J A M A I C A

IN THE COURT OF APPEAL

SUPREME COURT CIVIL APPEAL No. 17/1974

BEFORE: The Hon. President
The Hon. Mr. Justice Robinson, J.A.
The Hon. Mr. Justice Henry, J.A. (Ag.)

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BETWEEN

THE COMMISSIONER OF STAMP AND ESTATE DUTIES - DEFENDANT/APPELLANT

AND

REYNOLDS METALS COMPANY - PLAINTIFF/RESPONDENT

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Mr. Lloyd Ellis instructed by Mrs. Marjorie Harrison for Appellant.

Mr. R.N.A. Henriques instructed by Mr. Bruce Barker of Livingston, Alexander & Levy for Respondent.

September 29, 30 and
November 12, 1976

Henry, J.A.(Ag.):

The Plaintiff/Respondent is a Company incorporated in the State of Delaware in the United States of America with an office in Jamaica. By an Instrument dated 5th May, 1969 the Respondent transferred to Aluminum Company of America and Alcoa Service Corporation (both apparently incorporated abroad) certain lands comprised in 168 certificates of title and valued at $1,008,999.48. The consideration for this transfer was expressed to be the transfer by Aluminum Company of America and Alcoa Service Corporation to the Respondent of lands in the United States of America expressed to be of equal value to the lands transferred by the Respondent. The Appellant, classifying the Instrument as a "Settlement" within the meaning of the Stamp Duty Act, demanded

the relevant duty of $26,798.43. The Respondent paid this amount under protest and brought an action in the Supreme Court seeking a declaration that the transfer was chargeable to stamp duty as a deed in the sum of $1.88 and not as a Settlement in the sum of $26,798.43 and an order for the repayment with interest of this latter amount less $1.88. At the conclusion of the trial the learned trial judge granted the declaration sought and ordered repayment of the sum of $26,796.55 with interest at the rate of 8% from 5th June, 1969 to the date of judgment. This is an appeal from that judgment.

In his defence the Appellant had alleged inter alia that the transfer was either a "Settlement" or a "Conveyance" or an "Exchange" within the meaning of the Stamp Duty Act. As an "Exchange" the transfer attracts a duty of $5. It is therefore perhaps not surprising that at the hearing of the appeal the arguments in favour of the transfer being an "Exchange" were presented with less fervour than those in favour of its being either a Settlement or a Conveyance. What is surprising, however, is that Counsel for the Respondent should have made such strenuous efforts to persuade this Court that the transfer is not an "Exchange". This is particularly surprising since we are told that the Respondent's Statement of Claim was amended at the trial to include an alternative allegation that the transfer was an Exchange (although this is not reflected in the judgment). It is equally surprising in the state of the pleadings to be told that arguments were adduced to show that the transfer was not an "Exchange". And again the judgment of the learned trial judge does not reflect either what those arguments were or why they were accepted. The judgment does however deal with the submissions that the transfer is either a "Settlement" or a "Conveyance" and (we) agree with the conclusions of the learned trial judge, thereon and the reasons for those conclusions which he has set out with clarity. In so far as the argument that

the transfer is a "Settlement" is concerned it is sufficient to say that it can not, in any ordinary sense of the term be called a Settlement and the case of Hood-Barrs v.Commissioners of Indland Revenue (1946) 2 A.E.R. 768 on which great reliance is placed by Mr. Ellis clearly turns not on the ordinary meaning of the word settlement but on the interpretation of a particular statutory definition of the word which extends its ordinary meaning.

It seems equally clear in the light of the decision in Littlewoods Mail Order Stores, Ltd. v. Inland Revenue Commissioners (1962) 2 A.E.R. 279 that the transfer is not a "conveyance on sale" in the absence, inter alia, of a money price being paid or promised.

The only real point for consideration, therefore, is whether the document is an "Exchange". If not, it is clearly a "Deed" for which no duty is elsewhere imposed by the Stamp Duty Act. The learned trial judge came to the conclusion that it is a deed. He has not in his judgment found specifically that it is not an exchange. It is clear, however, that such a finding is implicit and he has given no reasons for so finding. Counsel for the Respondent sought to argue that it is not an exchange firstly because it does not effect a transfer of like for like i.e. freehold for freehold or leasehold for leasehold and secondly because the transfer deals in part with land outside the jurisdiction. On the state of the pleadings and in view of the fact that the nature of the respective interests in the lands in question was particularly within the knowledge of the Respondent we did not consider that it was open to the Respondent either before us or in the court below to advance the first argument. In support of his second argument counsel for the Respondent cited the cases of Colquhoun v. Heddon 2 Tax Cases 621 and British South Africa Company v. Companhia de Mocambique and others (1893) A.C. 602. We do not with respect consider that either case can be of assistance. The Colquhoun case was concerned with the interpretation of a particular section of the Income Tax Acts

and with whether, having regard to the particular wording of that section, foreign insurance companies were included. It has no relevance whatever to the matter with which we are here dealing. The British South Africa Company case had to do with whether an English Court has jurisdiction to entertain an action for trespass to land situate abroad. This case is not concerned with determining any rights in respect of land outside the jurisdiction but merely with determining whether any and, if so, what stamp duty is payable on an Instrument which relates in part to such land. We are of the view that if that Instrument can otherwise, having regard to its nature and description, be properly classified under a particular item in the Schedule to the Stamp Duty Act, the mere fact that it deals in part with land outside the jurisdiction would not avoid its being so classified. On the face of it the Instrument in question clearly falls under the item "Exchange" and we are of the view that it ought to be so classified and that stamp duty of $5 is accordingly payable on it. The judgment of the court below will therefore be varied accordingly.

Counsel for the Appellant also argued that no interest ought to have been awarded by the learned trial judge on the amount ordered to be refunded and in support of this he referred to the case of Western United Investment Co. Ltd. v. Inland Revenue Commissioners (1958) 1 A.E.R. 257 where it was held that section 3 of the United Kingdom Law Reform (Miscellaneous Provisions) Act 1934 did not confer jurisdiction to order interest to be paid by the Crown on overpaid stamp duty because an appeal under section 13 of the Stamp Act 1891 did not make the duty in issue a debt. That case clearly turns on the interpretation of the appeal provisions in the United Kingdom Stamp Act, 1891. There are no corresponding provisions in the Jamaican Act, and the proceedings here are not by way of appeal but by way of an action in the Supreme Court seeking a declaration and recovery of the duty together

with interest. Section 3 of the Law Reform (Miscellaneous Provisions) Act in our view clearly applies to such an action and the learned trial judge was entitled to award interest at such rate as he thought fit between the date when the cause of action arose and the date of trial.

In the result the appeal will be allowed and the judgment will be varied to the extent of substituting the word "Exchange" for the word "Deed", the amount of $5 for the amount of $1.88 in paragraph 1 and the amount of $26.793.43 for the amount of $26,796.55 in paragraph 2.

Although the appeal has been technically successful in part we are of the view that having regard to its practical outcome the costs of the appeal ought to be allowed to the Respondent and we so order.