

Privy Council Appeal No. 18 of 1955

Florence Emma Ward and others, as administrators in
the Estate of Charles Cameron Ward, deceased - - - *Appellants*

v.

The Commissioner of Inland Revenue - - - - - *Respondent*

FROM

THE COURT OF APPEAL OF NEW ZEALAND

JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE
OF THE PRIVY COUNCIL, DELIVERED THE 14TH FEBRUARY, 1956

Present at the Hearing:

THE LORD CHANCELLOR
LORD OAKSEY
LORD MORTON OF HENRYTON
LORD RADCLIFFE
LORD COHEN

[*Delivered by* LORD MORTON OF HENRYTON]

The property which is the subject of this appeal is situate in Devon Street, New Plymouth, New Zealand. Prior to the 15th June, 1932, Charles Cameron Ward was the owner and registered proprietor of the Devon Street property, subject to two mortgages for an aggregate sum of £5,000 and to a lease thereof to C. C. Ward Limited for a term of ten years from the 17th February, 1930, at a rental of £600 a year. On the 15th June, 1932, Mr. Ward transferred the Devon Street property (subject to the mortgages and the lease) to his four sons as tenants in common in equal shares. The consideration for which this transfer was executed and the other relevant facts of the case are fully set out in the Case Stated and need not be here repeated. Charles Cameron Ward died on the 18th April, 1949, and the respondent, in computing the final balance of his estate, included a sum of £17,265 representing the value of the Devon Street property on the death of the deceased (£22,265) less the aggregate amount of the said two mortgages. In so acting, the respondent relied upon the terms of sub-paragraph (j) of section 5 (1) of the Death Duties, Act, 1921. The appellant contends that this sub-paragraph has no application to the present case. There is no dispute as to facts or figures, and the question for decision turns entirely upon the construction of the relevant statutory provisions.

Section 2 of the Act of 1921 contains a number of definitions introduced by the words "In this Act, unless a contrary intention appears".

Section 3 imposes estate duty in the following terms:—

"In the case of every person who dies after the commencement of this Act, whether in New Zealand or elsewhere, and wherever the deceased was domiciled, there shall be payable to the Crown on the

final balance of the estate of the deceased, as determined in accordance with this Act, a duty (hereinafter called estate duty) at the rate and in accordance with the provisions prescribed by this Act."

Section 5 is the vital section, and their Lordships have carefully considered it as a whole, but for the present purpose it is sufficient to quote the following portions:—

"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:

(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,—

(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.

Section 39 begins:—"In this Act the term 'disposition of property' means," and there follows a definition in extremely wide terms. Para. (a) may be quoted:—

"(a) Any conveyance, transfer, assignment, settlement, delivery, payment, or other alienation of property, whether at law or in equity."

Having set out these statutory provisions their Lordships are now able to state in precise terms the question which has to be decided. The Devon Street property was clearly "comprised" in the transfer of 15th June, 1932, and the question is whether, on the true construction of section 5 (1) (j) of the Act, that transfer was either: (a) a "settlement" coming within sub-paragraph (i) or sub-paragraph (ii) or sub-paragraph (iii) of paragraph (j); or (b) a "trust" coming within any one or more of these sub-paragraphs; or (c) a "disposition of property" coming within any one or more of these sub-paragraphs.

It has not been suggested that the transfer was a "trust" within the meaning of paragraph (j) and their Lordships find it unnecessary to decide whether it was or was not a "settlement" within the meaning of that paragraph, because they are clearly of opinion that if the transfer was not a settlement it was a "disposition of property" within the meaning of paragraph (j). Similarly their Lordships find it unnecessary to decide whether or not the transfer came within sub-paragraph (i) of paragraph (j), since they are clearly of opinion that it came within sub-paragraph (ii), whether or not it also came within sub-paragraph (i).

In their Lordships' opinion the transfer exactly answers the description of "a disposition of property which is accompanied by . . . a contract for any benefit to the deceased for the term of his life," and consequently the property comprised therein comes within section 5 (1) (j) (ii) of the Act of 1921. They will now set out the steps by which they arrive at this conclusion.

First, was the transfer a disposition of property? Counsel for the appellants submitted that the wide definition contained in section 39 did not apply to the words: "disposition of property" in section 5 (j), but their Lordships again find it unnecessary to decide this point, since in their view the words in their ordinary meaning are wide enough to include this transfer. As Gresson, J., observed in the Supreme Court, the word "disposition" is not a technical word but an ordinary English word of very wide meaning, and their Lordships see no good reason for giving to it a restricted meaning in paragraph (j). In their opinion any transfer of property which possesses the characteristics described in sub-paragraph (i) or sub-paragraph (ii) or sub-paragraph (iii) is a disposition to which paragraph (j) applies.

Counsel for the appellants argued that if this meaning were attached to the word "disposition" the words "settlement" and "trust" were unnecessary. This is so, but their Lordships agree with Hutchison, J., when he observed: ". . . I think that the legislature might very well, and understandably, have specially mentioned settlements and trusts as being the types of disposition that would the more likely be used for the purposes set out in the sub-paragraphs without thereby intending to exclude from the operation of the provision any other dispositions that might be used for those purposes."

Turning to sub-paragraph (ii), their Lordships are of opinion that the transfer was undoubtedly accompanied by a contract for a benefit to the deceased for the term of his life, since it was executed "for the consideration of the purchasers executing a memorandum of mortgage . . . securing to the said Charles Cameron Ward an annuity for the remainder of his life of the sum of £650 payable in instalments of £12 10s. 0d. per week" and further securing after the death of the said Charles Cameron Ward a weekly payment to Selina Ward his wife during the remainder of her life so long as she should remain unmarried. A mortgage was executed on the same day by the four sons to secure the two annuities.

It is difficult to imagine circumstances in which a transfer could more plainly be "accompanied by" a contract, and it is obvious that the contract was a contract for a "benefit to the deceased for the term of his life."

Counsel for the appellants, however, contended that even if the transfer was within the actual words of paragraph (j), that paragraph should not be construed as covering a disposition for which full commercial consideration was given. He described the transaction as a commercial one of bargain and sale, and contended that there was to be found in section 5 of the Act a context which should induce their Lordships to hold that such a transaction was outside the scope of the section. Their Lordships cannot accept this argument. They find no such context in the section. On the contrary, a transfer accompanied by a contract for a benefit to the deceased for the term of his life is within the express terms of the section, and their Lordships see no reason for excluding from its operation a case in which the value of the benefit is equal to, or greater than, the value of the property transferred.

Counsel relied strongly upon the case of *Lethbridge v. A.G.* [1907] A.C. 19 and in particular upon a passage in the judgment of Lord Loreburn, L.C. In that case the House of Lords had to consider whether certain policies assigned by a father to his son were "purchased or provided" by the father within the meaning of section 2 (1) (d) of the Finance Act, 1894, and Lord Loreburn, L.C., said on page 23: "The general purpose of this sub-section is to prevent a man escaping estate duty by subtracting from his means, during life, moneys or money's worth, which, when he

dies, are to reappear in the form of a beneficial interest accruing or arising on his death. Now it is not subtracting from his means if the deceased has received a full equivalent in return for whatever he has laid out."

Counsel pointed out that in the present case the deceased "received a full equivalent" for the Devon Street property. This is so, on the figures set out in paragraph 10 of the case stated, but in their Lordships' view the observations of Lord Loreburn, L.C., have no bearing upon the present case. The learned L.C. was there stating the general purpose of section 2 (1) (d) of the Finance Act, 1894. He uses the word "sub-section" but it is clear that he was not referring to the whole of sub-section 2 (1) but only to sub-paragraph (d) thereof. This is clear from the context and, further, his words would be quite inappropriate in reference to (e.g.) sub-paragraph (a) of the sub-section. Sub-paragraph (d) is clearly the forerunner of sub-paragraph (g) of section 5 (1) of the New Zealand Act of 1921. The wording of the two sub-paragraphs is identical, save that some words are added at the end of sub-paragraph (g) in the New Zealand Act. The problem under each of these two sub-paragraphs is whether the deceased "purchased or provided" certain property and in *Lethbridge's* case the House of Lords construed the word "provided" as carrying with it the idea of bounty on the part of the deceased. Thus it became relevant to consider whether the deceased had "subtracted from his means," and Lord Loreburn pointed out that a man does not subtract from his means if he receives a full equivalent in return for whatever he has laid out. See also the observation of Lord Macnaghten: "It appears to me that the policies were not "provided" by the father within the meaning of that expression in the Act. It was not by the father's gift, or at his cost, or by means of any expenditure on his part that the policies were vested in the son."

Under section 5 (1) (j) (ii) of the New Zealand Act of 1921, however, it is immaterial to consider whether the deceased "purchased or provided" anything. The question is whether he did or did not make a disposition which answers the description contained in sub-paragraph (ii), and for the purpose of answering this question it does not matter whether the deceased did or did not receive "a full equivalent" for the property comprised in the disposition. Sub-paragraph (ii) is concerned only with the nature of the consideration, not with its amount, and its object is, in their Lordships' view, clear. It is to prevent a man escaping estate duty by subtracting property from his means during his life and replacing it with property which comes to an end on his death, with the result that neither the property transferred, nor the property which replaces it, forms part of his estate on his death. That is why the sub-paragraph imposes estate duty on the transferred property if the consideration for the transfer is (e.g.) an annuity for the life of the transferor but not if the consideration is (e.g.) cash.

The result is that in their Lordships' view there is no good reason for implying, in section 5 (1) (j) of the Act of 1921, an exception in the case of a purchase for full consideration in money or money's worth, and the view which they have formed is strongly supported by the United Kingdom Statutes which preceded the New Zealand Death Duties Act of 1909, wherein this paragraph first appeared. The wording of section 5 (1) (j) (ii) of the 1909 and 1921 Acts is obviously based upon section 7 of the United Kingdom Succession Duty Act, 1853 (16 & 17 Vict. c. 51) but the words "not being a *bona fide* sale", which appear in the last mentioned section, are omitted from section 5 (1) (j) (ii). It is surely reasonable to surmise that they were omitted because the New Zealand provision was intended to extend to a *bona fide* sale. Similarly sub-paragraphs (i) and (iii) of section 5 (1) (j) of the New Zealand Acts of 1909 and 1921 are obviously based upon section 38 (2) (c) of the United Kingdom Customs and Inland Revenue Act, 1881, as amended by section 11 of the Customs and Inland Revenue Act, 1889, and re-enacted by section 2 (1) (c) of the Finance Act of 1894. It is significant that although the New Zealand legislation reproduced, in effect, section 2 (1) (c) of the Act of 1894 it did not

reproduce section 3 (1) of the same Act, which contains an exemption from estate duty in the case of a *bona fide* purchase for full consideration in money or money's worth.

Their Lordships have not, of course, overlooked the cases of *Commissioner of Stamp Duties v. Russell* [1948] N.Z. L.R. 520 and *Craven v. Commissioner of Stamp Duties* [1948] N.Z. L.R. 550. In each of these cases it was held, rightly in their Lordships' view, that the transfer of property in question came within section 5 (1) (j) (ii) of the Act of 1921. These cases are not, however, of assistance in considering the argument now under review, for the Court in each case held that the transaction was not a commercial transaction for full consideration, and did not express any view upon the question whether such a transaction would or would not come within section 5 (1) (j) (ii).

Counsel for the appellants suggested that if the respondent's argument was correct great hardship would result in the present case and in other cases and he quoted the language of Gresson, J., in the present case. "If the unrestricted interpretation of the sub-section contended for by the respondent were correct it would produce results which one hesitates to believe the legislature could have intended. Upon the basis of such a wide interpretation if a man should expend his capital of say £5,000 in payment to an insurance company in the purchase of an annuity that sum would fall to be included as dutiable estate when he died. He might in fact have consumed the whole of his capital in this way yet at his death be assessed as having a notional capital although in fact it had ceased to exist in any traceable form."

As the case put by the learned Judge as an example may come before the Court for consideration in the future, their Lordships express no opinion upon it. They would, however, point out that section 5 (1) (j) only applies to property situate in New Zealand at the death of the deceased.

For the reasons which they have stated their Lordships are of opinion that the transaction now in question comes exactly within the words of the Statute and considerations of possible hardship in individual cases cannot affect their decision.

Their Lordships will humbly advise Her Majesty that this appeal should be dismissed. The appellants must pay the costs of this appeal.

In the Privy Council

WARD AND OTHERS, AS
ADMINISTRATORS IN THE ESTATE OF
CHARLES CAMERON WARD, DECEASED

v.

THE COMMISSIONER OF
INLAND REVENUE

DELIVERED BY
LORD MORTON OF HENRYTON