

UNIVERSITY OF LONDON  
W.C.1.

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INSTITUTE OF ADVANCED  
LEGAL STUDIES

No. 23 of 1955

2, 1956

In the Privy Council.

ON APPEAL FROM THE SUPREME COURT OF  
NEW SOUTH WALES

45927

BETWEEN

GEORGE JOHNSON, PERPETUAL TRUSTEE COMPANY  
(LIMITED) and GEORGE EDGERLEY JOHNSON  
Trustees of the Will of FRANK JOHNSON (deceased) ... *Appellants*

AND

THE COMMISSIONER OF STAMP DUTIES ... .. *Respondent.*

— AND BETWEEN —

THE COMMISSIONER OF STAMP DUTIES ... .. *Appellant*

AND

GEORGE JOHNSON, PERPETUAL TRUSTEE COMPANY  
(LIMITED) and GEORGE EDGERLEY JOHNSON  
Trustees of the Will of FRANK JOHNSON (deceased) ... *Respondents.*

RECORD OF PROCEEDINGS

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INSTITUTE OF ADVANCED  
LEGAL STUDIES,  
25, RUSSELL SQUARE,  
LONDON,  
W.C.1.

# In the Privy Council.

No. 33 of 1955.

## ON APPEAL FROM THE SUPREME COURT OF NEW SOUTH WALES

BETWEEN

GEORGE JOHNSON, PERPETUAL TRUSTEE COMPANY  
(LIMITED) and GEORGE EDGERLEY JOHNSON  
Trustees of the Will of FRANK JOHNSON (deceased) ... *Appellants*

AND

THE COMMISSIONER OF STAMP DUTIES ... .. *Respondent.*

— AND BETWEEN —

THE COMMISSIONER OF STAMP DUTIES ... .. *Appellant*

AND

GEORGE JOHNSON, PERPETUAL TRUSTEE COMPANY  
(LIMITED) and GEORGE EDGERLEY JOHNSON  
Trustees of the Will of FRANK JOHNSON (deceased) ... *Respondent.*

## RECORD OF PROCEEDINGS

No. 1.

Case Stated.

No. 313 of 1954.

In the  
Supreme  
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IN THE SUPREME COURT OF NEW SOUTH WALES.

IN THE MATTER of the Estate of SARAH JOHNSON late of Bellevue Hill in  
the State of New South Wales, deceased.

AND IN THE MATTER of the Stamp Duties Act, 1920–1952.

AND IN THE MATTER of the Appeal by GEORGE JOHNSON, PERPETUAL  
TRUSTEE COMPANY (LIMITED) and GEORGE EDGERLEY JOHNSON  
the Trustees of the Will of FRANK JOHNSON deceased against the  
assessment by the Commissioner of Stamp Duties of death duty  
payable in respect of the said estate.

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## CASE STATED.

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*continued.*

1.—Frank Johnson (hereinafter called the testator) died on 20th August, 1936, being then domiciled in the State of New South Wales and leaving real and personal property within the said State.

2.—Probate of the will and three codicils thereto of the testator was granted on 29th December, 1936, to George Johnson, Perpetual Trustee Company (Limited) and George Edgerley Johnson the executors named in the said will and codicils and the present trustees thereof.

3.—The will and three codicils thereto are set forth in the First Schedule at the end of this case and are to be taken as part thereof. 10

4.—Sarah Johnson, the widow of the testator, died on 8th December, 1952 being then domiciled in the State of New South Wales and leaving property within the said State.

5.—At the date of death of the said Sarah Johnson the executorial duties in respect of the estate of the testator had been carried out and the residuary estate vested in the trustees of the said will and codicils comprised (in addition to certain real estate situate in Queensland) the following property and assets, namely :

<i>Real Estate :</i>	£	s.	d.	
One third share in land Castlereagh Street, Sydney, New South Wales ... ..	15,000	0	0	20
 <i>Personal Estate :</i>				
Shares in Companies ... ..	42,482	0	4	
Commonwealth Inscribed Stock ... ..	3,846	10	7	
Debts due by Johnson & Sons Pty. Ltd. ... ..	36,311	3	10	
	<hr/>			
	£97,639	14	9	
	<hr/> <hr/>			

6.—(a) The shares in companies mentioned in paragraph 5 hereof and the place of incorporation of each of those companies and the local situation of the register on which those shares were listed at the date of death of the said Sarah Johnson are more particularly set forth in the Second Schedule at the end of this case. 30

(b) The Commonwealth Inscribed Stock mentioned in paragraph 5 hereof was at the date of death of the said Sarah Johnson recorded in the Registry of Inscribed Stock at Sydney in the said State.

(c) Johnson & Sons Pty. Ltd. is a Company duly incorporated in the State of New South Wales and carrying on business in that State.

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7.—Of the present trustees of the will and codicils of the testator, George Johnson and George Edgerley Johnson are domiciled and resident in the State of New South Wales. The other trustee, Perpetual Trustee Company (Limited) is incorporated and carries on business in the said State.

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8.—The children of the testator, George Johnson, Agnes Mary Smith, Edith Howes and Beatrice Sarah Luker, are all living and in consequence of the death of Sarah Johnson are each entitled for their respective lives to one-fourth of the income of the estate of the testator, having previously been each entitled to one-fourth of two thirds of the said income. The said children are all domiciled and resident in the State of New South Wales.

9.—The Commissioner of Stamp Duties has included in the dutiable estate of the said Sarah Johnson the assets specified in paragraph 5 hereof to the extent to which a benefit accrued or arose by cesser of the interest therein limited to cease on the death of the said Sarah Johnson claiming that such assets are so liable to be included to the extent aforesaid under and by virtue of Sections 102 (2) (g) and 102 (2A) of the Stamp Duties Act, 1920–1952, and the Commissioner has, pursuant to Section 102 (2) (g), valued such benefit at one third of the principal value of such assets as specified in paragraph 5, namely at £32,297 after making a certain adjustment not material to this case.

10.—For the purpose of assessing death duty in the estate of Sarah Johnson the Commissioner of Stamp Duties has, pursuant to Section 105A of the Stamp Duties Act, 1920–1952, treated the assets specified in paragraph 5 hereof, to the extent aforesaid, as an estate by itself and has separately assessed duty thereon in the sum of £3,633 8s. 3d. being 11¼ per centum of the abovementioned value of £32,297.

11.—The Commissioner of Stamp Duties has claimed that under and by virtue of Sections 114A and 120 of the Stamp Duties Act, 1920–1952, the trustees of the will of the testator are liable to pay the abovementioned sum of £3,633 8s. 3d. out of the assets of the testator's estate, to the extent aforesaid, and has issued a notice of assessment bearing date the 17th August, 1953, addressed to such trustees and calling upon them to pay the said sum of £3,633 8s. 3d. as death duty properly payable by them.

12.—The trustees of the will and codicils of the testator, in whom the said assets of the testator are so vested as aforesaid being dissatisfied with the said assessment, have required the Commissioner of Stamp Duties to state a case for the opinion of the Supreme Court of New South Wales in

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pursuance of Section 124 of the Stamp Duties Act, 1920–1952, and have paid the duty assessed and the sum of £20 as security for costs in accordance with that section.

13.—The following questions are stated for the determination of the Supreme Court :—

- (1) Whether any part of the property included in the estate of the testator in which Sarah Johnson had an interest limited to cease on her death was liable to duty under and by virtue of the provisions of the Stamp Duties Act, 1920–1952 ?
- (2) If the answer to question (1) be in the affirmative—
  - (a) What part of such property was liable to duty as aforesaid ?
  - (b) What was the value attributable to such part thereof for the purpose of assessing death duty thereon in accordance with the provisions of the said Act ?

10

14.—The Court is also asked whether the duty chargeable (if any) should be assessed at the said amount of £3,633 8s. 3d. or, if not, at what amount.

15.—The Court is also asked to decide the question of costs.

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#### FIRST SCHEDULE.

20

I, FRANK JOHNSON of Sydney in the State of New South Wales, Merchant hereby revoke all former Wills and testamentary dispositions heretofore made by me and declare this to be my last will and testament.

1.—I APPOINT my son GEORGE JOHNSON and PERPETUAL TRUSTEE COMPANY (LIMITED) (hereinafter called my Trustees) to be Executors and Trustees of this my Will.

2.—I BEQUEATH the following pecuniary legacies free of all death Probate and other (if any) duties payable upon or by reason of my death :

- (a) To my wife SARAH JOHNSON the sum of ONE THOUSAND POUNDS (£1,000).
- (b) To each of my children, namely, GEORGE JOHNSON, AGNES MARY SMITH, EDITH BARNETT and BEATRICE SARAH LUKER the sum of ONE THOUSAND POUNDS (£1,000).
- (c) To the CHURCH OF ENGLAND HOMES, CARLINGFORD the sum of TWO THOUSAND POUNDS (£2,000).

30

- (d) To the DEAF DUMB AND BLIND INSTITUTE the sum of FOUR HUNDRED POUNDS (£400).
- (e) To each of the following—THE SYDNEY HOSPITAL, THE ROYAL PRINCE ALFRED HOSPITAL, ST. VINCENTS HOSPITAL, THE ROYAL HOSPITAL FOR WOMEN, PADDINGTON, THE ROYAL ALEXANDRIA HOSPITAL FOR CHILDREN, THE WOMEN'S HOSPITAL, CROWN STREET, and the BENEVOLENT SOCIETY OF NEW SOUTH WALES the sum of ONE HUNDRED POUNDS (£100).

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10 AND I DECLARE that the receipt of the Treasurer or Secretary for the time being of any of the above Hospitals or Institutions shall be a proper and sufficient discharge to my Trustees for the said legacies.

3.—I GIVE DEVISE AND BEQUEATH all my real and personal estate whatsoever and wheresoever situate unto my Trustees UPON TRUST that my Trustees shall sell call in and convert the same into money at such times and in such manner as they shall think fit with power to postpone the sale calling in and conversion of the whole or any part or parts of my said real and personal estate during such period as they in their uncontrolled discretion shall think proper and so that the net income (after payment  
20 of rates, taxes, rents, costs of insurances, repairs and other outgoings, in the opinion of my Trustees properly attributable to income) arising from any property for the time being unconverted shall as from my death be applicable as income of my residuary estate.

C. A. HILL, D. S. PYE, FRANK JOHNSON.

4.—Out of the clear moneys to arise from such sale calling in and conversion my Trustees shall pay my debts funeral and testamentary expenses, State Probate, Federal Estate and all other duties on the whole of my estate and the legacies and bequests hereinbefore mentioned and subject thereto my Trustees shall stand possessed of the proceeds of the sale  
30 calling in and conversion of my said real and personal estate and any money belonging to me at my death.

5.—UPON TRUST to invest the same in manner hereinafter authorised and to stand possessed of such investments and of the residue of such investments aforesaid which formed part of my estate at the time of my death and of all parts of my estate for the time being unsold (hereinafter called my residuary estate) upon the following trusts :—

6.—AS to the net income arising from my residuary estate I DIRECT my Trustees to hold the same upon the following trusts :

40 (1) UPON TRUST to pay one third part or share of the said income to my wife the said SARAH JOHNSON during her life.

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(2) UPON TRUST to divide the residue of the income from my said residuary estate (including after the death of my said wife the income to which she was entitled) into four equal parts and to hold such income upon the following trusts :—

(a) UPON TRUST to pay one of such parts to my son the said GEORGE JOHNSON for his life.

(b) UPON TRUST to pay another of such parts to my daughter the said AGNES MARY SMITH for life.

(c) UPON TRUST to pay another of such parts to my daughter the said EDITH BARNET for life.

(d) UPON TRUST to pay the remaining part to my daughter the said BEATRICE SARAH LUKER for life.

10

7.—UPON the death of each of my said children I DIRECT my Trustees to pay or apply the share of such income of any child so dying or so much thereof as my Trustees in their discretion shall think fit to or for the benefit advancement or maintenance of the issue of the child so dying who shall be living at the death of such child until such issue shall respectively attain the age of twenty one years.

8.—I DECLARE that in case any of my said children shall die without leaving issue him or her or them surviving then the share or shares of income of the child or children so dying shall be paid or applied to or for the benefit of my surviving children and the issue of any deceased child or children in equal shares per stirpes in the same manner as the original shares to which they are entitled as hereinbefore mentioned.

20

9.—I DIRECT AND DECLARE that my Trustees shall hold the corpus of my—D. S. PYE, C. A. HILL, FRANK JOHNSON—residuary estate subject to the payment of the shares of income therefrom as hereinafter mentioned in trust for such of the issue of my said four children as shall be living at the death of such children respectively and shall attain the age of twenty-one years in equal shares per stirpes as tenants in common.

30

10.—I DIRECT that the shares of such issue in the corpus of my residuary estate and any accumulations of their share of income shall be paid to them as and when they shall respectively attain the age of twenty-one years.

11.—AND I DECLARE that during the minority of any of the issue of my said children who have died my Trustees may either themselves apply the shares of the income to which such issue may be entitled or any part thereof for the benefit of such issue as aforesaid or may pay the same to the guardian or guardians of such issue for their benefit without the necessity of seeing to the application thereof.



12.—AND I FURTHER DECLARE my trustees shall during the suspense of absolute vesting of the share of the corpus of my residuary estate accumulate the balance (if any) of the share of income not so paid or applied in augmentation and so as to follow the destination of the share of the corpus from which the same shall have proceeded but with power to apply any such accumulations for the benefit of the issue for the time being presumptively entitled thereto.

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13.—I EMPOWER my Trustees to invest my estate in any of the modes of investment for the time being authorised by law for the investment of  
10 trust funds or on deposit at or without interest in any Bank or financial Institution in New South Wales and may at the like discretion vary or transpose such investment or any of them into or for others of any nature hereinbefore authorised.

14.—I FURTHER EMPOWER my Trustees to allow any moneys which shall be invested at the time of my decease to remain so invested during such period or periods as they in their absolute discretion shall think fit notwithstanding that such investments may not be of the kind hereby authorised.

15.—I HEREBY DECLARE that notwithstanding the trust for sale  
20 hereinbefore contained my Trustees shall have the following powers :—

- (1) They may if they thall think fit to do so carry on or join in carrying on any trade or business carried on by me either alone or in partnership with any other person or persons who may be in partnership with me at the time of my decease during such period as they may think fit.
- (2) They may from time to time upon the expiration of the term of any partnership for the time being renew the same for any period determinable or otherwise as they may deem expedient and at any time or times vary the terms contained in any  
30 partnership articles or any of them.
- (3) They may employ therein or withdraw therefrom any capital which may be employed therein at my death for effectually carrying on such business.
- (4) They may employ or concur in employing at such salary as they shall think fit any Manager of the said business (whether a partner therein or not) and generally to act or concur in action in all matters relating to the said—D. S. PYE, C. A. HILL, FRANK JOHNSON—the business as if they were  
40 beneficially entitled thereto or to my share or interest therein.
- (5) For the purposes aforesaid or any of them they may enter into execute and do all such agreements deeds and acts as may be necessary or expedient.

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16.—I AUTHORISE my said son notwithstanding that he shall be a Trustee of this my Will at any time or times to purchase whether at any public auction or by private contract all or any part of my real estate at the fair market value of such real property at the date of any such purchase such fair market price or value to be determined and fixed by his co-trustee. IN WITNESS whereof I have hereunto set my hand to this my Will the twenty second day of May One thousand nine hundred and thirty four. FRANK JOHNSON SIGNED by the said FRANK JOHNSON as and for his last Will and testament in the presence of us both present at the same time and we at his request in his presence and in the presence of each other hereunto subscribed our names as witnesses. C. A. HILL, D. S. PYE Solcr. Sydney. 10  
I, FRANK JOHNSON of Sydney in the State of New South Wales, Merchant declare this to be a first CODICIL to my Will, which Will bears date the twenty-second day of May One thousand nine hundred and thirty four, WHEREAS by my said Will I gave devised and bequeathed the whole of my real and personal property to my Trustee upon the trusts therein declared NOW I HEREBY exclude therefrom the whole of my furniture and household effects AND I GIVE AND BEQUEATH all my household furniture and effects to my wife SARAH JOHNSON absolutely. IN all other respects I confirm my said Will. IN WITNESS whereof I have hereunto set my hand this twenty-third day of May One thousand nine hundred and thirty four. FRANK JOHNSON. SIGNED by the said FRANK JOHNSON as a first Codicil to his last Will and Testament in the presence of us both present at the same time and we at his request in his presence and in the presence of each other have hereunto subscribed our names as witnesses. G. V. RAYWARD, Clerk to Payten & Pye Solrs. Sydney. D. S. PYE Solr. Sydney. 20

I, FRANK JOHNSON of Sydney in the State of New South Wales, Merchant declare this to be a Second Codicil to my Will which bears date the twenty-second day of May One thousand nine hundred and thirty four 30  
WHEREAS by my said Will I appointed my son George Johnson and Perpetual Trustee Company (Limited) to be Executors and Trustees of this my Will NOW I HEREBY APPOINT my nephew GEORGE EDGERLEY JOHNSON to be a joint executor and Trustee with the Executors named in my said Will I GIVE AND BEQUEATH to my Cousin HUGH HERVEY of Whiteley Green Cheshire, England the sum of One hundred pounds (£100) clear of all exchange, which is to be payable out of my residuary estate AND LASTLY I DIRECT that my remains be cremated. IN ALL OTHER RESPECTS I confirm my said Will. As WITNESS my hand to this Second Codicil to my Will the Twentieth day of August One thousand nine hundred and thirty four. FRANK JOHNSON. SIGNED by the said FRANK JOHNSON as and for a Second Codicil to his last Will and Testament in the presence of us both present at the same time and we at his request in his presence and in the presence of each other have hereunto subscribed our names as witnesses. G. V. RAYWARD Clerk to Payten & Pye, Solrs. Sydney. D. S. PYE Solr. Sydney. 40

I, FRANK JOHNSON of Sydney in the State of New South Wales, Merchant declare this to be a third Codicil to my last Will which will bears date the Twenty-second day of May One thousand nine hundred and thirty-four I DECLARE that all legacies given by my said Will or any Codicil thereto shall be free of all State, Probate, Federal Estate or any other duty payable in consequence of my death and that all such duties shall be paid out of my residuary estate I FURTHER DECLARE that all gifts made by me during my lifetime shall not be brought into account in ascertaining what share a beneficiary is entitled to under this my Will and that the

10 persons or institutions to whom any such gifts have been made shall not be called upon to pay any State Probate, Federal Estate or any other duty on such gifts in consequence of my death and that the duties on any such gifts shall be paid out of my residuary estate IN ALL OTHER RESPECTS I confirm my said Will.

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AS WITNESS my hand to this my Third Codicil to my Will this twenty-eighth day of April One thousand nine hundred and thirty six. FRANK JOHNSON. SIGNED by the said FRANK JOHNSON as and for a third Codicil to his last Will and Testament in the presence of us both present at the same time and we at his request in his presence and in the presence

20 of each other have hereunto subscribed our names as witnesses. G. V. RAYWARD, Clerk to Payten & Pye, Solicitors, Sydney. D. S. PYE, Solr. Sydney.

#### SECOND SCHEDULE.

	<i>Name of Company.</i>	<i>Place of Incorporation.</i>	<i>Number of Shares or Stock Units.</i>	<i>Situation of Register.</i>
	Bank of New South Wales ... ..	New South Wales	80	Sydney N.S.W.
30	Commercial Bank- ing Co. of Sydney Limited... ..	” ”	145	” ”
	New Redhead Estate & Coal Company Limited	” ”	48 Ordinary 1000 Preference	” ”
	Perpetual Trustee Company (Limited)	” ”	400	” ”
40	Amalgamated Wireless (Australasia) Limited ... ..	” ”	538	” ”
	Edwards Dunlop & Company Limited	” ”	340	” ”

In the Supreme Court of New South Wales.	<i>Name of Company.</i>	<i>Place of Incorporation.</i>	<i>Number of Shares or Stock Units.</i>	<i>Situation of Register.</i>	
No. 1. Case Stated by the Com- missioner of Stamp Duties. 2nd September 1954 — <i>continued.</i>	Mauri Bros. & Thomson Limited	New South Wales	500	Sydney N.S.W	
	Washington H. Soul Pattinson Company Ltd.	„ „	367	„ „	
	Goldsbrough Mort & Company Limited	Victoria ...	2661	Melbourne Victoria.	10
	British Tobacco Company (Aust- ralia) Limited	Victoria ...	1611 Ordinary	Sydney N.S.W.	
	Dunlop Rubber Australia Limited	... Victoria ...	208 Ordinary	Melbourne Victoria.	
	The Broken Hill Proprietary Company Limited	Victoria ...	2689	(1199 shares on Melbourne Regstr. 1490 shares on Sydney Register)	20
	Henry Jones Co-operative Limited	... Victoria ...	270	Melbourne Victoria.	
	Australian Consolidated Industries Limited	... Victoria ...	6552 Ordinary 655 New Con- tributing	Melbourne Victoria.	30
	Huddart Parker Limited	... Victoria ...	100	Melbourne Victoria.	

Dated this second day of September 1954.

E. T. WOODS,  
*Commissioner for Stamp Duties.*

No. 2.

Reasons of Supreme Court of New South Wales.

IN THE SUPREME COURT OF NEW SOUTH WALES.

Coram : MAXWELL, J.  
 ROPER, C.J. in EQ.  
 HERRON, J.

20th April, 1955.

JOHNSON & ORS. *v.* COMMISSIONER OF STAMP DUTIES.  
 PERPETUAL TRUSTEE CO. LTD. *v.* COMMISSIONER OF STAMP DUTIES.  
 10 FORSTER & ANOR. *v.* COMMISSIONER OF STAMP DUTIES.

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 No. 2.  
 Reasons.  
 20th April  
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MAXWELL, J.  
 ROPER, C.J. in EQ.  
 HERRON, J.

These three cases have been stated under section 124 of the Stamp Duties Act, 1920-1952. They have been argued together and they raise questions as to whether certain legislation to be found in the Stamp Duties Act is within or beyond the legislative competence of the New South Wales Legislature.

20 Before turning to the facts of each particular case, it is convenient to consider the questions of law which have been raised and which, in some respects, are common to all cases. Broadly speaking, the submissions fall under two separate headings: (1) It was submitted that section 102 (2) (g) of the Act is wholly invalid as being beyond the territorial legislative competence of the New South Wales Legislature, and (2) it was submitted as a matter independent of the validity of section 102 (2) (g) that section 102 (2A) is invalid on the same ground insofar as it purports to extend the operation of section 102 (2) (g).

30 Paragraph (g) was inserted into section 102 (2) by the Stamp Duties (Amendment) Act, 1952. There had been a somewhat similar provision in the original Act of 1920, but this had been repealed in 1924. The paragraph constitutes a radical departure from the scheme of the Act as it had existed for many years prior to 1952. That scheme, broadly speaking, was one whereby the dutiable estate of a deceased person was ascertained by including all the property which he had owned at the date of his death and certain property which he had owned and had, by his own act, disposed of during his lifetime.

40 It is unnecessary to go into the refinements of these two broad headings, because paragraph (g) introduced a new concept in respect of a dutiable estate. It imposes a duty on or in respect of property which the deceased had never owned at all. The property included under the paragraph is property in which the deceased or some other person had "an estate or interest limited to cease on the death of the deceased or at a time determined by reference to the death of the deceased." The property is not aggregated with the balance of the estate of the deceased, but is

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separately assessed and, for that purpose considered to be an estate by itself (section 105A (1)). The duty payable is separately assessed in respect of the non-aggregated property and constitutes a debt payable to Her Majesty (section 114A (1)). As from the death of the deceased it constitutes a charge on so much of the non-aggregated property as is situate in New South Wales (section 115A (2)), but although this charge is limited to so much of the property as is situate in New South Wales, the Act also imposes a personal liability in respect of the payment of the duty which is not limited by reference to the amount or the existence of property in New South Wales (see section 120 and section 5).

10

The Legislature of New South Wales is a subordinate legislature. Its powers are to be found in the Constitution Act, 1902, section 5 of which, so far as material, provides that:—

“The Legislature shall subject to the provisions of the Commonwealth of Australia Constitution Act have power to make laws for the peace, welfare and good government of New South Wales in all cases whatsoever.”

Legislation on any subject matter which has no relevant territorial connection whatever with New South Wales falls outside the power of the legislature of New South Wales (see *Attorney-General v. Australian Agricultural Company*, 34 S.R. 571, and the *Commissioner of Stamp Duties v. Millar*, 48 C.L.R. 618).

20

One must examine the Stamp Duties Act, therefore, to see whether there is a relevant nexus between the property dealt with in paragraph (g) and the State of New South Wales, bearing in mind that under paragraph (g) property is brought into the estate of the deceased whom, for convenience, we will call the life tenant, although, of course, paragraph (g) has a wider application than merely to cases where the deceased was a life tenant. It is brought in only for the purpose of it thereupon being segregated and treated as a separate estate; it is brought in wherever the life tenant died and wherever he was domiciled (section 101/101E). It is so brought in wherever the remaindermen, or in the case of equitable estates, the trustee, resides or is domiciled, and without regard to the system of law by reference to which the instrument creating the limited interest or regulating the rights of the remaindermen was executed, or to which it owes its force, or by reference to which it would be administered. On these grounds it is said that no relevant connection with the State of New South Wales appears from the legislation.

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It is further submitted, and we have separated this submission because the ones which we have previously set out appear to be sound, whereas this one does not, that the property is brought in under the terms of the section, wherever it is situate, that is whether within or outside the state of New South Wales. The question of whether the property which is brought in by (g) extends to property situate outside New South Wales is one of construction, and we think upon the true construction of the Act, and on authority, the section must be construed as extending only to property situate in the State. Such a conclusion, follows from the decision

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in *Commissioner of Stamp Duties v. Perpetual Trustee Co. Ltd.* (Watt's case, 38 C.L.R. 12), and from that in *Vicars v. Commissioner of Stamp Duties* (71 C.L.R. 309, and see particularly pp. 338/339). The conclusion is greatly strengthened here by reference to the terms of section 102 (2A). That sub-section, to which reference will be made later in connection with the second main submission, reads as follows :

10       “ All personal property situate outside New South Wales at  
           “ the death of the deceased when (a) the deceased dies after the  
           “ commencement of the Stamp Duties (Amendment) Act, 1939,  
           “ and (b) the deceased was at the date of his death domiciled in  
           “ New South Wales and (c) such personal property would, if it  
           “ had been situate in New South Wales be deemed to be included  
           “ in the estate of the deceased by virtue of the operation of  
           “ paragraph (2) of this section.”

20       This provision was enacted by the Stamp Duties (Amendment) Act, 1939, but it is clear that it was regarded as extending the operation of paragraph (g) when that paragraph was inserted in its present form. That fact emerges without question from the provisions, for example, of section 102 (A1) and section 105 (A1). If the property referred to in paragraph (g) were construed to include property wherever situate, then section 102 (2A) could not operate to extend in the application of paragraph (g). The language used in section 102 (2A) (c) clearly indicates, that the property referred to in paragraph (g) is property situate in New South Wales. It is unnecessary to refer to section 17 of the Interpretation Act of 1897, nor to section 14 of the Stamp Duties Act, to support the conclusion, although, insofar as they might have any effect, they tend to support it.

30       It was, however, submitted that assuming that upon its correct construction paragraph (g) only applied to the property situate within the jurisdiction, the presence of the property within the jurisdiction is not a relevant nexus in this case. Its association, so it was submitted, with the event which brings about the imposition of the duty, namely the death of the life tenant, is merely accidental. The presence of the property in the State on this submission does not afford a sufficient connection with the State as it is not in respect of it being in New South Wales or in any sense arising out of that fact that it is taxed. Reliance for this proposition was placed on some remarks contained in *Broken Hill South Ltd. v. Commissioner of Taxation* (56 C.L.R. 337).

40       It is clearly established that the presence of property within the jurisdiction is sufficient to empower the State to impose taxation upon or in respect of it, no matter what event is chosen as the reason for the imposition. The property being within the jurisdiction is subject to the laws of the State, both protective and fiscal, “ As regards persons and “ things actually within the territory of a subordinate legislature its powers “ are virtually absolute, *Sixsmith v. Commissioner of Taxation*, 28 S.R. 456 “ at 466-7; *Colonial Gas Association v. Commissioner of Taxation.*” (*Attorney-General v. Australian Agriculture Co.*, *ibid* at p. 578.) Reading

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*continued.*

the paragraph as it should be read, as restricted to property situate within New South Wales, it is, in our opinion, perfectly valid.

Turning then to the second main submission, namely that section 102 (2A), which is quoted above, is invalid insofar as it purports to extend the operation of paragraph (g), that section is expressly concerned with property situate outside New South Wales, and the only connection with New South Wales which appears to be relied upon in the section to establish a territorial basis for the legislation is the fact that the deceased or life tenant was at the date of his death domiciled in New South Wales. It is well-established particularly in taxation cases, that a subordinate legislature has wide powers with respect to persons domiciled or dying domiciled within its territory, and with respect to the taxation of the property of such persons even though that property be situate outside the jurisdiction. 10

In this case, however, the duty is levied on or in respect of property which is not nor ever was property belonging to the deceased whose domicile in New South Wales is regarded as the touch-stone of liability. The case may be exemplified as being one in which a duty is levied on or in respect of the property "A" because the domicile in the jurisdiction of "B." In our opinion the suggested nexus is completely irrelevant, and, consequently, insofar as section 102 (2A) purports to extend the operation of paragraph (g) it is, we think, invalid. 20

The question then arises whether section 17 of the Interpretation Act of 1897, or section 104 of the Stamp Duties Act, can be used to produce a different result. As the sub-section is expressly directed to property situate outside New South Wales, section 17 has no operation. Nor do we think that the section can be read down as authorised by section 144 of the Stamp Duties Act so as to bring it within power. Other than the connection arising from domicile in New South Wales which, in the circumstances of this Act, we think, is not a relevant connection at all, there is nothing in the sub-section which could lead to a construction of it so as to bring it within power. There are many circumstances upon which the legislature might have siezed to enact a valid provision in the terms of section 102 (2A) in particular cases: as, for instance, that the remaindermen were domiciled in New South Wales or, in the case of equitable interests that the trustee is domiciled in New South Wales, and so on, but no suggested limitation of this character can be arrived at as a matter of construction of the section, construing it as favourably as one might, having regard to the provisions of section 144. 30

Turning now to the particular cases, *Johnson's* case is what might be called a section 102 (2A) case as well as a paragraph (g) case; movables situate outside New South Wales were included in the assessment with property situate within New South Wales. Every other feature in the case is one which, had the legislature chosen to fasten upon it, would have been within jurisdiction; for example the testator who created the life interest by his Will was domiciled in New South Wales, probate was granted in New South Wales, the trustees are domiciled in New South Wales and 40



all the beneficiaries are domiciled and resident here. But, as we have pointed out, none of these features is the test under the section. Insofar as the objection to the assessment in *Johnson's* case rests upon the invalidity of paragraph (g), apart from section 102 (2A), it fails because, as we have held, paragraph (g) is a valid exercise of legislative power, but insofar as the assessment rests upon section 102 (2A) by the inclusion of personal estate situate outside New South Wales, it succeeds.

No argument was addressed to us as to the quantum of the assessment or the method of assessing, and we think in these circumstances that the proper answers to the questions raised in the case stated are as follows :—

- (1) Yes.
- (2) (a) Such of the said property as was situate at the date of death of Sarah Johnson in New South Wales.
- (b) It is unnecessary to answer.

The case should be remitted to the Commissioner with a direction to re-assess the duty in conformity with the principles contained in this judgment, and the Commissioner should pay the costs.

The Perpetual Trustee Company's case is a pure paragraph (g) case, no complications arising from the provisions of section 102 (2A). The only extraordinary elements involved in the case are that the life tenant was domiciled outside New South Wales and some of the remaindermen are so domiciled. As we think paragraph (g) valid, it follows that the questions stated in the case should be answered as follows :—

- (1) Yes.
- (2) (a) All such property.

The appeal should be dismissed and the Appellant pay the costs.

*Forster's* case is also a paragraph (g) one. The property was wholly situate in New South Wales and no feature of the case introduced any consideration from outside this State. The questions should be answered :

- (1) Yes.
- (2) (a) The whole of such property.

The appeal should be dismissed and the Appellant pay the costs.

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*continued.*

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In the  
Supreme  
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Wales.

No. 3.

Order of Supreme Court of New South Wales on Case Stated.

No. 313 of 1954.

No. 3.  
Order on  
Case Stated.  
20th April  
1955.

IN THE SUPREME COURT OF NEW SOUTH WALES.

IN THE MATTER of the Estate of SARAH JOHNSON late of Bellevue Hill  
in the State of New South Wales, deceased.

AND IN THE MATTER of the Stamp Duties Act, 1920-1952.

AND IN THE MATTER of the Appeal by GEORGE JOHNSON, PERPETUAL  
TRUSTEE COMPANY (LIMITED) and GEORGE EDGERLEY JOHNSON  
the Trustees of the Will of FRANK JOHNSON deceased against the  
assessment by the COMMISSIONER OF STAMP DUTIES of death duty  
payable in respect of the said estate. 10

Wednesday the Twentieth day of April One thousand nine hundred and  
fifty-five.

THE CASE STATED by the Commissioner of Stamp Duties bearing  
date the Second day of September last coming on to be heard on the Eighth  
and Ninth days of November last WHEREUPON AND UPON READING the  
said case stated AND UPON HEARING what was alleged by Sir Garfield  
Barwick of Queen's Counsel with whom were Mr. R. C. Smith of Queen's  
Counsel and Mr. K. S. Jacobs of Counsel for the Appellants and by the  
Solicitor-General with whom was Mr. R. Else-Mitchell of Counsel for the  
Commissioner of Stamp Duties IT WAS ORDERED that the matter stand  
for judgment and the matter standing in the list this day for judg-  
ment accordingly IT IS ORDERED that the questions in the said case stated  
namely :— 20

- (1) Whether any part of the property included in the Estate of  
the Testator in which Sarah Johnson had an interest limited  
to cease on her death was liable to duty under and by virtue  
of the provisions of the Stamp Duties Act, 1920-1952 ?
- (2) If the answer to question (1) be in the affirmative— 30
  - (a) What part of such property was liable to duty as  
aforesaid ?
  - (b) What was the value attributable to such part thereof  
for the purpose of assessing death duty thereon in  
accordance with the provisions of the said Act ?

be answered respectively :—

- (1) Yes.
- (2) (a) Such of the said property as was situate at the date of  
death of Sarah Johnson in New South Wales.
- (b) It is unnecessary to answer. 40

AND IT IS FURTHER ORDERED that the case stated be remitted to the Commissioner of Stamp Duties with a direction to re-assess the duty in conformity with the principles contained in this judgment AND THAT the costs of the Appellants George Johnson, Perpetual Trustee Company (Limited) and George Edgerley Johnson of and incidental to the case stated be taxed by the proper officer and when so taxed and allowed to be paid by the Commissioner of Stamp Duties to the said Appellants or to Mr. J. J. Watling their Solicitor.

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Supreme  
Court of  
New South  
Wales.  
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No. 3.  
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Case Stated.  
20th April  
1955—  
*continued.*

By the Court,

For the Prothonotary,

R. T. BYRNE,  
*Chief Clerk.*

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No. 4.

Order Granting Final Leave to Appeal to Her Majesty in Council.

Term No. 313 of 1954.

IN THE SUPREME COURT OF NEW SOUTH WALES.

IN THE MATTER of the Estate of SARAH JOHNSON late of Bellevue Hill in the State of New South Wales, deceased.

AND IN THE MATTER of the Stamp Duties Act, 1920–1952.

20 AND IN THE MATTER of the Appeal by GEORGE JOHNSON, PERPETUAL TRUSTEE COMPANY (LIMITED) and GEORGE EDGERLEY JOHNSON the Trustees of the Will of FRANK JOHNSON deceased against the assessment by the COMMISSIONER OF STAMP DUTIES of death duty payable in respect of the said Estate.

Tuesday the Twenty-sixth day of July, 1955.

UPON MOTION made this day pursuant to the Notices of Motion of the abovenamed Trustees and the Commissioner of Stamp Duties filed herein respectively on the Twentieth and Twenty-first days of July 1955 WHEREUPON AND UPON HEARING READ the said Notices of Motion  
30 and the Affidavits of Albert James de Montfort and Bernard Strickland Doyle both sworn the Twentieth day of July 1955 and the Prothonotary's Certificate of Compliance dated the Twentieth day of July 1955 AND UPON HEARING what was alleged by Mr. Jacobs of Counsel on behalf of the said

No. 4.  
Order  
Granting  
Final Leave  
to Appeal  
to Her  
Majesty in  
Council.  
26th July  
1955.

In the  
Supreme  
Court of  
New South  
Wales.

No. 4.  
Order  
Granting  
Final leave  
to Appeal  
to Her  
Majesty in  
Council.  
26th July  
1955—  
*continued.*

Trustees and by the Solicitor-General with whom was Mr. Ellicott of Counsel on behalf of said Commissioner IT IS ORDERED that final leave to appeal to Her Majesty in Council from the judgment and order of this Court given and made herein the Twentieth day of April 1955 be and the same is hereby granted to George Johnson, Perpetual Trustee Company (Limited) and George Edgerley Johnson AND IT IS FURTHER ORDERED that final leave to appeal to Her Majesty in Council from the said judgment and order be and the same is hereby granted to the Commissioner of Stamp Duties AND IT IS FURTHER ORDERED that upon payment by the said Trustees of the costs of preparation of the Transcript Record and despatch 10 thereof to England the two several sums of Twenty-five pounds (£25 0s. 0d.) deposited in Court by the said Trustees and the said Commissioner respectively as security for and towards the costs thereof be paid out of Court to the said Trustees and the said Commissioner respectively or to their respective Solicitors.

By the Court,

C. T. HERBERT,

*Deputy Prothonotary.*

# In the Privy Council.

No. 33 of 1955.

ON APPEAL FROM THE SUPREME COURT OF  
NEW SOUTH WALES.

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BETWEEN

GEORGE JOHNSON, PERPETUAL  
TRUSTEE COMPANY (LIMITED)  
and GEORGE EDGERLEY JOHNSON  
Trustees of the Will of FRANK JOHNSON  
(deceased) ... .. *Appellants.*

AND

THE COMMISSIONER OF STAMP  
DUTIES ... .. *Respondent.*

—AND—BETWEEN

THE COMMISSIONER OF STAMP  
DUTIES ... .. *Appellant*

AND

GEORGE JOHNSON, PERPETUAL  
TRUSTEE COMPANY (LIMITED)  
and GEORGE EDGERLEY JOHNSON  
Trustees of the Will of FRANK JOHNSON  
(deceased) ... .. *Respondents.*

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## RECORD OF PROCEEDINGS

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BELL, BRODRICK & GRAY,  
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Cannon Street, E.C.4,  
*Solicitors for GEORGE JOHNSON AND OTHERS.*

LIGHT & FULTON,  
24 John Street,  
Bedford Row,  
London, W.C.1,  
*Solicitors for the COMMISSIONER OF STAMP DUTIES.*