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No. 34 of 1955.

In the Privy Council.

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ON APPEAL FROM THE SUPREME COURT OF
NEW SOUTH WALES

BETWEEN

PERPETUAL TRUSTEE COMPANY (LIMITED) the
Trustee of the Will of ANDREW JOHN BRADY deceased ... *Appellant*

AND

THE COMMISSIONER OF STAMP DUTIES ... *Respondent.*

RECORD OF PROCEEDINGS

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INSTITUTE OF ADVANCED
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25, RUSSELL SQUARE,
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W.C.1.

In the Privy Council.

No. 34 of 1955.

ON APPEAL FROM THE SUPREME COURT OF NEW SOUTH WALES

BETWEEN

PERPETUAL TRUSTEE COMPANY (LIMITED) the
Trustee of the Will of ANDREW JOHN BRADY deceased ... *Appellant*

AND

THE COMMISSIONER OF STAMP DUTIES *Respondent.*

RECORD OF PROCEEDINGS

No. 1.

Case Stated.

No. 314 of 1954.

In the
Supreme
Court of
New South
Wales. .

No. 1.
Case Stated
by the Com-
missioner of
Stamp
Duties.
2nd
September
1954.

IN THE SUPREME COURT OF NEW SOUTH WALES.

IN THE MATTER of the estate of MAUDE LILIAN BRADY late of Guildford
in the County of Surrey, England, deceased.

AND IN THE MATTER of the Stamp Duties Act, 1920-1952.

AND IN THE MATTER of the Appeal of PERPETUAL TRUSTEE COMPANY
(LIMITED) the Trustee of the Will of Andrew John Brady deceased
against the assessment by the Commissioner of Stamp Duties of death
duty payable in respect of the said estate.

CASE STATED.

In the
Supreme
Court of
New South
Wales.

—
No. 1.

Case Stated
by the Com-
missioner of
Stamp
Duties.

2nd
September
1954—
continued.

1.—Andrew John Brady (hereinafter called the testator) died on 25th August, 1927 being then domiciled in the State of New South Wales and leaving property within the said State.

2.—Probate of the will of the testator was on 25th October, 1927 granted to Perpetual Trustee Company (Limited) the executor therein named and the present trustee thereof.

3.—The will of the testator was in the words and figures following :—

THIS IS THE LAST WILL AND TESTAMENT of me ANDREW JOHN BRADY of Sydney in the State of New South Wales Medical Practitioner I BEQUEATH to my wife MAUDE LILIAN BRADY the sum of TWO HUNDRED AND FIFTY POUNDS (£250) to be paid to her as soon as conveniently may be after my decease AND I ALSO BEQUEATH to my said wife all my furniture plate plated articles linen china glass pictures and all other articles of personal domestic or household use or ornament belonging to me at the time of my decease AND I BEQUEATH to MARY O'BRIEN for faithful service the sum of ONE HUNDRED POUNDS (£100) I GIVE DEVISE AND BEQUEATH all the real and the residue of the personal property whatsoever and wheresoever situate of or to which I shall be seised possessed or entitled or over or in relation to which I shall then have any power of appointment or disposition by WILL UNTO AND TO THE USE of my Trustees hereinafter named UPON TRUST to pay all my just debts funeral and testamentary expenses and also all probate estate and legacy duties whatsoever both Federal and State and then UPON TRUST that my said Trustees or their successors or other the trustees or trustee for the time being of this my Will (hereinafter called my said Trustees) shall sell call in and convert into money such parts of the said real and personal estate and premises as shall not consist of money but as to my properties situate at Macleay Street Sydney known as "Cravenna" and "Glencairne" not without the consent in writing of my said wife and so that they shall have full power and discretion to postpone the sale calling in and conversion of the whole or any part or parts of such real and personal estate and premises during such period as they shall think fit (limited to fifteen years from the date of my death) without being responsible for loss AND I DECLARE that my said Trustees may sell the same premises either together or in parcels and either by public auction or private contract and upon such terms and subject to such conditions and in such manner in all respects as they shall think fit with power to buy in or rescind or vary any contract for sale and to resell without being responsible for loss AND for the purposes aforesaid to execute and do all such assurances and

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things as they shall think fit AND I DIRECT my said Trustees To INVEST the surplus or residue thereof in the names of my said trustees in or upon the public stocks funds or securities of the United Kingdom or any of the Australian States or Dominion of New Zealand or on the security of a mortgage or mortgages of any freehold estates in the United Kingdom or any of the Australian States or Dominion of New Zealand or in or upon the Stocks Fund Shares Debentures Debenture Stock Mortgages or Securities of any Corporation Company Public Body or Authority municipal local commercial or otherwise other than mining companies (the shares of which shall be fully paid up) in the United Kingdom or in New South Wales or any of the Australian States or Dominion of New Zealand with power from time to time at the discretion of my said trustees to vary such investment into or for others of a like nature AND TO STAND POSSESSED of the said trust funds and the investments for the time being representing the same UPON TRUST as to one-third part or share thereof to pay the income arising therefrom to my said wife MAUDE LILIAN BRADY during her life and from and after her death to hold the same upon trust for all such one or more exclusively of the others or other of my children at such age or time or respective ages or times if more than one in such shares and in such manner as my said wife shall from time to time by any deed or deeds or by Will or Codicil appoint and in default of any subject to any such appointment upon the same trusts as are hereinafter declared concerning the remaining two-thirds of my said trust estate PROVIDED ALWAYS AND I HEREBY DECLARE that in the event of the income received by my wife in any year under the trust in her behalf hereinbefore contained being less than the sum of Five hundred pounds (£500) then such deficiency shall be a charge upon and shall be deducted by my said trustees from the income for such year arising from the shares of my children hereinafter bequeathed upon trust for them and shall be paid to my said wife I DIRECT my said Trustees to stand possessed of the remaining two-thirds of my said trust estate upon trust for such of my children as being male shall attain the age of twenty-five years or being female shall attain the age of twenty-one years or marry if more than one in equal shares as tenants in common but subject to the declarations and provisions hereinafter contained that is to say I DECLARE that notwithstanding anything hereinbefore contained my said trustees shall (subject to the charge hereinbefore contained) stand possessed of the share of each daughter of mine of and in my said trust estate UPON TRUST during the life of such daughter to pay the income of her said share to her and so that during any coverture the same shall be for her separate use independently of her husband without power of anticipation and her receipt alone shall be a discharge

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continued.

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Wales.

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continued.

for the same AND after the death of such daughter UPON TRUST for all or such one or more exclusive of the others or other of the children of such daughter as such daughter shall by any deed or deeds or by will appoint and in default of and subject to any such appointment UPON TRUST for all or any of the children or child of such daughter who being a son or sons attain the age of twenty-one years or being a daughter or daughters attain that age or marry if more than one in equal shares as tenants in common or if there shall be no such child UPON TRUST for such person or persons as would have been entitled thereto under the Statutes for the distribution of the personal estates of intestates 10
at the death of such daughter such persons if more than one to take as tenants in common in the shares in which they would have taken under the same Statutes I DECLARE that my Trustees may apply the whole or any part at their discretion of the income of the share of the said trust premises to which any child or grandchild of mine shall for the time being be entitled in expectancy under the trusts hereinbefore contained for or towards his or her maintenance education or Benefit and may either themselves so apply the same or may pay the same to the guardian or guardians of such child or grandchild for the purpose aforesaid without seeing to the application thereof and during 20
the suspense of absolute vesting of any such share accumulate the surplus (if any) of the income thereof in the way of compound interest by investing the same and the resulting income thereof in any of the investments hereby authorised in augmentation and so as to follow the destination of the share or fund from which the same shall have proceeded but with power to apply any such accumulations in any such year for or towards the maintenance education or benefit of the child or grandchild for the time being presumptively entitled thereto in the same manner as such accumulations might have been applied had they been income 30
arising from the original trust fund in the then current year I AUTHORISE my Trustees to raise any part or parts not exceeding in the whole a moiety of the then expectant presumptive or vested share of any child or grandchild of mine in the said trust premises under the trusts aforesaid and to pay or apply the same for his or her advancement or benefit as my trustees may think fit I DIRECT that all the net rents profits and income arising from the whole or any part or parts of my estate hereinbefore directed to be sold called in or converted shall until such sale calling in or conversion and as well during the first year after my 40
death as afterwards be applied as if the same were income arising from the proceeds of the sale calling in or conversion thereof or the investment of such proceeds And that notwithstanding any postponement of conversion of my real estate hereinbefore directed to be converted shall for the purpose of transmission be

considered as converted from the time of my death I APPOINT my wife guardian of my infant children I HEREBY APPOINT PERPETUAL TRUSTEE COMPANY (LIMITED) executors and trustees of this my will I APPOINT Messrs. Wilkinson and Osborne of 11 Castlereagh Street Sydney Solicitors to my Estate AND REVOKING all wills at any time heretofore made by me I DECLARE this to be my last Will and Testament IN WITNESS whereof I have hereunto set my hand this Fourteenth day of December in the year of Our Lord one thousand nine hundred and twenty six A. J. Brady SIGNED by the Testator ANDREW JOHN BRADY as and for his last will and testament in the presence of us both present at the same time who at his request in his presence and in the presence of each other have hereunto subscribed our names as attesting Witnesses—

In the Supreme Court of New South Wales.

 No. 1.
 Case Stated by the Commissioner of Stamp Duties.
 2nd September 1954—
continued.

H. Stuart Osborne, Solicitor, Sydney.
 G. B. O. Wilkinson, Articled Clerk with Wilkinson and Osborne, Solicitors, Sydney.

4.—Maude Lilian Brady the widow of the testator died on 16th January, 1953 being then domiciled in England, and leaving property in the State of New South Wales.

5.—Probate of the Will and codicil thereto of the said Maude Lilian Brady deceased was granted by the High Court of Justice in England to Bertha Marian Ada Campbell Watts. No grant of representation of the estate of the said Maude Lilian Brady has yet been made in the State of New South Wales.

6.—At the date of death of the said Maude Lilian Brady the executorial duties in respect of the estate of the Testator had been carried out and the estate of the Testator in New South Wales vested in the trustees of the will comprised the following property and assets and such property and assets were of the values respectively set opposite the same, namely :—

			£	s.	d.
400	<i>Preference Shares</i> in—				
	Anthony Hordern & Sons Ltd. ...	... valued at	420	0	0
1980	<i>Ordinary Shares</i> in—				
	Australasian Paper & Pulp Co. Ltd. ...	.. ..	2,079	0	0
456	" B " <i>Shares</i> in—				
	Australian Gas Light Company ...	.. ..	416	2	0
742	<i>Ordinary Shares</i> in—				
	British Tobacco Co. (Aust.) Ltd. ...	.. ..	1,354	3	0
40	900 <i>Shares</i> in—				
	Broken Hill Pty. Co. Ltd. ...	.. ..	1,980	0	0

		£	s.	d.		
In the Supreme Court of New South Wales. No. 1. Case Stated by the Com- missioner of Stamp Duties. 2nd September 1954— <i>continued.</i>	225	Shares in—				
		Burns Philp & Co. Ltd.	valued at	669	7	6
	39	Shares in—				
		Colonial Sugar Refining Co. Ltd.	„ „	1,755	0	0
	238	Shares in—				
		Deposit & Investment Co. Ltd.	„ „	404	12	0
	559	Shares in—				
		Edwards Dunlop & Co. Ltd.	„ „	1,683	19	9
	265	Shares in—				10
		Peters Consolidated Milk Industries Ltd.	„ „	430	12	6
300	Fully-paid Shares in—					
	Queensland Insurance Co. Ltd.	„ „	960	0	0	
300	Contributing Shares in—					
	Queensland Insurance Co. Ltd.	„ „	768	15	0	
2205	Shares in—					
	Tooth & Co. Ltd.	„ „	8,048	5	0	
	Commonwealth Inscribed Stock		109	13	3	
	Cash in hand		43	15	1	
				<hr/>		
				£21,123	5	1 20
				<hr/>		

7.—The Companies mentioned in paragraph 6 hereof all carry on business in the State of New South Wales and the shares in the said paragraph mentioned were, at the date of death of Maude Lilian Brady, registered in the name of the trustee of the will of the testator upon share registers in New South Wales of the respective Companies. The Commonwealth Inscribed Stock mentioned in the said paragraph was at the date of death of the said Maude Lilian Brady recorded in the Registry of Inscribed Stock at Sydney in the said State.

8.—Perpetual Trustee Company (Limited) the trustee of the will of the testator is incorporated and carries on business in New South Wales. 30

9.—The testator left him surviving three children and no more, namely one son, Irvine Gordon Campbell Brady and two daughters, Bertha Marian Ada Campbell Watt and Moira Maud Campbell Broadhurst who all survived the said Maude Lilian Brady.

10.—At the date of the death of the said Maude Lilian Brady the said Irvine Gordon Campbell Brady was resident and domiciled in the State of New South Wales, the said Bertha Marian Ada Campbell Watt was resident and domiciled in England and the said Moira Maud Campbell Broadhurst was resident and domiciled in Scotland.

11.—The said Bertha Marian Campbell Watt died on the 21st day of July, 1953 leaving her surviving one child only namely Felicity Vernon who is resident and domiciled in England.

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12.—By her will the said Maude Lilian Brady duly appointed the one third share of the testator's residuary estate over which she had a special power of appointment under the testator's will to the abovenamed three children of the testator in equal shares absolutely.

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continued.

13.—During the year ended 30th June, 1952 the income of the estate of the testator was £1,116 of which the sum of £500 was paid to the said
10 Maude Lilian Brady.

14.—The Commissioner of Stamp Duties has included in the dutiable estate of the said Maude Lilian Brady the assets specified in paragraph 6 hereof to the extent to which a benefit accrued or arose by cesser of the interest therein limited to cease on the death of the said Maude Lilian Brady claiming that such assets are so liable to be included to the extent aforesaid under and by virtue of section 102 (2) (g) of the Stamp Duties Act, 1920–1952, and the Commissioner has, pursuant to such section, valued such benefit at 500/1116ths of the principal value of such assets as specified in paragraph 6, namely at £9,464.

20 15.—For the purpose of assessing death duty in the estate of Maude Lilian Brady the Commissioner of Stamp Duties has, pursuant to section 105A of the Stamp Duties Act, 1920–1952, treated the assets specified in paragraph 6 hereof, to the extent aforesaid, as an estate by itself and has separately assessed duty thereon in the sum of £1,072 11s. 9d. being $11\frac{1}{3}$ per centum of the abovementioned value of £9,464.

30 16.—The Commissioner of Stamp Duties has claimed that under and by virtue of sections 114A and 120 of the Stamp Duties Act, 1920–1952, the trustee of the will of the testator is liable to pay the abovementioned sum of £1,072 11s. 9d. out of the assets of the testator's estate to the extent aforesaid and has issued a notice of assessment bearing date the 14th day of April, 1953, addressed to such trustee and calling upon it to pay the said sum of £1,072 11s. 9d. as death duty properly payable by it.

17.—The trustee of the will of the testator, in whom the said assets of the testator are so vested as aforesaid, being dissatisfied with the said assessment, has required the Commissioner of Stamp Duties to state a case for the opinion of the Supreme Court of New South Wales in pursuance of section 124 of the Stamp Duties Act 1920–1952 and has paid the duty in conformity with the said assessment and the sum of £20 as security for costs in accordance with that section.

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18.—The following questions are stated for the determination of the Supreme Court :—

- (1) Whether any part of the property included in the estate of the testator in which Maude Lilian Brady had an interest limited to cease on her death was liable to duty under and by virtue 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 10 for the purpose of assessing death duty thereon in accordance with the provisions of such Act ?

19.—The Court is also asked whether the duty chargeable, if any, should be assessed at the said amount of £1,072 11s. 9d. or, if not, at what amount.

20.—The Court is also asked to decide the question of costs.

Dated this second day of September, 1954.

(Sgd.) E. T. WOODS,
Commissioner of Stamp Duties.

No. 2.
Reasons.
20th April
1955.

No. 2.

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Reasons of the Supreme Court of New South Wales.

IN THE SUPREME COURT OF NEW SOUTH WALES.

Coram : MAXWELL, J.
ROPER, C.J. in EQ.
HERRON, J.

20th April, 1955.

JOHNSON & ORS.	v. COMMISSIONER OF STAMP DUTIES.
PERPETUAL TRUSTEE CO. LTD.	v. COMMISSIONER OF STAMP DUTIES.
FORSTER & ANOR.	v. COMMISSIONER OF STAMP DUTIES.

MAXWELL, J.
ROPER, C.J. in EQ.
HERRON, J.

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These three cases have been stated under section 124 of the Stamp Duties Act, 1920–1952. They have been argued together and they raise

questions as to whether certain legislation to be found in the Stamp Duties Act is within or beyond the legislative competence of the New South Wales Legislature.

10 Before turning to the facts of each particular case, it is convenient to consider the questions of law which have been raised and which, in some respects, are common to all cases. Broadly speaking, the submissions fall under two separate headings : (1) It was submitted that section 102 (2) (g) of the Act is wholly invalid as being beyond the territorial legislative competence of the New South Wales Legislature, and (2) it was submitted as a matter independent of the validity of section 102 (2) (g) that section 102 (2A) is invalid on the same ground insofar as it purports to extend the operation of section 102 (2) (g).

20 Paragraph (g) was inserted into section 102 (2) by the Stamp Duties (Amendment) Act, 1952. There had been a somewhat similar provision in the original Act of 1920, but this had been repealed in 1924. The paragraph constitutes a radical departure from the scheme of the Act as it had existed for many years prior to 1952. That scheme, broadly speaking, was one whereby the dutiable estate of a deceased person was ascertained by including all the property which he had owned at the date of his death and certain property which he had owned and had, by his own act, disposed of during his lifetime.

30 It is unnecessary to go into the refinements of these two broad headings, because paragraph (g) introduced a new concept in respect of a dutiable estate. It imposes a duty on or in respect of property which the deceased had never owned at all. The property included under the paragraph is property in which the deceased or some other person had "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." The property is not aggregated with the balance of the estate of the deceased, but is separately assessed and, for that purpose considered to be an estate by itself (section 105A (1)). The duty payable is separately assessed in respect of the non-aggregated property and constitutes a debt payable to Her Majesty (section 114A (1)). As from the death of the deceased it constitutes a charge on so much of the non-aggregated property as is situate in New South Wales (section 115A (2)), but although this charge is limited to so much of the property as is situate in New South Wales, the Act also imposes a personal liability in respect of the payment of the duty which is not limited by reference to the amount of the existence of property in New South Wales (see section 120 and section 5).

40 The Legislature of New South Wales is a subordinate legislature Its powers are to be found in the Constitution Act, 1902, section 5 of which so far as material, provides that : —

“ The Legislature shall subject to the provisions of the
 “ Commonwealth of Australia Constitution Act have power to
 “ make laws for the peace, welfare and good government of New
 “ South Wales in all cases whatsoever.”

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Legislation on any subject matter which has no relevant territorial connection whatever with New South Wales falls outside the power of the legislature of New South Wales (see *Attorney-General v. Australian Agricultural Company*, 34 S.R. 571, and the *Commissioner of Stamp Duties v. Millar*, 48 C.L.R. 618).

One must examine the Stamp Duties Act, therefore, to see whether there is a relevant nexus between the property dealt with in paragraph (g) and the State of New South Wales bearing in mind that under paragraph (g) property is brought into the estate of the deceased whom, for convenience, we will call the life tenant, although, of course, paragraph (g) has a wider application than merely to cases where the deceased was a life tenant. It is brought in only for the purpose of it thereupon being segregated and treated as a separate estate; it is brought in wherever the life tenant died and wherever he was domiciled (section 101/101E). It is so brought in wherever the remaindermen, or in the case of equitable estates, the trustee, resides or is domiciled, and without regard to the system of law by reference to which the instrument creating the limited interest or regulating the rights of the remaindermen was executed, or to which it owes its force, or by reference to which it would be administered. On these grounds it is said that no relevant connection with the State of New South Wales appears from the legislation. 10 20

It is further submitted, and we have separated this submission because the ones which we have previously set out appear to be sound, whereas this one does not, that the property is brought in under the terms of the section, wherever it is situate, that is whether within or outside the State of New South Wales. The question of whether the property which is brought in by (g) extends to property situate outside New South Wales is one of construction, and we think upon the true construction of the Act, and on authority, the section must be construed as extending only to property situate in the State. Such a conclusion, follows from the decision in *Commissioner of Stamp Duties v. Perpetual Trustee Co. Ltd.* (*Watt's case*, 38 C.L.R. 12), and from that in *Vicars v. Commissioner of Stamp Duties* (71 C.L.R. 309, and see particularly pp. 338/339). The conclusion is greatly strengthened here by reference to the terms of section 102 (2A). That sub-section, to which reference will be made later in connection with the second main submission, reads as follows:— 30

“ 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.” 40

This provision was enacted by the Stamp Duties (Amendment) Act, 1939, but it is clear that it was regarded as extending the operation of paragraph (g) when that paragraph was inserted in its present form. That

fact emerges without question from the provisions, for example, of section 102 (A1) and section 105 (A1). If the property referred to in paragraph (g) were construed to include property wherever situate, then section 102 (2A) could not operate to extend in the application of paragraph (g). The language used in section 102 (2A) (c) clearly indicates, that the property referred to in paragraph (g) is property situate in New South Wales. It is unnecessary to refer to section 17 of the Interpretation Act of 1897, nor to section 14 of the Stamp Duties Act, to support the conclusion, although, insofar as they might have any effect, they tend to support it.

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It was, however, submitted that assuming that upon its correct construction paragraph (g) only applied to the property situate within the jurisdiction, the presence of the property within the jurisdiction is not a relevant nexus in this case. Its association, so it was submitted, with the event which brings about the imposition of the duty, namely the death of the life tenant, is merely accidental. The presence of the property in the State on this submission does not afford a sufficient connection with the State as it is not in respect of it being in New South Wales or in any sense arising out of that fact that it is taxed. Reliance for this proposition was placed on some remarks contained in *Broken Hill South Ltd. v. Commissioner of Taxation* (56 C.L.R. 337).

It is clearly established that the presence of property within the jurisdiction is sufficient to empower the State to impose taxation upon or in respect of it, no matter what event is chosen as the reason for the imposition. The property being within the jurisdiction is subject to the laws of the State, both protective and fiscal, "As regards persons and things actually within the territory of a subordinate legislature its powers are virtually absolute, *Sixsmith v. Commissioner of Taxation*, 28 S.R. 456 at 466-7; *Colonial Gas Association v. Commissioner of Taxation*." Reading the paragraph as it should be read, as restricted to property situate within New South Wales, it is, in our opinion, perfectly valid.

Turning then to the second main submission, namely that section 102 (2A), which is quoted above, is invalid insofar as it purports to extend the operation of paragraph (g), that section is expressly concerned with property situate outside New South Wales, and the only connection with New South Wales which appears to be relied upon in the section to establish a territorial basis for the legislation is the fact that the deceased or life tenant was at the date of his death domiciled in New South Wales. It is well-established particularly in taxation cases, that a subordinate legislature has wide powers with respect to persons domiciled or dying domiciled within its territory, and with respect to the taxation of the property of such persons even though that property be situate outside the jurisdiction.

In this case, however, the duty is levied on or in respect of property which is not nor ever was property belonging to the deceased whose domicile in New South Wales is regarded as the touch-stone of liability.

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The case may be exemplified as being one in which a duty is levied on or in respect of the property "A" because the domicile in the jurisdiction of "B." In our opinion the suggested nexus is completely irrelevant, and, consequently, insofar as section 102 (2A) purports to extend the operation of paragraph (g) it is, we think, invalid.

The question then arises whether section 17 of the Interpretation Act of 1897, or section 104 of the Stamp Duties Act, can be used to produce a different result. As the sub-section is expressly directed to property situate outside New South Wales, section 17 has no operation. Nor do we think that the section can be read down as authorised by section 144 of the Stamp Duties Act so as to bring it within power. Other than the connection arising from domicile in New South Wales which, in the circumstances of this Act, we think, is not a relevant connection at all, there is nothing in the sub-section which could lead to a construction of it so as to bring it within power. There are many circumstances upon which the legislature might have seized to enact a valid provision in the terms of section 102 (2A) in particular cases: as, for instance, that the remaindermen were domiciled in New South Wales or, in the case of equitable interests that the trustee is domiciled in New South Wales, and so on, but no suggested limitation of this character can be arrived at as a matter of construction of the section, construing it as favourably as one might, having regard to the provisions of section 144. 10

Turning now to the particular cases, *Johnson's* case is what might be called a section 102 (2A) case as well as a paragraph (g) case; movables situate outside New South Wales were included in the assessment with property situate within New South Wales. Every other feature in the case is one which, had the legislature chosen to fasten upon it, would have been within jurisdiction; for example the testator who created the life interest by his Will was domiciled in New South Wales, probate was granted in New South Wales, the trustees are domiciled in New South Wales and all the beneficiaries are domiciled and resident here. But, as we have pointed out, none of these features is the test under the section. Insofar as the objection to the assessment in *Johnson's* case rests upon the invalidity of paragraph (g), apart from section 102 (2A), it fails because, as we have held, paragraph (g) is a valid exercise of legislative power, but insofar as the assessment rests upon section 102 (2A) by the inclusion of personal estate situate outside New South Wales, it succeeds. 30

No argument was addressed to us as to the quantum of the assessment or the method of assessing, and we think in these circumstances that the proper answers to the questions raised in the case stated are as follows:— 40

(1) Yes.

(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.

The case should be remitted to the Commissioner with a direction to re-assess the duty in conformity with the principles contained in this judgment, and the Commissioner should pay the costs.

The Perpetual Trustee Company's case is a pure paragraph (g) case, no complications arising from the provisions of section 102 (2A). The only extraordinary elements involved in the case are that the life tenant was domiciled outside New South Wales and some of the remaindermen are so domiciled. As we think paragraph (g) valid, it follows that the questions stated in the case should be answered as follows :—

- (1) Yes.
- (2) (a) All such property.

10 The appeal should be dismissed and the Appellant pay the costs. Forster's case is also a paragraph (g) one. The property was wholly situate in New South Wales and no feature of the case introduced any consideration from outside this State. The questions should be answered :—

- (1) Yes.
- (2) (a) The whole of such property.

The appeal should be dismissed and the Appellant pay the costs.

In the
Supreme
Court of
New South
Wales.

—
No. 2.
Reasons.
20th April
1955—
continued.

No. 3.

Order of the Supreme Court of New South Wales on Case Stated.

No. 314 of 1954.

No. 3
Order on
Case Stated.
20th April
1955—

20 IN THE SUPREME COURT OF NEW SOUTH WALES.

IN THE MATTER of the Estate of MAUDE LILIAN BRADY late of Guildford in the County of Surrey, England, deceased.

AND IN THE MATTER of the Stamp Duties Act, 1920–1952.

AND IN THE MATTER of the Appeal of PERPETUAL TRUSTEE COMPANY (LIMITED) the Trustee of the Will of Andrew John Brady deceased against the assessment by the COMMISSIONER OF STAMP DUTIES of death duty payable in respect of the said Estate.

Wednesday, the Twentieth day of April, One thousand nine hundred and fifty-five.

30 THE CASE STATED by the Commissioner of Stamp Duties bearing date the Second day of September last coming on to be heard on the Eighth and Ninth days of November last WHEREUPON AND UPON READING the said case stated AND UPON HEARING what was alleged by Sir Garfield Barwick of Queen's Counsel with whom were Mr. R. C. Smith of Queen's Counsel and Mr. K. S. Jacobs of Counsel for the Appellant and by the Solicitor General with whom was Mr. R. Else-Mitchell of Counsel for the Commissioner

In the
Supreme
Court of
New South
Wales.

No. 3.
Order on
Case Stated
20th April
1955—
continued.

of Stamp Duties IT WAS ORDERED that the matter stand for judgment and the matter standing in the list this day for judgment accordingly IT IS ORDERED that the questions in the said case stated namely :—

- (1) Whether any part of the property included in the Estate of the Testator in which Maude Lilian Brady had an interest limited to cease on her death was liable to Duty under and by virtue 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 contributable to such part thereof for the purpose of assessing Death Duty thereon in accordance with the provisions of such Act ?

10

be answered respectively :—

- (1) Yes.
- (2) (a) All such property.

AND IT IS FURTHER ORDERED that the Appeal herein be dismissed AND that the costs of the Commissioner of Stamp Duties of and incidental to the case stated be taxed by the proper Officer and when so taxed and allowed to be paid by the Appellants to the Commissioner of Stamp Duties or to Mr. F. P. McRae, his Solicitor.

20

By the Court,
For the Prothonotary,
R. J. BYRNE,
Chief Clerk.

No. 4.
Order
Granting
Final Leave
to Appeal
to Her
Majesty in
Council.
26th July
1955.

No. 4.

Order Granting Final Leave to Appeal to Her Majesty in Council.

Term No. 314 of 1954.

IN THE SUPREME COURT OF NEW SOUTH WALES.
IN THE MATTER of the Estate of MAUDE LILIAN BRADY late of Guildford in the County of Surrey England deceased.
AND IN THE MATTER of the Stamp Duties Act, 1920-1952.
AND IN THE MATTER of the Appeal of PERPETUAL TRUSTEE COMPANY (LIMITED) the Trustee of the Will of Andrew John Brady deceased against the assessment by the COMMISSIONER OF STAMP DUTIES of Death Duty payable in respect of the said Estate.

30

Tuesday, the Twenty-sixth day of July, 1955.

UPON MOTION made this day pursuant to the Notice of Motion filed herein on the Eighteenth day of July 1955 WHEREUPON AND UPON READING the said Notice of Motion the affidavit of Maxwell Sutherland Edwards sworn on the Eighteenth day of July 1955 and the Prothonotary's Certificate of Compliance dated the Fifteenth day of July 1955 AND UPON HEARING what was alleged by Mr. Jacobs of Counsel on behalf of the Appellant Perpetual Trustee Company (Limited) and by the Solicitor General with whom was Mr. Ellicott of Counsel on behalf of the Respondent Commissioner of Stamp Duties IT IS ORDERED that final leave to appeal to Her Majesty in Council from the judgment and order of this Honourable Court given and made herein on the Twentieth day of April 1955 be and the same is hereby granted to the said Appellant AND IT IS FURTHER ORDERED that upon payment by the said Appellant of the costs of preparation of the Transcript Record and despatch thereof to England the sum of Twenty five pounds (£25 0s. 0d.) deposited in Court by the said Appellant as security for and towards the costs thereof be paid out of Court to the said Appellant or to its Solicitors.

In the
Supreme
Court of
New South
Wales.
—
No. 4.
Order
Granting
Final Leave
to Appeal
to Her
Majesty in
Council.
26th July
1955—
continued.

By the Court,
C. T. HERBERT,
DEPUTY PROTHONOTARY.



In the Privy Council.

No. 34 of 1955.

ON APPEAL FROM THE SUPREME COURT OF
NEW SOUTH WALES.

BETWEEN

PERPETUAL TRUSTEE COMPANY
(LIMITED) the Trustee of the Will of
ANDREW JOHN BRADY deceased
Appellant

AND

THE COMMISSIONER OF STAMP
DUTIES *Respondent.*

RECORD OF PROCEEDINGS

BELL, BRODRICK & GRAY,
The Rectory,
29 Martin Lane,
Cannon Street,
London, E.C.4,
Solicitors for the Appellant.

LIGHT & FULTON,
24 John Street,
Bedford Row,
London, W.C.1,
Solicitors for the Respondent.