

GM7.02. 9, 1954

In the Privy Council.

No. 2 of 1953.

37721

ON APPEAL FROM THE FIJI COURT OF APPEAL
AND THE SUPREME COURT OF FIJI

UNIVERSITY OF LONDON
W.C.1.
24 FEB 1955
INSTITUTE OF ADVANCED
LEGAL STUDIES

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BETWEEN
PHILLIP RICE APPELLANT
AND
THE COMMISSIONER OF STAMP DUTIES RESPONDENT
— AND BETWEEN —
THE SAME APPELLANT
AND
THE SAME RESPONDENT.
(Consolidated Appeals).
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CASE FOR THE RESPONDENT

RECORD

1.—The first of these two consolidated Appeals is from a Judgment, pp. 20-21
dated the 22nd August, 1952, of the Fiji Court of Appeal (Carew, Ag. C.J.,
Raby Heatt and Russell, JJ.), holding that the Court had no jurisdiction
to entertain an appeal from a Judgment, dated the 28th April, 1952, of the
Supreme Court of Fiji. The second Appeal is from the said Judgment of pp. 6-8
the Supreme Court (Vaughan, C.J.), answering certain questions of law
contained in a Case Stated by the Respondent for the opinion of the Court pp. 1-4
under the Death and Gift Duties Ordinance.

2.—The legislative provisions relevant to this Appeal are as follows :

10 *Death and Gift Duties Ordinance. (Cap. 151)*

“ 15.—(1) For the purposes of succession duty every
contingency affecting the succession shall be deemed to have
determined in the manner in which, in the opinion of the
Commissioner, it probably will determine, and the succession shall
be valued and succession duty assessed and paid accordingly.

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“(2) An appeal to the Supreme Court by way of Case Stated shall lie from any decision of the Commissioner under the last preceding subsection in the same manner as if that decision was the determination of a question of law, and all the provisions hereinafter contained as to appeals to the Supreme Court shall apply accordingly. If no such appeal is commenced within thirty days and fully prosecuted the decision of the Commissioner shall be final and conclusive.

* * * * *

“35.—(1) In this Ordinance the term ‘gift’ means any disposition of property (as hereinafter defined) which is made otherwise than by will, whether with or without an instrument in writing, without fully adequate consideration in money or money’s worth. 10

* * * * *

“(3) In this Ordinance the term ‘donor’ means the maker of a gift, and the term ‘beneficiary’ means any person acquiring any beneficial interest under a gift, and each of those terms includes a body corporate.

* * * * *

“42.—(1) No gift duty shall be payable on any gift the value of which, together with the value of all other gifts made at the same time or within twelve months subsequently or previously, and whether before or after the commencement of this Ordinance, by the same donor to the same or any other beneficiary otherwise than by way of a religious, charitable or educational trust, does not exceed one thousand pounds. 20

* * * * *

“46.—(1) For the purpose of computing the value of a gift the interests of beneficiaries, so far as those interests are affected by any contingency shall be valued in the same manner as the contingent interests of successors in the case of succession duty, and the provisions of Part II of this Ordinance with respect to reassessment, payment of deficient duty and refund of duty paid in excess shall extend and apply accordingly to gift duty with all necessary modifications. 30

* * * * *

“(2) Subject to the provisions of this Part of this Ordinance the value of a gift shall be deemed and taken to be the present value thereof at the time of the making of the gift.

* * * * *

“51.—(1) Within one month after the making of any gift the value of which is not less than one thousand pounds, or the

value of which, added to the value of any other gifts made by the donor within twelve months previously, amounts to not less than one thousand pounds, the donor shall deliver to the Commissioner a statement in the prescribed form, verified by statutory declaration in the prescribed form and manner and containing all such particulars with respect to the gift or gifts as are necessary to enable the Commissioner to determine whether the same is or are dutiable and to assess the duty thereon, and the Commissioner shall thereupon proceed to assess and recover gift duty accordingly.

10 “(2) If any gift has been created or is evidenced by any written instrument the donor shall deposit with the Commissioner, along with the statement aforesaid, the said instrument or a copy thereof verified as a true copy by statutory declaration.

 “(3) After the delivery of the aforesaid statement it shall be the duty of the donor, and of every beneficiary or trustee of a beneficiary, to furnish the Commissioner with such additional evidence as he reasonably requires for the purposes of this Ordinance with respect to the gift.

* * * * *

20 “57.—If a donor makes default in delivering to the Commissioner within one month after the making of the gift the statement required by section 51 of this Ordinance to be so delivered, the Commissioner may thereupon proceed to assess and recover the duty payable on the gift in the same manner as if the statement had been duly delivered.

* * * * *

30 “59.—(1) any donor who is dissatisfied in point of law with any assessment of gift duty [made by the Commissioner], may, within thirty days after notice of the assessment has been given to him, deliver to the Commissioner a notice in writing requiring him to state a case for the opinion of the Supreme Court.

* * * * *

 “(3) The appellant shall, within fourteen days after receiving the case, transmit the same to the Registrar of the Supreme Court, and the Registrar shall thereupon enter the case for hearing at the next sitting of the Court and shall give notice thereof to the appellant and to the Commissioner.

* * * * *

 “66.—(1) For the purpose of assessing death duty or gift duty, if the Commissioner is not satisfied as to the value as stated by the Administrator or donor, as the case may be, of any portion of the dutiable estate of the deceased or any portion of the subject

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of a gift, he may determine it either by agreement between himself and the administrator in the case of death duty or between himself and the donor in the case of gift duty or, in the event of a failure to agree, by a valuation made by an official valuer appointed under the Stamp Duties Ordinance.

“(2) There shall be payable to the official valuer by the administrator in the case of death duty, or by the donor in the case of gift duty, in respect of any such valuation such fee as may be prescribed by the Governor in Council in each case.

“(3) Any administrator in the case of death duty, or any donor in the case of gift duty, or the Commissioner in either case, may, within one month from the date upon which a valuation by an official valuer is communicated to him, appeal by way of originating summons against such valuation to the Supreme Court. 10

“67.—Subject to the provisions of the last preceding section, the value of any property shall, for the purpose of assessing any duty under this Ordinance, be ascertained by the Commissioner in such manner as he thinks fit.”

Court of Appeal Ordinance, 1949.

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“7.—The Court of Appeal shall have power and jurisdiction to hear and determine all appeals which by virtue of the provisions of this Ordinance lie from the Supreme Court of Fiji or any Judge thereof.

* * * * *

“11.—An appeal shall lie in any cause or matter, not being a criminal proceeding, to the Court of Appeal from a single Judge of the Supreme Court of Fiji sitting in first instance in the following cases:—

“(a) from all final orders, judgments and decisions . . .”

3.—By an Indenture dated the 14th March, 1951, the Appellant gave to his wife a policy of assurance on his life together with all bonuses accrued or to accrue in respect thereof. The policy was a participating policy issued by the Australian Mutual Provident Society on the 19th July, 1939. The sum payable on the death of the Appellant was £1,000, and the yearly premium was £34 9s. 2d. 30

p. 24

pp. 25-27

4.—On the 17th March, 1951, the Appellant's solicitors wrote to the Respondent, enclosing the deed of gift for stamping and claiming that, as the value of the policy then did not exceed about £400, the deed did not attract gift duty. Correspondence followed, in which the Appellant's solicitors stated that it was the Appellant's intention to pay the premiums 40

p. 27, ll. 19-33

pp. 28-33

p. 32, ll. 20-21

and keep up the policy, and the local agents of the Australian Mutual Provident Society stated that the accrued bonuses amounted to £155 12s., and the surrender value of the policy, including the bonuses, was £306 12s. On the 21st August, 1951, the Respondent wrote to the Appellant's solicitors, claiming that, as the Appellant intended to pay the premiums and keep up the policy, the assignment was liable for duty in respect of the full amount of the policy monies. On the 29th August the solicitors wrote in answer that the present value of the policy did not exceed £500, and under Section 46 (2) of the Ordinance only the present value was relevant.

10 On the 25th September, 1951, the Respondent gave notice to the solicitors that he had assessed the gift for duty, the policy value plus the accrued bonuses amounting to £1,155 12s., at £57 15s. 6d.

5.—On the 25th January, 1952, the Respondent stated a case for the opinion of the Supreme Court of Fiji. He set out the facts summarised in paragraphs 3 and 4 of this Case. The Appellant, being dissatisfied in point of law with the assessment, had required him (the Respondent) to state the case. The Appellant contended that the Respondent had no jurisdiction to make the assessment, and neither the deed nor the gift was liable to any duty. The Respondent contended that he had jurisdiction to make the assessment, and the gift was liable to duty in the sum of £57 15s. 6d. The questions of law to be decided were :

- (i) whether the Respondent had jurisdiction to make the assessment ;
- (ii) if so, what the value of the gift was, for the purposes of the Ordinance, when it was made ;
- (iii) whether the gift or the deed was liable to gift duty, and if so at what amount.

6.—The Case Stated came before Vaughan, C.J., on the 9th April, 1952. Before the argument started, the learned Chief Justice remarked that the real issue was whether the value was to be taken to be the present value, or was affected by a contingent interest. He delivered a reserved Judgment on the 28th April. After stating the contentions of the parties, he said there was no dispute about the surrender value of the policy at the time of the gift or about the amount payable on it at the Appellant's death. If duty was payable on the latter amount, it was agreed that it had been correctly assessed. The question was, which of the two values was to be taken ; and the learned Chief Justice rejected the Appellant's contention that there ought to have been a valuation by an official valuer under Section 66 of the Ordinance. The issue was not whether the gift of the policy was subject to a contingency, but whether the donee's interest resulting from the gift was affected by any contingency. If it was, the value for the purposes of the Ordinance was the value as computed by the Respondent under Sections 46 (1) and 15. The question whether the donee's interest was affected by any contingency depended on the nature and extent of the interest acquired ; and that depended on the happening

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of subsequent events. If the policy were kept up, the value of the donee's interest would be the full amount payable at the Appellant's death ; but if she surrendered the policy, as she might at any time during its currency, her interest would be the surrender value at that time. It followed that her interest was affected by a contingency, and the learned Chief Justice answered the questions in the case stated as follows :

p. 8, ll. 18-24

- (i) the Respondent had jurisdiction to make the assessment ;
- (ii) the value of the gift had to be computed by the Respondent under Section 46 (1) ;
- (iii) the deed was liable to the duty assessed, i.e., £57 15s. 6d. 10

pp. 9-10

7.—The Appellant appealed to the Fiji Court of Appeal by notice of motion dated the 13th May, 1952. The Grounds of Appeal included the following :

- (i) that the learned Chief Justice erred in holding that the donee's interest under the gift was affected by a contingency ;
- (ii) that he confused the nature and extent of the interest with its value ;
- (iii) that he erred in holding that the interest acquired by the donee would be different if she surrendered the policy from the interest acquired by her if the policy were kept up : 20
- (iv) that it was impossible to ascertain the amount due on the policy at the Appellant's death, because the Appellant was still alive ;
- (v) that the learned Chief Justice was wrong in holding that the Respondent was not bound to have a valuation of the policy made by an official valuer.

p. 11, ll. 12-18

8.—The Appeal came before Carew, Ag. C.J., Raby Heatt and Russell, JJ., on the 18th August, 1952. At the start of the hearing the Solicitor-General, who appeared for the Respondent, submitted that there was no right of Appeal under Section 11 of the Court of Appeal Ordinance, because Vaughan, C.J. had been hearing an appeal by way of Case Stated, not sitting as a Judge of first instance. After hearing argument the Court reserved Judgment on this preliminary point, and proceeded to hear argument on the merits of the Appeal. 30

p. 12, ll. 21-22

pp. 20-21

p. 20, ll. 14-22

9.—The Judgment of the Court of Appeal was delivered on the 22nd August, 1952. Under the Supreme Court Ordinance, the Supreme Court of Fiji was a superior Court of record possessing, in addition to any other jurisdiction conferred upon it by any Ordinance, all the jurisdiction, powers and authorities vested in the High Court in England. In England the appellate jurisdiction of a single judge was exercised in many matters, and the jurisdiction of a single judge in Fiji was similarly both original and appellate. This matter had come before the learned Chief Justice as a single judge in his appellate jurisdiction ; he had not been sitting as a judge 40

p. 20, ll. 37-43

of first instance. On the wording of Section 11 of the Court of Appeal Ordinance, no appeal lay from a decision of a single judge under Section 59 of the Death and Gift Duties Ordinance. Consequently the Court had no jurisdiction to entertain the Appeal. RECORD
p. 21, l. 1

10 10.—The Respondent respectfully submits that the Judgment of the Court of Appeal was right. The proceeding before Vaughan, C.J. was an appeal, by way of Case Stated, from the decision of the Respondent, not a hearing at first instance. Consequently, it did not fall within the terms of Section 11 of the Court of Appeal Ordinance; and, since that section is the only provision by virtue of which any appeal lies to the Court of Appeal in civil cases, the Court of Appeal had no jurisdiction to entertain an appeal in this case.

20 11.—The Respondent respectfully submits that the answers given by Vaughan, C.J., to the questions contained in the Case Stated were right. As the learned Chief Justice said, the question was not whether the beneficiary's interest in the policy was a contingent interest, in the sense of being subject to a contingency, but whether it was affected by a contingency. The Respondent respectfully submits that the beneficiary's interest in the policy, since it was liable to be extinguished if the premiums were not paid, was affected by a contingency, and the "present value" of the policy was therefore irrelevant for the purposes of the Ordinance. A valuation by an official valuer was not, in the Respondent's respectful submission, required in this case, because Section 66 applies only where there is a dispute simply about figures. In this case the dispute was not simply about figures but about the interpretation of the Ordinance. At no time before the learned Chief Justice delivered his Judgment did the Appellant challenge the figure of £1,155 12s. 0d. on which the Respondent's assessment was based; and that figure was in fact very favourable to the Appellant, because the value of the bonuses attaching to the policy is likely to increase during the lifetime of the Appellant.

30 12.—The Respondent respectfully submits that the Judgments of the Fiji Court of Appeal and the Supreme Court of Fiji were right and ought to be affirmed, for the following (amongst other)

REASONS

- 40
1. BECAUSE the learned Chief Justice was not "sitting in "first instance," and no appeal lay from his decision to the Fiji Court of Appeal;
 2. BECAUSE the beneficiary's interest in the gift was affected by a contingency;
 3. BECAUSE the Respondent's valuation of the gift and assessment of the duty payable thereon were right and in accordance with the Death and Gift Duties Ordinance.

J. G. LE QUESNE.

In the Privy Council.

No. 2 of 1953.

ON APPEAL FROM THE FIJI COURT OF APPEAL
AND THE SUPREME COURT OF FIJI.

BETWEEN

PHILLIP RICE ... APPELLANT

AND

THE COMMISSIONER OF
STAMP DUTIES RESPONDENT.

(and another Appeal consolidated).

CASE FOR THE RESPONDENT

BURCHELLS,
68, Victoria Street, S.W.1.
Solicitors for the Respondent.