

**Ram Swarup Vs. Joti and anr.**

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**Court :** Allahabad

**Decided On :** Feb-20-1933

**Reported in :** AIR1933All321

**Appellant :** Ram Swarup

**Respondent :** Joti and anr.

**Judgement :**

Mukerji, Ag. C.J.

1. This is a stamp reference made by a learned Munsif through the District Judge of Bareilly under the following circumstances: The plaintiff before the learned Munsif in Suit No. 327 of 1932 in the Court of the Munsif of Pilibhit brought the suit, out of which this reference has arisen, to recover a certain sum of money on foot of a bond which had been sold in his favour by defendant 2 in the suit on 6th September 1928, defendant 1, presumably being the executant of the bond. By this sale deed the plaintiff purchased not only the bond in suit but also 28 other bonds all sold to him by defendant 2. The sale consideration was Rs. 2,425 although at the date of the sale the total amount due on the several bonds sold was a much larger sum. The sale deed bore a stamp duty of Rs. 5. The question raised is whether the duty is sufficient. The learned Munsif himself thought that the stamp of Rs. 5 might be sufficient although he was not quite certain in his mind. He consulted the Chief Inspector of Stamps and that officer was of opinion that a stamp duty should have been calculated treating the sale deed as 29 sale deeds,

there being one sale deed for each of the 29 bonds. He was of opinion that Section 5, Stamp Act, applied and each bond should be treated as a 'distinct matter'.

2. The first thing that is to be considered is whether the sale deed really comprises or relates to several distinct matters within the meaning of Section 5, Stamp Act and therefore the charge should be the aggregate amount of the duties on each separate instrument each comprising or relating to one of such matters as would be chargeable under the Act. If the bonds are to be treated as 'distinct matters,' then if a grove be sold, the numerous trees standing on the grove must also be treated as distinct matters. Similarly the argument may be pressed forward with a great deal of force that when a sack of wheat is sold each grain of wheat in the sack should be treated as a distinct matter. The expression is 'distinct matters' and not/ 'distinct articles'. Distinct matters would be comprised in an instrument, if different transactions are sought to be evidenced by the same deed. So long a transaction is one and the same it would not comprise distinct matters simply because the goods or properties dealt with by the transaction happen to be more than one. If by one transaction a zamindari share a house and some furniture be sold, then nobody would say that the sale deed comprises or relates to several distinct matters and that the duty should be paid separately for each of the articles or properties sold and the aggregate value settled as the consideration of the sale deed should be split up and apportioned to each of the properties sold moveable or immovable.

3. The Chief Inspector of Stamps has stated in Ms letter that the view taken by him is supported by the Board of Revenue of the United Provinces and also by the Board of Revenue of the Madras Presidency. But no case reported or unreported has been laid before us and I am not in a position to consider the grounds on which the view has been entertained. On principle, however, and on an independent reading of Section 5, I am clearly of opinion that it has no application. Although in my opinion Section 5 does not apply it is necessary to find out what would be the stamp duty payable on the document as the stamp reference is before us and we should not content ourselves with leaving the entire point undecided simply because none of the views taken by the Munsif and the Chief

Inspector of Stamps respectively appeals to me. Article 62, Schedule 1, Stamp Act, applies to the case of a 'transfer' (which includes a sale) of any interest secured by a bond. In such a case the duty to be paid is the duty payable on the bond if the same does not exceed Rs. 5 and if the duty exceeds Rs. 5 then Rs. 5. It has been contended on behalf of the plaintiff that the duty payable, where more than one bond is sold, must be the aggregate of the duties paid for each bond provided the aggregate does not exceed Rs. 5 and if the aggregate sum exceeds Rs. 5 then Rs. 5. The argument is based on Section 13, General Clauses Act (10 of 1897), which says that, unless there is anything repugnant in the subject or context, words in the singular shall include the plural and vice versa. To apply Section 13 we have to see whether there is anything repugnant in the context or not. In my opinion the very fact that the duty on the bond to be sold is to be considered makes it impossible for us to apply the rule of interpretation contained in Section 13, General Clauses Act. If Section 13 be applied we shall have to read Article 62(c)(i) as follows:

If the duties on | The duties with which such bonds... do not | such bonds are chargeable. exceed Rs. 5.

4. But the expression 'the duties on such bonds' would be meaningless unless we added the word 'aggregate' before the word 'duties' or we added words 'sum total of the duties' before the word 'duties'. Under well-known rules of interpretation we are not entitled to add words to the language of the statute in order to interpret it. The very fact that the duty already paid on a bond is to be considered to be the duty payable on the deed of transfer implies that Article 62 contemplates the case of a transfer of a single bond, and the rule is that if the bond bears a stamp duty below Rs. 5 then the sum so paid will be the duty on the deed of transfer; but if the duty paid on the bond is Rs. 5 or more, then the duty payable on the deed of transfer would be Rs. 5 and no more. If the rule as it stands with words in the singular is applicable to only one bond and if in the case of a bond for which a duty exceeding Rs. 5 has been paid can be transferred by a deed bearing a stamp duty of Rs. 5 only. It is difficult to believe that the legislature meant that if ten bonds each paying a duty of more than Rs. 5 be transferred, the duty paid would be the same as the duty paid for the transfer of a single bond. I am, therefore, of opinion

that there is something in the context which precludes the application of Section 13, General Clauses Act to Article 62 Clause (c), Schedule 1, Stamp Act. If Article 62 be ruled out, the question will be what is the proper duty payable on the deed of transfer in question. Section 2, Clause (10), Stamp Act defines 'conveyance' as including

a conveyance of sale and every instrument by which property whether moveable or immovable is transferred inter vivos and which is not specifically provided for by Schedule 1.

5. If Art, 62 goes out of consideration then the deed of transfer in this case falls within the definition of 'conveyance' as already described. I can find no other category within which to place sale deed under consideration. In Article 23, Schedule 1, we are told the duty to be paid for a conveyance which is not a transfer chargeable under Article 62 is, under Article 23, according to the amount of the sale consideration which as I have already stated, is Rs. 2425, The duty payable would under Article 23, Schedule 1, be Rs. 25. My answer to the reference is that Section 5, Stamp Act, does not apply to the case nor does Article 62, Clause (c), Schedule 1, apply and that the correct article to apply is Article 23, Schedule 1, Stamp Act, and that the proper duty payable is Rs. 25.

**King, J.**

6. The instrument in question transferred the interests in 29 bonds. The consideration for the transfer was Rs. 2,425, although the sum of the amounts due on the bonds was Rupees 6,040-5-3. The point which we are asked to decide is whether the instrument should be held to be an instrument 'comprising or relating to several distinct matters' within the meaning of Section 5, Stamp Act, 1899. The learned Munsif who made the reference held that the instrument was clearly a transfer within the meaning of Article 62(c) which provides for the duty chargeable on an instrument of transfer of any interest secured by a bond. But he doubted whether under Section 5 the instrument should be held to comprise or relate to 29 'distinct matters' and therefore to be chargeable with the aggregate amount of the duties with which 29 instruments of transfer, each transferring the interest secured

by one bond, would be chargeable.

7. In my opinion, the provisions of Section 5 do not apply. I do not think the expression 'distinct matters' in Section 5 can be held to mean or to include distinct items of property. Take the case of a sale-deed transferring two houses and a grove of 50 trees for a consideration of Rs. 5,000. Such an instrument is a 'conveyance' as defined in Section 2(10). Under Article 23 the duty is chargeable according to the amount of consideration for the conveyance. The consideration being Rs. 5,000 the duty is readily ascertainable from the scale set forth in Article 23. Now, if it is held that Section 5 is applicable to such an instrument on the ground that it relates to several distinct items of property, and therefore to several 'distinct matters,' then it would be chargeable with the aggregate amount of duties chargeable on 52 instruments, i. e., one instrument for each house and one for each tree. Although the parties might have agreed to a lump sum as consideration for the sale of the whole lot of property, it would be necessary for them to put some arbitrary valuation upon each item in order that the aggregate amount of duties might be ascertained. Such a procedure seems not merely vexatious but contrary to the language of the statute. Article 23 requires the duty to be charged on the amount of consideration for the conveyance and not on the amount of consideration for each item of property included in the conveyance. Even if the details of the consideration were set forth, by specifying the price of each item of property, I do not think that the position would be altered. For the purpose of charging duty we have to look to the total consideration for the conveyance and not to the items included in the total. Similar principles are applicable to an instrument of transfer (Article 62).

8. In my opinion, the expression 'distinct matters' is equivalent to distinct transactions. One transaction may comprise or relate to one hundred distinct items of property. But if it is one transaction then Section 5 will not apply. In the case before us, there was one transaction transferring 29 bonds for a consideration of Rs. 2,425 and I do not think any distinction can be made, from the point of view of interpreting Section 5 between actionable claims and other classes of property. No authority has been shown to us in support of the view that Section 5 is applicable to an instrument such as the one in question. The Chief Inspector of Stamps

states that the Boards of Revenue in the United Provinces and Madras have taken that view, but no decisions by these authorities have been shown to us; so we are unable to take their reasoning into consideration. If there is any judicial authority for the proposition that a sale-deed comprising several items of property should be held to comprise several 'distinct matters' within the meaning of Section 5, it is inconceivable that no such authority can be cited, as such sale-deeds are very frequently executed. For the above reasons I hold that Section 5 does not apply to the instrument in question.

9. A further point has been raised in arguments before us. It is suggested that Article 62(c) applies only to an instrument transferring the interest secured by one bond, and that an instrument transferring the interests secured by two or more bonds would be a 'conveyance' governed by Article 23. I regret that I am unable to concur in this view. Article 62(c) enacts that the proper stamp duty on an instrument of transfer 'of any interest. secured by a bond,' if the duty on such bond does not exceed Rs. 5 'shall be the duty with which such bond is chargeable<sup>1</sup>, and in any other case shall be Rs. 5.' The Article speaks of 'a bond.' We are admittedly bound to follow the well-known rule of interpretation embodied in Section 13, General Clauses Act, 1897, i.e., that words in the singular shall include the plural, unless there is anything repugnant in the subject or context. So, we must apply the rule to bonds (in the plural) unless there is any such repugnancy. I cannot see any such repugnancy, as it seems to me that the words can be read in the plural without difficulty, thus: The proper stamp duty on a transfer of any interests secured by bonds shall be the duties with which such bonds are chargeable, if the duties on such bonds do not exceed Rs. 5, and shall be Rs. 5 in any other case.

10. It is argued that the expression 'the duties' would be meaningless unless we add some words such as 'the sum total of the duties' or 'the aggregate amount of the duties.' It is true that the expression, 'the duties' would have to be understood as meaning the sum of the duties, but I think the extra words can be tacitly understood without being expressed. The language of Article 62(a) may be referred to by way of example. This lays down that the proper stamp duty on a transfer of shares (plural) shall be one-half of the duty payable on a conveyance (No. 23) for a consideration equal to the value of the share (singular). Now in this

case it is beyond controversy that the word 'share,' in the second column, must be construed as including the plural, because' the plural 'shares' is used in the first column. So, it is absolutely necessary to read the last words in the second column as 'equal to the values of the shares.' Is this expression meaningless? I think not. In my opinion it means equal to the sum of the values of the shares, or the aggregate amount of the values of the shares and it can readily be understood in that sense without any extra words being expressly added. Similarly, in Article 62(c) I see no difficulty in understanding the expression 'the duties' as meaning the sum of the duties without any extra words being expressly added. It is a fundamental principle of the interpretation of a statute that one should, if possible, make sense of it and should not reject any expression as meaningless 'ut res magis valeat quam pereat'

11. In Article 62(c) I think there is no real difficulty in applying the rule to two or more bonds as well as to one bond. Neither the learned Munsif nor the Chief Inspector of Stamps seem to have felt any such difficulty. They assumed that Article 62(c) was applicable, although 29 bonds were transferred by one sale-deed. If it is held that Article 62(c) applies only to the transfer of one bond and if it is further held that Section 5 does not apply to this case then I think it follows that the instrument under consideration must be treated as a 'conveyance' under Article 23. To hold that an instrument transferring one bond is a 'transfer' (Article 62) and that an instrument transferring two bonds is a 'conveyance' (Article 23) involves such a strange and apparently illogical system of classification that I should be reluctant to impute any such intention to the legislature. To hold that the statute has fixed a maximum of Rs. 5 on an instrument transferring any number of bonds of any value does not seem to me to involve any impossible or improbable assumption. It is clear that a maximum duty of Rs. 5 is fixed on an instrument transferring one bond. If no distinction is made as regards duty between the transfer of a bond securing Rs. 1,000 and the transfer of a bond securing a lakh of rupees, I fail to see why there should necessarily be any distinction as regards duty between a transfer of two bonds securing a total sum of Rs. 1,000 and a transfer of two bonds securing a total of a lakh of rupees.

12. For the above reasons I regret that I cannot accept the view that the word 'bond' \_ in Article 62(c) must be read only in the singular and not in the plural. I agree with the learned Munsif that Article 62(c) applies to the instrument. Putting the case at its lowest, there is at least some doubt whether Article 2(c) does not apply, and the benefit of doubt in a fiscal status must be given to the subject.

**Niamatullah, J.**

13. This is a reference under Section 60, Stamp Act, 2 of 1899. The case is one in which an obligee under about twenty-nine simple money bonds and mortgage-deeds has transferred his rights for one lump sum as consideration without specifying the consideration in respect of any one of them. The relevant provisions of the Stamp Act, to be considered are Section 5 and Article 62(c). Section 5 runs as follows:

Any instrument comprising or relating to several distinct matters shall be chargeable with the aggregate amount of the duties with which separate instruments, each comprising or relating to one of such matters, would be chargeable under this Act.

14. The part of Article 62 which is relevant for the purpose's of this case is as follows:

(Description of instrument). (Proper Stamp Duty). 'Transfer (whetherwith or without con-sideration)"(c) of any interestsecured by a bond,mortgage-deed or po-licy of insurance"(i) if the duty on The duty with whichsuch bond, mortgage- such bond, mortgage-deed or policy does not -deed or policy of insu-exceed Rs. 5' rance is chargeable."(ii) inany othar case.' 'Rs. 5.'

15. It is contended on behalf of the Crown that the instrument of transfer in the present case comprises 'several distinct matters' within the meaning of Section 5 and that consequently it is chargeable with the aggregate amount of duties payable on transfer of each of the bonds and deeds by a separate instrument. The article said to be applicable is Article 62(c) quoted above. I do not think that the deed of transfer in question before us comprises several istinct matters. The word

'matter' signifies in this connexion, one transaction or bargain. To determine whether an instrument compromises one matter or more it is essential to find whether the parties negotiated for all the objects transferred as one unit. An important test is whether one lump sum was settled as the consideration for all the objects transferred by one to the other, no separate consideration for each object being part of the bargain, though the estimated value of each might have entered into the calculation of the consideration finally agreed on. The above test is fully satisfied in the present case. The deed mentions one lump sum as the price of the executant's rights under all the deeds. There is nothing to suggest that each deed was the subject of a separate bargain. Another test which may be applied as a rough and ready way of ascertaining whether a document embodies several 'distinct matters' is to find whether separate deeds can be executed in respect of each of the alleged 'matters' without interfering with the terms of the agreement between the parties. Judged by this test the instrument in question cannot be regarded as embodying several distinct matters. For these reasons I hold that Section 5 does not apply.

16. The next question is whether under Article 62(c) no more than the maximum duty of Rs. 5 is payable even though numerous interests under various bonds and mortgaged-deeds have been transferred. It is contended that under Section 13, General Clauses Act, singular includes plural and that therefore the same duty, subject to a maximum of Rs. 5 is payable. It is argued that all singular nouns occurring in the article should, for the purposes of this case, be read as plural and as the 'duties' on the bonds and mortgage-deeds exceed Rs. 5 no more than that sum is payable on the instrument in question. This construction necessitates the introduction of the word 'aggregate' before 'duties.' This objection is not however as serious as the one to be presently mentioned which may not arise in the case before us but will have to be surmounted if the singulars in the article are to be read as plurals. It so happens that in this easel the aggregate duties on all the bonds amount to more than Rs. 5. Let us take a case in which interests under three bonds and mortgage-deeds are transferred and duties paid on such bonds and deeds are of Rs. 2-1-8 and Re. 1 respectively, so that the aggregate does not exceed Rs. 5. In such a case, according to the second column of the article, the duty is determined by 'the duty with which such bond, mortgage-deed or policy of

insurance is chargeable.' Which bond or deed are we to take as supplying the determining factor? It is as arbitrary to take the highest, that is, Rs. 2 as the lowest, that is Re. 1; or the aggregate, that is Rs. 4-8 any of which alternatives makes it indispensable that some more words should be read into the article. To my mind the words 'a bond, mortgage-deed or a policy of insurance,' in the context in which they occur and coupled with the words 'such bonds etc.' exclude the hypothesis that the singular in this article includes the, plural.

17. The first column of the first schedule of the Stamp Act is headed as 'description of instrument,' and the second prescribes a duty with reference to the description thereof. The word 'instrument' is defined in Section 2(14) to include 'every document by which any right or liability is or purports to be, created, transferred, limited, extended, extinguished or recorded.' If by an instrument a distinct right is transferred it should be described for the purpose of stamp duty as an instrument to transfer of such right. It may also be an instrument of transfer of another distinct right and to that extent it is another instrument. Where, as in this case, the instrument conveys several distinct rights, some under bonds and some under mortgage-deeds, executed by different persons, it cannot be correctly and exhaustively described without reference to the transfer of each of such rights. In my opinion the instrument before us should be described as the instrument of transfer of the interest secured by bond A executed by X; also as an instrument of transfer of the interest by bond B executed by Y; also as an instrument of transfer of the interest secured by the mortgage-deed C executed by Z; and so on. This being so, the stamp duty should be paid as if there are so many instruments as the number of interests transferred thereunder though they are to be found within the four corners of one paper seemingly embodying only one instrument. Consideration is not a material element in determining the duty payable under Article 62 and therefore one 'distinct matter' referred to in Section 5 may include several transfers all of which were made in one and the same bargain or transaction, the consideration being one and entire for all. In the view I take, the stamp duty should be the aggregate amount of duties paid on the bonds and deeds, interests under which have been transferred, subject to a maximum of Rs. 5 in case of each bond or deed. In other words, the duty payable is the sum of all the duties paid on such bonds and deeds, provided that where the duty paid on

any one bond or deed exceeds Rs. 5 it shall be taken to be only Rs. 5.

**Bennet, J.**

18. In this reference the plaintiff argues that the article applicable is 62(c) (ii), Stamp Act. Schedule 1, Article 62(c), deals with 'the' transfer of any interest secured by a bond, mortgage-deed or policy of insurance.' The present case is one of the transfer of the interest secured by bonds and mortgage-deeds. Hence the article is applicable. Article 23 does not apply because it relates to a conveyance 'not being a transfer charged or exempted under (No. 62)' and the present case does come under Article 62. The next point is the main contention: the method of applying Article 62. Plaintiff contends that Section 13, General Clauses Act, 10 of 1897, should be applied and the words in the singular should include the plural so that Article 62(c) will include 'the transfer of any interests secured by bonds, mortgage-deeds...' We have to see whether there is anything repugnant in the context or not. Article 62 (c) (i) will then read:

If the duties on Proper stamp dutysuch bonds, mortgage- 'the duties withdeeds... do not which such bonds,exceed Rs. 5.' mortgage-deeds...are chargeable.

19. There are 29 bonds and mortgage-deeds transferred in the present deed of transfer. If each bond or deed were originally stamped with Rs. 4 the duties on such bonds or deeds would not exceed Rs. 5. But the duties with which such bonds are chargeable would be Rs. 4X29, that is, Rs. 116. If however the duty on each bond or deed is Rs. 5 or more, the case would come under Article 62(c)(ii) and the duty according to the plaintiff would be only Rs. 5. The theory therefore leads to an absurd conclusion. To avoid such a conclusion, it would be necessary not merely to read the singular as the plural, but to introduce some words specifying that the duties should be added to gether and the aggregate considered to see whether (i) or (ii) should be applied. But Section 13, General Clauses Act, does not make such a provision, and it seems strange that the Stamp Act should have omitted to specify that this was intended. Even if we add the duties together, a further difficulty arises from the' example given by Niamatullah,. J., of what would be the proper stamp duty for the transfer of three bonds of Re. 1, Re. 1-8-0 and

Rs. 2.

20. Another point to be noted is that Article 62 does refer to other transfers which are clearly to be taken in the singular; in (a) the shares in an incorporated company cannot be taken to cover transfers of shares in more companies than one, because the deed of transfer has to be filed in the office of the company permanently. Similarly in the case of (b) debentures. Both (d) and (e) refer to property held under one title, either as Administrator-General or as trustee. The four classes of exemptions all refer to single transfers of single articles as the transfers are by endorsement. When (a), (b), (d) and (e) and the four exceptions refer to the singular in cases where the plural cannot be applied, it does not appear logical to apply the plural to the singular words in (c). In this connexion I may observe that reliance has been placed on the occurrence of the word 'shares' in the first column of Article 62 (a) and 'share' in the second column, and it is argued that the word 'share' must be construed as including the plural, and if this is done in Article 62 (a) it must be done in Article 62(c). Let us examine the matter in the light of provisions in previous Stamp Act. In Act 10 of 1862 the provision was:

' Conveyance or transfer of a share of a Banking Corporation or Joint Stock Company whether by deed or endorsement, when the market value of the share transferred does not exceed Rs. 100 per share. 4 annas When it exceeds Rs. 100 and does not exceed Rs. 200, etc. 8 annas

21. In Act 1 of 1879 the provision was:

60-Transfer (a) Of shares in a company One quarter of theor association. duty payable on a Conveyance No. 21.

22. In Act 2 of 1899, the present Stamp Act:

62-Transfer (a) Of shares in an incor- (one-half) of theporated company or other duty payable on a body corporate. conveyance (No. 23) for a consideration equal to the value of the share.

23. In view of the different forms of expression in these Acts when dealing with the transfer of shares I think that the use of the word 'share' in the present Act is merely a grammatical error for 'shares' and it does not seem a case in which it is necessary to invoke the assistance of Section 13, General Clauses Act. So far I have been considering the context of Article 62(c). The General Clauses Act, Section 13, states that the rule cannot be applied 'if there is anything repugnant in the subject or context.' I now proceed to consider whether there is anything repugnant in the subject. The subject of the schedule of the Stamp Act is the amount of duty to be charged on every instrument mentioned in it, as laid down by Section 3 of the Act. It appears to me to be a subject which is repugnant to the application of the rule that the singular should include the plural. A similar subject is the duty imposed by a Customs Schedule. No one would apply to a Customs Officer to reduce a custom duty on the ground that the singular should include the plural. I consider that these schedules should be treated with mathematical precision and that a rule that the singular should include the plural is out of place in the interpretation of these schedules. It would have been quite easy for the Article 62(c) to have been expressed thus, If it was intended to cover the case of the plaintiff: (c) of any interest secured by a bond, mortgage-deed or policy of insurance or by several of such instruments. Where a schedule laying down a scale of charges does not expressly provide for the same charge to apply to a number of articles and to one article, I consider that the result should not be obtained by the introduction of a rule of interpretation that the singular includes the plural.

24. The second matter in controversy is the meaning to be attached to the three words 'several distinct matters' in Section 5, Stamp Act, 2 of 1899. This section is identical with para. 1, Section 7, Act 1 of 1879, para. 2, corresponding to the present Section 6. I now proceed to examine some rulings on the point. In the Reference under the Stamp Act (1902) 25 Mad 3, at p. 6, it was held:

The transaction or matter to which the instrument in question relates is single and indivisible and cannot be treated as relating to two distinct matters within the meaning of Section 5, Stamp Act. The instrument contains only one contract, a demise; the option of renewal of the lease is ancillary to it and forms part of the

consideration for entering into the lease. In Referred Case No. 1 of 1876 (1876) 1 Mad 133 on a reference by the Board of Revenue, it was held that a conveyance with the usual covenant for title, cannot be construed as constituting an indemnity bond, so as to render the document liable to stamp duty as an indemnity bond in addition to the stamp duty to which it is liable as a conveyance. It was there held that an instrument can be regarded as falling under two distinct categories each requiring a separate stamp, only where there is what is called a 'distinct consideration' for each and not where there is a unity of consideration as in the present case.

25. This shows that in each of these documents there was a main contract and a subsidiary or ancillary contract which formed part of the consideration for one party. In the present case none of the 29 transfers is subsidiary or ancillary to another, and although the consideration is expressed as a lump sum of money it would be possible for the parties to assign part of it to each transfer, and doubtless they did make some such calculation in arriving at the sum total., In *Ex parte Hill* (1882) 8 Cal 254, there was an arrangement which was partly a lease and partly a usufructuary mortgage. On p. 259 it was held:

It seems clear to us, that, under these circumstances, the loan is the consideration for the lease and the lease is the consideration for the loan ; and that neither part of the arrangement would have been complete without the other. We therefore think it impossible to say, that the instrument relates to two distinct matters within the meaning of Cl, 1, Section 7, General Stamp Act. That clause, in our opinion, relates only to transactions so distinct in their nature as to be capable of being carried out by two or more instruments instead of one, whereas here the contract is essentially one transaction.

26. This lays down the test-'where the transactions can be carried out by two or more instruments instead of one.' In the present case the 29 transfers could be carried out by 29 instruments, assigning to each instrument its part of the total consideration, or merely by a reference to the fact that a lump consideration was paid. In my opinion the mere fact that the parties are the same does not prevent an instrument from referring to two distinct matters. Now does the adding up of

items of money consideration have such an effect. This ruling in *Ex parte Hill* (1882) 8 Cal 254, has been referred to with approval in the Reference under Act 1 of 1879 (1895) 17 All 55, at p. 57. This was a case of a lease with hypothecation of property to secure' payment of the rent. It was held:

As to the second question, in our opinion the document in question cannot be regarded as an instrument comprising or relating to several distinct matters. The matter to which the instrument relates was the terms upon which the lessors let the land and the lessees took the holding. The mortgage was not a distinct matter from the lease. It was as much the matter of the lease as an ordinary covenant to pay would be part of the matter of the lease. We are consequently of opinion that para. 2, Section 7, Act 1 of 1879 applies to this case. We are fortified in this opinion by the decision of the Calcutta High Court in *Ex parte Hill* (1882) 8 Cal 254.

27. These rulings show that matters may be distinct where (a) a number of persons with different interests make unconnected agreements with a third party, such as the transfer of some of their separate interests: Reference under Stamp Act (1901) 24 Mad 176 (F B); (b) two parties make agreements which are not connected. And the test to be applied is whether the transactions can be carried out by two or more instruments instead of one. I may refer to an analogy which was introduced into argument in regard to this test. It was said that in the present instrument the 29 bonds and mortgage-deeds should not form the subject of 29 deeds of transfer any more than a transfer of 29 trees, houses, etc., should be split up. But the analogy is misleading, for the trees, houses, etc., all come under the heading of immovable property owned by the transferor. A the owner of any number of items of immovable property, may execute a single conveyance for transfer of his interest. When an owner acquires new immovable property, it merges in his estate. The new property was perhaps derived from a vendor who had a different title from previous vendors to A, and to this extent there is a difference. But A is the owner of all his immovable property and from this point of view the property is homogeneous. The case of an owner of a number of bonds and simple mortgages is different. He is no doubt the owner of all the rights in these documents. But his rights would have<sup>1</sup> to be enforced in separate suits, and

he is not the owner of tangible immovable property within the' meaning of Section 54, T.P. Act. A bond is an 'actionable claim' as defined by Section 3, T.P. Act, and Section 130 states that the transfer of an actionable claim shall be by an instrument in writing. And the transfer of the rights under a simple mortgage, being intangible immovable property must also be by a written instrument.

28. The Stamp Act provides in Article 62(c) for stamp duty on the transfer of a bond and the transfer of a mortgage-deed. The Act takes a bond as a unit and a mortgage-deed as a Unit. The Act therefore deals with a bond and a mortgage-deed as separate units for the purposes of transfer. As Article 62(c) provides for the transfer of a bond there is a distinct provision in the schedule for that matter, and the transfer of several bonds would be 'several distinct matters.' There is no provision in the schedule for the transfer of several bonds. But there is provision for the transfer of any number of items of property such as houses or trees, and so the analogy from items of property is misleading. No doubt each bond is an item of property; but it is also a matter for which distinct and separate provision is made in the schedule for its transfer as a single unit, and this is not true of a house or a tree. That is, there is an article which refers to the transfer of 'a bond' but no article which refers to the transfer of 'a house' or 'a tree.' They come under the term 'property' which comes, into the definition of 'conveyance' in Section 2(10). As regards the argument that 'several distinct transactions' is the correct meaning of 'several distinct matters' in Section 5, I would point out that Section 4 uses the word 'transaction' for the case of several instruments-employed for completing one transaction. The provision is that only the principal instrument shall be charged with the duty. Having used the word 'transaction' in Section 4, when the Act comes to Section 5, if the meaning is 'any instrument comprising or relating to several distinct transactions' why is the word 'transactions' not used Why is there a change to the word 'matter' Is it not because the instrument being executed at one time could always be considered as one transaction There must be some' further idea to make the instrument chargeable with the duties of several instruments. What is this further idea Is not the simplest solution of this problem that the instrument to be charged with several duties is an instrument which has something in it which would bring it several times under some duty in the schedule Does not the present instrument come twenty-nine times under Article 62(c)(ii) Does not this amount to

'several distinct matters' in the sense that each matter has a distinct provision for it-self in the schedule On this view Section 5 and Article 62(c) harmonize and each applies with the same result to the instrument in question. I may note one further point. In argument the learned Counsel for the plaintiff referred to the case of Doe'd Croft v. Tidbury (1854) 14 CB 304 and Wills v. Bridge (1849) 18 LJ Ex 384, and some other old English rulings. It was pointed out in Stamp Reference (5) at pp. 183 and 184 that these cases were decided under a statute of Anne where the language was quite different from 33 and 34 Vict. and the Stamp Acts. For the reasons I have given I agree with the opinion of Naimatullah, J., that the stamp duty on the instrument in question should be the aggregate of the amounts of duty payable under Article 62(c) on each of the 29 transfers contained in the instrument.

**Iqbal Ahmad, J.**

29. I agree with the judgment that has been delivered by my brother King, J., and for the reasons assigned by him I hold: (1) that the case does not come within the purview of Section 5, Stamp Act, and (2) that the proper stamp duty on the deed in question was a sum of Rs. 5.

30. The opinion of the majority of the members of the Court is that Section 5, Stamp Act, does not apply to the case, and that under Article 62 read with Section 13, General Clauses Act, the stamp duty chargeable on the deed in question is Rs. 5. Let a copy of this order under the seal of the Court be communicated to the learned Referring Officer.

**Mukerji, Ag. C.J.**

31. This stamp reference came on a former occasion before myself and two Hon'ble Judges. As it was found that three distinct views were taken by the three members of the Court, a larger Bench was constituted by the addition of two more Hon'ble Judges. The result however has not proved to be as satisfactory as was hoped, for there is still no clear majority in respect of any particular view. As no useful purpose is likely to be served by further enlarging the Bench. I have thought it fit to modify my views so that there may be a clear majority on one view. The fact

that there has been so much difference of opinion shows that the Stamp Act on the point in question is capable of various interpretations. I think I may accept that interpretation which is for the benefit of the subject, the Act being purely a fiscal one.

32. In modification therefore of my opinion expressed on 11th January 1933, I hold that Section 13, General Clauses Act, can be made applicable to Article 62, Stamp Act, as held by two of my brothers and that therefore the stamp duty payable in this particular case will be Rs. 5 and no more.

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