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INSTITUTE OF ADVANCED
LEGAL STUDIES
No. 28 of 1955.

In the Privy Council.

45929

ON APPEAL
FROM THE SUPREME COURT OF NEW SOUTH WALES.

BETWEEN—

GEORGE JOHNSON, PERPETUAL TRUSTEE
COMPANY (LIMITED) and GEORGE
EDGERLEY JOHNSON Trustees of the Will of
Frank Johnson deceased *Appellants*

— AND —

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THE COMMISSIONER OF STAMP DUTIES
Respondent

AND BETWEEN—

THE COMMISSIONER OF STAMP DUTIES
Appellant

— AND —

GEORGE JOHNSON, PERPETUAL TRUSTEE
COMPANY (LIMITED) and GEORGE
EDGERLEY JOHNSON Trustees of the Will of
Frank Johnson deceased *Respondents.*

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CASE

**for Commissioner of Stamp Duties, the Respondent on the Appeal and
the Appellant on the Cross-Appeal.**

RECORD.

1. The appeal and cross-appeal in this matter are brought by leave
of the Supreme Court of New South Wales from a judgment of that
Court dated 20th April, 1955, which dealt with the construction and
validity of certain provisions of the Stamp Duties Act, 1920-1952, and
more particularly provisions inserted in that Act by an amending Act,
namely the Stamp Duties (Amendment) Act, 1952. The said judgment
related also to two other cases in which appeals have also been brought
to the Privy Council by leave of the Supreme Court. p. 11.

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2. The Stamp Duties Act is a comprehensive Act of the Parliament of New South Wales providing *inter alia* for the imposition of death duty in the event of the death of persons to whom the Act applies; such duty is imposed in respect of property which was owned or enjoyed by a deceased person in his lifetime and, in some cases, in respect of property disposed of during his lifetime.

3. The main questions for decision in these appeals concern the construction and validity of two provisions of the Stamp Duties Act, 1920–1952; firstly s.102(2)(g) which provides for the imposition of death duty in respect of—

“any property in which the deceased or any other person had, at any time either before or after the commencement of the Stamp Duties (Amendment) Act, 1952, an estate or interest limited to cease on the death of the deceased or at a time determined by reference to the death of the deceased (in this Act referred to as the ‘limited interest’) to the extent to which a benefit accrues or arises by cesser of the limited interest,”

and, secondly, s.102(2A) which provides for the inclusion in the dutiable estate of a deceased person of—

“all personal property situate outside New South Wales at the death of the deceased, when—

“(a) the deceased dies after the commencement of the Stamp Duties (Amendment) Act, 1939; and

“(b) the deceased was, at the date of his death, domiciled in New South Wales; and

“(c) such personal property would, if it had been situate in New South Wales, be deemed to be included in the estate of the deceased by virtue of the operation of paragraph (2) of this section.”

The present appeals are more particularly concerned with the validity and application of the latter of these provisions and the effect thereon of s.144 of the Act which provides as follows:—

“s.144. This Act shall be read and construed so as not to exceed the legislative power of the State to the intent that where any enactment thereof would, but for this section, have been construed as being in excess of that power, it shall nevertheless be a valid enactment to the extent to which it is not in excess of that power.”

4. For convenience of reference certain sections of the Stamp Duties Act material to the questions arising in these appeals have been printed as a separate document and lodged herewith. As will appear from the side notes many of these sections were inserted or amended in 1952 by the Stamp Duties (Amendment) Act, 1952, which came into force on 25th November, 1952.

5. The judgment from which the present appeals are brought relates to death duty claimed to be payable in accordance with the provisions of the Stamp Duties Act in respect of property forming part

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of the estate of one Frank Johnson, deceased, in which Sarah Johnson, deceased, had an estate, to wit an equitable life interest, limited to cease on her death. The Supreme Court held that death duty was payable in respect of property situated in the State of New South Wales at the death of the life tenant, Sarah Johnson, deceased, and that death duty was not payable in respect of property situated outside such State at that date.

6. The facts relevant to the present appeals are set out in the case stated by the Commissioner of Stamp Duties and concern duty claimed by him on the death of the life tenant under the provisions of the Stamp Duties Act referred to in paragraph 3 above. The life tenant died domiciled in New South Wales and at the date of her death—

(a) the Trustees of the estate of the said Frank Johnson were the appellants George Johnson and George Edgerley Johnson both of whom were domiciled in New South Wales and the appellant Perpetual Trustee Company (Limited) a company incorporated and carrying on business in such State;

(b) the persons entitled to the income of the estate of the said Frank Johnson in consequence of the death of the life tenant were all resident and domiciled in New South Wales;

(c) the assets of the estate of the said Frank Johnson vested in the trustees of his estate consisted (apart from real estate in Queensland as to which no question arises) of the following:—

(i) real estate in New South Wales;

(ii) shares in companies and securities registered and recorded on registers in New South Wales;

(iii) shares in companies registered on registers in the State of Victoria.

The said Frank Johnson had been domiciled in New South Wales at the date of his death in 1936 and probate of his will and codicils were granted by the Supreme Court of New South Wales.

7. The case stated by the Commissioners submitted the following questions for determination by the Supreme Court:—

(1) Whether any part of the property included in the estate of the testator in which Sarah Johnson had an interest limited to cease on her death was liable to duty under and by virtue of the provisions of the Stamp Duties Act, 1920–1952?

(2) If the answer to question (1) be in the affirmative—

(a) What part of such property was liable to duty as aforesaid?

(b) What was the value attributable to such part thereof for the purpose of assessing death duty thereon in accordance with the provisions of the said Act?

The Court answered these questions as follows:—

(1) Yes.

p. 15, l. 11.
p. 16, l. 7.

(2) (a) Such of the said property as was situate at the date of death of Sarah Johnson in New South Wales.

(b) It is unnecessary to answer.

and remitted the case to the Commissioner of Stamp Duties to reassess the duty in conformity with the judgment.

8. The respective contentions of the parties to these appeals can be briefly stated as follows:—

(1) The parties George Johnson, Perpetual Trustee Company (Limited) and George Edgerley Johnson (hereinafter called the appellants), contend in their appeal that no duty was payable on the death of the said life tenant. 10

(2) The other party, the Commissioner of Stamp Duties (hereinafter called the respondent), contends in his appeal that duty was payable on the death of the said life tenant in respect of all assets comprised in the estate of Frank Johnson, deceased (other than real estate outside New South Wales) whether situate within New South Wales or not.

9. The Supreme Court of New South Wales consisting of Maxwell, J., Roper, C.J. in Eq. and Herron, J. delivered one judgment which covered the present case and the two other cases mentioned above. 20
In such judgment the Court held that s.102(2)(g) of the Stamp Duties Act was a valid enactment of the New South Wales Legislature but that s.102(2A) of that Act was invalid insofar as it purports to extend the operation of s.102(2)(g). In reaching these conclusions the Court held:—

(1) That the New South Wales Legislature has power under the Constitution Act, 1902, s.5 to make laws for the peace, welfare and good government of New South Wales.

(2) That the only legislation which is beyond this power is legislation on a subject matter which has no relevant territorial 30 connexion whatever with New South Wales.

(3) That s.102(2)(g) on its proper construction applies only to property situate within New South Wales.

(4) That the situation of property within New South Wales is a sufficient nexus to support the validity of legislation imposing taxation on or in respect of such property, no matter what event is chosen as the reason for its imposition.

(5) That the domicile within New South Wales of a person who had a life interest in property is not a sufficient nexus to support the validity of legislation imposing taxation in respect of that property 40 on the death of that person.

(6) That s.102(2A) is invalid insofar as it purports to extend the operation of s.102(2)(g) to personal property outside New South Wales in cases where the life tenant was domiciled in New South Wales.

p. 14, l. 2.

p. 14, l. 20.

p. 12, l. 14.

p. 12, ll. 18—20.

p. 13, l. 28—p. 14,
l. 2.

p. 13, l. 39.

p. 14, ll. 3—22.

p. 14, l. 20.

(7) That death duty was payable under s.102(2)(g) in respect only of such of the assets of the estate of Frank Johnson as were situate within New South Wales at the death of the life tenant. p. 15, l. 12.

In accordance with these conclusions the Court remitted the case to the Commissioner to re-assess the duty in conformity with the principles contained in its judgment. p. 15, l. 15.

10 10. The Commissioner submits that the Supreme Court was correct in the conclusions numbered (1), (2), (3) and (4) in paragraph 9 hereof but that it erred in reaching the conclusions numbered (5), (6) and (7) in that paragraph.

11. The Commissioner contends that the Supreme Court should have held that duty was payable on the death of the life tenant, Sarah Johnson, in respect of all assets in the estate of Frank Johnson, deceased (other than real estate outside New South Wales) and makes the following submissions in support of that contention:—

(1) S.102(2A) as a matter of literal construction extends the operation of s.102(2)(g) to all cases where the life tenant is domiciled in the State of New South Wales.

20 (2) The domicile in New South Wales of the life tenant is a sufficient territorial connexion with the State to support the validity of legislation imposing taxation upon or by reason of the death of the life tenant.

(3) If the domicile of the life tenant *alone* is not a sufficient territorial connexion with the State—

(a) S.102(2A) would exceed the constitutional power of the New South Wales Legislature but (by virtue of s.144 of the Act) only insofar as it would apply to cases which have no other territorial connexion with the State.

30 (b) The effect of s.144 is to confine s.102(2A) to those cases where there is a territorial connexion with the State of the nature hereinbefore referred to in addition to the domicile of the life tenant.

(c) Such a territorial connexion would exist in cases where one or other of the following additional elements is found:—

(i) the presence in New South Wales at the date of death of the life tenant of the person or corporation in whom the property is vested;

40 (ii) the existence in New South Wales at the date of death of the life tenant of some property forming part of the settled estate.

(d) In the present case both of these elements is to be found and, accordingly, s.102(2A) validly extends the application of s.102(2)(g) so as to justify the imposition of duty in respect of all assets comprised in the estate of Frank Johnson, deceased (other than real estate outside New South Wales).

12. The Commissioner humbly submits that the appeal of the Appellants should be dismissed for the following amongst other

REASONS.

- (a) BECAUSE s.102(2)(g) of the Stamp Duties Act, 1920–1952, is a valid enactment of the New South Wales Legislature.
- (b) BECAUSE the said section on its true construction entitles the Commissioner to assess and recover duty in respect of the assets comprised in the estate of Frank Johnson, deceased, which are situated in New South Wales.
- (c) BECAUSE the decision of the Supreme Court of New South Wales in the present case and the reasons therefor were correct. 10

14. The Commissioner humbly submits that his appeal should be allowed and that the assessment made by him should be wholly upheld for the following amongst other

REASONS.

- (a) BECAUSE s.102(2A) of the Stamp Duties Act, 1920–1952, is a valid enactment of the New South Wales Legislature.
- (b) BECAUSE s.144 of the said Act necessitates giving the widest possible application to such Act consistent with the constitutional competence of the New South Wales Legislature. 20
- (c) BECAUSE s.102(2A) validly extends the application of s.102(2)(g) to the facts and circumstances of the present case.
- (d) BECAUSE the said sections entitle the Commissioner to assess and recover the duty which he has assessed in the present case.
- (e) BECAUSE of the submissions set out in paragraph 11 hereof.

H. A. SNELLING,
Solicitor General.

R. E. MITCHELL. 30

In the Privy Council.

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FROM THE SUPREME COURT OF NEW SOUTH WALES.

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**GEORGE JOHNSON, PERPETUAL TRUSTEE
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— AND —

**THE COMMISSIONER OF STAMP DUTIES
Respondent**

AND BETWEEN

**THE COMMISSIONER OF STAMP DUTIES
Appellant**

— AND —

**GEORGE JOHNSON, PERPETUAL TRUSTEE
COMPANY (LIMITED) and GEORGE
EDGERLEY JOHNSON Trustees of the Will of
Frank Johnson deceased - - Respondents.**

CASE FOR THE RESPONDENT
on the Appeal and for the Appellant on the Cross
Appeal.

LIGHT & FULTON,
24 John Street,
Bedford Row,
London, W.C.1,
Solicitors for the Commissioner
of Stamp Duties.