



In the Privy Council.

ON APPEAL FROM THE SUPREME COURT
OF NEW SOUTH WALES

BETWEEN

FRANK BARTON FORSTER and FRANCIS BINDON
BLOOD the Trustees of the Will of CHARLES EDWARD
FORSTER deceased APPELLANTS

AND

THE COMMISSIONER OF STAMP DUTIES RESPONDENT.

CASE FOR THE APPELLANTS

RECORD

1.—This is an Appeal by leave of the Supreme Court of New South Wales from a Judgment of that Court given on the 20th April 1955. The Appeal arises upon a Case Stated by the Respondent under Section 124 of the Stamp Duties Act 1920-1952 of the State of New South Wales (hereinafter referred to as "The Stamp Duties Act") and concerns the constitutional validity of certain provisions introduced into that Act by the Stamp Duties Amendment Act 1952 whereby it was sought to levy death duty upon property in which a deceased or any other person had had an estate or interest limited to cease on the death of the deceased or at
10 a time determined by reference to that death.

p. 12
pp. 5-11
pp. 1-5

2.—The question for decision on the Appeal is :—

Whether Section 102 subsection (2) (g) and Sections 105A, 114A, 115A and certain ancillary Sections and subsections of the Stamp Duties Act are valid enactments of the Parliament of New South Wales.

3.—The relevant provisions of the Stamp Duties Act are :—

Sections 4, 5, 100 in its definitions of Administrator and Administration, Section 101 (D), 101 (E), Section 102 and paragraph 1 (a) thereof, Section 102 (2), Section 102 (2A), Section 102 A, sub-paragraphs 1, 2 and 3, Section 102 B, Sections 104, 105, 105A, 114, 114A, 115, 115A, 116, 120, 124, 144.

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p. 6, ll. 39-45

4.—Section 5 of the Constitution Act 1902 of the State of New South Wales provides :—

“ 5. 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.”

p. 1, ll. 13-19

5.—Charles Edward Forster (hereinafter called “ the Testator ”) died on the 27th day of July, 1920, being then domiciled in the State of New South Wales and leaving real and personal property within the said State. Probate of the Will of the Testator was granted on the 30th day of August, 1920, to Grace Isabel Forster and the Appellant Frank Barton Forster, the executrix and executor named in the said Will. The Appellants are the present Trustees of the said Will of the Testator. 10

pp. 2-3

6.—By his said Will the Testator after bequeathing certain legacies which are not material to this Appeal gave devised and bequeathed all his real estate and all the rest and residue of his personal estate to his Trustees upon trust to pay his debts funeral and testamentary expenses including all Probate and estate duties and subject thereto, with power of sale and investment, to pay the income arising from the real and residuary personal estate to Grace Isabel Forster, his wife, and from and after her death to hold the same upon trust for all his children in equal shares provided that if any of his children should predecease him leaving issue such issue would take the deceased parent’s share and if more than one equally to be divided between them per stirpes. It is not considered that any other provisions of the said Will are relevant to the matters raised in this Appeal. 20

p. 3, ll. 22-24

7.—The said Grace Isabel Forster died on the 22nd day of March, 1953, being then domiciled in the State of New South Wales and leaving property within the said State.

p. 3, ll. 25-28

8.—At the date of death of the said Grace Isabel Forster the executorial duties in respect of the estate of the testator had been carried out and the specific bequests given by his Will had long since been transferred and satisfied. 30

p. 3, ll. 29-43

9.—At the date of death of the said Grace Isabel Forster the estate of the Testator vested in the Appellants and in which the said Grace Isabel Forster had an interest limited to cease on her death comprised real estate situated within the State of New South Wales and valued at £6,000 shares in public companies incorporated in the State of New South Wales, and an advancement to a son of the Testator, the said Frank Barton Forster. The total value of the said property and assets at the date of death of the said Grace Isabel Forster was £41,593 10s. 7d. 40

p. 4, ll. 2-5

10.—At the date of death of the said Grace Isabel Forster the said shares in public companies were registered in the names of the Appellants

upon share registers in the State of New South Wales of the respective companies.

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11.—The Testator left him surviving three children and no more, namely, the Appellant Frank Barton Forster and Dorothy Mary Murdoch and Constance Eileen McCullagh all of whom survived the said Grace Isabel Forster and were at the date of her death domiciled and resident in the State of New South Wales. p. 4, ll. 8-12

12.—The Appellants are both domiciled and resident in the State of New South Wales. p. 4, ll. 6-7

10 13.—On the basis of the foregoing facts the Respondent included in the dutiable estate of the said Grace Isabel Forster the property and assets of the estate of the Testator above mentioned to the extent to which a benefit accrued or arose by cesser of the interest therein of the said Grace Isabel Forster limited to cease on her death and the Respondent valued such benefit at the whole of the principal value of the said property and assets, namely, at £41,594. p. 4, ll. 13-21

20 14.—For the purpose of assessing death duty in the estate of the said Grace Isabel Forster the Respondent treated the said property and assets, to the extent to which a benefit accrued or arose by cesser of the interest therein of the said Grace Isabel Forster as an estate by itself and separately assessed duty thereon in the sum of £5,615 3s. 10d. p. 4, ll. 22-27

15.—Notice of such assessment was issued by the Respondent on the 21st day of July 1953 addressed to the Appellants and calling upon them to pay the said sum of £5,615 3s. 10d. as death duty properly payable by them. Death duty in accordance therewith was duly paid by the Appellants but they being dissatisfied with such assessment delivered to the Respondent notice in writing requiring him to state a case for the opinion of the Supreme Court of New South Wales. p. 4, ll. 28-41

30 16.—In accordance with such notice and his obligations under Section 124 subsection (2) of the Stamp Duties Act the Respondent on the 2nd day of September 1954 stated and signed a case for the opinion of the Supreme Court of New South Wales upon the following questions :—

- pp. 1-5
p. 5, ll. 1-12
- (1) Whether any part of the property included in the estate of the Testator in which Grace Isabel Forster had an interest limited to cease on her death was liable to duty under and by virtue 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 ?
- 40 (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 ?

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17.—The Case Stated by the Respondent came on for hearing before the Full Court of the Supreme Court of New South Wales on the 8th and 9th days of November, 1954, before Maxwell, J., Roper, C.J., in Eq., and Herron, J., when it was argued by the Appellants and the Respondent simultaneously with two other Cases Stated by the Respondent, namely, a Case Stated in the matter of the estate of Maude Lilian Brady deceased and a Case Stated in the matter of the estate of Sarah Johnson deceased. Both the last named Cases Stated involved questions similar to the questions raised in the Case Stated in the present matter.

pp. 5-10

18.—On the 20th April 1955, the Supreme Court gave Judgment in 10
all of the three Cases Stated and delivered one Judgment as furnishing the Reasons for its answers to the questions in each of the three cases. In the Case Stated in the estate of Grace Isabel Forster deceased, the Supreme Court answered the questions which are set out in paragraph 16 above as follows :—

p. 10, ll. 10-15
p. 11, ll. 17-18

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

19.—The Supreme Court held

p. 7, ll. 24-28

- (a) That Section 102 subsection (2) (g) upon its true construction extends only to property situate in the State of New South 20
Wales and which was so situate at the date of the death of the deceased.

p. 7, ll. 28-31

Such a conclusion in their Honours' opinion followed from the decision in *The Commissioner of Stamp Duties v. The Perpetual Trustee Co. (Ltd.) (Watt's case)* (38 C.L.R. page 12) and from that in *Vicars v. The Commissioner of Stamp Duties* (71 C.L.R. page 309) and was greatly strengthened by reference to the provisions of Section 102 subsection (2A) of Section 102 A, subsection (1) and to those of Section 105A 30
subsection (1).

p. 7, l. 31-
p. 8, l. 6

p. 6, ll. 39-45

- (b) That, although the Legislature of New South Wales is a subordinate legislature so that legislation operating on a subject matter which has no relevant territorial connection with New South Wales falls outside its power and although under Section 102 subsection (2) (g) of the Stamp Duties Act property was brought to duty wherever the deceased may have died and wherever he may have been domiciled and wherever the remaindermen or Trustee in whom the property was vested may reside or be domiciled and no matter what the system of law by reference to which the instrument creating 40
the interest or regulating the rights of the remaindermen was executed or to which it owed its force or by reference to which it could be administered, nevertheless, since upon its true construction Section 102 subsection (2) (g) extended only to property situated in the State of New South Wales at the date

p. 7, ll. 4-17

p. 7, ll. 24-28

of the death of the deceased, the mere presence of the property within the jurisdiction was sufficient to empower the imposition of taxation upon it no matter what event was chosen as the reason or occasion for the imposition. RECORD
p. 8, ll. 21-31

10 (c) That Section 102 sub-section (2A) insofar as it purported to extend the operation of Section 102 subsection (2) (g) to property situate outside New South Wales in which a person domiciled in New South Wales at his death had an interest limited to cease on his or her death was not a valid enactment of the Parliament of New South Wales, their Honours being of opinion that the domicile of the deceased in the State was irrelevant to the levy of duty on property which was not nor ever had been the property of the deceased person. p. 8, l. 32-
p. 9, l. 5

20.—The Appellants submit that the reasoning of the Supreme Court appears to concede (and, in the Appellants' humble submission, correctly) that if Section 102 (2) (g) as drawn applied to property wherever situate it would be beyond the competence of the Parliament of New South Wales. It is only by a process of construing the statute so as to confine its operation to property within the State of New South Wales at the relevant date that p. 7, l. 4-
p. 8, l. 31

20 their Honours have reached their conclusion that the Section is valid. The Appellants submit that such a construction is not warranted. The Statute, in the Appellants' submission, evidences an intention to impose duty on property wherever situate and discloses no criterion or standard of reference to which its unqualified language could be reduced so as to apply only to property situate within the State of New South Wales at the date of the death of the deceased that being the occasion on which the duty is sought to be levied.

The Appellants submit that the Supreme Court's use of the cases referred to in paragraph 19 subparagraph (a) hereof is not justified. The p. 7, ll. 29-31

30 present case is one in which it is sought to levy duty on property which has not at any time been the property of the deceased, whereas in the cases cited the property in question was or had been the property of the deceased over whose estate legislature on the facts of those cases had complete control.

In any case, the Appellants would respectfully submit that insofar as p. 7, ll. 29-30

The Commissioner of Stamp Duties v. The Perpetual Trustee Co. (Ltd.) (*Watt's case*) decided that the Section then under consideration should be construed as limited to property within the State at the date of the death of the deceased and that it was valid on that basis it was incorrectly decided.

21.—The Appellants further submit that in any case even if the Statute

40 can be construed so as to confine its operation to property within the State of New South Wales at the date of the death of the deceased, the mere presence within the State of the property of the remaindermen does not furnish a sufficient nexus with the State of New South Wales to support a Statute levying tax on such property upon the death of a deceased wherever the death may take place and wherever the deceased had been resident or

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domiciled. In this connection the Appellants respectfully point out that the duty is not levied in respect of the presence in New South Wales of the remaindermen's property but solely in respect of the death of the person entitled to a limited interest as defined. The Statute does not make the presence of the property in New South Wales in any sense a criterion of liability. It is only because of the process of construction adopted by the Supreme Court that the circumstance of the presence of the property in New South Wales obtains any significance.

p. 11, ll. 6-18

22.—The Appellants submit that the Judgment of the Supreme Court upon the Case Stated insofar as it answers questions 1 and 2 (a) in the manner indicated is wrong and ought to be reversed for the following amongst other 10

REASONS

1. BECAUSE on its true construction Section 102 subsection (2) (g) of the Stamp Duties Act is invalid.
2. BECAUSE upon its true construction Section 102 subsection (2) (g) operates in circumstances and upon property which furnish no sufficient connection with the State of New South Wales as to make the subsection a law for the peace, order and good government of New South Wales. 20
3. BECAUSE the reduction of the language of the subsection, or the introduction into it of any qualification or implication, so as to restrict its operation to property within the State of New South Wales at the date of the death of the deceased is unwarranted.
4. BECAUSE the Judgment of the Supreme Court in the respects now appealed from was wrong and ought to be reversed.

K. S. JACOBS.

In the Privy Council

No. 35 of 1955.

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BETWEEN

FRANK BARTON FORSTER and
FRANCIS BINDON BLOOD the
Trustees of the Will of CHARLES
EDWARD FORSTER deceased
APPELLANTS

AND

THE COMMISSIONER OF STAMP
DUTIES RESPONDENT.

CASE FOR THE APPELLANTS

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