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~~GD 66~~

Judgment
45
1964

IN THE PRIVY COUNCIL

No.51 of 1962

ON APPEAL FROM THE HIGH COURT OF AUSTRALIA

B E T W E E N:

THE COMMISSIONER OF STAMP DUTIES
(Queensland) (Respondent)

Appellant

- and -

HUGH DUNCAN LIVINGSTON
(Petitioner)

Respondent

RECORD OF PROCEEDINGS

UNIVERSITY OF LONDON
INSTITUTE OF ADVANCED
LEGAL STUDIES
23 JUN 1965
25 RUSSELL SQUARE
LONDON, W.C.1.

- 78676

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IN THE PRIVY COUNCILNo.51 of 1962ON APPEAL FROM THE HIGH COURT OF AUSTRALIAB E T W E E N:THE COMMISSIONER OF STAMP DUTIES
(Queensland) (Respondent)Appellant

- and -

HUGH DUNCAN LIVINGSTON
(Petitioner)RespondentRECORD OF PROCEEDINGSINDEX OF REFERENCE.

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ON APPEAL FROM THE HIGH COURT OF AUSTRALIA

BETWEEN:

THE COMMISSIONER OF STAMP DUTIES
(Queensland) (Respondent) Appellant

- and -

HUGH DUNCAN LIVINGSTON
(Petitioner) Respondent

RECORD OF PROCEEDINGS

10

No.1

Affidavit of Hugh Duncan Livingston
verifying Petition No.8 of 1958.

In the Supreme
Court of
Queensland

No.1

IN THE SUPREME COURT
OF QUEENSLAND

No. of 195

IN THE MATTER of "The Succession and
Probate Duties Acts 1892 to 1955"

- and -

IN THE MATTER of the estate of JOCELYN
HILDA COULSON deceased.

Affidavit of
Hugh Duncan
Livingston,
verifying
Petition
No.8 of 1958
8th February
1958

20

I, HUGH DUNCAN LIVINGSTON of "Booloroo"
Moree in the State of New South Wales, Grazier
make oath and say as follows -

1. I am the Petitioner in the Petition here-
unto annexed and marked "A".

2. The statements in the said Petition are
to the best of my belief true in substance
and in fact.

30

SIGNED AND SWORN by the)
abovenamed HUGH DUNCAN)
LIVINGSTON at Moree in)
the State of New South)
Wales this eighth day)
of February 1958)
Before me:

H.D. Livingston

R. W. Paton J.P.
A Justice of the Peace
for the State of New South Wales.

In the Supreme
Court of
Queensland

No.2

No.2

Petition No.8 of 1958 against
Assessment of Succession Duty
(Annexure "A")

Petition No.8
of 1958
against Assess-
ment of
Succession Duty
(Annexure "A")
8th February
1958

"A"

SUCCESSION DUTY

Petition No. 8 of 1958

IN THE SUPREME COURT OF QUEENSLAND

Mr. Justice Townley
Mr. Justice Mack

10

IN THE MATTER of "The Succession and
Probate Duties Acts 1892 to 1955"

- and -

IN THE MATTER of the Estate of
JOCELYN HILDA COULSON deceased.

To the Supreme Court of Queensland

The humble petition of Hugh Duncan Living-
ston of Moree in the State of New South Wales
Grazier showeth as follows:

1. Jocelyn Hilda Coulson wife of Bruce Thomas
Coulson died intestate on the eighth day of
July 1950. 20

2. On the thirteenth day of November 1951
Letters of Administration of the Estate of the
said Jocelyn Hilda Coulson were granted to your
petitioner by the Supreme Court of New South
Wales.

3. The said Jocelyn Hilda Coulson died resident
and domiciled in the State of New South Wales.

4. The said Jocelyn Hilda Coulson married the
said Bruce Thomas Coulson on the twenty-second
day of June 1950. Before such marriage she
was the widow of Hugh Duncan Livingston (herein-
after called Hugh Duncan Livingston the elder)
late of "Booolocroo" Moree in the State of New
South Wales Grazier. 30

5. The said Hugh Duncan Livingston the elder died resident and domiciled in the State of New South Wales on the seventeenth day of November 1948 having first duly made and executed his last will and testament bearing date the ninth day of December 1944 whereby he appointed the said Jocelyn Hilda Coulson, John Evelyn Cassidy of Sydney in the State of New South Wales and Max Bernhard Hesslein of Sydney aforesaid to be the executrix, executors and trustees thereof. The said executrix executors and trustees are and were at all material times domiciled in the State of New South Wales.

10

6. By his said will inter alia the said Hugh Duncan Livingston the elder gave and bequeathed to the said Jocelyn Hilda Coulson to be paid to her as soon as possible after his death the proceeds of all policies of assurance of his life and he gave devised and bequeathed to his said trustees all his real and the residue of his personal estate of whatsoever nature and where-soever situate (in the will called his "trust property") subject to the payment thereof of all his just debts funeral and testamentary expenses and all death estate and other duties upon trust as to one-third thereof for the said Jocelyn Hilda Coulson absolutely and as to the remaining two-thirds shares thereof upon trust to use and apply the income therefrom or such part thereof as his trustees might in their absolute discretion think fit for the maintenance education and advancement in life of his sons Hugh Duncan Livingston, (your petitioner) and John Angus Livingston until they should respectively attain the age of 23 years and to pay and transfer half of the said remaining two-thirds of his said trust property and all un-applied income thereof to each of his said sons upon his attaining that age. The will also empowered his trustees in their absolute discretion to carry on the business of a grazier on all or any of the properties which should belong to his estate for such time as they should think expedient, and if at the time of his decease he should be engaged in any partnership or partnerships they should have power to continue the same or to enter into further or other partnership or partnerships with his brothers and/or sister or their or any of their

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30

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In the Supreme
Court of
Queensland

No.2

Petition No.8
of 1958
against Assess-
ment of
Succession Duty
(Annexure "A")
8th February
1958
continued

In the Supreme
Court of
Queensland

No.2

Petition No.8
of 1958
against Assess-
ment of
Succession Duty
(Annexure "A")
8th February
1958
continued

respective legal representatives for such period or periods as his trustees in their absolute discretion should think fit. He gave them further powers in relation to the carrying on of business including powers in relation to land and leaseholds, and he gave them power generally to act in all matters whether specifically mentioned in his will or not, relating to such stations or pastoral properties or any of them as if they were the absolute owners thereof. By his will the said testator also empowered his trustees to sell and dispose of any of his trust property and declared that without in any way restricting the power of sale his trustees should not be bound to sell any portion of his trust property until the youngest of his said sons should attain the age of twenty three years and until the power of sale should be exercised he directed his trustees to pay to his wife the said Jocelyn Hilda Coulson one-third of the nett annual income of his trust property. A copy of the said will is hereunto annexed and marked "B" and your petitioner craves leave to incorporate and refer to the same as part of this petition.

10

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7. Probate of the said will was granted to the said trustees by the Supreme Court of New South Wales on the thirteenth day of October 1949. An exemplification thereof was not resealed in Queensland until the thirteenth day of February 1952.

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8. The said Hugh Duncan Livingston the elder was survived by the said Jocelyn Hilda Coulson and by his said sons Hugh Duncan Livingston (your petitioner) and John Angus Livingston aged respectively nineteen years and seventeen years at the date of his death. The youngest son attained the age of 23 years on the thirtieth day of May 1954.

9. The assets in the estate of the said Hugh Duncan Livingston the elder consisted of real and personal estate in the State of New South Wales and real and personal estate in the State of Queensland.

40

10. The assets in the said estate in the State of Queensland consisted of:-

1. A freehold and leasehold grazing property together with stock and plant thereof whereon the said Hugh Duncan Livingston the elder carried on grazing business on his own account and,

In the Supreme
Court of
Queensland

No.2

10

2. An interest in a leasehold grazing property together with stock and plant thereon on which a grazing business was carried on in partnership. Such partnership was that of the said Hugh Duncan Livingston the elder, his brother John Hector Livingston, Kenneth Huthwaite Stokham Livingston his sister Nancy Florence Livingston and Alan Stephen Gillespie and was carried on under the name or style of Maranoa Downs Pastoral Company and,

Petition No.8
of 1958
against Assess-
ment of
Succession Duty
(Annexure "A")
8th February
1958
continued

3. One undivided fourth interest in certain other freehold and leasehold grazing properties.

20

Such partnership and also his own grazing business in Queensland were carried on by his said trustees and his surviving trustees at all material times.

30

11. The said trustees of the estate of the said Hugh Duncan Livingston the elder lodged with the proper authorities in the State of New South Wales accounts of the said estate for the purpose of the assessment in the State of New South Wales of duties payable upon his death. No assessment of duties and no payment thereof had been made in the estate of Hugh Duncan Livingston the elder at the date of death of the said Jocelyn Hilda Coulson and either in the State of New South Wales or elsewhere.

40

12. At the said date of death of the said Jocelyn Hilda Coulson the estate of the said Hugh Duncan Livingston the elder had not been fully administered, the residue had not been ascertained and the final balance payable to the beneficiaries including the share of the said Jocelyn Hilda Coulson therein had not been and could not have been determined. Probate of the will of the said Hugh Duncan Livingston the elder had not been resealed in Queensland nor

In the Supreme
Court of
Queensland

No.2

Petition No.8
of 1958
against Assess-
ment of
Succession Duty
(Annexure "A")
8th February
1958
continued

had the said trustees lodged accounts with the Commissioner of Stamp Duties for the purpose of the assessment of Succession and Probate Duties. The said Hugh Duncan Livingston the elder had died domiciled in New South Wales and the executors and trustees were and have remained domiciled in New South Wales and not in Queensland, and the interest of the said Jocelyn Hilda Coulson in his estate was a right to call on the executors and trustees in New South Wales to administer his estate in accordance with his will, and wherever situated.

10

13. Your petitioner having been required to do so by the Commissioner of Stamp Duties but under protest and without prejudice to his contention that no succession or administration duty under The Succession and Probate Duties Acts was payable on the death of the said Jocelyn Hilda Coulson filed an account of her estate. By a notice of assessment addressed to your petitioner's solicitors and dated the twentieth day of April 1956 the Commissioner of Stamp Duties assessed Succession Duty claimed by him to be payable under The Succession and Probate Duties Acts 1892 to 1955 on the death of the said Jocelyn Hilda Coulson. A copy of the said notice of assessment is hereunto annexed and marked "C".

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14. Your petitioner duly paid the amount of Succession Duty so assessed to the Commissioner of Stamp Duties.

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15. At the date of the death of the said Jocelyn Hilda Coulson there was no property in the State of Queensland in respect of which Succession Duty was chargeable upon her death.

16. In the alternative your petitioner relies upon the following and says:

- (a) That in arriving at the amount upon which he so assessed Succession Duty the Commissioner of Stamp Duties wrongly included an amount of £2518. 13. 10d. being a proportion of moneys received by the said trustees of the estate of the said Hugh Duncan Livingston the elder as a result of the second, third and fourth

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distributions (made respectively in the years 1952, 1953 and 1955) under the Wool Realisation (Distribution of Profits) Act 1948 - 1952;

In the Supreme
Court of
Queensland

No.2

Petition No.8
of 1958
against Assess-
ment of
Succession Duty
(Annexure "A")
8th February
1958
continued

- 10 (b) Such amount relates to participating wool within the meaning of the said Act and which was supplied for appraisalment by Livingston Brothers in partnership in which the said Hugh Duncan Livingston the elder had a one-third interest but which was dissolved before his death from grazing properties in the State of Queensland during the period from twenty-eighth day of September 1939 to thirtieth day of June 1946.
- 20 (c) The said amount of money so received by the said trustees was not and is not property situated in the State of Queensland for the purposes of The Succession and Probate Duties Acts 1892 to 1955.

17. Your Petitioner further says -

- (a) At some time in or before the month of March 1954 the Commissioner of Stamp Duties called upon your petitioner to file an account of the estate of the said Jocelyn Hilda Coulson for the purpose of the assessment of Succession Duty.
- 30 (b) Your petitioner filed such account on the twenty fifth day of March 1954. At the time of filing such account your petitioner intimated to the Commissioner of Stamp Duties that such account was filed without prejudice to his contention that no Succession Duty was payable on the death of the said Jocelyn Hilda Coulson.
- 40 (c) Your petitioner's solicitors repeatedly requested the Commissioner of Stamp Duties to issue an assessment of Succession Duty in the said estate but the Commissioner of Stamp Duties did not issue such assessment until the twentieth day of April 1956.
- (d) Notwithstanding these facts included in

In the Supreme
Court of
Queensland

No.2

Petition No.8
of 1958
against Assess-
ment of
Succession Duty
(Annexure "A")
8th February
1958
continued

the said assessment is an amount of
£962. 2. 10 for interest.

18. Your petitioner being dissatisfied with the said assessment and the duty so assessed having been paid gave notice in writing to the Commissioner of Stamp Duties on the second day of May 1956 of his intention to appeal against such assessment.

19. On the twenty eighth day of May 1956 your petitioner furnished to the Commissioner of Stamp Duties a statement in writing of the grounds of such appeal against the said assessment. The grounds of appeal so stated were as follows:

1. That the said assessment is wrong in and contrary to law.
2. That the said Jocelyn Hilda Coulson was domiciled in the State of New South Wales at the date of her death and at such date there was no property in the State of Queensland in respect of which Succession Duty was chargeable upon her death.
3. In the alternative to paragraph 2 hereof -
 - (a) That you should not have included in the assets of the said Jocelyn Hilda Coulson for the purpose of the levy of Succession Duty any part of any distributions made to the executors and trustees of the will of Hugh Duncan Livingston deceased in pursuance of the Wool Realisation (Distribution of Profits) Act 1948 to 1952 since there was no succession in Queensland and no disposition of property in Queensland and no devolution by law of any beneficial interest in property in Queensland or the income thereof in respect of any of the said distributions;
 - (b) That pursuant to Section 8 of the Succession and Probate Duties Act of 1904 you should have remitted interest up to the twentieth day of

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40

April 1956 on the Succession Duty assessed by you in respect of the estate of the said Jocelyn Hilda Coulson.

In the Supreme Court of Queensland

20. Your petitioner therefore humbly prays as follows:

No.2
Petition No.8
of 1958
against Assess-
ment of
Succession Duty
(Annexure "A")
8th February
1958
continued

A. That it may be declared:

- 1. That the said assessment is wrong in and contrary to law.
- 10 2. That the said Jocelyn Hilda Coulson was domiciled in the State of New South Wales at the date of her death and:
 - (a) At such date there was no property in the State of Queensland in respect of which Succession Duty was chargeable upon her death, and
 - 20 (b) At such date the proprietary interest of the said Jocelyn Hilda Coulson under the will of her husband Hugh Duncan Livingston who died at Sydney in the State of New South Wales on the seventeenth day of November 1948, in respect of property of his estate situated in Queensland, was a personal right against the executors and trustees of his will, who were at all material times domiciled in the State of New South Wales, and such interest was not property within
 - 30 the State of Queensland.
- 3. In the alternative to paragraph 2 hereof -
 - (a) That the Commissioner of Stamp Duties should not have included in the assets of the said Jocelyn Hilda Coulson for the purpose of the levy of Succession Duty any part of any distributions made to the executors and trustees of the will of Hugh Duncan Livingston deceased in pursuance of the Wool Realisation (Distribution of Profits) Act 1948 to 1952 since
 - 40 there was no succession in Queensland

In the Supreme
Court of
Queensland

No.2

Petition No.8
of 1958
against Assess-
ment of
Succession Duty
(Annexure "A")
8th February
1958
continued

and no disposition of property in Queensland and no devolution by law of any beneficial interest in property in Queensland or the income thereof in respect of any of the said distributions and at the date of her death the said Jocelyn Hilda Coulson was not domiciled in Queensland.

(b) That pursuant to Section 8 of the Succession and Probate Duties Act of 1904 the Commissioner of Stamp Duties should have remitted interest up to the twentieth day of April 1956 on the Succession Duty assessed by the Commissioner of Stamp Duties in respect of the estate of the said Jocelyn Hilda Coulson. 10

B. That it may be ordered:

- 1. That the Commissioner of Stamp Duties pay to your petitioner such sum as has been paid as Succession Duty consequent upon the death of the said Jocelyn Hilda Coulson or in the alternative such sum as has been so paid in excess of the amount legally payable. 20
- 2. That the Commissioner of Stamp Duties pay to your petitioner his costs of and incidental to his appeal against the said assessment and his costs of this petition and the hearing thereof to be taxed. 30
- 3. Or that such further or other order should be made in the premises as to this Honourable Court may seem meet.

DATED this eighth day of February 1958.

H. D. Livingston
Petitioner.

It is intended to serve this Petition on the Commissioner of Stamp Duties.

This Petition is presented by Thynne & Macartney of National Mutual Building, 293 Queen Street, Brisbane whose address for service is at National Mutual Building, 293 Queen Street, Brisbane, Solicitors for the Petitioner who resides at "Booloroo" Moree in the State of New South Wales. 40

No.3

Last Will and Testament of Hugh
Duncan Livingston (the elder)
(Annexure "B")

In the Supreme
Court of
Queensland

No.3

"B"

Last Will and
Testament of
Hugh Duncan
Livingston
(the elder)
(Annexure "B")
9th December
1944

THIS IS THE LAST WILL AND TESTAMENT of me
HUGH DUNCAN LIVINGSTON of Boolooroo Moree in
the State of New South Wales Grazier

10 I REVOKE all former Wills and testamentary
dispositions I APPOINT my wife JOCELYN HILDA
LIVINGSTON, JOHN EVLYN CASSIDY of Sydney in
the said State one of His Majesty's Counsel and
MAX BERNHARD HESSLEIN of Sydney aforesaid
Solicitor (hereinafter called "my Trustees") to
be Executrix, Executors and Trustees of this my
Will AND I DECLARE that all the powers
authorities and discretions hereinafter vested
in my Trustees may be exercised by the surviv-
ors or survivor of them or other the Trustees
20 or Trustee for the time being of this my Will
I GIVE AND BEQUEATH to my said wife JOCELYN
HILDA LIVINGSTON to be paid to her as soon as
possible after my death the proceeds of all
policies of assurance of my life AND I DIRECT
that such bequest shall be free of all duties
payable in connection with my estate I GIVE
DEVISE AND BEQUEATH all my real and the residue
of my personal estate of whatsoever nature and
wheresoever situate including my share in the
30 estates of my late father and my mother to my
Trustees (hereinafter referred to as my "trust
property") subject to the payment thereof of
all my just debts funeral and testamentary
expenses and all death estate and other duties
UPON TRUST as to one-third thereof for my said
wife absolutely and as to the remaining two-
thirds shares thereof to use and apply the in-
come therefrom or such part thereof as my
Trustees may in their absolute discretion think
40 fit for the maintenance education and advance-
ment in life of my sons HUGH DUNCAN LIVINGSTON
and JOHN ANGUS LIVINGSTON until they respec-
tively attain the age of twenty three years AND
UPON each of my said sons attaining that age to
pay and transfer one half of the said remaining

In the Supreme
Court of
Queensland

No. 3

Last Will and
Testament of
Hugh Duncan
Livingston
(the elder)
(Annexure "B")
9th December
1944
continued

two-thirds shares and all unapplied income there-
of to each of my said sons upon attaining that
age and in the event of there being only one such
son who attains the said age of twenty three
years then TO PAY the whole of the remaining two-
thirds shares and the unapplied income thereof to
such son absolutely PROVIDED NEVERTHELESS that
if either of my said sons shall die before
attaining the said age of twenty three years
leaving a lawful child or children him surviving
and who shall attain the age of twenty one years
then such child or children shall take and if
more than one equally between them the share
which his her or their parent would have taken
under this my Will if such parent had attained
the said age of twenty three years AND PROVIDED
ALWAYS that if both my said sons shall die be-
fore attaining the said age of twenty three years
and one of them only shall leave a lawful child
or children him surviving and who shall attain
the age of twenty one years then such child or
children shall take and if more than one equally
between them the whole of the said remaining two-
third shares and the unapplied income thereof
AND PROVIDED FURTHER that if both of my said
sons shall die before attaining the said age of
twenty three years without leaving a lawful child
or children them or either of them surviving who
shall attain the age of twenty one years THEN I
GIVE DEVISE AND BEQUEATH the said remaining
two-thirds shares and the unapplied income there-
of to such of the children of my brothers Hector
and Kenneth and my sister Nancy as may be living
at my death and who shall attain the age of
twenty-one years and if more than one equally
between them per capita I EMPOWER my Trustees
if in their absolute discretion they shall deem
it advisable to advance any portion of the share
or shares of the corpus of my trust property to
which either of my said sons respectively or any
infant beneficiary shall be entitled in expect-
ancy under this my Will for the benefit of my
said son or sons respectively or any infant bene-
ficiary as aforesaid or for the purchase of a
grazing or farming property if either or both of
my said sons shall desire to carry on the busi-
ness of grazing or farming or to enable such son
or sons to commence or carry on business or
businesses which such son or sons shall desire
to carry on and until the sale of my trust

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In the Supreme
Court of
Queensland

No.3

Last Will and
Testament of
Hugh Duncan
Livingston
(the elder)
(Annexure "B")
9th December
1944
continued

property in accordance with the power of sale
hereinafter contained I EMPOWER my Trustees in
their absolute discretion to carry on the
business of a grazier on all or any of the
properties which shall belong to my estate for
such time as they shall think expedient and if
at the time of my decease I shall be engaged
in any partnership or partnerships my Trustees
shall have power to continue the same partner-
ship or partnerships or to enter into any
further or other partnership or partnerships
with my brothers and/or sister on their or any
of their respective legal representatives for
such period or periods as they in their abso-
lute discretion shall think fit I ALSO DECLARE
that my Trustees in the carrying on of the said
business shall have the following powers and
authorities namely they may use and employ any
live or deadstock working plant machinery
waggons carts implements utensils and other
effects upon or appropriated to any of the
stations or pastoral properties which shall be-
long to my estate They may employ labourers
agents servants and workmen at such salaries
remuneration or wages and for such time or times
and upon such terms and conditions in all re-
spects as my Trustees shall think fit and they
may determine any such employment or agency
they may acquire by purchase lease exchange or
otherwise lands of any tenure of licenses to
use lands adjoining or near any one or more of
the stations or pastoral properties belonging
to my estate to be used as part thereof and may
dispose of any such lands They may erect
buildings upon or effect repairs or improvements
on or to any one or more of the stations or pas-
toral properties belonging to my Estate They
may buy and sell live and dead stock wool grain
and other produce They may effect insurance
including insurance against liability under the
Worker's Compensation Act or any other Act of a
similar nature or purport and may pay the pre-
miums and other moneys necessary to effect or
renew or keep on foot any such insurances They
may pay rates and taxes of every description and
purchase and other moneys payable including fees
and Stamp Duty and all other outgoings and
expenses of every description incidental to such
managing and carrying on or to the exercise of
any of the powers discretions and authorities

In the Supreme
Court of
Queensland

No.3

Last Will and
Testament of
Hugh Duncan
Livingston
(the elder)
(Annexure "B")
9th December
1944
continued

herein contained They may convert conditionally purchased lands into freehold or any conditionally leased lands into conditionally purchased lands and generally may at their discretion convert lands of any tenure or holding under the Crown Lands Acts into any other tenure or holding under such Acts and make all application and do all things necessary in that behalf and generally they may act in all matters whether specifically mentioned herein or not relating to the said stations or pastoral properties or any one or more of them as if they were the absolute owners thereof and for all or any of the purposes aforesaid they may employ and expend any moneys in hand or forming part of my trust property whether income or corpus and may borrow any moneys which may be required and may secure repayment of such moneys with interest thereon at such rate as they shall think fit by a Mortgagee of the whole or any part of my estate and any such Mortgage shall contain all powers and provisions and shall be upon such terms and conditions in all respects as my Trustees shall think proper I FURTHER EMPOWER my Trustees to employ both or either of my said sons as Manager or Managers or Overseer or Overseers of my business of a Grazier of any property or properties on which the same business or any part thereof may be carried on or in any other capacity in connection with such business at such salary or wages or other remuneration as my Trustees may from time to time in their absolute discretion agree upon and so that their employment as aforesaid shall be with regard to duties to be performed and remuneration to be paid upon similar terms to those applicable to any other person engaged as Manager Overseer or in any other capacity in connection with my said business I ALSO EMPOWER my Trustees in their absolute discretion at such time or times as they shall think fit to sell and dispose of all or any part of my trust property for such price and upon such terms and conditions and either for cash or upon such extended terms of credit as my Trustees in their own absolute discretion shall think fit AND I DECLARE that without in any way restricting the power of sale hereinbefore contained my Trustees shall not be bound to sell any portion of my trust property until the youngest of my said sons shall attain the said age of twenty three years and until the

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10 said power of sale shall be exercised I DIRECT
 my Trustees to pay to my said wife one third of
 the net annual income of my trust property I
AUTHORISE my Trustees to invest the proceeds of
 such sale and any other moneys forming portion
 of my trust property upon any of the investments
 authorised by law for the investment of trust
 moneys or if my Trustees shall in their own
 absolute discretion deem it advisable in the
 purchase of other Station or pastoral properties
 stock and plant to enable them to continue to
 carry on the business of a grazier thereupon for
 the benefit of my estate or in the purchase of
 any rent producing real estate AND I DECLARE
 that my Trustees shall not be answerable or
 responsible for any loss which shall be sustain-
 ed in carrying on the business of a grazier
 either upon properties forming portion of my
 trust property at the time of my decease or upon
 20 any other properties which shall be acquired by
 my Trustees for my estate or in connection with
 any business in which I shall be a partner at
 the time of my decease or otherwise howsoever
I DECLARE that any executor or trustee of this
 my Will being a solicitor or other person en-
 gaged in any profession or business may be so
 employed or act and shall be entitled to charge
 and be paid all professional or other charges
 for any business or act done by him or his firm
 30 in connection with the trusts hereof including
 acts which a Trustee would have done personally.

IN WITNESS WHEREOF I have set my hand to
 this my Will the ninth day of December One
 thousand nine hundred and forty four.

40 SIGNED by the Testator HUGH
DUNCAN LIVINGSTON as and
 for his last Will in the
 presence of us both being
 present at the same time
 and who at his request in
 his presence and in the pre-
 sence of each other have
 hereunto subscribed our names)
 as witnesses:)

T. Davis
 Boolooroo
 Moree.
 T. Cross
 Boolooroo
 Moree.

50

In the Supreme
 Court of
 Queensland

No.3

Last Will and
 Testament of
 Hugh Duncan
 Livingston
 (the elder)
 (Annexure "B")
 9th December
 1944
 continued

H. D.
 Livingston

In the Supreme
Court of
Queensland

No.4

Notice of
Assessment of
Succession Duty
(Annexure "C")
20th April 1956

No.4
Notice of Assessment of
Succession Duty (Annexure
"C")

"C"
FORM R.

"THE SUCCESSION AND PROBATE DUTIES ACTS,
1892 to 1955."

NOTICE OF ASSESSMENT OF SUCCESSION DUTY.

No. 975/54.

10

In the Estate of Jocelyn Hilda Coulson
deceased.

I HEREBY GIVE YOU NOTICE that I have this day
assessed the Succession Duty payable on the
successions arising or deemed to arise on the
death of the abovenamed in respect of the pro-
perty disclosed at £4437/7/1 as per particu-
lars set out hereunder:

Success- or	Relation- ship	Assess- able Amount	Rate	Duty £. s. d.
Bruce Thomas Coulson and others	Husband and children	R 16224.5.4.	15%	2433.12.9
		P 13358.2.1.	"	<u>2003.14.4</u>
				4437. 7.1.
		Interest paid to 30th April 1956		<u>962. 2.10.</u>
				<u>£5399. 9.11.</u>

20

DATED this 20th day of April 1956.

To
Messrs. Thynne & Macartney,
Solicitors, 293 Queen Street,
BRISBANE.

30

W. M. Kay,
Commissioner of Stamp Duties.

No.5

Statement of Additional Facts to
those in the Petition No.8 of 1958

In the Supreme
Court of
Queensland

No.5

Statement of
Additional Facts
to those in the
Petition No.8
of 1958

SUCCESSION DUTY.

IN THE SUPREME COURT
OF QUEENSLAND

Petition No.8 of 1958.

Mr. Justice Townley
Mr. Justice Mack

10

IN THE MATTER of "The Succession
and Probate Duties Acts 1892
to 1955"

- and -

IN THE MATTER of the Estate of
JOCELYN HILDA COULSON deceased.

STATEMENT OF ADDITIONAL FACTS.

The facts agreed upon by the parties are
as stated hereunder and as set forth in the
Petition subject to any exceptions herein con-
tained.

20

1. The leasehold grazing property referred
to in paragraph 10 of the petition herein con-
sists of Crown Leaseholds held under the pro-
visions of "The Land Acts, 1910 to 1957".

2. The interest in the partnership in re-
spect of the leasehold grazing property refer-
red to in Clause 2 of paragraph 10 of the
petition herein which is an asset in the said
estate in Queensland is a nine-fortieths
interest.

30

3. The partnership referred to in Clause 2
of paragraph 10 of the petition was registered
in the State of Queensland as a firm under the
provisions of "The Registration of Firms Acts,
1942 to 1953" with its place of business in
the district of Mitchell Queensland.

A copy of the partnership agreement of

In the Supreme
Court of
Queensland

the firm of Maranoa Downs Pastoral Company is annexed to the Statement of Additional Facts filed in conjunction with Petition No.7 of 1958 relating to Administration Duty.

No.5

Statement of
Additional Facts
to those in the
Petition of No.8
of 1958
continued

Hugh Duncan Livingston the elder retired by death from the firm of "Maranoa Downs Pastoral Company" on the seventeenth day of November 1948. The said Jocelyn Hilda Coulson (then Jocelyn Hilda Livingston), John Evelyn Cassidy and Max Bernhard Hesslein as the executors and trustees of the estate of the said Hugh Duncan Livingston the elder became members of the said firm as from the seventeenth day of November 1948. The said Jocelyn Hilda Coulson as executrix of the estate of the said Hugh Duncan Livingston the elder deceased retired by death from the said firm as from the eighth day of July 1950.

10

4. The partnership referred to in Clause (b) of paragraph 16 of the petition was registered in the State of Queensland as a firm under the provisions of "The Registration of Firms Acts, 1942 to 1953" under the firm name "Livingston Brothers" with its place of business at "Bulla-warrie" near Mungindi in the State of Queensland. Such partnership was that of the Hugh Duncan Livingston, John Hector Livingston, Kenneth Stokham Huthwaite Livingston and the said partnership was dissolved as from the first day of July 1946.

20

5. The date on which the trustees of the estate of the said Hugh Duncan Livingston the elder lodged with the proper authorities in the State of New South Wales accounts of the said estate for the purpose of the assessment in the State of New South Wales of duties payable upon his death as referred to in paragraph 11 of the petition was the seventeenth day of October 1949. The date on which assessment of duties was made in the estate of Hugh Duncan Livingston the elder in the State of New South Wales was the Twelfth day of January 1951. Payment thereof including payment on account of duties to be assessed was made by instalments as follows:-

30

30th May 1949	£11,941.12. 0
26th October 1949	9,297. 8. 0
16th December, 1949	9,995. 0. 0
31st January, 1951	3,021.12. 3
Interest thereon	621.19.11

40

£34,877.12. 2

An amended assessment was prepared on or about the seventeenth day of April 1952 but was not issued. There was a final assessment on the Thirteenth day of October 1952 under which additional duty of £3,445.14.10 was paid.

In the Supreme
Court of
Queensland

No.5

Statement of
Additional Facts
to those in the
Petition of No.8
of 1958
continued

10 6. The only acts of administration done by the executors and trustees of the estate of Hugh Duncan Livingston the elder deceased in the State of Queensland as at the date of death of the said Jocelyn Hilda Coulson in respect of the estate of the said Hugh Duncan Livingston the elder deceased were as follows:-

- (a) That the grazing businesses of the said deceased were carried on;
- (b) A valuation of the said estate was made and a return thereof for duty purposes was lodged on the eighth day of March 1950 with the proper authority of the Commonwealth of Australia;
- 20 (c) Notice of Change of Membership of the said firm of Maranoa Downs Pastoral Company consequent upon the death of the said Hugh Duncan Livingston the elder deceased was filed with the Registrar of Firms for the State of Queensland on the Thirtieth day of May 1949.

30 The only acts of administration done by the executors and trustees of the estate of Hugh Duncan Livingston the elder deceased in the State of New South Wales as at the date of death of the said Jocelyn Hilda Coulson in respect of the estate of the said Hugh Duncan Livingston the elder deceased were as follows:-

- 40 (a) Collection of the proceeds of all of the policies of assurance on the life of the said Hugh Duncan Livingston the elder deceased which proceeds were paid with the consent of the said Jocelyn Hilda Coulson now deceased to the Commissioner of Stamp Duties for the State of New South Wales on account of duties to be assessed.
- (b) The carrying on of the grazing businesses of the said Hugh Duncan Livingston the elder deceased.

In the Supreme
Court of
Queensland

No.5

Statement of
Additional Facts
to those in the
Petition of No.8
of 1958
continued

(c) The making of a valuation of the said estate and the lodgment of accounts thereof for duty purposes with the proper authorities of the Commonwealth of Australia and the State of New South Wales.

(d) The reduction into the possession of the executors and trustees of the estate of the said Hugh Duncan Livingston the elder deceased of all the assets in the said estate. 10

(e) The payment of all debts in the said estate with the exception of a balance of duties payable to The Commissioner of Stamp Duties for the State of New South Wales as specified above and the exception of a debt due to the Bank of New South Wales being a mortgage charged on the land in the said estate.

The facts stated in this paragraph and those stated in paragraph 11 of the said petition are the basis for the statements of the petitioner in paragraph 12 of the said petition that as at the date of death of the said Jocelyn Hilda Coulson the estate of the said Hugh Duncan Livingston the elder deceased had not been fully administered, the residue had not been ascertained and the final balance payable to the beneficiaries including the share of the said Jocelyn Hilda Coulson therein had not been and could not have been determined. The aforesaid statements in paragraph 12 of the said petition are not agreed to by the Commissioner of Stamp Duties for Queensland. 20 30

7. The statement in paragraph 12 of the said petition that "the interest of the said Jocelyn Hilda Coulson in his estate was a right to call on the executors and trustees in New South Wales to administer his estate in accordance with his will and wherever situated" is an inference made on behalf of the petitioner and is not agreed to by the Commissioner of Stamp Duties for the State of Queensland. 40

8. The Commissioner of Stamp Duties for Queensland does not admit the statement in paragraph 15 of the said petition in so far as it relates to any property in Queensland in the

estate of the said Hugh Duncan Livingston the elder deceased.

In the Supreme
Court of
Queensland

No.5

Statement of
Additional Facts
to those in the
Petition of No.8
of 1958
continued

9. The proportion of moneys actually included by the Commissioner of Stamp Duties as referred to in paragraph 16(a) of the petition is a one third part of the share of the estate of the said Hugh Duncan Livingston the elder in such moneys being a one third part of the sum of £3,527.15.5. The fourth distribution in the Wool Realisation (Distribution of Profits) Acts 1948-1952 referred to in paragraph 16(a) of the petition as being made in the year 1955 was the fifth and the final distribution under those Acts. The five distributions including the four distributions referred to in paragraph 16 (a) of the petition were in respect of wool grown and marketed in Queensland. The first distribution was made on the Thirtieth day of November 1949; the second distribution was made on the Twenty-eighth day of March 1952; the third distribution was made on the Sixth day of March 1953; the fourth distribution was made on the Sixth day of April 1954; and the fifth and final distribution was made on the twenty-ninth day of April 1955.

10. All cheques received for distributions made under the Wool Realisation (Distribution of Profits) Act 1948-1952 as referred to in paragraph 16(a) of the said petition were made payable either to Livingston Brothers or Estate late E.B.Livingston or Maranoa Downs Pastoral Company and were banked to respective accounts under those names with the Bank of New South Wales at Mungindi in the State of New South Wales. An apportionment of the amount thereof due to the estate of the said Hugh Duncan Livingston the elder deceased was made by Messrs.Harrison Knox and Leslie Chartered Accountants of Sydney in the said State which firm acted as accountants for all parties including the said estate and the amount found due to the said estate was paid to the credit of the bank account of the said estate with the Bank of New South Wales at Mungindi aforesaid.

11. The statements in paragraph 16(c) and 16 (f) (i) and (ii) of the petition are an inference made on behalf of the petitioner and are not agreed to by the Commissioner of Stamp Duties for Queensland.

In the Supreme
Court of
Queensland

No.5

Statement of
Additional Facts
to those in the
Petition of No.8
of 1958
continued

12. The date upon which succession accounts were lodged with the Commissioner of Stamp Duties for the State of Queensland in the estate of the said Jocelyn Hilda Coulson by the petitioner was the twenty-sixth day of March 1954 and not the Twenty-fourth day of March 1954 as stated in paragraph 16(d) of the petition. The Probate in the estate of the said Hugh Duncan Livingston the elder deceased was lodged in the Supreme Court of Queensland for re-sealing on the First day of November 1950 and was re-sealed on the Thirteenth day of February 1952. The executors and trustees of the estate of the said Hugh Duncan Livingston the elder deceased lodged accounts with the Commissioner of Stamp Duties for the State of Queensland for the purpose of the assessment of Succession and Probate Duties on the Twenty-fifth day of October 1950.

10

13. Transmission consequent on the death of the said Hugh Duncan Livingston the elder in favour of Jocelyn Hilda Livingston, John Evelyn Cassidy and Max Bernhard Hesslein as Devisees in trust in respect of the freehold land in the said estate situated in Queensland was produced for registration in the Real Property Office Brisbane on the Nineteenth day of August 1952 and was entered on the titles thereof on the Twenty-sixth day of October 1953.

20

14. Transmission consequent on the death of the said Hugh Duncan Livingston the elder in favour of Jocelyn Hilda Livingston, John Evelyn Cassidy and Max Bernhard Hesslein as executors in respect of the said leasehold land in the said estate situated in Queensland was registered in the Department of Public Lands Brisbane on the Twentieth day of August 1952.

30

15. Record of Marriage of the said Jocelyn Hilda Livingston with Bruce Thomas Coulson in respect of the leasehold land mentioned and referred to in the preceding paragraph hereof was registered in the Department of Public Lands Brisbane on the said the Twentieth day of August 1952.

40

16. Record of Death of the said Jocelyn Hilda Coulson in respect of the said leasehold land was registered in the Department of Public Lands Brisbane on the said the Twentieth day of August 1952.

In the Supreme
Court of
Queensland

No.5

10 17. On the Fifteenth day of December 1950 the Commissioner of Stamp Duties requested the Solicitors for the Petitioner to inform the Commissioner what steps were being taken to file succession accounts in the estate of the said Jocelyn Hilda Coulson deceased. The said solicitors replied by letter bearing date the Twenty-sixth day of April 1951, to the effect that no such steps had been taken. Such account was filed on the Twenty-sixth day of March 1954.

Statement of
Additional Facts
to those in the
Petition of No.8
of 1958
continued

20 18. A request was made by the solicitors for the Petitioner to the Commissioner of Stamp Duties for the State of Queensland to remit interest on the succession duty assessed by the Commissioner of Stamp Duties in respect of the estate of the said Jocelyn Hilda Coulson deceased by letter dated the First day of May 1956 a copy of such letter is annexed hereto and marked with the letter "A".

Thynne & Macartney
Solicitors for the Petitioner

30 L.E. Skinner
Crown Solicitor
Solicitor for the Commissioner
of Stamp Duties.

In the Supreme
Court of
Queensland

No.6

No.6

Copy letter from the Solicitor
for the Petitioner to the
Respondent (Annexure "A").

Copy letter
from the
Solicitor for
the Petitioner
to the
Respondent
(Annexure "A")
1st May 1956

"A"

THYNNE & MACARTNEY
Solicitors and Notary.

National Mutual Building
293 Queen Street,
BRISBANE.

4/8

1st May, 1956.

The Commissioner of Stamp Duties,
Adelaide Street,
BRISBANE.

10

Dear Sir,

re J.H.Coulson deceased -
No.975/54

We hand you herewith Notice of the
Administrator's Intention to Appeal against the
assessments of administration and succession
duty issued in this estate.

In this estate you have charged an amount
of £962/2/10d. for interest. The succession
accounts were lodged with you on 25th March 1954
and it was not until 27th January 1956 that any
action was taken by you to issue an assessment.

20

It is therefore submitted that the interest
for the period 25th March 1954 to 27th January
1956 should be remitted as the delay during the
whole of this period was solely attributed by
your office.

Yours faithfully,

30

THYNNE & MACARTNEY.

Enc.

No.7

Affidavit of Hugh Duncan Livingston
verifying Petition No.7 of 1958.

In the Supreme
Court of
Queensland

No.7

IN THE SUPREME COURT
OF QUEENSLAND

No. of 195 .

Affidavit of
Hugh Duncan
Livingston
verifying
Petition
No.7 of 1958
8th February
1958

IN THE MATTER of "The Succession
and Probate Duties Acts 1892
to 1955"

- and -

10

IN THE MATTER of the estate of
JOCELYN HILDA COULSON
deceased

I, HUGH DUNCAN LIVINGSTON of "Booloroo"
Moree in the State of New South Wales, Grazier
make oath and say as follows -

1. I am the Petitioner in the Petition
hereunto annexed and marked "A".

2. The statements in the said Petition are
to the best of my belief true in substance and
in fact.

20

SIGNED AND SWORN by the)
abovenamed HUGH DUNCAN)
LIVINGSTON at Moree in) H.D. Livingston
the State of New South)
Wales this eighth day)
of February 1958)

R.W.Paton J.P.

A Justice of the Peace
for the State of New South Wales.

In the Supreme
Court of
Queensland

No.8

No.8

Petition No.7 of 1958 against
Assessment of Administration
Duty (Annexure "A")

Petition
No.7 of 1958
against Assess-
ment of Adminis-
tration Duty
(Annexure "A")
8th February
1958

"A"

ADMINISTRATION DUTY

IN THE SUPREME COURT
OF QUEENSLAND

Petition No.7 of 1958

Mr. Justice Matthews
Mr. Justice Stanley

10

IN THE MATTER of "The Succession
and Probate Duties Acts 1892
to 1955"

- and -

IN THE MATTER of the Estate of
JOCFLYN HILDA COULSON deceased

To the Supreme Court of Queensland.

The humble petition of Hugh Duncan
Livingston of Moree in the State of New South
Wales Grazier showeth as follows:

20

1. Jocelyn Hilda Coulson wife of Bruce Thomas
Coulson died intestate on the eighth day of
July 1950.

2. On the thirteenth day of November 1951
Letters of Administration of the estate of the
said Jocelyn Hilda Coulson were granted to
your petitioner by the Supreme Court of New
South Wales.

3. The said Jocelyn Hilda Coulson died resid-
ent and domiciled in the State of New South
Wales.

30

4. The said Jocelyn Hilda Coulson married the
said Bruce Thomas Coulson on the twentysecond
day of June 1950. Before such marriage she was
the widow of Hugh Duncan Livingston (hereinafter

called Hugh Duncan Livingston the elder) late of "Booloroo" Moree in the State of New South Wales Grazier.

In the Supreme
Court of
Queensland

No.8

Petition
No.7 of 1958
against Assess-
ment of Adminis-
tration Duty
(Annexure "A")
8th February
1958
continued

10 5. The said Hugh Duncan Livingston the elder died resident and domiciled in the State of New South Wales on the seventeenth day of November 1948 having first duly made and executed his last will and testament bearing date the ninth day of December 1944 whereby he appointed the said Jocelyn Hilda Coulson, John Evelyn Cassidy of Sydney in the State of New South Wales and Max Bernhard Hesslein of Sydney aforesaid to be the executrix, executors and trustees thereof. The said executrix executors and trustees are and were at all material times domiciled in the State of New South Wales.

20 6. By the said will inter alia the said Hugh Duncan Livingston the elder gave and bequeathed to the said Jocelyn Hilda Coulson to be paid to her as soon as possible after his death the proceeds of all policies of assurance of his life and he gave devised and bequeathed to his said trustees all his real and the residue of his personal estate of whatsoever nature and wheresoever situate (in the will called his "trust property") subject to the payment there-
30 out of all his just debts funeral and testamen- tary expenses and all death estate and other duties upon trust as to one-third thereof for the said Jocelyn Hilda Coulson absolutely and as to the remaining two-thirds shares thereof upon trust to use and apply the income there-
40 from or such part thereof as his trustees might in their absolute discretion think fit for the maintenance education and advancement in life of his sons Hugh Duncan Livingston (your petitioner) and John Angus Livingston until they should respectively attain the age of 23 years and to pay and transfer half of the said remaining two-thirds of his said trust property and all un- applied income thereof to each of his said sons upon his attaining that age.

The will also empowered his trustees in their absolute discretion to carry on the busi- ness of a grazier on all or any of the properties which should belong to his estate for such time as they should think expedient, and if at the

In the Supreme
Court of
Queensland

No.8

Petition
No.7 of 1958
against Assess-
ment of Adminis-
tration Duty
(Annexure "A")
8th February
1958
continued

time of his decease he should be engaged in any partnership or partnerships they should have power to continue the same or to enter into further or other partnership or partnerships with his brothers and/or sister or their or any of their respective legal representatives for such period or periods as his trustees in their absolute discretion should think fit. He gave them further powers in relation to the carrying on of business including powers in relation to land and leaseholds, and he gave them power generally to act in all matters, whether specifically mentioned in his will or not, relating to such stations or pastoral properties or any of them as if they were the absolute owners thereof. By his will the said testator also empowered his trustees to sell and dispose of any of his trust property and declared that without in any way restricting the power of sale his trustees should not be bound to sell any portion of his trust property until the youngest of his said sons should attain the age of twenty-three years and until the power of sale should be exercised he directed his trustees to pay to his wife the said Jocelyn Hilda Coulson one-third of the nett annual income of his trust property. A copy of the said will is hereunto annexed and marked "B" and your petitioner craves leave to incorporate and refer to the same as part of this petition.

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7. Probate of the said will was granted to the said trustees by the Supreme Court of New South Wales on the thirteenth day of October 1949. An exemplification thereof was not resealed in Queensland until the thirteenth day of February 1952.

8. The said Hugh Duncan Livingston the elder was survived by the said Jocelyn Hilda Coulson and by his said sons Hugh Duncan Livingston (your petitioner) and John Angus Livingston aged respectively nineteen years and seventeen years at the date of his death. The youngest son attained the age of 23 years on the thirtieth day of May 1954.

40

9. The assets in the estate of the said Hugh Duncan Livingston the elder consisted of real and personal estate in the State of New South

Wales and real and personal estate in the State of Queensland.

In the Supreme
Court of
Queensland

10. The assets in the said estate in the State of Queensland consisted of :-

No.8

1. A freehold and leasehold grazing property together with stock and plant thereof whereon the said Hugh Duncan Livingston the elder carried on grazing business on his own account and,

Petition
No.7 of 1958
against Assess-
ment of Adminis-
tration Duty
(Annexure "A")
8th February
1958
continued

10 2. An interest in a leasehold grazing property together with stock and plant thereon on which a grazing business was carried on in partnership. Such partnership was that of the said Hugh Duncan Livingston the elder, his brother John Hector Livingston, Kenneth Huthwaite Stokham Livingston his sister Nancy Florence Livingston and Alan Stephen Gillespie and was carried on under the name or style of Maranoa Downs Pastoral Company and,

20

3. One undivided fourth interest in certain other freehold and leasehold grazing properties.

Such partnership and also his own grazing business in Queensland were carried on by his said trustees and his surviving trustees at all material times.

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11. The said trustees of the estate of the said Hugh Duncan Livingston the elder lodged with the proper authorities in the State of New South Wales accounts of the said estate for the purpose of the assessment in the State of New South Wales of duties payable upon his death. No assessment of duties and no payment thereof had been made in the estate of Hugh Duncan Livingston the elder at the date of death of the said Jocelyn Hilda Coulson and either in the State of New South Wales or elsewhere.

40

12. At the said date of death of the said Jocelyn Hilda Coulson the estate of the said Hugh Duncan Livingston the elder had not been fully administered, the residue had not been ascertained and the final balance payable to the beneficiaries

In the Supreme
Court of
Queensland

No.8

Petition
No.7 of 1958
against Assess-
ment of Adminis-
tration Duty
(Annexure "A")
8th February
1958
continued

including the share of the said Jocelyn Hilda Coulson therein had not been and could not have been determined. Probate of the will of the said Hugh Duncan Livingston the elder had not been resealed in Queensland nor had the said trustees lodged accounts with the Commissioner of Stamp Duties for the purpose of the assessment of Succession and Probate Duties. The said Hugh Duncan Livingston the elder had died domiciled in New South Wales and the executors and trustees were and have remained domiciled in New South Wales and not in Queensland, and the interest of the said Jocelyn Hilda Coulson in his estate was a right to call on the executors and trustees in New South Wales to administer his estate in accordance with his will, and wherever situated.

10

13. Your petitioner having been required to do so by the Commissioner of Stamp Duties but under protest and without prejudice to his contention that no succession or administration duty under The Succession and Probate Duties Acts was payable on the death of the said Jocelyn Hilda Coulson filed an account of her estate. By a notice of assessment addressed to your petitioner's solicitors and dated the twentieth day of April 1956 the Commissioner of Stamp Duties assessed Succession Duty claimed by him to be payable under The Succession and Probate Duties Acts 1892 to 1955 on the death of the said Jocelyn Hilda Coulson. A copy of the said notice of assessment is hereunto annexed and marked "C".

20

30

14. Your petitioner duly paid the amount of Administration Duty so assessed to the Commissioner of Stamp Duties.

15. At the date of the death of the said Jocelyn Hilda Coulson there was no property of hers in the State of Queensland in respect of which Administration Duty was payable.

40

16. In the alternative your petitioner relies upon the following and says:-

- (a) That in arriving at the amount upon which he so assessed Administration Duty the Commissioner of Stamp Duties wrongly

included an amount of £2518.13.10 being a proportion of moneys received by the said trustees of the estate of the said Hugh Duncan Livingston the elder as a result of the second, third and fourth distributions (made respectively in the years 1952, 1953 and 1955) under the Wool Realisation (Distribution of Profits) Act 1948-1952;

In the Supreme
Court of
Queensland

—
No.8

Petition
No.7 of 1958
against Assess-
ment of Adminis-
tration Duty
(Annexure "A")
8th February
1958
continued

10

(b) Such amount relates to participating wool within the meaning of the said Act and which was supplied for appraisalment by Livingston Brothers in partnership in which the said Hugh Duncan Livingston the elder had a one-third interest but which was dissolved before his death from grazing properties in the State of Queensland during the period from twentyeighth day of September 1939

20

(c) The said amount of money so received by the said trustees was not and is not personal estate, effects, rents, money, or property in Queensland of the said Jocelyn Hilda Coulson for the purposes of The Succession and Probate Duties Acts 1892 to 1955.

30

(d) In arriving at the amount upon which he so assessed Administration Duty, the Commissioner of Stamp Duties included the amount of £30,481. 4. 7. which is said by him to be part of the value of the growth of wool upon the grazing property referred to in paragraph 10 hereof between the date of death of the said Jocelyn Hilda Coulson and the twentyfourth day of March 1954 (the date upon which succession accounts were lodged in the estate of the said Jocelyn Hilda Coulson by your petitioner).

40

(e) In respect of the amount referred to in the last preceding sub-paragraph hereof there has been paid or will be payable by the trustees of the estate of the said Hugh Duncan Livingston the elder and/or by your petitioner income tax and other outgoings.

In the Supreme
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No.8

Petition
No.7 of 1958
against Assess-
ment of Adminis-
tration Duty
(Annexure "A")
8th February
1958
continued

(f) (i) The amount of £30,481.4.7 referred to in sub-paragraph (c) of this paragraph was not and is not personal estate, effects, rents, moneys or property in Queensland of the said Jocelyn Hilda Coulson for the purposes of The Succession and Probate Duties Acts 1892 to 1955.

(ii) In the alternative the Commissioner of Stamp Duties for the purposes of the assessment of Administration Duty (if payable) should have deducted from the said amount of £30,481. 4. 7. income tax and other outgoings paid or payable in respect thereof.

10

17. Your petitioner being dissatisfied with the said assessment and the duty so assessed having been paid gave notice in writing to the Commissioner of Stamp Duties on the second day of May 1956 of his intention to appeal against such assessment.

20

18. On the twentyeighth day of May 1956 your petitioner furnished to the Commissioner of Stamp Duties a statement in writing of the grounds of such appeal against the said assessment. The grounds of appeal so stated were as follows :

1. That the said assessment is wrong in and contrary to law.
2. That the said Jocelyn Hilda Coulson was domiciled in the State of New South Wales at the date of her death and at such date there was no property of hers in the State of Queensland in respect of which administration duty was chargeable.
3. In the alternative to paragraph 2 hereof -

30

(a) That you should not have included in the assets of the said Jocelyn Hilda Coulson for the purpose of the levy of administration duty any part of any distributions made to the executors and trustees of Hugh Duncan Livingston deceased in pursuance of the Wool Realisation (Distribution of Profits) Act of

40

1948 to 1952 since the said distributions did not nor did any part thereof constitute any of the personal property or effects or rents of the said Jocelyn Hilda Coulson in Queensland or other moneys coming into the hands of the said administrator or recoverable by him under any grant of letters of administration in Queensland in respect of any property of the said Jocelyn Hilda Coulson;

In the Supreme
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No.8

Petition
No.7 of 1958
against Assessment of Administration Duty
(Annexure "A")
8th February
1958
continued

10 (b) (i) In estimating the net value of the property of the said Jocelyn Hilda Coulson for the purpose of the levy of probate duty you should have taken the value of the said property as the value thereof at the date of the death of the said Jocelyn Hilda Coulson except for any accumulation of interest and any dividends or rents paid or accrued since the said date but you should not have included any part of any profits made since the said date arising out of the carrying on of any business in Queensland by the executors of Hugh Duncan Livingston deceased;

20 (ii) In the alternative to 3 (b) (i) in calculating the value of the profits of any such business you should have made allowance for income tax and other debts and/or outgoings.

30 19. Your petitioner therefore humbly prays as follows:

A. That it may be declared:

1. That the said Assessment is wrong in and contrary to law.

2. That the said Jocelyn Hilda Coulson was domiciled in the State of New South Wales at the date of her death and:

40 (a) At such date there was no property of hers in the State of Queensland in respect of which Administration Duty

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ment of Adminis-
tration Duty
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was chargeable, and

- (b) At such date the proprietary interest of the said Jocelyn Hilda Coulson under the will of her late husband Hugh Duncan Livingston who died at Sydney in the State of New South Wales on the seventeenth day of November, 1948, in respect of property of his estate situated in Queensland, was a personal right against the executors of his will, who were at all material times domiciled in the State of New South Wales, and such interest was not property within the State of Queensland.

10

3. In the alternative to paragraph 2 hereof:

- (a) That the Commissioner of Stamp Duties should not have included in the assets of the said Jocelyn Hilda Coulson for the purpose of the levy of administration duty any part of any distributions made to the executors and trustees of Hugh Duncan Livingston deceased in pursuance of the Wool Realisation (Distribution of Profits) Act 1948 to 1952 since the said distributions did not nor did any part thereof constitute any of the personal property or effects or rents of the said Jocelyn Hilda Coulson in Queensland or other moneys coming into the hands of the said administrator or recoverable by him under any grant of letters of administration in Queensland in respect of any property of the said Jocelyn Hilda Coulson; and at the date of her death the said Jocelyn Hilda Coulson was not domiciled in Queensland.

20

30

- (b) (i) In estimating the net value of the property of the said Jocelyn Hilda Coulson for the purpose of the levy of administration duty the Commissioner of Stamp Duties should have taken the value of the said property as the value thereof at the date of the death of the said Jocelyn Hilda Coulson;

40

alternatively the said value except for any accumulation of interest and any dividends or rents paid or

accrued since the said date but the Commissioner of Stamp Duties should not have included any part of any profits made since the said date arising out of the carrying on of any business in Queensland by the executors of Hugh Duncan Livingston deceased;

- 10 (ii) In the alternative to 3 (b) (i) in calculating the value of the profits of any such business the Commissioner of Stamp Duties should have made allowance for income tax and other debts and/or outgoings.

B. That it may be ordered:

- 20 1. That the Commissioner of Stamp Duties pay to your petitioner such sum as has been paid as Administration Duty consequent upon the death of the said Jocelyn Hilda Coulson or in the alternative such sum as has been so paid in excess of the amount legally payable.
2. That the Commissioner of Stamp Duties pay to your petitioner his costs of and incidental to his appeal against the said assessment and his costs of this petition and the hearing thereof to be taxed.
- 30 3. Or that such further or other order should be made in the premises as to this Honourable Court may seem meet.

DATED this eighth day of February 1958.

H. D. Livingston

Petitioner.

It is intended to serve this Petition on the Commissioner of Stamp Duties.

40 This Petition is presented by Thynne & Macartney of National Mutual Building, 293 Queen Street, Brisbane whose address for service is at National Mutual Building, 293 Queen Street, Brisbane, Solicitors for the Petitioner who resides at "Booloroo" Moree in the State of New South Wales.

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No.8

Petition
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against Assess-
ment of Adminis-
tration Duty
(Annexure "A")
8th February
1958
continued

In the Supreme
Court of
Queensland

No.9

No.9

Notice of Assessment of
Administration Duty.
(Annexure "C")

Notice of
Assessment of
Administration
Duty
(Annexure "C")
20th April 1956

FORM O.

"THE SUCCESSION AND PROBATE DUTIES ACTS,
1892 to 1955"

NOTICE OF ASSESSMENT OF ADMINISTRATION DUTY.

No. 975/54. In the Estate of Jocelyn Hilda
Coulson deceased.

10

I HEREBY GIVE YOU NOTICE that I have this
day assessed the Administration Duty payable in
the above Estate at £607/-/- and upon receipt
of such sum the Grant will be duly stamped and
returned to the Registrar, Supreme Court.

The value of the property upon which such
duty has been assessed amounts to £60,670/12/-.

Dated this 20th day of April, 1956.

W. M. Kay,
Commissioner of Stamp Duties.

20

To:

Messrs. Thynne & Macartney,
Solicitors, 293 Queen Street,
BRISBANE.

No.10

Statement of Additional Facts
to those in the Petition No.7
of 1958.

In the Supreme
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No.10

ADMINISTRATION DUTY

IN THE SUPREME COURT
OF QUEENSLAND

Petition No.7 of 1958.

Statement of
Additional
Facts to those
in the
Petition No.7
of 1958
Undated

Mr. Justice Matthews
Mr. Justice Stanley

10

IN THE MATTER of "The Succession
and Probate Duties Acts, 1892
to 1955"

- and -

IN THE MATTER of the Estate of
JOCELYN HILDA COULSON deceased.

STATEMENT OF ADDITIONAL FACTS.

20

The facts agreed upon by the parties are
as stated hereunder and as set forth in the
Petition subject to any exceptions herein
contained.

1. The leasehold grazing property referred to
in paragraph 10 of the petition herein consists
of Crown Leaseholds held under the provisions of
"The Land Acts, 1910 to 1957".

2. The interest in the partnership in respect
of the leasehold grazing property referred to
in Clause 2 of paragraph 10 of the petition
herein which is an asset in the said estate in
Queensland is a nine-fortieths interest.

30

3. The partnership referred to in Clause 2 of
paragraph 10 of the petition was registered in
the State of Queensland as a firm under the
provisions of "The Registration of Firms Acts,
1942 to 1953" with its place of business in the
district of Mitchell Queensland.

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Statement of
Additional
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continued

A copy of the partnership agreement of the firm Maranoa Downs Pastoral Company is annexed hereto and marked with the letter "A".

Hugh Duncan Livingston the elder retired by death from the firm "Maranoa Downs Pastoral Company" on the seventeenth day of November 1948. The said Jocelyn Hilda Coulson (then Jocelyn Hilda Livingston), John Evelyn Cassidy and Max Bernhard Hesslein as the executors and trustees of the Estate of the said Hugh Duncan Livingston the elder became members of the said firm as from the seventeenth day of November 1948. The said Jocelyn Hilda Coulson as executrix of the estate of the said Hugh Duncan Livingston the elder deceased retired by death from the said firm as from the eighth day of July 1950.

10

4. The partnership referred to in Clause (b) of paragraph 16 of the petition was registered in the State of Queensland as a firm under the provisions of "The Registration of Firms Acts, 1942 to 1953" under the firm name "Livingston Brothers" with its place of business at "Bullawarrie" near Mungindi in the State of Queensland. Such partnership was that of the said Hugh Duncan Livingston, John Hector Livingston, Kenneth Stokham Huthwaite Livingston and the said partnership was dissolved as from the first day of July 1946.

20

5. The date on which the trustees of the estate of the said Hugh Duncan Livingston the elder lodged with the proper authorities in the State of New South Wales accounts of the said estate for the purpose of the assessment in the State of New South Wales of duties payable upon his death as referred to in paragraph 11 of the petition was the seventeenth day of October 1949. The date on which assessment of duties was made in the estate of Hugh Duncan Livingston the elder in the State of New South Wales was the Twelfth day of January 1951. Payment thereof including payment on account of duties to be assessed was made by instalments as follows:-

30

40

30th May, 1949	£11,941.12. 0.
26th October, 1949	9,297. 8. 0.
16th December, 1949	9,995. 0. 0.
31st January, 1951	3,021.12. 3.
Interest thereon	<u>621.19.11.</u>

£34,877.12. 2.

An amended assessment was prepared on or about the seventeenth day of April 1952 but was not issued. There was a final assessment on the Thirteenth day of October 1952 under which additional duty of £3,445.14.10 was paid.

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No.10

10 6. The only acts of administration done by the executors and trustees of the estate of Hugh Duncan Livingston the elder deceased in the State of Queensland as at the date of death of the said Jocelyn Hilda Coulson in respect of the estate of the said Hugh Duncan Livingston the elder deceased were as follows:-

Statement of
Additional
Facts to those
in the
Petition No.7
of 1958
Undated
continued

- (a) That the grazing businesses of the said deceased were carried on;
- (b) A valuation of the said estate was made and a return thereof for duty purposes was lodged on the eighth day of March 1950 with the proper authority of the Commonwealth of Australia;
- 20 (c) Notice of Change of Membership of the said firm of Maranoa Downs Pastoral Company consequent upon the death of the said Hugh Duncan Livingston the elder deceased was filed with the Registrar of Firms for the State of Queensland on the Thirtieth day of May 1949.

30 The only acts of administration done by the executors and trustees of the estate of Hugh Duncan Livingston the elder deceased in the State of New South Wales as at the date of death of the said Jocelyn Hilda Coulson in respect of the estate of the said Hugh Duncan Livingston the elder deceased were as follows:-

- 40 (a) Collection of the proceeds of all of the policies of assurance on the life of the said Hugh Duncan Livingston the elder deceased which proceeds were paid with the consent of the said Jocelyn Hilda Coulson now deceased to the Commissioner of Stamp Duties for the State of New South Wales on account of duties to be assessed.
- (b) The carrying on of the grazing businesses of the said Hugh Duncan Livingston the elder deceased.

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Statement of
Additional
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in the
Petition No.7
of 1958
Undated
continued

- (c) The making of a valuation of the said estate and the lodgment of accounts thereof for duty purposes with the proper authorities of the Commonwealth of Australia and the State of New South Wales.
- (d) The reduction into the possession of the executors and trustees of the estate of the said Hugh Duncan Livingston the elder deceased of all the assets in the said estate. 10
- (e) The payment of all debts in the said estate with the exception of a balance of duties payable to The Commissioner of Stamp Duties for the State of New South Wales as specified above and the exception of a debt due to the Bank of New South Wales being a mortgage charged on the land in the said estate.

The facts stated in this paragraph and those stated in paragraph 11 of the said petition are the basis for the statements of the petitioner in paragraph 12 of the said petition that as at the date of death of the said Jocelyn Hilda Coulson the estate of the said Hugh Duncan Livingston the elder deceased had not been fully administered, the residue had not been ascertained and the final balance payable to the beneficiaries including the share of the said Jocelyn Hilda Coulson therein had not been and could not have been determined. The aforesaid statements in paragraph 12 of the said petition are not agreed to by the Commissioner of Stamp Duties for Queensland. 20 30

7. The statement in paragraph 12 of the said petition that "the interest of the said Jocelyn Hilda Coulson in his estate was a right to call on the executors and trustees in New South Wales to administer his estate in accordance with his will and wherever situated" is an inference made on behalf of the petitioner and is not agreed to by the Commissioner of Stamp Duties for the State of Queensland. 40

8. The Commissioner of Stamp Duties for Queensland does not admit the statement in paragraph 15 of the said petition in so far as it relates to

any property in Queensland in the estate of the said Hugh Duncan Livingston the elder deceased.

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No.10

Statement of
Additional
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in the
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of 1958
Undated
continued

9. The proportion of moneys actually included by the Commissioner of Stamp Duties as referred to in paragraph 16(a) of the petition is a one third part of the share of the estate of the said Hugh Duncan Livingston the elder in such moneys being a one third part of the sum of £3,527.15. 5. The fourth distribution in the Wool Realisation (Distribution of Profits) Acts 1948-1952 referred to in paragraph 16 (a) of the petition as being made in the year 1955 was the fifth and the final distribution under those Acts. The five distributions including the four distributions referred to in paragraph 16(a) of the petition were in respect of wool grown and marketed in Queensland. The first distribution was made on the Thirtieth day of November 1949; the second distribution was made on the Twenty-eighth day of March 1952; the third distribution was made on the Sixth day of March 1953; the fourth distribution was made on the Sixth day of April 1954; and the fifth and final distribution was made on the Twenty-ninth day of April 1955.

10. All cheques received for distributions made under the Wool Realisation (Distribution of Profits) Act 1948-1952 as referred to in paragraph 16(a) of the said petition were made payable either to Livingston Brothers or Estate late E. B. Livingston or Maranoa Downs Pastoral Company and were banked to respective accounts under those names with the Bank of New South Wales at Mungindi in the State of New South Wales. An apportionment of the amount thereof due to the estate of the said Hugh Duncan Livingston the elder deceased was made by Messrs. Harrison Knox and Leslie Chartered Accountants of Sydney in the said State which firm acted as accountants for all parties including the said estate and the amount found due to the said estate was paid to the credit of the bank account of the said estate with the Bank of New South Wales at Mungindi aforesaid.

11. The statements in paragraph 16(c) and 16(f) (i) and (ii) of the petition are an inference made on behalf of the petitioner and are not

In the Supreme
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Queensland

No.10

Statement of
Additional
Facts to those
in the
Petition No.7
of 1958
Undated
continued

agreed to by the Commissioner of Stamp Duties for Queensland.

12. The sum of money actually included by the Commissioner of Stamp Duties for the State of Queensland as referred to in paragraph 16(d) of the petition is in fact the amount of £30,481. 4. 7. being a one third part of the nett increment to the estate of the said Hugh Duncan Livingston the elder as estimated and assessed by the Commissioner of Stamp Duties as being a one third part of the share of the said estate in the nett value of the growth of wool upon the grazing properties in Queensland referred to in paragraph 10 of the petition between the date of death of the said Jocelyn Hilda Coulson deceased and the Twenty-sixth day of March 1954 exclusive of income tax paid or payable but after allowance was made for all other outgoings estimated by the Commissioner of Stamp Duties as likely to be incurred in the production of such increment.

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20

13. The date upon which succession accounts were lodged with the Commissioner of Stamp Duties in the estate of the said Jocelyn Hilda Coulson by the petitioner was the Twenty-sixth day of March 1954 and not the Twenty-fourth day of March 1954 as stated in paragraph 16(d) of the petition. The Probate in the estate of the said Hugh Duncan Livingston the elder deceased was lodged in the Supreme Court of Queensland for re-sealing on the First day of November 1950 and was re-sealed on the Thirteenth day of February 1952. The executors and trustees of the estate of the said Hugh Duncan Livingston the elder deceased lodged accounts with the Commissioner of Stamp Duties for the purpose of the assessment of Succession and Probate Duties on the Twenty-fifth day of October 1950.

30

14. Transmission consequent on the death of the said Hugh Duncan Livingston the elder in favour of Jocelyn Hilda Livingston, John Evelyn Cassidy and Max Bernhard Hesslein as Devisees in trust in respect of the freehold land in the said estate situated in Queensland was produced for registration in the Real Property Office Brisbane on the Nineteenth day of August 1952 and was entered on the titles thereof on the Twenty-sixth day of October 1953.

40

15. Transmission consequent on the death of the said Hugh Duncan Livingston the elder in favour of Jocelyn Hilda Livingston, John Evelyn Cassidy and Max Bernhard Hesslein as executors in respect of the said leasehold land in the said estate situated in Queensland was registered in the Department of Public Lands Brisbane on the Twentieth day of August 1952.

In the Supreme Court of Queensland

No.10

Statement of Additional Facts to those in the Petition No.7 of 1958 Undated continued

10

16. Record of Marriage of the said Jocelyn Hilda Livingston with Bruce Thomas Coulson in respect of the leasehold land mentioned and referred to in the preceding paragraph hereof was registered in the Department of Public Lands Brisbane on the said the Twentieth day of August 1952.

20

17. Record of Death of the said Jocelyn Hilda Coulson in respect of the said leasehold land was registered in the Department of Public Lands Brisbane on the said the Twentieth day of August 1952.

Tynne & Macartney
Solicitors for the Petitioner.

L. E. Skinner
Crown Solicitor,
Solicitor for the Commissioner
of Stamp Duties.

No.11

No.11

30

Copy Partnership Agreement of
the Maranoa Downs Pastoral
Company (Annexure "A")

Copy Partner-
ship Agreement
of the Maranoa
Downs Pastoral
Company
(Annexure "A")
30th December
1929

"A"

Queensland
Stamp Duty
(Impressed
Duty 10/-)

Stamped under Declaration
Vide Regn. 64425/ '19.9.29.
6/1/30.

THIS INDENTURE made the Thirtieth day of
December One thousand nine hundred and twenty-
nine BETWEEN HUGH DUNCAN LIVINGSTON JOHN
HECTOR LIVINGSTON KENNETH STOKHAM HUTHWAITE
LIVINGSTON all of near Moree in the State of

In the Supreme
Court of
Queensland

No.11

Copy Partner-
ship Agreement
of the Maranoa
Downs Pastoral
Company
(Annexure "A")
30th December
1929
continued

New South Wales Graziers NANCY FLORENCE
LIVINGSTON of near Moree aforesaid Spinster and
ALAN STEPHEN GILLESPIE of Maranoa Downs near
Mitchell in the State of Queensland "Grazier"
WHEREAS the parties hereto are the owners of
Woodlands Pastoral Holding in the Maranoa District
of the State of Queensland (which holding is
generally known as "Maranoa Downs") and the live-
stock plant and effects thereon in the proportions
following namely 9/40ths. by each of the parties
hereto except the said Alan Stephen Gillespie who
holds 4/40ths interest therein AND WHEREAS it
has been agreed by and between the said parties
hereto that they shall enter into partnership in
the business of Graziers and Stock Dealers on
"Maranoa Downs" aforesaid upon the terms and sub-
ject to the conditions hereinafter expressed
NOW THIS INDENTURE WITNESSETH that in considera-
tion of the mutual confidence of the said parties
it is hereby mutually covenanted and agreed by
and between the said parties hereto as follows:-

1. The said Hugh Duncan Livingston John Hector
Livingston Kenneth Stokham Huthwaite Livingston
Nancy Florence Livingston and Alan Stephen
Gillespie will become and remain partners in the
business of graziers and stock dealers under the
style or firm of "The Maranoa Downs Pastoral
Company" from the Thirty-first day of May 1929
for the term of five years PROVIDED THAT the
death or retirement of any one partner shall not
determine the partnership between the surviving
or continuing partners and the said Hugh Duncan
Livingston shall be the Manager of the said
business (during his lifetime) and his decision
shall be final and conclusive in connection with
all matters relating to the conduct of the said
business.

2. The business of the partnership shall be
carried on at or upon the abovementioned holding.

3. The Bankers of the said partnership shall
be the Mungindi Branch of the Bank of New South
Wales or such other Bank as the partners may from
time to time agree upon. All cheques upon such
account shall be drawn in the firm name and may
be signed by any partner. All moneys belonging
to the firm when received shall be paid into the
partnership account.

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30

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In the Supreme
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No.11

Copy Partner-
ship Agreement
of the Maranoa
Downs Pastoral
Company
(Annexure "A")
30th December
1929
continued

10 4. The capital of the said business shall consist of the said Pastoral Lease and the live-stock and plant now held by the partnership or henceforth to be acquired in connection with the said business and shall belong to the partners hereto in the proportions aforesaid and such sum or sums of money as shall from time to time be required for carrying on the said business to advantage which shall be contributed by the said partners in the proportions aforesaid.

20 5. The usual books of account shall be kept and entries made therein as are usually entered in books of account kept by firms engaged in a grazing business. All partners shall have full access to them at all times and shall be at liberty to make such extracts therefrom as he or she may think fit. The said books of account and all letters papers and documents belonging to the partnership shall be kept at Maranoa Downs aforesaid or at such other place as may be mutually agreed upon.

30 6. The nett profits of the said business after providing for the expenses of management shall be divided between the partners in the proportion of $\frac{9}{40}$ ths to each partner except the said Alan Stephen Gillespie who shall be entitled to a $\frac{4}{40}$ ths share and they shall in like proportion bear all losses and the nett profits shall be divided in the proportions abovementioned after the taking of the annual account

40 PROVIDED THAT the said Alan Stephen Gillespie shall be paid such salary as Overseer as shall be mutually agreed upon which shall not be debited against his share of profits hereunder but shall be treated as a working expense. On the thirtyfirst day of May 1930 and on the Thirty-first day of May in every subsequent year a general account shall be taken of the assets and liabilities of the partnership during the preceding year and of acts and matters and things usually comprehended in accounts of a like nature taken by persons employed in a like business and in taking such account a just valuation shall be made of all items requiring valuations. Such general account shall be signed by all the partners and when so signed shall be binding on them save that if any manifest error shall be found therein and signified by any

In the Supreme
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No.11

Copy Partner-
ship Agreement
of the Maranoa
Downs Pastoral
Company
(Annexure "A")
30th December
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continued

partner to the others within three calendar months after such signature the same shall be rectified.

7. Each partner shall at all times duly and punctually pay and discharge his or her separate debts and engagements whether present or future and keep indemnified therefrom and from all actions proceedings costs claims and demand in respect thereof the partnership property and the other partners and their representatives. 10

8. In the event of any partner making any advance to the partnership the same shall bear interest at the rate of 7% be payable annually.

9. All rents rates and taxes charges insurance premiums wages interest and other costs and expenses which shall happen in respect of the said business shall be paid out of the income of the business and in case of deficiency thereof by the partners in the proportions before-mentioned. 20

10. Each partner shall be just and faithful to the others in all transactions relating to the partnership at all times give to the others a just and faithful account of the same and upon every reasonable request furnish a full and correct explanation thereof to the others and devote all required attention to the business of the partnership and diligently and faithfully employ himself and herself therein and use his and her best skill and endeavours to carry on the same for the utmost benefit of the partnership. 30

11. No partner shall without the written consent of the others enter into any bond or bail with or for any person or do or knowingly cause or suffer to be done anything whereby the partnership property or any part thereof may be seized attached extended or taken in execution assign mortgage or charge his or her name in the partnership or any part of such share or make any other person a partner therein compromise or compound or (except upon payment in full thereof) release or discharge any debt due to the partnership. 40

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No.11

Copy Partner-
ship Agreement
of the Maranoa
Downs Pastoral
Company
(Annexure "A")
30th December
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continued

10 12. If at any time during the continuance of
this partnership any partner shall for a period
of six consecutive calendar months be incapaci-
tated by bodily or mental infirmity from fully
and effectually attending to the said business
and performing his or her duties in respect
thereof it shall be lawful for the other partners
or a majority of them by notice in writing given
to such partner or his or her Solicitor or agent
at or after the expiration of such six calendar
months and during the continuance of such in-
capacity to determine this partnership so far
as relates to such partner and the same shall
determine accordingly as on the date of giving
such notice.

20 13. If any partner shall die during the contin-
uance of the partnership or if the partnership
shall determine in respect of any partner in
terms of the preceding clause the surviving or
continuing partners as the case may be shall from
the date of such death or determination if more
than one in the proportions in which they were at
such date entitled to share in the nett profits
of the partnership succeed to the share of the
deceased partner or the partner in respect to
which the partnership has been determined in the
partnership business and the property and good-
will thereof and shall undertake all the debts
and liabilities and obligations of the partner-
ship and to pay to the legal representatives of
30 the deceased partner or to the partner whose
interest has been determined or his legally
authorised representatives as circumstances may
require in such instalments as may be agreed
upon the nett value of such share at the date
of such death or determination after providing
for the then debts and liabilities of the
partnership such value in case of dispute to be
determined by arbitration in the manner herein-
40 after mentioned.

14. Upon the determination of the partnership
by effluxion of time unless otherwise agreed
the assets and property thereof shall with all
convenient speed be realised and sold and the
debts due to the partnership got in and the pro-
ceeds shall be applied in discharge of the
liabilities of the partnership and the expenses
of liquidating the same and realising the assets

In the Supreme
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Copy Partner-
ship Agreement
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thereof and in the next place in payment to each partner or his or her representative of any unpaid profits due or owing to him or her and of his or her share in the capital and the surplus (if any) of the moneys realised as aforesaid shall be divided between the partners or his or her representatives in the shares and proportions to which they are respectively entitled to the nett profits of the said business and each partner or his or her representatives shall execute such release to the other partner or partners or his or her representative from all claims and accounts of the partnership.

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15. All disputes and questions whatsoever which shall arise during the partnership or afterwards between the partners or their respective representatives touching these presents or the construction or application thereof or any clause or thing contained or any amount valuation or division of assets or liabilities to be made hereunder or as to any act deed or omission of any partner or as to any matter in any way relating to the partnership business or the affairs thereof or the rights and duties or liabilities of any person under these presents shall be referred for settlement to two arbitrators one to be appointed by each party to the dispute and in case of such arbitrators disagreeing to their umpire to be appointed before entering on the reference and if either party shall neglect or refuse to appoint an arbitrator within seven days after being requested by the other party so to do shall appoint an arbitrator who shall be unable or unwilling to act then the arbitrator appointed by the other party shall proceed to hear and determine the matters in difference as if he were an arbitrator appointed by both parties for that purpose and the arbitrator or arbitrators or their umpire shall have power to determine by whom the costs of the arbitration shall be borne and every such reference shall be deemed an arbitration in accordance with the provisions of The Interdict Act of 1867 and be subject to the provisions relating to arbitration to the said Act.

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IN WITNESS whereof the parties hereto have

hereunto set their hands and seals the day
and year first before mentioned

In the Supreme
Court of
Queensland

SIGNED SEALED AND DELIVERED)
by the said HUGH DUNCAN)
LIVINGSTON in the presence)
of:)

H.D.Livingston

No.11

W. Poole
Solicitor

Copy Partner-
ship Agreement
of the Maranoa
Downs Pastoral
Company
(Annexure "A")
30th December
1929
continued

10

SIGNED SEALED AND DELIVERED)
by the said JOHN HECTOR)
LIVINGSTON in the presence)
of:)

J.H.Livingston

K. Moodie
Solicitor, Sydney.

SIGNED SEALED AND DELIVERED)
by the said KENNETH STOKHAM)
HUTHWAITE LIVINGSTON in)
the presence of:)

K.S.H.Livingston

K. Moodie

20

SIGNED SEALED AND DELIVERED)
by the said NANCY FLORENCE)
LIVINGSTON in the presence)
of:)

Nancy F.
Livingston

K. Moodie

SIGNED SEALED AND DELIVERED)
by the said ALAN STEPHEN)
GILLESPIE in the presence)
of:)

A.S.Gillespie

W. J. Fraser J.P.

In the Full
Court of
Queensland

No.12

Reasons for Judgment of the Full
Court of Queensland pronounced
by His Honour Mr. Justice Philp

No.12

Reasons for
Judgment
pronounced by
His Honour Mr.
Justice Philp.
2nd December
1959

LIVINGSTON v. COMMISSIONER OF STAMP DUTIES

JUDGMENT - PHILP, J.

The salient facts in this matter are as follows:- Hugh Duncan Livingston the elder (hereinafter called the testator) died in 1948 resident and domiciled in New South Wales. By his will he appointed his widow and two other persons executors and trustees of his will. All these persons were at all material times resident and domiciled in New South Wales. By his will the testator gave his residuary estate to his trustees upon trust inter alia as to one-third thereof for his widow absolutely. 10

Probate of the will was granted in New South Wales in 1949 and was resealed in Queensland in February 1952. 20

The widow married one Coulson in June 1950 and died intestate in July 1950 resident and domiciled in New South Wales. The only property of Mrs. Coulson alleged to be situated in Queensland is her interest under the testator's will.

The assets in the testator's estate consisted of real and personal estate in the State of New South Wales and real and personal estate in the State of Queensland. 30

The assets in the said estate in the State of Queensland consisted of:

1. A freehold and leasehold grazing property together with stock and plant thereof whereon the said Hugh Duncan Livingston the elder carried on grazing business on his own account and,
2. An interest in the leasehold grazing

property together with stock and plant thereon on which a grazing business was carried on in partnership. The partnership was that of the said Hugh Duncan Livingston the elder, his brother John Hector Livingston, Kenneth Huthwaite Stokham Livingston his sister Nancy Florence Livingston and Alan Stephen Gillespie and was carried on under the name or style of Maranoa Downs Pastoral Company and,

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- 10 3. One undivided fourth interest in certain other freehold and leasehold grazing properties.

The partnership and also his own grazing business in Queensland were carried on by the testator's trustees and his surviving trustees at all material times.

20 The testator's trustees duly lodged accounts for death duties in New South Wales but at the time of Mrs. Coulson's death the duties had not been assessed and the estate of the testator was then also in other respects substantially unadministered so that the residue and Mrs. Coulson's share thereof could not be ascertained.

30 In 1951 the petitioner was granted administration of Mrs. Coulson's estate by the Supreme Court of New South Wales. No application for a grant or reseal in respect of Mrs. Coulson's estate was made to the Supreme Court of Queensland.

The Queensland Commissioner demanded and received an account of the estate of Mrs. Coulson and upon that account assessed administration and succession duties.

40 The petitioner appeals by two separate petitions - one in respect of administration duty and the other in respect of succession duty. The following statements in the first petition appear also in the second petition in respect of succession duty -

" Your petitioner having been required to do so by the Commissioner of Stamp Duties but under protest and without prejudice to

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his contention that no succession or administration duty under The Succession and Probate Duties Acts was payable on the death of the said Jocelyn Hilda Coulson filed an account of her estate. By a notice of assessment addressed to your petitioner's solicitors and dated the twentieth day of April 1956 the Commissioner of Stamp Duties assessed Administration Duty claimed by him to be payable under The Succession and Probate Duties Acts 1892 to 1955 on the death of the said Jocelyn Hilda Coulson."

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The petitioner paid the duties and lodged appeals the grounds being as follows:-

- "1. That the said assessment is wrong in and contrary to law.
2. That the said Jocelyn Hilda Coulson was domiciled in the State of New South Wales at the date of her death and at such date there was no property of hers in the State of Queensland in respect of which administration duty was chargeable.
3. In the alternative to paragraph 2 hereof -
 - (a) That you should not have included in the assets of the said Jocelyn Hilda Coulson for the purpose of the levy of administration duty any part of any distributions made to the executors and trustees of Hugh Duncan Livingston deceased in pursuance of the Wool Realisation (Distribution of Profits) Act of 1948 to 1952 since the said distributions did not nor did any part thereof constitute any of the personal property or effects or rents of the said Jocelyn Hilda Coulson in Queensland or other moneys coming into the hands of the said administrator or recoverable by him under any grant of letters of administration in Queensland in respect of any property of the said Jocelyn Hilda Coulson:

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(b) (i) In estimating the net value of the property of the said Jocelyn Hilda Coulson for the purpose of the levy of probate duty you should have taken the value of the said property as the value thereof at the date of the death of the said Jocelyn Hilda Coulson except for any accumulation of interest and any dividends or rents paid or accrued since the said date but you should not have included any part of any profits made since the said date arising out of the carrying on of any business in Queensland by the executors of Hugh Duncan Livingston deceased;

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(ii) In the alternative to 3 (b) (i) in calculating the value of the profits of any such business you should have made allowance for income tax and other debts and/or outgoings. "

The grounds of appeal in respect of succession duty were in similar terms.

In his petition the petitioner prays the Court to make declarations in terms of the said grounds of appeal.

30

A preliminary question arises as to our jurisdiction to determine in the present proceedings the questions raised and to make the declarations sought. In other words, the question is - does Section 50 of "The Succession and Probate Duties Act" (hereinafter called "the Act") give in the present circumstances a right of appeal against the assessment of administration duty or succession duty?

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The amendments to the original Act of 1892, particularly those made in and after 1918, have worked such a confusion that confident opinion on the question is impossible.

The Act deals with two quite different types of duty - Succession Duty and Probate

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Duty (in which term I include Administration duty) and the inclusion of both duties in the one Act is apt to mislead one into thinking that provisions relating to one duty apply also to the other.

Succession duty, broadly speaking, is a duty imposed on each successor to property real or personal which passes to him upon a death by virtue of a disposition being a settlement or a will or by virtue of a devolution by law. Succession duty is really not a stamp duty although Section 11 provides that it shall be considered as such.

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Section 12, and the last paragraph of Section 46 make the duty a debt due to the Crown.

Probate duty is primarily a stamp duty and like other stamp duties it was attracted by an instrument - the grant of probate.

The first 54 sections of the Act - even in its present form - deal almost exclusively with Succession duty. Probate and administration duty are imposed by Section 55 and the Schedule to the Act. Section 55A does not apply to administration duty unless the grant be cum testamento annexo.

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Section 55 reads as follows:-

There shall be paid, in respect "of every grant of Probate or Letters of Administration made in respect of the estate of any person dying after the time appointed for the commencement of this Act, duties at the rate mentioned in the Schedule to this Act, the payment of which duties shall be denoted by impressed Stamps impressed on the Probate or Letters of Administration: And no Probate or Letters of Administration shall be issued from the office of the Registrar of the Supreme Court unless payment of the duty payable in respect thereof is denoted thereon by such impressed Stamps; and a Probate or Letters of Administration granted in respect of the estate of any person dying after the time appointed for the commencement of this Act shall not be admitted in evidence in any Court of Justice unless the payment of duty is so denoted thereon", and the relevant part of the Schedule reads as follows:-

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"When the net value of the property of the deceased person in respect of which the Grant of Probate or Letters of Administration is made does not amount to £300 Nil

When such value amounts to £300 or upwards, for every £100 or part thereof £1: 0: 0."

10 It will be seen that the duty is to be paid "in respect of every grant" i.e. in respect of an instrument and the section does not make the duty a Crown debt.

20 A person seeking a grant is required by Regulation 4 to lodge with the Registrar of the Supreme Court particulars of the value of the estate which under Regulation 5 are forwarded to the Commissioner for the purpose of having the duty "assessed". By Regulation 7 within fourteen days after the duty has been assessed such duty shall be paid whereupon the Commissioner shall stamp the grant and return it to the Registrar.

30 In Guest's Case (1935) S.R.Q. 248 E.A. Douglas, J., expressed the view that the power of the Commissioner to "assess" duty arose only where an application for a grant was made under Regulation 4 but he thought that the Crown could sue for the duty even though a grant were not sought. He relied on the decision in New York Brewery Co. Ltd. v. Attorney General (1899) A.C. 62 but that decision was made on English legislation corresponding to Section 11 B of the Act. The English Crown Suits Act 28 & 29 Vic. of 104 Section 57 gave special power to sue for an account and payment of probate duty.

40 Following Guest's Case the Queensland declaratory Act of 1935 was passed. That Act declared that the Commissioner has and always has had power to assess and recover probate duty in respect of the estates of persons dying after 1 July 1918, although no grant has been made.

It will be noticed that Section 11 B passed in 1918, made it an offence in certain circumstances to take possession of or administer the estates of persons dying after 1 July 1918.

If there is no right of appeal against an assessment - and such a right can be conferred

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only by the words of the statute - an applicant for a grant dissatisfied by the quantum of the assessment must seek his remedy if there be one elsewhere - possibly by mandamus or a declaratory action. Of course a person asserting his non-liability to any duty whatever would not apply for a grant and he could contest his liability if he were prosecuted under Section 11 B or if he were sued for the duty under the declaratory Act of 1935. I think that the power to assess and recover duty given by the 1935 Act involves a power to sue for an account - otherwise the power to assess would in many cases be nugatory; but in an action for an account the defendant denying any liability to duty could contest his liability to account.

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The need for an appeal then exists only in relation to the quantum of the assessment whether the assessment be made upon an application for a grant or under the Act of 1935.

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In the instant case the petitioner did not apply for a grant - the Commissioner assessed duty, presumably under the 1935 Act, on the material contained in the succession duty accounts which the petitioner rendered under protest. The petitioner at all times contended that he was under no liability to account in respect of or to pay probate duty. The petitioner could have waited to be sued for the duty and in the action contested his liability but the question remains whether the statute gave the petitioner a right to contest his liability by the procedure of appeal.

30

The only section which gives any right of appeal is Section 50. In order to understand the meaning of that section it is, I think, proper to consider it first in the context of the Act as it stood in 1892 and then to see whether its meaning has been changed by the subsequent amendments of the Act.

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The first 54 sections of the original Act dealt exclusively with succession duty and the Act closely followed the scheme of the English Succession Duty Act of 1853 which of course had nothing to do with Probate duty.

Section 46 defined the persons who are

"accountable for the duty ... payable in respect of any succession" and makes those persons liable for the duty for which they are accountable.

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Section 47 imposed on those persons so accountable in respect to succession duty the liability to deliver an account "of the property for the duty whereon they are respectively accountable". The Commissioner was given power to assess "the Succession duty" upon the accounts as delivered or if dissatisfied with that account, to take an account himself.

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It will thus be seen that under the 1892 Act the Commissioner had no power to assess succession duty unless some account were delivered.

By Section 48 if a person required to deliver "such account as aforesaid" (i.e. an account for succession duty) failed so to do the Commissioner might take proceedings in the Supreme Court for an order for the delivery of the account. In such proceedings the question of the accountability of the party was determined subject of course to the general rights of appeal from a Supreme Court Judge.

Section 49 dealt and deals only with the liability of persons who have accounted for succession duty.

Then follows Section 50 which provided and provides that "Any accountable party dissatisfied with the assessment of the Commissioner" may appeal by petition to the Supreme Court.

Taking the Act as it stood in 1892 I think that Section 50 applied only to succession duty. The assessment referred to in Section 50 is the assessment of succession duty with which alone the previous sections have dealt. Again the words "accountable party" naturally in their context refer to a person made accountable for succession duty by Section 46. The reason why any accountable party is given an appeal is to permit for example an individual successor who has put in in no account to appeal against an assessment made on an account put in by an executor; the provision is inapposite to probate duty. Nowhere in the Act is a person liable to pay probate

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duty referred to as a person accountable for probate duty or as accountable party. It must be remembered that under the 1892 Act no person was "accountable" for probate duty. The duty became payable only by the voluntary applicant for a grant who to get a grant was required to furnish "particulars and value of the estate". Such a person is an "accounting" party but not I think an "accountable party" within Section 50.

In my opinion Section 50 as it appeared in the 1892 Act gave no right of appeal against an assessment of probate duty.

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The amendments to the Act do not specifically alter this position although one amending section at least causes one to think that the Legislature assumed that Section 50 gave a right of appeal against an assessment of probate duty. I refer to Section 47A which was inserted in 1918 and which gives power to reassess "succession or probate duty subject to appeal as hereinafter provided".

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But a further difficulty arises for the petitioner and this difficulty affects his right of appeal in respect of succession duty also. Assuming that the words "the assessment" in Section 50 includes an assessment of probate duty, as regards both probate and succession duty the only person competent to appeal under Section 50 is "an accountable party". The appellant must be a person who by law is an accountable party - not merely a person whom the Commissioner alleges to be or assesses as being an accountable party.

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As has been pointed out, so far as succession duty is concerned Section 48 provides machinery for a Judge to determine the question of accountability. Section 50 is available only when accountability is admitted and the details of the assessment are disputed.

The Queensland sections 47, 48 and 50 correspond to sections 45, 47 and 50 respectively of the English Succession Duty Act of 1853. In the notes on those sections contained in Hanson on Death Duties 7th Ed. pp.532 and 535 it is pointed out in effect that liability to account is to be determined by a judge on summons and

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cannot be determined in an appeal under Section 50.

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10 But it was argued that whereas in England (and in Queensland prior to 1918) the Commissioner had no power to assess or to take his own account unless he had an account placed before him voluntarily or under a Court order, Section 47 as amended in 1918 gives the Queensland Commissioner power to make what was referred to as a default assessment; it was argued that a person so assessed became an accountable party who could under Section 50 dispute his accountability and liability to any duty.

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Who are accountable parties is determined by the law - principally by Section 46. No determination by the Commissioner can make an accountable party a person who is not by law an accountable party.

20 Section 47 prescribes that accountable parties shall deliver an account and provides that the Commissioner may assess on the account as delivered and then proceeds: "but the Commissioner if dissatisfied with such account and estimate, or if no account and estimate have been delivered as prescribed may himself take an account" and assess on that account.

30 The words underlined, which were introduced in 1918 only give power to make a "default assessment" against an accountable party, since it is delivery of an account only by an accountable party which is prescribed by Section 47. If A is by law an accountable party and no account has been delivered the Commissioner may validly assess A who could appeal against the details of the assessment under Section 50; but if A is not by law an accountable party no default assessment by the Commissioner can make him one and such a person so assessed would have no right of appeal under Section 50; it is not necessary to
40 determine what his other remedies are.

In the instant case a "default assessment" was not made.

The petitioner at all times in effect asserted and asserts that he was not an accountable party

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but succession accounts having been demanded by the Commissioner he delivered them without prejudice and under protest; he paid the probate and succession duties as assessed no doubt upon the understanding that he could contest his accountability in an appeal under Section 50 and payment of duty is a condition precedent to that right of appeal.

I think that if the petitioner had refused to deliver the account he would not have been guilty of a breach of Section 49 A since he certainly would have had "reasonable excuse" for his refusal - the excuse being that he bona fide contested his accountability.

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Section 56A presents difficulty to me as no doubt it did to the petitioner. It purports to give certain evidentiary weight to the assessment of the Commissioner but whether it does extend to make the assessment even prima facie evidence or a prima facie conclusion whether in an appeal or otherwise that a person assessed is in law an accountable party I should not like to say. McAndrews v. Federal Commissioner of Taxation 98 C.L.R.263 illustrates the difficulties arising from this type of section.

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I am deeply conscious of the difficulties arising from the Act in its present form which beset the petitioner's advisers and can only hope that some other Court will be able to show a way out of the morass.

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In my view a person cannot assert that he qualifies as an appellant against assessments of administration duty and succession duty because he is an accountable party and in the same breath assert that he is not an accountable party and ask us so to hold.

I hold that it is not competent for this Court in the proceedings before us to determine the questions raised as to whether the petitioner was or was not an accountable party whether in respect of administration or succession duty or as to whether the petitioner is or is not liable to pay such duties.

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As the substantive matters involved were

fully argued before us and as this matter will probably be the subject of an appeal I think I should give my opinion on the questions raised.

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Mrs. Coulson at her death as appears above had an interest in the testator's estate which comprised property situated in Queensland.

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It was argued that Mrs. Coulson, because the testator's estate was unadministered at the time of her death had merely a right of action against the trustees and that as all the trustees resided in New South Wales the situs of that right - her chose in action - was in New South Wales. It was argued then that because Mrs. Coulson at her death had no property in Queensland her estate was not liable for administration or succession duty.

As I have mentioned these duties are quite different and liability to each of them depends upon the relevant statutory provisions.

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As to administration duty - the duty is imposed by Section 55 "in respect of the grant made in respect of the estate of any person" etc. Primarily the duty was "the price of a grant" but as I have mentioned the duty is payable under the 1935 Act whether a grant has been made or not and to the same extent as if a grant had been made.

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By the Schedule the duty is imposed on "the net value of the property of the deceased in respect of which the grant is made" or applying the 1935 Act - "would have been made if applied for."

The subject of duty then is "estate" or "net property" of the deceased situated in Queensland.

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The probate duty which was the subject of consideration in "Attorney General v. Lord Sudeley (1897) A.C. 11" was imposed originally on the "estate and effects of the deceased for or in respect of which the probate or letters of administration is or are granted."

Some of the relevant Acts are adverted to

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by Lord Esher in Lord Sudeley's Case in the Court of Appeal (1896) 1 Q.B. 354 at p.359. He does not refer to the Customs and Inland Revenue Act 1880 Section 10 which makes it plain that the duty is imposed on "the personal estate of the deceased for or in respect of which the grant is made."

It would thus appear that the subject of duty in England was the same as it is today in Queensland, namely, the "estate" or "property" of the deceased in respect of which the grant is made.

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It thus seems to me that for administration duty purposes the "property" which Mrs. Coulson had at the time of her death derived under her husband's will was of the same nature as that had by the Mrs. Tollemache referred to in Lord Sudeley's case at the time of her death.

According to that case Mrs. Coulson's "asset" or "property" consisted of an equitable chose in action since the testator's estate was unadministered at her death and as all the trustees resided in New South Wales her "property" for administration duty purposes was situated in New South Wales. I would be bound by that case to hold that that property is not subject to administration duty in Queensland.

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As to succession duty different considerations apply. The subject of probate and administration duty is frequently referred to as the "assets" which the executor or administrator can get in by virtue of his grant. Succession duty has nothing to do with assets or a grant.

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Succession duty is imposed by Section 12 "in respect of each succession according to the value thereof."

Section 4 (following verbatim Section 2 of the English Act of 1853) provides as follows:-

"Every past or future disposition of property by reason of which any person has become or shall become beneficially entitled to any property or the income thereof upon the death of any person dying after the time

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appointed for the commencement of this Act, either immediately or after any interval, either certainly or contingently, and either originally or by way of substitutive limitation, and every devolution by law of any beneficial interest in property, or the income thereof, upon the death of any person dying after the time appointed for the commencement of this Act, to any other person, in possession or expectancy, shall be deemed to have conferred or to confer on the person entitled by reason of such disposition or devolution a 'succession'; and the term 'successor' shall denote the person so entitled; and the term 'predecessor' shall denote the settlor, testor, obligor, ancestor, or other person from whom the interest of the successor is or shall be derived."

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The first part of the section deals with the case of dispositions of property and so includes wills and settlements. The duty thereunder attaches only if by such a disposition a person becomes beneficially entitled to "property" in Queensland. It may be that if Mrs. Coulson had by will disposed of her interest under her husband's will that interest would not, in view of Lord Sudeley's case, be "property" in Queensland - see Attorney General v. Johnson (1907) 2 K.B. 885.

Since Mrs. Coulson died intestate the first part of Section 4 has no application. The question then is - did her death work a "devolution by law of any beneficial interest in property" in Queensland?

I am unable to see why the wording in respect of devolutions is different from that in respect of dispositions and I have seen no case in which the matter is adverted to.

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It is trite law that in interpreting a statute - particularly a fiscal statute - we are bound to construe words as they stand without wresting the words to cure the seeming injustice or inadvertence of the Legislature in imposing different bases of taxation where that course seems unjustified. Also a change in

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wording prima facie implies a change in meaning.

According to Lord Sudeley's case Mrs. Coulson had no "property" in Queensland but the question is - did she have "a beneficial interest in property" in Queensland? In McCaughey v. The Commission of Stamp Duties 46 S.R.N.S.W. 192 Jordan C.J. dealt at length with Lord Sudeley's case, of which he disapproved, but which he decided he must apply when the estate is unadministered. He was dealing with a statute wherein the subject of tax was "property" and by Section 3 of that statute property was defined to include "any interest in any property". At p.206 he said, "Apart from authority I should have no doubt that this includes any beneficial interest which the deceased may have in the estate of a deceased person notwithstanding that it is in course of being administered in that estate. We are however constrained by Sudeley's case to do what was deprecated by the Privy Council in Blackwood v. The Queen L.R. 8 A.C.82 that is first search for a rule of law, and then bend the statute in accordance with it."

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With all respect to that learned Judge I think he failed to give sufficient weight to the decision of the House of Lords in Skinner v. Attorney General (1940) A.C. 350 in which Sudeley's case was specifically dealt with. Jordan C.J. dealt with Skinner's case at p.204 of McCaughey's case. I do not know whether he compared the subject of tax in Sudeley's case with the subject of tax in Skinner's case which unfortunately is not set out in the report of that case.

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As I have said the subject of tax in Sudeley's case was the estate and effects in respect of which a grant is made which is referred to as "assets" or "personal property". In Sudeley's case (1896) 1 Q.B. at p.365 Kay L.J. (with whom the House agreed) said "What in law is the interest of Frances's executors in the estate of Algernon? It is a right to recover from Algernon's executors one-fourth of the clear residue of the estate. So far as such residue consists of personal property that is a chose in action". The court was not considering

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whether Frances's executors had an "interest" in property situated in New Zealand although as appears from the report in the House counsel endeavoured to make it seem that the subject of tax was an "interest" in property.

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10 In Skinner's case a Testator bequeathed to his widow an annuity for life charged on his residuary estate; the executors lived in Northern Ireland; at the time of the widow's death the husband's estate which was then un-administered consisted inter alia of securities situated in England.

By Section 1 of The Finance Act 1894 estate duty is imposed on all "property" passing on a death. By section 2 (b) such property is deemed to include "Property in which the deceased had an interest ceasing on the death of the deceased to the extent to which a benefit accrues or arises by the cessor of such interest."

20 On the widow's death the Crown claimed estate duty under Section 2 (b) setting up that the "property" in which the deceased had an "interest" at her death included the securities situated in England. The question then was - did the widow have an interest in property in England? The taxpayer relied on Sudeley's case. At p.358 speaking for the House Lord Russell of Killowen pointed out that Sudeley's case was concerned only with probate duty. He said
30 that -

"The whole point of the decision was that the widow did not own any part of the mortgages. As Lord Herschell pointed out in his speech the whole fallacy of the argument of the widow's executors rested on the assumption that she or they were entitled to any part of the mortgages as an asset - she in her own right or they as executors. 'I do not think', he said, 'that they have any estate, right, or interest, legal or equitable, in these New Zealand mortgages, so as to make them an asset of her estate.' My Lords, I emphasize the last ten words of that sentence, which show clearly that the interest which was being repudiated was a proprietary interest. The case is not in any way a decision that the widow or

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In the Full
Court of
Queensland

No.12

Reasons for
Judgment

pronounced by
His Honour Mr.
Justice Philp
2nd December
1959
continued

her executors had no interest in the mort-
gages, and it is certainly no authority
against the view that an annuitant whose
annuity is charged on the estate of a testator
has an 'interest' in the different items of
which that estate from time to time consists."

(The underlinings are mine.)

The matter has not been further considered
in England because the Finance Act of 1938
(passed while Skinner's case was pending) dealt
specifically with interests in unadministered
estates - see Hanson 10 Ed. p.711 and particu-
larly at p.715.

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It appears to me that the words construed
in Skinner's case are the same as the words to
be construed in the instant case. In the result
while Mrs. Coulson did not "own" property in
Queensland at her death she had, I think, an
interest in all the property which was subject to
the trust in her favour or more exactly an
interest in each part of the property held by her
husband's executors. It will be noticed that in
Skinner's case no trust was declared by the
testamentary instruments and there was no ap-
pointment of trustees - see p.351 of the
report - and yet it was held that the annuit-
ant had an interest in each part of the pro-
perty in the unadministered estate.

20

I think that the decision in Skinner's case
binds us and that the dicta and decisions on the
question involved made in respect of income tax
are not binding; they deal with statutory
provisions different from that with which we are
dealing.

30

I should hold then that there did devolve
on Mrs. Coulson's death her interest in the
property in Queensland which was owned by her
husband's executors.

With regard to the moneys referred to in
para. 16 (a) of each of the petitions and in
para. 9 of each of the additional statements of
facts I would consider that they were not pro-
perty which is subject to either administration
or succession duty.

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In the result I conclude it is not com-
petent for us in the present proceedings to
decide the questions raised by the petitions.

No.13

Order of the Full Court of Queensland
dismissing the Petition (No.8 of 1958)
against the Assessment of Succession
Duty

In the Full
Court of
Queensland

No.13

IN THE SUPREME COURT
OF QUEENSLAND.

Petition No.8 of 1958.

Mr. Justice Matthews
Mr. Justice Stanley

Order of the
Full Court of
Queensland
dismissing the
Petition (No.8
of 1958)
against the
Assessment of
Succession Duty
2nd December
1959

10

IN THE MATTER of "The Succession and
Probate Duties Acts 1892 to 1955"

- and -

IN THE MATTER of the Estate of JOCELYN
HILDA COULSON deceased.

re SUCCESSION DUTY.

BETWEEN:

HUGH DUNCAN LIVINGSTON Petitioner.

- and -

20

THE COMMISSIONER OF STAMP
DUTIES Respondent.

FULL COURT: Before Their Honours Mr. Justice
Philp, Mr. Justice Wanstall and
Mr. Justice Stable.

WEDNESDAY THE SECOND DAY OF DECEMBER, 1959.

30

THE PETITION appealing against the assess-
ments of Succession Duty in the abovenamed
Estate having on the Fifteenth, Nineteenth,
Twentieth and Twentyfirst days of May 1958, and
the Third day of November 1958 come on for hear-
ing pursuant to an Order of Mr. Justice Philp
made on the Eighteenth day of March 1958 and
UPON HEARING what was alleged by Mr. Bennett
Q.C., with him Mr. Lucas Q.C., and Mr. Nicholson
of Counsel for the Petitioner and Mr. Barry Q.C.
with him Mr. Fairleigh of Counsel for the
Respondent and UPON READING the Record of the
Transcript of proceedings herein THIS COURT DID
on the last mentioned date Order that the said
Petition stand for Judgment and the same standing
for Judgment this day on the list of this Court

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In the Full Court of Queensland

in the presence of Counsel for both parties THIS COURT DOETH ORDER that the Petition against the assessment of Succession Duty be dismissed AND THIS COURT DOETH NOT MAKE ANY ORDER AS TO COSTS.

No.13

Order of the Full Court of Queensland dismissing the Petition (No.8 of 1958) against the Assessment of Succession Duty 2nd December 1959 continued

By the Court

J. Shannon

(L.S.)

REGISTRAR

No.14

Order of the Full Court of Queensland dismissing the Petition (No.7 of 1958) against the Assessment of Administration Duty 2nd December 1959

No.14

Order of the Full Court of Queensland dismissing the Petition (No.7 of 1958) against the Assessment of Administration Duty.

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IN THE SUPREME COURT OF QUEENSLAND

Petition No.7 of 1958

Mr. Justice Matthews
Mr. Justice Stanley

IN THE MATTER of "The Succession and Probate Duties Acts 1892 to 1955"

-- and --

20

IN THE MATTER of the Estate of JOCELYN HILDA COULSON deceased.

re ADMINISTRATION DUTY

BETWEEN:

HUGH DUNCAN LIVINGSTON Petitioner

-- and --

THE COMMISSIONER OF STAMP DUTIES Respondent.

FULL COURT: Before Their Honours, Mr. Justice Philp, Mr. Justice Wanstall and Mr. Justice Stable.

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WEDNESDAY THE SECOND DAY OF DECEMBER, 1959.

THE PETITION appealing against the assessments

of Administration Duty in the abovenamed Estate having on the Fifteenth, Nineteenth, Twentieth and Twentyfirst days of May 1958 and the Third day of November 1958 come on for hearing pursuant to an Order of Mr. Justice Philp made on the Eighteenth day of March 1958 and UPON HEARING what was alleged by Mr. Bennett Q.C., with him Mr. Lucas Q.C., and Mr. Nicholson of Counsel for the Petitioner and Mr. Barry Q.C., with him Mr. Fairleigh of Counsel for the Respondent AND UPON READING the Record of the transcript of proceedings herein THIS COURT DID on the last mentioned date Order that the said Petition stand for Judgment and the same standing for Judgment this day on the list of this Court in the presence of Counsel for both parties THIS COURT DOTH ORDER that the Petition against the assessment of Administration Duty be dismissed AND THIS COURT DOTH NOT MAKE ANY ORDER AS TO COSTS.

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By the Court
 J. Shannon
 (L.S.) REGISTRAR.

No.15

Notice of Appeal against the Order of the Full Court of Queensland dismissing the Petition against the Assessment of Succession Duty.

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IN THE HIGH COURT OF AUSTRALIA
QUEENSLAND REGISTRY Appeal No.28 of 1959.

On Appeal from the Supreme Court of Queensland (Full Court).

BETWEEN:

HUGH DUNCAN LIVINGSTON Appellant
 (Petitioner)

- and -

THE COMMISSIONER OF STAMP DUTIES Respondent
 (Respondent).

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NOTICE OF APPEAL.

TAKE NOTICE that the abovenamed Appellant

In the Full Court of Queensland

No.14
 Order of the Full Court of Queensland dismissing the Petition (No.7 of 1958) against the Assessment of Administration Duty
 2nd December 1959
 continued

In the High Court of Australia

No.15
 Notice of Appeal against the Order of the Full Court of Queensland dismissing the Petition against the Assessment of Succession Duty
 16th December 1959

In the High
Court of
Australia

No.15

Notice of Appeal
against the
Order of the
Full Court of
Queensland dis-
missing the
Petition against
the Assessment
of Succession
Duty
16th December
1959
continued

appeals to the High Court of Australia from the whole of the Judgment of the Full Court of the Supreme Court of Queensland, pronounced herein at Brisbane on the Second day of December 1959 in the matter, Petition Number 8 of 1958 in which the present Appellant was the Petitioner and the present Respondent was the Respondent whereby the said Full Court dismissed an appeal by the Appellant against the assessment by the Respondent of Succession Duty in the Estate of Jocelyn Hilda Coulson but made no order as to costs and that Judgment be entered in the said matter as prayed in the said Petition namely, that it may be declared that the assessment of succession duty made by the said Commissioner was wrong in and contrary to law, and that the said Jocelyn Hilda Coulson deceased was domiciled in the State of New South Wales at the date of her death, and that at such date there was no property in the State of Queensland in respect of which succession duty was chargeable upon her death, and that at such date the proprietary interest of the said deceased under the Will of her husband Hugh Duncan Livingston, who died at Sydney in the State of New South Wales on the Seventeenth day of December, 1948, in respect of the property of his estate situated in Queensland, was a personal right against the executors and trustees of his Will, who were at all material times domiciled in the State of New South Wales, and that such interest was not property within the State of Queensland; and, alternatively, that the said Commissioner should not have included in the assets of the said deceased any part of any distribution made to the executors and trustees of the Will of the said Hugh Duncan Livingston deceased, in pursuance of the Wool Realisation (Distribution of Profits) Act 1948 to 1952; upon the following grounds that is to say:-

1. That the Judgment is wrong in and contrary to law.
2. That the said Full Court was in error in holding that the Appellant in the circumstances had no right of appeal against the assessment of Succession duty.

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3. That the appellant had a right of appeal against the assessment of succession duty by the Commissioner;

In the High
Court of
Australia

4. That the said Full Court should have decided:

No.15

a. That the Commissioner's assessment of succession duty was wrong in and contrary to law;

Notice of Appeal
against the
Order of the
Full Court of
Queensland dis-
missing the
Petition against
the Assessment
of Succession
Duty
16th December
1959
continued

10

b. That at the time of her death, the said Jocelyn Hilda Coulson deceased had no beneficial or proprietary interest situated in Queensland in any property which would justify the said Commissioner in making his said assessment;

20

c. Alternatively, that any distributions made to the executors and trustees of the Will of Hugh Duncan Livingston deceased in pursuance of the Wool Realisation (Distribution of Profits) Act 1948 to 1952, were not assets of the said Jocelyn Hilda Coulson for the purpose of the levy of succession duty in Queensland;

AND that the costs of this appeal and of the said proceedings in the Supreme Court of Queensland be paid by the Respondent.

DATED this sixteenth day of December 1959.

Thynne & Macartney

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Solicitors for the Appellant.

In the High
Court of
Australia

No.16

Affidavit of Robert William Lalor.

No.16

IN THE HIGH COURT OF

AUSTRALIA

QUEENSLAND REGISTRY

Affidavit of
Robert William
Lalor.
15th December
1959

On Appeal from the Supreme Court
of Queensland (Full Court).

BETWEEN :

HUGH DUNCAN LIVINGSTON

Appellant
(Petitioner)

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- and -

THE COMMISSIONER OF
STAMP DUTIES

Respondent
(Respondent)

I, ROBERT WILLIAM LALOR of Neulands Road,
Indooroopilly, Brisbane in the State of Queens-
land, Solicitor being duly sworn make oath and
say as follows:-

1. I am a member of the firm of Messieurs
Thynne & Macartney, Solicitors for Hugh Duncan
Livingston the abovenamed appellant who is
appealing against a Judgment pronounced by the
Full Court of the Supreme Court of Queensland
in a matter Petition Number 8 of 1958, when he
was petitioner on appeal from the whole of an
assessment of succession duty issued by the
abovenamed respondent for the sum of Five
thousand three hundred and ninety nine pounds
nine shillings and eleven pence (£5,399.9.11d.)

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2. The said Petition was heard by the said Full
Court at Brisbane on the Fifteenth, Nineteenth,
Twentieth and Twentyfirst days of May and the
Third day of November, 1958, and Judgment was
then pronounced in favour of the Respondent in
the matter (the abovenamed Respondent) and the
Petition was dismissed.

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3. This appeal to the High Court of Australia is in respect of a Final Judgment pronounced in respect of a sum at issue amounting to a value of One thousand five hundred pounds (£1,500. 0. 0d.)

In the High Court of Australia

No.16

10 SIGNED AND SWORN by the abovenamed ROBERT WILLIAM LALOR at Brisbane aforesaid this fifteenth day of December 1959, before me: R. W. Lalor

Affidavit of Robert William Lalor. 15th December 1959 continued

(?) J.P.

A Justice of the Peace.

No.17

No.17

20 Notice of Motion for Special Leave to Appeal to the High Court of Australia against the Order of the Full Court of Queensland dismissing the Petition against the Assessment of Administration Duty.

Notice of Motion for Special Leave to Appeal to the High Court of Australia against the Order of the Full Court of Queensland dismissing the Petition against the Assessment of Administration Duty 16th December 1959

IN THE HIGH COURT OF

AUSTRALIA

Appeal No. 29 of 1959.

QUEENSLAND REGISTRY

IN THE MATTER of "The Succession and Probate Duties Acts 1892 to 1955"

- and -

IN THE MATTER of the Estate of JOCELYN HILDA COULSON deceased.

30 HUGH DUNCAN LIVINGSTON Petitioner.

THE COMMISSIONER OF STAMP DUTIES

Respondent

Pending in the Supreme Court of Queensland.

TAKE NOTICE that the Full Court of the High

In the High
Court of
Australia

No.17

Notice of Motion
for Special
Leave to Appeal
to the High
Court of Australia
against the
Order of the
Full Court of
Queensland dis-
missing the
Petition against
the Assessment
of Administra-
tion Duty
16th December
1959
continued

Court of Australia will be moved at Brisbane on Tuesday the Fourteenth day of June 1960 next or as soon thereafter as Counsel can be heard by Counsel on behalf of Hugh Duncan Livingston the Administrator of the estate of Jocelyn Hilda Coulson deceased for Special Leave to Appeal against the whole of the judgment of the Full Court of the Supreme Court of Queensland pronounced at Brisbane on the Second day of December 1959 whereby the said Full Court dismissed an appeal by the said Hugh Duncan Livingston as such administrator against an assessment of Administration Duty by the Commissioner of Stamp Duties claimed by him to be payable under the Succession and Probate Duties Acts 1892 to 1955 on the death of the above-named deceased.

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Dated this Sixteenth day of December 1959.

Thynne & Macartney

Solicitors for the Applicant.

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It is intended to serve this Notice of Motion on The Commissioner of Stamp Duties.

This Notice of Motion is given by Messieurs Thynne & Macartney of National Mutual Building, 293 Queen Street, Brisbane Solicitors for the applicant, the said Hugh Duncan Livingston.

NOTE: On the hearing of the Motion it is intended to use the Affidavit of ROBERT WILLIAM LALOR filed herein on the sixteenth day of December, 1959.

30

To
The District Registrar,
High Court of Australia,
BRISBANE.

AND TO

The Commissioner of Stamp Duties.

No.18

Affidavit of Robert William Lalor.In the High
Court of
AustraliaIN THE HIGH COURT OFAUSTRALIAMotion No. 29 of 1959.

No.18

IN THE MATTER of "The Succession and
Probate Duties Acts 1892 to 1955"

- and -

IN THE MATTER of the Estate of Jocelyn
Hilda Coulson deceased.Affidavit of
Robert William
Lalor
15th December
195910 Pending in the Supreme Court of Queensland.

I, ROBERT WILLIAM LALOR of Neulands Road,
Indooroopilly, Brisbane in the State of Queens-
land, Solicitor, being duly sworn make oath and
say as follows :-

1. I am a member of the firm of Messieurs
Thynne & Macartney Solicitors for Hugh Duncan
Livingston the applicant for special leave to
appeal in this matter.

20 2. The nature of the case giving rise to this
application for special leave to appeal in this
matter appears from the paragraphs following.

30 3. As Solicitor for Hugh Duncan Livingston the
administrator of the Estate of Jocelyn Hilda
Coulson deceased, I filed in the Registry of the
Supreme Court of Queensland a Petition of the
said Hugh Duncan Livingston and an affidavit
verifying the same dated the eighth day of
February 1958 claiming the relief set out there-
in and a Statement of Additional Facts filed
subsequently. True copies of the said Petition
and Affidavit Verifying and the Statement of
Additional Facts are now produced and shown to
me and marked "A" and "B" respectively.

4. The said petition and a further petition
and affidavit verifying of the said Hugh Duncan
Livingston bearing the same date were heard by
the Full Court of the Supreme Court of Queens-
land at Brisbane on the fifteenth, nineteenth,
twentieth and twentyfirst days of May 1958.

In the High Court of Australia

No.18

Affidavit of Robert William Lalor 15th December 1959 continued

5. Judgment in the matter was pronounced by the said Full Court of the Supreme Court of Queensland on the Second day of December 1959 whereby it ordered that the said Petition be dismissed and no order was made as to costs. A true copy of the said Judgment of the Full Court as entered is now produced and shown to me and marked "C". A true copy of the reasons for judgment published by the Honourable Mr. Justice Philp is now produced and shown to me and marked "D". In the said Full Court the Honourable Mr. Justice Wanstall and Mr. Justice Stable agreed with the reasons for judgment published by the Honourable Mr. Justice Philp.

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6. The questions involved in this appeal inter alia include :-

(a) Whether there is any right of appeal under The Succession and Probate Duties Acts 1892 to 1955 against an assessment of administration duty.

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(b) If yes to (a) above whether there is any right of appeal under The Succession and Probate Duties Acts 1892 to 1955 against an assessment of administration duty when the person assessed denies liability to pay such duty.

7. Important questions of law and of construction of the said Acts and Regulations thereunder are involved.

8. The said questions involved are of great public importance in that it has been the practice in the State of Queensland for many years to appeal against the assessment of Administration duty by the Commissioner of Stamp Duty whether the appellant denied liability to pay such duty or merely challenged the quantum thereof.

30

SIGNED AND SWORN by the above-named Deponent ROBERT WILLIAM LALOR at Brisbane aforesaid this fifteenth day of December, 1959, before me :-

R.W.Lalor

40

(?) J.P. A Justice of the Peace.

No.19

Reasons for Judgment of the Full
Court of the High Court of
Australia -
(a) His Honour The Chief Justice
(Sir Owen Dixon).

In the Full
Court of the
High Court of
Australia

No.19

Reasons for
Judgment

LIVINGSTON

v.

THE COMMISSIONER OF STAMP DUTIES (QLD.)

(a) His Honour
the Chief
Justice (Sir
Owen Dixon)
16th December
1960

10 JUDGMENT

DIKON C.J.

By sec. 48 of the Succession and Probate
Duties Acts 1892 to 1952 of Queensland it is
provided amongst other things that if any
person accountable for or chargeable with duty
on being required by the Commissioner to deliver
an account makes default in doing so the
Commissioner may, by summons before a judge of
the Supreme Court in Chambers call upon such
person to show cause why he should not deliver
20 the account and pay the duty and costs, and
thereupon such order shall be made as the judge
thinks just. Some time before 20th April 1956
the Commissioner (who is the respondent in this
appeal) required Hugh Duncan Livingston (who is
the appellant) to deliver an account of the pro-
perty or estate of Jocelyn Hilda Coulson decess-
ed. That lady had died intestate on 8th
July 1950 resident and domiciled in the State of
New South Wales and on 13th November 1951 the
30 Supreme Court of New South Wales had granted to
the appellant, who is her son, letters of admin-
istration of her estate. The appellant claimed
that he was not accountable and that Mrs. Coul-
son had left no property or estate in Queensland.
Nevertheless the appellant filed an account of
her estate with the Commissioner but under pro-
test and without prejudice, as he says, to his
contention that no succession or administration
duty was payable.

40 Mrs. Coulson's death was caused by a motor
accident which caused also the death of her
husband. They had married little more than a
fortnight before, she then being the widow of

In the Full
Court of the
High Court of
Australia

No.19

Reasons for
Judgment

(a) His Honour
the Chief
Justice (Sir
Owen Dixon)
16th December
1960
continued

Hugh Duncan Livingston deceased. The latter had died on 17th November 1948 domiciled and resident in the State of New South Wales. The property which he left included some freehold and leasehold land in Queensland, on which he carried on a grazing business, and the stock and plant of the business. At his death he was also a member of a partnership of five which carried on a grazing business on leasehold land in Queensland, and in addition he was entitled to an undivided fourth interest in some other freehold and leasehold land in Queensland used for grazing. By his last will he appointed his wife his executrix and two other persons his executors. After a specific bequest to his wife he devised his real and bequeathed the residue of his personal estate to these three persons as his trustees. After payment of debts, testamentary expenses and death, estate and other duties, he declared trusts of this residuary estate as to one-third thereof to his wife absolutely and as to two-thirds upon special trusts in favour of his two sons, one of whom is the appellant Hugh Duncan Livingston. There were certain gifts over in case of failure of these trusts. Among the powers conferred there are powers of conversion and of management but there is no direction to convert. Probate of this will was granted by the Supreme Court of New South Wales on 13th October 1949 to the executrix and executors who are domiciled and reside in that State. Probate of the will was resealed in Queensland by the surviving executors after the death of the executrix, namely on 13th February 1952. At the date of her death, although three large payments on account of duty chargeable by the State of New South Wales on property of the testator there dutiable had been paid in that State, the assessment of duty had not been completed and as it turned out further large payments remained to be paid. Commonwealth Estate Duty had not been paid or for that matter assessed. There were, too, other steps to be taken in the administration of the estate which was by no means fully administered. The residue of his estate had therefore not been ascertained. It was the claim of the appellant that

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accordingly at the time of her death Mrs. Coulson had no proprietary right or interest in the specific assets in Queensland or elsewhere which the testator's estate comprised but only a claim against his executors for the due administration of the estate so that the residue should be ascertained and held upon trust as to one-third thereof for her. This, he maintained, was a chose in action or chose in equity subsisting in New South Wales where her fellow executors and herself resided and where the administration of the estate proceeded, the place moreover under the laws of which they were constituted and the trusts would be enforced. On the death intestate of Mrs. Coulson her only right of property passing to him as her administrator, so he claimed, was this New South Wales right or chose in action. Except for what she might obtain in the fulfilment of this right she possessed no property in Queensland and moreover it was not a right situated in Queensland but in New South Wales. Notwithstanding this contention the Commissioner (the respondent) issued a notice of assessment of succession duty. The notice was dated 20th April 1956 and was addressed to the appellant's solicitors in Brisbane. It followed substantially Form R in the Schedule to the Succession Duties and Probate Duties Regulations but it nowhere mentioned the appellant by name as the party assessed or otherwise. The "successor" was given as Coulson (that is her husband killed by the motor accident) and others and the relationship as husband and children, the assessable amount was given as R (i.e. realty) £16,224. 5. 4, P(personalty) £13,358. 2. 1. and the rate of duty as fifteen per cent. The duty amounted to £4437. 7. 1. The appellant paid this sum together with interest to the Commissioner and appealed to the Supreme Court by petition. The appeal was referred to the Full Court and that Court for reasons to which it will be necessary to refer later dismissed the petition. From the order of dismissal the present appeal was brought to this Court as of right.

In the Full
 Court of the
 High Court of
 Australia

No.19

Reasons for
 Judgment

(a) His Honour
 the Chief
 Justice (Sir
 Owen Dixon)
 16th December
 1960
 continued

At the same time as the foregoing proceedings with respect to Succession Duty were

In the Full
Court of the
High Court of
Australia

—————
No.19

Reasons for
Judgment
—————

(a) His Honour
the Chief
Justice (Sir
Owen Dixon)
16th December
1960
continued

in train, parallel proceedings took place with respect to the duty payable under sect.55 of the Act in respect of every grant of Probate or of Letters of Administration. It is true that letters of administration in respect of the intestate estate of the late Mrs. Coulson had not been applied for in Queensland. But by sec. 2 of the Succession and Probate Duties Acts Declaratory and Amendment Act of 1935 (26 Geo. V No.27) Qld. it is declared that (to the extent of the property described in the section) the Commissioner may assess and recover duties "notwithstanding that probate or administration ... has not been granted in Queensland or if probate or administration of such property has been granted in any place outside Queensland without the reseal in Queensland of such probate or administration." Whether the respondent Commissioner purported to act under this or some other provision, he is said to have required the appellant to file an account of Mrs. Coulson's estate and, under protest and without prejudice to his contention that no succession or administration duty was payable on the death of Mrs. Coulson, the appellant filed an account of her estate. Doubtless this is the same account and same protest as has already been referred to. The respondent Commissioner gave notice to the appellant's solicitors of his assessment of administration duty. The notice followed Form O of the Regulations and stated that the Commissioner had assessed the administration duty payable in the estate of Mrs. Coulson at £607, proceeding to say, as if a grant of letters of administration had been applied for and made, that upon the receipt of the sum the grant would be duly stamped and returned to the Registrar of the Supreme Court. The notice then stated the value of the property upon which such sum had been assessed, but that is a matter with which this appeal is not concerned, subject to a particular item to be mentioned in due place. The appellant appealed by petition to the Supreme Court against the assessment to administration duty but the Full Court dismissed the appeal. As the amount involved in the case of administration duty is insufficient to enable him to appeal as of right the appellant

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applies for special leave to appeal. Special leave is not opposed and the case of administration duty was argued as an appeal.

In the Full
Court of the
High Court of
Australia

No.19

Reasons for
Judgment

10 The appeals present difficulties both of substance and of procedure. In the end they must be resolved by the application of the provisions of the Acts. But to apply the Acts, which are notoriously involved and obscure, it is necessary first to determine what under the law of Queensland were the beneficial rights, if any, of Mrs. Coulson in respect of the assets in Queensland forming part of the estate of her late husband. The legislature of Queensland did not follow the other Australian colonies in providing that upon death realty should vest in the personal representative and the rule that it passed directly to the devisee continued (see Kerr: Australian Lands Titles p.457). By the enactment of the Public Curators Acts 1915 to 1957, sec.30, all property, including land, not disposed of by will vests in the Public Curator until a grant of letters of administration: see secs.12 and 14 of the Intestacy Act 1877 as amended. As probate of Livingston's will was not resealed until 13th February 1952, at the time of Mrs. Coulson's death on 8th July 1950 the devolution or vesting of his assets in Queensland was governed by the general law. Real estate vested in her and the two executors as devisees. Actually a transmission to them in that character was produced at the Real Property Office in Brisbane and entered upon the titles after her death. Under the law of Queensland this registration meant that she must be considered as one of the three proprietors of the legal estate in the land in question at the time of her death. The law of Queensland would also regard the chattels personal and chattels real as vesting in them as well as their testator's interest in the partnership. The beneficial interest would of course depend upon the provisions of the will. In these appeals we are concerned with the law of Queensland. In the courts of Queensland the law of New South Wales is not foreign law in the same sense as it was before federation. For there is sec.118 of the Commonwealth Constitution and there is the State and Territorial Laws and Records

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40

(a) His Honour
the Chief
Justice (Sir
Owen Dixon)
16th December
1960
continued

In the Full
Court of the
High Court of
Australia

No.19

Reasons for
Judgment

(a) His Honour
the Chief
Justice (Sir
Owen Dixon)
16th December
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recognition Act 1901-1950. In this Court where the law of all parts of the Commonwealth and its Territories is a matter of judicial notice the law of New South Wales is ascertained on that footing. Nevertheless it is the law of Queensland that governs the case. It is well to begin by seeing if any and what beneficial interest in the items of property in Queensland of her husband's estate existed under that law in Mrs. Coulson at the time of her death. The appellant denies that any legal or equitable interest in her husband's estate whether in Queensland or New South Wales then existed in her beneficially: her right was to have the assets applied in a due course of administration and until the administration was completed the residue of which the trustees were to stand seized and possessed upon the trusts of the will under which she was cestui que trust could not be ascertained. The locality of this right was New South Wales. It is hardly necessary to say that, for the appellant, the important thing is not whether such a right subsisted under the law of New South Wales with a locality in that State but whether under the law of Queensland Mrs. Coulson had no equitable interest in the property in Queensland forming part of the estate of Hugh Duncan Livingston deceased. In Lord Sudeley v. A.-G. 1897 A.C. 11, a decision that has been the source of much difficulty and misunderstanding, the question was the liability to the inclusion in the estate of a domiciled English woman for the purpose of English probate duty of the value of certain mortgages in New Zealand. She was not the mortgagee. But at the time of her death she was entitled under the testamentary dispositions of her late husband, who had died only fifteen months earlier, to a fourth share in his then unadministered estate. That estate included the mortgages in New Zealand. These doubtless are to be considered movable and not immovables for the purposes of our private international law: see per Cussen J. in re Ralston 1906 V.L.R. 689 at p.694; per Salmond J. in re O'Neill 1922 N.Z.L.R. 408 and McClelland v. Trustees Executors & Agency Co. Ltd. (1936) 55 C.L.R. at p.493 and the paper in 2 A.L.J. 85 there referred to which was contributed by Sir Frank Kitto. In Lord Sudeley's case no point was made of the fact that the

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mortgages were movable though perhaps in considering that decision it is a matter that ought not to be left out of account. At all events the order made by the majority of the Court of Appeal (1896 1 Q.B. 354; 74 L.T. 91) which the House of Lords affirmed, appears to have been expressed in accordance with the prayer of the information and declared that one fourth part of the value of the mortgage securities in New Zealand forming part of the residuary personal estate of the husband should have been included in the value for the purpose of probate duty of the personal estate of the deceased (64 L.T. at p.92). Lord Herschell said that the fallacy of the argument in support of the appeal rested on the assumption that the deceased or her executors were entitled to any part of the New Zealand mortgages as an asset - she in her own right or they as her executors. His Lordship continued, "I do not think that they have any estate right or interest, legal or equitable, in these New Zealand mortgages so as to make them an asset of her estate." An important gloss was placed upon the language of Lord Herschell by Lord Russell of Killowen in Skinner v. A.-G. 1940 A.C. 351, where an unsuccessful attempt was made to apply the decision to the operation of a provision of a will of a testator by which he had charged an annuity bequeathed by the will upon an unascertained residue. It was attempted to establish that the charge did not attach to the individual or "specific" items of his estate but only to the undefined residue considered as an inseparable mass, that is to say, independently of its then present components. Lord Russell said that he emphasized the last ten words of Lord Herschell's sentence, viz. the words "so as to make them an asset of her estate", "which", his Lordship said, "show clearly that the interest which was being repudiated was a proprietary interest. The case is not in any way a decision that the widow or her executors had no interest in the mortgages . . ." In the same case in the Court of Appeal Greene M.R. spoke of the line of authorities in which Lord Sudeley's case stands and said, "They were concerned with the local situation to be attributed to property for purposes of probate or probate duty" (sc. in England) "and the questions which arose were two (a) what was the property which the deceased owned at his death? (b) what, for the purposes of a grant of probate" (sc. in England) "was its

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local situation? The property in question being merely a right to have another estate duly administered, it was held that the local situation of the property was in the country of the forum of administration of that other estate." 1939 Ch. 131 at p. 141; 1938 2 A.E.R. 691 at p. 696-7. This explanation may perhaps be said to adopt a, or the, forum concursus and thence to import the lex loci concursus as supplying the entire governing law. Devolution and administration of assets are two distinct things. The latter must involve many matters of substantive right, to take an example the order or priority of payment of debts. But "the crucial difference between the two concepts is that administration from the point of view of the administrator is not beneficial but in the nature of a duty, while succession is essentially of benefit to the successor." The Conflict of Law (1st ed.) R.H. Graveson at p. 288 q.v. It is devolution or succession that is the subject of the present question and devolution or succession as recognised by the forum situs, if not by the lex loci situs. No one need doubt that the forum concursus or lex loci concursus may treat a right to share in the ultimate distribution as a single right devolving under that law and subject to whatever tax may by that law be imposed on devolution. That is what is done by the actual decision in Lord Sudeley's case. But to do so does not imply a denial of the existence under the lex loci rei sitae of a beneficial right in the property and devolution of that right taxable under the law of that place. Lord Sudeley's case itself appears to provide an example. For according to the report of the argument 74 L.T. 88 at p.92, 2nd col., counsel for the defendant executors said that the defendants had registered in New Zealand a claim to the mortgaged property and had paid a sum for probate duty there. But the contention that Mrs. Coulson had at her death no equitable interest in the property in Queensland forming part of her deceased husband's estate is put less upon the basis of the law of his domicile or her domicile, less on the lex loci concursus, than upon a positive doctrine attributed to the law, of law and of equity, which apparently is taken to be part of the law of Queensland. That

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would mean that according to the law of Queensland the items of property that have been enumerated forming part of the estate of Livingston deceased vested in his executors (whether as devisees or as executors) subject to their duties of administration but not beneficially and yet subject to no equitable estate or interest of any kind in a cestui que trust. It would mean that the beneficial interest is nowhere until the completion of their duties of administration. Moreover the theory seems to be that the forum to which those who would become interested in residue when ascertained must resort to enforce performance of such duties is the Supreme Court of New South Wales.

This diversity between the duties or functions of administration and the equitable interests of beneficiaries is no new thing. It appeared even in Farr v. Newman 1792 4 T.R. 621; 100 E.R. 1209 which at the end of the eighteenth century established, not without the dissent of Buller J., that even at law the goods of the testator could not be taken in execution for the executor's own judgment debt. Here Buller J. contrasted the rule at law with that in Chancery which he described thus (4. T.R. at p. 638; 100 E.R. at p. 1218):-

"The Court of Chancery consider the fund as debtor; and therefore they pursue that; collect it all in their own hands, under the notion of taking an account; call all persons before them who have any demand on that fund; and distribute it amongst all, according to their priorities at law (if they have any); or if not, equally. But that Court has never said that, if the effects of a testator get bona fide and for a good consideration into the hands of a third person, they will take them from him." Needless to say equity has never deprived a third person taking the legal title bona fide and for value of any property. But the key to the matter lies in the last sentence of Buller J. For it impliedly recognises that an equitable interest attaches to the assets, not the interest of creditors, but of a beneficiary. It was not long before this was made very clear in Chancery. In Hill v. Simpson 1802 7 Ves. Jun. 153: 32 E.R. 63

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a bill by two persons entitled to general pecuniary legacies was filed against bankers to whom an executor had transferred assets to secure his personal debt and relief was decreed by Sir William Grant M.R. In McLeod v. Drummond 1810 17 Ves. Jun. 153 at p. 168: 34 E.R. 59 at p.65 Lord Eldon referred to the decision of the Master of the Rolls and said: "I cannot conceive why in a case falling within the exception, a creditor and a specific legatee should be able to follow the assets; and not a pecuniary or residuary legatee. The case of a residuary legatee is stronger than that of a pecuniary legatee. It is said in Farr v. Newman, that the residuary legatee is to take the money, when made up: but I say he has in a sense a lien upon the fund, as it is; and may come here for the specific fund. If it is wrong, as against a creditor, for the executor to apply the fund in payment of his own debt, why is it not equally wrong, both in Law and Equity, to allow a third person wilfully and fraudulently to take from the executor that money, which in his hands the residuary legatee can call for, as the specific property of the testator?" By the "exception" Lord Eldon means the exception to the rule enabling an executor to sell or pledge assets to a bona fide purchaser. The words with which the citation from Lord Eldon concludes make it clear that the residuary legatees' ultimate title to the specific property is the basis of the continuing equitable interest. What then did Lord Russell mean when he said that what Lord Herschell was repudiating was a proprietary interest? It is not easy to say unless the words mean an unqualified ownership or interest. It cannot mean that he was asserting a complete absence of any equitable interest. An equitable interest is not ownership; but it is proprietary. Its true nature was explained luminously by Maitland in the ninth, tenth and eleventh of his Lectures on Equity. In Australia we have the advantage of the able and cogent examination of the matter by the late Sir Frederick Jordan C.J. in McCaughy v. The Commissioner of Stamp Duties 1945 46 S.R. N.S.W. 192. At one point in his judgment (at p.204) His Honour said this and it is difficult to see how in principle there could be any other view: "The idea that beneficiaries in an unadministered or partially administered estate have no

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beneficial interest in the items which go to make up the estate is repugnant to elementary and fundamental principles of equity." However His Honour concluded with what is perhaps a calculated paradox which he attributed to the coercive effect of authority to which he surrendered. Perhaps the surrender was needless and the paradox is not an unavoidable consequence. Some years later this Court dealt with the difficulty in Smith v Layh (1953) 90 C.L.R. at pp. 108-9. After quoting a passage from Lord Cave's judgment in the case of Dr. Barnado Homes National Incorporated Association 1921 2 A.C. 1 at p.10 we said this: "But it is not the consequence that the residuary legatee or next-of-kin has no right of property in the totality of assets forming the residue of the intestate estate. The beneficial interest is not vested in the legal personal representative, subject to the rights of creditors. The right of the next-of-kin or residuary legatee to have the estate properly administered and to receive payment of the net balance gives them an equitable interest in the totality and therefore in the assets of which it is composed: cf. Horton v. Jones (1935) 53 C.L.R. 475, at p. 486. It is what equity calls property: a jus in personam ad rem." In the paper of Dr. Hanbury 44 L.Q.R. at p.471 to which we there refer that learned writer remarks: "However much equitable rights begin to look like iura in rem they cannot belong to this category because they are always liable to be defeated by a bona fide purchaser for value of the legal estate." But it is none the less true that in virtue of her share in the residue of her first husband's estate Mrs. Coulson was entitled at her death to an equitable interest in the Queensland property forming part of his estate. The interest is not to be defined in the terms appropriate to legal estates or chattels real. But it is an equitable interest capable of description by reference to the rights which it gives to share in the residue after debts, death duties or other liabilities have been discharged or otherwise cleared. That equitable interest is in or in respect of land and other property situate in Queensland and as such it devolved on the death of Mrs. Coulson upon her next-of-kin and, if he

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survived her for any interval of time, her husband.

The questions which remain are (1) whether the devolution of this equitable interest is comprehended by the Succession and Probate Duties Acts in its provisions imposing succession duty or in those imposing probate and administration duties or in both; (2) whether the appellant Hugh Duncan Livingston junior is an accountable party liable to be assessed for either tax or both; and (3) whether an appeal is given to him by the Acts from the assessments on any of the foregoing grounds if otherwise he is entitled to succeed.

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Sec.4 of the Succession and Probate Duties Acts includes in its description of a "succession" every devolution by law of any beneficial interest in property . . . upon the death of any person . . . to any other person in possession or expectancy. The word "succession" is defined by sec.3 to denote any property chargeable with duty under the Acts. By sec. 4 the dispositions and devolutions which the section describes shall be deemed to confer on the person entitled by reason of such disposition or devolution a "succession"; and the term "successor" shall denote the person so entitled; and the term "predecessor" shall denote the settlor, testator, obligor, ancestor or other person from whom the interest of the successor shall be derived. On the death of Mrs. Coulson the equitable interest to which she was entitled in the property in Queensland forming part of the estate of her late husband passed to or became vested in the Public Curator under sec.30 of the Public Curator Acts. But that seems to be immaterial, for the persons to whom the beneficial interest in that equitable interest passed were her next-of-kin as for brevity we may call them, that is her two sons and perhaps her husband. It may be taken that a beneficial devolution is the subject of the duty. It follows that together there was a devolution upon the two sons and perhaps the husband amounting to a "succession". Sec.12 provides that there shall be levied and paid to the Crown in respect of every succession according to the value thereof at the time when

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the succession takes effect the duties that the section proceeds to prescribe. It seems clear enough having regard particularly to sec.43 that every successor is liable for duty, though curiously enough the statute nowhere says so directly and totidem verbis. There are however a number of references to the liability, of which it is enough to mention two. Sec.20 provides that the duty imposed by the Act shall be paid at the time when the successor, or any person in his right or on his behalf, becomes entitled to his succession or to the receipt of the income and profits thereof. Secondly, sec. 46 provides that "the following persons, besides the successor, shall be accountable to Her Majesty for the duty payable in respect of any succession"; then follows a statement of various capacities held by persons in whom the property or its management might be vested. If therefore it is correct that the next-of-kin are successors notwithstanding that the interest immediately became vested in the Public Curator, it only remained to assess the next-of-kin or one of them. The third paragraph of sec.47 seems to confer power upon the Commissioner to make such an assessment. The assessment is made by the section "subject to appeal as hereinafter provided". The provision evidently referred to by these words is sec.50 which enacts that any accountable party dissatisfied with the assessment of the Commissioner may appeal by the procedure there laid down, a condition being the payment of the duty. A statement of the grounds of appeal must be furnished and the appeal is by petition, the procedure followed in the present case. A serious difficulty is raised by the fact that sec.50 is expressed to give an appeal only to "any accountable party". Can he appeal on the ground that he is not accountable, as Hugh Duncan Livingston did in the present case? Philp J. after a full examination of the provisions of the Statute reached the conclusion that an appeal on such a ground does not lie and in his judgment Wanstall and Stable JJ. agreed. In their view to resist assessment on the ground that the party assessed was not accountable some resort to other remedies was necessary. He might contest a summons under s.48. Sec.56A(2) at first sight may appear to create great difficulty in contesting liability except on appeal once an assessment has

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been made, but it is susceptible of a limited construction and probably should be restricted in its conclusive effect to the procedure of assessing and the amount and particulars of property and value. Yet para.(b) of sec.56A (2)(i) seems rather to imply that on appeal everything that is covered by the paragraph is open to attack. The question whether a party denying his accountability may appeal for the purpose of establishing that he is not accountable has apparently not been raised in Queensland before and there are examples of proceedings where an appeal has been used for such a purpose. On the other hand, the view adopted by Philp J. is that which was taken in England of sec.50, a provision which even bears the same number in the Succession Duty Act 1853 (16 and 17 Vict. c.51). In Hanson on Death Duties, 8th Ed., at p.559, there is a note to the section containing this statement: "The right of appeal conferred by the present section only applies to cases where there is a question as to the value of the succession or the details of the account; cases, in other words, where the liability to some duty is admitted, and the only question is as to the amount." It might not seem impossible to construe the expression in sec.50 "any accountable party dissatisfied with the assessment" as meaning "any party accountable according to the assessment who is dissatisfied" and one may be permitted to hope that such a construction accords with legislative policy. But in strictness the question does not arise in this case if the appellant is accountable and the foregoing reasons show that he is accountable. It is true, or at least so it would seem, that he was assessed because he had obtained letters of administration to his mother's estate from the Supreme Court of New South Wales. If so, the reason was misconceived. That would neither give a title to the equitable interest in Queensland nor expose him to assessment. He is accountable as one of the next-of-kin upon whom the equitable interest devolved under the law of Queensland.

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As to probate and administration duty there is a separate difficulty. What has already

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been said shows that there devolved an equitable interest in property in Queensland and if application had been made to the Supreme Court of Queensland for a grant or reseal of letters of administration of Mrs. Coulson's estate no doubt the duty would have been assessable. The judgment of E.A. Douglas J. in re Guest 1935 S.R. Qld. 248 was to the effect that the duty was only assessable when such an application was made.

10 His Honour had referred to sec.11B which provides that any person who takes possession of or in any manner administers any real property of a less tenure than an estate of freehold or any personal property whatsoever in Queensland or any interest therein belonging to any person who dies (after the date specified for the commencement of the provision) shall be liable to a penalty unless within a given time he obtains a grant or reseal of probate or letters of administration. The learned judge took the view that a suit by the Crown to recover the duty might lie against such a person. Referring to this in his judgment which was delivered in July 1935 he said: "I have already indicated that under The Succession and Probate Duties Act, 1892 to 1931, in a properly constituted action after the lapse of the necessary time, I think the petitioners would be liable to probate duty in respect of personal assets and real property of a less tenure than freehold situated in Queensland." The case was evidently regarded as revealing a defect in the legislation and in December of the same year the Parliament of Queensland passed the Succession and Probate Duties Acts Declaratory and Amendment Act 1935. By sec.2 it was declared that the duties were payable, to put it shortly, independently of the grant or reseal of probate or letters of administration and the duties might be assessed and recovered accordingly. The operation of the section however is limited to "any real property of a less tenure than an estate of freehold or any personal property whatsoever in Queensland or any interest therein of a person who dies . . . taken possession of or in any way administered" without grant or reseal of probate or letters of administration. This limitation appears in the judgment of Douglas J. in the passage already quoted and comes from sec.11B. It is not clear, however, why the limitation is made. The duty is imposed by sec.55 of the

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principal Act and the Schedule upon all the property of the testator or intestate. The reason probably is to be found in the devolution of a descendible estate of freehold which if devised vested in the devisee, though as from 1878, if undisposed of it was distributed in the same manner as personal estate and since 1915 vested in the Public Curator: secs.12 and 13 of the Intestacy Act 1877 and sec.36 of the Public Curators Act 1915. The point however was not made in support of the appeal and on the whole it may be right to regard the anomalous equitable interest of Mrs. Coulson as within the provision.

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A separate but minor question was raised as to money coming to the hands of the executors of Hugh Duncan Livingston deceased in virtue of the Wool Realization (Distribution of Profits) Act 1948-1952 in respect of wool from Queensland properties submitted for appraisalment. There is no sufficient ground for treating these payments as so localised in Queensland as to form or contribute to part of the subject of Mrs.Coulson's equitable interest in the State. The money was paid in New South Wales and the mere fact that wool grown and presumably submitted for appraisalment in Queensland was the source in fact cannot matter.

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One-third of the sum of £3527.15. 5. appears to have gone into the valuation of the equitable interest of Mrs. Coulson in consequence of the view that these moneys should be treated as located in Queensland at her death. This is erroneous. The valuation of the interest should be reduced accordingly. As it is a matter not depending upon accountability but upon assessment of value the assessment of succession duty is in that respect clearly subject to appeal. As to probate or administration duty under sec. 55 the question whether the assessment is subject to appeal in the same respect is very difficult. The judgment of Philp J. gives very strong reasons for saying that logically sec.50 ought not to be construed as covering probate and administration duty. But the course of practice in Queensland seems to have been to the contrary. At all events there are other reported cases of appeal with respect to that duty in addition to

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re Guest: Union Trustee Co. of Australia Ltd. v. Commissioner of Stamp Duties 1935 S.R. Qld. 248.

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10 Once sec. 2 (3rd para.) of the Act of 1935
26 Geo. V No. 27 was passed the assessment by
the Commissioner to probate or administration
duty independently of the grant of probate or
letters of administration became possible and it
is perhaps not going too far to treat this as
"accountability" on the part of a person liable
to be assessed. The Act is declaratory: it
declares but does not profess to alter the law.
In all the circumstances the better view seems
to be that on assessment sec.50 was intended to
apply, with the result that a person assessed
may appeal against the correctness of the
assessment.

20 The result is that in both the case of
succession duty and administration duty the
assessments should have been reduced by the
Supreme Court by the exclusion from the valua-
tion of the intestate's share of her father's
estate or interest in Queensland of so much of
the distribution of moneys under the Wool
Realization (Distribution of Profits) Act 1948-
1952 as has been included. The order of the
Supreme Court should be varied to give effect
to the reduction so required. Otherwise the
appeals should be dismissed.

30 (b) His Honour Mr.
Justice Fullagar.

(b) His Honour
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LIVINGSTON

v.

THE COMMISSIONER OF STAMP DUTIES
(QUEENSLAND)

JUDGMENT

FULLAGAR J.

40 We have before us appeals from two orders
of the Supreme Court of Queensland (Full Court).
Those orders were made on appeals by the present

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appellant against assessments of (1) succession duty, and (2) administration duty, under the Succession and Probate Duties Acts 1892 to 1952 (Qld.). Those appeals were by way of petition, and purported to be brought under s.50 of the Acts. The actual decision of the Supreme Court in each case was that the appeals were not authorised by s.50, so that the Court had no jurisdiction to deal with them, but the learned judges who constituted the Court (Philp and Wanstall J.J. and Stable A.-J.) expressed the opinion that both appeals should fail. The order made in each case was that the appeal be dismissed.

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In my opinion both appeals to the Supreme Court were authorised by s. 50, but I will postpone giving my reasons for this view until after I have dealt with the appeals to this Court on the merits. It should be mentioned that, while the amount involved in the appeal as to succession duty is such as to give an appeal to this Court as of right, the amount of administration duty involved is such that special leave is required, but we were all of opinion that special leave should be given.

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The essential facts are simple. Hugh Duncan Livingston the elder (who is so described to distinguish him from the appellant, who bears the same name and is his son) died on 17th November 1948. I will refer to him as the testator. By his last will, dated 9th December 1944, the testator appointed his wife, Jocelyn Hilda Livingston, and two other persons as executors and trustees. He bequeathed to his wife the proceeds of certain life policies, and devised and bequeathed the whole of his real estate and the residue of his personal estate (described as his "trust property") to his trustees upon trust (after payment of debts etc.) as to one-third thereof for his wife absolutely, and as to the other two-thirds thereof for the maintenance education and advancement of his two sons until they should respectively attain the age of 23 years. As I read the will, any balance up to one-third of income in any year was payable to the wife of the testator. Upon each son attaining the age of 23 years the testator directed his trustees to "pay and

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transfer" one half of the two-thirds of his "trust property" to him. The will made provision for the contingencies of either or both sons dying under the age of 23 years with or without leaving children. In fact both sons survived him, the elder being aged 19 years and the younger 17 years at his death, and both have since attained the age of 23 years. The will contained a power to sell any part of the estate and invest the proceeds in trustee securities or pastoral properties, but provided that the trustees should "not be bound to sell" any part of the estate until the younger son should have attained 23 years. I do not think it is necessary to consider whether the estate is now held on trust for sale.

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The three named executors proved the testator's will in New South Wales in 1949. On 22nd June 1950 the testator's widow married Bruce Thomas Coulson, and became Jocelyn Hilda Coulson. She died intestate on 8th July 1950, she and her husband being killed in the same motor car accident. The material before us does not make it clear whether her next of kin were her husband and her two sons or her two sons alone, but for present purposes this does not matter. At the date of her death the estate of the testator had not been fully administered, and the residue had not been ascertained and could not be ascertained. In other words, it was not possible to predicate of any asset or assets that it or they formed part of the residue of the estate.

The testator was at all material times resident and domiciled in New South Wales. Mrs. Coulson and the other executors of his will were also at all material times resident and domiciled in New South Wales, and the place of administration of his estate was New South Wales. His estate comprised large assets situate in New South Wales, and also large assets situate in Queensland. The assets in Queensland were (1) certain freehold and leasehold land, on which he carried on a grazing business, and the stock and plant thereon, (2) an interest in a partnership with four other persons, which carried on a grazing business with stock and plant on certain leasehold land known as

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Maranoa Downs, and (3) an undivided one-fourth interest as tenant in common in certain other freehold and leasehold land. It has never been disputed that these assets must, for duty purposes, be regarded as having their local situation in Queensland. The first and third were immovables in fact situate in Queensland, and, with regard to the second, the well settled general rule is that an interest in a partnership must be treated as locally situate at the place, or the principal place, where the partnership business is carried on: see, e.g., Commissioner of Stamp Duties (N.S.W.) v. Salting (1907) A.C. 449. What is now in question is not the liability of the testator's estate to Queensland succession or administration duty in respect of these assets in Queensland, but the liability of Mrs. Coulson's estate to those duties in respect of her interest in the testator's residuary estate under his will.

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It is, I think, of great importance in this case to state with precision the question or questions on which the liability of Mrs. Coulson's next of kin to each of the two duties depends. For this purpose, it is not necessary to examine in detail the provisions of the relevant Queensland legislation, but it is necessary to state the main provisions of the Succession and Probate Duties Acts and to consider their scope.

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The original Queensland Act of 1892, so far as succession duty is concerned, followed, in its essential features, the English Act of 1853. Section 3 provides that the term "property" includes real property and personal property. "Real property" is defined as including "all freehold, leasehold and other hereditaments in Queensland", and all estates in any such hereditaments. "Personal property" includes all property not comprised in the definition of real property. Section 4, so far as material, provides that every disposition of property by reason of which any person shall become beneficially entitled to any property upon the death of any person and every devolution by law of any beneficial interest in property shall be deemed to confer

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on the person entitled by reason of such disposition or devolution a "succession". The term "successor" denotes the person so entitled, and the person from whom the succession is derived is called the "predecessor". The section which imposes succession duty is s.12, which provides that "There shall be levied and paid to His Majesty in respect of every such succession as aforesaid, according to the value thereof at the time when the succession takes effect, the following duties." Then follows a graduated scale of rates. Administration duty is imposed by s.55, which, so far as material, provides that "there shall be paid, in respect of every grant of probate or letters of administration made in respect of the estate of any person dying . . . duties at the rates mentioned in the Schedule to this Act." The Schedule provides (subject to certain exemptions) for duty at a flat rate of 1%.

So far as what has been called in this case "administration duty" - the duty imposed by s.55 - is concerned, there is no difficulty in stating the question upon which the liability of Mrs. Coulson's next of kin depends. That duty belongs to a well known class of death duties. It is a true "probate duty". It is payable, in effect, as the price of a grant of probate or letters of administration. It is well settled that such a duty is, unless a contrary intention appears, payable in respect of, and only in respect of, assets which cannot be administered by an executor or administrator without the grant which he seeks. That is to say, it is payable in respect of, and only in respect of, assets locally situate within the territorial jurisdiction: see Blackwood v. The Queen (1882) 8 A.C. 82 and Commissioner of Stamps (N.S.W.) v. Hope (1891) A.C. 476. The liability of Mrs. Coulson's next of kin to "administration duty", depends, therefore, on whether her estate comprised assets locally situate in Queensland.

With regard to succession duty, the position is not quite so simple. The original Queensland Act of 1892 made it quite plain that the charge fell on successions to real property which was situate within the territorial jurisdiction, but not on successions to real property

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which was outside that jurisdiction: see the definition of real property in s.2. But neither Act contained any express definition or limitation of the successions to personal property which were to be chargeable with duty. In England the question of what successions to personal property were chargeable under the English Act of 1853 came before Lord Cranworth L.C. in Wallace v. Attorney-General (1865) L.R. 1 Ch. App. 1. His Lordship held that succession duty was not chargeable in respect of the personal property in England of a testator domiciled in France. In holding that the question in every case of personal property, was "not where the property was situate but what was the domicil of the testator", his Lordship followed an earlier decision of the House of Lords in Thomson v. Advocate-General (1845) 12 Cl. & F.1, which was a case of legacy duty. He said (at p.9) :- "Parliament has, no doubt, the power of taxing the succession of foreigners to their personal property in this country; but I can hardly think we ought to presume such an intention, unless it is clearly stated." Lord Cranworth's decision was applied by the Privy Council to the Queensland Act of 1892 in Harding v. Commissioners of Stamps (1898) A.C. 769. The property there in question included debts secured by mortgages of land in Queensland, freehold and leasehold lands in Queensland, and shares in a company incorporated in Queensland, but the testator was domiciled in Victoria. It was held that the Queensland Act did not extend to personal property given by the will, or devolving on the intestacy, of a person domiciled outside Queensland, whether that property were locally situate in Queensland or not.

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If the matter had stopped there, it would seem that on no view of the nature of Mrs. Coulson's "interest" in the residue of the testator's estate could the succession to it have been charged with duty in respect of his interest in the partnership. For, whatever might have been the position in relation to the testator's freehold and leasehold lands, which were real property within the meaning of the Act, his interest in the partnership was personal property, and Mrs. Coulson was not domiciled in Queensland. However, in 1895 the Queensland

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Parliament passed an amending Act, s.2 of which provided:- "It is hereby declared that succession duty is chargeable in respect of all property within Queensland, although the testator or intestate may not have had his domicile in Queensland." This Act had in fact been passed before Harding's Case came before their Lordships, but the testator had died before its commencement. It was argued for the Crown that it was retrospective in operation, but this argument was rejected. If we disregard the curious fact that it does not appear to refer to successions under settlements, the effect of s.2 of the Act of 1895, read with s.4 of the original Act, seems to be, so far as presently material, that the duty falls, irrespective of the domicil of a testator or intestate, on successions to interests in real or personal property which are locally situate in Queensland. It is unnecessary to consider whether it falls also on interests, wherever situate, in the personal property of a testator or intestate who was domiciled in Queensland.

It seems clear, therefore, that, as a result of s.2 of the Act of 1895, the question upon which the liability of Mrs. Coulson's next of kin to succession duty depends is the same question as that on which their liability to administration duty depends. That question is whether her estate comprised assets locally situate in Queensland. The answer to that question is, in my opinion, determined by clear authority.

It is a commonplace that the law must, for a variety of purposes, attribute a locality to rights which cannot naturally be said to have any local situation. It has very frequently had to do this in relation to death duties, and especially probate duties. Everyday examples are shares in companies, shares in partnerships, mortgage debts. In most cases rules have now been laid down and are well established. It would probably be going too far to say that there is any general principle of law to be discerned in these attributions of local situation. From the very nature of things, such attributions must be in some degree artificial or conventional, and general rules must be modified to

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special cases: it is interesting to compare Attorney-General v. Higgins (1857) 2 H. & W. 339 with Brassard v. Smith (1925) A.C. 371. But, when faced with a question of the locality of a right, the courts have examined the nature of the particular right, and have generally localised it in the place where it must be exercised or enforced, or would normally and naturally be exercised or enforced. Thus a simple contract debt is held to be situate where the debtor resides. Proceeding on this basis, the courts have consistently held in a large number of cases that the right of a residuary legatee or next of kin, before the administration of the estate is complete, is a right against the executors or administrators to have the estate duly administered, and the residue ascertained and disposed of according to the will or according to law. From the nature of the right it follows that it must be treated as situate in the place of administration, or the principal place of administration, of that estate - the place where the executors are, and where they must, or most naturally would, be sued. The locality, natural or artificially ascribed, of the assets comprising the estate is immaterial.

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So much is, I think, quite clear. I should have preferred to state the rule in much wider terms, for logically I think that all equitable estates and interests should be held, whenever it is necessary to attribute locality to them, to be locally situate in the place of administration of the trust: see Re Cigala's Trusts (1877) 7 Ch. D. 351, and Dicey, Conflict of Laws, ed. 7, p. 508. But, as the authorities stand, I do not think it is possible to state the rule in wider terms. If the view of Lord Sumner and Lord Blanesburgh in Baker v. Archer-Shee (1927) A.C. 844 (to which I shall refer later) had prevailed, what I cannot help regarding as anomalies would have been avoided. It may be that applications in later cases of the view of the majority in that case have been based on a misunderstanding of that view, but the fact is that since the decision in that case unsatisfactory distinctions have been drawn between cases where an estate is "fully administered" and cases where

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it is not, and, in the former class of case, between cases where there is a single beneficiary and cases where two or more beneficiaries are entitled to shares: see, e.g., Stannus v. Commissioner of Stamp Duties (1947) N.Z.L.R. 1. There is however, no occasion now for considering whether these distinctions are sound or unsound. For the rule, as I have narrowly stated it, appears to have been universally accepted, and the present case falls within it. I proceed to consider some of the numerous authorities.

The case of Re Ewing (1880) 6 P.D. 19 was not a duty case, but a case of an application for probate in England. The headnote to the report is unsatisfactory. William Ewing was at the date of his death entitled to £10,000 under the will of his uncle, John Orr Ewing, and was also entitled to one-sixth of the residue of his deceased uncle's estate, which was in course of administration by executors in Scotland. Unless this interest in his uncle's estate was an English asset, William Ewing had only trifling assets in England. Sir James Hannen held that that interest was not an English asset. On this question he said (at pp. 22-3):- "It is not disputed that the deceased, J.O. Ewing, was a domiciled Scotchman, and that his will was properly proved in Scotland, and is being administered there in accordance with Scotch law. The claim of the executors of W. Ewing in respect of the interest of their testator under his uncle's will, is a claim on the executors of the uncle duly to administer his estate and to pay the legacy to W. Ewing out of the funds which may be applicable to that purpose. It cannot be disputed that this claim or interest in the estate of the uncle constitutes an asset of the estate of the deceased W. Ewing, because it is recoverable by the executors of W. Ewing virtute officii, but it appears to me that it is an asset in Scotland and not in England." It may be noted that in Ewing's Case the principal asset of John Orr Ewing's estate was in fact situate in Scotland, but Sir James Hannen did not base his opinion on this fact, or regard it is relevant.

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In Sudeley v. Attorney-General (1896) 1 Q.B. 354, (1897) A.C. 11, which must be regarded as the leading case on the subject, a question of liability to English probate duty arose. The duty was imposed by s.27 of the Customs and Inland Revenue Act 1881 on "the estate and effects for or in respect of which the probate or letters of administration is or are to be granted." This meant, of course, estate and effects situate in England. The essential facts were these. A by his will gave to his wife one-fourth of the residue of his estate. He died on 16th January 1892, domiciled in England. His executors were in England, and proved his will in England. The wife died on 15th April 1893, while the estate was in course of administration. Included in the assets of A's estate were certain large sums owing (presumably) by persons resident in New Zealand, and secured by mortgages of land in New Zealand. The Crown claimed probate duty in respect of these mortgage debts. The whole question in the case was as to the local situation of the interest of the wife at her death in A's estate, but that question was approached by way of an examination of the nature of the wife's interest in A's estate. The mortgage debts were situate in New Zealand, but it was held by a majority of the Court of Appeal and a unanimous House of Lords that the right of the wife's executors was not to any share of the mortgage debts, but a right as against A's executors, who were in England, to have the estate administered and to receive from them in due course a fourth part of the residue. It followed that the asset in question was situate in England, and probate duty was payable.

I will cite only one passage from Sudeley's Case, and that is from the speech of Lord Herschell (1897) A.C. at p.19. His Lordship said "In truth, the right she had was to require the executors of her husband to administer his estate completely, and she had an interest to the extent of one-fourth in what should prove to be the residuary estate of the testator, Algernon Tollemache. Well, where was that situate? It seems to me that it can only be said to have been situate in this

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country." Sudeley's Case is the converse of the present case, but, in my opinion, it governs the present case. It may be thought that there are passages in it which go beyond the necessities of the case and deny too much. Probably no-one would deny that Mrs. Coulson here had an "equitable interest" in the entire mass of the testator's estate, and some may think it follows that she had an equitable interest in every part of that mass. We may call it a proprietary interest, if we wish, or equity may call it "property" (Smith v. Layh (1953) 90 C.L.R. at pp.108-9), but whether it should have this dignity conferred upon it seems to me to be little more than a matter of "words and names", capable of leading to the kind of strife which moved Gallio to say that he "cared for none of these things". To say that Mrs. Coulson had an equitable interest in the estate is to say something that requires explanation and analysis, and the explanation is given, and the nature of the "interest" analysed, in Sudeley's Case. It is a single interest which is localised at the death of the testator, and cannot change its locality as investments are bought and sold in the course of administration.

Sudeley's Case has been followed and applied in a large number of reported cases, and has doubtless been acted upon in very many other cases. In Re Smyth (1898) 1 Ch. 89 a testator, resident and domiciled in England, gave real and personal property in Jamaica to trustees upon trust for certain persons for their lives, and after the death of all of them upon trust to sell and divide the proceeds between certain other persons. The trustees of the will were resident and domiciled in England and one of them proved the testator's will in England. One of the persons entitled in remainder died while persons entitled for life were still living. The question arose whether English probate duty was payable in respect of his interest under the testator's will. It was held by Romer J. that that interest was situate in England, and that probate duty was payable upon it. I will quote at some length from the judgment - partly because it disposes of the relevance of the argument that in some conceivable circumstances a suit might have been brought by Mrs. Coulson in a Queensland forum in respect of the testator's Queensland

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property. Romer J. said (1898) 1 Ch. at p.94:-
"The right of the legatee as against the trustee
was only to have the trusts of the will adminis-
tered. Administered where? The testator was
domiciled in England, his will was proved in
England, his trustee was in England, and the
money recoverable would in the ordinary and prop-
er course be brought to England. The trustee
could only be properly and in the ordinary
course sued in the English Court by the legatee,
who was in England. . . . It was suggested as
against the Crown that possibly under some cir-
cumstances an action might have been brought by
the legatee to enforce his rights in Jamaica.
I am bound to say that at present I do not see
what action could have been properly brought
there. But even admitting that under some
conceivable circumstances or change of circum-
stances some action might have been brought
there, the question is not in what place under
extraordinary circumstances an action might be
brought, but what place under existing circum-
stances was the natural and proper one in which
the legatee should enforce his rights - in
other words, what was the proper forum for
deciding upon the legatee's claim; and the
answer to this clearly is that the forum was
English."

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The same principle was applied in Attorney-
General v. Johnson (1907) 2 K.B. 885; see
especially what was said by Bray J. at p. 895,
and cf. what was said by Russell J. (as he then
was) in Favorke v. Steinkopf (1922) 1 Ch. 174,
at p. 178. These were both cases in which the
local situation of an asset was in question.
A question as to succession duty in similar
circumstances arose in the Canadian case of
Minister of National Revenue v. Fitzgerald
(1949) Can. S.C.R. 453, (1949) 3 D.L.R. 497.
The facts of this case were somewhat complicated,
because there were successive devolutions of
interests in estates in course of administration.
The relevant physical assets in question were in
British Columbia, and the relevant administra-
tions were in California. It was held by the
Exchequer Court and the Supreme Court of Canada
that the situs of the interests in question was
California, and that succession duty was not
chargeable under a statute which defined

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"succession" in the same terms as does the Queensland Act. In New Zealand Sudeley's Case was applied, after an exhaustive examination of the authorities, by Northcroft J. and the Court of Appeal in Stannus v. Commissioner of Stamp Duties (1947) N.Z.L.R. 1: see especially the judgment of Callan J.

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10 Apart from cases which are concerned with
the local situation of such interests, there
are many cases in which the exposition in
Sudeley's Case of the nature of such interests
has been accepted without question. It was
expressly accepted and acted upon by a House
consisting of Viscount Finlay, Viscount Cave,
Lord Atkinson and Lord Sumner in Barnardo's
Homes v. Income Tax Commissioners (1921) 2 A.C.
1. It was treated as clear authority in
20 Glenn v. Commissioner of Land Tax (1915) 20
C.L.R. 490, at pp. 500 (per Griffith C.J.),
501-2 (per Isaacs J.). In Re Rowe (1926 V.L.R.
452, at p. 454, Dixon A.-J. (as he then was)
said of a person in the position of Mrs. Coul-
son's next of kin:- "He is entitled to have
the assets applied in due course of administra-
tion; but he is not entitled to a legal or
equitable interest in any specific asset. His
position is not dissimilar to that of a residu-
ary legatee, of which, in Barnardo's Homes v.
Special Income Tax Commissioner, Viscount Cave
30 said - "When the personal estate of a testator
has been fully administered by his executors
and the net residue ascertained, the residuary
legatee is entitled to have the residue as so
ascertained, with any accrued income, trans-
ferred and paid to him; but until that time
he has no property in any specific investment
forming part of the estate or in the income
from any such investment, and both corpus and
income are the property of the executors, and
40 are applicable by them as a mixed fund for the
purposes of administration. This was fully
explained in Lord Sudeley v. Attorney-General."
In Watt's Case (1926) 38 C.L.R. 12, at p.30,
Knox C.J. and Gavan Duffy J. said in a joint
judgment:- "The interest of the deceased under
the settlement was not an interest in the
specific property in which the trust funds were
for the time being invested, but a right to call
on the trustees of the settlement to account to

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him as a beneficiary under the settlement. The trustees were resident in New South Wales and not elsewhere, and the interest of the testator was a chose in action enforceable by action against the trustees. The Courts of New South Wales were the proper forum for the enforcement by the deceased or by his representatives of his claim as a beneficiary, and his interest under the settlement was, therefore, a New South Wales asset." See also Horton v. Jones (1935) 53 C.L.R. 475, at p. 486 (where the interest in question was held to be an "interest" in land within the meaning of the Statute of Frauds), Pagels v. MacDonald (1936) 54 C.L.R. 519, at pp.524-5, Robertson v. Commissioner of Land Tax (1941) 65 C.L.R. 338, at pp.345-6, 347, Mackinnon v. Campbell (1944) 45 S.R. (N.S.W.) 140 (a decision of Roper J.), Young v. Commissioner of Stamp Duties (1931) 31 S.R. (N.S.W.) 316, and Re Young (1942) V.L.R. 4.

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The two Archer-Shee cases - Baker v. Archer-Shee (1927) A.C. 844 (to which I have already referred) and Archer-Shee v. Garland (1931) A.C. 212 - require special mention. They were income tax cases, and it is unnecessary to refer to the facts or the complex statutory provisions involved. In the earlier case the majority of their Lordships fully accepted Sudeley's Case, but considered that it was not applicable because in the case before them the estate had been "fully administered" and a "definite and specific trust fund" constituted, to the income of which Lady Archer-Shee was entitled. Lord Sumner and Lord Blanesburgh dissented. In their opinion it could make no difference whether the estate was or was not, at the material time, "fully administered". In their judgments is to be found a very clear exposition of what was really decided by Sudeley's Case, and I will quote Lord Sumner. His Lordship ((1927) A.C. at pp.855-6) said :- "Again the case of Lord Sudeley v. Attorney-General ((1897) A.C.11) is said by Sargant L.J. to be in its general reasoning precisely applicable. The points referred to there were, first, the local situation, for the purposes of English taxation, of an equitable right to have an estate administered, in which the testatrix was interested as a residuary legatee at the time of her death, and, second,

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the question, whether for such taxation her interest was to be deemed to be confined to a specified fraction of the residuary estate, corresponding to her share under her husband's will, or extended to the whole of that residuary estate. In applying this to the present case the learned Lord Justice says, that Lady Archer-Shee has not any specific right to any particular item of income, but, following Lord Herschell's reasoning, only an equitable right to have handed over to her the net income of the estate, subject to all proper deductions, which right of hers is a form of property situate in New York, in whose Courts it would have to be asserted. I think the reasoning of this judgment is correct. It is immaterial that in Lord Sudeley's case the estate of the husband of the testatrix had not yet been administered, whereas here, no doubt, this has been long ago accomplished." Cf. what was said by Lord Blanesburgh (at p. 877). In an article in the Law Quarterly Review entitled "A Menace to Equitable Principles" ((1928) 44 L.Q.R. 468) Hanbury commended strongly the dissenting judgments as upholding "Maitland's position", which "could not be too strongly established": see in this connexion Maitland's refutation of Austin in his ninth Lecture.

Baker v. Archer-Shee was decided by the majority on the assumption that the law of New York was, in the absence of evidence to the contrary, the same as the law of England. In Archer-Shee v. Garland, where an assessment of a later year was in question, evidence was called which was regarded as establishing that the law of New York was in accordance with what Lord Sumner and Lord Blanesburgh had thought to be the law of England, and the income in question was held not be taxable. (It is rather surprising that the law of New York should differ from the law of England on such a subject). The actual decision in the earlier case does not, of course, affect the present case, where the testator's estate was at Mrs. Coulson's death still in course of administration.

The Commissioner relied on the case of Skinner v. Attorney-General (1940) A.C. 350.

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But that case does not appear to me to help him. The facts were simple. A died in 1923, domiciled in Northern Ireland, having by his will bequeathed to his wife an annuity charged on all his residuary estate. His wife died in 1936. At his death his estate consisted almost entirely of assets in Northern Ireland and the United States. Between the date of his death and the date of his wife's death his executors purchased a number of English securities, but the estate was not at the date of the wife's death fully administered. The Commissioner claimed estate duty from the wife's executors in respect of the English securities. The claim was made under ss. 1 and 2(1) (b) of the Finance Act 1894. Sec. 1 provided that the duty should be payable on the value of "all property, real or personal, which passes on the death of" a person. If s.1 had stood alone, one would have thought that it did not touch the case, but s.2(1)(b) provided that "Property passing on the death of the deceased shall be deemed to include property in which the deceased . . . had an interest ceasing on the death of the deceased". It was held that the wife had, within the meaning of s.2(1)(b), an interest in the English assets of her husband's estate, and that interest ceased, of course, on her death, when the annuity ceased to be payable. That is all that Skinner's Case decided. Referring to Sudeley's Case, Lord Russell of Killowen ((1940) A.C. at pp. 358-9) said:- "The whole point of the decision was that the widow did not own any part of the mortgages." (In the present case the widow did not own anything in Queensland.) "As Lord Herschell pointed out in his speech the whole fallacy of the argument of the widow's executors rested on the assumption that she or they were entitled to any part of the mortgages as an asset - she in her own right or they as executors. 'I do not think', he said, 'that they have any estate, right, or interest, legal or equitable, in these New Zealand mortgages, so as to make them an asset of her estate.' My Lords, I emphasize the last ten words of that sentence, which show clearly that the interest which was being repudiated was a proprietary interest."

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In Skinner's Case the question was simply -

was there an "interest" in property within the meaning of s.2(1)(b) of the Finance Act? If there was, that was an end of the matter. The question whether that interest was an asset in the wife's estate was wholly irrelevant. Indeed, since it ceased with her death, it could not be an asset in her estate, and no question could arise as to its character or local situation. In Sudeley's Case, on the other hand, the wife's estate could only escape liability to duty by establishing not merely an interest in a general fluctuating mass of assets but a proprietary interest in specific assets in New Zealand. The idea that she had such a proprietary interest in any specific asset was the idea which was "repudiated". In the present case it is on that repudiated idea that the Commissioner in Queensland must rely. He must establish not merely an interest in the general mass, but a proprietary interest in specific assets in Queensland as distinct from a proprietary interest in specific assets in New South Wales. This case is like Sudeley's Case and unlike Skinner's Case in that we are here concerned with the question whether Mrs. Coulson had such an interest in specific property in Queensland as to constitute an asset of her estate.

In Minister of National Revenue v. Fitzgerald (1949) 3 D.L.R. at p. 502 Kerwin J., after quoting from Lord Russell's speech in Skinner's Case, said :- "These extracts from Lord Russell's speech indicate the difference between the Skinner case, on the one hand, and the Sudeley case and the present one, on the other. Here, we are not dealing with a statute imposing a tax on the passing of property in which a deceased had an interest, ceasing on his death, but with one which imposes a tax upon a succession to property situate in Canada . . . All that devolved . . . was a right to have the estate of Bonnie Steed administered; and that right was a chose in action properly enforceable and therefore situate in California and not in Canada." In the same case Kellock J. quoted the following passage from the judgment of Lopes L.J. in Sudeley's Case (1896) 1 Q.B. at p. 363 :- "The right of the executors of Frances (the widow and residuary legatee

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of the testator) as against the executors of her husband is a right to have his estate administered. Administration where? The husband was domiciled in England, his executors are in England, and his estate is being administered in England, and the money recoverable will be brought to England. The executors of the husband can only be sued in the English Courts by the executors of Frances. It is an English chose in action, recoverable in England, and is, in my opinion, an English and not a foreign asset." The judgment of Lopes L.J. was approved in the House of Lords.

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I must refer briefly in conclusion to the case of McCaughey v. Commissioner of Stamp Duties (1945) 46 C.L.R. 192. In this case Jordan C.J., delivering the judgment of himself and Halse Rogers and Roper J.J., expressed strong disapproval of Sudeley's Case, regarding it as inconsistent with the decision of the House of Lords in Cooper v. Cooper (1874) L.R. 7 H.L. 53 His Honour (at p. 204) said :- "Had not both cases been decisions of the House of Lords, one or other would have long been overruled, and that, I venture to think, would have been Lord Sudeley v. Attorney-General. The idea that beneficiaries in an unadministered or partially administered estate have no beneficial interest in the items which go to make up the estate is repugnant to elementary and fundamental principles of equity." The Court nevertheless, the estate having been "fully administered", applied Sudeley's Case as it understood that case to have been qualified by Baker v. Archer-Shee, and, with the greatest respect, I am unable to see a sound reason for this assault upon a case which is, to my mind, especially after reading the opinions of Lord Sumner and Lord Blanesburgh in Baker v. Archer-Shee (1927) A.C. 844, sinned against rather than sinning. One may say with respect, as I have said, that there may be passages in Sudeley's Case which deny too much, but I would not regard that case as deciding that "beneficiaries in an unadministered or partially administered estate have no beneficial interest in the items which go to make up the estate." What it does is simply to explain the nature of the interest of such beneficiaries, and to attribute a local situation to it accordingly. Younger J. (as he then was)

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in Vanneck v. Benham (1917) 1 Ch. 60, at p.76, has reconciled Cooper v. Cooper with Sudeley's Case, if they needed reconciling.

It remains only to explain why I think that an appeal lay to the Supreme Court of Queensland under s. 50 of the Queensland Act.

10 Sec. 43 make the succession duty "a debt due to the Crown from the successor" and "a first charge on the interest of the successor". Sec.46 provides that certain other persons, in addition to the successor, "shall be personally accountable" for the succession duty. Sec. 47 authorises the Commissioner to assess the succession duty, and he did in fact make an assessment of that duty in this case. Sec. 50 provides that "any accountable party dissatisfied with the assessment of the Commissioner" may appeal to the Supreme Court. Jurisdiction is then given to the Court to hear and determine the appeal, and the section proceeds:- "The

20 costs of any such appeal shall be in the discretion of such court or judge, having regard to the extent to which the Commissioner's assessment exceeds the amount admitted by the appellant before the appeal commenced and the extent to which the Commissioner's assessment is upheld or varied."

30 It was argued that s. 50 does not authorise an appeal based (as the appeal to the Supreme Court in this case was) on the contention that the appellant is not an accountable party at all because no succession duty is exigible. The right is given, it is said, only where liability is admitted and the only issue is as to amount. The argument is, of course, supported by reference to the last paragraph of s.50, which I have quoted above. But I am not able to accept the argument. Its acceptance would create an absurd position, and in the construction of a

40 statute an absurd result is to be avoided if possible. I can see no real difficulty in reading "any accountable party" as meaning "any party made accountable by the assessment". A person assessed to duty is an "accountable party" unless and until he upsets the assessment on appeal: see s.56A (2)(i)(a) and (b). And the last paragraph is not literally incapable of application

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to a case where the Commissioner's assessment exceeds, to the extent of the whole amount of the assessment, the "amount admitted by the appellant". Even if it were incapable of such an application, the meaning of the section cannot be controlled by making an assumption that the last paragraph was intended to be applicable to every possible case.

With regard to administration duty, the difficulty up to 1935 was that the appeal which s.50 gives is an appeal against an assessment, and, although s. 47A (which was not introduced until 1918) refers to "any assessment of succession or probate duty", no express power to make an assessment of the latter duty was given to the Commissioner. This position, however, was remedied in 1935 - presumably in consequence of the decision of the Full Court in Re Guest (1935) S.R. (Qld.) 248. Sec. 2 of the Act of 1935 (which was retrospective) gave to the Commissioner express power to make an assessment of administration duty whether or not a grant of probate or letters of administration be sought or made. An assessment was in fact made in the present case. In the light of that provision, I can see no sufficient reason for reading s. 50 as giving the right of appeal only in respect of succession duty.

Both appeals should, in my opinion, be allowed.

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Kitto.

LIVINGSTON

v.

THE COMMISSIONER OF STAMP DUTIES

JUDGMENT

KITTO J.

The late Mrs. Coulson was a beneficiary under the will of a former husband, Hugh Duncan

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Livingston the elder. By the will, the proceeds of all policies of assurance on the testator's life were bequeathed to Mrs. Coulson, and the real estate and the residue of the personal estate were devised and bequeathed to the trustees of the will, subject to the payment thereout of the debts funeral and testamentary expenses and all death estate and other duties, upon trust as to one-third thereof for Mrs. Coulson absolutely and as to the remaining two-thirds thereof for other persons

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In Mrs. Coulson's lifetime the estate was apparently cleared of unsecured debts, funeral and testamentary expenses, and the greater part of the duties. But the proceeds of the life assurance policies had been absorbed in the process, and there was still some New South Wales death duty to be assessed and paid. In other words, the estate was still not fully administered. The assets as they stood at the time included real and personal property in Queensland, as well as property in New South Wales. The husband had died domiciled in New South Wales, and the executors and trustees of his will were there. Probate had been granted in New South Wales; but not until some two years after Mrs. Coulson's death was the grant resealed in Queensland. Mrs. Coulson herself died intestate and domiciled in New South Wales. Letters of administration of her estate have been granted in that State, but there has been no grant or reseat in Queensland.

In these circumstances the respondent Commissioner has claimed that both Queensland succession duty and Queensland administration duty became payable, upon Mrs. Coulson's death, in respect of an interest in the Queensland assets of the husband's estate; and the object of the proceedings out of which these appeals arise is to test the validity of the claims.

The two duties are provided for in the one collection of Acts, The Succession and Probate Duties Act, 1892 (Q'ld.) and a dozen or more amending Acts. Into this dark jungle, full of surprises and mysteries, it is our duty to peer.

The succession duty is imposed, primarily,

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by s.12. It is to be levied and paid "in respect of every such succession as aforesaid". The word "succession" here refers not to the passing of property from one person to another on the death of the former, but to the property itself; s.3. The duty is in respect of the property to which the Act refers. It is payable when a "successor" becomes entitled in possession to "his succession" or to the receipt of the rents and profits thereof: s.20. There are two ways in which a person may become a "successor" and property a "succession"; first, the making of a disposition by reason of which a person becomes beneficially entitled to any property or its income upon a death, and secondly, a devolution by law of a beneficial interest in property or its income, upon the death of a person, to any other person: s. 4. In the present case, no one became beneficially entitled on Mrs. Coulson's death to any property or income by virtue of her husband's will; but whatever beneficial interests in property Mrs. Coulson had at the time of her death devolved by the law of intestate succession, and they therefore became by her death a "succession" to which the person or persons upon whom they devolved must be considered the "successor". Before the commencement of the amending Act of 1895 (59 Vic. No.28), s. 4 was to be construed as referring only to devolutions by virtue of Queensland law, that is to say the municipal law of Queensland. The devolution of immovables in Queensland was thus within the section, but the devolution of movables, even though they were in Queensland, was not within the section unless the deceased had died domiciled in Queensland, for if he had died domiciled elsewhere the Queensland rules of private international law would apply the lex domicilii as the law governing the devolution: Harding v. Commissioners of Stamps for Queensland (1898) A.C. 769. By s. 2 of the 1895 Act, however, it is declared that succession duty is chargeable in respect of all property within Queensland, although the testator or intestate may not have had his domicile in Queensland. "Within Queensland" means, of course, (in the case of corporeal property) actually situate in Queensland, or (in the case of incorporeal property) regarded in law as situate in Queensland. By making the rule

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mobilia sequuntur personam irrelevant for the purposes of the Act, the amendment ensured that s. 4 should operate as if "devolution by law" had been defined to mean devolution either by the municipal law of Queensland or by the municipal law of another country as applied in Queensland by the Queensland rules of private international law.

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10 Administration duty, on the other hand, is provided for primarily by s. 55. That section, considered by itself, makes duties payable at the rates mentioned in the Schedule in respect of every grant of probate or letters of administration made in respect of the estate of any person dying after the time appointed for the commencement of the Act; and the Schedule refers to the net value of the property of the deceased person in respect of which the grant of probate or letters of administration is made.

20 Then s. 2 of the amending Act of 1935 (26 Geo. V. No.27) declares that duties at the rates in the Schedule are payable in respect of any real property of a less tenure than an estate of freehold or any personal property whatever in Queensland or any interest therein "belonging to any person" taken possession of or in any manner administered without the grant in Queensland of probate or administration or the reseal of a grant made elsewhere. The duty is, therefore, a duty on property which belonged to the

30 deceased and is included in the deceased's estate.

40 It follows from the foregoing that the central question to be considered in regard to succession duty is whether any beneficial interest under Livingston's will which was the subject of a devolution by law upon Mrs. Coulson's death is to be considered as having been then situate in Queensland; and in regard to administration duty it is whether any property, consisting of an interest under Livingston's will, which belonged to Mrs. Coulson and formed part of her estate at her death is to be considered as having been then situate in Queensland.

Mrs. Coulson's rights as one of the residuary legatees under Livingston's will may be described in two ways, each of them correct.

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They may be described by saying that she was entitled to have the administration of the estate completed, and one-third of the residue, when ultimately ascertained, paid or transferred to her. They may also be described by saying that she was entitled at her death to have every individual asset which at that time was comprised in the estate dealt with in a due course of administration. Both descriptions recognise that she was entitled to have a process carried out; but while the one emphasises the purpose of the process and its ultimate benefit to her, the other directs primary attention to the property presently available for the carrying out of the process. Which description is to be used on a given occasion is a question of appropriateness to the purpose in hand; but it is important always to remember that there is only the one set of rights that is being referred to. I venture to think that for the purpose of solving a concrete legal problem with respect to such a set of rights, more hindrance than help is likely to come from an attempt to classify them according to Austinian terminology as rights in personam or rights in rem. More than forty years ago those distinguished jurists Prof. A. W. Scott and Prof. Harlan F. Stone (as he then was) learnedly disputed as to whether the rights of a cestui que trust were in rem or in personam, the former being able to invoke such great names as Maitland and Holland, the latter Salmōnd and Pound; Columbia Law Review, Vol. XVII (1917) pp. 269, 467; but it may be doubted whether much illumination was provided for a case like the present. Dr. Hanbury strongly opposed the "realist" theory in his Essays in Equity (1934) pp. 16 et seq., 23 et. seq. I must confess, however, that I incline to the view of Mr. R. W. Turner, who wrote in his book The Equity of Redemption (1931) at p. 152: "It is a moot question whether the whole discussion raised by these arbitrary classifications borrowed from Roman law and distorted to fit in with new facts is not a mere academical tourney with no real bearing upon the practice of the law, and, being faulty in hypothesis and unsatisfactory in result, would be better abandoned altogether."

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Since one way of describing Mrs. Coulson's interest as a residuary legatee is to say that

she had a right in respect of each individual asset of the Livingston estate that that asset should be dealt with, and dealt with only, in a due course of administration so that she might receive her share in the ultimate distribution, it is in accordance with the ordinary terminology of English law, and with the terminology of the Act we have here to consider, to say that among the beneficial interests which devolved by law on Mrs. Coulson's death was a beneficial interest in the Queensland assets of Livingston's estate, and that that interest was property which belonged to her at her death. To maintain that a residuary legatee has no beneficial interest in the individual assets of the estate, or has no such interest in them as itself constitutes property, would be, I think, to deny to the word "interest" its accepted meaning in the law. The interests of the beneficiaries under a general residuary gift must absorb the whole beneficial interest in the assets not otherwise disposed of (subject of course to their diminution by the discharge of liabilities and other payments in the course of administration); for the legal personal representatives as such have no beneficial interest, those who would take on intestacy are excluded, and it is axiomatic that, with the one exception provided by the law of charities, the whole beneficial interest in property must reside in some individual or collection of individuals: Pearson v. Lane (1809) 17 Ves. 101 at p. 194, Glenn v. Federal Commissioner of Land Tax (1915) 20 C.L.R. 490 at p. 503. Hence the law of resulting trusts. That a residuary beneficiary has a beneficial interest in each asset not disposed of otherwise than by the residuary gift is the proposition for which cases such as Cooper v. Cooper (1874) L.R. 7 H.L. 53; Attorney-General v. Watson (1917) 2 K.B. 427; Skinner v. Attorney-General (1940) A.C. 350; and Smith v. Layh (1953) 90 C.L.R. 102, are authority. A clear example of its application is found where land is among the assets included in a residuary disposition, and a question arises while the administration is still incomplete, and while the land remains in the estate, as to whether a residuary beneficiary has, as such, an interest in land. The answer is plainly, Yes: Horton v. Jones (1935) 53 C.L.R. 475 at pp. 487, 490; (1934) 34 S.R. (N.S.W.) 359 at p.366.

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But the existence of a beneficial interest is one thing, and the nature of it is another. If a question arises as to whether a particular asset "belongs" to the residuary legatee within the meaning of some statute or other instrument, the answer cannot be reached without consideration of the precise rights of which the residuary interest consists. Similarly, if the question is where should the interests be considered in law as locally situate, the rights which it comprehends must be clearly understood before an answer can be given. After all, the expression "beneficial interest" is a nomen generale, not to say generalissimum; and the label is not sufficiently informative to enable such questions as these to be answered. In Baker v. Archer-Shee (1927) A.C. 844 the difference of opinion which arose among the members of the House of Lords who sat on the case was simply upon the question whether the rights of a cestui que trust in respect of the income of a trust fund were such as to justify a description of that income as belonging specifically to her, and as for that reason falling within a particular statutory provision. That the cestui que trust had a beneficial interest in the income no one doubted; but the question could not be answered save by consideration of the rights of which the interest consisted. Again, in Dr. Barnardo's Homes National Incorporated Association v. Commissioners for Special Purposes of the Income Tax Acts (1921) 2 A.C. 1, the question whether, so long as a testator's estate is not fully administered, the income produced by its assets is income of the residuary beneficiaries was decided in the negative upon consideration of the rights which constituted the beneficiaries' interests in that income. It was because those rights were adjudged not to be sufficiently direct and exclusive that a negative answer to the question was returned. The point which the last-mentioned case emphasises is that the rights of residuary beneficiaries while administration is incomplete stop short of entitling them to any of the assets in specie, or to any of the income in specie, or to any property or any part or share of property into which either the assets or their income may be converted. The beneficiaries are entitled only to receive, eventually, a share of whatever turns out to

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be left when the administration is complete; and that may not include any of the existing assets or their income, or anything representing either, for conceivably an asset may be sold and its proceeds used up in the process of administration, and the income may be similarly absorbed. Of course the beneficiaries' rights are rights with respect to, or "in", or ad each specific asset for the time being in the estate; but the important point to notice is that each such asset is liable, in the very working out of those rights themselves, to disappear from the estate. In other words, the nature of the beneficiaries' interests in the particular assets necessarily accords with the nature of their interests in the residue as a whole.

We are, of course, considering interests which, being intangible property, cannot possess geographical situation. For some purposes, for the exercise of probate jurisdiction for example, or for the application of statutes which depend upon local situation, the law must attribute a notional locality to such property. It does so by fixing upon a place with which the property has, by reason of its nature, a special connexion. For the more common classes of property the special connexion; and consequently the criterion of locality, have become defined by authority; though it may be observed that in a particular instance the circumstances may require a deviation from a general rule: see R. v. Lovitt (1912) A.C. 212 at p. 219; New York Life Insurance Co. v. Public Trustee (1924) 2 Ch. 101 at p. 111 (as to which, see In re Claim of Hilbert Wagg & Co. Ltd. (1956) Ch. 323 at pp. 342-344.) An interest in property is no doubt often so much more closely connected with the place where the property itself exists than with any other place that it is naturally to be considered as situate there; but generalisation on the point is, in my opinion, unwarranted, for it denies the prime necessity to take account of the nature of the rights which are comprised in the interest under consideration in the particular case. The interest of a residuary beneficiary in an asset of an unadministered estate, consisting as it does of rights with respect to that asset which form an integral part of the beneficiary's rights with respect

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to the whole estate, possess most substantial connexion with the place of the appropriate forum for enforcing the due administration of the estate; and the law, if I understand it correctly, for that reason accords to the interest in the individual asset, no less than to the interest in the whole estate, a local situation at that place.

This is what I understand to be laid down in Lord Sudeley v. Attorney-General (1897) A.C. 11. It is true that expressions used by some of their Lordships in the course of their ex tempore speeches in that case have been understood at times as meaning that residuary beneficiaries have no interest of any kind in the individual assets of an unadministered estate; and those who have so understood what was said have not unnaturally exhibited signs of shock at the apparent contradiction of the considered pronouncements of Lord Cairns and other great lawyers in Cooper v. Cooper (1874) L.R. 7 H.L. 53: see e.g. McCaughey v. Commissioner of Stamp Duties (1945) 46 S.R. (N.S.W.) 192 at p. 205. With others, incredulity at such seeming apostasy has led to interpretation; though not all have felt so badly about the need for that process as to join in the acid comment of Holmes L.J., that "Lord Cairns, in addition to great knowledge and experience, was such a master of language and logical exposition that he has perhaps an unfair advantage when his judgments are compared with those of lawyers of equal learning."; Tevlin v. Gilsenan (1902) 1 I.R. at p. 537. Bearing in mind what has been said of Lord Sudeley v. Attorney-General in cases decided since, I think that the judgments in that case should be understood as meaning that in considering the application of a statute which is concerned with "the estate and effects of the deceased" in England to the interest of a deceased residuary beneficiary, it is not to the point to refer to the locality of individual assets of the head estate. The beneficiary in his lifetime had no "proprietary" interest in those assets (to use the expression of Lord Russell of Killowen in Skinner v. Attorney General (1940) A.C. 350, at p.355) if by that is meant such an interest that he might have

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said of any of the assets "this is mine. Hand it over to me"; Vanneck V. Benham (1917) 1 Ch. 60, at p. 76; In re Cunliffe-Owen (1953) Ch. 545, at p. 554; and there is no logical or legal justification for subdividing the mass of his rights as residuary beneficiary so as to separate his rights with respect to each asset from his rights with respect to the others and attribute to each set of rights a separate local situation derived from the situation of the separate assets. You must, according to the law as laid down in Lord Sudeley v. Attorney-General, attribute a local situation to the totality of rights, fixing on the place with which the totality is specially connected; and there is no need to go further in order to attribute their proper situation to the rights which exist as to the particular assets.

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Similar reasoning applies, I think, to an interest in a trust fund of inherently variable composition. In re Smyth, Leach v Leach (1898) 1 Ch.89 and Favorke v. Steinkopff (1922) 1 Ch. 174, provide clear examples. The interest to be located in the latter case was the interest of an annuitant in a fund which was vested in trustees on trust to pay annuities. The fund stood invested, at the time when the question arose, in a German State loan; but as Russel J. pointed out, the investment could be altered from time to time. The right of the annuitant being simply to have the fund properly administered, his interest in the fund as it stood for the time being was held to be not where the German State loan investments were situate, but where the proper forum for the enforcement of the trusts was situate. See also Commissioner of Stamp Duties v. Perpetual Trustee Co. Ltd. (Watt's case) (1926) 38 C.L.R. 12. I must not be understood, however, as holding that where Blackacre is vested at law in X upon trust for Y absolutely, Y's interest is situate anywhere but where Blackacre is. As at present advised, I think that the fixed nature of Y's rights with respect to Blackacre should be considered the decisive factor in determining their locality.

An Analogy may be seen also in the case of a partner's interest in the partnership assets. That he has a beneficial interest,

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which the law will recognize and enforce, in every piece of property which belongs to the partnership is clearly established: in re Holland, Brettell v. Holland (1907) 2 Ch. 88, 91; Manley v. Sartori (1927) 1 Ch. 157 at pp. 163, 164; In re Fuller's Contract (1933) Ch. 652 at p. 656; and none the less so because the nature of the interest is peculiar in that his share in the partnership, by virtue of which the interest in a given asset exists while the asset belongs to the partnership, consists not of a title to specific property but of a right to a proportion of the surplus after the realization of the assets and payment of the debts and liabilities of the partnership; In re Ritson, Ritson v. Ritson (1898) 1 Ch. 667, (1899) 1 Ch. 128; Bakewell v. Deputy Federal Commissioner of Taxation (1937) 58 C.L.R. 743 at p. 770; that is to say, not a "definite" share or interest in a particular asset, no "right to any part" of it, but an interest which "can be finally ascertained only when the liquidation has been completed, and . . . consists of his share of the surplus": Rodriguez v. Speyer Brothers (1919) A.C. 59 at p. 68. Yet, the local situation of the interest in the partnership as a whole being considered in law to be where the business is carried on, so also is the partner's interest in a partnership asset: In the Goods of Ewing (1881) 6 P.D. 19, at p. 23. In the leading cases of Laidley v. Lord Advocate (1890) 15 A.C. 468; Beaver v. Master in Equity (1895) A.C. 281 and Salting v. Commissioner of Stamp Duties (1907) A.C. 449, it occurred to no one to distinguish for the purposes of locality between the interest in the partnership and the interest in the assets; and indeed in Beaver v. Master in Equity the emphasis given by the Privy Council to the fact that the business of the partnership in Melbourne was a distinct business from others which the partnership carried on in London and Adelaide indicates that the partner's interest in the Melbourne assets would not have been treated as situate there if there had been only a single business and that had been carried on in London. There is a case in the Supreme Court of Canada in which the contrary view was taken by a majority of the Court, but, with respect, I would prefer the dissenting judgment

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of Anglin J: Boyd v. Attorney-General for British Columbia (1917) 36 D.L.R. 266.

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10 For these reasons I am of opinion that
neither succession duty nor administration duty
was payable in this case. The learned judges
of the Supreme Court thought otherwise, but they
considered that in any event the appeals should
be dismissed on the ground that although the Act
provides for an appeal as to quantum where
succession duty is admittedly payable, it does
not provide for an appeal as to succession duty
in which all liability for the duty is denied,
and it does not provide for any appeal at all in
respect of administration duty. This conclusion
their Honours reached with an evident reluctance
which no doubt was all the greater because over
a long period of time appeals denying that any
duty was payable, and relating to each kind of
20 duty, have been entertained and decided by the
courts, and in that period the Queensland Parli-
ament, though frequently engaged in amending the
Act, has never seen fit to put an end to the
practice.

30 The only provision which gives a right of
appeal is to be found in s.50. The right is
given to "any accountable party dissatisfied
with the assessment of the Commissioner". The
expression "the assessment of the Commissioner"
refers back to s.47 which, as the Act stood
originally, empowered the Commissioner (I shall
speak of the Commissioner though until 1918 it
was the Commissioners) to assess succession duty
in a limited class of cases only. He was not
expressly given any power to make an assessment
of administration duty, and the cases in which
he might assess succession duty were those only
in which persons described as "the persons here-
by made accountable for the payment of duty . .
40 . . or some of them" had performed the obliga-
tion, which the section in its first paragraph
cast upon them, of giving notice to the Commis-
sioner of their liability to such duty and de-
livering to him a full and true account of "the
property for the duty whereon they are respec-
tively accountable" and of the value thereof,
and the deductions claimed by them, together
with other particulars. A second paragraph
required verification of the account, and a

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third conferred the power of assessment. The power was limited to two cases: if the Commissioner were satisfied with the account and estimate as delivered, he might assess the duty on the footing thereof; and if he were dissatisfied with the account and estimate, he might take his own account and estimate and assess the duty on the footing thereof, "subject to appeal as hereinafter provided".

I share the view of their Honours that it is extremely difficult to see how the Act, while it stood thus, could have been read as giving a right of appeal against liability, as distinguished from quantum, in the case of succession duty, or as giving a right of appeal at all in the case of probate or administration duty. The expression in s.50 "the assessment of the Commissioner" must have meant the assessment of succession duty, made on the footing either of the account delivered, or of the account taken by the Commissioner himself upon his being dissatisfied with the account delivered; and the account delivered must have been delivered by some or all of the persons made accountable for the payment of succession duty. Moreover, the prescribed locus standi for an appellant consisted in being "any accountable party"; and "accountable" is a word which was frequently used in fiscal statutes of the nineteenth century to refer, as indeed may be seen clearly enough from s.47 itself, to accountability, i.e. liability, for duty, and not to liability to deliver an account of dutiable property. The persons so accountable for succession duty are the "successor" (s.43) and certain other persons (s. 46).

But in 1918 an amending Act (9 Geo. V. No. 16) made an important change. By inserting additional words in the third paragraph of S.47, it provided for a second case in which the Commissioner might make an assessment of succession duty on the footing of an account and estimate of his own, namely, the case where no account and estimate had been delivered. The words "subject to appeal as hereinafter provided" thus came to apply to assessments made where no account had been delivered; and an amendment made to the words in the fourth

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paragraph referring to appeal reinforce the conclusion that this was intended. The most obvious case in which no account and estimate would be delivered is the case where the persons who would be accountable for payment of the duty if it were payable deny liability in toto. Since 1918, therefore, there has been nothing in s. 50, except the expression "any accountable party", to limit the right of appeal to cases where an assessment had been made after an account submitted by persons accountable for the payment of duty. This was not because the meaning of any of the words of s. 50 had been changed, but because the words "appeal against such assessment" had acquired a more extended application. The referential word "such" was sufficient to give consequential effect to the enlargement of the power of assessment in s.47; and the result was that the appeal that was spoken of came to include an appeal against an assessment which had been made notwithstanding that everyone who, according to the Commissioner, was accountable for payment of duty denied that any duty was payable. Was there, then, no necessary implication as to the expression "any accountable party"? To extend a right of appeal so that it will exist in a new class of cases seems necessarily to imply that the persons who are the proper appellants in a case of the new class may be appellants notwithstanding any limitation formerly arising from words by which competent appellants have been described. In my opinion s. 50 should be read, since the 1918 amendment, as if it began "any accountable party or party who would be accountable if the assessment were correct".

As regards administration (or probate) duty, again it must be conceded that as the Act stood originally there would have been much difficulty in maintaining that a right of appeal was conferred. But once more amending legislation seems to me to imply that s. 50 is to be read as if words extending its application had been expressly inserted. There is no difficulty about the word "accountable" as applied to administration duty. True, the word does not occur in the Act in relation to that duty, but it is not a technical word of

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succession duty law: it refers only to liability to make a payment, and a person liable for administration duty is quite aptly described as an accountable party. The difficulty which did exist, however, was that the expression "the assessment of the Commissioner" referred back, as I have mentioned, to s. 47, and had no application at all in respect of administration duty. But the 1918 amending Act altered this by inserting a new s. 47A in the following terms;

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"If, within two years after any assement of succession or probate duty has been made or any such duty has been paid it is discovered that the account and estimate as originally delivered disclosed a less amount than the true value of such property at the time the succession took effect, or that for any reason too little duty has been paid, the Commissioner may take a further account and estimate and reassess the duty on the footing of such further account and estimate subject to appeal as hereinafter provided, and recover any further duty payable on such reassessment, together with the whole or any part of the expenses incident to the taking of such last-mentioned account and estimate."

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In my opinion it is unsound to treat the references in this section to probate duty as inserted by mistake. The draftmanship is careless in the extreme, but the intention is too plain to be missed. Running the two duties together in the one provision, Parliament has indicated, in my opinion, that if the Commissioner in fact makes an assessment of probate duty (the omission to mention administration duty is of no significance, for the description obviously refers to the duty under s. 55 whatever it may be called), or such duty has been paid without assessment, and within two years thereafter it is discovered that for any reason too little duty has been paid, the Commissioner may take an account and estimate of his own and reassess the duty, but the reassessment is to be "subject to appeal as hereinafter provided". The only provision to which the words quoted can refer is s. 50. The implication is surely plain that s. 50 is to be read as applying to "probate"

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duty: and if that be so, any verbal alteration of s. 50 which may be necessary for its application to such duty must be treated as impliedly made.

In my opinion, therefore, both petitions to the Supreme Court were competent and should have succeeded. I would accordingly allow the appeal in respect of succession duty, and grant special leave and allow the appeal in respect of administration duty.

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LIVINGSTON

v.

THE COMMISSIONER OF STAMP DUTIES

JUDGMENT

MENZIES J.

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The late Jocelyn Hilda Coulson (whom I will refer to as "the intestate"), who died intestate domiciled in the State of New South Wales, was absolutely entitled under the will of her first husband, Hugh Duncan Livingston (whom I will refer to as "the testator"), to a one-third interest in the residue of his estate ascertained after the payment of debts, funeral and testamentary expenses, and duties. At the time of the death of the intestate, the executors of the testator, who were domiciled in the State of New South Wales, had not fully administered his estate, part of which was real and personal property situated in Queensland. Upon the merits of these proceedings

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(which are an appeal by the administrator of the estate of the intestate from the decision of the Full Court of the Supreme Court of Queensland with regard to succession duty (£5,339.9s.11d.) assessed and paid in respect of the estate of the intestate and an application for special leave to appeal with regard to administration duty (£607) assessed and paid in respect of that estate), the questions are whether Queensland administration duty and succession duty are payable by the administrator, to whom letters of administration have been granted by the Supreme Court of New South Wales, in respect of any part of the interest that the intestate had in the estate of the testator.

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Administration duty, although originally payable in respect of a grant of letters of administration, was by s.2 of The Succession and Probate Duties Acts Declaratory and Amendment Act of 1935 declared payable under The Succession and Probate Duties Act 1892 (Qld) as amended, s.55, in respect of "any personal property whatsoever in Queensland or any interest therein . . . taken possession of or in any manner administered without the grant in Queensland of . . . administration . . ." Succession duty, although originally not chargeable in respect of the personal estate of a person domiciled outside Queensland was, by s.2 of The Succession and Probate Duties Act 1892 Amendment Act of 1895, declared chargeable "in respect of all property within Queensland although the testator or intestate may not have had his domicile in Queensland". More exactly the principal question is therefore whether because of her interest in an estate which included property in Queensland, there belonged to the intestate any property in Queensland.

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The conclusion that I have reached is that because the intestate's interest was in the totality of the estate of the testator and because she had no separate or separable property in the Queensland assets of that estate, her interest in the estate of the testator was property situate in New South Wales, where the trustees were domiciled, and not as to any part in Queensland. Indeed, prior to the administration she had but one asset, not as many assets as there were assets in the estate of the testator. Were the executors of the testator's

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will to realise Queensland assets to pay debts, it could not, I think, with accuracy be described as property of the intestate that was being sold; her right was to share in residue ascertained by administration in due course.

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10 This conclusion appears to me to be in line
not only with the decision of the House of Lords
in Lord Sudeley's case 1897 A.C. 11 and the
many cases in which that decision has been
10 followed, but also with the dictum of this Court
in Smith v. Layh (1953) 90 C.L.R. 102, at p.108
when in speaking of the right which residuary
beneficiaries take in the unconverted assets of
an estate before it is fully administered, it
was said: "They have no separate or separable
property in the specific items or assets of
which the estate is made up". Although upon
the death of the intestate there was a devolu-
tion of her one-third interest in the residue of
20 the testator's estate, there was, for the
reasons I have given, no devolution of any pro-
perty in Queensland, and it would not be correct
to say that the administrator of her estate, in
getting in her interest in the estate of the
testator, has taken possession of, or in any
manner administered, property in Queensland or
any interest therein. Any merely colloquial
use of the word "interest" is, of course, to be
disregarded because without question the Act is
30 throughout concerned with assets, i.e., propri-
etary interests.

I have had the advantage of reading the
judgment of Fullagar J., surveying the authori-
ties bearing upon the problem before us, and
because I agree with his survey I refrain from
making one of my own. There are, however,
difficult questions regarding the jurisdiction
of the Supreme Court to determine the appellant's
40 appeals to it which I feel obliged to consider
with some particularity for myself.

There are to be found in various sections of
the Act references to persons "accountable for
the payment of duty", to persons "accountable for
. . . duty" who may be required by the Commission-
er to "deliver an account", and to "every person
who under the provisions of this Act delivers any
account", and it seems to me that the word
"accountable" is used in two senses - the first,
liable to pay duty (e.g., s.46); the second,

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liable to deliver an account (e.g., s.49). Sometimes the duty to deliver an account and to pay duty are imposed upon the one person, but this is not always the case. Section 50, which gives "any accountable party dissatisfied with the assessment of the Commissioner" a right of appeal - and is the section under which these appeals were instituted - does, it seems to me authorise an appeal by a person accountable in either of the senses in which the word is employed in the Act. The appellant here is the administrator of the estate of the intestate, to whom letters of administration were granted by the Supreme Court of New South Wales on 13th November 1951. He did not apply for a grant of letters of administration in Queensland, but did as required by the Commissioner file an account of the estate of the intestate with the Commissioner, and subsequently he paid the succession and the administration duty assessed thereon. The appellant did these things under protest and "without prejudice to his contention that no succession or administration duty under The Succession and Probate Duties Acts was payable on the death of the said Jocelyn Hilda Coulson". He then instituted two appeals - one in relation to administration duty, the other in relation to succession duty. The Full Court of the Supreme Court of Queensland, before which the appeals came, dismissed them, deciding that they were incompetent. The Court decided that an appeal with respect to administration duty was altogether outside s.50, and that, as regards succession duty, the section authorised an appeal only when accountability (in the sense of accountability for the payment of duty) is admitted and the details of the assessment are alone in dispute.

There is, of course, no doubt that an assessment of administration duty by the Commissioner is necessary because the duty is payable according to a scale upon the "net value of the property": and see ss. 47A and 56A(2) of the Principal Act, and s. 2 of The Succession and Probate Duties Acts Declaratory and Amendment Act of 1935. The Acts themselves do not in terms provide for any person making a return for the purpose of the assessment of administration duty, but having regard to their provisions as a whole, it is, I think, clear that a person in the position of the

appellant should both make a return and pay administration and succession duty if the Acts apply. To infer an obligation upon an administrator to pay administration duty assessed with respect to the estate is not going very far, and as regards succession duty, s. 46 makes, besides the successor, "every trustee . . . in whom . . . any property, or the management of any property, subject to such duty, is vested" personally accountable for the duty payable in respect of any succession. The administrator here, therefore, is the person who, as required by the Commissioner, has delivered an account and has paid the duty assessed therein and may therefore properly be described as an accountable party, unless for the purposes of s. 50, notwithstanding the success of a party's appeal, his liability for some duty must remain. I do not regard it as necessary to read s. 50 as so restricted, but before elaborating this it is necessary to refer to a particular difficulty about administration duty, that is, that s. 50 stands as it did before the Act related to administration duty and, therefore, as it was enacted, s.50 related only to appeals against assessments of succession duty. The section must, however, now be read in the context of the Act as it has been amended, and that context includes s. 47A which recognises that s. 50 does relate to appeals against assessments of "probate duty", which clearly enough includes administration duty. I have therefore reached the conclusion that s. 50 does authorise appeals against assessments of probate and administration duty.

This brings me to the contention that as regards both administration and succession duty, the right of appeal given by s.50 is limited to questions of amount, as the Full Court decided, and does not extend to questions of liability. In its forceful judgment, the Full Court points out that ss. 47, 48 and 50 of the Queensland Act correspond with ss. 45, 47 and 50 of the English Act, and the accepted view in England is that liability to account is not to be determined upon such an appeal: Hanson on Death Duties, 7th Ed. (1925), pp. 532 and 535. It appears to me, however, that the language of s. 50 is capable of a construction that would cover appeals as to liability itself and there

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is nothing in any other provision of the Act which requires a more limited construction. In favour of according the section the larger construction is the consideration that S.56A(2)(i) (b) provides that in legal proceedings other than on appeal against an assessment, the production of the assessment is conclusive evidence that the amount and all the particulars of the assessment are correct, which seemingly would apply to proceedings by or on behalf of the Crown to recover any duty that has been assessed. If this be so, to construe s. 50 to cover an appeal as to liability would be the only means of testing whether or not there is liability for duty which has been assessed. Upon the whole I have reached the conclusion that s.50 does authorise the appeals which resulted in the orders that are the subject of these proceedings.

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In my judgment the appeal in relation to succession duty should be allowed, there should be special leave to appeal from the judgment of the Full Court in relation to administration duty and that appeal should also be allowed.

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(e) His Honour
Mr. Justice
Windeyer
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1960

(e) His Honour Mr.
Justice Windeyer.

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JUDGMENT

WINDEYER J.

I agree that in this case an appeal lay to the Supreme Court of Queensland in respect of both succession duty and administration duty, although I appreciate the force of the contrary view expressed by the Supreme Court. The Legislation is a patchwork and s. 50 in its context is far from clear. On the questions of

substance concerning succession duty and administration duty, I can state my conclusions shortly, for I fear they are naive: I think that if a person has an interest in Queensland land, of a kind recognised by the law of Queensland, then, for the purposes of Queensland law, that interest is in Queensland and is property there. It matters not, I think, what in juristic theory is the nature of the interest or by what name it is called. And similarly I think that an interest in the undertaking and assets of a partnership in a station in Queensland is for the purposes of Queensland law property in Queensland.

To go fully into all the matters argued in this case, and to discuss all the cases referred to would involve a consideration of the juristic nature of proprietary rights and equitable interests. I think I can avoid this. the noun "property" and the adjective "proprietary" are notoriously capable of much variety of explanation by writers on jurisprudence: but when used in statutes or judgments the meaning depends upon the context; and little is to be gained, I think, by the theoretical analysis. As to the nature of equitable interests in our system of law: I think it enough to quote what Dr. Hanbury has said, reviewing Sir George Paton's A Textbook of Jurisprudence, "The vexed question of the nature of the right of a beneficiary is one that must exercise the mind of a jurist, though it is questionable how far the discussion is not purely academic, except in the realm of Private International Law" (63 L.Q.R. 115). This case is within the realm of private international law: and the nature of the interest of a beneficiary in trust property is fundamental to it - the particular question here being the nature of the interest of those entitled as next of kin to the estate of a deceased person while that estate is in course of administration. It is, I think, the inevitable result of our system of equity and of the impact of equitable remedies upon legal rights that the rights of a beneficiary under a trust can be regarded as a right to be asserted against the trustee who has the legal title to the trust property or as an interest in that property. This double aspect

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of the existence of equitable remedies is peculiar to our system. "The continental jurist" is puzzled by any reference to a right that partakes of the nature of rights in rem and rights in personam. He asks: "Who has the ownership? If it is given to the trustee, the beneficiary has a mere right in personam; if to the beneficiary then the trustee is a mere agent". That is how Professor Paton puts it in the work above referred to; 2nd edition (1951) p. 432. We were, of course, pressed with the decision in Lord Sudeley v. The Attorney-General (1897) A.C. 11. Remarks in the speeches of their Lordships in that case concerning the nature of the interest of a beneficiary in the assets of an estate in the course of administration have been much criticised, trenchantly so by Jordan C.J. in McCaughey and Another v. The Commissioner of Stamp Duties (1946), 46 S.R. (N.S.W.) 192 at 202-206. But those remarks must now be read in the explanatory light of what was said later in Skinner v. The Attorney-General, (1940) A.C.350, and in In re Cunliffe-Owen. Mountain v. Inland Revenue Commissioners, (1953) 1 Ch. 545. No one would now say that Mrs. Tollemache had no interest in the New Zealand assets in question in Sudeley's case. True she could not have said, "They are mine: give them to me", for her husband's estate had not been fully administered. The New Zealand assets were still in his estate: and her share in that estate was an English asset in respect of which probate duty under English law was payable. But, as we now know, that does not mean that she had no interest in the items of property that were comprised in that English asset. A situation comparable with that in question here would have arisen if Sudeley's Case had been concerned not with a liability of the English estate to English probate duty but with a liability under the law of New Zealand to duty upon property locally situate there. It is not without significance that in the original judgment in Sudeley's Case in the Queen's Bench, (1895) 2 Q.B. 526, Lord Russell of Killowen C.J. and Charles J. referred to the fact that the English executors could only possess themselves of the assets in New Zealand by the aid of the Court there; and that administration duty had been paid on the estimated value of the share of

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Frances L. Tollemache in New Zealand.

If then it be correct, as I think it is, to regard Mrs. Coulson as having had an interest in the several items of property that make up the estate of Livingston, where is that interest situate? In my view it is where that property is. The land and stock and plant of the station are in Queensland. The partnership business of conducting Maranoa Downs was carried on in Queensland. That does not, I think, contradict the parallel proposition that Mrs. Coulson would ordinarily have had to assert her rights under Livingston's will by insisting that Livingston's executors perform their duties, and that the proper tribunal to compel them to do so would be the New South Wales court. But the land and other physical things and the partnership in which Mrs. Coulson had an interest were all in Queensland. Her interest in those things existed only so far as the law of Queensland recognised it and would aid the New South Wales courts in enforcing it. It was not, I think, accurate to say, as was said, that proceedings in relation to her rights in those things could only be protected by the court in New South Wales. The Queensland court would, in some circumstances, exercise jurisdiction at her suit, certainly in relation to the Queensland realty, provided of course that the executors of Livingston were made parties, as they could be by service outside Queensland.

I have written this merely to emphasise my view that the matter must be judged from the point of view of Queensland law; the opposite situation from that under consideration in Sudeley's Case. Having done so, I need say no more than that I concur in the conclusions of the Chief Justice and in the general principles he has stated on which his conclusions are based. There are, of course, some distinctions between succession duty and administration duty: in a sense they reflect the basic distinction that Dicey emphasises between administration and succession. Westlake's description of the nature of succession duty, in the course of his explanation of the differences between it and probate duty, in earlier editions e.g. 3rd ed. pp. 125, 126 gave rather too limited an effect to succession

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duty: in the sixth edition the same passage (s. 116) is restricted to succession duty when it is incident on settled property. Here we are concerned with duty on a succession under s. 4 of The Succession & Probate Duties Act, which is in the same terms as s. 2 of the English Act of 1852. And a "succession" as so described, it is always important to remember, is not an event; it is property, a proprietary interest (see per Rowlatt J. in Attorney-General v. Anderton, (1921)), 1 K.B. 159 at 170. And now as a result of the amendment to the law made in 1895, succession duty is chargeable on all property within Queensland. Administration duty, on the other hand, is in the nature of a probate duty, as ordinarily understood but with its scope extended by the amending Act of 1935. It is levied in respect of property belonging to a deceased in Queensland. So that substantially the same question arises in respect of both duties. In my opinion, there was, in this case, a liability for both succession and administration duty to the extent which the Chief Justice has stated; that involves excluding the wool realization moneys. I have not considered whether the valuation of the property in respect of which the duties were levied were made on a proper basis. This was not really contested: and, in any event, as most members of the Court think the duties are not payable, I need not consider it. I would dismiss the appeals.

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No.20

Order of the Full Court of the High Court allowing the appeal in respect of the Assessment of Succession Duty.

In the Full Court of the High Court of Australia

No.20

IN THE HIGH COURT
OF AUSTRALIA.

QUEENSLAND REGISTRY

Appeal No.28 of 1959.

ON APPEAL FROM THE SUPREME COURT OF QUEENSLAND

(FULL COURT)

Order of the Full Court of the High Court of Australia allowing the Appeal in respect of Assessment of Succession Duty
16th December 1960

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BETWEEN:

HUGH DUNCAN LIVINGSTON
(Petitioner)

Appellant

- and -

THE COMMISSIONER OF
STAMP DUTIES
(Respondent)

Respondent.

BEFORE THEIR HONOURS THE CHIEF JUSTICE, MR.
JUSTICE FULLAGAR, MR. JUSTICE KITTO,
MR. JUSTICE MENZIES AND MR. JUSTICE
WINDEYER.

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SYDNEY FRIDAY THE SIXTEENTH DAY OF DECEMBER
1960.

THIS PETITION having on the Fourteenth and Fifteenth days of June 1960 come on for hearing at Brisbane by way of appeal from the Judgment of the Full Court of the Supreme Court of Queensland pronounced on the Second day of

In the Full
Court of the
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No.20

Order of the
Full Court of
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allowing the
Appeal in
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December 1959 whereby it was ordered that the
Petition against the assessment of Succession
Duty in the Estate of Jocelyn Hilda Coulson
deceased be dismissed (and being heard together
with Application for Special Leave to Appeal
No. 29 of 1959) AND UPON HEARING Mr. Bennett
Q.C. with him Mr. Nicholson of Counsel for the
Appellant and Mr. Barry Q.C. with him Mr. Fair-
leigh of Counsel for the Respondent THIS COURT
DID on the said Fifteenth day of June 1960
Order that the matter stand for judgment and
the same standing for judgment this day in the
paper at Sydney THIS COURT DOTH ORDER that
the Appeal be allowed and that the said Order
of the Full Court of the Supreme Court of
Queensland be discharged and in lieu thereof
THIS COURT DOTH ORDER that the Appeal against
the said assessment of Succession Duty be
allowed with costs and that the said assessment
be discharged AND THIS COURT DOTH REMIT the
cause to the Supreme Court of Queensland to
make any consequential order or orders that may
appear necessary or proper AND THIS COURT DOTH
FURTHER ORDER that the Appellant recover
against the Respondent his costs of and inci-
dental to the said Appeal to be taxed AND THIS
COURT DOTH BY CONSENT ORDER that the sum of
Fifty pounds (£50) paid into this Registry by
the above named Appellant as security for the
costs of the Appeal be paid out of Court to the
Appellant or to his Solicitors, Messieurs
Thynne & Macartney.

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By the Court,

J. Shannon

(L.S.)

DISTRICT REGISTRAR

No.21

Order of the Full Court of the High Court of Australia granting special leave to appeal and pursuant to such special leave allowing the appeal in respect of Assessment of Administration Duty.

In the Full Court of the High Court of Australia

No.21

Order of the Full Court of the High Court of Australia granting special leave to appeal and allowing the appeal in respect of Assessment of Administration Duty
16th December 1960

IN THE HIGH COURT

OF AUSTRALIA

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QUEENSLAND REGISTRY

Appeal No.29 of 1959

ON APPEAL FROM THE SUPREME COURT OF QUEENSLAND

(FULL COURT)

BETWEEN:

HUGH DUNCAN LIVINGSTON
(Petitioner)

Appellant

- and -

THE COMMISSIONER OF
STAMP DUTIES
(Respondent)

Respondent

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BEFORE THEIR HONOURS THE CHIEF JUSTICE, SIR OWEN

DIXON, MR. JUSTICE FULLAGAR, MR. JUSTICE

KITTO, MR. JUSTICE MENZIES AND MR. JUSTICE

WINDEYER.

SYDNEY FRIDAY THE SIXTEENTH DAY OF DECEMBER 1960.

THIS PETITION having on the Fourteenth and Fifteenth days of June 1960 come on for hearing

In the Full Court of the High Court of Australia

No.21

Order of the Full Court of the High Court of Australia granting special leave to appeal and allowing the appeal in respect of Assessment of Administration Duty
16th December 1960
continued

at Brisbane by way of Application for Special Leave to appeal from the Judgment of the Full Court of the Supreme Court of Queensland pronounced on the Second day of December 1959 whereby it was ordered that the Petition against the assessment of Administration Duty in the Estate of Jocelyn Hilda Coulson deceased be dismissed (and being heard together with Appeal No. 28 of 1959) AND UPON HEARING Mr. Bennett Q.C. with him Mr. Nicholson of Counsel for the Appellant and Mr. Barry Q.C. with him Mr. Fairleigh of Counsel for the Respondent THIS COURT DID on the said Fifteenth day of June 1960 order that the matter stand for judgment and the same standing for judgment this day in the paper at Sydney THIS COURT DOTH GRANT Special Leave to Appeal and doth pursuant to such Special Leave order that the Appeal be allowed and that the said Order of the Full Court of the Supreme Court of Queensland be discharged and in lieu thereof THIS COURT DOTH ORDER THAT the Appeal against the said assessment of Administration Duty be allowed with costs and that the said assessment be discharged AND THIS COURT DOTH REMIT the cause to the Supreme Court of Queensland to make any consequential order or orders that may appear necessary or proper AND THIS COURT DOTH FURTHER ORDER that the Appellant recover against the Respondent his costs of and incidental to the said Application for Special Leave to Appeal and to the Appeal to be taxed.

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By the Court,

J. Shannon

(L.S.) DISTRICT REGISTRAR.

No.22

Order granting special leave
to appeal.

In the
Privy Council

No.22

AT THE COURT AT BUCKINGHAM PALACE

The 30th day of July, 1962.

Order granting
special leave
to appeal
30th July 1962

PRESENT

THE QUEEN'S MOST EXCELLENT MAJESTY

LORD PRESIDENT MR. SOAMES

MR. SECRETARY BUTLER MR. POWELL

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WHEREAS there was this day read at the Board a Report from the Judicial Committee of the Privy Council dated the 16th day of July 1962 in the words following viz. :-

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" WHEREAS by virtue of His late Majesty King Edward the Seventh's Order in Council of the 18th day of October 1909 there was referred unto this Committee a humble Petition of The Commissioner of Stamp Duties (Queensland) in the matter of an Appeal from the High Court of Australia between the Petitioner and Hugh Duncan Livingston Respondent setting forth: that the Petitioner desires special leave to appeal to Your Majesty in Council from a Judgment of the High Court of Australia delivered on the 16th December 1960 whereby the Appeals of the Respondent against the assessments of Succession Duty and of Administration Duty in the Estate of Jocelyn Hilda Coulson deceased were allowed and the High Court further ordered that the Respondent recover against the Petitioner costs of and incidental to the Appeals to be taxed; that the Petitioner was the Respondent and the Respondent was the Appellant in the matters Petition numbered 7 and 8 of 1958 to the Full Court of the Supreme Court of Queensland whereby the said Full Court dismissed

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In the
Privy Council

No.22

Order granting
special leave
to appeal
30th July 1962
continued

the Appeals by the Appellant against the said assessments by the Respondent: And humbly praying Your Majesty in Council to grant the Petitioner special leave to appeal from the said Judgment of the High Court of Australia delivered on the 16th December 1960 and for further or other relief:

"THE LORDS OF THE COMMITTEE in obedience to His late Majesty's said Order in Council have taken the Humble Petition into consideration and having heard Counsel in support thereof no one appearing at the Bar in opposition thereto Their Lordships do this day agree humbly to report to Your Majesty as their opinion that leave ought to be granted to the Petitioner to enter and prosecute his Appeal against the Judgment of the High Court of Australia dated the 16th day of December 1960:

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"AND Their Lordships do further report to Your Majesty that the proper officer of the said High Court ought to be directed to transmit to the Registrar of the Privy Council without delay an authenticated copy under seal of the Record proper to be laid before Your Majesty on the hearing of the Appeal upon payment by the Petitioner of the usual fees for the same. "

HER MAJESTY having taken the said Report into consideration was pleased by and with the advice of Her Privy Council to approve thereof and to order as it is hereby ordered that the same be punctually observed obeyed and carried into execution.

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Whereof the Governor-General or Officer administering the Government of the Commonwealth of Australia for the time being and all other persons whom it may concern are to take notice and govern themselves accordingly.

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W. G. Agnew.

IN THE PRIVY COUNCIL

No.51 of 1962

ON APPEAL FROM THE HIGH COURT OF AUSTRALIA

B E T W E E N:

THE COMMISSIONER OF STAMP DUTIES

(Queensland) (Respondent)

Appellant

- and -

HUGH DUNCAN LIVINGSTON

(Petitioner)

Respondent

RECORD OF PROCEEDINGS

FRESHFIELDS, -
1, Bank Buildings,
Princes Street,
London, E.C.2.
Solicitors for the Appellant.

LAYTONS,
21, Old Buildings,
Lincoln's Inn,
London, W.C.2.
Solicitors for the Respondent.