

*Judgment of the Lords of the Judicial Committee
of the Privy Council on the Appeal of
The Minister of Stamp Duties v. Annie
Quayle Townend, from the Court of Appeal
of New Zealand; delivered the 23rd July,
1909.*

Present :

THE LORD CHANCELLOR.

LORD ASHBOURNE.

LORD COLLINS.

LORD GORELL.

SIR ARTHUR WILSON.

[*Delivered by The Lord Chancellor.*]

This case has been admirably argued on both sides. There are only two questions in dispute, on both of which the judgments given by the Court of Appeal of New Zealand are so clear and so exhaustive that it is not necessary for their Lordships to say much.

The first question is, whether or not the deceased, George Henry Moore, intended to give, and did effectively give, to his daughter large sums of money during the later years of his life. While admitting that a Court must carefully scrutinise any claims by the living that they have received gifts at the hands of those who are no longer able to give an account of themselves, their Lordships are satisfied that the conclusion arrived at by the Court of Appeal in this case

was perfectly sound. The deceased, in their Lordships' opinion, deliberately intended to part with as much of his property as he safely could in favour of his daughter, in order to escape payment of taxes either during his life or after his death. His conduct in admittedly allowing his own money to be paid to his daughter, and the evidence of Mr. Martin, corroborate in the strongest way the evidence of the daughter, which of itself seems to their Lordships to be abundantly sufficient in every respect to show that it is a probable and credible account of what happened. Their Lordships have not overlooked the cogent observations of Mr. Justice Chapman, but they think the real answer to them is, that this evidence has to be taken as a whole, and that, when there is a substantial corroboration of the testimony given by the interested party, it confirms the credit, not only of the statements which are expressly supported, but of all statements made by the interested party. If this be so, the evidence given by Mrs. Townend is conclusive in regard to the case.

The second question is, whether or not certain deeds fall within the duty chargeable upon deeds of gift. The type of document in question is as follows:—A mortgagor owing money to Mr. Moore pays it to his daughter, with his consent, and she re-lends the money to the same mortgagor. This transaction, although carried out by two deeds, is carried out by deeds which do not themselves convey anything to the daughter. What does convey something to her is the authority emanating from Mr. Moore that his daughter might have for herself moneys received by her under his power of attorney, and this authority, being verbal, could not be stamped. The learned Chief Justice puts it in the most concise way when he says that the statute taxes

instruments and does not tax transactions. Here there was no gift by any document, and therefore there is no duty payable. Their Lordships agree with the observation made by the learned Chief Justice in regard to the 35th section of the Deceased Persons' Estates Duties Act, 1881.

Accordingly, their Lordships will humbly advise His Majesty that this Appeal should be dismissed.

The Appellant will pay the costs of the Appeal, but only one set of costs will be allowed.

