

William Herald Thomson and others - - - - *Appellants*

v.

The Commissioner of Stamp Duties (New South Wales) - *Respondent*

FROM

THE HIGH COURT OF AUSTRALIA.

JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF THE
PRIVY COUNCIL, DELIVERED THE 19TH FEBRUARY, 1929.

Present at the Hearing :

THE LORD CHANCELLOR.

LORD SHAW.

LORD CARSON.

LORD ATKIN.

SIR CHARLES SARGANT.

[*Delivered by* LORD SHAW.]

This is an appeal, for which special leave was granted, from a judgment of the High Court of Australia dated the 10th December, 1927, reversing a unanimous decision of the Supreme Court of New South Wales of the 1st July, 1927.

There has been a variety of judicial opinion. The New South Wales Supreme Court was unanimous. The High Court of Australia reversed the judgment, Isaacs, Higgins and Powers JJ. favouring that course, with Knox C.J. and Gavan Duffy J. dissenting. The facts raising the case are as follows :—

By an indenture of settlement dated the 4th August, 1896, Mr. Arch. Wm. Currie, of Melbourne, settled certain lands upon the trusts about to be mentioned and the appellants are trustees under that settlement. On the 3rd September, 1914, Mr. Currie died and the appellants are executors under his will and codicil. His wife died about nine years thereafter, namely, on the 13th July, 1923.

The sole question in the case is whether the property conveyed by the indenture of settlement, was liable to duty as

part of the deceased's estate in terms of the provisions of the Stamp Duties Act, 1898, No. 27 of New South Wales, as amended by the Stamp Duties Amendment Act, 1914, No. 3.

The New South Wales Supreme Court decided that there was no such liability and the High Court of Australia decided that there was.

As will be presently noted, the terms of the destination in the indenture of settlement are somewhat peculiar; and it is important accordingly to make no pronouncement of a wider character on the taxing clauses of these Acts than is required by the application of the relevant provisions of the statute to the exact set of facts as they have arisen. Their Lordships appreciate the analysis given by the learned Judges in the Courts below of Section 49 of the statute; but as in their judgment the question at issue between the parties is definitely concluded by section 58, they rest their judgment upon the interpretation of the last mentioned section.

By the Act, section 49, it is provided:—

“The duties to be levied, collected and paid as aforesaid upon the estates of deceased persons shall be according to the duties mentioned in the Third Schedule to this Act; and such duties shall be charged and chargeable upon and in respect of all estate, whether real or personal which belonged to any testator or intestate dying after the commencement of this Act.”

By the second part of section 49 it is provided, in consequence of the amendment by the Act of 1914 as follows:—

“All real estate, including (chattels real) passing under a deed of gift or voluntary conveyance whenever made by any person dying after the commencement of the Stamp Duties (Amendment) Act, 1914, of which *bona fide* possession and enjoyment has not been assumed by the donee or person to whom such conveyance has been made immediately upon the gift or conveyance and thenceforth retained to the entire exclusion of the donor or maker of the conveyance or of any benefit to him of whatsoever kind or in any way whatsoever.”

Then comes section 58, which is as follows:—

“Within six months of the death of any person who has executed a settlement containing any trust to take effect after his death, or within such further time as the commissioner may allow, notice of such settlement shall be lodged by the Trustee thereof or if there is no such trustee then by some person interested thereunder together with a declaration specifying the property thereby settled and the value thereof and duty thereon shall be payable on such value at the rates specified in the Third Schedule hereto. If such trustee or any such person fails to so lodge such notice and declaration he shall be liable to a penalty not exceeding Fifty Pounds.”

These being the statutory provisions, the terms and trust purposes of the indenture of settlement may now be noted. At the date of the settlement Mr. Currie was possessed of certain lands forming the stations of “North Wakool” and “Rankeilour” in New South Wales with the stock thereon.

In the indenture of settlement of the 4th August, 1896, it was narrated that he was desirous “of making a provision for

his said wife and five daughters." It is witnessed that he and his said wife " respectively declare that she the said Jessie Currie, her executors or administrators, shall either retain and manage the said land as hereinafter provided so long as the said Archibald Currie during his life and after the death of the said Archibald Currie so long as the trustees or trustee for the time being of these presents shall think fit or shall at the request in writing of the said Archibald Currie during his life and after his death " at the discretion of his trustees have power of sale, and certain consequential powers and discretions. The deed then proceeds in the following terms :—

" And the said Jessie Currie shall during the joint lives of the said Archibald Currie and Jessie Currie retain for her own sole use and benefit as her separate estate and she shall not have power to dispose or deprive herself of the benefit thereof by anticipation the whole of the rents and profits, interest, dividends and income of the said land, moneys, stocks, funds, investments and securities, and after the death of either of them the said Archibald Currie or Jessie Currie, the trustees or trustee for the time being shall pay one-fifth part of the rents and profits, interest, dividends and income of the said land, moneys, stocks, funds, investments and securities unto each of the said five daughters of the said Archibald Currie during her life for her separate use."

There follows a destination over of the fee.

The true question in the case is what is the period of time at which the destination to the daughters takes effect. Cases are common enough in the shape of a destination which takes effect by way of giving a life interest to the wife and thereafter the fee to the children or of giving a life interest postponed to that of the wife with the fee to the grandchildren or the children's other heirs. This is not a destination of that kind. It comes into operation expressly " after the death of either of them the said Archibald Currie or Jessie Currie " at which period " the trustees or the trustee for the time being shall pay." Accordingly the Board is of opinion that it is to that state of facts and no other that section 58 plainly applies.

It appears to their Lordships clear that within six months after Mr. Currie's death the duty lay upon his trustees to conform to the provisions of section 58 and to make a declaration specifying the property settled by the indenture and the value thereof. Nor does there appear to be any escape from the remaining part of the section that " duty thereon shall be payable on such value at the rate specified in the third schedule."

For the reason already stated it is desirable to avoid any further pronouncement as the section so clearly and quite completely covers the situation which has arisen in fact. For the same reason the Board sets aside the argument that one could conjecture a different set of facts; in particular that the wife should have predeceased the husband and that in that event no duty would then be exigible, the destination having taken effect not after but before the disposer's death. It may quite conceivably be so but no pronouncement is made on that in

the present case which is decided, as the Act was meant to be applied, namely, not on facts reversed but on facts as they stand. Here, as is seen, Act fits fact like hand and glove.

The case of *Rosenthal v. Rosenthal* (1910, 11 Commonwealth, L.R. 87) was referred to in argument, and one sentence from the judgment of Griffith C.J. may be referred to.

“The general intention of the legislature evidently was that property disposed of by way of voluntary assignment, taking effect wholly or in part after the death of the settlor, should be placed on the same footing with regard to taxation as property disposed of by way of passing on intestacy.”

Their Lordships entirely agree. Various authorities were cited which bear upon the meaning to be attached to the words “after the death,” the discussion being whether that word “after” was to be confined in construction to immediately after or not. Such discussions are beside the point of the present case. The destination came into effect of course after Mr. Currie’s death, and it is plain from section 58 that the reckoning should be made and even the information should have been given promptly after that event. This was not done, but that makes no difference now. There is no dispute between the parties as to the quantum of the duty and interest charged.

Their Lordships agree with the majority of the High Court of Australia, and will humbly advise His Majesty that the appeal should be refused with costs.



In the Privy Council.

WILLIAM HERALD THOMSON AND OTHERS

v.

THE COMMISSIONER OF STAMP DUTIES (NEW
SOUTH WALES)

DELIVERED BY LORD SHAW.

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