

[HIGH COURT OF AUSTRALIA.]

COMMISSIONER OF STAMP DUTIES (NEW } APPELLANT ;
SOUTH WALES) }

AND

H. SMALL AND COMPANY PROPRIETARY } RESPONDENT.
LIMITED }

ON APPEAL FROM THE SUPREME COURT OF
NEW SOUTH WALES.

Stamp Duties—"Receipt"—Sale over two pounds—"Cash sale" docket—Payment H. C. OF A.
—Memorandum of transaction handed to purchaser unstamped—No acknowledg- 1950.
ment of payment—Liability to duty—Stamp Duties Act 1920-1940 (N.S.W.)
(No. 47 of 1920—No. 50 of 1940), ss. 90, 92.

SYDNEY,
April 28 ;
May 16.

A firm purchased certain goods at the price of £5 16s. 5d. from a company on the terms that the transaction was a cash sale. The firm received the goods and a document marked "cash sale" setting out particulars of the sale, and paid for the goods immediately by cheque. The document, which was the only document which passed between the parties, did not contain any acknowledgment of the delivery of the goods or the payment by cheque.

Latham C.J.,
McTiernan,
Williams, Webb
and
Fullagar JJ.

Held, that there was no evidence on which it could be found that the document was a receipt within the meaning of s. 90 of the *Stamp Duties Act* 1920-1940 (N.S.W.).

Decision of the Supreme Court of New South Wales (Full Court): *H. Small & Co. Pty. Ltd. v. Commissioner for Stamp Duties*, (1949) 50 S.R. (N.S.W.) 141 ; 67 W.N. 15, affirmed.

APPEAL from the Supreme Court of New South Wales.

Upon an information laid by Edward Thomas Wood, Commissioner of Stamp Duties of New South Wales, *H. Small & Co. Pty. Ltd.* was charged before a magistrate that on 15th March 1949 at Sydney, that company gave to Murray's of 91 Darlinghurst Road, Kings Cross, a receipt for the sum of £5 16s. 5d. which, although liable to stamp duty under ss. 90 and 92 of the *Stamp Duties Act* 1920-1940 (N.S.W.), was not duly stamped.

thereby of signifying an acknowledgment of the receipt of moneys ; and (ii) came within the definition of " receipt " within s. 90 of the *Stamp Duties Act* 1920-1940, and having been given for or upon payment of money amounting to two pounds and upwards, namely £5 16s. 5d., it was liable for duty in accordance with the provisions of that Act.

An appeal by the defendant company by way of case stated from that decision on the grounds that the document was not a receipt within the meaning of s. 90 of the *Stamp Duties Act* 1920-1940, and that evidence was wrongly admitted as to the circumstances under which the document was handed by the defendant company to the firm, was allowed by the Full Court of the Supreme Court of New South Wales (*H. Small & Co. Pty. Ltd. v. Commissioner for Stamp Duties* (1)).

From that decision the informant appealed, by special leave, to the High Court.

The relevant statutory provisions are set forth in the judgment of *Latham C.J.* hereunder.

G. Wallace K.C. (with him *L. J. Tully*), for the appellant. The words in s. 90 of the *Stamp Duties Act* 1920-1940 (N.S.W.) are of the widest and most comprehensive nature and are the words used in *Attorney-General v. Carlton Bank* (2) ; see also *Stamp Act* 1891 (Imp.), s. 101 and *Stamps Act* 1928 (Vict.), s. 52. There was not any necessity to show any previously existing debt. It was sufficient if there was a mere acknowledgment or expression of the receipt of payment of money whether a debt or not. The concluding words of the section, namely, " or which signifies or imports any such acknowledgment " are of great importance. The word " acknowledgment " relates back to the two earlier references in the section to that word. The words " signifies " and " imports " mean—from which it can be " implied " or " spelt out " or " gleaned." Regard must be had to the real nature of the transaction in order to construe the document. Evidence was admissible to show that in the circumstances the document was not an invoice but was a receipt. The document shows that a cash sale had been completed ; that goods had been exchanged for money. The document was a signification of the receipt of that money. The evidence shows that the payer treated it as a receipt. A common intention was not a decisive test. An employment card showing hours worked, amount earned, wages paid and signature of employee was held to be a receipt in *Campbell v. Anderson* (3). The document

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(1) (1949) 50 S.R. (N.S.W.) 141 ; 67 W.N. 15.

(2) (1899) 2 Q.B. 158, at pp. 163-166.

(3) (1948) V.L.R. 355.

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in this case was stronger than that card because the document contains the words "cash sale." The presence of the provision for signature is important. Analogous matters were considered in *General Council of the Bar (England) v. Inland Revenue Commissioners* (1) and *Attorney-General v. Carlton Bank* (2) and the entry in each case was held to constitute a receipt. *Attorney-General v. Northwood Electric Light and Power Co. Ltd.* (3) is distinguishable because it was held in that case that in the circumstances there was not a "giving" of a receipt. The form of the document in *Duncan v. Farmer & Co. Ltd.* (4) showed clearly that the transaction was a cash sale and that money was not paid "in satisfaction of any debt." Exemption (s) under "Receipt or discharge" in the second schedule to the *Stamp Duties Act* was intended to exempt cash dockets from liability to duty.

F. W. Kitto K.C. (with him *C. L. D. Meares*), for the respondent. The meaning of the document is a pure question of construction, the answer to which must be ascertained from a consideration of what appears on the face of the document and any admissible extrinsic evidence that may bear on that problem. Without the words "cash sale" the document would be in the ordinary form of an invoice. In the absence of a signature it indicated nothing more than the nature of the transaction or bargain between the parties; what that transaction or bargain was or was intended to be. The presence of the words "cash sale" indicated only that the sale was upon cash terms. The document did not show whether either party performed a contract on his or its part, or whether any cash was paid or a cheque was given or, if given, was honoured. The document enabled the purchaser of the goods to prove nothing more than that he bought those goods on terms of paying cash therefor, and even if construed in the light of the custom in the trade it could not be gathered from the document that the money had been paid. The document would be irrelevant to the proof of payment. Evidence was adduced in *General Council of the Bar (England) v. Inland Revenue Commissioners* (5) which established that the document there under consideration was a receipt. In the absence of any evidence on the document to the contrary, it was not a receipt. There was not any evidence of a custom or practice known to both parties and in accordance with such custom or practice they must be assumed to have acted, as in *General Council of the Bar (England) v. Inland Revenue Commissioners* (5) and

(1) (1907) 1 K.B. 462, at p. 473.
(2) (1899) 2 Q.B., at pp. 163, 165.
(3) (1947) 1 K.B. 511.

(4) (1920) 21 S.R. (N.S.W.) 54; 37 W.N. 260.
(5) (1907) 1 K.B. 462.

Attorney-General v. Carlton Bank (1). A receipt must be available to the recipient whenever he may require it for the purpose it purports to effect (*Attorney-General v. Northwood Electric Light and Power Co. Ltd.* (2)). *Campbell v. Anderson* (3) was an obvious case. Exemption (s) was inserted in the second schedule to the Act to make it plain what was to happen with regard to those retail transactions, and where the particulars shown did not include an acknowledgment of, or imply, a payment of money. The document now under consideration was not a receipt within the meaning of the Act and the surrounding circumstances did not afford any ground for arriving at a different conclusion.

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G. Wallace K.C., in reply. It is not conceded that the matter can be tested by considering whether the document would be admissible in subsequent proceedings to prove payment. "Salesman's signature" on the document was intended, on the probabilities, to be signed by the person making delivery to the purchaser on a cash sale. On such a sale there would not be any point in handing over the name of a salesman to the purchaser. Among business men and traders cheques are regarded as cash. There was an intended distinction in the section between an acknowledgment and an importing of an acknowledgment. The printed matter on the document, e.g. the provision for signatures and the notation that the sale was a cash sale, coupled with the giving, warranted the inference that the document was intended as an acknowledgment and that it did in fact import an acknowledgment in all those circumstances. Exemption (s) was not a mere precautionary measure to aid the public but was intended to have legal effect.

Cur. adv. vult.

The following written judgments were delivered:—

May 16.

LATHAM C.J. This is an appeal by special leave from a decision of the Full Court of the Supreme Court of New South Wales. The appellant is the Commissioner of Stamp Duties. The respondent, H. Small & Co. Pty. Ltd., was charged with an offence against the *Stamp Duties Act* 1920-1940 in that it "did give to Murray's of 91 Darlinghurst Road, King's Cross, a receipt liable to duty without the same being duly stamped to wit, a receipt for the sum of five pounds sixteen shillings and fivepence (£5 16s. 5d.) contrary to the Act." Section 92 (2) (a) of the Act provides—"Every person is liable to a fine of not less than one pound nor more than five pounds who:—

(1) (1899) 2 Q.B. 158.

(3) (1948) V.L.R. 355.

(2) (1947) 1 K.B., at pp. 518, 521.

The document was in duplicate. One copy was retained by the defendant and the other was handed to Murray's. It was unsigned, but s. 90 makes the absence of a signature immaterial.

I agree with the decision of the Full Court that the document does not acknowledge or express that money has been received or paid or that any debt was thereby acknowledged to have been settled, satisfied or discharged, or that it signifies or imports any such acknowledgment. The transaction consisted in the delivery of goods and immediate payment therefor. The goods were delivered in exchange for the payment. There was not at any time a debt between the parties. The document is a memorandum stating the terms upon which the goods specified therein were to be sold and delivered, namely, that the sale was to be a sale for cash. It does not show or purport to show that the cash, which was expected to be received in exchange for the goods, was actually paid. It is doubtless true that if the goods had not been accepted by Murray's and paid for neither the goods nor the document would have been given to Murray's, but that fact does not alter the character of the document, which is a record of the terms upon which it was proposed to carry out a transaction and not of the receipt of money.

Evidence was given that the defendant retained the document for accountancy purposes. Naturally it would be a convenient record of the transaction, but what the defendant did with the document after he received it could not turn into a receipt a document which otherwise was not a receipt so as to show that another person gave him a receipt.

Some reliance was placed by the appellant upon the exemption under the heading of "Receipt or Discharge" contained in the Second Schedule under par. (s) which relates to documents described as cash sale dockets issued in retail establishments. This provision exempts such dockets though they show the price of goods purchased if they do not acknowledge the receipt of the money. These words show no more than that there may be a record of a price which is not an acknowledgment of payment. They do not affect the interpretation of s. 92 (2) (a) and the exemption is not relevant in this case because the purchase was not in a retail establishment.

In my opinion the appeal should be dismissed.

McTIERNAN J. The document in question in this case is called a cash sale docket. It is said that the document is a receipt within s. 90 of the *Stamp Duties Act* 1920-1940. This section is in the same terms as s. 101 (1) of the English *Stamp Act* 1891. In the case

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of *General Council of the Bar (England) v. Inland Revenue Commissioners* (1) it was decided that the words "or which signifies or imports any such acknowledgment" apply to the first branch of the section, namely, acknowledgments of money received, deposited or paid. The Court however added these observations on the effect of the words:—"They do not, however, substantially extend the word 'acknowledgment,' because, if the writing signifies or imports an acknowledgment, I think it is an acknowledgment. Probably these words were put in to make it clear that it is not necessary that the word 'acknowledgment' or any equivalent word should have been used" (2).

A document is not a receipt unless it is an acknowledgment to "somebody," presumably the payer, for money received or paid (*Attorney-General v. Carlton Bank* (3); *Attorney-General v. Northwood Electric Light and Power Co. Ltd.* (4)). It is sufficient if the acknowledgment is express or tacit.

The form and contents of the document in the present case do not suggest that it was framed in order to act as a receipt. This does not necessarily result in it not being a receipt within the terms of s. 90 (*Attorney-General v. Northwood Electric Light and Power Co. Ltd.* (5)). Its form and contents suggest that the document was to be used for other purposes.

The document sets out the terms of the sale of the goods to which it relates. It says that it was to be a cash sale: the effect of the document is that the delivery of the goods and the payment were to be concurrent or as simultaneous as the nature of the thing would allow. There is a space provided for the signature of the seller's salesman. The document is in duplicate and at the foot the words "Buyer to sign on white copy." The document when complete would serve as a record of the transaction for both buyer and seller.

The Court, however, is not bound by the apparent tenor of the document. The test is the real nature of the instrument and in order to elucidate that the Court will receive extrinsic evidence (*Commissioner of Stamp Duties (Q.) v. Hopkins* (6)).

In the case of *Attorney-General v. Carlton Bank* (7), Lord Russell said: "It seems clear that the entries in question were intended to be, and were in fact acknowledgments by an officer of the bank." Also, in the *General Council of the Bar (England) v. Inland Revenue*

(1) (1907) 1 K.B. 462.

(2) (1907) 1 K.B., at p. 472.

(3) (1899) 2 Q.B., at p. 165.

(4) (1947) 1 K.B., at p. 518.

(5) (1947) 1 K.B. 511.

(6) (1945) 71 C.L.R. 351.

(7) (1899) 2 Q.B., at p. 163.

Commissioners (1), *Bray J.* applied the test of purpose. He said : " Now, what does counsel put his initials or name opposite the fee for ? He does so because he is asked by the solicitor to do so, in order that the solicitor may satisfactorily prove to the taxing Master, or to his client, or to the Court, or perhaps to the Law Society, that he has paid the fees. He, in effect, asks the counsel to acknowledge payment of the fees. Order LXV., r. 27 (52), says that no fee to counsel shall be allowed (by the taxing Master) unless vouched by his signature. It is a voucher. What is a voucher but an acknowledgment that money has been received ? I think that the decision of Lord *Russell* of Killowen C.J. in *Attorney-General v. Carlton Bank* (2) supports this view."

The document in the present case does not according to its apparent tenor contain an acknowledgment for money paid or received.

The extrinsic evidence is that the terms of the sale were fulfilled. It was a cash sale, not a sale on credit.

The extrinsic evidence also proves that the document was given to the customer with the goods. He gave a cheque in exchange for the goods. This may be regarded for present purposes as the payment of money.

In order to sustain the point that the document is within s. 90, the inference must be made from its terms and these facts that the document was given to the customer for the purpose, amongst others, of being used as an acknowledgment by the respondent that the customer paid for the goods. If this inference cannot be drawn from that material, the fact that the customer used it as a receipt, if he did so, would not make the respondent liable for not putting a stamp upon it. The document would fail to acquire the quality of a receipt within the terms of s. 90, because it would not have the " bilateral operation " which Lord *Greene* M.R. describes in *Attorney-General v. Northwood Electric Light and Power Co. Ltd.* (3).

In my opinion the terms of this document and the extrinsic evidence fail to prove that it is or contains an acknowledgment for money paid or received or that the document imports or signifies such an acknowledgment.

I do not decide that no document which might be called a cash sale docket could fall within the terms of s. 90.

Exemption (s) in the Second Schedule contemplates that a document may be a cash sale docket and yet acknowledge the

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(2) (1899) 2 Q.B. 158.

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receipt of money. It excludes any cash sale docket which is within the terms of the exemption but does not acknowledge the receipt of money. This exemption does not in my opinion support the contention that the document in question in this case is a receipt within s. 90.

In my opinion the appeal should be dismissed.

WILLIAMS J. This is an appeal by special leave by the Commissioner of Stamp Duties of New South Wales from an order of the Full Court of the Supreme Court of New South Wales made in an appeal to that Court by way of case stated by a stipendiary magistrate under the *Justices Act* 1902-1940 (N.S.W.). Special leave to appeal was given because the case was said to be a test case brought to ascertain whether cash sale dockets issued by wholesalers when supplying goods to retailers are liable to stamp duty under the *Stamp Duties Act* 1920-1940 (N.S.W.) as receipts for payment of money paid to the wholesaler by the retailer. The question asked by the magistrate in the case stated was whether his determination convicting the respondent company was erroneous in point of law. The Supreme Court answered the question in the affirmative and remitted the case to the magistrate.

The respondent was convicted of the offence of giving to Murray's of 91 Darlinghurst Road, Kings Cross, Sydney, on 15th March 1949 a receipt for the sum of £5 16s. 5d. without the same being duly stamped. The charge was laid under s. 92 (2) (a) of the *Stamp Duties Act* which provides that every person is liable to a fine of not less than £1 nor more than £5 who gives any receipt liable to duty without the same being duly stamped.

The facts can be shortly stated. On 15th March 1949 the carter of the respondent, which carries on a wholesale business at Stanmore, delivered to the premises of Murray's which carries on a retail grocery business, chocolate blocks together with the document which is claimed to be a receipt. Murray's received these goods and the document from the carter and gave him a cheque for £5 16s. 5d. No receipt was asked for by Murray's and the document in question was the only document which passed between the parties as part of the transaction.

The document is in the following terms :

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duty and the person primarily liable is the person giving the receipt. It was contended for the appellant that the document of 15th March 1949 is a receipt because it acknowledges that £5 16s. 5d. was received by the respondent's carter from Murray's. Alternatively it was contended that the document signifies or imports such an acknowledgment. The document was not signed with the name of any person but this does not prevent it being an acknowledgment if it otherwise amounts to an acknowledgment within the meaning of the section. Some documents acknowledge the receipt or payment of money on their face and are clearly receipts. But the document of 15th March 1949 is not such a document. Apart from the words 'cash sale' which it contains, it could not be contended that the document was more than an invoice and these words do not appear to change its character. Many invoices contain the letters "C.O.D." but it was not contended that these letters would convert an invoice into a receipt. The words "cash sale" do not in themselves signify or import an acknowledgment that money has been received or paid. They merely indicate that the sale is to be for cash and not on credit. They are not as potent to signify or import that money has been received as the letters "C.O.D." for these letters indicate that the buyer pays cash to the seller simultaneously with the delivery of the goods, whereas a purchase for cash may be effected by the buyer paying for the goods before they are delivered. If the respondent sued for the purchase price the production of the document would be quite inadequate to prove a plea of payment. The payment was in fact made by cheque and not in cash and, if the cheque was crossed and made payable to the order of the respondent, payment might be proved by the production of the cheque. But if the payment had been made in cash, the purchaser would have to prove the payment by oral evidence. The document would only be evidence that the sale was intended to be a sale for cash. I agree with *Street*, A.C.J., as he then was, that the document is in itself completely neutral as to whether the goods were delivered or the money was paid. On its face it is simply an invoice and nothing more.

In *Commissioner of Stamp Duties (Q.) v. Hopkins* (1) it was held that extrinsic evidence is admissible in order to determine the real nature of the transaction to which the instrument relates and to ascertain the amount of duty payable. But all that the extrinsic evidence proves in the present case is that the carter handed the document to Murray's at the same time as he delivered the goods and collected the purchase money. There is no evidence that the

document was intended to be a receipt or discharge given for or upon the payment of money. If anything in the transaction, apart from the contents of the cheque or oral evidence, could signify or import an acknowledgment that cash had been paid, it would be the delivery of the goods because it could be inferred that they would not have been delivered until they had been paid for. But the *Stamp Duties Act* taxes instruments and not transactions and receipts to be taxable must be in writing and given for or upon the payment of money. The document has at its foot a space for the signature of the respondent's salesman and states that the buyer is to sign on the white copy. There is no evidence from which any inference can be drawn that the salesman intended was the carter of the goods. The word is better suited to the employee in the respondent's warehouse or factory who receives the order and prepares the goods for delivery. The buyer would sign the white copy to acknowledge that the goods had been delivered. I agree with *Street A.C.J.* that "the evidence is completely silent on the question of what was the intention of the defendant in giving the document, nor is there any evidence from which an intention could be inferred that the document was treated by both parties as a receipt for money." In other words there is no evidence that the document was intended to have more than its face value.

We were referred to several cases, the most recent being *Attorney-General v. Northwood Electric Light and Power Co. Ltd.* (1) but they were decided on different facts and do not appear to me to throw any light on the present problem.

The appellant sought some indirect assistance from an exemption added to the list of instruments exempt from duty as receipts by the amending *Stamp Duties Act* No. 16 of 1924. This Act exempts a cash sale docket as there defined, that is to say, an instrument issued or tendered to a purchaser of goods for cash by a salesman in any retail establishment immediately on the occasion of the purchase which denotes the description of the goods purchased, and the retail price thereof or the amount then paid in cash therefor, but does not acknowledge the receipt of the money. It was contended that this amendment indicated a legislative intention that cash sale dockets, other than those protected by the exemption, on being handed to purchasers should be regarded as instruments which signified or imported an acknowledgment that money had been received within the meaning of s. 90 of the principal Act. But the exemption may only have been added to ensure that a certain class of cash sale dockets would be exempt from duty. The terms

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For these reasons I would dismiss the appeal.

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WEBB J. I agree that the appeal should be dismissed for the reasons given by *Williams J.*

FULLAGAR J. I agree that the appeal should be dismissed for the reasons given by the Chief Justice and *Williams J.*

Appeal dismissed with costs.

Solicitor for the appellant, *F. P. McRae*, Crown Solicitor for New South Wales.

Solicitors for the respondent, *Duncan Barron & Co.*

J. B.