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G.M.F. 2.

9, 1954

No. 2 of 1953.

In the Privy Council.

ON APPEAL
FROM THE FIJI COURT OF APPEAL

BETWEEN

PHILLIP RICE (Plaintiff) *Appellant*

AND

THE COMMISSIONER OF STAMP DUTIES (Defendant) . . . *Respondent.*

RECORD OF PROCEEDINGS

BARROW, ROGERS & NEVILL,
WHITEHALL HOUSE,
41 WHITEHALL,
LONDON, S.W.1,
Solicitors for the Appellant.

BURCHELLS,
68 VICTORIA STREET,
LONDON, S.W.1,
Solicitors for the Respondent.

In the Privy Council.

37719

No. 2 of 1953.

ON APPEAL
FROM THE FIJI COURT OF APPEAL.

UNIVERSITY OF LONDON
W.C.1.

24 FEB 1955

INSTITUTE OF ADVANCED
LEGAL STUDIES

Appellant

BETWEEN
PHILLIP RICE
AND
THE COMMISSIONER OF STAMP DUTIES *Respondent.*

RECORD OF PROCEEDINGS

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In the Privy Council.

ON APPEAL FROM THE FIJI COURT OF APPEAL.

BETWEEN

PHILLIP RICE *Appellant*

AND

THE COMMISSIONER OF STAMP DUTIES . *Respondent.*

RECORD OF PROCEEDINGS

10

No. 1.

CASE STATED by the Respondent.

IN THE SUPREME COURT OF FIJI.

No. 3 of 1952.

IN THE MATTER of the Death and Gift Duties Ordinance
(Cap. 151) hereinafter called "the Ordinance,"

and

IN THE MATTER of a certain DEED OF GIFT bearing the date
the 14th day of March, 1951, made between PHILLIP RICE
of Ba in the Colony of Fiji, Solicitor, of the one part and
MONA RICE, his wife, hereinafter called "the Donee," of
the other part.

20

Between The said PHILLIP RICE Appellant

and

THE COMMISSIONER OF STAMP DUTIES Respondent.

This is a case stated by the undersigned, the Commissioner of Stamp Duties, hereinafter called "the Respondent," in pursuance of section 59 of the Ordinance.

1. On the 14th day of March, 1951, Phillip Rice of Ba in the Colony of Fiji, Solicitor, hereinafter called "the Appellant" by deed hereunto
30 annexed as Exhibit "A" made to the Donee a gift particulars whereof are specified in the said deed.

*In the
Supreme
Court of
Fiji.*

No. 1.
Case Stated
by the
Respondent
25th
January
1952.

*In the
Supreme
Court of
Fiji.*

No. 1.
Case Stated
by the
Respondent
25th
January
1952,
continued.

2. The policy of insurance described in the schedule to the said deed and the subject of the said gift is hereunto annexed as Exhibit "B."

3. The Appellant is still alive but had he died on or immediately after the said 14th day of March, 1951, the value of the said policy together with bonuses already then accrued in respect thereof and together also with all rights, powers and remedies referred to in the said deed would have been the sum of £1,155.12.0.

4. On the 17th day of March, 1951, the Appellant by his Solicitors, Messrs. Rice and Stuart of Ba in the Colony of Fiji, wrote to the Respondent enclosing the said deed and requesting that it be stamped with a stamp to the value of £1, stating that the present value of the said policy did not exceed the sum of about £400 and claiming that in such case the said deed did not attract gift duty. A copy of the letter is attached hereunto as Exhibit "C." 10

5. On the 3rd day of April, 1951, the Respondent wrote to the Appellant enclosing the said deed stamped as required by the Appellant, as set out in paragraph 4 hereof, but requesting that the Appellant would for the purpose of record complete a form of declaration, which he enclosed, with respect to the value of the gift the subject of the said deed. A copy of this letter, together with a copy of the form which the Respondent requested the Appellant to complete, is attached hereunto as Exhibit "D." 20

6. On the 10th day of April, 1951, the Appellant by his solicitors aforesaid wrote to the Respondent claiming that under the provisions of the Ordinance and in the circumstances he was not bound to complete the form referred to in paragraph 5 hereof and asking for the Respondent's confirmation of his view. A copy of this letter is attached hereunto as Exhibit "E."

7. On the 4th day of May, 1951, the Respondent wrote to the Appellant agreeing that the contention of the Appellant as set out in paragraph 6 hereof appeared to be correct but asking that, for the purpose which the Respondent set out the Appellant supply him with the following information :— 30

- (A) the policy value ;
- (B) the amount of any bonus which might have accrued at the date of the gift ;
- (C) whether or not it was the intention of the Appellant to pay the premiums and keep up the policy.

A copy of this letter is attached hereunto as Exhibit "F."

8. On the 14th day of May, 1951, the Appellant, by his solicitors aforesaid, wrote to the Respondent, stating :— 40

- (A) that he was unable to state the exact value of the said policy but that it was between £400 and £500 ;
- (B) that the value of accrued bonuses was included in the foregoing valuation ;

(c) that it was the Appellant's intention to pay the premiums and keep up the said policy ;

and authorising the Respondent to obtain full information in regard to the value of the said policy from Messrs. Sands, Junor and Company of Fiji, the agents of the insuring company, the Australian Mutual Provident Society of Australia. A copy of this letter is hereunto annexed as Exhibit " G."

*In the
Supreme
Court of
Fiji.*

No. 1.
Case Stated
by the
Respondent
25th
January
1952,
continued.

9. On the 12th day of June, 1951, Messrs. Sands, Junor and Company aforesaid in reply to a letter from the Respondent stated that, in respect
10 of the said policy :—

(A) the sum assured was £1,000 ;

(B) the existing reversionary bonuses amounted to £155.12.0 ;

(c) the surrender value of the said policy amounted in all to £306.12.0.

A copy of this letter is hereunto annexed as Exhibit " H."

10. The Respondent being of the opinion that for the purposes of the Ordinance the value of the said policy at the date of the said gift was in the circumstances the value of the said policy on its maturity together with any accrued bonuses at such maturity, by letter dated the 21st day of
20 August, 1951, so informed the Appellant and requested him to complete a form of declaration in respect of the value of the said gift, the Respondent being of the opinion that he was entitled so to require by virtue of the provisions of section 51 of the Ordinance. A copy of this letter is attached hereunto as Exhibit " I."

11. On the 29th day of August, 1951, the Appellant by his solicitors aforesaid wrote to the Respondent declining to complete the form of declaration referred to in paragraph 10 hereof, claiming that the value of the said gift at the date thereof did not exceed £500 and that accordingly for the reason set out in his letter to the Respondent dated
30 the 10th day of April, 1951 (referred to in paragraph 6 hereof and attached hereunto as Exhibit " E ") he declined to complete the said form of declaration. A copy of this letter is attached hereunto as Exhibit " J."

12. On the 25th day of September, 1951, the Respondent being of the opinion that he was thereunto entitled by virtue of the provisions of sections 57 and 68 of the Ordinance proceeded to assess the duty payable on the said gift and so assessed it at £57.15.6 and by letter dated the 25th day of September, 1951, enclosing a notice of assessment, so informed the Appellant. A copy of this letter, together with a copy of the said notice of assessment, is attached hereunto as Exhibit " K."

40 13. On the 9th day of October, 1951, the Appellant, being dissatisfied in point of law with such assessment, submitted to the Respondent a notice in writing in accordance with the provisions of section 59 of the Ordinance requiring the Respondent to state this case for the opinion of this Honourable Court.

*In the
Supreme
Court of
Fiji.*

No. 1.
Case Stated
by the
Respondent
25th
January
1952,
continued.

14. On the part of the Appellant it is contended as follows :—

(A) that the respondent in the circumstances aforesaid neither has nor ever has had any jurisdiction to make the assessment referred to in paragraph 12 hereof, and

(B) that neither the said deed nor the gift thereby evidenced is liable to any gift duty whatsoever.

15. On the part of the Respondent it is contended :—

(A) that the Respondent had jurisdiction in the circumstances aforesaid to make the said assessment ;

(B) that in the circumstances aforesaid the said gift was and is liable to gift duty in the said sum of £57.15.6.

16. The questions of law to be decided by this Honourable Court on this case stated are as follows :—

(A) Had the Respondent in the circumstances aforesaid any jurisdiction to make the assessment of duty referred to in paragraph 12 hereof ?

(B) If so, what was the value of the said gift, at the date on which it was made, for the purposes of the Ordinance ?

(C) Is the said gift, or the said deed, liable to gift duty at any, and if so what amount ?

20

Dated the 25th day of January, 1952.

(Sgd.) R. B. ACKLAND,
Commissioner of Stamp Duties.

No. 2.
JUDGE'S NOTE OF HEARING.

Before
THE HONOURABLE THE CHIEF JUSTICE, SUVA.

*In the
Supreme
Court of
Fiji.*

No. 2.
Judge's
Note of
Hearing,
9th April
1952.

9th April, 1952.

Mr. P. Rice for the Appellant.

Mr. P. N. Dalton, Solicitor-General, for the Respondent.

By the Court : The real issue arising from this case stated is whether the value is to be taken at the present value or whether the value is
10 affected by a contingent interest.

Rice : S. 51 (1). S. 46 Proviso—value—present value at the time of making the gift. C.A. 14/1950—*Gajadhar Singh v. Commissioner of Stamp Duties*, value—price in open market. What would a person pay for it? Houseman, p. 80—surrender value.

25 Vol. E. & E. Digest, 529. Intention. 105 et seq. Incomplete gifts. 25 T.L.R. p. 250. Intention does not constitute gift.

Court had no jurisdiction to act under s. 53—no default under 51.

Jaganath v. Commissioner of Stamp Duties—C.A. 4/1947. See sec. 66. Failure to obtain valuation by official valuer fatal to Commissioner of
20 Stamp Duties.

Dalton : Alpe Law of Stamp Duties, 23rd Ed. p. 256. s. 66 no application—no disagreement as to value. Matter is covered by s. 46 and s. 15.

Rice : Reply.

There is no contingency at all—it is an out and out gift. Alpe, 23 Ed. p. 256.

Judgment reserved.

J. H. V.
C.J.

*In the
Supreme
Court of
Fiji.*

No. 3.

JUDGE'S NOTES.

Action No. 3 of 1952.

No. 3.
Judge's
Notes,
28th April
1952.

Between PHILLIP RICE Appellant
and
THE COMMISSIONER OF STAMP DUTIES Respondent.

Before

HIS LORDSHIP THE CHIEF JUSTICE, SUVA.

Monday, the 28th April, 1952.

Mr. P. Rice, the Appellant, in person. 10

Mr. P. N. Dalton, Solicitor-General, for the Respondent.

Judgment delivered.

(Sgd.) J. H. VAUGHAN,
C.J.

On the question of costs. The Commissioner would be in normal circumstances entitled to his costs, but in the particular circumstances of this case I do not think I should make any order as to costs.

J. H. V.,
C.J.

No. 4.

20

JUDGMENT.

No. 4.
Judgment,
28th April
1952.

This is an appeal by way of case stated under section 59 of the Death and Gift Duties Ordinance (cap. 151) from an assessment made by the Commissioner of Stamp Duties whereby he assessed at £57 15s. 6d. the duty payable on a gift made by the Appellant to his wife of a policy of assurance on his own life. This assessment was based, according to the Notice of Assessment on the "policy value plus accrued bonus £1,155 12s.", that is, the full amount which would become due to the donee on the death of the donor, assuming that the premiums were paid up in accordance with the terms of the policy. The Appellant contends that the value of the gift must be taken to be the present value at the time of the gift, namely, the surrender value of the policy which is agreed at £306 12s. The Respondent maintains that the interest of the beneficiary under the gift is a contingent interest and that the Commissioner correctly computed the value of the gift in accordance with the terms of subsection (1) of section 46 of the Ordinance. If the Appellant's contention is correct the gift would not attract any duty under the Ordinance and would not fall within section 51 requiring the donor to submit the statement required by that section. 30

There is no dispute between the parties either as to the surrender value at the time of the gift or as to the amount which would become due on the fully paid up policy on the death of the donor. It is also agreed that the duty if payable on this latter amount was correctly assessed at £57 15s. 6d. The dispute relates to which of the two values is the correct one for the purposes of the Ordinance. For this reason I am unable to accept the Appellant's submission that the Commissioner was bound to determine the value by a valuation made by an official valuer in accordance with the terms of section 66 of the Ordinance.

*In the
Supreme
Court of
Fiji.*
No. 4.
Judgment,
28th April
1952,
continued.

10 The relevant provisions of the Ordinance under which this matter falls to be decided are as follows :—

Section 46.—(1) For the purpose of computing the value of a gift the interests of beneficiaries, so far as those interests are affected by any contingency, shall be valued in the same manner as the contingent interests of successors in the case of succession duty, and the provisions of Part II of this Ordinance with respect to reassessment, payment of deficient duty and refund of duty paid in excess shall extend and apply accordingly to gift duty with all necessary modifications.

20 (2) Subject to the provisions of this Part of this Ordinance the value of a gift shall be deemed and taken to be the present value thereof at the time of the making of the gift.

Section 15.—(1) For the purposes of succession duty every contingency affecting the succession shall be deemed to have determined in the manner in which, in the opinion of the Commissioner, it probably will determine, and the succession shall be valued and succession duty assessed and paid accordingly.

Section 46 therefore clearly provides an alternative method of arriving at the value of a gift for the purposes of the Ordinance, and the question
30 therefore resolves itself to one simple issue, namely, whether the true value of the gift for the purposes of the assessment of duty is to be taken as the present value at the time of the gift, or whether the interest is contingent interest, in which case the Ordinance requires the value of the gift to be computed by the Commissioner in terms of subsection (1) of section 46 and section 15. The Appellant submits that there is no contingency but that the gift was an out-and-out gift. The question, however, in terms of the Ordinance is not whether the gift of the policy was subject to a contingency but whether the interest of the donee as a result of the gift is affected by any contingency ; if it is, the value of the gift for the purposes
40 of the Ordinance is not the present value at the time of the gift but the value as computed by the Commissioner, as provided by section 46 (1) and section 15.

To answer this question is a matter of some difficulty. No provisions in the English taxing acts comparable to sections 46 and 15 of the Ordinance have been brought to my notice by counsel, and I am not aware of any such provisions ; the statements in English text books to which I have been referred are therefore of little assistance, being comments upon the effects of English legislation. The question as to whether the interest of the donee under the gift is affected by any contingency depends upon the nature

*In the
Supreme
Court of
Fiji.*

No. 4.
Judgment,
28th April
1952,
continued.

and extent of the interest acquired. What then is the nature and extent of the interest acquired under this gift? I find it impossible to answer that question without prefacing the answer with a condition or premise, because the answer depends upon the happening of subsequent events. In the event of the policy being kept up by the payment of the premiums, whether by the donor or the donee or a third party, the value of the interest acquired by the donee would prove to be the full value of the policy payable on the death of the donor; on the other hand, it is open to the donee to surrender the policy at any time during its currency, and in the event of her doing so the interest acquired under the policy would be the surrender value of the policy at the time. The conclusion that the interest of the beneficiary is affected by a contingency inevitably follows. This being so, the Commissioner was bound to compute the value for the purposes of duty in accordance with the terms of sections 46 and 15 of the Ordinance. 10

It follows from my finding on this issue that the gift was one which falls within section 51 of the Ordinance, and it also follows that the answers to the questions I am required to answer on the case stated are as follows:—

(A) The Respondent had jurisdiction to make the assessment of duty referred to in paragraph 12 of the case stated.

(B) The value of the gift for the purposes of the Ordinance must be computed by the Commissioner under subsection (1) of section 46. 20

(C) The deed is liable to the duty assessed by the Commissioner namely, £57 15s. 6d.

(Sgd.) J. H. VAUGHAN,
Chief Justice.

Suva, Fiji.

28th April, 1952.

No. 5.

NOTICE OF MOTION OF APPEAL.

*In the
Fiji
Court of
Appeal.*

Civil Appeal No. 8 of 1952.

IN THE FIJI COURT OF APPEAL.

On Appeal from the Supreme Court of Fiji.

No. 5.
Notice of
Motion of
Appeal,
13th May
1952.

IN THE MATTER of " The Death and Gift Duties Ordinance " (Cap. 151)

and

10 IN THE MATTER of a certain DEED OF GIFT bearing the date the 14th day of March 1951 made between PHILLIP RICE of Ba in the Colony of Fiji Solicitor of the one part and MONA RICE his wife (hereinafter called " the Donee ") of the other part

Between the said PHILLIP RICE Appellant

and

THE COMMISSIONER OF STAMP DUTIES Respondent.

20 TAKE NOTICE that the Court will be moved on such date at the expiration of fourteen days from the date of service upon you of this notice and at such time and place as The Registrar of this Honourable Court shall in pursuance of Rule 25 of " The Court of Appeal Rules 1949 " notify by Counsel for the above-named Appellant Phillip Rice that the judgment or decision of The Supreme Court of Fiji delivered on the 28th day of April 1952 in a cause numbered as " Action Number 3 of 1952 " wherein the above-named Appellant is Appellant and the above-named Respondent is Respondent be wholly set aside or varied or modified and that the said Respondent do pay to the said Appellant his costs as taxed of and incidental to this Appeal and to the said cause upon the grounds—

30 (A) The said judgment of the learned Chief Justice of Fiji in the said cause after correctly propounding the question in the fifth paragraph thereof namely as to what was the nature and extent of the interest of the Donee under the gift therein referred to erred in concluding that such interest was affected by a contingency.

(B) In attempting to resolve such question the learned Chief Justice confused the nature and extent of such interest with the value of the same.

40 (C) The learned Chief Justice further erred in law in holding that if the Donee were to surrender the policy referred to in the said judgment during the life of the Appellant she would acquire under the said gift a different interest than if such policy were kept up by payment of premiums for the duration of such life and that for that reason the Donee's interest acquired under the said gift was not absolute but affected by a contingency.

*In the
Fiji
Court of
Appeal.*

No. 5.
Notice of
Motion of
Appeal,
13th May
1952,
continued.

(D) The learned Chief Justice erred in his finding that there was no dispute as to the amount which would become due on the said policy (which it is respectfully submitted he wrongly designated as "fully paid up") on the death of the Appellant inasmuch as—

(i) it is conceded that had such death occurred on the said 14th day of March 1951 such amount would have been £1,155 12s. but

(ii) as the Appellant was then and is still alive it is quite impossible to ascertain such amount.

(E) For the reasons stated in paragraph (D) hereof (*inter alia*) the learned Chief Justice was wrong in law in rejecting the Appellant's submission that the Respondent was bound to determine the value of the said Policy by a valuation made by an official valuer. 10

(F) The learned Chief Justice failed to answer the question submitted to him by paragraph 16 (B) of the Case Stated by the Respondent in the said cause and the statement referred to in his said judgment which purports to be an answer to such question as it is respectfully submitted an incorrect statement of law.

(G) The answers returned by the learned Chief Justice in his said judgment to the questions submitted to him by paragraphs 16 (A) and 16 (c) of the said Case Stated are each incorrect in law. 20

(H) Generally the said judgment of the learned Chief Justice was erroneous in law.

Dated this 13th day of May, 1952.

(Sgd.) RICE & STUART,
Solicitors for the Appellant.

To the above-named Respondent, The
Commissioner of Stamp Duties,
and to The Registrar.

This notice of motion is taken out by RICE & STUART, Solicitors for 30 the Appellant whose address for service is at the Chambers of the said Solicitors at Ba and also at the Chambers of their Suva Agents, Messieurs GRAHAME & COMPANY, Solicitors, Central Chambers, Suva.

No. 6.

JUDGES' NOTES OF HEARING (Mr. Justice Carew, President).

MR. JUSTICE CAREW, President.

MR. JUSTICE RABY HEATT.

MR. JUSTICE RUSSELL.

Monday, 18th August, 1952.

RICE

V.

COMMISSIONER OF STAMP DUTIES

*In the
Fiji
Court of
Appeal.*No. 6.
Judges'
Notes of
Hearing
(Mr. Justice
Carew,
President),
18th
August
1952.

- 10 The Appellant Mr. P. Rice in person.
The Solicitor-General for the Respondent.

Dalton : Is there any appeal under sec. 11 of Court of Appeal Ordinance of 1949 ?

Case stated under sec. 59 of Cap. 151.

Sec. 59—appeal to Supreme Court from assessment of Commissioner. Subsection (6). Costs of appeal.

This is an appeal by way of case stated to Supreme Court—not judge of first instance.

Don't labour point—thought should be brought to notice of Court.

- 20 *Rice* : Sec. 11 Court of Appeal Ordinance. Was C.J. sitting as judge of first instance ?

Sec. 56 of Cap. 151—nomenclature—“ appeal ” and “ appellant ” is used.

English legislation. Sec. 13 English Stamp Act 1891 54 and 55 Vict. Ch. 39.

Sec. 13 Stamp Duty—similar provision.

21st Ed. Alpe Law of Stamp Duties p. 36—words “ appeal ” and “ appellant ” used.

P. 37 Alpe—last note.

- 30 Final order or decision—Sec. 11.

Held in England—*Onslow v. Commissioners of Inland Revenue* 1890, 25 Q.B.D., p. 465—whether 30 or 14 days notice—no question of right of appeal.

English Stamp Duties Ordinance—no express right of appeal given—provision same as in our Ordinance.

National Telephone Co. v. P.M.G. 82 L.J.K.B. P. 1197, at p. 1201.

L.C. “ If the reference is one on the same footing as a reference under the general Acts, which is a reference to the Commission as a Court of Record, with a right of appeal expressly provided, this

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is decisive against the points raised in the arguments for the appellants, and I find nothing in the Act of 1909 to cut down the effect of the words at the end of section 1, which appear to me to provide for a reference to the Commission in its usual capacity. When a question is said to be referred to an established Court, without more, it, in my opinion, imports that the ordinary incidents of the procedure of that Court are to attach and also that any general right of appeal from its decisions likewise attaches."

All incidents attach—also right of appeal.

Privy Council adopted principle in *Hem Singh v. Mahant Basant Das* 10 (1936) 1 All E.R., p. 356.

P.C. *Secretary of State for India v. Sri Rajah Dhelikani Rama Rao & ors.* (1916) 85 L.J. P.C. 222.

Commissioner of Stamps Straits Settlement v. Oei Tjong Swan & ors. (1933) A.C. p. 378.

English Finance Act 1894, Sec. 10—Death Duties—now no right of appeal expressed—subsection 2. No appeal from High Court. Green Death Duties.

Dalton : Sec. 13 Court of Appeal Ordinance. Stamp Duty. Cap. 150. Sec. 44 (1) Stamp Duty—refer to Supreme Court. 20

Court : Decision on preliminary point reserved.

Hear appeal on its merits—for purpose of convenience.

Rice : What was value of policy at date of gift ? Payable at death. Surrender value at date of gift.

Sec. 51 Cap. 151—value not less than £1,000—less than £1,000 exempt. Value not determined.

Gajadhar Singh Civ. App. 14/1950—market value.

Value now means market value. What price the insurance policy would fetch in open market at date of gift ?

Sec. 46 (2) Cap. 151. 30

Assessed market value at full amount assuming assured died.

True value surrender value.

C.J.'s judgment, 3rd para. Record p. 7. No gift duty in England. Stamp duty on gift documents—no document no duty.

Seletto's Law of Gift Duty 2nd Ed. bottom page 2, p. 4.

In England the instrument would have been stamped as voluntary assignment.

Houseman—3rd Ed. p. 80—surrender value—on policy in England.

P. 2 of record, para. 7 case stated—my contention accepted—letter Ex. " F ", p. 31, Ex. " I ", p. 34, para. 3—" . . . to keep up the premiums." 40

Ex. " F " para. 3, p. 31—reply Ex. " G " last para. p. 32, no obligation to pay the premiums—merely an intention.

Deed of Gift, p. 24 of Record. No covenant to pay future premiums. Intention to pay premiums no legal obligation. Intention to make a gift is not a gift.

*In the
Fiji
Court of
Appeal.*

Questions in case stated—

(a) No jurisdiction—purporting to act under sec. 57—Ex. “ K ”, p. 35 Record. No default under sec. 51. Value less than £1,000.

Jaganath v. Commissioner of Stamp Duties Civ. App. No. 4/1947, last para. p. 3 judgment. Policy should have been valued by official valuer before acting under sec. 57.

10

(b) Surrender value.

(c) Less than £1,000—exempt from duty.

No. 6.
Judges’
Notes of
Hearing
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Section 52—impound instrument.

Case stated—paras. 4 and 5. Commissioner should have impounded instrument. Violating 52 (1) by charging stamp duty if he charged gift duty.

Cap. 151, sec. 68—further assessment—similar section in the Australian law—sec. 22 Aust. Act.

Selleto’s Gift Duty 2nd Ed., p. 67.

20 Agreement by Commissioner of Stamp Duties to stamp instrument for £1. Appellant will be charged £1 too much if Commissioner of Stamp Duties’ view correct.

Maxwell 8th Ed., pp. 250, 251—twice taxed.

Error of Commissioner of Stamp Duties—contingent interest—vested interest—sec. 46 (1), Cap. 151—interest here is absolute—not affected by any contingency.

Sec. 46—states difference between vested and contingent.

Salmond on Jurisprudence, 5th Ed., p. 232. Interest perfect or conditional.

30 Selleto—p. 61, sec. 18 of Australian act—same as our sec. 46—contingency p. 62.

Sec. 46, subsection (2)—

Subsection (1) reduce a contingent interest to notional vested interest.

Judgment p. 7 of Record—no alternative.

Privy Council—*Commissioner for Stamp Duties of the State of N.S.W. v. Perpetual Trustee Co. Ltd.*, (1943) 1 All E.R. p. 525—p.527-530 — “ Vested and contingent interests.”

P. 8 of record (b) incorrect.

Dalton : C.J.’s answers are correct.

40 What is the value of gift for purposes of duty under the Ordinance ? Subsection (2) of sec. 46—governed by subsection (1).

Sec. 15 (1) and subsection (3).

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No. 6.
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President),
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continued.

Contingency is if premiums kept paid—value of gift will be £1,000 plus accrued bonuses—if not paid value will be surrender value.

Contingency is a thing dependent upon an uncertain event.

Halsbury Vol. 34 p. 375—conditional gifts—para. 419—until interest ascertainable.

Sec. 15 (1) assessment as he thinks it will work out—if it does not so work out can reassess.

Sec. 66—no dispute between Commissioner and appellant to call a valuer under sec. 66—not bound.

Value of policy is clear—question of assessment in dispute—nothing 10 for valuer to determine.

Sec. 52—when £1 duty charged Commissioner did not know value of policy—did not exceed £400.

Commissioner can refund under sec. 70.

Sec. 52 does not preclude Commissioner when he knows all facts—can't impound instrument till he does know all the facts.

Interest to donee in the gift—an absolute gift—but what is the value of it—is it affected by a contingency ?

An estate or interest is contingent until the estate or interest becomes ascertainable. 20

Sections 52 and 66 do not affect this case.

Rice : Page 2 of Record.

Section 15 (6) same as subsection (2) of 46.

Deed of gift is precise.

Page 24 of record—gift—absolute and ascertained.

Section 66—in a dispute—value of policy ?

Surrender value—Commissioner's value.

£1 stamp duty—Commissioner then knew all facts. See Ex. "C," p. 27 Record.

Refund—is for a refund of Death and Gift Duty, not Stamp Duty. 30

If it is an out and out gift as Solicitor-General states it cannot be affected by a contingency.

C.A.V.

W. D. CAREW.

22nd August, 1952.

Judgment delivered.

Appeal dismissed.

Costs of Appeal to be paid by Appellant.

Gajadhar (for Rice) : States that he proposes to appeal to the Privy Council and in the meantime he opposes costs. 40

W. D. CAREW,
Acting Chief Justice,
President.

Mr. Justice Raby-Hieatt.

Dalton : Preliminary point—any right of appeal under sec. 11 of Court of Appeal Ordinance ?

This case was on case stated under sec. 59 of Cap. 151. Submits no right of appeal.

Rice : Submits C.J. was sitting as judge of first instance. Refers to sec. 13 Stamp Act 1891—(21st Ed. Alpe's Law of Stamp Duties—p. 36)—sec. 13 similar to Fiji sec. 59.

10 *Onslow v. Commissioners of Inland Revenue* (1890) 25 Q.B.D., p. 465—taken for granted in that case that there was a right of appeal.

No express right of appeal given in local Ordinance nor in Stamp Duties Act, where appeals are allowed.

Submits that where statute provides reference to Court of Record, all procedures of that Court are implied.

Hem Singh v. Mahant Basant Das (1936) 1 All E.R. p. 356 (P.C. case) principle supporting above submission.

Secretary of State for India v. Sri Rajah Chelikani Rama Rao and ors. (1916) 85 L.J. P.C. case p. 222. ditto.

20 *Commissioner of Stamps Straits Settlement v. Oei Tjong Swan & ors.* (1933) A.C., p. 378. ditto.

In subsequent English legislation on other revenue matters, significant that right of appeal is expressly excluded.

Dalton : Sec. 13 of Ordinance. Court cannot grant new trial on question of amount of stamp duties. Sec. 44 (1) Cap. 150 (p. 1593) Stamp Duties Ordinance.

Ruling : Court reserves judgment on preliminary point—will hear appeal on merits and decide later.

30 *Rice* : Question is what was value of gift at date of gift. Whole life policy. Surrender value was £306.12.0 at date of gift. Sec. 51 Cap. 151—only when value of gift is £1,000 or over that statement is required—gifts below exempt.

“ Value ” not defined in Ordinance.

Gajadhar Singh v. Commissioner of Stamp Duties (Civ. App. 14 of 1950) held that “ value ” meant “ money value.” Submits “ value ” in this case means “ market value.”

Sec. 46 (2) of Cap. 151.

Commissioner puts market value as value if appellant had died at time of gift.

Submits true value was surrender value.

40 Refers to Seletto's Gift Duties (Australian text book).

Duty payable on this deed in England would have been on value of property transferred—normally surrender value.

Refers to para. 7 of case stated (p. 2 of record)—Commissioner first agreed Rice's contention. Changed his mind at para. 2 of Ex. “ I ”

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*National
Telephone
Co. v.
P.M.G.
(1882) L.J.
K.B.
p. 1197.*

Finance
Act 1894
sec. 10.

Houseman
on Life
Ass. 3rd
Ed., p. 80.

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Fiji
Court of
Appeal.*

No. 6.
Judges'
Notes of
Hearing
(Mr. Justice
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1952,
continued.

(p. 34 of record). Intention to make gift in future is no gift. Intention to pay premiums in no way binding. Deed of gift—no covenant to pay premiums. Each payment of premium is a separate gift.

Refers to questions in case stated p. 3.

(A) Submits no jurisdiction. Commissioner says he acts under Sec. 57 of Cap. 151. (See Ex. " K " Record, p. 35)—no jurisdiction because there was no default—gift less than £1,000.

Also see *Jaganath v. Commissioner of Stamp Duties* (Civ. App. 4 of 1947). On other hand, Commissioner had no power—there was disagreement as to value and value should therefore have been 10 settled by official value under sec. 66 of Cap. 151.

(B) Already dealt with—surrender value. Refers also to sec. 52 (particularly (2))—Commissioner *shall* impound.

Refers to paras. 4 and 5 of case stated, p. 2 Record. If any duty had been payable—Commissioner should have impounded.

If Commissioner claims gift duty—he violates sec. 52 (1) by stamping at £1 under Stamp Duties Ordinance (Cap. 150).

Refers to Sec. 68 (1) under which Commissioner seeks to cover above.

Submits that there was in fact agreement between Commissioner and donor as to value (by accepting as less than £1,000 value) and he is bound 20 by that agreement.

C.J. erred in considering that interest was affected by a contingency.

Interest in this case is absolute—see deed of gift.

Sec. 46 (1) propounds difference between " vested " and " contingent " interests. Cites Salmond on Jurisprudence, 5th Ed., p. 132.

Refers to similar Australian legislation. Seletto pp. 62–63.

Refers to judgment, p. 7 Record—C.J. was wrong in saying there were alternative ways of valuing—(1) and (2) of sec. 46 deal with different types of gifts.

1943 1 All E.R., p. 525—*Commissioner for Stamp Duties of the State* 30 of *N.S.W. v. Perpetual Trustees Co. Ltd.* at p. 530—difference between vested and contingent.

True value was surrender value.

Solicitor-General : Submits C.J. answered questions correctly. What is value of gift for purpose of Ordinance ?

Refers to sec. 15 (1) and (3) of Cap. 151.

Contingency here is payment of premiums and value will then be £1,000 and bonuses—if no premiums paid—surrender value.

Refers to definition of contingency in Oxford Dictionary.

Halsbury Vol. 34 p. 375, para. 419—gift remains contingent until 40 property passes and precise interest ascertained.

Commissioner should assess in manner he thinks contingency will happen—if it does not, he is under duty to reassess.

There has been no dispute between Commissioner and donor necessitating valuer under sec. 66—sec. 66 gives power to Commissioner—not obligation—to refer to valuer.

When Commissioner stamped at £1 he did not know value of policy and had no details.

Sec. 52 does not preclude Commissioner from making proper assessment when he knows all the facts. He cannot impound until he does know all facts.

Dearth of authorities—necessary for Court to interpret sec. 46 (1).

Submit C.J. was correct in judgment on p. 7 Record.

Interest is absolute gift—but what is value? Submit that ss. 52 and 66 do not affect case.

10 *Rice*: Refers to para. 10 of case stated, p. 3 Record. Subsection (6) of 15 is same as 46 (2).

Halsbury 34 p. 375—precise interest—deed of gift could not be clearer.

Value is required under sec. 66—disagreements as to values.

Referred to remarks of Solicitor-General not applicable—different Ordinances.

22nd August, 1952. Ruling on non-admissibility of appeal read.

A.R.H.

*In the
Fiji
Court of
Appeal.*

No. 6.
Judges'
Notes of
Hearing
(Mr. Justice
Raby-
Heatt),
18th
August
1952,
continued.

Mr. Justice Russell.

20 *Dalton*: Preliminary point. Is there any right of appeal? Court of Appeal Ordinance, sec. 11. Mr. Justice Russell.

Case stated.

Sec. 59 of Vol. 2. From wording of sec. 59 the appeal is one by way of case stated and he is therefore not a Judge of first instance.

Rice: Whole question is whether C.J. was a Judge sitting in first instance.

English law. Sec. 13 of English Stamp Act 1891, 54 and 55 Vict. Ch. 39. Sec. 13 deals with stamp duty.

21st Ed. *Alpe Law of Stamp Duties*, pp. 36 and 37. Appeal comes under sec. 11 (2).

30 *Onslow v. Commissioners of Inland Revenue* (1890), 25 Q.B.D., p. 465. There principle is when matter is referred to Court of Record there should be right of appeal.

National Telephone Co. v. P.M.G., 82 L.J.K.B., p. 1197, p. 1201.

Hem Singh v. Mahant Basant Das (1936) 1 All E.R., p. 356.

Secretary of State for India v. Sri Rajah Chelikani Rama Rao & ors. (1916) 85 L.J. Privy Council, p. 222.

Commissioner of Stamps Straits Settlement v. Oei Tjong Swan & ors. (1933) A.C., p. 378.

Dalton: In reply.

40 Sec. 13 Appeal Court Ordinance. Sec. 44 Stamp Duties Ordinance.

*In the
Fiji
Court of
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continued.

Sec. 59 says he is sitting as Judge of appeal.

Decision : Preliminary point reserved and we decide to hear appeal on its merits.

Rice : Salient question is what was value at date of gift, on 14.3.51. A whole life policy. Surrender value £306.12.0.

Sec. 51 Death and Gift Duties Ordinance, p. 1641, Vol. 2. Word "value" not defined in Ordinance. What does "value" mean?

Gajadhar Singh v. Commissioner of Stamp Duties, Civ. App. 14 of 1950. Held value meant market value. What value would it bring in open market? 10

Sec. 46 subsection (2). Commissioner puts market value at full value as if death had occurred.

Surrender value is true value.

No gift duty but stamp duty is payable upon amount of gift. 2nd para. of Gift Duty (Australian) pp. 2 and 4. Instrument would have been taxable as voluntary disposition. Duty normally assessed on surrender value which is accepted as true value.

Intention to pay premium can be changed at any moment. Deed of gift contains nothing as to payment of future premiums. Another gift is made every time a premium is paid. 20

Page 3 of Record. Question. Commissioner purported to act under sec. 57. Commissioner no jurisdiction under sec. 57 as no default under sec. 51 as value of gift less than £1,000.

Jaganath v. Commissioner of Stamp Duties Civ. App. 4 of 1947, p. 3 last para. Commissioner should have appreciated official values. Sec. 66 Death & Gift Duties Ordinance, Cap. 151.

Section 52 Death & Gift Duties Ordinance. Commissioner's duty to impound the instrument. He has violated sec. 52 (1) and (2).

Section 68 deals with further claims.

Sec. 22 Australian Ordinance, p. 67. *Selleto*. 30

Interest was not a contingent interest or interest affected by contingency.

Sec. 46 (1). Interest has to be affected by contingency. Absolute gift and without any qualification whatsoever.

Sec. 46 (c) propounds difference between the vested and contingent interest.

Sec. 18 Australian Act. Correct way to value is under subsection (2) of interest absolute.

Commissioner for Stamp Duties of the State of N.S.W. v. Perpetual Trustee Co. Ltd. (1943) 1 All E.R., p. 525 at p. 530. 40

C.J. confused interest improperly with value. The interest acquired would be the surrender value. The real value is surrender value.

Dalton : Answer to case stated correct. No dispute as to facts. Sole question is what was value for purposes of duty under Ordinance. Sec. 46 subsection (2) governed by subsection (1). Section 15 (3).

Commissioner has duty to re-assess. There is a contingency ; if premiums are paid value is £1,000 plus. If premiums not paid £306.

Acting as dependant on an uncertain event.

Halsbury Vol. 34 p. 375. Contingent until interest is attainable.

Sec. 15 (1). If contingency not determined in probably every case he will determine it is his duty to re-assess.

Sec. 66. Never any dispute which would necessitate calling in a valuer. Commissioner *may* call in valuer. When Commissioner levied stamp duty he did not know value of property.

- 10 Sec. 32 in no way precluded Commissioner from making a proper assessment when he knew all the facts. He cannot impound an instrument until he does know all the facts.

The interest of beneficiary is a gift, it is an absolute gift but what is the value of gift ?

Estate or interest still contingent.

Sections 52 and 66 do not affect the case.

Rice : In reply.

Para. 10 of case stated.

Section 15. Subsection 6.

- 20 Halsbury 34 p. 375. Deed of gift was absolute. No provision for refund under Stamp Duties Ordinance.

Adjourned for Judgment.

T. T. R.

22nd August, 1952.

Judgment read dismissing appeal.

Application by Gajadhar to postpone payment of costs in view of appeal to Privy Council refused.

T. T. R.

*In the
Fiji
Court of
Appeal.*

No. 6.
Judges'
Notes of
Hearing
(Mr. Justice
Russell),
18th
August
1952,
continued.

JUDGMENT.

Civil Appeal No. 8 of 1952.

No. 7.
Judgment,
22nd
August
1952.**IN THE FIJI COURT OF APPEAL.**

On Appeal from the Supreme Court of Fiji.

Between PHILLIP RICE Appellant

and

THE COMMISSIONER OF STAMP DUTIES Respondent.

This is an appeal from a judgment of the learned Chief Justice wherein he made certain findings in favour of the Respondent upon a matter which 10 came before him on appeal by way of case stated, under section 59 of the Death and Gift Duties Ordinance, Cap. 151, from an assessment made by the Commissioner of Stamp Duties under section 51 of the Ordinance. He assessed at £57 15s. 6d. the duty payable on a gift made by the Appellant to his wife on a policy of assurance on his own life.

The Solicitor-General, for the Respondent, at the hearing before this Court raised the preliminary question as to whether there was a right of appeal to this Court which is constituted under the Court of Appeal Ordinance, 1949.

The Supreme Court of Fiji, as constituted by the Supreme Court 20 Ordinance, Cap. 2, is a superior court of record and has all the jurisdiction, powers and authorities which are vested in or capable of being exercised by His Majesty's High Court of Justice in England, in addition to any other jurisdiction conferred upon it by any other Ordinance. In England the jurisdiction of the High Court is both original and appellate and the appellate jurisdiction of a single judge is exercised in many matters, and the jurisdiction of a single judge of the Supreme Court of Fiji is similarly both original and appellate.

The relevant section of the Court of Appeal Ordinance, 1949, which 30 confers the right of appeal from the Supreme Court to this Court, reads as follows :—

“ 11. An appeal shall lie in any cause or matter, not being a criminal proceeding, to the Court of Appeal from a single Judge of the Supreme Court of Fiji sitting in first instance in the following cases—

- (a) from all final orders, judgments and decisions provided that no appeal shall lie except by special leave of the Judge of first instance or of the Court of Appeal from an order made by consent or as to costs only.”

The Solicitor-General argued that as the Chief Justice was hearing an 40 appeal by way of case stated from an assessment of the Commissioner of Stamp Duties he was not sitting as a judge of first instance.

We are of the opinion that the matter came before the learned Chief Justice sitting as a single judge in his appellate jurisdiction and that he was not sitting as a judge of first instance. However desirable it may be that an appeal should lie to this Court, we think that we are bound to hold, on the wording of the section quoted above, that no appeal lies to this Court from a decision of a single judge of the Supreme Court under section 59 of the Death and Gift Duties Ordinance, Cap. 151.

*In the
Fiji
Court of
Appeal.*

No. 7.
Judgment,
22nd
August
1952,
continued.

This Court has therefore no jurisdiction to entertain this appeal, and the costs of these proceedings must be paid by the Appellant.

10

(Sgd.) W. D. CAREW,
Acting Chief Justice,
President.

(Sgd.) A. RABY HEATT,
Judge.

(Sgd.) T. T. RUSSELL,
Judge.

Suva, Fiji.
22.8.52.

No. 8.

20

NOTICE OF MOTION FOR LEAVE TO APPEAL.

No. 8.
Notice of
Motion for
Leave to
Appeal,
10th
September
1952.

TAKE NOTICE that this Honourable Court will be moved on Friday the 12th day of September 1952 at 2.45 o'clock in the afternoon or so soon thereafter as Counsel may be heard by Mr. K. C. Gajadhar Counsel for the above-named Appellant for an order granting leave to appeal to Her Majesty in Council from the judgment of this Honourable Court dated the 22nd day of August, 1952.

UPON THE GROUNDS (*inter alia*) that the said judgment is erroneous in law.

30 AND that the value of the property which is the subject of the claim in this action is more than FIVE HUNDRED POUNDS (£500.0.0) sterling AND FURTHER that the question involved is of great general and public importance.

Dated this 10th day of September, 1952.

(Sgd.) K. C. GAJADHAR,
Solicitor for the Appellant.

To : The Commissioner of Stamp Duties

And to : The Solicitor-General Suva.

JUDGES' NOTES OF HEARING of Motion for Leave to Appeal.

In Chambers before Mr. JUSTICE CAREW,
Acting Chief Justice, President.

12th September, 1952.

No. 9.
Judge's
Notes of
Hearing
of Motion
for Leave
to Appeal,
12th
September
1952.

Mr. Gajadhar for the Appellant, instructed by Rice & Stuart.

Mr. P. N. Dalton, Solicitor-General, for the Respondent.

Gajadhar : Applies for leave to appeal on grounds set out in motion.

Rule 2 (a) (6)—Rules 31/5/10.

Dalton : Rule 2 (a) appeal as of right—if property is more than £500 10 he can go to P.C. without leave—do not agree to the value.

Amendment of 26/6/50 is an error—rule 2 (a) should read 2 (b).

Should not deal with application under rule 2 (a).

Rule 2 (b) discretion—no great general or public importance in this case.

Daily Telegraph Newspaper Co., Ltd. v. McLaughlin—1904 A.C. : p. 776—great public importance ; p. 779—L. Macnaghten.

Question of law. P.C. Practice Bentwich, 3rd Ed., p. 118.

Brown v. McLaughan, S.A. 1870, 7 Moo. (N.S.) 306.

Ex parte Gregory—1901 A.C., p. 128. If point of law is whether there 20 is a right of appeal to the Court of Appeal of Fiji—matter for discretion.

Value only about £50—the stamp duty.

ORDER :—

1. Leave to appeal on point of law of general importance.
2. Security £500 sterling within three months.
3. Record to be prepared and despatched within three months.

Costs to abide event.

W. D. CAREW.

No. 10.

ORDER granting Leave to Appeal and Order for Security for Costs.

*In the
Fiji
Court of
Appeal.*

Civil Appeal No. 8 of 1952.

IN THE FIJI COURT OF APPEAL.

On Appeal from the Supreme Court of Fiji.

No. 10.
Order
granting
Leave to
Appeal and
Order for
Security for
Costs, 12th
September
1952.

IN THE MATTER of " The Death and Gift Duties Ordinance " (Cap. 151) and

10 IN THE MATTER of a certain DEED OF GIFT bearing the date the 14th day of March 1951 made between PHILLIP RICE of Ba in the Colony of Fiji Solicitor of the one part and MONA RICE his wife (hereinafter called " the Donee ") of the other part.

Between The said PHILLIP RICE Appellant

and

THE COMMISSIONER OF STAMP DUTIES Respondent.

BEFORE :

The HONOURABLE MR. JUSTICE CAREW,
Acting Chief Justice.

In Chambers.

20 *Friday the 12th day of September, 1952.*

30 UPON READING the notice of motion herein AND UPON HEARING Mr. K. C. Gajadhar of Counsel for the Appellant AND UPON HEARING Mr. Dalton Solicitor-General of Counsel for the Respondent IT IS ORDERED that the Appellant be at liberty to appeal to Her Majesty in Council from the judgment of this Honourable Court herein dated the 28th day of August, 1952 UPON CONDITION that the Appellant within three months from the date hereof enter into good and sufficient security to the satisfaction of this Honourable Court in the sum of FIVE HUNDRED POUNDS (£500.0.0) sterling for the due prosecution of the appeal and the payment of all such costs as may become payable to the Respondent in the event of the Appellant not obtaining an order granting final leave to appeal or the appeal being dismissed for non prosecution or in the event of Her Majesty in Council ordering the Appellant to pay the Respondent's costs of the appeal AND UPON CONDITION that the Appellant within three months from the date of this order shall take the necessary steps for the purpose of procuring the preparation of the record and despatch the same to England.

By the Court.

(Sgd.) G. YATES,
Registrar.

Exhibits.

Exhibit A.

Deed of
Gift, 14th
March
1951.**EXHIBITS.**

Exhibit "A."

DEED OF GIFT.

THIS INDENTURE made the fourteenth day of March One thousand nine hundred and fifty-one Between PHILLIP RICE of Ba in the Colony of Fiji Solicitor (hereinafter called "the Donor") of the one part and MONA RICE his wife (hereinafter called "the Donee") of the other part WHEREAS the Donor is the owner of the Policy of Assurance more particularly described in the Schedule hereto AND WHEREAS the Donor is desirous of making a gift of the same to the Donee NOW THIS INDENTURE 10
WITNESSETH that in pursuance of the premises and In Consideration of the natural love and affection which He the Donor Doth bear unto the Donee He The Donor for himself and his executors administrators and assigns DOTH HEREBY GIVE GRANT CONVEY ASSURE AND ASSIGN unto the Donee ALL THAT the said Policy of Assurance TOGETHER with the bonuses already accrued in respect thereof and also all future bonuses yet to accrue in respect thereof and all rights powers and remedies of whatsoever nature appertaining or ancillary to the said Policy To HOLD the same Unto the Donee her executors administrators and assigns absolutely AND THIS INDENTURE FURTHER WITNESSETH that She the 20
Donee (testified by her execution hereof) DOTH HEREBY ACCEPT such gift.

IN WITNESS WHEREOF these presents have been executed the day and year first hereinbefore written.

THE SCHEDULE.

All that the Policy of Assurance on the Life of the Donor issued by The Australian Mutual Provident Society under its Table A as Number 1164543 which said Policy is dated the 19th day of July 1939 and the annual Premium in respect of which is the sum of £34.9.2.

Signed Sealed and Delivered by the said } P. RICE 30
Phillip Rice as Donor in the presence of }

H. DELBRIDGE,
Minister of Religion,
Namosau, Fiji.

Signed Sealed and Delivered by the said } M. RICE
Mona Rice as Donee in the presence of }

H. DELBRIDGE,
Minister of Religion,
Namosau, Fiji.

Exhibit " B. "

LIFE ASSURANCE POLICY.

Exhibits.

Exhibit B.

Participating Policy.

Life
Assurance
Policy,
19th July
1939.

AUSTRALIAN MUTUAL PROVIDENT SOCIETY

No. 1164543

Sum Assured

Table A.

£1,000.

Head Office : 87 PITT STREET, SYDNEY.

IN PURSUANCE of the Proposal for this Policy and of the Declaration or Personal Statement made in connection therewith, dated respectively the
 10 fourth day of March 1939 and the sixth day of March 1939 which together are hereby declared to be the basis of and shall be held to form part of this Contract, and in consideration of the payment by the Assured whose name is set out in the Schedule hereto of the Premium specified in the said Schedule and on the days therein specified in each year during the life of the said Assured, the AUSTRALIAN MUTUAL PROVIDENT SOCIETY (hereinafter called the Society) will subject to the Conditions hereunder specified and any further Conditions endorsed hereon, which shall be held to form part of this Policy) on the death of the said Assured pay to
 20 his/her Executors, Administrators or Assigns on production of this Policy duly discharged, the sum assured specified in the said Schedule.

The risk under this Policy commences from the twenty-second day of April 1939.

CONDITIONS.

1. The sum assured specified in the said Schedule shall not become payable until proof of the age, indentity, and death of the Assured has been furnished to the satisfaction of the Society's Board of Directors.

2. Provided always that if the specified Premiums or any one of them be not duly paid on the days named or within one calendar month thereafter (subject as hereinafter mentioned), or if the aforesaid Proposal or Declaration or Personal Statement shall be found to be fraudulently
 30 untrue in any particular, or if the Assured shall whether sane or insane, die by his-her own hands within one year and thirty days from the commencement of the risk, as defined by this Policy or as fixed by the Society on any reinstatement thereof, then, and in any such case, this Policy shall be void and the benefits assured shall be forfeited, and all claims on or interest in the assets of the Society shall cease and determine and any Premiums paid in respect thereof shall be retained by the Society. Provided always that should any other person or persons have a bona fide interest in this Policy (in the event of the Assured dying as aforesaid),
 40 acquired for value in money or money's worth, the funds of the Society shall be liable to pay to such person or persons an amount equal to such interest, if the sums assured will admit, but no more.

Exhibits.
 ———
 Exhibit B.
 ———
 Life
 Assurance
 Policy,
 19th July
 1939,
continued.

3. Provided further that if this Policy be kept in force for two (2) years from the commencement of the risk, the non-payment of any subsequent Premium shall not void the same so long as the surrender value, as fixed by the Board, after deduction of any loan or charge thereon, is sufficient for the payment of any such subsequent Premium. The Board may appropriate a sufficient portion of such surrender value towards the payment of any Premium due, and any sum so appropriated shall bear compound interest at such rate as the Board shall determine, and shall be a charge upon the Policy and may be deducted from any moneys payable under the Policy.

10

4. Provided further that the assets of the Society shall alone be liable under this Policy, and that the Assurance hereby made shall at all times and under all circumstances be subject to the Act of Incorporation and By-laws for the time being of the Society.

5. Provided further that if the Assured shall die in consequence of an accident in or to an aircraft in which he/she was other than a passenger or in or to a submarine vessel engaged in submerging operations on which vessel he/she was employed, the Society shall not be liable to pay any sum in respect of this Policy in excess of the net surrender value of this Policy as fixed by the Board at the time of such death. Provided, however, that the Society may, in writing, extend the benefits of this Policy to cover either or both of the aforesaid risks on condition that an extra Premium is paid by the Assured.

6. Provided further that the Society shall at the request in writing of the Executors or Administrators of the Assured apply the whole or a part of the moneys assured and bonuses (if any) under the sole control or disposition of the Assured at the death of the Assured in or towards payment direct to the proper Authority or Department of Government of duty payable in respect of the estate of the Assured after grant and before delivery of Probate or Letters of Administration, but Probate or Letters of Administration must be produced to the Society before payment of the residue (if any) of the said moneys to the Executors or Administrators. Provided, however, that before payment by the Society of the said duty or any part thereof the Society shall not be concerned to inquire whether any other assets or moneys of the Assured are available for that purpose or as to the contents of the Will (if any) of the Assured and shall not incur any liability by reason of such payment.

7. All premiums payable under this Policy shall be paid, all claims thereunder made, and all moneys assured or contracted to be paid by this Policy shall be paid at the principal office of the Society in the State or Country in which this Policy is for the time being registered.

8. This Policy entitles the Assured, his/her Executors, Administrators or Assigns to participate in any surplus of the Society which may be distributed as reversionary additions to participating Policies.

THE SCHEDULE.

Name of the person whose life is assured	PHILLIP RICE of BA, FIJI, SOLICITOR.
Yearly Premium payable in advance	£34. 9. 2.
Premiums payable	on the twenty-third day of April.
Sum Assured	£1,000. One thousand pounds.

Exhibits.

Exhibit B.
 Life Assurance Policy, 19th July 1939, *continued.*

Dated at Sydney this nineteenth day of July One Thousand Nine Hundred and Thirty-Nine.

10

For and on behalf of
 AUSTRALIAN MUTUAL PROVIDENT SOCIETY.

(Sgd.)

Director.

(Sgd.)

pro Secretary.

Examined (Init.) AGE ADMITTED.

(Sgd.) *pro* Manager.

Entered (Init.) 1 Dec. 1949 Ex'd.

 Exhibit "C."

LETTER : Rice and Stuart to Commissioner of Stamp Duties.

RICE & STUART
 20 Barristers & Solicitors.

Box 14, BA. FIJI
 17th March, 1951.

The Commissioner of Stamp Duties
 SUVA.

Exhibit C.

Letter :
 Rice and Stuart to
 Commissioner
 Stamp
 Duties,
 17th March
 1951.

Dear Sir,

Deed of Gift—P. Rice to M. Rice.

We enclose herewith this Deed together with our cheque to yield you £1, and we should be glad if you would please stamp the Deed for that sum. For your information we should explain that the present value of the Insurance Policy concerned does not exceed the sum of about £400,
 30 and hence the Deed will not attract gift duty.

Yours faithfully,
 RICE & STUART.

Encl.

Exhibits.

Exhibit " D."

Exhibit D.

LETTER : Commissioner of Stamp Duties to Rice and Stuart.

Letter :
Com-
missioner
Stamp
Duties to
Rice and
Stuart,
3rd April
1951.

2984.

3rd April, 1951.

Gentlemen,

re Deed of Gift P. Rice to M. Rice

The Deed referred to above which accompanied your letter dated the 17th March has been stamped as requested by you, and returned, but for the purpose of record I shall be grateful if you will complete the attached form and also provide me with a certified copy of the Deed referred to above. 10
No stamp duty is payable on the Declaration or Certified copy.

Yours faithfully,

R. C.

for Commissioner of Stamp Duties.

Messrs. Rice & Stuart,
Solicitors,
Box 14,
B A.

ATTACHMENT to Exhibit " D."

Exhibit D
(attach-
ment).

FORM N 20

DEATH AND GIFT DUTIES ORDINANCE (CAP. 151).—PART IV.

Attach-
ment to
Letter :
Com-
missioner
Stamp
Duties to
Rice and
Stuart,
3rd April
1951.

STATEMENT TO BE DELIVERED TO THE COMMISSIONER OF STAMP DUTIES BY DONOR WITHIN ONE MONTH (OR BY BENEFICIARY OR TRUSTEE WITHIN FOURTEEN DAYS AFTER DEFAULT BY DONOR SO TO DO) AFTER THE MAKING OF ANY GIFT WHICH IS SUBJECT TO GIFT DUTY, OR THE VALUE OF WHICH IS NOT LESS THAN £1,000, PURSUANT TO SECTIONS 51 AND 53 OF THE ABOVE ORDINANCE.

Register No...... *Folio*.....

Date of gift
Name of donor.....
Name of beneficiary..... 30
Name of solicitor (if any) filing statement.....
Address for service

DECLARATION.

I,.....
do solemnly and sincerely declare :—

1. That the statement hereunder written, and marked A, contains true and full particulars of all property both real and personal comprised in the gift of the above-mentioned date made by the above-named donor to the above-named beneficiary.

2. That the value of the property set forth in such particulars is to the best of my knowledge and belief the true and full value of the said property as at the time of the making 40
of the gift of such property.

3. That to the best of my knowledge and belief the said beneficiary is not entitled as against the donor or any other person, or as against any other property, to any available right of indemnity or contribution in respect of the encumbrances affecting the said property as set out in such statement.

Exhibits.
—
Exhibit D
(attachment).

4. That with the exception of gifts made in good faith as part of the normal expenditure of the above-named donor and not exceeding £200 in the aggregate in favour of any one beneficiary in the course of one calendar year, no other gift, whether to the same or any other beneficiary, has been made by the above-named donor at the same time or within the space of twelve months before or after the date of the gift above referred to
10 [other than the gifts of which particulars are set out in the statement hereunder written, and marked B, and the particulars set out in that statement are true].

—
Attachment to
letter :
Com-
missioner
Stamp
Duties to
Rice and
Stuart,
3rd April
1951,
continued.

5. That the document attached hereto, and marked C, is [a true copy of] the instrument creating or evidencing the said gift made on the date first above-mentioned.

And I make this solemn declaration conscientiously believing the same to be true, and by virtue of the Statutory Declarations Act 1835.

20 Declared at....., by the
said.....
this.....day of.....
one thousand nine hundred and.....
before me—

.....
A Commissioner.

A

PARTICULARS AND VALUE OF PROPERTY COMPRISED IN THE GIFT HEREINBEFORE REFERRED TO.

(NOTE.—Schedules Nos. 1 to 26, as may be applicable, may be annexed hereto for the purpose of supplying full particulars.)

Date of Gift	Particulars of Property	Consideration (if any)	No. of Schedule (if any)	Value, irrespective of consideration		
Total amount of consideration, £			Total Value, £			

30 PARTICULARS OF ENCUMBRANCES EXISTING UPON THE PROPERTY COMPRISED IN THE GIFT HEREINBEFORE REFERRED TO AS TO WHICH THERE IS NO RIGHT OF INDEMNITY AGAINST THE DONOR OR ANY OTHER PERSON OR ESTATE.

Date of Encumbrance	Name of Person holding Encumbrance	Nature of Encumbrance and Property charged therewith	Amount secured		
£					

B

Exhibits.

Exhibit D
(attach-
ment).

Attach-
ment to
Letter :
Com-
missioner
Stamp
Duties to
Rice and
Stuart,
3rd April
1951,
continued.

PARTICULARS OF OTHER GIFTS MADE AT THE SAME TIME OR WITHIN TWELVE MONTHS BEFORE OR AFTER THE DATE OF THE ABOVE-MENTIONED GIFT.

ASSESSMENT OF GIFT DUTY.

Total value of gifts	£.....
Less amount of encumbrances	£ ..
Less amount of any consideration paid by beneficiary	£ ..
Amount dutiable	£ ..
Duty on £....., at £..... <i>per centum</i>	£ ..

.....
Commissioner of Stamp Duties. 10

Exhibit E.

Exhibit "E."

LETTER : Rice and Stuart to Commissioner of Stamp Duties.

Letter :
Rice and
Stuart to
Com-
missioner
Stamp
Duties,
10th April
1951.

RICE & STUART
Barristers and Solicitors
Commissioners for Oaths.

Box 14, Ba. Fiji.
10th April, 1951.

The Commissioner of Stamp Duties,
Suva.

Dear Sir,

Deed of Gift—Rice to Rice. 20

In reply to your letter of the 3rd instant herein we think, with respect, that you have misconstrued the provisions of Section 51 of the Death and Gift Duties Ordinance, because it is only when the value of a gift is not less than £1,000 that the declaration desired by you has to be made. We therefore return herewith the form which you sent, and we should be glad if you would please confirm our view of the law.

Yours faithfully,
RICE & STUART.

Encl.

Exhibit "F."

LETTER : Commissioner of Stamp Duties to Rice and Stuart.

4th May, 1951.

Gentlemen,

Deed of Gift—Rice to Rice.

I thank you for your letter dated the 10th April 1951, and note that you are not disposed to complete the declaration and furnish me with a copy of the Deed.

2. I agree that under Section 51 of Cap. 151 it does not appear to be incumbent upon the donor to deliver a statement in the prescribed form unless the gift exceeds £1,000, or if the value added to the value of any other gifts made by the donor within twelve months previously exceeds £1,000. However, it appears from section 36 that gifts which exceed £200 in the aggregate in the same calendar year shall be taken into account as such for the purposes of gift duty, and death duty. In the event of death before the expiration of three years the value of a gift is included in the final balance for assessment of death duty. It was for that reason I required full details for the purpose of record, and many donors who make gifts which do not exceed £1,000 in value deliver a statement in the prescribed form without being requested to do so.

3. Will you please inform me of the policy value, the amount of any bonus which may have accrued at the date of gift, and whether it is your intention to pay the premiums and keep up the policy.

Yours faithfully,

(Sgd.) R. C.,

For Commissioner of Stamp Duties.

Messrs. Rice and Stuart,
Solicitors,
Ba.

Exhibits.

Exhibit F.

Letter :
Com-
missioner
Stamp
Duties to
Rice and
Stuart,
4th May
1951.

Exhibits.

Exhibit "G."

Exhibit G.

LETTER : Rice and Stuart to Commissioner of Stamp Duties.

Letter :
Rice and
Stuart to
Com-
missioner
Stamp
Duties,
14th May
1951.

RICE & STUART
Barristers and Solicitors.

Box 14, Ba. Fiji.

14th May, 1951.

The Commissioner of Stamp Duties,
Suva.

Dear Sir,

Deed of Gift—Rice to Rice.

We have your letter of the 4th instant for which we thank you, and 10
note your explanation.

Replying to your queries we have to state we have not before us the
exact present value of this policy, but can definitely state it would be
between £400 and £500. Its exact valuation could be obtained from
Messrs. Sands, Junor & Co., Fiji Agents of the A.M.P. Society, and you
have our full authority to apply to them in the matter. The number of
the Policy is 1164543.

As regards accrued bonuses at the date of gift, they were included in
the foregoing valuation.

It is our Mr. Rice's intention to pay the Premiums and keep up the 20
Policy.

Yours faithfully,

RICE AND STUART.

Exhibit "H."

LETTER : A. M. P. Society, Fiji, to Commissioner of Stamp Duties.

AUSTRALIAN MUTUAL PROVIDENT SOCIETY.

Fiji Agency

Messrs. SANDS, JUNOR & Co.
Suva.12th June 1951.
E.The Commissioner of Stamp Duties,
Government Buildings,
Suva.*Exhibits.*

Exhibit H.

Letter :
A.M.P.
Society,
Fiji, to
Com-
missioner
Stamp
Duties,
12th June
1951.

10 Dear Sir,

re : Policy No. 1164543.

Phillip Rice.

We refer to your letter dated 19th May 1951 and as requested, we set out hereunder the surrender value of the abovenumbered Policy.

Sum Assured	Existing Reversionary Bonuses	Surrender Value, if all be in order		
		Of Policy	Of Bonuses	Total
£1,000	£155 12 0	£230 9 0	£76 3 0	£306 12 0

Yours faithfully,

20

For and on behalf of
AUSTRALIAN MUTUAL PROVIDENT SOCIETY,
J. E. BELL,
pp. SANDS, JUNOR & Co.,
Local Agents in Fiji.

Exhibits.

Exhibit "I."

Exhibit I.

LETTER : Commissioner of Stamp Duties to Rice and Stuart.

Letter :
Com-
missioner
Stamp
Duties to
Rice and
Stuart, 21st
August
1951.

Messrs. Rice and Stuart,
Solicitors,
Ba.

21st August, 1951.

Gentlemen,

Deed of Gift—Rice and Rice.

Your letter dated the 14th May 1951 refers.

2. It has been ascertained from the Fiji Agents of the A.M.P. Society that the sum assured under Policy No. 116453 is £1,000, and accrued 10 bonuses amount to £155.12.0.

3. As it is your Mr. Rice's intention to pay the premiums and keep up the policy, it would appear that this assignment by way of gift is liable for duty in respect of the full amount of the policy moneys and not only on the value of the policy at the date of the agreement instrument.

4. I shall be grateful if you will complete the attached declaration and return it at your earliest convenience.

Yours faithfully,

(Sgd.) REGINALD CALDWELL,
for Commissioner of Stamp Duties.

20

Exhibit J.

Exhibit "J."

LETTER : Rice and Stuart to Commissioner of Stamp Duties.

Letter :
Rice and
Stuart to
Com-
missioner
Stamp
Duties,
29th
August
1951.

RICE & STUART
Barristers and Solicitors.

Box 14, Ba.
Fiji.

29th August, 1951.

The Commissioner of Stamp Duties,
Suva.

Dear Sir,

Deed of Gift—Rice to Rice.

We have your letter of 21st instant herein. We admit that the value 30 *at death* of this policy is £1,000 plus bonuses, but as pointed out in our letter of 14th May last the *present value* as at the date of gift did not exceed £500. It seems clear from Section 46 (2) of Ordinance Cap. 151 that it is only the present value which is relevant and we are with respect, quite unable to see that the contents of the third paragraph of your letter have any significance.

For these reasons our Mr. Rice must, with regret, adhere to what was stated in our letter of 10th April last.

Yours faithfully,

RICE & STUART. 40

Exhibit "K."

LETTER : Commissioner of Stamp Duties to Rice and Stuart (and attachment).

Exhibits.

Exhibit K.

25th September, 1951.

Messrs. Rice and Stuart,
Solicitors,
Ba.Letter :
Com-
missioner
Stamp
Duties to
Rice and
Stuart (and
attach-
ment), 25th
September
1951.

Gentlemen,

*Re Gift Rice to Rice.*The attached Notice of Assessment of Gift Duty is issued in accordance
10 with Section 57 of Cap. 151.

Yours faithfully,

(Sgd.) REGINALD CALDWELL,
for Commissioner of Stamp Duties.

FORM O.

Death and Gift Duties Ordinance 1920 (Part IV).

NOTICE OF ASSESSMENT OF GIFT DUTY.

P. Rice to M. Rice.

Policy value plus accrued bonuses £1,155.12.0.

I hereby give you notice that I have assessed the above-mentioned
20 gift for gift duty at £57.15.6.

Dated this 25th day of September, 1951.

(Sgd.) REGINALD CALDWELL,
for Commissioner of Stamp Duties.Messrs. Rice & Stuart,
Solicitors,
Ba.

In the Privy Council.

ON APPEAL
FROM THE FIJI COURT OF APPEAL

BETWEEN
PHILLIP RICE (Plaintiff) *Appellant*
AND
THE COMMISSIONER OF STAMP DUTIES (Defendant) . . . *Respondent.*

RECORD OF PROCEEDINGS

BARROW, ROGERS & NEVILL,
WHITEHALL HOUSE,
41 WHITEHALL,
LONDON, S.W.1,
Solicitors for the Appellant.

BURCHELLS,
68 VICTORIA STREET,
LONDON, S.W.1,
Solicitors for the Respondent.