

Olive Finch - - - - - *Appellant*

*v.*

The Commissioner of Stamp Duties - - - - - *Respondent*

FROM

THE COURT OF APPEAL OF NEW ZEALAND.

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JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF THE  
PRIVY COUNCIL, DELIVERED THE 22ND JANUARY, 1929.

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*Present at the Hearing :*

THE LORD CHANCELLOR.

LORD SHAW.

LORD CARSON.

LORD ATKIN.

SIR CHARLES SARGANT.

[*Delivered by the LORD CHANCELLOR.*]

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In their Lordships' opinion this appeal succeeds. The point is a short one and turns upon the application to the particular facts of this case of two or three sections of the Death Duties Act of 1921. The facts in the case stated are not very fully elaborated partly apparently because the Crown sought to extend and modify the grounds upon which it supported its claim when it reached the argument of the case stated in the Courts, but those facts have been supplemented by agreement between the parties.

It appears that the deceased and his wife, Mrs. Finch, were living together in a house belonging to the wife. Both the husband and wife enjoyed a separate income and the wife's income was habitually under contribution to the household expenditure. The case finds that in fact the deceased husband's contribution to the joint purse for housekeeping purposes had been kept at a low figure for the purpose of accumulating his capital. In the years 1925 and 1926 the husband caused certain alterations

and repairs to be made in the house in which they were both living. The total amount so expended came to £1,982 and was spent under contracts made directly between the husband and the builder who did the alterations and the repairs. In those circumstances the Crown claims that the payments so made to the builder were, for the purposes of the Death Duties Act, gifts to the wife.

In order to see whether that contention is well founded, it is necessary to look at one or two sections of the Act in question. Under Section 5 of the Act it is provided that the estate of a deceased person shall be deemed to include any property comprised in any gift within the meaning of Part IV of the Act made by the deceased within three years before his death. In Part IV, under Section 38, the term "gift" is defined to mean "any disposition of property (as hereinafter defined) which is made otherwise than by will, whether with or without an instrument in writing, without fully adequate consideration in money or money's worth." And Section 39 provides by subsection (a) that the term "disposition of property" means "any conveyance, transfer, assignment, settlement, delivery, payment, or other alienation of property, whether at law or in equity," and by subsection (f): "Any transaction entered into by any person with intent thereby to diminish, directly or indirectly, the value of his own estate and to increase the value of the estate of any other person." Originally it appears that the Crown based their claim in this case upon subsection (f), and alleged that the payments to the builder were transactions entered into by the husband with intent thereby to diminish the value of his own estate and to increase the value of his wife's estate. In their Lordships' opinion the facts found by the Commissioner render that contention quite hopeless. It is expressly found that there was no reason to believe that the deceased would not enjoy the normal span of life (he was in fact only 53 years of age when he died) or that he would necessarily predecease the appellant, and it is added in the supplementary statement of facts that the appellant's estate was as large as that of the deceased. It is further found that the object in the appellant's mind, and, as far as she knew, the object in the deceased's mind was simply the improvement of the family home in accordance with their means and station in life.

In their Lordships' view when the statute brings in as a gift a transaction entered into with intent to diminish the value of one estate and to increase the value of another, what is hit at by the statute is a transaction which the person entering into it intends to have the effect stated in the subsection. It is not enough merely to prove that the result which is stated in that subsection accrued. The Commissioner here has found that there was no such intention, and, therefore, the claim under subsection (f) fails. But in the argument before the Chief Justice it was contended alternatively for the Crown that subsection (a) was

applicable, and that these payments to the builder were payments without any adequate consideration in money or money's worth. A reference was made to a decision in New South Wales in the case of *Chadwick v. Commissioner for Stamps* (19 N.S.W.S.R., page 39), where Sir William Cullen says that : " If A knowingly and voluntarily spends his money in building upon B's land with B's knowledge and approval he makes a gift to B as effectually as if he handed him the money for the purpose of building on it himself." That one method of making a gift may be by spending money on the property of the donee is no doubt quite true, but the Chief Justice quite obviously did not intend to convey that every expenditure of that kind must necessarily involve a gift, because he goes on a little later in his judgment to say : " The fact that A himself has a partial interest in the property is not necessarily proof that the expenditure is not a gift, wholly or in part. According to the circumstances of the case the facts may show that the expenditure is referable to other considerations."

On the facts found here it seems to their Lordships quite plain that the payments to the builder were not referable to any intention of making a gift or improving the value of the estate of the wife, but were referable to the desire of the husband to improve the home in which he was living and in which his children were being brought up, and did not constitute, either in intention or in fact, a gift to the wife ; they were merely a provision made by him for his own enjoyment and benefit and for the proper maintenance of his home and his children.

For these reasons, which are substantially the reasons set out in the judgment of the Chief Justice in New Zealand with which their Lordships find themselves in full agreement, their Lordships come to the conclusion that the payments are not rightly included in the dutiable estate of the deceased, and they will humbly advise His Majesty that the appeal be allowed and the judgment of the Chief Justice restored with costs here and below.

In the Privy Council.

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OLIVE FINCH

v.

THE COMMISSIONER OF STAMP DUTIES.

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DELIVERED BY THE LORD CHANCELLOR.

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