CALCUTTA HIGH COURT

Rash Mohan Chatterjee

Vs.

Controller of Estate Duty

Matter No. 393 of 1962

(Sankar Prasad Mitra and Kamalesh Ch. Sen, JJ.)

18.09.1963

JUDGMENT

Sankar Prasad Mitra, J.

1. This is a reference under Section 64(1) of the Estate Duty Act, 1953. It relates to the Assessment of Estate duty on the accountable persons of the estate of Ratan Mohan Chatterjee, who died on the 11th July, 1959. The deceased was the absolute owner, inter alia, of premises No. 1, Queens Park, Calcutta. On July 1, 1954, he gifted this property by way of settlement on four trustees namely Rash Mohan Chatterjee, Loke Mohan Chatterjee. Asoke Kumar Banerjee and P.K. Ghose for the objects mentioned in the Indenture of Trust. The trustees were to hold the property for the absolute use and benefit of the deceased's two sons, Rash Mohan Chatterjee and Loke Mohan Chatterjee, in equal shares during their respective lives and upon the death of any of or both the sons, to be held for the use of the wife or wives of such son or sons with remainder to the male children of the two sons in equal share per stirpes. Provision had been made in the deed of settlement empowering the trustees to grant, amongst other things, lease of the trust property as they thought fit.

2. On the 2nd July. 1954, the trustees leased out the upper portion of the premises to the settlor Ratan Mohan Chatterjee on a monthly rental of Rs. 150/- for a period of five years. The lease was to take effect from the 1st July, 1954, i.e. from the same date as the date of the gift itself. The lease expired on the 30th June, 1959 and as stated above, the deceased died 11 days thereafter, on the 11th July, 1959. The said property continued to be occupied by the deceased as a continuing tenant for the last 11 days of his life.

3. Before the Assistant Controller of Estate Duty two alternative contentions were raised on behalf of the accountable persons. The first contention was that no part of the property could be deemed to pass under Section 10 of the Estate Duty Act. The alternative contention was that only

the upper portion of the house could be deemed to pass. The Assistant Controller rejected both the contentions. He took the view that the entire property did pass on the donor's death because continued possession and enjoyment of the property was not immediately assumed by the donors and thenceforward retained to the entire exclusion of the donor or to the entire exclusion of any benefit to him by contract or otherwise.

4. The Appellate Controller of Estate Duty gave his decision against the assessees on the same ground.

5. The Appellate Tribunal decided the appeal partially in favour of the applicants. It held that upon the donor's death only that part of the property which had been leased out to the donor would be deemed to pass to the accountable persons. The other portion of the property was exempt from estate duty because to that extent *bona fide* possession and enjoyment had had been assumed by the donors and thenceforward retained by them to the entire exclusion of the donor. The Tribunal also held that it was unrealistic to separate the property in its intangible form from the rights and interests attached to it.

6. On behalf of the Controller of Estate Duty the following question of law was suggested for reference to this Court :

> "Whether, on the facts and in the circumstances of the case, the Tribunal was right in holding that in terms of Section 10 of the Estate Duty Act only that portion of the property at No. 1, Queens Park, Calcutta, which was occupied by the deceased by virtue of the lease dated the 2nd July, 1954, could be deemed to pass on his death and the value thereof only was to be included in the principal value of the estate ?"

7. The accountable persons, on the other hand, framed the following question :

> "Whether on the facts and in the circumstances of the case the Appellate Tribunal is right in holding that the deceased was not entirely excluded from *bona fide* possession and enjoyment of the part or portion of the property at 1, Queens Park, Calcutta, occupied by him by reason of the lease dated July 2, 1954, within the meaning of Section 10 of the Estate Duty Act ?"

8. The Tribunal was of opinion that the questions raised on behalf of the parties were counterparts of each other and framed the following question of law and referred it to this Court for opinion :

> "Whether on the facts and in the circumstances of the case and an a true interpretation of the provisions of Section 10 of the Estate Duty Act, the Tribunal was justified in holding that only that portion of the property at 1. Queens Park, Calcutta which was in the occupation of the deceased could be deemed to pass on the death of the deceased and not

the whole of the property ?"

9. Learned counsel for the Controller argued that having regard to the framing of the question by the Tribunal it was not open to the applicants to contend that no portion of the property was dutiable. From the statement of the case relevant portions whereof I have referred to already, it seems to me, that this argument is of no substance. The Tribunal by the question it has framed intended to cover all the aspects of this case. Just as the Controller can urge that the whole of the property is liable to estate duty the applicants can also submit that no portion of the property is dutiable. The Tribunal it appears has taken into consideration the question suggested by the Controller and the applicants respectively and tried to frame a question of its own. Both the questions have been set out in the statement of the case and then the Tribunal's question is put forward. In these circumstances, to my mind, it is unreasonable to hold that the applicants before us are debarred from contending that no portion of the property is liable to estate duty.

10. Mr Sukumar Mitra, learned counsel for the applicants, has argued that, the question at issue depends upon the true construction of Section 10 of the Estate Duty Act, 1953, which reads –

> "Property taken under any gift whenever made shall be deemed to pass on the donor's death to the extent that *bona fide* possession and enjoyment of it was not immediately assumed by the donee and thenceforward retained to the entire exclusion of the donor or of any benefit to him by contract or otherwise."

11. In the words of Hamilton J. in *Attorney General v. Seccombe*[1] at p. 699 :

> "I think grammatically the words must be construed thus : 'Property taken under any gift, whenever made, of which property *bona fide* possession and enjoyment shall not have been assumed by the donee immediately upon the gift and of which property *bona fide* possession and enjoyment shall not have been thenceforward retained by the donee to the entire exclusion of the donor from such possession and enjoyment or of any benefit to him by contract or otherwise."

12. Therefore, according to Mr. Mitra, the first thing to be determined is what is the property taken under the gift ? The nature of the right to the property given is important.
13. Mr. Mitra then relied on a passage in the judgment of Lord Russell of Killowen in Commr. for Stamp Duties, *New South Wales v. Perpeual Trustee Co*[2]. at p. 440. Lord Russell has said :

> "The linking of possession with enjoyment as a composite object which has to be assumed by the done indicates that the possession and enjoyment contemplated is beneficial possession and enjoyment by the object of the donor's bounty."

14. Learned Counsel proceeded to quote thereafter the following passage from the speech of

Lord Simonds in *St. Aubyn v. Attorney General*[3], at p. 29 :

> "I venture to think that much of the argument that was addressed to the House in this case and much of the confusion that has arisen in the past on this admittedly difficult branch of the law have been due to the failure to bear in mind that that of which enjoyment is to be assumed and retained and from which there is to be exclusion of the donor and any benefit to him by contract or otherwise is that which is truly given, a proposition which is obvious enough in the case of two separate estates but more difficult to follow and apply where trusts are declared of a single property which are not completely exhaustive in favor of a done."

15. For the propositions aforesaid Mr. Sukumar Mitra has also relied on the cases of

[1](1911) 2 KB 688 [3](1952) AC 15
[2](1943) AC 425

Munro v. Commr. of Stamp Duties[4], and the dictum of Griffiths, C.J. in the case *Lang v. Webb*[5],

16. Mr. Mitra submitted to us that having ascertained the property taken under the gift and whether the donee assumed *bona fide* possession and enjoyment of that property the next step is to find whether the donor had thenceforth been excluded from the possession and enjoyment of such property.

17. The 'possession and enjoyment' of the property contemplated, Mr. Mitra says, is the legal possession and enjoyment and not factual or physical and the principle is "the cedent or donor must be entirely excluded from some enforceable right of a benefit of that which was part of his property before the cession" in other words, an enjoyment by the donor of the same kind as before vide *Lord Advocate v. Stewart*[6] re-affirmed in 1911-2 KB 688 (Supra).

18. In order to bring the case within the scope of the Section, it is not sufficient, states Mr. Mitra. to take the situation as a whole and find that the donor has been allowed to enjoy substantial advantages which have some relation to the property given : it is necessary to consider the nature and source of each of the advantages and determine whether or not it is a benefit of such kind as to come within the section : *Oakes v. Commr. of Stamp Duties. New South Wales*[7]

19. Mr. Mitra submits that, the possession and enjoyment from which the donor has not been excluded (or to which he has been inducted) must trench upon or impair and diminish the rights of the donee, in the subject-matter of the gift. If a new right in the tangible property is created which does not affect the rights of the donee then the Section is not attracted.

20. Learned counsel then urged that, in order that duty may be levied the burden of proof is upon

the taxing authority who must bring the subject within the charge i.e., establish that there was not an entire exclusion of the donor or of any benefit to him by contract or otherwise. The Section does not impose an obligation to pay the duty leaving the accountable person to bring himself within the exception : vide Seccombe's case 1911-2 KB 688 (Supra).

21. It follows, according to learned counsel, that if there is any doubt as to the nature of the 'possession and enjoyment' granted to the donor being that which he had before the cession then the duty is not exigible.

22. In this case, Mr. Sukumar Mitra argued, the gift was of the full right of ownership which did not contain any right as a tenant at the time the gift was made. Therefore, the benefit that may have been conferred on the donor a day after was not referable to the gift itself. The source of the possession and enjoyment under the lease was the lease and not the freehold right which had been given. Before the lease is given the tenant's right does

[4]1934 AC 61 [6](1906) 8 F. 579
[5](1912) 13 CLR 503 [7]1954 AC 57

not come into existence and it would be erroneous to say that the leasehold interest in the property was comprised in the freehold in erest before the creation of the lease. Hence, the lease when granted does not in any way prejudice or trench upon or impair 'passsession and enjoyment' which the lessor had before the creation of the lease.

23. In the foregoing paragraphs I have set out all the points canvassed before us by learned counsel for the applicants. The law on the subject including the present trend of decisions of the English Courts has been summarized in Dymond's "Death Duties", 13th Edition, Volume 1, at pages 210 to 221.

24. For purposes of the present reference the provisions in the Indian Act (Section 10 of the Estate Duty Act, 1953) and those in the British Act (Section 59(3) of the Finance Act (1909-1910) and in the Australian Act (Section 11 of the Administration and Probate Act, 1903), are substantially the same. The difference that is there, relevant for us in this reference would be discussed later in this judgment. I propose to rely on the observations made in Dymond's book confining myself however, to the points that arise for our consideration in the instant case.

25. Estate duty is payable in respect of ill gifts, made by the deceased in his life time unless inter alia, (1) the transfer of 'he property' to the donee was only completed : (2) the donee assumed *bona fide* possession and enjoyment of the property and thenceforward retained such possession and enjoyment; and (3) the deceased was 'henceforward entirely excluded from the possession and enjoyment thereof and also from any benefit by contract or otherwise.

26. The first condition is satisfied if the property is vested in trustees for the donee even though the donor is one of the trustees 1943 AC 425 or the sole trustee 1954 AC 57 This condition has undoubtedly been satisfied in the instant case.

27. For the purpose of the second condition, it is necessary that the donee shall (a) assume and (b) thenceforward retain the possession and enjoyment of the property. It seems that the donee, or person on his behalf, must assume and retain actual possession and enjoyment and not merely the legal right thereto; Stamp Duties *Commr. of New South Wales v. Permanent Trustee Co. of New South Wales*[8]. But presumably where the donor occupies land or enjoys chattels for full consideration such as the payment of a full rent, the receipt of the rent or other consideration by the done will be regarded in English Law as possession and enjoyment by him if the death was on or after the 29th July, 1959, in view of Section 35(2) of the Finance Act, 1959, which runs thus :

> "In the case of property being an interest in land, or being chattels retention or assumption by the said other person or actual occupation of the land or actual enjoyment of an incorporeal right over the land, or actual possession of the chattels shall be disregarded if for full consideration in money or money's worth."

28. Our attention has not been drawn to any provision in the Indian Act similar to the provision in Section 35(2) of the English Finance Act of 1959. There is a finding by the Appellate Controller at page 29 of the paper book that *bona fide* possession and

[8]1956 AC 512

enjoyment of the property was perhaps assumed by the dones immediately upon the gift. The Appllate Tribunal also must have come to the same conclusion otherwise its order cannot be justified.

29. In this reference the crux of the matter appears to be whether condition No. 3 stated above has been satisfied. This condition has two limbs the deceased must be entirely excluded (i) from the property and (ii) from any benefit by contract or otherwise.

30. The distinction between the two limbs or conditions, which has not always been made clear in the earlier cases, some of which have been cited by Mr. Sukumar Mitra, was sharply drawn by the Privy Council in *Chick v. Commr. of Stamp Duties of New South Wales*[9], a decision on a similarly worded clause of a New South Wales Statute. In this case, the deceased gave his son a farming property, "Mia Mia", in 1934; in 1935 the deceased the son and another son entered into a partnership agreement as graziers and Stock dealers, on the terms, inter alia, that the deceased should be the Manager and that his decision should be final in all matters relating to the conduct of the business; that the capital should consist of the live stock and plant owned by the partners; that the business should be conducted on their respective holdings (including "Mia Mia") : and that the land held by each partner should be his sole property and he should have the sole and free right to deal with it as he might think fit. The partnership continued till the death of the deceased in 1952. and the property "Mia Mia" was held dutiable as a gift not to his entire exclusion. The main points were :

(1) the deceased was not in fact excluded from the property, but as a partner enjoyed rights over it

(2) There was an initial out-right gitf of the property not of the property shorn of certain rights (contrast 1934 AC 61).

(3) It was immaterial that the partnership agreement was later than the gift, since the Section required that possession and enjoyment should thereafter be retained to the exclusion of the donor 1956 AC 512.

(4) It was also immaterial that the partnership was "an independent commercial transaction" and that the donor gave full consideration for his rights. If a donor gives a done a freehold and the done gives the donor a lease, even at a full rent, the donor is not excluded from the property. ((1912) 13 CLR 503, which was approved).

(5) The question whether the partnership agreement was "related" "or "referable" to the gift did not arise the question is relevant only to the "second limb" of the clause.

(6) It was immaterial that the done could make no better use of the property. "Where the question is whether the donor has been entirely excluded from the subject mailer of the gift that is the single fact to be determined. If he has nut been so excluded, the eye need look no further to see whether his non-exclusion has been advantageous or otherwise to the done." The remarks of Lord Reid in 1954 AC 57 do not relate to the "first limb", but to the "second limb" of the clause. In this last mentioned case residence on the property in a managerial capacity had not been regarded as a "reservation" but, in the light of the Chick decision it cannot be considered authoritive on the "first limb".

[9]1958 AC 435

31. It appears from point No. 4 above that the Privy Council in Chick's case 1958 AC 435 has fully approved of the decision of the High Court of Australia in (1912) 13 CLR 503. This is the case which has to be carefully considered by us in determining whether Section 10 of the Estate Duty Act, 1953, applies to the facts in the present reference.

32. Section 11 of the Administration and Probate Act, 1903, (Vict) ran as follows :

"Every conveyance or assignment, gift, delivery or transfer of any estate real or personal and whether made before or after the commencement of this Act, purporting to operate as an immediate gift inter vivos whether by wav of transfer, delivery, declaration of trust or otherwise shall -

(a) if made within twelve months immediately preceding the death of the person so dying; or

(b) if made at any time relating to any property of which property *bona fide* possession and enjoyment shall not have been assumed by the donee immediately upon the gift and thenceforward retained to the entire exclusion of the donor or of any benefit to him by contract or otherwise be deemed to have made the property to which the same relates chargeable with the payment of the duty payable under the Administration and Probate Acts, as though part of the estate of the donor."

33. In Lang's case (1912) 13 CLR 503 a testatrix was the owner in fee of land in her actual possession and enjoyment, which she worked as a single property. More than 12 months before her death she gave to her three sons blocks of this land each of which was surrounded by other of the land if the testatrix. The sift was made by conveyances of so much of the land as was under the general law and by transfers of so much of it as was under the Transfer of Land Acts. On the same day upon which the conveyances and transfers were executed, each of the was executed a lease for five years of the land even to him to the testatrix at a fair and reasonable rent. After the gifs the lands given continued to be in the actual physical occupation of the testatrix and to be worked by her with nor other land in the same way as before the gift. The testatrix died before the expiration of the leases.

34. Let us compare these facts with the salient facts in the reference before us. On the 1st July, 1954, the deceased made a gift of the property by way of settlement on trustees. On the 2nd July, 1954, the trustee leased out the upper portion of the premises to the deceased with effect from the 1st July, 1954, on a monthly rental of Rs. 150/- for a period of five years. The lease expired on the 30th June, 1959; the deceased continued as a tenant; and died on the 11th July, 1959.

35. In Lang's case (1912) 13 CLR 503 the High Court of Australia held that the land so given was chargeable with the payment of the duty payable under the Administration and Probate Acts as though part of the estate of the testatrix.

36. Viscount Simonds in Chick's case 195S AC 435 has fully considered the effect of the decision in Lang's case, (1912) 13 CLR 503 and makes the following observations :

> "As long ago as 1912 in *Lang v. Webb*[10] (a case whether a testatrix gave certain blocks of land to her son and on the same day took leases from

[10](1912) 13 CLR 503

> them of the same land) Isaacs, J. said : the lease, however, gave to the donor possession and enjoyment of the land itself, which is a simple negation of exclusion and bring the case within the statutory liability. It was argued that as the rent was the full value, the lessee's possession and occupation were not a benefit. The argument is unimportant because the lease, at whatsoever rent, prevents the entire exclusion of the donor. This view of the Sub-Section has never been departed from and their Lordships respectfully adopt the words of Issacs, J in the present case. It is irrelevant that the donor gave (if he did give) full consideration for his right as a member of the partnership to possession and enjoyment of the land that he had given to his son." : Vide 1958 AC 435 at p. 447.

37. I have given my anxious, consideration to the arguments of Mr. Sukumar Mitra that unless something is carved out of the subject-matter of the gift and given to the donor the liability under the statute is not attracted. To my mind the correct view is that so far as the upper portion of premises No. 1, Queens Park is concerned the lease gave to the donor possession and enjoyment

of the property itself which is a negation of exclusion and brings the case within the statutory liability. The lease at whatsoever rent prevents the entire exclusion of the donor envisaged by Section 10 of the Estate Duty Act, 1953. This was the view of Isaac, J. in Lane's case, (1912) 13 CLR 503 approved by the Judicial Committee in Chick's case, 1958 AC 435 and it is this view which applies to the portion of premises No. 1, Queens Park, leased out by the trustees to the donor. As to whether the other portion of the property was also affected by this lease we shall consider later in this judgment.

38. The principles decided in Lang's case, (1912) 13 CLR 503 has, however, been substantially negatived in England, as respects, deaths on and alter the 29th July, 1959. Under Section 35(2) of the Finance Act, 1959, the donor's actual occupation of the land, enjoyment of an incorporeal right over the land (e.g. Shooting, or fishing rights or a right to take timber), or possession of the chattels is to be disregarded if for full consideration in money or moneys worth. But as I have said no such provision exists in the Indian Statute. There is no difficulty, it seems, therefore in drawing upon the principles laid down in Lang's case, (1912) 13 CLR 503 for construing the relevant provisions in Section 10 of the Estate Duty Act, 1953. Accordingly, it appears, that subject to Section 3(2) of the English Finance Act, 1959, in the case of land and chattels, the condition regarding entire exclusion of the donor from the property would be in fringed where the donor's benefit consists of any form of possession or enjoyment of the gifted, property itself, or of property representing it. In other words, the "first limb" of the condition may be infringed if the donor occupies or enjoys the property or its income, even though he has no right to do so which he could legally enforce against the donee. It is not entirely easy to reconcile this view with the decisions in Stewart's case, (1906) 43 SCLR 465 and in Secomb's case, (1911) 2 KB 688 (the decision on which Mr. Sukumar Mitra placed strong reliance) in which cases the deceased either released with the decision in Stewart's case, (1906) 43 SC LR 465) or made an absolute gift of (the Seccomb), a house and furniture to a relative, without any stipulation, but continued to live there as the donee's guest until his death more than five years later and it was held that duty was not chargeable. In the Seccomb case, 1911-2 KB 688 Hamilton J. in his remarks at p. 700 of the report, appears to have considered that the deceased's exclusion from the property itself (the first limb of the condition) would, like his exclusion "from any benefit pay contract or otherwise" (the second limb), be achieved unless he had "some enforceable right". It is submitted in Dymond's book that if by this expression Hamilton, J. meant a legally enforceable right against the donee, his view cannot be sustained, so far as the first limb is concerned, in the light of the contrary authority noted above. The requirement of enforceability in this sense, derived apparently from the word "contract" in the second limb, seemingly has no relevance to the first limb. It may be observed, however, that although in cases like the Permanent Trustee case 1956 AC 512 the donee could at any time have terminated the arrangement under which the deceased was not excluded, nevertheless, so long as the arrangement continued, the deceased had a specific right; whereas in the Stewart case, (1906) 43 ScLR 465 and the Seccomb case, 1911-2 KB 688 it appears that there was no specific arrangement at all and the deceased was simply the guest of the donee. In Seccomb case, (1911) 2 KB 688 for example, Hamilton J. said (at p. 701

of the report) that there was no understanding that the deceased should be permitted to reside in the house

> "in the sense of an arrangement, or as it is called an honourable understanding, which is not legally enforceable. I have no doubt that neither the donor nor the donee contemplated for one moment that the former would under any circumstances be turned out of the house but there was no discussion on the point and the donor before he executed the Deed was fully aware that after executing the Deed he would be at the defendant's mercy and was fully content to rely upon the affection which the defendant Bore Cowards His grand-uncle and benefactor. Upon this affection and not upon any contract or honourable understanding, the donor was content to rely. . . ."

The difference indicated may, according to the Editor of Dymond's book, be sufficient to distinguish the two lines of cases. It is also stated in this text book that, notwithstanding the sweeping character of the term "entire exclusion", there must, it is thought, be some limit to its meaning the condition cannot be infringed merely because the donor paid occasional visits to the done and the Stewart and Secomb's decisions ((1906) 43 SC LR 465 and 1911-2- KB 688) if still valid, indicate that more permanent residents as a guest does not offend the condition, of any rate if there was no "honourable understanding". On the other hand, specific rights of lodging in the property secured to the donor at the time of the transfer are a breach of the condition : *Revenue Commr. v. O. Donohoe*[11], where the deceased retained the right to the exclusive use of a room and "the right of his support therein."

39. I have discussed all the authorities which appear to me to be relevant for answering the question raised in this reference. These authorities lead me to the following conclusions :

> (a) In order to avoid the mischief of Section 10 of the Estate Duty Act, 1953, it must be established that the done not only assumed *bona fide* possession and enjoyment of the property taken under the gift but also thenceforward retained the said property to the entire exclusion of the donor or any benefit to him by contract or otherwise.
> (b) The single factor to be considered is whether the donor has been entirely

[11]1936 IR 342

> excluded from the subject matter of the gift.
> (c) If the donor has not been entirely excluded then it is not at all relevant to consider whether the non-exclusion of the donor has been advantageous to the done or not In other words, it is immaterial that the donee was receiving full consideration for what the donor was enjoying or possessing.
> (d) Possession and enjoyment by the donor have to be judged in the light of the factual position alone.
> (e) The "benefit to him by contract or otherwise" must, however, be based on enforceable rights.

Applying the above principles to the facts of this case I reiterate that the upper portion of premises No. I, Queens Park, Calcutta, which was leased out by the trustees to the donor, does not escape the consequences indicated in Section 10 of the Estate Duty Act. We have now to consider whether this section can be attracted to the whole of the property on the facts of this case.

40. Section 10 of the Estate Duty Act, 1953, provides as we have already seen, that property taken under any gift, whenever made, shall be deemed to pass on the donor's death to the extent that *bona fide* possession and enjoyment of it was not immediately assumed by the donee and thenceforward retained to the entire exclusion of the donor or of any benefit to him by contract or otherwise.

41. The expression "to the extent" introduced into the Indian Statute is a departure from the provisions in the British and Australian Acts. So far as this aspect of the question is, therefore, concerned no assistance can be derived from decisions in other countries. Mr. Balai Pal, learned counsel for the Controller says that this expression does not indicate any quantum or degree of curtailment of interest. It is merely descriptive of the nature of the property given to the done. I am not inclined to accept this argument. That is not the plain meaning of the expression at all and there is no reason why the meaning should be strained in the manner suggested by Mr. Pal. In any event the doubt, if any has been resolved by the statement of objects and reasons with respect to Section 10 of the Estate Duty Act, 1953, circulated to the members of Parliament. The statement runs thus :

> "This clause brings under charge property given in gift, but in which the donor retains some interests by contract or otherwise. Where the donor retains such interests in a part of the property only, estate duty is payable on that part only ....."

42. It is abundantly clear therefore, that in this case estate duty is payable by the accountable persons only on that portion of premises No. 1, Queens Park, Calcutta, which was in the occupation of the deceased as a lessee.

43. The answer to the question framed is in the affirmative. Each party will bear and pay its own costs of the reference. Certified for the counsel as against respective clients.

K. C. Sen, J.

44. I agree.

Answer in the affirmative.