the Court, this case is stated and signed accordingly.

30

Dated this 26th day of March, 1974.

Sd. F. E. Rainbow
Collector of Stamp Revenue

/ck

Stamp Duty
330.00

In the
District
Court
of
Hong
Kong
Holden
at
Victoria

2% Ad Valorem
Duty \$1,206.-
C.R. No.374
Sd. Asst.
Collector

EXHIBIT "A"

DISTRICT ADMINISTRATION, NEW TERRITORIES

23 OCT 1973

THE NEW TERRITORIES ORDINANCE (Cap. 97)

ADJUDICATED
ADJUDGED DUTY
STAMPED
Sd. Asst.
Collector

Stamp Duty-\$330
Excess Stamp
Duty -----
Registration
Fee ----- \$15

21 FEB 1973
Paid

FORM A

No. 3

Case
stated
by the
Collector
of Stamp
Revenue

23 OCT 1973

CONVEYANCE ON SALE (Section 24)

10 In consideration of \$16,465.68 (Dollars SIXTEEN THOUSAND FOUR HUNDRED AND SIXTY FIVE CENTS SIXTY EIGHT only) this day paid (the receipt whereof is hereby acknowledged) THE CHARTERED BANK a body Corporate incorporated by Royal Charter having its Head Office situate at London England but having a branch Office situate at Nos.4-4A Des Voeux Road Central Victoria in the Colony of Hong Kong as Vendor in exercise of its power of sale under and by virtue of an Indenture of Mortgage dated the 23rd day of August, 1968 and registered in the District Office, Yuen Long by Memorial No.161537 hereby assigns unto LAP SHEW

20 TEXTILES INDUSTRIAL COMPANY LIMITED whose registered office is situate at Shiu Lun Building, Nos.682-684 Castle Peak Road Kowloon in the said Colony of Hong Kong as Purchaser the Lots Nos.365, 397, 681 and 1125 in Yuen Long Demarcation District No.125 in the New Territories of the Colony for the residue of the term of years created by the Crown Lease thereof, subject to the incumbrances mentioned in the Schedule hereto. BUT ABSOLUTELY FREED AND DISCHARGED from the said Mortgage Memorial No.161537.

(1) If the Vendor is a Mortgagee, Trustee, personal representative of a deceased person or a Registered Manager, his capacity should be stated

(Contd.)

SCHEDULE

| Memorial | Date | Parties | Particulars of Incumbrances |
|----------|------|---------|-----------------------------|
| | | | Nil |

In the
District
Court of
Hong
Kong
Holden at
Victoria

As Witness the hands and seals
of the parties this 8th day of February 1973

SIGNED, SEALED and DELIVERED)
by Mr. S.G. Smallwood, the)
lawful Attorney of the Vendor)
in the presence of : -)

THE CHARTERED BANK

Sd. S. G. Smallwood
Mainland Manager

Seal

No. 3

Sd. Oscar Lai
Solicitor, Hong Kong.

Case
stated
by the
Collector
of Stamp
Revenue

SEALED with the Common Seal of)
the Purchaser and SIGNED by Mr.)
Law Shiu Lun, Managing Director)
in the presence of : -)

Sd. Law Shiu Lun
(in Chinese)

10

(Contd.)

Sd. Oscar Lai
Solicitor, Hong Kong.

Registered by Memorial No.174531 on Saturday the 3rd day of
March 1973, at

Sd. P. J. Williamson
Assistant Land Officer, New Territories

Vol. 12 Fol 145, 146, 149 & 151

EXHIBIT "B"

In the District Court of Hong Kong Holden at Victoria

TELEPHONE : 5-248001

I.R.S.D. Form No. 35

Ref.No. 6738/SDO/A/11 (S.O.K.1297)

INLAND REVENUE DEPARTMENT
Stamp Duty Office
Club Lusitano Building,
1st Floor, Ice House Street,
Hong Kong.

Lap Shun Textiles Industrial Co. Ltd.,
Nos.682-684, Castle Peak Road,
Kowloon.

No. 3

Case stated by the Collector Sir/Madam, of Stamp Revenue

2 OCT 1973

10

Assignment dated 8.2.73 of Lot Nos.365, 397,
681 & 1125 in D.D. 125 - The Chartered Bank
to Lap Shun Textiles Industrial Co. Ltd.

(Contd.)

I have to advise you that the Commissioner of Rating & Valuation has assessed the value of the above property at \$76,800.00.

The stated consideration is not therefore deemed to be valuable consideration for the purpose of Section 27(4) of the Stamp Ordinance, as I am of the opinion that, by reason of the inadequacy of the sum paid as consideration, the conveyance or transfer is therefore deemed to operate as a voluntary disposition inter vivos within the meaning of this Section. 20

In conformity with Section 27(2), I am of the opinion that this document attracts the following duty assessed in accordance with Section 17(3) :-

| | |
|------------------------------------------|-------------------|
| Under Head 53(2) in the Schedule to the | |
| Stamp Ordinance - 2% of \$76,800.00..... | \$1,536.00 |
| Less already paid | 330.00 |
| | <u>\$1,206.00</u> |
| | ===== |

I shall be obliged if you will kindly forward your cheque for the above amount, together with the document, which will then be duly stamped and returned. 30

In the
District
Court
of Hong
Kong
Holden
at
Victoria

If you are dissatisfied with this assessment you may, within twenty-one days from the date hereof and on payment of the duty in conformity herewith, appeal against the assessment in accordance with Section 18 of the Ordinance.

Yours faithfully,

No. 3
Case
stated
by the
Collector
of Stamp
Revenue

WMS/jc

Sd. WONG Moon-son
for Collector of Stamp Revenue

(Contd.)

In the
District
Court
of
Hong
Kong
Holden
at
Victoria

IN THE DISTRICT COURT OF HONG KONG
HOLDEN AT VICTORIA
CIVIL JURISDICTION
Stamp Appeal No. 5 of 1973

BETWEEN

Lap Shun Textiles Industrial Company Limited Appellant

and

No. 4

The Collector of Stamp Revenue Respondent

Notes of
Evidence
of the
Hon.
Judge
Garcia

JUDGE'S NOTES

21st June 1974

10

Coram: A. Garcia, D.J. in Court.

Mr. J.R. Wimbush of Deacons for appellant.

Mr. William Lee, C.C., for respondent.

Mr. Wimbush: S.18(1) of the Stamp Ordinance. Basic rule is that stamp duty on assignment is payable on amount of value or consideration. Phrase used for many years. 1891 Act same as Cap.117. In 1891 no provision for stamping of voluntary dispositions so that a gift not having consideration would pay a nominal duty. In 1894 estate duty first introduced - incentive to make inter vivos gifts increased and authorities losing a great amount of duty. Finance Act 20 1910. Sergeant on Stamp Duties p. 199. Section 74(1). Merely leaning on ss. (1) would not achieve desired result. S.74(5) - section identical to section 27(4) - Cap.117. No. of cases on these points - page 203 of Sergeant. I.R.C. v. Littlewoods Mail Order Stores, Ltd. Refers Baker v. I.R.C. (1923) All E.R. 566. Sergeant takes view that this case exhaustingly discusses section 74(5) (Reads judgment of Haldane, 572B - 572D). No argument that purchase subject matter of conveyance on sale was arm's length transaction. Anderson v. I.R.C. p. 491 (1938) 4 All E.R. Very little direct relevance to case before Court.

In the Wigan Coal and Iron Co. v. C.I.R. (1945) I All E.R. 392. Again I
District don't think we need refer more to this case. Parties gave good
Court consideration and was an arm's length transaction. I.R.C. v.
of Littlewoods Mail Order Stores (1962) 2 All E.R. 279. Position
Hong of this case: In effect you have a series of transactions
Kong between associated parties, purpose of which is to attempt a
Holden stamp duty saving. No suggestion that these documents were
at negotiated at arm's length. Whole transaction although valuable
Victoria consideration given - no suggestion that proper consideration has
_____ been given. Case has no application to case in Court. 10

No. 4 There is extremely little authority on this section at all.
The four cases cited are virtually the whole of the reported
Notes authorities on this section. Monroe on Stamp Duties discusses this
of problem. Page 115 para. 2 to para. 1 page 117. What do words in
Evidence section 27(4) in brackets refer. It is clear 'any conveyance or
of the transfer' is qualified by words in brackets. As I read the case
Hon. stated they are saying that although stamp duty on assignment is
Judge payable on consideration or value or upon the value of property
Garcia or shares transferred whichever is the higher. In each one of the
cases cited not dealing with documents with a bona fide purchaser 20
(Contd.) for value. Submission is that by virtue of words in brackets
section 27 which apply to any conveyance or transfer has no
application to the ordinary arm's length sale. There is a second
method to decide whether submission I have made is correct 'by
reason of the inadequacy of the sum paid... conveyed or
transferred.' What is 'confers a substantial benefit'? Use of
word 'confer' in case where there is a grant, bestowing or giving.
'Confer' can only be used where it is intention of vendor to do so.
What section says is not that the vendor confers but conveyance 30
confers. No difference in saying 'conveyance' or 'vendor'. Do not
think you could put forward argument that you could separate vendors
and deed itself. It is consistent with earlier submission if
conveyance or transfer referred to in Section 27(4) is excluded,
'confer' is topical. In all the cases vendor or assignor intend to
confer a substantial benefit. Monroe's example, page 116, in which
he says it would be cheaper for A to transfer half of Blackacre for
Whiteacre. If conveyance is giving something over and above which
he gets back then it could be said to be conferred. Suggest that
when two parties agree to sale and purchase of property at arm's
length transaction, neither can be said to confer any benefit. 40
Suggest what I believe to be intention of legislation, and mischief
they have in mind. In taxing statute Court follows words used.
Rules relative to interpretation of conditions of this type of
legislation must state with certainty tax to be paid.

In the
District
Court of
Hong Kong
Holden at
Victoria

No. 4

Notes of
Evidence
of the
Hon. Judge
Garcia
(Contd.)

Two questions: (a) Sale between two parties at arm's length for valuable consideration of piece of land. At time of assignment both parties believe price paid is a fair market price - 12 months after sale purchaser discovers under land valuable minerals and property is in fact worth 100 times he in fact paid for it. No time of operation of assessment under Section 27(4). When valuable minerals are discovered collector has right to turn round and say that conveyance conferred a substantial benefit. Therefore stamp duty wanted would be on the substantial benefit conferred. There is no certainty on amount of stamp duty payable on such a document because under our laws both vendor or purchaser are liable to stamp duty on the assignment. Possible for stamp duty to be greater than amount of consideration received. 1st para. of letter of 2.10.73 from I.R.D. to appellants. Once you agree that parties are acting in good faith and for valuable consideration rule of market place applies. Stamp duty should be on amount of consideration.

10

Section 27 has an application to both assignments of property and transfer of shares. How do you assess stamp duty on transfer of a share - s.18A. We all know that price of shares in a public stock exchange does not reflect underlying value of the shares. From time to time price paid on stock exchange would be far in excess of underlying assets and at other times far below underlying assets. If words in brackets in Section 27(4) do not have the meaning I have submitted, Collector has the right to assess duty on such of the contract notes for shares in companies.

20

If answers in affirmative not only do they have to concede that the duty is uncertain but the words in brackets have no meaning. His power to re-assess is limited to transfers or conveyances within meaning of that section but not to every conveyance or transfer. Collector has no power to re-assess duty where assignment is in good faith and for valuable consideration. Para. 9 of case stated: Appellant company in my submission a concession which brings appellant's assignment within the words in brackets of that section.

30

Para 10(b) of case stated: he is saying that you cannot bring yourself within brackets if you did not pay the full value. He is then submitting that the basis upon which assignments and transfers is the formula I have suggested.

40

In the
District
Court of
Hong Kong
Holden at
Victoria

Nobody knows what the motives are between buyers and sellers who work at arm's length. Motives are as diverse as the range of human experience. Use of expression 'amount of value or consideration', Collector is entitled to assess duty on the consideration shown. He can assess under section 27 when the transaction is other than at arm's length.

No. 4

Case for appellant.

Notes of
Evidence
of the
Hon. Judge
Garcia
(Contd.)

Mr. Lee: Refer to interpretation of relevant section 27(4). By reading section without words in brackets - any conveyance or transfer would be chargeable with duty under Head 53. Valuable consideration not defined in Ordinance except in sub-section. 'Inadequacy', 'substantial benefit'. To fall within exception purchaser must show that clear case when purchase made in good faith - appellant would also have to show that the valuable consideration has been paid. Is purported consideration valuable consideration in his opinion. (Refer to Bakers case page 573 para. E and F.) Valuable consideration has been decided by the Collector (para 572, para.E). This clearly indicates that it goes to support my contention Commissioner given power to consider if valuable consideration is there. When appeal is lodged against Collector's opinion as to assessment Court is asked to look at assessment made by Collector whether consideration is actually valuable consideration - whether opinion by Collector that it is not valuable consideration is based on solid facts. Actual value of property is \$37,000. Estimated value of property at date of assignment is more than 100% of consideration paid. Fact speaks for the inadequacy of sum paid for property. Since sum paid is so far below market value of property conveyance confers a substantial benefit on appellant. Clearly this transaction confers benefit on person to whom property is transferred. Refer Monroe p.115 para. 2 Mr. Wimbush submits that all the English cases deal with gifts. Urging Court to look at section itself and ignore that section only refers to gifts inter vivos and nothing more. 2 parties might have struck a good bargain but not necessary that State should join in and enhance luck of purchaser. (Wigan Coal and Iron Co. Ltd. v. I.R.C. p.395, para. E, F, G - and p.396A.)

10

20

30

In the
District
Court of
Hong Kong
Holden at
Victoria

No. 4
Notes of
Evidence
of the
Hon. Judge
Garcia
(Contd.)

Question posed by my learned friend: Assessment 12 months after assignment. Question will not arise. Value of property is assessed at date of conveyance or assignment of property. Once assessed it is final. 2nd Question about shares: As far as shares are concerned they are merely bundles of rights. Value should be market value. Distinguished from underlying assets themselves. If shares are bought at market price, assessment based on market price other than on underlying assets.

Mr. Wimbush: I think my learned friend has done much 10
to demonstrate confused arguments of Collector. Submission
is that higher stamp duty is payable if argument is correct
- expression he used is that Revenue would get the best out
of transaction. He referred to sale to bosom friend. Don't
think it is problem which confronts Court. Sale between
best friends - disposing at price below value he can get from
arm's length bargain. He is conferring benefit. Section 27(4)
would apply. What is in dispute is what happens when there is
an arm's length bargain. Marriage always regarded as good 20
consideration. If words in brackets taken out quite obviously
settlement made in consideration of marriage would be caught
by section. Suggest that he has not answered the 2 questions
I have posed - answer to 1st question - value of property on
date of assignment. Vendor, purchaser and valuer from Rating
and Valuation, each is called upon to value. Shares are more
than bundles of rights - in same way as conveyance. Consider-
ation between price paid for property and price paid for
share in market place are eventually the same thing.
Submission you cannot escape the problem so easily merely
by saying there is a difference. I think that the interpretation 30
which I have submitted to you is the only one which produces
logical construction, consistent with the language used - only
practical manner in which this matter may be dealt with. We
are very much dealing with transaction in good faith. Reason
why judge said in Wigan case that he left out words is because
he is dealing with certain facts. I think it is very clear he
has been trying to say what Collector has contended he could
have said so and come to same conclusion. Lastly my learned
friend confused two separate matters - whether there is a right 40
to go behind assessment of Collector - this is not the problem.
My contention is that he has no power to assess where purchaser

In the
District
Court of
Hong Kong
Holden at
Victoria

No. 4

Notes of
Evidence
of the
Hon. Judge
Garcia
(Contd.)

is inside those brackets.

Judgment reserved.

(Sd.) A. Garcia
District Judge
21.6.74

31st July 1974

Coram: A. Garcia, D.J. in Court.
Mrs. Annie Wong of Deacons for appellants.
Mr. William Lee, C.C. for respondent.

Judgment read out in Court.

10

(Sd.) A. Garcia
District Judge
31.7.74

14th August 1974

Coram: A. Garcia, D.J. in Chambers.
Mrs. Annie Wong of Deacons for applicant.
William Lee, C.C., for respondent.

Mrs. Wong: Summons to appeal against Your Honour's
judgment of 31.7.74 Case involving points of
laws of interpretation.

Mr. Lee: Attorney General has no objection to appeal.

20

Leave granted.
Costs reserved.

(Sd.) A. Garcia
District Judge
14.8.74.

Certified true copy

.....
Sd. EVA KWAN /S.A.T.
16.8.74.

In the District
Court of
Hong Kong
Holden at
Victoria

IN THE DISTRICT COURT OF HONG KONG
HOLDEN AT VICTORIA
CIVIL JURISDICTION
STAMP APPEAL ACTION NO. 5 OF 1973

No. 5

BETWEEN

Judgment of
the Hon.
Judge
Garcia

Lap Shun Textiles Industrial
Company Limited

Appellant

and

The Collector of Stamp Revenue

Respondent

1974 June 21
July 31

J U D G M E N T

10

Coram: Garcia, D.J. in Court.

This is an appeal by way of case stated from the assessment of the Collector of Stamp Revenue in respect of the stamp duty assessed and paid on a conveyance of sale of certain property situated in Yuen Long, New Territories from the Chartered Bank as vendors to the appellants as purchasers, on the 5th day of February 1973.

The facts are fully set out in the case dated 2nd March 1974 and the issues which fall to be decided are summarised in paragraph 12 thereof.

20

The relevant subsections of Section 27, Cap.117 under which the Collector based his assessment read as follows:

"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.

(2) Notwithstanding anything in Section 17 the Collector may be required to express his opinion under the Section on any conveyance or transfer operating as a voluntary disposition inter vivos,

30

In the District
Court of
Hong Kong
Holden at
Victoria

No. 5
Judgment of
the Hon.
Judge
Garcia
(Contd.)

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." 10

For the purposes of this appeal the Commissioner has conceded that (i) the consideration amounting to \$16,465.68 set out in the conveyance on sale in question is the whole consideration paid by the appellants to the Chartered Bank (ii) the said amount was arrived at by way of an arms length bargain and such figure is based on a price of 15 cents per square foot and (iii) the appellants acted in good faith. 20

Section 27 of the Stamp Ordinance is in effect similar, mutatis mutandis, to Section 7 of the Finance (1909-10) Act, 1910, of the United Kingdom and although it has been submitted that there are few cases on this particular section decided in the United Kingdom, nevertheless such cases do have some relevance in the present case. The appellants in their argument consider that these cases which were cited do not apply to the present case since none of them deal with documents which relate to bona fide purchasers for value. I do not agree with this contention as the facts in an authority to be cited do not necessarily require to be similar to the case to be decided upon before such authority has any relevance. What is in fact required here is what has been decided previously on the interpretation of the relevant section, and the cases cited, in my view, do set out the principles upon which the section has been interpreted by the Courts in England. 30 40

Substantially, the argument against the Commissioner

In the
District
Court of
Hong Kong
Holden at
Victoria

No. 5

Judgment of
the Hon.
Judge
Garcia

(Contd.)

applying Section 27(4) of the Ordinance to the conveyance on sale in question is that he has no power to do so because the conveyance on sale represents an arms length transaction, the parties to the sale having acted in good faith, and that therefore the conveyance comes within the exception to Section 27(4) of the Ordinance, such conveyance "being a disposition made in favour of a purchaser or incumbrancer or other person in good faith and for valuable consideration." I would fully agree with this contention if the subsection had only been expressed in the following manner: "(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." It would then be clear that the present conveyance on sale, being one for valuable consideration and one made in good faith, would be excepted from the provisions of Section 27. But the sub-section does not stop there - it goes on to state what is not valuable consideration for the purposes of the subsection and such definition in my view must apply to the words "valuable consideration" within the exception. In this respect, the following extracts from Viscount Finlay's judgment in the case of Baker v. Inland Revenue Commissioners (1923) All E.R. Rep. H.L., at page 573 are very much to the point:

".....I think that the conveyance was one for valuable consideration, and, of course, it was in good faith. That disposes, so far as the present case is concerned, of the first part of Sub-section (5), but the real pinch of this case arises on the second portion of the Sub-section which begins by saying what is to be deemed to be a conveyance or transfer operating as a voluntary disposition inter vivos, and then goes on :

'and (except where marriage is the consideration) the consideration for any conveyance or transfer shall not for this purpose be deemed to be valuable consideration where the Commissioners are 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.'

In the District
Court of
Hong Kong
Holden at
Victoria

No. 5
Judgment of
the Hon.
Judge
Garcia

(Contd.)

"..... then the Clause goes on to confer a certain power upon the Commissioners with regard to the adequacy of the consideration. I confess that I have very considerable doubt whether the full extent of these words as they appear in the section was appreciated at the time when it was passed into law. As soon as you have a provision that voluntary conveyance shall be subject to the same duty as if they were on sale, the question arises: what will happen supposing that a sum is mentioned as consideration, but it is an inadequate sum? It is perfectly clear that if no provision were made to meet that case there might be wholesale evasion of the provision; some sum which was not a mere nominal sum, but was a wholly inadequate consideration might have been inserted, and unless the case had been dealt with, the provisions of the Act might have been altogether nugatory. The latter part of the section was inserted for that purpose. Many people might have been disposed at first sight to read this provision as merely intended to prevent such inadequate consideration being put in for the purpose of evading the Act. Some power in the Commissioners to deal with such cases was obviously necessary but what we have to deal with is the words used and I think it is impossible to escape from the wide words there employed. The Commissioners have devolved upon them the duty of forming an opinion whether '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.'"

10

20

30

It seems to me that the above statement puts the matter beyond doubt. I would also add that in my opinion the words "any conveyance" used in the sub-section are wide enough to embrace conveyances on sale even where the consideration is arrived at after an arms length bargain, if the Collector is of opinion that the sum paid by the buyer is inadequate and which would result in a substantial benefit being conferred on the latter. I do not agree with the submission made on behalf of

40

In the
District
Court of
Hong Kong
Holden at
Victoria

No. 5

Judgment of
the Hon.
Judge
Garcia

(Contd.)

the Appellants that the word "conveyance" has the same connotation as the word "vendor" in the sub-section, since in my view, even without the knowledge of the vendor and without an intention on his part of so doing, the purchaser can have a benefit conferred upon him by the conveyance where it secures to him property at a price which the Collector considers inadequate for the purposes of the Ordinance. This reasoning, and the wording of the Section, necessarily rejects the contention that the Section is only dealing with gifts or conveyances made purely for a nominal consideration. I think it can be said that if a purchaser buys property at a price much lower than the price prevailing in the market, he would certainly be conferred a benefit in the difference between the two prices, although the Vendor never intended to confer such a benefit on the purchaser, and even if the purchaser did not purposely seek such a benefit.

10

Again it is instructive to read part of the judgment of Wrottesley, J., in *Wigan Coal and Iron Co. Ltd. v. Inland Revenue Commissioners* (1945) 1 K.B.D. 395, which bears directly on the powers of the Commissioners under the sub-section in question:

20

"This is an uncompromising subsection (Sect. 74(5)) which provides that all transfers which are not inter alia (I leave out "made in good faith"; I have not to deal with that) for valuable consideration are to be deemed to be transfers operating as voluntary dispositions inter vivos, and the consideration is not (this is the effect of the appendix) valuable consideration where the Commissioners are of opinion, as they are now, that the transfer confers a substantial benefit on the transferee. It is not for the Commissioners to examine and see whether the transaction can be called a voluntary disposition. It is only for them to see whether there is inadequacy in the consideration or some other circumstances from which they can come to the opinion that the transfer confers a substantial benefit on the transferee. That phrase, I think, (and everybody agrees with me; I have asked them) means a benefit over and above what is paid for at the time. The statute therefore decides that if a transfer is not a

30

40

In the District
Court of
Hong Kong
Holden at
Victoria

No. 5
Judgment of
the Hon.
Judge Garcia

(Contd.)

disposition for valuable consideration - and valuable consideration is not consideration which is inadequate in the view of the Commissioners - or for other circumstances confers a substantial benefit on the transferee, it is to be deemed to be a transfer operating as a voluntary deposition. So that, topic, as I have said, is not one that is confided to the Commissioners for them to determine one way or the other."

It is to be noted that in the judgment that the word "transfer" had not been assigned a meaning synonymously with the word "transferer" as it would have been if what this appellant's say is correct that the use of the words "conveyance" and "vendor" have no difference in usage in the Sub-section. In my view since that Collector is of opinion that the conveyance confers a substantial benefit on the purchaser, by reason of the big difference between the market value of the property (\$37,500) as assessed by the District Officer, Yuen Long, and the consideration expressed in the said conveyance, the provisions of Section 27(4) of the Ordinance apply to it. 10

I therefore answer the questions posed in paragraph 12 of the case stated as follows : -

- (1) the consideration shown in the conveyance on sale as \$16,465.68 is not deemed to be valuable consideration for the purpose of Section 27(4) of the Ordinance;
- (2) Yes. A substantial benefit has been conferred on the appellants by the Conveyance on Sale.
- (3) Yes. The Conveyance on Sale is chargeable with duty of \$750 as assessed by the Collector. 30

In the circumstances, no answer is required to (4).

In the
District
Court of
Hong Kong
Holden at
Victoria

No. 5

Judgment of
the Hon.
Judge Garcia

This appeal is therefore dismissed with costs to be
taxed on Scale V to the Respondent.

Sd. A. Garcia

District Judge

Solicitors: Deacons; Attorney General

(Contd.)

In the
District
Court
of Hong
Kong
Holden
at
Victoria

IN THE DISTRICT COURT OF HONG KONG
HOLDEN AT VICTORIA
CIVIL JURISDICTION
STAMP APPEAL ACTION NO. 5 OF 1973

BETWEEN: LAP SHUN TEXTILES INDUSTRIAL Appellant
 COMPANY LIMITED

and

The Collector of Stamp Revenue Respondent

No. 7
Order to
the Hon.
Judge
Garcia
in
Chambers
upon
hearing
of the
Summons
of the
7th
August
1974

BEFORE HIS HONOUR JUDGE GARCIA IN CHAMBERS

O R D E R

10

Upon hearing the Solicitors for the Appellant and the Counsel for the Respondent and upon reading the application for the Appellant herein IT IS ORDERED that the Appellant do have leave to appeal to the Full Court and the Costs of this application be reserved.

Dated the 14th day of August, 1974.

C. K. CHAN

Seal by Deputy Registrar.

PART II

In the
Supreme
Court of
Hong Kong

IN THE SUPREME COURT OF HONG KONG
APPELLATE JURISDICTION
NO. / OF 1974
(V. C. J. STAMP APPEAL NO.5 OF 1973)

No. 8
Notice of
Appeal
Dated 9th
August
1974

BETWEEN

LAP SHUN TEXTILES INDUSTRIAL COMPANY Appellant
LIMITED

and

THE COLLECTOR OF STAMP REVENUE Respondent

10

NOTICE OF APPEAL

Take notice that (pursuant to the leave of His Honour Garcia District Judge given on the 14th day of August, 1974) the Court of Appeal will be moved so soon as Counsel can be heard on behalf of the above-named Appellant on appeal from the judgment of His Honour Garcia District Judge given on the 31st day of July, 1974 whereby it was decided that :-

- 20
1. the consideration shown in the Conveyance on Sale dated the 8th of February 1973 made between The Chartered Bank of the one part and the Appellant of the other part is not deemed to be valuable consideration for the purpose of Section 27(4) of The Stamp Ordinance in the circumstance as set out in the case stated by The Collector of Stamp Revenue dated the 26th day of March 1974.
 2. that a substantial benefit has been conferred on the Appellant by the said Conveyance on Sale.
 3. that the said Conveyance on Sale is chargeable with duty of \$750.00 as assessed by the Collector.

For an order that :-

- 30
- (1) the said decision be reversed.
 - (2) the costs of the hearings before the Learned Judge and of this appeal to be paid by the Respondent.
 - (3) such further and other orders as may be necessary.

In the
Supreme
Court of
Hong Kong

No. 8
Notice of
Appeal
dated 9th
August
1974

(Contd.)

And further take notice that the grounds of this appeal are that the Learned Judge was wrong in his decision in that :-

1. he failed to consider or adequately to consider the exception created by the words "(not being a disposition made in favour of a purchaser or incumbrancer or other person in good faith and for valuable consideration)" in Section 27(4) of the Ordinance.
2. he failed to consider or adequately to consider the question of the bona fides of the Appellant in the transaction of the said Conveyance in the context and within the meaning of "a purchaser" in Section 27(4) of the Ordinance. 10
3. he erred in law in holding that the consideration amounting to \$16,465.68 set out in the Conveyance on Sale is not "valuable consideration" within the meaning of Section 27(4) of the Ordinance.
4. he erred in law in holding that the Conveyance on Sale "confers a substantial benefit" on the Appellant.
5. he erred in law in his interpretation of Section 27(4) of the Ordinance that the words "any conveyance or transfer" in the second part of the sub-section do not have the same meaning as the same words "any conveyance or transfer" at the commencement of the said sub-section, so that the limitation created by the words "(not being a disposition made in favour of a purchaser or incumbrancer of other person in good faith and for valuable consideration)" apply to both references to "any conveyance or transfer" in the said sub-section of the Ordinance. 20 30

And further take notice that the Appellant propose to apply to set down this appeal in the Supreme Court (Pending) List.

Dated this 19th day of August, 1974.

Seal by

J. R. OLIVER
Registrar.

This notice was issued by Messrs. Deacons, Solicitors for the Appellant, whose address for service is 1417-1418 Tung Ying Building, 100 Nathan Road, Kowloon, Hong Kong.

To The Respondent, The Collector of Stamp Revenue of Club Lusitano Building, Ice House Street, Hong Kong. 40

(Estimated time one day).

Sd. Deacons

In the
Supreme
Court
of
Hong
Kong

IN THE SUPREME COURT OF HONG KONG

(APPELLATE JURISDICTION)

STAMP APPEAL NO. 1 OF 1974.

No. 9

BETWEEN

Judgment
of the
Full
Court
Appeal

LAP SHUN TEXTILES INDUSTRIAL CO., LTD.

Appellant

and

THE COLLECTOR OF STAMP REVENUE

Respondent

Coram : Huggins & McMullin, JJ.

J U D G M E N T

Huggins, J. :

This is an appeal arising in another case where the Collector 10
of Stamp Revenue has taken the view that property has been conveyed
at an under value and where he has in consequence sought to charge
the conveyance with duty as a voluntary disposition under Head 53(2)
by virtue of s.27 of the Stamp Ordinance. The point which is now
taken did not arise (or at least if it did arise was not taken) in the
recent case of Zung Fu Company, Limited v. The Collector of Stamp
Revenue 1973 H.K.L.R. 496, a fact to which attention was drawn in an
article at (1974) 4 H.K.L.J. 280. In passing I would, with respect,
observe that the learned author of that article appears to have mis-
understood the ratio decidendi of that case for nowhere in my judgment 20
or in the argument was it ever suggested that, if the conveyance was
properly deemed to be a conveyance operating as a voluntary disposition
inter vivos, the duty on the conveyance was to be assessed otherwise
than under Head 53: what was in issue was the date to be taken by the
Collector for the valuation to determine whether the sum paid as con-
sideration was inadequate.

In the
Supreme
Court
of
Hong
Kong

The present appeal is against a judgment of Judge Garcia dismissing an appeal by way of case stated against an assessment by the Collector of Stamp Revenue of the duty payable on a conveyance dated 8th February 1973. It was contended that the Collector had no power under s.27 to change the conveyance as a voluntary disposition inter vivos, but the learned judge held that he was entitled so to do.

No. 9

Judgment
of the
Full
Court
Appeal

(Contd.)

It is common ground that the conveyance was a conveyance on sale, which prima facie fell to be assessed under Head 19(2) on the amount or value of the consideration on the day of the date of the instrument. The stated consideration was \$16,465.68 and it is conceded that that was the whole consideration for the conveyance. It was further agreed that in fixing the consideration the parties to the agreement bargained at arm's length and that the Appellants (the purchasers) acted in good faith.

10

The contention of the Collector was that the true value of the property was not \$16,465.68 but \$37,500 and that by virtue of the provisions of s.27 the duty was therefore assessable under Head 53(2). Section 27(1) provides that, with exceptions which are not material to this case, any voluntary disposition inter vivos and "any conveyance or transfer operating as a disposition inter vivos" shall be charged under Head 53 and it is not disputed that if the present conveyance comes within that subsection then it is chargeable under Sub-head (2) of Head 53. The broad subject of dispute is whether the conveyance is one operating as a voluntary disposition inter vivos. Subsection (4) then provides :

20

"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".

30

In the
Supreme
Court
of
Hong
Kong

No. 9

Judgment
of the
Full
Court
Appeal

(Contd.)

The Collector took the view that the Appellants' conveyance was one which was not "a disposition made in favour of a purchaser ... in good faith and for valuable consideration" and was therefore not excluded from being deemed to be a voluntary disposition inter vivos. His reasoning was that the words "valuable consideration" had the special meaning assigned to them by the second part of the subsection, that is to say a consideration which the Collector did not think inadequate and which he did not think, by its inadequacy, resulted in the conveyance's conferring a substantial benefit on the Appellants as purchasers. The appellants, on the other hand, submit that the words "valuable consideration" in the parenthesis are not governed by the second part of the subsection and that they (the Appellants) are what they appeared to be, purchasers in good faith for valuable consideration, so that their conveyance is not to be deemed to be a conveyance operating as a voluntary disposition inter vivos.

10

On any view this is a most unhappily worded provision and the first observation one must make about it is that when, in the second part of the subsection, the Legislature said "it shall not be deemed to be" it must have intended to say "it shall be deemed not to be", for there is no reason why the consideration for any conveyance or transfer should be deemed to be valuable consideration. Secondly, in the first part of the subsection the words "shall ... be deemed to be a conveyance ... operating as a voluntary disposition inter vivos" cannot, it seems to me, mean anything more than "shall operate as a voluntary disposition inter vivos".

20

The second part of sub-s.(4) is concerned with a wholly artificial concept, namely that a consideration which is in law valuable is to be deemed to be not valuable - with the consequence that the conveyance operates as a voluntary disposition inter vivos. In the end I think the case turns upon the meaning of the words "for this purpose" in that part of the subsection. No "purpose" of any kind having been previously mentioned the Legislature presumably intended to say "for the purpose of deciding this", but even so it is still arguable to what "this" refers. If the meaning is "for the purpose of deciding, in the words of the parenthesis, whether a conveyance is 'a disposition made in favour of a purchaser ... in good faith and for valuable consideration'" then the Collector is right, but if it is "for the purpose of deciding whether a conveyance not within the words

30

40

In the
Supreme
Court
of
Hong
Kong

No. 9
Judgment
of the
Full
Court
Appeal
(Contd.)

of the parenthesis 'shall for the purposes of this section be deemed to be a conveyance ... operating as a voluntary disposition inter vivos' the Appellants are right. Grammatically the Collector's interpretation may be open to the greater criticism, but it has the merit that only within the parenthesis does one find any previous reference to 'valuable consideration'. It is argued on behalf of the Appellants that the Collector's interpretation is open to the more serious criticism that it makes nonsense of the parenthesis. Both sides agree that the subsection must be read as a whole and it is said that the Collector's interpretation would produce the result that the second part negates the words in parenthesis : thus, the present conveyance would be excluded by the words in parenthesis in the first part of the subsection but would be included by the second part. Indeed the suggestion is that any conveyance or transfer thus excluded by the first part would necessarily be included by the second part. I am not persuaded that that is the position. A conveyance upon sale made in good faith and for a consideration which was both valuable and adequate would be excluded and would not be affected by the second part of the subsection. Counsel for the Appellants suggested to us alternative and simpler versions of the section which, he said, would have sufficed if the Crown's present interpretation had been intended, but in my opinion they would not have had precisely the same effect. I recognize that the Collector's interpretation may produce some anxiety for conveyancers but I venture to think that any fears they may have are exaggerated and that it would not, as counsel argues, necessitate an application for an adjudication in every case of a conveyance on sale. I respectfully agree with the author of the article previously referred to when he said (at 1974) 4 H.K.L.R. 286) :

"It seems that if the consideration is plainly nominal a later purchaser would be entitled to reject the title and the land officer to refuse registration of a memorial. In any other case it appears that a title cannot be questioned unless a document of title can be shown to be improperly stamped. Presumably the land officer would be bound to register a memorial unless he could show that the stamp was inadequate."

10

20

30

40

In the
Supreme
Court
of
Hong
Kong

No. 9

Judgment
of the
Full
Court
Appeal

(Contd.)

In this connection see Re Weir and Pitt's Contract (1911) 55 Sol. Jo. 536. It is notorious that valuation is not an exact science so that the Collector is unlikely to pray in aid s.27(4) unless the consideration is manifestly inadequate. In the majority of cases, I would have thought, a manifestly inadequate consideration was itself strong evidence that the vendor either intended to confer a substantial benefit on the purchaser or that the conveyance was not made in good faith. It must be rare that a conveyance on sale is effected bona fide at a gross under value and it is only when the benefit to the purchaser is, in the opinion of the Collector, "Substantial" that s.27(4) may be invoked. Whether this is a case where such an opinion was justified we do not know, for the court was not called upon to review the valuation. What we do know is that the Crown itself first set up one valuation at \$76,800 and then another at \$37,500, thereby conceding that its first valuation was wrong. The second may also be wrong, but s.6A gives the Collector power to ascertain the value of the property "in such manner as he thinks fit". 10

It is the interpretation of the Appellants which in the event appears to me to produce insurmountable difficulty. Mr. Mumford submits, in effect, that the second part of the subsection is a proviso (with which I agree), but unless it is a proviso which relates to the words in parenthesis it seems to me to make nonsense : if a conveyance is not taken outside the operation of the first part of the subsection by the application of the words in parenthesis that conveyance "shall for the purposes of this section be deemed to be a conveyance ... operating as a voluntary disposition inter vivos" (emphasis supplied). However one reads the second part of the subsection it could not then reverse that mandatory result. 20 30

It has been argued that when the Legislature alluded to cases where "the conveyance ... conferred a substantial benefit" it was contemplating only cases where there was a gift or what counsel described as a "quasi gift". In support of this contention we were referred to the Oxford English Dictionary for the meaning of the word "confer" and to a passage in the speech of Viscount Cave, L.C. in Baker v. Commissioners of Inland Revenue 1924 A.C. 270, 275 where he said :

"I think that means that a conveyance, although for value, comes within the section if it confers upon the grantee a substantial benefit 40

In the
Supreme
Court
of
Hong
Kong

beyond what that grantee gives, or (in other words) if it is in substance a gift to the person taking under it after allowing for any consideration which he brings in. In such cases the conveyance does confer a benefit - that is a gift - on the person to whom the conveyance is made, and to that extent is to be treated as a voluntary disposition".

No. 9
Judgment
of the
Full
Court
Appeal
(Contd.)

The argument is (i) that a gift necessarily involves an intention to give and that a conveyance cannot "confer" a benefit which was not intended, and (ii) that, in any event, the second part of sub-s. (4) should not be accorded a wide interpretation which would cover the conferring of an unintended benefit. I am not persuaded that a conveyance cannot confer a benefit unless the assignor in fact intends to convey that benefit: I think it is sufficient that the conveyance shows he intended to convey the property. As to the second limb of the argument, it is true that no case has been cited to us which is on all fours with the present. Both Baker v. The Commissioners of Inland Revenue and Wigan Coal and Iron Company, Limited v. Inland Revenue Commissioners 1945 1 All P.R. 392 were cases where it was possible to infer an intention to benefit the assignee and it is by no means clear that Viscount Cave was of opinion that the subsection was confined to such cases : it was enough for the decision of the appeal before him that such cases are within the equivalent English provision. For my part I do not think the words used by the Legislature indicate such a limitation or that to read "benefit" as a synonym for "gift" can be justified.

10

20

The only basis upon which I might have felt able to allow the appeal would have been if we could say that the result is one which the Legislature could not have intended. I recognize that it is just possible to conceive of cases where serious injustice might result from the Collector's interpretation. For example, if two ignorant parties contracted bona fide for the sale and purchase of a piece of land which they mistakenly thought was useful for nothing but grazing but which notoriously had a much greater value for some other purpose, it might be that stamp duty assessed under Head 53(2) would so far exceed the price the purchaser agreed to pay that the only way the parties could pay that duty would be for the purchaser to borrow on the security of his equitable interest in the land itself, while if the seller had agreed to pay half the duty he might be

30

40

In the
Supreme
Court
of
Hong
Kong

No. 9
Judgment
of the
Full
Court
Appeal
(Contd.)

rendered bankrupt. As against this, one must remember that the purpose of the Stamp Ordinance is to raise revenue and that a sale at an inadequate price, even though unintentionally inadequate, might tend to deprive the Revenue of duty which would normally be payable. One cannot be certain that the Legislature did not intend to protect the Revenue against just such a contingency, leaving the Collector to exercise his discretion reasonably. One may not like a provision which thus leaves the fate of Her Majesty's subjects to the discretion of a civil servant, but that must not lead us to close our eyes to the ordinary meaning of the language used or to give that language a strained interpretation in order to avoid a remote possibility of injustice. As Lord Cairns said in Partington v. The Attorney General (1869) 4 L.R.H.L. 100, at p.122:

10

"... as I understand the principle of all fiscal legislation, it is this : If the person sought to be taxed comes within the letter of the law he must be taxed, however great the hardship may appear to the judicial mind to be."

For these reasons I think the learned judge in the court below came to the right conclusion and I would dismiss the appeal.

20

24th January 1975.

In the
Supreme
Court
of
Hong
Kong

IN THE SUPREME COURT OF HONG KONG

(APPELLATE JURISDICTION)

STAMP APPEAL NO. 1 OF 1974

—————
BETWEEN

No. 9
Judgment
of the
Full
Court
Appeal

Lap Shun Textiles Industrial
Company Limited

Appellant

and

The Collector of Stamp Revenue

Respondent

(Contd.)

Coram : Full Court (Huggins & McMullin, JJ.)

24 JAN 1975

10

—————
J U D G M E N T
—————

McMullin, J. :

The stated consideration recited in the conveyance on sale with which the present appeal is concerned was the sum of \$16,465.68. The assignment was stamped under Head 19(2) of the Schedule to The Stamp Ordinance as such conveyance, the appropriate duty within that description being \$350. This sum was duly paid. Subsequently at the Collector's request the District Officer, Yuen Long, assessed the value of the property at \$76,800. This assessment was subsequently revised and for it was substituted a figure of \$37,500. The Collector took the view that the consideration was in any event inadequate and, purporting to act under the powers conferred upon him by Section 27 of the Ordinance, he called upon the transferees (who are the appellants on the present appeal) to pay additional duty assessed under Head 53(2)

20

In the
Supreme
Court
of
Hong
Kong

No. 9

Judgment
of the
Full
Court
Appeal

(Contd.)

of the Schedule. The Solicitors for the transferees had already paid the excess duty demanded prior to the revision of the estimated value of the land by the District Officer and had, while doing so, requested that a case be stated under the provisions of Section 18(1) of the Ordinance since it was their intention to challenge the Collector's action in calling for the payment of additional duty. It is admitted that there is in any event a sum of \$786 due to be refunded to the transferees consequent upon the revision of the initial estimate of the value of the land by the District Officer. It is also conceded that the sum of \$16,465.68 is the whole consideration paid by the appellants to the vendor; that that sum was reached by way of an arm's length bargain and is based on a price of 15¢ per square foot; and that the appellants acted in good faith in this transaction. The Collector contends that he was entitled to demand the revised duty because the consideration for the transfer was inadequate and therefore, in his opinion, conferred upon the appellants a substantial benefit within the meaning of Subsection 4 of Section 27.

10

We have had the benefit of some interesting argument upon a section of the Ordinance which does not appear to have received very much judicial attention, although I confess, with respect to counsel for the appellant, that some of the contentions appeared to me to be over-subtle. Subsection 4 is not happily worded but it yields at first sight what appears to be a fairly simple meaning. The first part of the subsection provides in effect that every conveyance or transfer other than one made in good faith and for valuable consideration shall be deemed to be a voluntary disposition inter vivos; the second part, or appendix as it has been called, provides in effect that no conveyance or transfer will be included in the excepted class of transfers where the Collector is of the opinion that the conveyance or transfer confers a substantial benefit on the transferee. The final words of the subsection provide that the Collector must form his opinion by reference to two matters : (a) the adequacy or otherwise of the sum paid by way of consideration; or (b) the other circumstances of the conveyance or transfer. In other words the Collector has no power to deal with any of the excepted class of conveyances under Section 27 but he is, within certain limits, entitled in effect to say whether any conveyance is within the excepted

20

30

40

In the
Supreme
Court
of
Hong
Kong

—
No. 9

Judgment
of the
Full
Court
Appeal

(Contd.)

class. In any case in which a sum of money has been paid by way of consideration which is not a mere nominal sum and which would, in the ordinary course of contract, be valuable consideration in the eye of the law the Collector is given a special power to draw down the verdict of the law against its being considered valuable consideration. His power to do so is, however, circumscribed : any consideration which would normally be a valuable consideration for a transfer will continue to be a valuable consideration unless the Collector can say that it confers a "substantial benefit" upon the transferee. This, roughly speaking, was the line taken by Mr. Lee for the Collector at the hearing of the present appeal.

10

I cannot accept Mr. Mumford's contention that, if the Collector's view of the interpretation of the subsection is correct, the second part thereof would operate to sweep back into the ambit of the subsection all such transfers as had been excepted from its operation by the words in brackets in the first part. Those words, he contends have been rendered nugatory if the appendix is to be interpreted as the Collector would have us interpret it. I do not think that can be the case. A transfer which is, in the ordinary sense, for valuable consideration will be exempted from the operation of the section unless and until the Collector has made a determination the result of which will be to declare that in the eyes of the law it was not in the first instance for valuable consideration at all. That will not occur in every case in which the only feature to attract the Collector's attention is the amount of the consideration but, presumably, only in cases which show a striking discrepancy between what might be described as the market value of the land and the purchase price actually paid for it.

20

30

Again it does not appear to be correct to say that if it falls to the Collector to determine whether or not any transfer is within the excepted class of transfers and to do so by reference to the adequacy of the consideration there would then be no case in which the Collector would not be called upon to express his opinion under Subsection 2 of Section 27. Subsection 2 reads as follows :

"(2) Notwithstanding anything in section 17, the Collector may be

40

In the
Supreme
Court
of
Hong
Kong

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."

No. 9
Judgment
of the
Full
Court
Appeal
(Contd.)

Under Section 27 the Collector is given two quite separate powers which are relevant to the matters we are now considering. The first of these is the power to say in respect of any transfer which is, admittedly and ostensibly, a voluntary disposition inter vivos, what amount of duty [in accordance with provisions of Section 17(1)] is chargeable in connection with that disposition. That is the power conferred by Subsection 2. The power conferred by Subsection 4 is quite different, it is the power in effect to say whether a disposition is a disposition inter vivos or not. Subsection 2 envisages a situation which may arise when parties to a voluntary disposition actually solicit the Collector's opinion while Subsection 4 envisages the case where the Collector of his own motion queries the nature of a disposition which has been brought to his attention. Of course it is true that where he does query a disposition of his own motion on the basis that it appears to be for a consideration which is inadequate he will, in effect, be doing so by reference to what he deems to be its proper market value and may therefore be said to be performing his function of assessment under Subsection 2 of Section 27 and under Section 17 as well as that under Subsection 4 of Section 27. But the two operations are nevertheless distinct.

The real substance of this appeal, as I see it, lies in Mr. Mumford's contention that the final words of Subsection 4 of Section 27 are simply not apt to cover a genuine situation of purchase and sale. He rightly points out that in neither of the two cases upon which the learned District Judge relied were the English courts confronted with such a situation. In Baker v. The Commissioner of Inland Revenue (1)*, although the House of Lords was considering the provisions of Section 74 of the Finance Act, 1910, which are for all material purposes identical in terms with the provisions of Section 27 of the Ordinance, the facts were widely different from a simply question of purchase and sale. What was involved was an elaborate and complicated resettlement of certain estates by the tenant in tail in remainder

(1)* (1924) A.C. 270.

In the
Supreme
Court
of
Hong
Kong

No. 9
Judgment
of the
Full
Court
Appeal
(Contd.)

of those estates, who was then a minor, for the principal purpose of rescuing his mother and father and their other children from straitened circumstances. A modest annual income and a life estate was secured to the minor as a quid pro quo for the settlement. There was however, as the learned Lord Chancellor pointed out, no cash consideration at all. Although the Commissioners in their case stated referred to the inadequacy of the consideration the learned Lord Chancellor read that as a finding that by reason of the circumstances of the case generally the conveyance did convey a substantial benefit on the persons to whom the property was conveyed. In other words the case was one which concerned not so much the "inadequacy of the consideration" as the "other circumstances" of the conveyance and it was principally in relation to those circumstances that the Commissioners came to the conclusion that a substantial benefit had been conferred. The other learned judges were of the same opinion. Nevertheless their views as to what kind of conveyance would come within the wording of the appendix is of the greatest interest in the present case. At page 275 the learned Lord Chancellor, Viscount Cave having recited the words of the English provision, which are in terms identical with those in Section 27(4), goes on to say :

10

20

"I think that means that a conveyance, although for value, comes within the section if it confers upon the grantee a substantial benefit beyond what that grantee gives, or (in other words) if it is in substance a gift to the person taking under it after allowing for any consideration which he brings in."

30

Lord Haldane was of the view that :

"... the conveyance was one where by reason of the inadequacy of the consideration and also because the whole transaction, from its beginning and in its substance, was a provision made by the son for the family much more than for himself, the conveyance

In the
Supreme
Court
of
Hong
Kong

No. 9

Judgment
of the
Full
Court
Appeal

(Contd.)

conferred a substantial benefit on those
in whose favour the property was
conveyed."

What is apparent from these judgments is that in addition to
the cases of pure gift which are obviously within the section
there are also two other categories. The first comprises
cases in which although there is consideration it is of a
wholly nominal nature and the second cases in which although
the consideration could not be described as nominal it is of
such an inadequate nature that the primary purpose of the
transfer is seen to be an attempt to benefit the transferee.

10

In Wigan Coal and Iron Company, Ltd. v. Inland Revenue
Commissioners (2)* the facts were if anything more remote still
from a situation of purchase and sale. What they amounted to
was that a shareholder in the appellant company, pursuant to
the Company's scheme for redeeming a part of the paid up capital,
received a hundred and thirty-four shares in another company which
were transferred to him, in effect, at a cost of 10s. although
the value of the shares was 149. It might be said that the
case was one involving a nominal rather than any inadequate
consideration but Wrottesley J. considering the same provisions
which were before the court in Baker's case (1)* and which
confront us now said :

20

"It is not for the commissioners to examine
and see whether the transaction can be
called a voluntary disposition. It is
only for them to see whether there is
inadequacy in the consideration or some
other circumstances from which they can
come to the opinion that the transfer
confers a substantial benefit on the
transferee. That phrase, I think, (and
everybody agrees with me; I have asked
them) means a benefit over and above what
is paid for at the time."

30

Now it seems to me that Mr. Mumford makes an arguable point
when he says that the whole notion of conferring a benefit,

*(1) (1924) Appeal Cases 270.

*(2) (1945) 1 All E.R. 392.

In the
Supreme
Court
of
Hong
Kong

————
No. 9
Judgment
of the
Full
Court
Appeal

(Contd.)

as it has been understood and interpreted in those two cases, is quite foreign to the state of affairs which arises when two parties, at arm's length and in good faith (as is conceded to be the case here) enter into an agreement for the sale and purchase of a piece of property and the stated consideration is neither illusory, nominal nor insubstantial. If, he says, it had been the intention of the Legislature to provide that duty should be paid either upon the value of the stated consideration or else upon the value of the property, whichever be the greater, it would have been very simple so to provide. Although at first sight the very wide words of the appendix to Subsection 4 would seem to leave the matter wholly at large within the discretion of the Collector it is, in counsel's view, highly questionable whether they were intended to permit him to intrude upon the domain of bona fide commercial transactions at all. Mr. Mumford argued that where parties are buying and selling property in the ordinary way and where there is no question of fraud or concealment or of any indirect motive for the sale it is difficult to apply the notion of conferring benefit within the special meaning of this section. I confess I found myself, upon reflection, more drawn by this argument than I was at the time when he advanced it. As he put it the section was intended to catch transfers in the nature of pure gifts and also to apply to what he termed quasi-gifts. It might perhaps be more helpful, for the purposes of his agreement, to refer to the latter category as pseudo-sales. Where A and B agree upon the price for a certain piece of land and the price though small, even very small, is still substantial must not the conclusion be that each of them has gained something which is of substantial value to himself? I find it difficult to dismiss the point as simply verbal. If a transaction were as fair as is conceded to have been the case here and if the parties to such a transaction were questioned, and if they answered honestly, would not each of them allege that he had received exactly as much as he had hoped and be disinclined to admit that the opposite party had been the substantial beneficiary under the agreement? In those circumstances is the Collector entitled to intervene and point out that by the standards of the market one party has wholly over-borne the other? In short where the consideration is substantial can it reasonably be said to be inadequate? The Legislature instead of making the value of the property the determinant of the quantum of duty has resorted to the language of benefit. It is that usage which makes it difficult to avoid

10

20

30

40

In the
Supreme
Court
of
Hong
Kong

No. 9
Judgment
of the
Full
Court
Appeal
(Contd.)

looking beyond the transfer itself to the intention of the parties. It would I think in the ordinary way be conceded that the notion of a benefit necessarily involves the existence of a benefactor and a beneficiary and that it would only be in a loose or analogical sense that the thing given could be said to confer a benefit. In answer to this it may be said as the learned District Judge said that by using the words "conveyance or transfer" rather than words such as "transferor" or any cognate term the Legislature intended those words to be understood in a sense special to the subsection as excluding any implication of will or intention. Read in that way however the words of the subsection disclose a disturbing enlargement of the Collector's powers. There may be many cases in which the transferor will be content with what might appear to a shrewder man a very poor bargain, and the Collector will feel entitled to intervene. But even in the case of a moderately poor bargain where, let us say, the land has gone for something like 4/5ths of its reputed market value a zealous incumbent of the office of the Collector might see fit to regard even that as conferring a substantial benefit upon the transferee. If, in cases where the amount of the consideration is the significant factor, the practice of the Collector is to be established wholly without regard to the intention of the parties and if every transfer which is not very close to the rate of some current notional market price is to be thought of as conferring some degree of benefit on the transferee it may be difficult to establish, more difficult still to maintain, a rule of practice supple enough to serve the interests of justice and stable enough to avoid the appearance of caprice. For example, given that a certain estate in land is worth \$1,000 a stated consideration for its transfer of \$1 would clearly be so nominal and unrealistic that it could not be said to be other than inadequate. For the same estate a consideration of \$999 could raise no question. Between these two extremes the Collector may find that it is difficult to establish a point, related simply to the question of price, at which he ought to question the adequacy of the consideration. It might, indeed, be said that the history of the present assessment is a fair illustration of the practical difficulties confronting the Collector in his role of measurer-of-benefit if

10

20

30

40

In the
Supreme
Court
of
Hong
Kong

No. 9

Judgment
of the
Full
Court
Appeal

(Contd.)

the law is to be read as he would have it. Originally he thought that the stated consideration was roughly one quarter the true value of the property; at present his opinion has settled upon a value which is only twice the amount of the contract figure. That is a downward revision in the region of 50%. The Ordinance gives no means to the parties of challenging his figures or of supplying alternative figures of their own to establish the market rate. On such a startling review it is difficult for the court, let alone for the parties, to feel that his interpretation of the vagaries of the market is secure or that, if pressed, he might not revise his opinion again. But even if now correct is a consideration 50% lower than the market rate the proper point to declare a "substantial benefit"?

I have entered upon the submissions of counsel in some detail because I have not found it easy to resolve these doubts - notwithstanding the apparent simplicity of the language of the subsection. Nor is a simple answer given by the decided cases. Although, as Wrottesley J. points out, when dealing with the position of the commissioners in England (in the passage cited supra), the Collector in Hong Kong is not asked to say whether the transaction can be called a voluntary disposition there will be cases when it will not be possible for him to deal with the question which is left to him to answer without incidentally becoming involved with the selfsame considerations which would be relevant to resolve the former question. Certainly, in cases other than those of simple sale and purchase his opinion that there has been a substantial benefit can only be formed by having regard to the whole nature of the disposition including the intention of the parties. I think it is basic to Mr. Mumford's argument that this must be so in every case and that the Collector is not allowed simply to deem a substantial benefit where there is nothing more to guide him than some notional inadequacy in the purchase price. But it is here, to my mind, that the argument runs into difficulty.

It is true that it is the law and not the Collector which "deems" the consideration not to be valuable consideration once he has declared the situation to be one of "substantial benefit" to the transferee. The fact that there has

In the
Supreme
Court
of
Hong
Kong

No. 9

Judgment
of the
Full
Court
Appeal

(Contd.)

to be a "deeming" denotes the intention of the Legislature to create an artificial category of transfers : transfers which are not, in the ordinary sense either outright gifts or bona fide sales at all. Prima facie the Collector is not asked to deem anything but simply to decipher the evidence; it is upon his opinion that a transaction is to be allocated to this intermediate category. If the Collector were obliged by Subsection 5 to form his opinion in every case by reference to the circumstances of the transaction generally and was not entitled in any case simply to restrict his scrutiny to the amount of the purchase price it might be argued that in no case would the law deem a transfer to be a voluntary disposition save where he could say that it already was so in substance. But the subsection separately and disjunctively provides for the case of inadequate consideration, and here it would seem that something like an independent power to deem is given to the Collector who need look no further nor make any wider inquiry before giving his opinion.

10

In cases such as Baker v. The Commissioner of Inland Revenue (1)* and the Wigan Coal and Iron Company, Ltd.'s case (2)* it may be that the Collector will be obliged to decide that there has been a substantial benefit because the transaction is in substance a gift or benefit to the transferee. That, as it seems to me is the ratio of those cases. But they are decisions which seem to relate primarily to circumstances other than mere inadequacy of consideration. For that reason, and notwithstanding the compelling words quoted above from the judgment in Baker's case (1)*, neither of those cases can be said to afford conclusive support to Mr. Mumford's contention. Where it is not the "other circumstances" of the transaction but purely the "inadequacy of the sum paid as consideration" which is in question, I can find no compelling reason to say that the Collector should not be allowed to interpret his powers as permitting him, in turn, to deem that there has been a "substantial benefit" irrespective of what the parties themselves may have felt or intended in relation to their transaction.

20

30

(1)* (1924) A.C. 270.

(2)* (1945) 1 All E.R. 392.

In the
Supreme
Court
of
Hong
Kong

—————
No. 9

Judgment
of the
Full
Court
Appeal

(Contd.)

We were informed that this was in the nature of a test case, a fact which, coupled with the dearth of authority and the assertion of counsel that the Collector has not hitherto employed his powers in this way, did not render my initial hesitations any the easier to dispel. However, for the reasons given, but not without some reluctance I too have come to the conclusion that the words of Subsection 4 are to be read simply as they stand and that the appeal must be dismissed.

In the
Supreme
Court
of
Hong
Kong

IN THE SUPREME COURT OF HONG KONG
APPELLATE JURISDICTION
STAMP APPEAL NO.1 OF 1974
(FROM V.C.J. STAMP APPEAL NO.5 OF 1973)

BETWEEN LAP SHUN TEXTILES INDUSTRIAL COMPANY LIMITED Appellant

and

No. 10

Order of
the
Full
Court
dismissing
the
Appeal

THE COLLECTOR OF STAMP REVENUE Respondent

BEFORE THE HONOURABLE MR. JUSTICE HUGGINS AND
THE HONOURABLE MR. JUSTICE McMULLIN IN FULL COURT

O R D E R

10

Dated the 24th day of January, 1975

Upon reading the Notice of Motion dated the 19th day of August, 1974 on behalf of the Appellant by way of appeal from the Judgment of His Honour Judge Garcia given on the 31st day of July, 1974, whereby it was ordered that : -

1. the consideration shown in the Conveyance on Sale dated the 8th day of February, 1973 made between the Chartered Bank of the one part and the Appellant of the other part is not deemed to be valuable consideration for the purpose of Section 27(4) of The Stamp Ordinance in the circumstance as set out in the case stated by The Collector of Stamp Revenue dated the 26th day of March, 1974;
2. that a substantial benefit has been conferred on the Appellant by the said Conveyance on Sale; and
3. that the said Conveyance on Sale is chargeable with duty of \$750.00 as assessed by the Collector.

20

And upon reading the said judgment.

And upon hearing Counsel on behalf of the Appellant and Counsel on behalf of the Respondent.

30

In the
Supreme
Court
of
Hong
Kong

IT IS ORDERED that the said judgment of His Honour Judge Garcia, dated the 31st day of July, 1974, be affirmed, and that this appeal be dismissed with costs to be paid by the Appellant to the Respondent or his Solicitor, such costs to be taxed.

No. 10

Seal by

Order
of the
Full
Court
Dismissing
the Appeal

C.G. Doyle
Acting Assistant Registrar.

(Contd.)

In the
Supreme
Court
of
Hong
Kong

IN THE SUPREME COURT OF HONG KONG

APPELLATE JURISDICTION

STAMP APPEAL NO.1 OF 1974

Sd. C. G. Doyle

Acting Assistant (V. C. J. Stamp Appeal No.5 of 1973)

Registrar

No. 12

7th April 1975

Amended
Order
of
the
Full
Court
Granting
Con-
dition-
al leave
to Appeal
to the
Privy
Council

BETWEEN LAP SHUN TEXTILES INDUSTRIAL COMPANY LIMITED

Appellant

Amended by consent
of both parties.

and

Sd. Mr. P.K. LEE
Crown Counsel

THE COLLECTOR OF STAMP REVENUE

Respondent

Sd. Deacons

BEFORE THE HONOURABLE MR. JUSTICE HUGGINS AND
MR. JUSTICE PICKERING IN COURT

O R D E R

10

Upon hearing counsel for the Appellant and counsel for the Respondent and upon reading the Notice of Motion filed herein on the 28th day of January 1975, IT IS ORDERED that leave be granted to the Appellant to appeal to Her Majesty in Council against the Judgment of the Full Court herein dated the 24th day of January 1975 conditional upon the Appellant within three months from today entering into good and sufficient security of the sum of \$5,000.00 by giving a letter of undertaking for payment thereof to the satisfaction of the Registrar of this court 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 obtaining an Order granting it final leave to appeal or of the appeal being dismissed for non-prosecution or of Her Majesty in Council ordering the Appellant to pay the Respondent's costs of the appeal (as the case may be).

20

IT IS FURTHER ORDERED that the said Appellant shall prepare and dispatch the record to England within three months from today.

In the
Supreme
Court
of
Hong
Kong

IT IS FURTHER ORDERED that costs of this Application
to be costs in the Appeal.

Dated the 6th day of March, 1975.

Seal by C.G. Doyle
Acting Assistant Registrar.

————
No. 12

Amended Order
of the Full
Court Granting
Conditional
Leave to
Appeal to the
Privy Council

(Contd.)