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INSTITUTE OF ADVANCED
LEGAL STUDIES
No. 18 of 1955.
155A

In the Privy Council.

ON APPEAL FROM THE COURT OF APPEAL OF
NEW ZEALAND

BETWEEN

FLORENCE EMMA WARD, widow, RONALD STANLEY
WARD, and LIONEL MORAN WARD, as administrators
in the Estate of CHARLES CAMERON WARD, deceased ... *Appellants.*

AND

THE COMMISSIONER OF INLAND REVENUE ... *Respondent.*

CASE FOR THE APPELLANTS

RECORD

1.—This is an Appeal from a Judgment of Court of Appeal of New Zealand dated the 29th October, 1954, allowing by a majority (Hutchison and McGregor, J.J., Barrowclough, C.J. dissenting) the appeal of the above-named Respondent from a judgment of Mr. Justice Gresson dated the 7th September, 1953, in favour of the above-named Appellants, upon a Case stated under Section 62 of The Death Duties Act, 1921 (hereinafter referred to as "the Act").

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2.—The question for determination upon this appeal is whether on the true construction of Section 5 (1) (j) of the Act certain property which was transferred by the above-named Charles Cameron Ward deceased (hereinafter referred to as "the deceased") to his sons in 1932 forms part of the dutiable property of the deceased.

3.—The deceased died on the 18th April, 1949, and the Appellants received an assessment of death duties alleged to be payable under Section 5 (1) (j) of the Act in respect of certain real property in Devon Street, New Plymouth (hereinafter referred to as "the Devon Street property") which was the subject of a deed of transfer executed by the deceased in 1932. The Administrators appealed against the said assessment by way of case stated to the Supreme Court of New Zealand pursuant to the provisions of Section 62 of the Act.

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4.—The material facts as appearing in the said case stated are as follows :—

(i) The deceased died on the 18th April, 1949. He had married Selina Stanley (hereinafter referred to as "Selina Ward") on the 21st June, 1899, was separated from her in 1921, and in May, 1932, petitioned for a divorce and obtained a decree nisi which was duly made absolute on the 7th November, 1932. There are four sons of the marriage all now adult and surviving.

(ii) The deceased was the owner of the Devon Street Property, which was subject to mortgages of £3,000 and £2,000. The Devon Street Property was leased to C. C. Ward Limited for a term of ten years from the 17th February, 1930, at a rental of £600 per annum. The said Company was a private Company with a capital of £10,000, in which all the shares were held by the deceased and his said sons. 10

(iii) On the 15th June, 1932, the deceased transferred to his said sons as tenants in common in equal shares the Devon Street Property subject to the two mortgages aforesaid. The said transfer was expressed to be in consideration of the said sons executing a mortgage securing to the deceased an annuity of £650 per annum, and, after his death an annual payment to Selina Ward of £6 per week during the remainder of her life so long as she should remain unmarried. 20

By a memorandum of Mortgage dated 15th June, 1932, the said sons in consideration of the contemporaneous execution of the said transfer covenanted to pay to the deceased during the remainder of his life an annuity of £650 and after his death to pay to Selina Ward during the remainder of her life so long as she should remain unmarried an annuity of £416 while the youngest son was a minor and thereafter of £312, and for the better securing of the said annuities the said sons mortgaged to the deceased and Selina Ward all their estate and interest in the Devon Street Property. The said youngest son attained the age of 21 on the 15th March, 1934. 30

(iv) The said sons paid the said annuity of £650 regularly to the deceased up to 17th March, 1949, and the amount accrued for the period from the said date to the date of the deceased's death has been duly accounted for as part of the assets of the deceased for death duty purposes.

(v) The total value of the Devon Street Property at the time of the said transfer was £11,195. The net value, allowing for the then existing mortgages was thus £6,195. The value of the said annuities as assessed by the Commissioner for Stamps at the time of the said transfer was £7,247. The said transfer did not constitute a gift within the meaning of the Act. At the date of death of the deceased the value of the Devon Street Property was £22,265. 40

(vi) In computing pursuant to the Act the final balance of the dutiable estate of the deceased the Respondent included the sum of £17,265 representing the value at the deceased's death of the Devon Street Property less the £5,000 owing under the said mortgages referred to in subparagraph (ii) hereof. The Respondent's contention was that the said transfer of the Devon Street Property subject to the said mortgages constituted a disposition of property for the purposes of Section 5 (1) (j) of the Act. The Appellants' contention was that the value of the said Devon Street Property was wrongly included in computing the said balance.

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5.—The principal provisions of the Act which are material to the present appeal are :—

Section 5. (1) In computing for the purposes of this Act the final balance of the estate of a deceased person his estate shall be deemed to include and consist of the following classes of property :—

. . . (g) Any annuity or other interest purchased or provided by the deceased, whether before or after the commencement of this Act, either by himself alone or in concert or by arrangement with any other person, to the extent of the beneficial interest accruing or arising by survivorship or otherwise on the death of the deceased, if that annuity or other interest is property situated in New Zealand at the death of the deceased . . .

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. . . (j) Any property comprised in any settlement, trust, or other disposition of property made by the deceased, whether before or after the commencement of this Act, and situated in New Zealand at the death of the deceased :—

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(i) By which an interest in that property, or in the proceeds of the sale thereof, is reserved either expressly or by implication to the deceased for his life or for the life of any other person, or for any period determined by reference to the death of the deceased or of any other person ; or

(ii) Which is accompanied by the reservation or assurance of, or a contract for, any benefit to the deceased for the term of his life or of the life of any other person, or for any period determined by reference to the death of the deceased or of any other person ; or

(iii) By which the deceased has reserved to himself the right, by the exercise of any power, to restore to himself or to reclaim that property or the proceeds of the sale thereof.

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6.—In his said judgment in favour of the Appellants Mr. Justice Gresson said “ The crucial question is whether there was here a ‘ settlement, “ ‘ trust or other disposition of property ’.” He held that the word

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“ disposition ” must be construed *ejusdem generis* with the preceding words “ settlement ” and “ trust ” ; and that the wide definition of “ disposition of property ” contained in Section 39 of the Act did not apply. He went on to hold that the said transfer, having been made for full consideration on terms which might have been agreed between strangers, was not akin to a settlement or a trust, and that therefore the Respondent was not entitled to include the said sum of £17,265 in the said final balance.

p. 39 7.—The Respondent appealed against the said judgment to the Court of Appeal of New Zealand which on 29th October, 1954, allowed the appeal by a majority. 10

p. 23 8.—Mr. Justice Hutchison, while agreeing that the wide definition of “ disposition of property ” contained in Section 39 of the Act is not applicable to Section 5 (1) (j), held that the meaning of the phrase “ disposition of property ” in that paragraph is controlled not only by the words “ trust ” and “ settlement ” but also by the succeeding subparagraphs (i) (ii) and (iii), but that in any case (agreeing with Mr. Justice McGregor) the said transfer was “ of the nature of a settlement.” He further held (in answer to the present Appellants’ main alternative argument that Section 5 (1) (j) does not apply to transactions in the nature of a sale for full consideration), that while “ it has never been decided 20
p. 27, l. 37 “ whether a purely commercial transaction would be outside the scope “ of Section 5 (1) (j),” the said transfer, being a transaction between father and sons, was not to be treated in the same way as a purely commercial transaction, although admittedly made for full consideration. He distinguished the case of *Lethbridge v. A.G.* (1907) A.C. 19 on the grounds that that case “ is authority for the view that a transaction for which full
p. 29, l. 21 “ consideration was given is not within Section 5 (1) (g) of the Act,” but that the authority did not extend to Section 5 (1) (j) of the Act, as was shown by the decision in *Craven v. Commissioner of Stamp Duties* (1948) N.Z.L.R. 550. He regarded the decision in *Lethbridge’s* case (*supra*) as based on the view that the word “ provided ” in Section 2 (1) (d) of the United Kingdom Finance Act, 1894 (corresponding to Section 5 (1) (g) of the Act) meant “ supplied without payment ” or words to that effect, 30
p. 30, l. 33
p. 31, l. 4 but that the word “ made ” in Section 5 (1) (j) had no such connotation.

p. 32 9.—Mr. Justice McGregor delivered a judgment broadly agreeing with that of Mr. Justice Hutchison that a transaction for full consideration was not outside the scope of Section 5 (1) (j). He considered that the said transfer was in the nature of a settlement in that it effected “ an interest
p. 35, l. 42 “ reserved to the settlor by virtue of the mortgage and on the death of “ the annuitants unfettered enjoyment by the transferees.” He agreed 40
p. 35, l. 12 that the definition of “ disposition of property ” contained in Section 39 of the Act is not applicable to Section 5 (1) (j).

10.—Chief Justice Barrowclough, in a dissenting judgment, relied on *Lethbridge's* case (supra) for his view that Section 5 (1) (g) and Section 5 (1) (j) of the Act did not apply to transactions made for full consideration. In his opinion *Craven's* case (supra) did not contradict this view, since there the *ratio decidendi* was that, as the transaction was not one which would have been made between strangers, the operation of Section 5 (1) (j) was not excluded.

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11.—It is submitted that since the judges unanimously rejected the definition of “disposition of property” contained in Section 39 of the Act, for the purpose of construing Section 5 (1) (j), it is necessary to adopt some narrower meaning of the said phrase. Such meaning, it is submitted, must be *ejusdem generis* with the words “settlement” and “trust” and cannot be extended by the succeeding sub-paragraphs which contain words of limitation. The said transfer was in no way akin to, or of the nature of a trust or settlement. Further, both *Lethbridge's* case and *Craven's* case (supra) support the view that a transaction made for full consideration does not fall within Section 5 (1) (j), on the principle that merely because the parties to a transaction are related, it does not follow that the transaction should be treated as other than commercial, if made for full consideration. *Craven's* case could otherwise have been decided merely by a finding that the parties to the relevant transaction were related.

12.—The Appellants therefore humbly submit that this Appeal ought to be allowed for the following amongst other

REASONS

1. BECAUSE the words “other disposition of property” contained in Section 5 (1) (j) of the Act must be construed *ejusdem generis* with the preceding words “Settlement” and “trust” and, so construed, do not include the said transfer;
2. BECAUSE Section 5 (1) (j) does not apply to transactions such as the said transfer which are made for full consideration;
3. BECAUSE the said transfer does not fall into any of the classes referred to in sub-paragraphs (i) (ii) or (iii) of Section 5 (1) (j);
4. BECAUSE the Act is a taxing Act and no tax can be imposed without words clearly showing an intention to lay the burden on the taxpayer, and there are no such clear words contained in Section 5 (1) (j);
5. FOR the reasons given in the judgments of Gresson, J. and Barrowclough, C.J.
6. BECAUSE the Judgment of the Court of Appeal is wrong and ought to be reversed.

KENNETH DIPLOCK.
HERBERT TAYLOR.

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CASE FOR THE APPELLANTS

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