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INSTITUTE OF ADVANCE
LEGAL STUDIES

No. 34 of 1955.

In the Privy Council.

ON APPEAL

5533 FROM THE SUPREME COURT OF NEW SOUTH WALES.

BETWEEN—

PERPETUAL TRUSTEE COMPANY (LIMITED)
the Trustee of the Will of Andrew John Brady,
deceased - - - *Appellant*

— AND —

THE COMMISSIONER OF STAMP DUTIES
Respondent.

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CASE FOR THE RESPONDENT.

RECORD.

1. This is an appeal brought by leave of the Supreme Court of New South Wales from a judgment of that Court dated 20th April, 1955, which dealt with the construction and validity of certain provisions of the Stamp Duties Act, 1920-1952, and more particularly provisions inserted in that Act by an amending Act, namely the Stamp Duties (Amendment) Act, 1952. The said judgment related also to two other cases in which appeals have likewise been brought to the Privy Council by leave of the Supreme Court.

p. 14.

pp. 8-13.

20 2. The Stamp Duties Act is a comprehensive Act of the Parliament of New South Wales providing *inter alia* for the imposition of death duty in the event of the death of persons to whom the Act applies; such duty is imposed in respect of property which was owned or enjoyed by a deceased person in his lifetime and, in some cases, in respect of property disposed of during his lifetime.

3. The main questions for decision in these appeals concern the construction and validity of two provisions of the Stamp Duties Act, 1920-1952; firstly s.102(2)(g) which provides for the imposition of death duty in respect of—

30 "any property in which the deceased or any other person had, at any time either before or after the commencement of the Stamp Duties (Amendment) Act, 1952, 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 (in this Act referred to as the ‘limited
 “interest’) to the extent to which a benefit accrues or arises by cesser
 “of the limited interest,”

and, secondly, s.102(2A) which provides for the inclusion in the dutiable estate of a deceased person of—

“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.”

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The present appeal is more particularly concerned with the construction and validity of the former of these provisions.

4. For convenience of reference extracts from the Stamp Duties Act containing provisions in the Act material to the questions arising in these appeals are lodged herewith. As will appear from the side notes many of these sections were inserted or amended in 1952 by the Stamp Duties (Amendment) Act, 1952, which came into force on 25th November, 1952.

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5. The judgment from which the present appeal is brought held that death duty was payable in accordance with the provisions of the Stamp Duties Act in respect of property forming part of the estate of one Andrew John Brady, deceased, in which one Maude Lilian Brady, deceased, had an estate, to wit an equitable life estate, limited to cease on her death.

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p. 5, l. 26-

p. 6, l. 28.

p. 6, ll. 29, 30.

p. 2, l. 2.

p. 6, l. 35-

p. 7, l. 3.

6. The facts relevant to the present appeal are set out in the case stated by the Respondent Commissioner and concern duty claimed by the Commissioner on the death of the said life tenant, the estate assets being wholly situate in New South Wales and the Trustee thereof being a company incorporated and carrying on business in New South Wales. The Testator Andrew John Brady was domiciled in New South Wales at the time of his death but, at the date of the death of the life tenant, she and some of the remaindermen were domiciled outside New South Wales.

p. 8.

7. The case stated the following questions for determination by the Supreme Court:—

(1) Whether any part of the property included in the estate of the testator in which Maude Lilian Brady had an interest limited to cease on her death was liable to duty under and by virtue of the Stamp Duties Act, 1920-1952?

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(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 such Act?

The Court answered these questions as follows:—

(1) Yes.

(2) (a) All such property.

p. 13, l. 6.

p. 14, l. 13.

10 8. The Supreme Court of New South Wales delivered one judgment which covered the present and the two other cases mentioned above. In such judgment the Court (Maxwell, J., Roper, C.J. in Eq. and Herron, J.) held that s.102(2)(g) of the Stamp Duties Act was a valid enactment of the New South Wales Legislature and that, as in the present appeal, all the assets of the above-mentioned estate in which the life tenant had a limited interest were situate in New South Wales, the Respondent Commissioner had properly assessed the estate to duty. In reaching this conclusion the Court held—

p. 11, ll. 22-32

p. 13, ll. 1-8.

20 (i) That the New South Wales Legislature has power under the Constitution Act, 1902, s.5 to make laws for the peace, welfare and good government of New South Wales.

p. 9, ll. 43-46.

(ii) That the only legislation which is beyond this power is legislation on a subject matter which has no relevant territorial connection whatever with New South Wales.

p. 10, ll. 1-5.

(iii) that s.102(2)(g) on its proper construction applies only to property situate within New South Wales.

p. 11, l. 31.

(iv) That the situation of property within New South Wales is a sufficient nexus to support the validity of legislation imposing taxation on or in respect of such property, no matter what event is chosen as the reason for its imposition.

p. 12, ll. 1-4.

30 (v) That s.102(2)(g) validly applied to impose duty in respect of the limited interest of the said Maude Lilian Brady in the assets of the estate all of which were situate within New South Wales.

p. 13, ll. 1-8.

In accordance with these conclusions and the answers set out in paragraph 7 the Court held that the assessment was correct and dismissed the Appellant's appeal with costs.

p. 13, l. 9.

p. 14.

40 9. The Respondent contends that the decision of the Supreme Court of New South Wales in respect of the case the subject of the present appeal was correct and adopts the reasons stated by the said Supreme Court for such decision.

10. The Respondent Commissioner humbly submits that the present appeal should be dismissed with costs for the following amongst other

REASONS.

- (a) BECAUSE s.102(2)(g) of the Stamp Duties Act, 1920–1952, is a valid enactment of the New South Wales Legislature;
- (b) BECAUSE the said section on its true construction entitles the Commissioner to assess and recover the duty which he has assessed in the present case; and
- (c) BECAUSE the decision of the Supreme Court of New South Wales in the present case and the reasons given therefor were correct.

H. A. SNELLING,
Solicitor General.

R. ELSE MITCHELL.

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CASE FOR THE RESPONDENT.

LIGHT & FULTON,
24, John Street,
Bedford Row,
London, W.C.1,
Respondent's Solicitors.