

JACOB

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THE HIGH COURT

1981 No: 281(A) REVENUE



BRIGID KATHLEEN JACOB

.v.

THE REVENUE COMMISSIONERS

JUDGMENT of Mr. Justice McWilliam delivered the 6th day of July 1983

This appeal concerns a claim by the Revenue Commissioners under Part II of the Capital Acquisitions Tax Act, 1976, for the payment of gift tax on the exercise by the trustees of a settlement, in favour of the Appellant, of a power contained in the settlement.

By an Indenture of Settlement dated 22nd December, 1955, the father of the Appellant settled certain funds upon trust for the Appellant so that the income should be accumulated and added to the capital of the fund until the Appellant should attain the age of thirty years and thereafter to pay the income to the Appellant until 31st December, 1985, or her earlier death and, should she survive

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until 31st December, 1965, then to pay the capital to her for her own use and benefit absolutely. By the Indenture provision was made for payment out of capital under certain circumstances for the benefit of the Appellant or her husband or children and it was provided that, if the Appellant should die at any time while any part of the trust fund remained in the hands of the trustees, such part should be held in trust for her children or, if none, for the other children of the settlor as therein provided.

It was also provided by the Indenture that, after the Appellant should have attained the age of thirty years, the trustees might hand over all or any part of the trust fund to the Appellant for her own use absolutely.

The Appellant attained the age of thirty years on 17th November, 1962, and, by deed dated 4th April, 1978, the trustees irrevocably declared that they held the trust fund for the benefit of the Appellant absolutely, freed and discharged from the trusts of the settlement.

Section 4 of the Act provides as follows:

"A capital acquisitions tax, to be called a gift tax and to be computed as hereinafter provided, shall, subject to this Act and the regulations thereunder, be charged, levied

"and paid upon the taxable value of every taxable gift taken by a donee, where the date of the gift is on or after the 28th day of February 1974."

Section 5 provides as follows:-

"(1) For the purposes of this Act, where, under or in consequence of any disposition, a person becomes beneficially entitled in possession, otherwise than on a death, to any benefit (whether or not the person becoming so entitled already had an interest in the property in which he takes such benefit), otherwise than for full consideration in money or money's worth paid by him, he shall be deemed to take a gift.

(2) A gift shall be deemed -

(a) to consist of the whole or the appropriate part, as the case may be, of the property in which the donee takes a benefit, or on which the benefit is charged or secured or on which the donee is entitled to have it charged or secured;

and

(b) (not relevant to these proceedings)."

Section 6 provides as follows:-

"(1) In this Act, "taxable gift" means -

(b) in the case of a gift taken under a discretionary trust where -

(i) the disponent is domiciled in the State at the date of the gift or was (in the case of a gift taken after his death) so domiciled at the time of his death; or

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(ii) the proper law of the discretionary trust at the date of the gift is the law of the State, the whole of the gift;"

Section 2 of the Act contains definitions of many of the terms used in the foregoing provisions. I refer to the following:-

"date of the gift" means the date of the happening of the event upon which the donee, or any person in right of the donee or on his behalf, becomes beneficially entitled in possession to the benefit, and a reference to the time when a gift is taken shall be construed as a reference to the date of the gift;

"disposition" includes -

- (b) any trust, covenant, agreement or arrangement, whether made by a single operation or by associated operations;
- (f) the grant or creation of any benefit;
- (g) the grant or the creation of any lease, mortgage, charge, licence, option, power, partnership or joint tenancy or other estate or interest in or over property.
- (i) the exercise of a general power of appointment in favour of any person other than the holder of the power;

"benefit" includes any estate, interest, income or right;

"property" includes rights and interests of any description;

"discretionary trust" means any trust whereby, or by virtue or in consequence of which, property is held on trust to apply, or with a power to apply, the income or capital or part of the income or capital of the property for the benefit of any person or persons or of any one or more of a number or of a class of persons whether at the discretion of trustees or any other person and notwithstanding that there may be a power to accumulate all or any part of the income;

"date of the disposition" means -

(c) in any other case, the date on which the act (or where more than one act is involved, the last act) of the disponent was done by which he provided or bound himself to provide the property comprised in the disposition;

"interest in expectancy" includes an estate in remainder or reversion and every other future interest, whether vested or contingent, but does not include a reversion expectant on the determination of a lease;

"entitled in possession" means having a present right to the enjoyment of property as opposed to having a future such right, ..... but he (a person) shall not be deemed to be

entitled in possession to an interest in expectancy until an event happens whereby this interest ceases to be an interest in expectancy.

The effect of these rather involved provisions seems to be that there must be a disposition in order to have a gift, but that the date of the disposition is irrelevant for the purpose of determining the date of the gift, which latter is determined by the date on which any benefit under the disposition becomes a beneficial interest in possession.

On this basis the Appellant took a gift in 1962 to the extent of the interest which then vested in her in possession. As this gift was taken before 8th February, 1974, it was not a taxable gift. The arguments as to the nature and extent of this interest have formed the basis of the main submissions in the case.

On behalf of the Appellant it was argued that she took an absolute vested interest in the entire property when she attained the age of thirty years subject only to divesting in the event of her death before 31st December, 1985, and, as all possibility of divesting was removed by the appointment, the gift essentially took

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effect in 1962 and that this was the date of the gift so that there was no liability to tax. It was submitted that this was the real nature of the transaction and that the real nature must be considered and not the conveyancing form. I was referred to the cases of Attorney General .v. Power (1906) 2 I.R. 272 and Ramsey .v. Inland Revenue Commissioners (1981) 2 W.L.R. 449. It was also pointed out that section 20 contemplates a situation such as this and supports the argument on behalf of the Appellant in that it provides for taxation on the basis that the contingency will not happen and the entitlement will not thereby cease but makes provision for a subsequent adjustment in the event of the happening of the contingency.

It was not contested on behalf of the Revenue that the Appellant took a vested interest in 1962, but it is contested that she took an absolute interest. I was referred to a number of cases on behalf of the Revenue but these cases, in the main, do not discuss the nature of a contingent estate, that is to say, one only to be enjoyed on the happening of an uncertain event, but are more concerned with the time of vesting and the nature of the particular estate.

Pearson .v. Inland Revenue Commissioners (1980) 2 W.L.R. 871 related

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to an interest equivalent to the interest taken by the Appellant prior to attaining the age of thirty years. In Gartside .v. Inland Revenue Commissioners (1968) 2 W.L.R. 277 the Revenue claimed that the possibility of receiving a benefit by the objects of a discretionary trust constituted an interest in possession in the property the subject matter of the trust. It was held that such a possibility did not constitute an interest in possession. The case does not give assistance with regard to determining the nature of the contingent interest in the present case except, possibly, in so far as Lord Reid observed at page 282:-

" A person who has a contingent right to some benefit from a trust fund in some future event, has a present right to prevent the trustees from dissipating the fund. But that right is not an interest in possession separate and in addition to his contingent interest."

This observation indicates that a contingent right to some benefit on some future event is an interest in the property, although care should be taken when applying an observation made under a set of circumstances and on the consideration of a provision of a statute quite different from the present.

I am of opinion that the proper approach to this case is to



consider whether the interest of the children and remoter issue of the Appellant contingent on the death of the Appellant before 31st December, 1985, was a benefit taken by the Appellant under the deed of 1978.

Having regard to the definitions of "benefit", "property" and "interest in expectancy", I am of opinion that, by the appointment or declaration of 4th April, 1978, which was, in effect, a conveyance of the contingent interest of the children, the Appellant took a benefit within the meaning of section 5. In practical terms, she immediately became entitled to use or dispose of the capital of the property which she could not otherwise have done until after December, 1985.

The question I have been asked is whether the Appeal Commissioner was correct in holding that the interest taken by the Appellant on 17th November, 1962, was a limited interest and that the decision of the Revenue Commissioners that the appointment on 4th April, 1978, of securities and cash to the Appellant constituted a gift chargeable with gift tax of the said securities and cash taken absolutely by the Appellant on 4th April, 1978, from the disponer, Philip Francis Scanlan.

I have not been addressed with regard to the rate or incidence of gift tax and I have not considered this. Accordingly, I will merely state my opinion that the Appellant took a benefit by the deed of 1978, that this benefit constituted a gift liable to gift tax and that the benefit taken by the deed of 1978 was the value of the contingent interest given to the children or remoter issue of the Appellant by the settlement of 1955.

*Robert R. Whelan,*

*17<sup>th</sup> September, 1983.*

CASES CITEDFor Appellant:

Attorney General .v. Power (1906) 2 I.R. 272;  
Ramsay .v. Inland Revenue Commissioners (1981) 2 W.L.R. 449;  
McGredy .v. Commissioners of Inland Revenue 32 T.C. 338

For Revenue:

Re Robinson's Settlement (1891) 3 Ch. 129;  
Jackson .v. Commissioner of Stamps (1903) A.C. 350;  
Re Thomas (1930) 1 Ch. 194;  
Tomlinson .v. Glyn's Executor & Trustee Co. (1969) 3 W.L.R. 310  
Cochranes Executors .v. Commissioners of Inland Revenue 49 T.C. 299;  
Gartside .v. Inland Revenue Commissioners (1967) 3 W.L.R. 671;  
Pearson .v. Inland Revenue Commissioners (1980) 2 W.L.R. 872.