

Judgment of the Lords of the Judicial Committee of the Privy Council on the Appeal of Ellen Jackson (since deceased, and now represented by Richard Cecil William Dixon, the sole Executor of her Will) v. The Commissioner of Stamps, from the Supreme Court of New Zealand; delivered the 1st May 1903.

Present at the Hearing :

LORD MACNAGHTEN.

LORD DAVEY.

LORD LINDLEY.

SIR ARTHUR WILSON.

[*Delivered by Lord Macnaghten.*]

The late Appellant, who was the widow and executrix of William Valentine Jackson, and is now deceased, brought this Appeal by special leave against a Judgment of the Supreme Court of New Zealand without having appealed to the Court of Appeal in the Colony. The Appeal has now been duly revived by the legal personal representative of the widow.

The question arises out of a claim by the widow to exemption from the duties payable under the Deceased Persons' Estates Duties Act, 1881, and the amending Act of 1885, in respect of her husband's residuary estate on the ground that she became, as she contended, absolutely entitled thereto under his will.

Under the will the testator's widow took a life interest in the testator's residuary estate. Subject to her life interest the residuary estate was to be held in trust for such person or persons at such ages and times not being earlier as to any object of that power than his or her age of 21 years or

day of marriage, in such shares and manner as she should by deed or will appoint. In default of appointment there was an ultimate bequest upon trust for certain persons and purposes therein mentioned.

The testator died on the 13th of February 1900, and his will was duly proved by the widow shortly afterwards.

On the 19th of March 1900 the widow appointed the whole of the testator's residuary estate subject to her own life interest therein to herself absolutely. Thereupon she claimed the benefit of a provision in the Act of 1881 as amended by the Act of 1885, which declares that
 "no duty shall be payable in respect of any real
 "or personal property to which any wife . . .
 "shall become absolutely entitled
 "under" her husband's "will."

The Commissioner of Stamps decided that upon the true construction of the will and the relevant section of the Act of 1885 the widow did not become absolutely entitled under her husband's will to the trust fund in question, and declined to allow any exemption from duty in respect thereof.

A case was then stated by way of appeal for the consideration of the Supreme Court. The case was heard by Edwards J., who dismissed the Appeal and affirmed the Commissioner's decision.

The general scheme of the Act of 1881 as amended by the Act of 1885 is clear and simple.

"In order to ascertain the amount of duty payable" under the Act every "administrator"—a term which includes an executor to whom probate has been granted—is bound within six months from the grant to file with the Commissioner a statement in writing in respect of the property to which the administration relates specifying (a) the particulars of all the personal

property of or to which the deceased was possessed or entitled at the time of his death and of the value thereof; (b) the debts due by the deceased payable thereout; and (c) the balance of such personal property after deducting such debts. A similar statement is required with regard to the testator's real estate.

The statement of the administrator, when finally approved by the Commissioner, receives the Commissioner's certificate.

As regards the payment of duty the Act of 1881 contains the following provision:—

Section 7. Except as herein otherwise provided, there shall be paid to the Commissioner by every administrator duty according to the rate mentioned in the schedule to this Act, which shall be computed on the final balance of real and personal property appearing upon his statement as certified as aforesaid, and shall be assessed by the Commissioner.

The exceptions referred to in Section 7 of the Act of 1881 included a provision in Section 36 exempting a widow from duty in respect of any real or personal property to which she became absolutely entitled under her husband's intestacy or under his will. That provision was repealed by Section 18 of the Act of 1885, and re-enacted so as to make the exemption extend to a husband taking under his wife's intestacy or under her will.

On a careful review of the Act of 1881 as amended by the Act of 1885, Edwards J. came to the conclusion that the duty payable under the Act was made a charge upon the property of the deceased, and that the liability imposed was imposed as from the date of the death. His opinion, therefore, was that in the present case the subsequent appointment by the widow could only pass the property subject to the incidents which

attached to it at the date of the appointment, and therefore subject to liability to pay duty.

Their Lordships agree with Edwards J. in his view of the effect of the enactment. They do not, however, dissent from the view of the Commissioner, who arrived at the same result by a different path. The Commissioner was of opinion that according to the true construction of the statute the widow did not become entitled to the property under the will. The absolute interest which alone confers immunity from duty was certainly acquired under the appointment and not under the will.

The learned Counsel for the Appellant referred to certain cases under the English Succession Duty Act, and under the English Customs and Inland Revenue Act of 1881. It does not, however, appear to their Lordships that any assistance is to be derived from them. In each of those cases the language and scope of the enactment differed from the language and scope of the enactment now under consideration. Cases relating to the construction of covenants to settle property afford perhaps a better analogy. It has been determined in this country that a person entitled under a will in default of appointment who takes by appointment precisely the same interest which he would have taken if no appointment had been made, takes a new interest, and takes under the appointment and not under the will.

Sweetapple v. Horlock, 11 Ch. D. 745.

Their Lordships will therefore humbly advise His Majesty that the Appeal ought to be dismissed.

The present Appellant must pay the costs of the Appeal.
