Judgment of the Lords of the Judicial Committee of the Privy Council on the Appeal of John Spencer Brunton and others v. *The Acting Commissioner of Stamp Duties for the State of New South Wales, from the Supreme Court of the State of New South Wales (P.C. Appeal No. 9 of 1913); delivered the 20th June 1913.*

PRESENT AT THE HEARING:

THE LORD CHANCELLOR.
LORD SHAW.
LORD MOULTON.
LORD PARKER OF WADDINGTON.
SIR SAMUEL GRIFFITH.

[DELIVERED BY
LORD PARKER OF WADDINGTON.]

The result of this Appeal depends upon the true meaning and effect of Section 21 of the New South Wales statute No. 24 of 1904, the short title of which is the Stamp Duties Amendment Act, 1904.

The material facts are as follows:—Mary Ann Thorne died on the 7th August 1911. The estate belonging to her at the time of her death was of the value of 15,432*l.* 2*s.* 7*d.*, but besides this estate she had under the will of one William Moffatt a special power of testamentary appointment over property of the value of 181,085*l.* 9*s.* 11*d.* This power she exercised by her will. On her death duty became payable under the Stamp Duties Act, 1898, as amended by the Probate Duties (Amendment) Act, 1899, and the Stamp Duties

Amendment Act, 1904, in respect of (1) the estate belonging to her at her death and (2) the estate over which she exercised her special testamentary power. The Commissioner of Stamp Duties for the State of New South Wales thereupon claimed that the rate of duty payable in respect of the estate belonging to her at her death must be determined not by reference to the value of such estate, but by reference to the aggregate value of such estate and the estate over which she exercised her special testamentary power. The Supreme Court of New South Wales, by Order dated the 4th September 1912, upheld this contention, and the executors of Mary Ann Thorne are appealing from this Order. The actual amount involved in the question their Lordships have to determine is 1,190*l.* 11*s.* 2*d.*

The Stamp Duties Act, 1898, the full title of which is "An Act to consolidate the Laws relating to Stamp Duties," deals with a variety of matters, but for the purposes of this Appeal it is only necessary to refer to Part III. thereof comprising Sections 49 to 59 inclusive. It is provided by Section 49 (1) that the duties to be levied upon the estates of deceased persons shall be according to the duties mentioned in the third schedule to the Act, and that such duties shall be charged and chargeable upon all estate, whether real or personal, which belonged to any testator or intestate dying after the commencement of the Act. A reference to this schedule shows that the rate of duty is to be determined by the value of the real and personal estate of the deceased in respect of which there is a grant of probate or letters of administration. Section 49 (2) provides that duties to be levied according to the duties mentioned in the third schedule shall also be charged and chargeable upon certain other estates

enumerated under the headings A and B. The heading A includes the following:—(*a*) all estate which any person dying after the 22nd May 1894 has disposed of either before or after that date by will or settlement creating any trust in respect of that estate to take effect after his death under any authority enabling that person to dispose of the same by deed or will; (*b*) all estate taken under a voluntary disposition made by such person after the 22nd May 1894, but not *bonâ fide* made within 12 months before the death of such person; (*c*) all estate which such person being absolutely entitled thereto has transferred into the joint names of himself and any other person so that some beneficial interest passes or accrues by survivorship on his death; (*d*) all estate purchased or invested by such person in the joint names of himself and any other person so that some beneficial interest passes or accrues by survivorship on his death; and (*e*) all estate passing under any voluntary settlement made by such person by instrument (other than a will) whereby an interest for life or any period determinable by reference to death is reserved to the settlor or whereby the settlor has reserved the right by the exercise of any power to restore to himself or reclaim the absolute interest in the settled property. The heading B includes all personal estate (not being chattels real) taken under any gift whenever made by such person of which *bonâ fide* possession has not been assumed by the donee immediately upon the gift and not thenceforward retained to the exclusion of any benefit to the donor whether by contract or otherwise.

Under the third schedule to the Act the rate of duty is determined according to the value of the estate chargeable therewith.

It is in their Lordships' opinion reasonably clear that according to the true construction of the Stamp Duties Act, 1898, every estate on which duty is chargeable must for the purpose of determining the rate of duty be treated as an estate in itself and not aggregated with any other estate. This construction was not seriously disputed by Counsel for the Respondent and is corroborated by reference to the previous Acts which the Act of 1898 was intended to consolidate, and also, as will appear presently, by the Probate Duties (Amendment) Act, 1899. The only trace which their Lordships can find in the Act of 1898 of any aggregation for the purpose of determining the rate of duty is in Section 52, in the case of conveyances or gifts made with intent to evade the payment of duty and of donations *mortis causa;* and here there are express provisions that the subject of every such conveyance, gift or donation *mortis causa* is to be deemed part of the estate or property of the deceased and the duty thereon recovered on that footing.

Further, an examination of the subsequent sections of Part III. of the Act of 1898 will show that the Act contains no provision for the assessment or collection of the duties charged under Section 49 (2). All those sections, with the exception of Section 58, relate to the assessment and collection of duty on the estates real and personal of deceased persons, including the subject-matter of gifts made with the intention of evading duties and of donations *mortis causa*, while Section 58 relates to the assessment and payment of the duty thereby charged on property of which the deceased has executed a settlement containing any trust to take effect after his death, property which if the settle-

ment were voluntary and the settlor had reserved a life interest, would appear to be already charged with duty by Section 49 (2) A. (*e*). This is no doubt accounted for by the fact that Section 52 is a re-enactment of a clause contained in the Statute No. 3 of 1880, whereas Section 49 (2) is a re-enactment of the later Statute No. 20 of 1894.

The Act of 1898 was followed by the Probate Duties (Amendment) Act, 1899, which provides (Section 1, subsection 1) that where under Part III. of the Act of 1898 duties are chargeable upon the estates of any persons dying after the commencement of the Act, or upon estates the subject of any settlement, trust, disposition, conveyance, transfer, vesting, purchase, investment or gift made after the commencement of the Act by any person so dying, such duties shall be levied according to the duties mentioned in the schedule to the Act. The schedule provides for duties, the rate of which varies with "the total value of the estate," which in their Lordships' opinion means the total value of each estate chargeable, and not the total value of all the estates chargeable. It would be against all sound principles of construction to infer from an ambiguous phrase in the schedule the intention of aggregating estates for the purpose of determining the rate of duty, and such aggregation would involve various anomalies in the application of Section 1, subsection 2, the object of which is to grant partial relief from duty to the widow, children and grandchildren of the deceased. It was not indeed contended that the Act of 1899 introduced any principle of aggregation.

In the year 1903 the case of the Commissioner of Stamp Duties for New South Wales *v.* Stephen, 1904, A.C. 137, came before their Lordships'

Board. A Mrs. O'Connell had died in 1901, leaving a will by which she disposed of her own property and by which also she exercised a special testamentary power conferred on her by her marriage settlement. The Commissioner of Stamp Duties insisted that the executor must pay the duty charged by Section 49 (2) A (*a*) of the Act of 1898 on the appointed property, before probate was granted. The Court below held that this was not so, because the Act of 1898 did not make the executor liable for the duty in question. Their Lordships' Board affirmed the decision of the Court below, but on the ground that Section 49 (2) A (*a*) did not apply at all to property appointed under a special power, but only to property appointed under general powers of appointment. The judgment of the Board was delivered by Lord Lindley, and Counsel in the present case laid considerable stress on certain expressions contained therein. In their Lordships' opinion there is nothing in Lord Lindley's judgment which indicates in any way that the question of aggregating two or more estates for the purpose of ascertaining the rate of duty was present to his mind, or that he considered that according to the true construction of the Act of 1898 the executor was responsible for the payment of the duties chargeable under Section 49 (2) of that Act, except possibly the duty on property appointed by will under a general power, in which case such property would for certain purposes be assets of the testator. After the decision, however, two points were quite clear, (1) that Section 49 (2) A (*a*) of the Act of 1898 did not apply to property appointed under a special power, and (2) that no machinery was provided by the Act of 1898 for the assessment and collection of the duties

chargeable under Section 49 (2), except possibly property appointed by will under a general power.

It was under these circumstances that the Legislature of New South Wales passed the Stamp Duties Amendment Act, 1904, upon the true construction of which this Appeal depends. Their Lordships are concerned only with Sections 20, 21, and 22 of this Act. Section 20 provides that Section 49 (2) A (*a*) of the Act of 1898 shall be deemed to have extended and shall extend to property appointed under a special power. In other words it in effect reverses the ultimate decision in the case of the Commissioner of Stamps for New South Wales *v.* Stephen. Sections 21 and 22 at any rate provide machinery for the assessment and collection of all the duties chargeable under Section 49 (2) of the Act of 1898; in other words they are clearly designed to remedy the defect in the Act of 1898 above referred to. The question is whether they go beyond this and increase the duties imposed by the Act of 1898 by introducing the principle of aggregating two or more estates for the purpose of ascertaining the rate of duty chargeable. To answer this question the exact wording of the sections requires careful examination.

The 21st section deals with the duties payable under Section 49 (2) A (*a*) or (*b*) of the Act of 1898 as amended by the Act of 1899. It provides that where such duty is payable in respect of a disposal by will, settlement, or voluntary disposition of any estate (*a*) such estate shall for the purposes of the Acts of 1898 and 1899 be deemed to be the estate of the person dying; (*b*) the duty shall be payable by the executor or administrator of the person dying; and (*c*) the duty shall be a charge on the estate and shall be paid thereout by the trustees

or owners thereof according to the value of their respective interests to the executor or administrator. The expressions "such estate" in subsection (*a*) and "the estate" in subsection (*c*) clearly mean the particular estate chargeable, whether the subject of a disposal by will, settlement or voluntary disposition, and the expression "the duty" in subsections (*b*) and (*c*) clearly means the duty payable under the Act of 1898 as amended by the Act of 1899 in respect of such particular estate. By subsection (*a*) the particular estate is for the purposes of the Acts of 1898 and 1899 to be deemed the personal estate of the person dying, and it is argued that these words are wide enough to introduce the principle of aggregation for the purpose of determining the rate of duty. On the other hand, if the legislature had been contemplating any alteration in the rate of duty, one would have expected the section to be worded in such a way as to show clearly (1) that "the duty" meant "the duty payable under the Act of 1898 as amended by the Act of 1899 *and the Act of* 1904" and not "the duty payable under the Act of 1898 as amended by the Act of 1899" only; (2) that "the duty" meant the duty on the personal estate increased by the estates to be aggregated for ascertaining its rate; and (3) that the duty charged on the particular estate was not the whole duty but a proper proportion of the duty. One would also have expected subsection (*a*) to provide that the particular estate should be deemed to be "part of the estate of the person dying" as in Section 52 of the Act of 1898, and not "the estate of the person dying." The Act of 1898 (Section 9) had made a distinction between "estate which belonged to" the person dying and other property also made liable to duty. The Act of 1899 (Section 1) had

repeated the distinction in slightly different language, but the rate of duty upon both classes of property was equal. For other purposes, however, as has been shown, the distinction between the two classes was material. When, therefore, it was provided by Section 21 that the estate mentioned in that section should be "deemed" the estate of the person dying, the natural construction would seem to be that the property mentioned, although not in fact his estate, shall be deemed to be so for all purposes for which the quality artificially attributed to it is material, but not for any other purpose. And if the clear object of the section be (as it seems to be) to provide for the assessment and collection of duties already imposed and not to increase such duties there would be little difficulty in limiting the generality of the expression by reference to the object in view.

Passing to Section 22 it will be found to deal with every other duty payable under Section 49 (2) of the Act of 1898 as amended by the Act of 1899, except those already dealt with by Section 21. It provides in subsections (*a*), (*b*), (*c*), and (*d*) machinery for the assessment and collection of the duty in every case. Such duty is by subsection (*e*) charged on the estate, which again means the particular estate chargeable. Then comes the important subsection (*f*), which provides that for the purpose of assessing the amount of the duty the estate (that is, the particular estate chargeable) shall be deemed to be the estate of the person dying. It was argued that this subsection can have no meaning at all unless it means that for the purposes of determining the rate of duty the particular estate is to be aggregated with the estate of the deceased person. In their Lordships' opinion

this is not so. Even if it be impossible to point to any particular section of the Act of 1898 which is by this subsection brought into operation for the purpose of assessing the duty there referred to, the subsection itself might have an important effect in determining whether any particular item forming part of the estate chargeable with duty ought, having regard to questions of domicile and local situation, to be disregarded for the purpose of the assessment, and upon a question of this sort Section 52 of the Act of 1898 is not altogether immaterial. As, therefore, in the case of Section 21, so also in the case of Section 22 the words are wide enough to introduce the principle of aggregation, though a rational meaning can be assigned to them without reference to such introduction. On the other hand, as in the case of Section 21, so also in the case of Section 22, one would not have expected this section to be worded as it is in fact worded had the legislature been intending to introduce any principle of aggregation for the purpose of determining the rate of duty.

Where in a statute words are used capable of more than one construction the results which would follow the adoption of any particular construction are not without materiality in determining what construction ought to prevail. In the present case if Sections 21 and 22 be held to have introduced the principle of aggregation for the purpose of determining the rate of duty, then under Section 21 the testator's own estate would have to be aggregated with any estate chargeable with duty under Section 49 (2) A (*a*) or (*b*) for the purpose of determining the rate of duty on all these estates. On the other hand, under Section 22 the testator's own estate would have to be aggregated with each of

the other estates with which that section deals for the purpose only of determining the rate of duty on each such other estate. There would be no aggregation of the various estates with which the section deals for the purpose of determining the rate of duty on any of them nor would there be any aggregation of any of them with the estates dealt with by Section 21 for any purpose whatever. These results would be curious, if not anomalous; and further, if in Section 21 (*a*) the words "for the purposes of those Acts" mean for all the purposes of those Acts, the relief granted by the Act of 1899 for the benefit of widows, children and grandchildren of a deceased person might incidentally be wholly abrogated. Suppose, for example, a testator by his will gave all his own property worth, say, 10,000*l*., to his widow and children and at the same time exercised a special testamentary power over property worth 100,000*l*. in favour of persons not being his widow, children or grandchildren, then inasmuch as the latter property would have for the purposes of the Act of 1899 to be treated as the testator's estate, the widow and children would be totally deprived of the relief intended for them. There is no indication in the Act that any such result was intended, and the result itself is so strange that the Court may well hesitate in construing the doubtful words of the statute in such a way as to bring it about.

Lastly, the intention to impose a tax or duty, or to increase a tax or duty already imposed, must be shown by clear and unambiguous language and cannot be inferred from ambiguous words (*see* the cases of the Oriental Bank *v.* Wright, 5 Ap. C. 842, and

Simms *v.* Registrar of Probates, 1900, Ap. C. 323).

Their Lordships therefore have come to the conclusion that neither Section 21 nor Section 22 of the Act of 1904 provides for any aggregation of estates for the purpose of determining the rate of duty. They are of opinion that both these sections were intended to provide machinery for the assessment and collection of the duties payable under the earlier Acts and not to increase such duties or vary the rate at which they are calculated. As before, so after the Act of 1904, the estate of the testator or intestate is, for the purpose of duty, a separate estate, and similarly each estate chargeable under Section 49 (2) is for the purpose of duty a separate estate. The Act of 1904 does not provide for any aggregation for the purpose of determining the rate of duty on estates which, before the Act, were treated as separate estates for that purpose.

Their Lordships will therefore humbly advise His Majesty to allow the Appeal with costs here and below.

In the Privy Council.

JOHN SPENCER BRUNTON AND OTHERS

v.

THE ACTING COMMISSIONER OF STAMP DUTIES FOR THE STATE OF NEW SOUTH WALES.

DELIVERED BY
LORD PARKER OF WADDINGTON.

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