Judgment of the Lords of the Judicial Committee of the Privy Council on the Appeal of Harding and another v. *The Commissioners of Stamps for Queensland, from the Supreme Court of Queensland; delivered 24th June* 1898.

Present:

LORD WATSON.
LORD HOBHOUSE.
LORD DAVEY.
SIR RICHARD COUCH.

[*Delivered by Lord Hobhouse.*]

This appeal arises out of a claim made on behalf of the Crown to charge succession duty on the estate of Silas Harding. The Appellants are his executors. The Respondents are the Stamp Commissioners who claim duty. The Supreme Court to whom the executors appealed have decided that duty is chargeable. On some disputed points they decided against the Commissioners, but there is no appeal on those points. The executors maintain that no duty is payable at all.

Silas Harding died in the year 1894, domiciled in the Colony of Victoria. In September 1894 his will was proved in Victoria, and in April 1895 ancillary Letters of Probate were granted by the Supreme Court of Queensland. He had a large property, and among it were the following particulars; (1) A debt of 102,036*l.* 2*s.* 7*d.* due from a Mr. Doneley; (2) A debt of 20,863*l.* 0*s.* 3*d.* due from the Queensland Brewery; (3) 3,000 shares in the Royal Bank of Queensland. The two debts were

secured by mortgages on land stock and goods in Queensland. It is on these three items that the Supreme Court has held duty to be chargeable under the terms of the Succession and Probate Duties Act 1892 as amended in 1895.

From the written reasons of the learned Judges their Lordships collect that if the Act of 1892 had stood alone they would have felt constrained by the course of decisions in England, though not fully assenting to them, to hold that no duty was chargeable. Their judgment in effect turns on the application of the Act of 1895, and the first question is what was the law immediately before that Act was passed.

Section 4 of the Act of 1892 is in effect, as the learned Judges point out, a transcript of Section 2 of the English Succession Duty Act of 1853. The material words are "Every . . . "disposition of property by reason of which any "person . . . . . shall become beneficially "entitled to any property upon the death of any "person . . . shall be deemed . . . to "confer on the person entitled by reason of such "disposition . . . a succession;" and on that succession the duties are fastened. The literal force of these expressions includes the estate of Silas Harding. But then it includes a great deal more which nobody can suppose that the legislature intended to tax; it includes all persons and all property all over the world, and if not confined within reasonable limits would enable the Queensland authorities to levy a tax in respect of foreign property on foreigners when within their power. Abnormal consequences such as these have been avoided by judicial decisions in England.

In *Thompson* v. *The Advocate General* (12 Cl. & Fin. 1) the question arose under words of a similar character in the Act of 55 Geo. III. cap. 184. That Act imposed duties on "every "legacy given by any will of any person." A

gentleman domiciled in Demerara owned money locally situate in Scotland on which the Crown claimed legacy duty. The case was ultimately decided in the House of Lords; the Judges were consulted, and their joint opinion delivered by Tindal, C. J. He pointed out the absolute necessity of limiting the sense of the words, and laid it down that such necessary limitation is that the statute does not extend to the will of any person domiciled out of Great Britain whether the assets are locally situate there or not. That opinion was adopted by the House.

In *Wallace* v. *The Attorney-General* (L.R. 1 Ch. 1) a similar question arose under Section 2 of the English Succession Duty Act of 1853, which defines a succession in the same way as the Queensland Act of 1892. A gentleman domiciled in France owned personal property in England consisting of a sum of consols. The Crown claimed succession duty on that property. Lord Cranworth held that the same limitation which had been put on the words "every legacy given by any "will of any person" must be put on the words "every disposition whereby any person becomes "entitled" and that the person intended is a person who becomes entitled by the laws of this country.

The soundness of this principle of construction has never been impugned, nor has the British legislature thought fit to put any different limitation upon the generality of the terms in which legacy duty and succession duty are imposed. The matter appears to be well summed up in Mr. Dicey's work on the Conflict of Laws at p. 785, in which he paraphrases Lord Cranworth's application of the principle "*Mobilia sequuntur personam*" by saying that the law of domicile prevails over that of situation.

It is of course a maintainable opinion that the law of situation should prevail; and that a line which brings under the general words of

taxation property which is protected by the taxing State, and which in case of dispute is administered by it, would form a more reasonable limitation of such words than the limitation by domicile. The learned Judges below inclined to that principle; and the Queensland legislature has adopted it. But the Court has only to decide what the legislature meant when it passed the Act of 1892. Now the decision in *Thomson's* case was given in the year 1845; that in *Wallace's* case just 20 years later; and it has been taken ever since that the expressions in question do not apply to movable property belonging to persons of foreign domicile. Nearly 30 years after the later decision the Queensland legislature passed their Succession Duty Act in terms identical with those of the English Act of 1853. It is impossible to suppose that they did not intend those terms to be read in the sense affixed to them by the English tribunals, and in which they would be read by every lawyer and every official conversant with the subject matter.

Arguments have been presented at the bar which are founded on definitions of real estate in Queensland statutes, and on decisions respecting the locality of mortgage debts and similar property. Their Lordships fail to see that the definitions were intended to apply or do apply to the principle that movables follow the person. And as regards locality, it is clear that the assets now in question have locality in Queensland, but that does not affect the beneficial interest to which succession duty is attached and which devolves according to the law of the owner's domicile.

It remains to see whether the Act of 1895 alters the incidence of the Act of 1892 upon a will which took effect in 1894 and the Probate of which was granted in Queensland several months

before the latter Act came into force; in other words, whether the Act of 1895 is retrospective.

The Act is entitled "An Act to amend "the Succession and Probate Duties Act 1892"; and Section 1 provides that it may be cited as "The Succession and Probate Duties Act 1892 "Amendment Act of 1895." The important section is the second which runs thus:—

"2. It is hereby declared that upon the issue "of any grant of probate or administration in "Queensland, succession duty is chargeable in "respect of all property within Queensland, "although the testator or intestate may not have "had his domicile in Queensland."

That enactment is calculated to meet such cases as the present one; and if retrospective would be conclusive in favour of the Respondents. The Supreme Court think that the section is declaratory because of the opening expression "it is declared"; and then they go on to reason that a declaratory Act is *primâ facie* retrospective, and confine themselves to examining whether it contains anything of a contrary nature so as to neutralize its declaratory and retrospective character.

Their Lordships cannot take such a view of the Act. The use of the expression "it is declared" to introduce new rules of law is not incorrect, and is far from uncommon. The nature of the Act must be determined from its provisions. Now the Act does not contain any words to show that it purports to construe the Act of 1892; it does purport to amend it; every other of its provisions is in language prospective, and in Section 2 itself the new rule is to take effect "upon the issue of any grant of probate," which is not fitting language to apply to estates for which probate has already been granted. In fact the language of the Act points, as their Lordships think, distinctly to future operations.

And inasmuch as it falls under two well-established canons of construction, both requiring that, as against the persons sought to be affected, it should be shown quite clearly and strictly to affect them; first, that which relates to statutes imposing liabilities; and secondly, that which relates to retrospective statutes, their Lordships feel no hesitation in deciding that the Act cannot be retrospective.

The result is that when the will of Silas Harding took effect and when the Queensland Letters of Probate were granted, the law of 1892 did not subject his moveable assets to succession duty, and that the state of things so existing has not been disturbed by subsequent legislation. They will humbly advise Her Majesty to discharge the order appealed from so far as it declares that succession duty is chargeable on all the property of the testator which was in Queensland at the time of his death, and instead thereof, to declare that no succession duty is payable on the three items of the testator's property which are the subject of this appeal. The Respondents must pay the costs of this appeal.