

re: DEED OF CONVEYANCE - SAMOAN PUBLIC TRUSTEE AND ARP

SUPREME COURT. 1962, 1963. 19, December; 17, January. MOLINEAUX C.J.

Stamp Duties Ordinance - appeal against assessment of duty - deed of conveyance of land - whether land conveyed at time of verbal agreement or upon execution of deed of conveyance.

This was an appeal against an assessment of stamp duty made by the Financial Secretary on a deed of conveyance dated 19 October 1962.

Towards the end of 1954, the <sup>beneficial</sup> ~~beneficiary~~ owner of a piece of land entered into a verbal agreement with the purchaser for the sale of the property for £200; a deposit of £100 then being paid, with the balance to be paid upon completion of formalities in connection with an estate of which the land formed a part. Shortly after, the purchaser entered into possession of the land. In 1959, the owner died and thereafter the Samoan Public Trustee as sole executor of her estate confirmed the verbal agreement made by her in 1954 and on 19 October 1962 executed a deed of conveyance of the land in favour of the purchaser. The consideration recited in the deed was £200 being the purchase price agreed to in 1954. On the same day the balance of £100 was paid.

Upon the deed of conveyance being lodged with the Financial Secretary for stamping, that officer considered that the consideration shown in the instrument was inadequate having regard to the value of the property conveyed which, as at 19 October 1962, was valued at £1,300. The Financial Secretary pursuant to section 11 of the Stamp Duty Ordinance 1932 then assessed duty at £13, being £2 at the consideration disclosed and £11 on the amount of a voluntary conveyance of the value of £1,100.

The question, on appeal, being whether the property was conveyed at the time of the verbal agreement in 1954 or when the deed of conveyance was executed on 19 October 1962 or at some other time -

HELD: that as a matter of practice conveyance of land takes place on settlement when an executed deed of conveyance and documents of title are handed over to the purchaser in exchange for the balance of purchase moneys, and it is at that point of time that the estate or interest of the vendor passes in its entirety to the purchaser who then stands vested in exactly the same estate or interest in the land that formerly was vested in the vendor; and when that happens and only then is the property in the generally accepted sense of the term said to be conveyed. That the word "conveyed" in the phrase "...having regard to the value of the property conveyed..." in both section 11 of the Stamp Duties Ordinance and in the Schedule thereto is to be given this meaning. As a matter of construction and having regard to the language of the instrument itself, the land comprised in the instrument was conveyed contemporaneously with the execution of the deed and not at some earlier date.

Assessment of duty by the Financial Secretary held to be correct and accordingly the appeal failed.

MOTION by way of appeal against an assessment of duty made on a deed of conveyance and in pursuance of the Stamp Duties Ordinance 1932.

Metcalfe, for Appellant.

Frapwell, Attorney-General, for Respondent.

MOLINEAUX C.J.: Motion by way of appeal against an assessment of stamp duty made by the Financial Secretary on a deed of conveyance dated the 19th of October 1962 between the Samoan Public Trustee and others as vendors and Albert James Arp as purchaser affecting all that piece of land containing one acre more or less situated at Lotopa being parcel 262/77 and part of the land comprised in Volume 8 Folio 71 of the Land Registry of Western Samoa.

The facts which were not in dispute are as follows - the said land was part of the estate of one Charles Mugele late of Lotopa planter deceased who died in 1929. Under his will the said land along with other property was devised to his widow Hazel Mugele and her children in equal shares. Subsequently, the widow remarried becoming Hazel Hack and she agreed with the other beneficiaries to a partition of the land in her former husband's estate whereby she was to receive the said parcel 262/77. Towards the end of 1954 but before the partition formalities had been completed she entered into a verbal agreement with the purchaser for the sale of the section she was to receive under the partition for the sum of £200. The purchaser paid her £100 on account of the purchase price and it was arranged as in fact was done that the balance should be paid to Mr Jackson of Apia, solicitor, pending completion by the Samoan Public Trustee of the formalities in connection with the estate and the subsequent partition. On the 11th February 1955 the purchaser instructed Mr Jackson to act in connection with the survey pending formal conveyance to him of the property. By then he had entered into possession of the land and commenced the erection of a Samoan fale thereon. After concluding the said agreement Hazel Hack went to New Zealand where she died in 1959. By 1962 the formalities in connection with the survey and the partition were completed. The Samoan Public Trustee as sole executor of her estate confirmed the verbal agreement made by her in 1954 and on the 19th of October 1962 executed a deed of conveyance of parcel 262/77 in pursuance thereof in favour of the purchaser. The consideration recited in the deed was £200 the purchase price agreed upon by the parties in 1954. On the same day Mr Jackson paid over the balance of the purchase money in settlement, namely the £100 that had been held in trust by him on behalf of the purchaser since his instructions in February 1955. The deed of conveyance was lodged at the Treasury Office for stamping together with £2 being the duty payable on a conveyance at £200. Whereupon the Financial Secretary advised the purchaser of his opinion that the consideration shown in the instrument was inadequate having regard to the value of the property conveyed thereby. Counsel were agreed that the value of the property on 19th October 1962 was £1,300. The Financial Secretary by the application of section 11 of the Stamp Duty Ordinance 1932 had assessed the duty on the deed of conveyance at £13. From this decision the purchaser has appealed, advancing as his grounds that the opinion of the Financial Secretary was erroneous and assessment inequitable.

The question to be decided is whether the property was conveyed at the time of the verbal agreement in 1954 or when the deed of conveyance was executed in October 1962 or at some other time.

It is perhaps convenient firstly to consider the provisions of the Stamp Duty Ordinance 1932 that guided the Financial Secretary in arriving at his assessment. The Ordinance is a taxing Statute for the purpose of providing part of the Inland Revenue by means of charging certain instruments specified in the Schedule with stamp duty. It is concerned only with instruments. An instrument is defined as including every written document not of a testamentary nature. As the deed of conveyance under consideration meets with both of these requirements it is an instrument for the purposes of the Ordinance. Once an instrument is presented for stamping the Financial Secretary is required to assess the amount of duty and on payment of the amount thereof he shall cause the instrument to be stamped. Section 11 provides that if in assessing that duty he is of the opinion that the consideration shown in the instrument is inadequate having regard to the value of the property conveyed thereby he is authorised to disregard the consideration shown therein. In that eventuality the instrument is then

deemed by the operation of subsection (2) to be what is described elsewhere in the Ordinance as a "voluntary conveyance" to the extent of the resulting inadequacy and is chargeable with duty at the rate chargeable for a voluntary conveyance to that extent. Being of the opinion that the consideration disclosed was inadequate to the extent of £100 which was the difference between the undisputed value of the property on the 19th of October 1962 £1,300 and the consideration shown in the instrument £200, the Financial Secretary assessed the instrument for duty at £2 on the consideration disclosed plus £11 on the amount of a voluntary conveyance of the value of £1,100 which according to the Schedule attracts duty at the rate of 10/- for every £50 or part of £50 of the value of the property conveyed.

It was fairly conceded by Mr Metcalfe for the purchaser that if the property was conveyed on the date of execution of the conveyance then the assessment by the Financial Secretary was correct. In his view, however, the property was conveyed at the time of the verbal agreement in 1954 on payment of the deposit and the lodgment of the balance of the purchase moneys with Mr Jackson and his client's entry into possession. If that were so there is a difficulty in that such an agreement is clearly not stampable, as not being in writing it is not an instrument for the purposes of the Ordinance. Some importance therefore attaches to the meaning of the word "conveyed" in the phrase "having regard to the value of the property conveyed" in both section 11 and in the Schedule but more especially as the date on which the property was conveyed is the pivot upon which the amount of the assessment of duty must turn. In transactions involving the sale of land there is a point of time when the estate or interest of the vendor passes in its entirety to the purchaser who then stands vested in exactly the same estate or interest in the land that formerly was vested in the vendor. When that happens and only then is the property in the generally accepted sense of the term said to be conveyed. It is in this sense I think that the term is used in section 11 and in the Schedule. Conveyance of land in transactions of this kind invariably takes place as a matter of practice on settlement when an executed deed of conveyance and documents of title are handed over to the purchaser in exchange for the balance of the purchase moneys. Prior to settlement the parties may have incurred contractual obligations during the subsistence of which no change occurs in the title to the land, the estate or interest of the vendor therein, whatever its limitation, remaining unaffected. Nothing is conveyed in the sense of being legally transferred. The learned editor of the 22nd Edition of Williams on Real Property at page 619 puts the matter in this way:- "The bulk of the purchase money is never paid on a sale of land until the title has been investigated and the necessary searches made, and only when all these inquiries have been satisfactorily prosecuted is the transaction then completed by conveyance of the land on the one hand and payment of the consideration money on the other". If this be a correct interpretation of the word "conveyed" in the context here then it follows in the present case that the property was conveyed on the 19th October 1962 being the date on which the deed was executed and settlement of the transaction effected. Some support for this view is derived from the language of the instrument itself. It is intituled a Deed of Conveyance. The vendors are recited as being seized of an estate in fee simple which would not have been possible had the property being conveyed by them at some earlier date. There are recitals expressing the vendors' intention of conveying the land to the purchaser and of the purchaser's request to the vendors to do so. The operative words in the deed "DO HEREBY CONVEY UNTO THE PURCHASER" are clear and unambiguous as to when the conveyance of the land is expressly intended to take place. As a matter of construction therefore I am of the opinion that the land comprised in the instrument was conveyed contemporaneously with the execution of the deed and not at some earlier date. This accords with an established principle in the law of Real Property under the Deeds Registration System that it is the execution of the conveyance that vests the estate in the purchaser and until that time no property has been conveyed in the sense that the title thereto passes from vendor to purchaser.

See Garrow's Real Property in New Zealand 3rd Edition at page 219. Under these circumstances it is unnecessary perhaps to take the matter further except to state that in my view the Financial Secretary was correct in his assessment, as on this basis the value of the property conveyed was £1,300 and by virtue of section 11 the correct amount of duty payable thereon is £13. This being so I am of the opinion that the appeal should fail. The Attorney-General is allowed costs at six guineas.