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No. 18 of 1955.

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 of the Estate of CHARLES CAMERON WARD, deceased . . .

Appellants

UNIVERSITY OF LONDON
W.C.1.
19 FEB 1957
INSTITUTE OF ADVANCED
LEGAL STUDIES

10

and

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

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Case for the Respondent

RECORD.

1. This is an appeal from a Judgment of the Court of Appeal of New Zealand dated the 29th October 1954, reversing by a majority (Hutchison and McGregor, JJ., Barrowclough, C.J., dissenting) a judgment of the Supreme Court of New Zealand dated the 7th September 1953 in favour of the Appellants on an appeal brought by them by way of a case stated by the Respondent under section 62 of the Death Duties Act 1921 (hereinafter called "the Act").

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20 2. The Appellants are the Administrators of the estate of Charles Cameron Ward of New Plymouth in New Zealand, Draper (hereinafter referred to as "the deceased"), who died on the 18th April 1949 and Probate of whose last Will was duly granted to them on the 9th June 1949.

30 3. Up to the 15th June 1932 the deceased was the beneficial owner and registered proprietor of real property (hereinafter referred to as the "Devon Street property") in Devon Street, New Plymouth, subject as to part to a mortgage under which £3,000 was then owing and as to another part to a mortgage under which there was then owing £2,000. The Devon Street property was leased to C. C. Ward Limited for ten years from the 17th February 1930 at a rental of £600 a year. C. C. Ward Limited is a private company incorporated in New Zealand with a capital of £10,000 divided into 10,000 shares of £1 each. At all material times the deceased and his four sons were the legal and beneficial owners of the said shares.

4. By a Memorandum of Transfer dated the 15th June 1932 the deceased transferred the Devon Street property (subject to the said mortgages and lease) to his said sons as tenants in common in equal shares in

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consideration of the said sons executing a memorandum of mortgage securing to the deceased during his life an annuity of £650 payable by weekly instalments of £12.10.0 and securing after his death the weekly sum of £6 a week to Selina Ward who was at one time the wife of the deceased but whose marriage to him was dissolved by decree made absolute on the 7th November 1932.

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5. By Memorandum of Mortgage dated the 15th June 1932 the said sons in consideration of the contemporaneous execution of the said Memorandum of Transfer covenanted to pay to the deceased during his life an annuity of £650 payable by weekly instalments of £12.10.0 as from the 25th August 1932 and after his death to pay to the said Selina Ward during her life so long as she should not have remarried an annuity of £416 payable by weekly instalments of £8 if and while the youngest of the said sons should be a minor and thereafter an annuity of £312 payable by weekly instalments of £6 and charged the Devon Street property as security for the said annuities. 10

6. It has always been common ground between the Appellants and the Respondent that :—

(A) The value of the Devon Street property at the time of the said transfer was £11,195. 20

(B) The amount owing under the said mortgages was £5,000 at the time of the said transfer.

(C) The value of the said annuities at the time of the said transfer was £7,247.

(D) At the date of death of the deceased the value of the Devon Street property was £22,265.

7. In computing the final balance of the dutiable estate of the deceased the Respondent pursuant to section 5 (1) (j) of the Act included the sum of £17,265 representing the value at deceased's death of the Devon Street property less the amounts owing under the said mortgages 30 as at the 15th June 1932.

8. Section 5 of the Act so far as it is material is in the following terms :—

“(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 :

* * * * *

(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— 40

(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

10 (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.

* * * * *

20 (3) Property shall not be subject to estate duty under paragraph (j) of subsection (1) hereof by reason of the reservation or assurance of, or any contract for, any interest or benefit, or by reason of the reservation of any right to restore or reclaim the property or the proceeds of the sale thereof, if by any release, surrender, merger, cesser, forfeiture, determination, alienation, or disposition of such interest, benefit, or right, the interest, benefit, or right (together with any interest, benefit, or right, whether of the same or of any different kind, which may have been substituted therefor) has wholly ceased to exist or to be vested in the deceased at any time more than ten years before the death of the deceased (and whether before or after the commencement of this Act) ; but otherwise than as aforesaid no such release, surrender, merger, cesser, forfeiture, determination, alienation, or disposition (whether before or after the commencement of this Act) shall have any effect in preventing the operation of this section in the same manner as if the interest, benefit, or right continued to be vested in the deceased at the date of his death.

30 (4) For the purposes of this section the property comprised in any settlement, trust, or disposition of property shall be deemed to include the proceeds of the sale or conversion thereof, and all investments for the time being representing the same, and all property which has in any manner been substituted for the property originally comprised in such settlement, trust, or disposition."

40 9. The Appellants objected to the inclusion of the said sum of £17,265 in the final balance of the said estate and required the Respondent to state a special case for the determination of the Supreme Court under section 62 of the Act. The Appellant duly stated the said case on the 24th March 1953.

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10. The said case was heard by Gresson, J., who by judgment dated the 7th September 1953 declared that the Respondent was not entitled to include the said sum of £17,265 in the final balance of the said estate.

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11. The learned Judge considered that the words " other disposition " in section 5 (1) (j) of the Act ought to be confined to dispositions of the same class as settlements or trusts. He further considered that although the transaction in question was not a purely commercial transaction but was in the nature of a family arrangement, yet as the deceased received full consideration for what he transferred to his children, the transfer coupled with the contemporaneous mortgage was not a disposition akin to a settlement or trust and was not caught by the subsection. It is submitted that where a father transfers property to his children in consideration of an annuity for his life charged thereon the transaction is a settlement, or akin to a settlement, of the property whether or not the actuarial value of the annuity is equal to the value of the property at the date of the transaction. The Respondent submits in the alternative that the words " other disposition " in the subsection are not confined to dispositions of the same character as settlements or trusts and that even if the transaction in question was not a settlement or akin to a settlement it was still caught by the subsection. 10

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12. By notice of appeal dated the 23rd September 1953 the Respondent appealed to the Court of Appeal against the said judgment of Gresson, J., and by judgment dated the 29th October 1954 the Court of Appeal (by a majority, Barrowclough, C.J., dissenting) allowed the appeal and declared that the Respondent was entitled to include the said sum of £17,265 in computing the final balance of the dutiable estate of the deceased. 20

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13. Barrowclough, C.J., was of opinion that the transfer of the Devon Street property by the deceased to his sons was a " disposition of property "; that the mortgage securing the annuity was " a contract for a benefit of the deceased for the term of his life "; and that the disposition was " accompanied by the contract " within the meaning of section 5 (1) (j) (ii) of the Act. He considered, however, that he was obliged by the authority of the case of *Lethbridge v. A.-G.* [1907] A.C. 19 to hold that dispositions for full consideration were impliedly excluded from the scope of section 5 (1) (j). The *Lethbridge* case was concerned with the meaning of section 2 (1) (d) of the Finance Act 1894, the wording of which is reproduced in section 5 (1) (g) of the Act. In that case a son had as part of a family arrangement purchased certain policies of insurance on the life of his father from his father for full consideration. The House of Lords held that in these circumstances it could not be said that the policies had been " purchased or provided " by the father for the benefit of his son. The Respondent submits that the learned Chief Justice was wrong in thinking that the *Lethbridge* case throws any light on the construction of section 5 (1) (j) of the Act. 30 40

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14. Hutchison, J., thought that any disposition of property, whether or not it was akin to a settlement or trust, fell within section 5 (1) (j) provided that the conditions set out in (j) (i) or (j) (ii) or (j) (iii) were satisfied. He further considered that the disposition in question here was " of the nature of a settlement " so that it would fall within the words " settlement trust or other disposition " even if the " *ejusdem generis* " rule applied to that phrase. He held that the *Lethbridge* case threw no light on the construction of section 5 (1) (j) and that there was nothing in

the wording of that subsection which would justify the Court in saying that it did not apply where the relevant disposition was made for full consideration.

15. McGregor, J., considered that the transaction in question was a disposition of property in the nature of a settlement with the characteristics required by section 5 (1) (j) (ii). He agreed with the views expressed by Hutchison, J., as to the bearing of the *Lethbridge* case on the present case and further agreed with him in finding nothing in the subsection to limit its application to dispositions in the nature of gifts as opposed to
10 dispositions for full consideration. p. 32.

16. By Order dated the 29th April 1955 the Court of Appeal gave the applicants leave to appeal to Her Majesty in Council from the Order of the Court of Appeal dated the 29th October 1954. p. 40.

17. The Respondent respectfully submits that this appeal should be dismissed for the following (among other)

REASONS

- 20
- (1) BECAUSE the transfer of the Devon Street property by the deceased dated the 15th June 1932 and the contemporaneous mortgage of it to the deceased to secure the life annuities constituted a "settlement" or alternatively a "disposition" falling within section 5 (1) (j) of the Act and having the characteristics required by the subsection.
- (2) BECAUSE a "settlement" or "disposition" which would otherwise be within the subsection is not taken out of it by reason of the fact that it was made for full consideration.
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- (3) BECAUSE the decision of the House of Lords in *Lethbridge v. A.-G.* [1907] A.C. 19 does not govern and has no bearing on the construction of section 5 (1) (j) of the Act.
- (4) BECAUSE the judgments of the majority of the Court of Appeal were right and the judgment of Gresson, J., in the Supreme Court and the dissenting judgment of Barrowlough, C.J., were wrong.

GEOFFREY CROSS.

J. BYRNE.

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 Admini-
strators of the Estate of
Charles Cameron Ward,
deceased *Appellants*

AND

THE COMMISSIONER OF
INLAND REVENUE . *Respondent*

Case for the Respondent

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