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In the Privy Council.

UNIVERSITY OF LONDON
W.C.1.
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INSTITUTE OF ADVANCED
LEGAL STUDIES
No. 35 of 1955.
15935

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.*

RECORD OF PROCEEDINGS

INDEX OF REFERENCE.

No.	Description of Documents.	Date.	Page.
1	Case Stated by the Commissioner of Stamp Duties	2nd September 1954	1
2	Reasons of the Supreme Court of New South Wales	20th April 1955 ...	5
3	Order of the Supreme Court of New South Wales on Case Stated	20th April 1955 ...	10
4	Order Granting Final Leave to Appeal to Her Majesty in Council	4th August 1955 ...	12

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

In the Privy Council.

No. 35 of 1955.

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.*

RECORD OF PROCEEDINGS

No. 1.

Case Stated.

No. 315 of 1954.

IN THE SUPREME COURT OF NEW SOUTH WALES.

IN THE MATTER of the estate of GRACE ISOBEL FORSTER 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 of FRANK BARTON FORSTER and FRANCIS
BINDON BLOOD, the Trustees of the will of CHARLES EDWARD FORSTER
10 deceased against the assessment by the Commissioner of Stamp Duties
of death duty payable in respect of the said estate.

In the
Supreme
Court of
New South
Wales.

No. 1.
Case Stated.
2nd
September
1954.

CASE STATED.

1.—Charles Edward Forster (hereinafter called the testator) died on the 27th July 1920 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 of the Testator was granted on the 30th August 1920 to Grace Isabel Forster and Frank Barton Forster, the executrix and executor therein named. The present trustees of the said will are Frank Barton Forster and Francis Bindon Blood.

In the
Supreme
Court of
New South
Wales.

—
No. 1.
Case Stated.
2nd
September
1954—
continued.

3.—The will of the testator was in the words and figures following
namely :—

THIS IS THE LAST WILL of me CHARLES EDWARD FORSTER of
Sydney in the State of New South Wales Civil Engineer
I REVOKE all wills by me heretofore made AND I APPOINT my
wife, GRACE ISABEL FORSTER and my son FRANK BARTON
FORSTER (hereinafter called "my Trustees") Executrix and
Executors and Trustees of this my Will I GIVE AND BEQUEATH
to my said wife all my household furniture jewellery and articles
of domestic use and ornament and consumable provisions which 10
shall at the date of my death be in and about my dwelling house
I GIVE and bequeath to my daughter Constance Eileen Forster
twenty shares in the Commercial Banking Company of Sydney
Limited ten shares in the Bank of New South Wales and four
hundred and thirty-two shares in the Cairns Gas Company
Limited I GIVE DEVISE AND BEQUEATH all my real estate and all
the rest and residue of my personal estate to my said Trustees
UPON TRUST to pay my debts funeral and testamentary expenses
including all Probate and Estate Duties and subject thereto to
either retain the same in the existing state in which they may be 20
invested at the time of my death or from time to time at their
discretion to realise the same or any part thereof and invest the
proceeds in accordance with the provisions for investment
hereinafter contained I DIRECT my Trustees to pay the income
arising from my real and residuary personal Estate and the
investments from time to time representing the same to my said
wife for her own use and benefit and from and after the death of
my said wife I DIRECT my Trustees to hold the said real and
residuary personal Estate and the investments representing the 30
same UPON TRUST for all my children in equal shares PROVIDED
that if any of my children shall predecease me leaving issue such
issue shall take his her or their deceased parents share and if
more than one equally to be divided between them per stirpes
AND I DIRECT that my Trustees may invest any moneys held by
them subject to the trusts of this my WILL upon the following
securities within any part or parts of the British Empire that is
to say Government securities the Debentures of any Municipal
or Trading Corporation the purchase or mortgage of lands of any
tenure whatsoever whether freehold leasehold or otherwise Fixed
Deposit with any Bank or Banks the purchase of shares of any 40
Company (Mining Companies and Companies carrying on business
of a speculative nature excepted) or partly upon one and partly
upon other or others of such investments with power to vary or
transpose such investments in to or for any other hereby
authorised at their absolute discretion and for the purpose of
enabling my Trustees to make any such investments elsewhere
than in the State of New South Wales I EMPOWER them to invest

10 moneys in the names of two or more persons as Trustees for my said Trustees AND I HEREBY DECLARE that the power of appointing a new Trustee shall be exercisable by my wife AND I DECLARE that the receipt signed by my Trustees for any moneys securities or other personal property paid transferred or delivered to them shall be an effectual discharge for all such moneys securities or other personal property and shall exonerate the person paying transferring or delivering the same from being bound to see to the application or being liable for the loss or misapplication thereof IN WITNESS whereof I have hereunto set my hand this twentythird day of February One thousand nine hundred and seventeen. SIGNED by the said Testator as and for his last Will and Testament in the presence of us both present at the same time who at his request and in his presence and in the presence of each other have hereunto subscribed our names as witnesses.

In the
Supreme
Court of
New South
Wales.
—
No. 1.
Case Stated.
2nd
September
1954—
continued.

Charles E. Forster.

Arthur D. Fisher.
Solr. Sydney.

20 H. R. Andrews.
Mangg. Law Clerk.

4.—Grace Isabel Forster, the widow of the testator, died on 22nd March 1953 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 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 and the estate of the Testator vested in the Trustees of his will and in which the said Grace Isabel Forster had an interest limited to cease
30 on her death comprised the following property and assets only, namely:—

		£	s.	d.
<i>Real Estate :</i>				
Residence at Bellevue Hill	6,000	0	0	
<i>Personal Estate :</i>				
Shares in Commercial Banking Co. of Sydney Ltd. ...	1,221	6	0	
Shares in Bank of New South Wales	1,005	15	0	
Shares in Colonial Sugar Co. Ltd.	29,348	0	0	
Shares in Mort's Dock & Engineering Co. Ltd. ...	537	10	0	
Shares in Kandos Cement Co. Limited	581	5	0	
40 Advancement to Frank Barton Forster	2,900	0	0	
	£41,593	16	0	
Less Capital account overdrawn		5	5	
	£41,593	10	7	

In the
Supreme
Court of
New South
Wales.

—
No. 1.

Case Stated.
2nd
September
1954—
continued.

6.—The Companies mentioned in paragraph 5 hereof are all incorporated in the State of New South Wales and the shares in the said paragraph mentioned were, at the date of death of Grace Isabel Forster, registered in the names of the Trustees of the will of the testator upon share registers in New South Wales of the respective companies.

7.—The present Trustees of the will of the testator are both domiciled and resident in the State of New South Wales.

8.—The testator left him surviving three children and no more, namely the said 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. 10

9.—The Commissioner of Stamp Duties has included in the dutiable estate of the said Grace Isabel Forster 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 Grace Isabel Forster claiming that such assets are so liable to be included to the extent aforesaid under and by virtue of section 102 (2) (g) of the Stamp Duties Act, 1920–1952, and the Commissioner has, pursuant to such section, valued such benefit at the whole of the principal value of such assets as specified in paragraph 5, namely at £41,594. 20

10.—For the purpose of assessing death duty in the estate of Grace Isabel Forster 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 £5,615 3s. 10d. being 13½ per centum of the above mentioned value of £41,594.

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 above-mentioned sum of £5,615 3s. 10d. out of the assets of the testator's estate to the extent aforesaid and has issued a notice of assessment bearing date the 21st July 1953 addressed to such trustees and calling upon them to pay the said sum of £5,615 3s. 10d. as death duty properly payable by them. 30

12.—The trustees of the will 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 pursuant to section 124 of the Stamp Duties Act, 1920–1952, and have paid the duty in conformity with the said assessment and the sum of £20 as security for costs in accordance with that section. 40

- 13.—The following questions are stated for the determination of the Supreme Court :—
- In the Supreme Court of New South Wales.
—
No. 1.
Case Stated.
2nd September 1954—
continued.
- (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—
- 10 (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 ?

14.—The Court is also asked whether the duty chargeable (if any) should be assessed at the said amount of £5,615 3s. 10d. or, if not, at what amount.

15.—The Court is also asked to decide the question of costs.
Dated this Second day of September One thousand nine hundred and fifty-four.

20

(Sgd.) E. T. WOODS,
Commissioner of Stamp Duties.

No. 2.

Reasons of the Supreme Court of New South Wales.

No. 2.
Reasons.
20th April
1955.

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.
30 FORSTER & ANOR. *v.* COMMISSIONER OF STAMP DUTIES.

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

In the
Supreme
Court of
New South
Wales.

No. 2.
Reasons.
20th April
1955—
continued.

Act is within or beyond the legislative competence of the New South Wales Legislature.

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). 10

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. 20

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 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). 30

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, 40 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).

- 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.
- 10 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.
- 20 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 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 :—
- 30

40 “ 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.”

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,

In the
 Supreme
 Court of
 New South
 Wales.

—
 No. 2.
 Reasons.
 20th April
 1955—
continued.

In the
Supreme
Court of
New South
Wales.

—
No. 2.
Reasons.
20th April
1955—
continued.

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 properly 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.

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). 10

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 the paragraph as it should be read, as restricted to property situate within New South Wales, it is, in our opinion, perfectly valid. 20

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 40 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.

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.

10 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 seized 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
20 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.

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
30 New South Wales, the trustees are domiciled in New South Wales and 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
40 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.

In the
Supreme
Court of
New South
Wales.

—
No. 2.
Reasons.
20th April
1955—
continued.

In the
Supreme
Court of
New South
Wales.

No. 2.
Reasons.
20th April
1955 —
continued.

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.

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

No. 3.
Order of the Supreme Court of New South Wales on Case Stated.

No. 315 of 1954.

IN THE SUPREME COURT OF NEW SOUTH WALES.

IN THE MATTER of the Estate of GRACE ISABEL FORSTER 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 of FRANK BARTON FORSTER and FRANCIS BINDON BLOOD the Trustees of the Will of CHARLES EDWARD FORSTER deceased against the assessment by the COMMISSIONER OF STAMP DUTIES of Death Duty payable in respect of the said Estate.

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 Judgment accordingly IT IS ORDERED that the questions in the said Case Stated namely :—

- In the
Supreme
Court of
New South
Wales.

No. 3.
Order on
Case Stated.
20th April
1955—
continued.
- 10 (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 ?
- (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) The whole of such property.

20 AND IT IS FURTHER ORDERED that the Appeal herein be dismissed AND that the costs of the Commissioner of Stamp Duties of and incidental to the Case Stated be taxed by the proper Officer and when so taxed and allowed be paid by the Appellants to the Commissioner of Stamp Duties or to Mr. F. P. McRae his Solicitor.

By the Court.

For the Prothonotary,
(Sgd.) R. T. BYRNE,
(L.S.)
Chief Clerk.

No. 4.

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

In the
Supreme
Court of
New South
Wales.

Term No. 315 of 1954.

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

IN THE SUPREME COURT OF NEW SOUTH WALES.

IN THE MATTER of the estate of GRACE ISABEL FORSTER 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 of FRANK BARTON FORSTER and FRANCIS BINDON BLOOD, the Trustees of the Will of CHARLES EDWARD FORSTER deceased against the assessment by THE COMMISSIONER OF STAMP DUTIES of Death Duty payable in respect of the said Estate. 10

Thursday the Fourth day of August 1955.

UPON MOTION made this day pursuant to the Notice of Motion filed herein on the Second day of August 1955 WHEREUPON AND UPON READING the said Notice of Motion the Affidavit of Thomas Archdall Langley sworn on the Second day of August 1955 and the Prothonotary's Certificate of Compliance dated the 29th day of July 1955 AND UPON HEARING what was alleged by Mr. Jacobs of Counsel on behalf of the Appellants Frank Barton Forster and Francis Bindon Blood and by Mr. Ellicott of Counsel on behalf of the Respondent Commissioner of Stamp Duties IT IS ORDERED 20 that final leave to appeal to Her Majesty in Council from the Judgment and Order of this Court given and made herein on the Twentieth day of April 1955 be and the same is hereby granted to the said Appellants AND IT IS FURTHER ORDERED that upon payment by the said Appellants of the costs of preparation of the transcript record and despatch thereof to England the sum of Twenty-five pounds (£25 0s. 0d.) deposited in Court by the said Appellants as security for and towards the costs thereof be paid out of Court to the said Appellants or to their Solicitors.

By the Court,

C. T. HERBERT, 30
Deputy Prothonotary.

In the Privy Council.

No. 35 of 1955.

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.*

RECORD OF PROCEEDINGS

BELL BRODRICK & GRAY,
The Rectory,
29 Martin Lane,
Cannon Street,
London, E.C.4,
Solicitors for the Appellants.

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