Judgment of the Lords of the Judicial Committee of the Privy Council, on the Appeal of Broughton and others v. *The Commissioners of Stamp Duties, from New South Wales; delivered 29th November* 1898.

Present:

LORD MORRIS.
LORD MACNAGHTEN.
SIR RICHARD COUCH.

[*Delivered by Lord Morris.*]

THEIR Lordships need not hear the Respondents. They are of opinion that the Judgment of the Supreme Court in New South Wales should be affirmed, and substantially for the reasons assigned in the Judgment of Mr. Justice Manning. The application to state a case for the Full Court does not appear to their Lordships to have been brought within a reasonable time. The purport of the letter which has been so much relied upon, as assisting the case of the Appellants, is obviously aimed at the decision which was then pending before the Supreme Court in *Brodribb's* case (9 N.S.W., L.R. 49). In that case the point here raised by the Executors of Broughton, namely, as to whether the duty demanded by the Commissioners from the Executors should be at the rate of 5 per cent. or at the rate of 1 per cent. was discussed. It would appear from a subsequent decision, which it is immaterial for their Lordships to consider, that it was finally decided that duty was not leviable at all; but at the date in 1887, when the controversy arose,

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the sole question between the parties was whether it should be at the rate of 5 per cent. or at the rate of 1 per cent. The money was paid at the rate of 5 per cent. by the Executors of Broughton accordingly under protest, and with a reservation of their right to have the excess refunded, and also on condition that the delay should not tell against them. What delay? The delay appears pretty plainly to be the delay consequent on the decision in *Brodribb's* case, which was then pending. It is quite clear that the Executors of Broughton themselves were not satisfied to raise the question at their own expense, and they must have been waiting for some decision which was likely to be arrived at within some reasonable time. Such a decision was made in the year 1888, and nine years elapse from that time before the parties apply for a mandamus. During that period the Executors entered upon a discussion with the Commissioners in 1892 as to their right to a refund; they were refused in the year 1894. They then waited for another period—substantially eight or nine years—which appears to be a very unreasonable time at which to reopen this case, in which the money was apparently paid under a mistake of law.

Upon these grounds their Lordships will humbly advise Her Majesty that the Judgment of the Supreme Court of New South Wales should be affirmed.

The Appellants must pay the costs.