

[FISHER, C.J. AND STUART, P.J.]

THE BANK OF CYPRUS

v.

CHRISTOFI PELENDRIDES AND OTHERS.

FISHER,
C.J.
&
STUART,
P.J.
1921
} April 30
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STAMP LAW—LIABILITY FOR NON-STAMPING—TWO DOCUMENTS—CONTRACT.

*Arising out of an appeal before the Supreme Court.**A question arose as to whether a certain letter or letters required to be stamped as a contract under the Stamp Law and whether the Plaintiff Bank was liable to pay a fine on the amount claimed by virtue of that letter or those letters.*

The Supreme Court heard argument thereon.

For the plaintiff Bank *Economides*.For the Crown the *King's Advocate*.

Judgment: THE CHIEF JUSTICE: We originally called upon the Bank to show cause why they should not pay a penalty for not having stamped a document (considered by itself) by which the three last named Defendants guaranteed the payment of the sum of £970 by the first Defendant in consideration of the Bank giving the first Defendant ten days for payment. Having heard the argument of Mr. Economides and considered the authorities cited by him I do not think that that document required to be stamped. At the time it was signed it was merely an offer, and nothing more, and therefore did not at the time of signature require a stamp. So far therefore as the point upon which we originally called upon the Bank to show cause is concerned, which strictly speaking is the only point before us, I think that the Bank are exonerated. But the King's Advocate urges that the offer was accepted in writing and that therefore, either the document which was originally merely an offer, or that the document of acceptance, must be stamped. As regards the stamping of the first, in my opinion there is nothing to show under Ottoman Law a document originally not liable to stamp duty can become so by a subsequent event. As regards the acceptance it does not, in my opinion, come within Art. 1 of the Law. It was a letter written by the Bank to the first Defendant accepting the offer and not a document embodying a contract with the last three Defendants. It was a document by the writing of which an obligation came into existence, a fulfilment of a condition which made the offer of the last three defendants binding on them. Taken by itself it was not therefore, in my opinion, a document requiring a stamp, nor do I think that the wording of the Ottoman Stamp Law contemplates two or more distinct documents being regarded as one document for the purpose of stamp duty. I think that the remark referred to in argument,

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namely, that Stamp Laws refer to documents and not transactions is in point in this case and having regard to the strictness required in construing taxing enactments, I think the Bank are not liable.

PUISNE JUDGE: Unless documents embodying contracts are clearly subjected to a stamp duty no obligation to stamp will be implied. The classes of contracts which on embodiment in writing (and not many classes need to be in fact so embodied) require the documents of embodiment to be stamped in various ways is set forth in Art. 1 of the Stamp Law of 30th November, 1873.

On the particular facts of this case it is not possible to say that there exists any document requiring to be stamped under Art. 1. The first document—which is the one that the Court thought it advisable to request the Plaintiff in the case to explain why it should not be considered as within the provisions of the Stamp Law—is obviously not itself a contract but a mere pollicitation that might or might not become the foundation of a contract through subsequent events. Admittedly therefore when written it did not require stamping; and there is no provision whatever in the law to show that a document not requiring to be stamped when written becomes liable to duty on account of some subsequent event, the document itself remaining unaltered. Upon the production of this document to the Court it was impossible therefore to refuse its admittance to evidence under Art. 19 unless stamped and the penalty imposed. In regard to the admittance of the document, Art. 19 had no relevancy.

The second document or letter of acceptance—as it may be called need not have been produced at all; its production was unnecessary for the Plaintiff's case as he had only to show that he had acted in a certain way in consequence of the first or pollicitation letter and in accordance with its embodied offer. It was produced, however, by which of the parties is not clear, and what does it amount to—an intimation (made in accordance with the request expressed in the offering letter) that he would accept the proposal made to him. There is nothing whatever in the Stamp Law even to indicate that such an intimation of acceptance, though in writing, requires to be stamped. There was no ground on which when tendered in evidence the Court could have put in force Art. 19 against the Plaintiff, even assuming in favour of the Crown that the Plaintiff was the "porteur" of this written intimation of acceptance within the meaning of Art. 20—a very doubtful matter indeed.

The King's Advocate argues that these two instruments though not separately needing to be stamped yet together form a constructive complex document that does require or would require stamping. The

argument is however unsatisfactory. Examination of the provisions of the Stamp Law would appear to show that it knows nothing whatever of such a combination to form an imaginary constructive document. The argument would require that both documents should have been tendered in evidence together or simultaneously and that they should have been not merely in relation but necessary parts of a complete whole. Yet one only of the documents could have been in the possession necessarily of the Plaintiff and we have already seen that it was quite unnecessary for the Plaintiff to have put in—if he did—the letter of acceptance. Again the admissibility of each document when tendered in evidence was dependent on its own contents and so each document was in evidence apart from the other. These facts are quite inconsistent therefore with any idea that each document was merely an incomplete portion of some imaginary whole or single document. It is true that they are in relation to each other but this is not enough for the argument. The letter of acceptance as moving from the Plaintiff shows his intention: what makes the guarantors liable is the fact of the delay granted by the Plaintiff consequent upon their offer. It would be absurd under such circumstances to say that some constructive single documents can be imagined from these two related indeed but not interdependent letters. (We have here nothing to do with any possible claims by the guarantor, had some detriment arisen to them if the Plaintiff after his letter of acceptance had nevertheless refused to grant delay). Indeed a practical difficulty would of itself destroy this argument of the learned King's Advocate. Both documents are in evidence on their own separate merits. What power has the Court, after having properly received each in evidence, to turn round and thrust them out of evidence again. Nowhere is such power given and indeed had it been given it would in this case be futile for after having been thrust out the Plaintiff need only have withdrawn his letter of acceptance and the Court would then have been bound to receive, unstamped, the letter of pollicitation; and we may here remind ourselves that it is this letter only that really is before us. The Court, in that case, would then have no judicial knowledge that a letter of acceptance existed.

Interesting questions have been touched on in argument. It is unnecessary to consider the bearings of the arguments based upon paper impressed with a stamp and paper to which stamps can be affixed.

The argument founded on the meaning of the word "bearer" (porteur) in Art. 20 may have very real importance. No difficulty occurs when the Plaintiff is himself the legal possessor of the document requiring a stamp, but a real difficulty arises when he is not such a

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FISHER, legal possessor and the document is produced in Court on a *sub poena*
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The Plaintiff in such a case may never have been in a position to have had the document so produced stamped: and it would seem a strange application of a law imposing penalties that a penalty should fall on a Plaintiff if he be held to be the "porteur" of the document under such circumstances. The matter must remain however for future decision.