

*Judgment of the Lords of the Judicial Committee of the Privy Council on the Appeal of Silas Harding v. The Registrar of Land Tax from the Supreme Court of Victoria; delivered 18th July 1891.*

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Present :

LORD MACNAGHTEN.

LORD MORRIS.

SIR RICHARD COUCH.

MR. SHAND (LORD SHAND).

[*Delivered by Lord Morris.*]

This case comes before their Lordships on the appeal of Silas Harding from an Order of the Full Court of Victoria, dated the 5th of March 1888, which dismissed his appeal from an Order of Mr. Justice Williams, dated the 12th of September 1887. The last-mentioned Order discharged a previous Order Nisi obtained by Silas Harding on the 3rd of December 1886, by which the Registrar of Land Tax was ordered to show cause why he should not remove the name of Silas Harding from the Land Tax Register in respect of certain lands set forth in the schedule to the Order. The Appellant was previous to the passing of the Land Tax Act 1877 entitled as owner to certain large landed estates. On the passing of the Act he was desirous to except his estates from the operation of the Act. By Section 4, Sub-section 3 of the Act, it is enacted that "Every

“ settlor, grantor, assignor, or transferor of any  
“ landed estates comprised in any settlement,  
“ grant, assignment, transfer, or conveyance, not  
“ made *bond fide* for valuable consideration,”  
shall be deemed to be an owner of landed  
estates for the purposes of the Act.

The Appellant on the 22nd of September sent in four separate applications to the Registrar of Land Tax for the removal of his name from the Register, declaring that he had conveyed the lands, and was not the owner within the meaning of the Land Tax Act, 1877. With respect to the lands comprised in the first application, he alleged that, by indentures dated the 4th of December 1878 and the 8th of February 1879, he had conveyed the lands comprised in the said first application to Silas George Tangye and to Mary Tangye his wife. With respect to the lands comprised in the second application, he alleged that by indentures dated the 22nd of February 1879, the 25th of February 1879, the 25th of February 1879, and the 26th of February 1879, he had conveyed the lands comprised in the said second application to Richard Howell, to Elizabeth Howell wife of the said Richard Howell, and to Silas George Tangye and to Mary Tangye his wife. With respect to the lands comprised in the third application the Appellant alleged that by an indenture dated the 5th of December 1885 he had conveyed the lands comprised in the said third application to Silas George Tangye. With respect to the lands comprised in the fourth application, he alleged that by an indenture dated the 5th of December 1885 he had conveyed the lands comprised in the said fourth application to Silas George Tangye.

The several conveyances relied upon by the Appellant as transferring the said several parcels of land were formally executed, and the sole

question for decision is whether or not these conveyances were made *boná fide* for valuable consideration. If they were so made, the Registrar should remove the Appellant's name from the Register; if they were not so made, the applications were rightly refused. Both Mr. Justice Williams, and on appeal the Full Court, have decided this question against the Appellant, and have held that he did not part with the said lands by grants made *boná fide* for valuable consideration. Their Lordships entirely concur in these decisions. One of the objects of the Land Tax Act was to prevent sham sales for the purpose of evading the land tax, and the meaning of Sub-section 3 of Section 4 is, that as between transferor and transferee there must be the passing of the estate from the transferor and the passing of the consideration from the transferee, without any secret understanding or trust. It would be most difficult to track the Appellant through the complicated series of sham dealings with his nephew and manager Silas George Tangye, and with his brother-in-law and overseer Richard Howell, the pretended transferees in the conveyances.

The indentures of 1878 and 1879 present almost every badge of fraud. They were not accompanied by change of possession. The pretended considerations were bills of exchange, for which payment was not made, or asked as they fell due. The Appellant continued his dealing with the lands in a manner quite irreconcilable with any *boná fide* transfer of them. The transferees were near relatives, and in his employment at small salaries. The contradictory and false statements made by him further lead to the conclusion that these conveyances were mere covers to enable him to escape the payment of land tax.

With respect to the lands comprised in the 3rd and 4th applications to the Registrar of Land Tax, the Appellant alleges that by an instrument of the 5th of December 1885 he conveyed *bonâ fide* for valuable consideration the said lands to Silas George Tangye. It appears that he had previously in 1878 conveyed them to his wife. That conveyance was a voluntary one, but by means of it he succeeded for a time in getting his name removed from the register. His wife died in 1882, and in July 1883 he purported to sell and convey the same lands to Silas George Tangye as a *bonâ fide* sale for value. The next of kin of the Appellant's wife impeached the sale to Silas George Tangye, and on a trial before a jury in October 1885 the sale to Silas George Tangye was found to be a sham sale. Very soon after the trial the Appellant conveyed by an instrument of the 5th of December 1885 the same lands to the same Silas George Tangye, and he now relies upon it. In the administration suit by the next of kin of Mrs. Harding, this Board on appeal held that the Appellant, as administrator of his wife's estate, was not beneficially entitled to the estate, but was under obligation to realize it and distribute it according to law (*Harding v. Howell*, L. R. 14, Appeal Cases, p. 307).

Now the indenture of the 5th of December 1885, relied upon by the Appellant as transferring the estate to Silas George Tangye, is made expressly "in his own right, and not as administrator," and the consideration is stated to be 8,475*l.* But the Appellant had no title in his own right; he was only a trustee, and the consideration was raised on the same day by the grantee by mortgage. In fact the Appellant, by the conveyance to his wife, sought to evade the land tax; by the conveyance to Tangye in 1883 he sought to defraud the next of kin of his wife; and by the inden-

ture of December 1885 he appears to seek to defraud both.

Their Lordships are of opinion that the decision of Mr. Justice Williams, affirmed by the Full Court, was correct, and ought to be affirmed, and the appeal dismissed with costs, and they will so humbly advise Her Majesty.

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