

BANK OF NEW SOUTH WALES v. COMMISSIONER OF STAMP DUTIES.

[Civil Jurisdiction (Maxwell Anderson, C.J.) March 31, 1931.]

*Stamp Duties Ordinance, 1920*¹—“*Set of Instruments*”—*Interpretation*—*whether duplicates are to be stamped as included in a set of instruments.*

A mortgagor in consideration of a loan gave as principal security a cash credit bond and three collateral securities—two mortgages and a bill of sale. In addition to these documents, duplicates of the collateral securities were presented and were assessed as duplicates. The Mortgagee applied to the Court for a determination of the proper assessment, contending that the duplicates formed part of a set of instruments within the meaning of the proviso in the Schedule to the Stamp Duties Ordinance, 1920, with reference to collateral securities and accordingly that the whole amount of duty should not exceed £1 in the case of any one instrument and its duplicates :—

HELD.—A duplicate is not included in the term “set” in the Schedule to the Stamp Duties Ordinance, 1920.¹

[**EDITORIAL NOTE.**—The provision as to sets of instruments has not been amended since this decision—*vide* Schedule to Stamp Duties Ordinance (Cap. 150) (Revised Edition, Vol. II at page 1614). For the provision as to duplicates *vide* Schedule to Stamp Duties Ordinance (Revised Edition, Vol. II at page 1612).]

MOTION under the provisions of s. 44 of the Stamp Duties Ordinance by the person presenting an instrument and being dissatisfied with the assessment of the Commissioner thereon.

H. M. Scott, K.C., for the Bank of New South Wales. The Bank claims refund to the stamp duty paid on the duplicates to the transaction in question. Without the duplicates the originals cannot be registered as required by the Real Property Ordinance 1876² and the Bills of Sale Ordinance 1897. Therefore duplicates must be included with originals and all taken to be one set of instruments. (Counsel referred to amendments made in Stamp Duties Ordinance 1883 by Ordinances Nos. 19 and 39 of 1920 (now consolidated No. 9 of 1920), also Imperial Stamp Act 1891, s. 72, and Revenue Act 1903, s. 7).

The Acting Attorney-General, *A. E. P. Rose*, for the Commissioner of Stamp Duties. The assessment is correct. To read “duplicates” into the term “set of instruments” would be to include something which is not there either expressly or by implication.

MAXWELL ANDERSON, C.J.—This is a motion moved under the provisions of s. 44 of the Stamp Duties Ordinance 1920 whereby the Commissioner of Stamp Duties if in doubt as to a proper assessment or a party dissatisfied with an assessment may apply to the Supreme Court for a summary determination of the matters in issue.

¹ Now Cap. 150.

² Repealed.

In this case the Bank of New South Wales being dissatisfied with an assessment made by the Commissioner moves the Court to set aside or alternately to vary the assessment made, but although the motion must of necessity be made in such terms, the real point at issue is the true meaning to be attached to the term "set of instruments" as used in the Schedule to the Ordinance (*vide* Ordinance 9 of 1920 at p. 1540, Consolidated Laws of Fiji 1924).

The facts of the case are not in dispute and may be briefly taken from the affidavit of Daisy Bernard. A mortgagor in consideration of a loan gave to the bank a Cash Credit Bond (the principal security) and three collateral securities, to wit (a) Mortgage of Freeholds, (b) Mortgage of Leasehold, (c) Bill of Sale over Chattels.

The Commissioner assessed the principal security and the collateral securities in accordance with the law and no complaint is made thereto, but it is necessary to note that the assessment on the collateral securities was fixed at one pound sterling, the maximum amount allowable.

With the above collateral securities were presented duplicates thereof which were assessed at five shillings each in regard to the two mortgages and at two shillings and sixpence as regards the Bill of Sale being a total of twelve shillings and sixpence and it is this sum which is in dispute between the parties.

It is argued on behalf of the Bank that since the documents in question have to be registered under the provisions of other Ordinances, therefore the duplicates as required by those Ordinances must be taken to be included in the term "set of instruments" as used in the Stamp Ordinance.

One of the difficulties and inconveniences which arises from Consolidations of Laws is that the natural sequence of events is lost and I am indebted to counsel of the bank for his research into the chronological sequence of stamp duties in this Colony. The first Stamp Duties Ordinance of 1883 exempted from duty all mortgages and collateral securities, but did provide for the stamping of duplicates of original documents themselves liable to duty. It is not until Ordinance 19 of 1920 (14th May, 1920) that mortgages and securities collateral thereto are rendered liable to stamp duty and by such Ordinance each collateral security is to be assessed at a rate based on a £100 unit. Later in the same year (8th December, 1920) Ordinance No. 39 of 1920 enacted to come into force on 1st January, 1921, repealed all previous legislation on stamp duties and is now the main Ordinance (No. 9 of 1920).

In this Ordinance, or rather in the Schedule thereto, there is to be found for the first time the provision making a "set of instruments" being collateral securities liable only to a maximum duty of one pound. This is a substantial concession by the legislature and it is to be noted that the Ordinance which gives the concession at the same time raises the duty on duplicates from what I may term a half-crown rate to a five-shilling rate. It is not for the Court to fathom the intention of the Legislature, the duty of the Court is merely to construe what the Legislature has said and in this case the Court is asked to say that the words used mean that the duplicates of the original documents are included in the term "set of instruments." The argument for the Bank is, as I have said, that because the originals cannot subsequently be used

for other purposes as required by law therefore the duplicates must be taken with the originals to be one set of instruments on which a maximum fee or duty of one pound is payable.

The word "set" has no special legal meaning so far as I am aware (nor is it to be found in British or other Stamp Acts of which I have cognizance), and it falls to be construed in its ordinary meaning. To take a few examples of the use of the word. A lawyer speaks of a "set of law reports" which means, I take it, a complete number of volumes, each of which is supplementary or additional to the others but no one of which is a duplicate of another. A set of mathematical instruments connotes several instruments each of which is necessary to the other and to the full use of the whole, but none of which is a duplicate of any other. A set of tennis, using the word in its earlier application to the players and not to the game or the requisites thereof, could scarcely be construed to mean that each player was the duplicate of the others, either in physique, physiognomy or even in skill except perhaps in a few rare instances. Reference to such dictionaries of the English language as *Webster's* and the *Concise Oxford Dictionary* or to *Roget's Thesaurus* while providing a large number of meanings to the word, discloses none in which there is any allusion to duplication.

I am of opinion that the true meaning of the word is "a collection of articles or instruments each of which is necessarily a complement or addition to another or a number of such but in no way is a duplicate of such other." I hold therefore that a duplicate is not included in the term "set".

Counsel of the Bank has urged upon the Court very strongly that without the duplicates he cannot fulfil their requirements of other Ordinances. So be it, but the answer to that is that the Schedule for the Stamp Duties Ordinance provides for the obtaining of duplicates at a reduced fee or duty. The wording of the Schedule is clear: "Duplicate or counterpart of any instrument charged with any duty, etc."

It is almost as though the legislation had said: "I charge you a duty on a set of instruments—I know that you will in some cases require duplicates of your set—I have had (if I may be permitted a colloquialism) my squeeze out of the originals—you can have your duplicates at a reduced rate".

The original imposition (Ordinance 19 of 1920) made no provision for a reduced duty on a set of instruments, each separate collateral security carried its own duty and the final enactment (Ordinance 39 of 1920) was a substantial concession, and the words used in the grant thereof cannot be construed beyond their literal meaning.

If it had been the intention of the legislature to exclude duplicates of a set of instruments from any stamp duty, such intention could easily have been effected by a slight revision of the wording of the Schedule under the heading "duplicate," but, as I have previously said, this Court is not concerned with intentions but only with the actual enactment.

In my view this motion fails—the assessment was correctly made—and must be dismissed.

The matter coming before the Court for summary determination, there will be no order as to costs.
