

Privy Council Appeal No. 97 of 1932.

The Trustees of the Sir Currimbhoy Ebrahim Baronetcy Trust - *Appellants*

v.

The Commissioner of Income-tax, Bombay Presidency - - *Respondent*

FROM

THE HIGH COURT OF JUDICATURE AT BOMBAY.

JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF THE
PRIVY COUNCIL, DELIVERED THE 26TH FEBRUARY, 1934.

Present at the Hearing :

LORD BLANESBURGH.

LORD MERRIVALE.

SIR SIDNEY ROWLATT.

[*Delivered by* SIR SIDNEY ROWLATT.]

The question in this case, as it finally came before the High Court of Judicature at Bombay is whether the appellants, who are a body of trustees incorporated by an Act of the Indian Legislature, are liable to be assessed to income tax and super tax (which in this respect stand upon the same footing) in respect of the income of the trust or whether as regards the whole or any part of it they are not so liable on the ground that they are not beneficially interested. Certain complications, arising out of previous practice, which affected the case in its earlier stages, were got rid of by arrangement and need not now be noticed. The question so propounded was answered in the affirmative by the High Court in a judgment dated the 18th August, 1931. This is an appeal by the trustees, an incorporated body.

The Act incorporating them (Act No. IV of 1913) is described in its title as an Act for settling certain properties belonging to Sir Currimbhoy Ebrahim, Baronet, so as to accompany and support the title and dignity of a Baronet and for other purposes connected therewith. By Section 2 of this Act the appellants were incorporated as trustees for executing the trusts,

powers and purposes of the Act and by section 5 certain freehold and leasehold hereditaments specified in schedules to the Act were vested in the corporation upon trust to permit the Baronet for the time being to use and occupy certain parts of the properties, rent free, and as to the rest to demise the same subject to certain conditions.

By section 6 the corporation was to pay out of the income from the properties all rates and taxes and sundry other outgoings. By section 7 the corporation was required to form two funds, called the Sinking Fund and the Repair Fund, and to carry annually thereto respectively, out of the income of the properties, certain sums calculated on percentages of capital sums there specified. By section 8 the residue of the income was to be paid to the Baronet for the time being, if of full age, for his own absolute use and benefit. Section 29 provided that the actual management of the properties including the collection of rents and the carrying out of repairs should be in the hands of the Baronet for the time being, subject nevertheless to the control and supervision of the corporation.

The present Baronet, the third holder of the title, succeeded before the commencement of the financial year (1928-9) to which this case relates, being then of full age. Of the total income of the trust roughly 75 per cent. was paid to the Baronet, about 10 per cent. having been carried to the Sinking Fund and Repair Fund and the remaining 15 per cent. having been absorbed by rates, taxes and other outgoings.

The taxing Act under which the question in this case arises is the Indian Income-tax Act, 1922, as subsequently amended. By section 2 of that Act "assessee" is defined as meaning "a person by whom income tax is payable" and "person" by virtue of the General Clauses Act, 1897, section 3 (39) "includes any company or association or body of individuals whether incorporated or not." Chapter I of the Act, containing sections 3 and 4, is headed "Charge of Income-tax." Section 3, as amended, is as follows:—

"Where any Act of the Indian Legislature enacts that income-tax shall be charged for any year at any rate or rates applicable to the total income of an assessee, tax at that rate or those rates shall be charged for that year in accordance with, and subject to the provisions of, this Act in respect of all income, profits and gains of the previous year of every individual, Hindu undivided family, company, firm and other association of individuals."

By section 4 it is provided that the Act should "apply to all income profits or gains as described or comprised in section 6."

Chapter III of the Act, containing sections 6-17, is headed "Taxable Income." Section 6 is as follows:—

"Save as otherwise provided by this Act, the following heads of income, profits and gains, shall be chargeable to income tax in the manner hereinafter appearing, namely, (i) salaries, (ii) interest on securities, (iii) property, (iv) business, (v) professional earnings, (vi) other sources."

Section 7 deals with "salaries." Sections 8 and 9 deal with "interest on securities" and "property," which are the heads with which this case is concerned. These two sections, so far as material, are as follows :—

"S. 8. The tax shall be payable by an assessee under the head 'interest on securities' in respect of the interest receivable by him on any security of the Government of India or of a local government, or on debentures," etc.

"S. 9. The tax shall be payable by an assessee under the head 'Property' in respect of the *bona fide* annual value of property consisting of any building or lands appurtenant thereto of which he is the owner . . ."

Provisos to section 8 relieve the assessee from income tax on certain securities issued tax free, but by section 16 these provisos do not apply in the computation of the total income of an assessee. By virtue of section 14 (2) and section 16 the position is the same as regards dividends and shares of profits received from companies or firms whose profits have been taxed.

Section 22 (2) provides for a return of total income and section 23 (1) for assessment of the total income of an assessee and determination of the amount payable on the basis of such return. Provisions follow for the verification and, if necessary, correction of the figures returned.

Chapter IX of the Act is headed "Super-tax." The first two sections in the chapter, namely, sections 55 and 56, are (omitting a proviso to section 55 immaterial for present purposes) as follows :—

"S. 55. In addition to the income-tax charged for any year, there shall be charged, levied and paid for that year in respect of the total income of the previous year of any individual, Hindu undivided family, company, unregistered firm or other association of individuals, not being a registered firm, an additional duty of income-tax (in this Act referred to as super tax) at the rate or rates laid down for that year by Act of the Indian Legislature :—

"S. 56. Subject to the provisions of this Chapter, the total income of any individual, Hindu undivided family, company, unregistered firm or other association of individuals shall, for the purposes of supertax, be the total income as assessed for the purposes of income tax, and where an assessment of total income has become final and conclusive for the purposes of income-tax for any year, the assessment shall also be final and conclusive for the purposes of supertax for the same year."

For the year to which this case relates income tax and super tax, both at graduated rates, were leviable by virtue of the current Finance Act.

As appears from the provisions above referred to the scheme of the income tax is that there is to be a statement of the total income of the assessee from which is to be deducted for the purpose of assessing income tax, but not of super tax, nor for the purpose of any graduation of income tax by reference to total income, the amounts of interest on tax free securities and of dividends and shares of profits already taxed. In the assessment in the present case the income of the appellants was assessed under three heads,

namely, interest on tax free securities Rs. 1,02,390, interest on taxed free securities (*i.e.*, dividends already taxed) Rs. 20,223, property Rs. 69,182, totalling together Rs. 1,91,795. Income tax was accordingly charged on Rs. 69,182 and super tax on the total Rs. 1,91,795.

In the argument before their Lordships on behalf of the appellants it was in the first place attempted to support the broad proposition that these assessments were wholly wrong on the ground that trustees could not be assessed at all. In this connection the decision of the House of Lords in *Williams v. Singer*, L.R. [1921], 1 A.C. 41, was referred to. In that case the question, as stated by Lord Cave, was whether income from foreign investments which was received abroad by a person not domiciled in this country was chargeable with income tax under the Income Tax Acts by reason of the fact that the investments stood in the names of trustees domiciled in the United Kingdom. Under orders signed by the trustees the whole income from these investments was paid to the account of the beneficiary in New York. It was held that the trustees could not be assessed. Lord Cave, in whose opinion Lord Atkinson and Lord Shaw concurred, rejected the contention that for income tax purposes the legal ownership was alone to be considered. On the other hand, he said that even apart from special provisions expressly enabling trustees to be charged in particular circumstances he was not prepared to deny that there were many cases in which a trustee in receipt of trust income might be chargeable with tax upon such income. He instanced, among other cases, a trustee who was under an obligation to apply the trust income in satisfaction of charges or to accumulate it for future distribution. Lord Wrenbury expressly refrained from dealing with a position of that kind, pointing out that it was not the case before the House. Lord Phillimore observed that it would seem in such circumstances that the assessment must be put upon the trustee.

An argument was also founded by counsel for the appellants upon section 38 (2) of the Indian Income-tax Act (which requires trustees, guardians and agents to furnish the Revenue officials upon request with a return of the names and addresses of their beneficiaries or principals) and upon section 40 (which provides for the assessment of guardians, trustees and agents of incapacitated or non-resident persons). It was said that the existence of these provisions supported a construction of the Act which would exclude trustees in other cases. It is to be observed, however, that similar provisions in the United Kingdom Income Tax Acts were before the House of Lords in *Williams v. Singer* and Lord Cave expressly says that the cases in which he considered that trustees might be assessed were additional to the cases so expressly provided for.

In the result it is clear in their Lordships' view that so far at least as concerns the money which in the present

case the appellants employ in maintaining the Sinking Fund and the Repair Fund and in defraying outgoings no support is to be found in the opinions delivered in *Williams v. Singer* for the contention that the appellants cannot be assessed. Their effect is exactly the contrary, and in the end this contention (which would have the effect of exempting this income from all assessments whatever) was not strongly insisted upon.

The question remains as regards the balance of the trust income, namely, that part paid over to the Baronet. The suggestion on behalf of the appellants was that this should be treated as drawn from the two heads of income, interest and property, proportionately and that the Baronet and not the appellants should be assessed in respect of it. The question as it arises upon the words of the statute is whether, to the extent indicated, the "interest" is "receivable" by the Baronet within the meaning of section 8 and whether he is the "owner" of the "property" within the meaning of section 9.

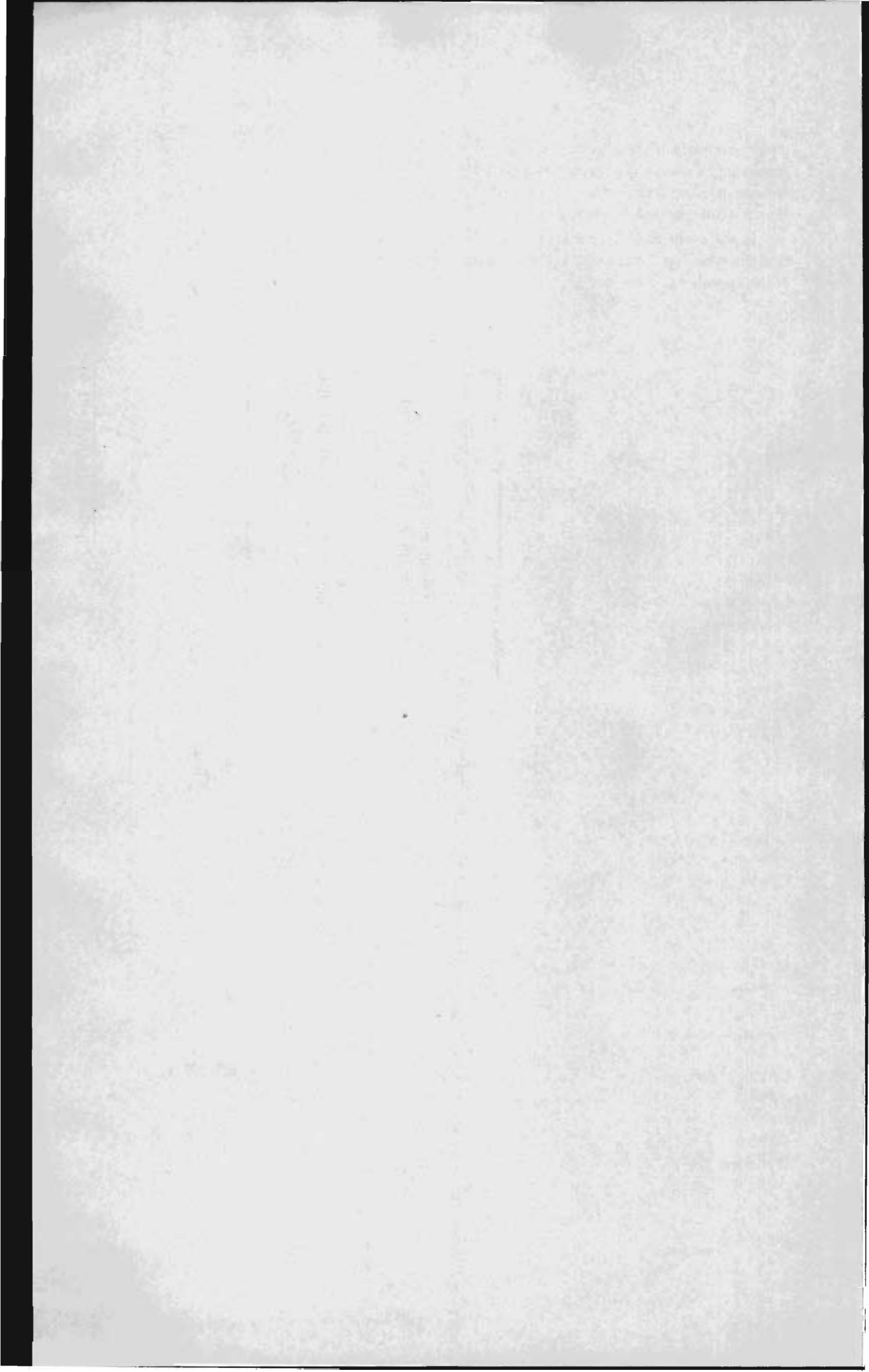
In their Lordships opinion the effect of the Act creating these trusts is not to give the Baronet for the time being any right to any part of the interest or property specifically or any right which, even granting that the legal title is not the only thing that can ever be looked at, would make it true to say that any proportion of the interest is not "receivable" or any proportion of the property is not "owned" by the incorporated trustees.

The whole income and every part of it is charged with the provision of the sums necessary to maintain the Sinking Fund and Repair Fund and to pay the outgoings and it is not until those liabilities have been met thereout by the corporation that the Baronet is entitled to what remains and then simply as so much money.

It was suggested that if the appellants are to be assessed, as has been done, it will result in double taxation, because the Baronet will also be liable to be assessed on what he receives from the trust and also that the assessment of trustees involves the graduation of the tax being applied with reference to the total income of the trustees, including that derived from other trusts or even belonging to them personally, and that, on the other hand, there would be no graduation with reference to the total income of the beneficiary either in his favour, where he enjoys only a small benefit out of a large estate with slender other resources, or in favour of the Revenue in other cases. As regards the question of double taxation, the point does not call for any expression of opinion by their Lordships on the present occasion. If and when it comes up for decision it may or may not be found that that is the position. As regards graduation it may be that it will be found compatible with the scheme and machinery of the Act to have the scale of tax adjusted according to the total income of the Baronet individually. The possibility of such a step which, as already indicated, might be either advantageous or

disadvantageous to the Baronet cannot be discussed except in proceedings between the Baronet and the Revenue. The present decision goes no further than to affirm that the assessments on the appellants cannot be disturbed.

In the result their Lordships will humbly advise His Majesty that the appeal be dismissed. The appellants must pay the costs of the appeal.



In the Privy Council.

THE TRUSTEES OF THE SIR CURRIMBHOY
EBRAHIM BARONETCY TRUST.

v.

THE COMMISSIONER OF INCOME-TAX,
BOMBAY PRESIDENCY.

DELIVERED BY SIR SIDNEY ROWLAT†.

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