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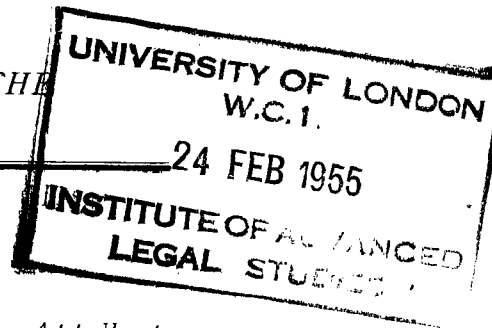
9, 1954

Appeal No. 2 of 1953.

In the Privy Council.

37720

ON APPEAL
FROM THE FIJI COURT OF APPEAL AND THE
SUPREME COURT OF FIJI.



FIRST APPEAL

BETWEEN

PHILLIP RICE- - - - - *Appellant,*

AND

10 THE COMMISSIONER OF STAMP DUTIES - - - *Respondent.*

SECOND APPEAL

BETWEEN

PHILLIP RICE- - - - - *Appellant,*

AND

THE COMMISSIONER OF STAMP DUTIES - - - *Respondent.*

(Consolidated Appeals.)

CASE FOR THE APPELLANT.

RECORD.

1. These are consolidated appeals, the first being from a judgment of the Fiji Court of Appeal dated the 22nd August, 1952, and the second being an appeal by special leave from a judgment of the Supreme Court of Fiji dated the 28th April, 1952. p. 6. p. 20.

2. The appeal by special leave from the judgment of the Supreme Court relates to the value for assessment to gift duty to be placed upon a policy of life assurance upon the life of the Appellant (in the sum of £1,000 plus accrued bonuses), given to his wife by the Appellant. The matter came before the Supreme Court by way of case stated under the Death and Gift Duties Ordinance, Cap. 151, from an assessment made under Section 51 of the said Ordinance. The Supreme Court assessed at £57 15s. 6d. the duty payable on the said gift. p. 6.

- RECORD.
p. 20.
3. The appeal from the judgment of the Fiji Court of Appeal relates to the question as to whether that Court of Appeal has jurisdiction to entertain an appeal from the said judgment of the Supreme Court. The Court of Appeal by their said judgment held that since the judgment of the Supreme Court was in an appeal by way of case stated from the Commissioner of Stamp Duties they had no jurisdiction to entertain an appeal of this nature as it could not be brought within the provisions of the Court of Appeal Ordinance No. 2 of 1949, Section 11. Leave to appeal to Her Majesty in Council against the said judgment of the said Appeal Court has been granted by that said Court. 10
- The material sections of the Death and Gift Duties Ordinance, as amended, referred to in paragraph 2 above, and the material section of the Court of Appeal Ordinance are annexed hereto.
- p. 6.
4. The principal issue for determination in the appeal from the judgment of the Supreme Court is whether the learned Chief Justice was right in holding that for the purpose of Section 46 of the Death and Gift Duty Ordinance (Cap. 151) the value of a life assurance policy given by a husband to a wife must be taken to be the amount payable on the death of the assured and not the market or surrender value at the time of the gift. 20
- p. 24.
5. By a deed dated the 14th March, 1951, the Appellant being the owner of a policy of assurance gave to his wife the said policy of assurance together with the bonuses already accrued thereon and all future bonuses which might accrue thereon. The surrender value of the said policy at the date of the gift was £306 12s. 0d.
- p. 27.
p. 24.
6. On the 17th March, 1951, the Appellant through his Solicitors wrote to the Respondent enclosing the said deed of gift and requested that it be stamped with a stamp to the value of £1, enclosing in respect thereof a cheque to the value of £1, stating that the value of the said gift did not exceed £400 and that in the circumstances the said gift was not liable to be assessed in respect of gift duty. (No gift of the value of less than £1,000 is liable to gift duty. Death and Gift Duties Ordinance, Cap. 151, Section 51 as amended by Ordinance 32 of 1948, Section 5.) 30
- p. 28.
7. On the 3rd April, 1951, the Respondent wrote to the Appellant enclosing the said deed, duly stamped, and requesting the Appellant to complete a form of statutory declaration with respect to the value of the said gift.
- p. 30.
8. On the 10th April, 1951, the Appellant through his Solicitors wrote to the Respondent claiming that under the provisions of the said Death and Gift Ordinance, Section 51, the value of the said gift being less than £1,000, he was not required to make the said statutory declaration. 40
- p. 31.
9. On the 4th May, 1951, the Respondent wrote to the Appellant agreeing that the contention of the Appellant as set out in his Solicitors'

letter of the 10th April, 1951, appeared to be correct but asked that the Appellant supply him with the following information:— RECORD.

- (a) The Policy value.
- (b) The amount of any bonus which might have accrued at the date of gift.
- (c) Whether or not it was the intention of the Appellant to pay the premiums and keep up the policy.

10. On the 14th May 1951 the Appellant through his Solicitors replied to the Respondent stating:— p. 32.

- 10 (a) That he was unable to state the exact value of the policy but that it was between £400 and £500.
- (b) That the value of the accrued bonuses was included in the above valuation.
- (c) That it was his intention to pay the premiums and to keep up the said policy,

and further that he authorised the Respondent to obtain full information in regard to the value of the said policy from the agents in Fiji of the insuring Company.

11. On the 12th June, 1951, the agents of the insuring company in answer to an enquiry by the Respondent concerning the said policy replied:— p. 33.

- 20 (a) That the sum assured was £1,000.
- (b) That the existing reversionary bonuses amounted to £155 12s.
- (c) That the surrender value of the said policy amounted in all with bonuses, to £306 12s.

12. By a letter dated the 21st August, 1951, the Respondent wrote to the Appellant's Solicitors and stated *inter alia*— p. 34.

30 “As it is your Mr. Rice's intention to pay the premiums and keep up the policy, it would appear that this assignment by way of gift is liable to duty in respect of the full amount of the policy moneys and not only on the value of the policy at the date of the instrument.

“I shall be grateful if you will complete the attached declaration and return it at your earliest convenience.”

13. The Appellant through his Solicitors on the 29th August, 1951, declined to complete the said form of declaration on the basis that the value of the said gift at the date of the gift was not of the required amount. The Respondent being of the opinion that the said gift was liable to duty, assessed the said duty at £57 15s. 6d. and served the said assessment on the Appellant. The Appellant being dissatisfied in point of law with the said assessment served a notice in accordance with the p. 34, l. 21.
p. 35.
p. 3, l. 40.

RECORD. provisions of the said Ordinance requiring the Respondent to state this case for the consideration of the Supreme Court.

p. 4. 14. The said case stated, having set out all the material facts (as set out in paragraphs 5 to 13 inclusive above), concluded with the following three paragraphs:—

“ 14. On the part of the Appellant it is contended as follows:—

- (A) that the Respondent in the circumstances aforesaid neither has nor ever has had any jurisdiction to make the assessment referred to in paragraph 12 hereof, and 10
- (B) that neither the said deed nor the gift thereby evidenced is liable to any gift duty whatsoever.

“ 15. On the part of the Respondent it is contended:—

- (A) that the Respondent had jurisdiction in the circumstances aforesaid to make the said assessment;
- (B) that in the circumstances aforesaid the said gift was and is liable to gift duty in the said sum of £57 15s. 6d.

“ 16. The questions of law to be decided by this Honourable Court on this case stated are as follows:— 20

- (A) Had the Respondent in the circumstances aforesaid any jurisdiction to make the assessment of duty referred to in paragraph 12 hereof ?
- (B) If so, what was the value of the said gift, at the date on which it was made, for the purposes of the Ordinance ?
- (C) Is the said gift, or the said deed, liable to gift duty at any, and if so what amount ? ”

p. 5. 15. The said case was heard by the Supreme Court (J. H. Vaughan,
p. 6. C.J.) on the 9th April and judgment was delivered on the 28th April,
p. 6, l. 5. 1952. The learned Chief Justice in the course of his judgment stated 30
(*inter alia*) that the assessment of the Respondent was based on the policy value plus accrued bonus £1,155 12s., that is the full amount which would become due to the donee on the death of the donor, assuming that the premiums were paid up in accordance with the policy; that he was unable to accept the Appellant's submission that the Commissioner was bound to determine the value by a valuation made by an official valuer in accordance with the terms of Section 66 of the Death and Gift Duties Ordinance; that he asked himself what was the nature and extent of the interest acquired under the gift and answered this question as follows:— 40

“ I find it impossible to answer that question without prefacing the answer with a condition or premise, because the answer depends upon the happening of subsequent events. In the event

of the policy being kept up by the payment of the premiums, whether by the donor or the donee or a third party, the value of the interest acquired by the donee would prove to be the full value of the policy payable on the death of the donor; on the other hand, it is open to the donee to surrender the policy at any time during its currency, and in the event of her doing so the interest acquired under the policy would be the surrender value of the policy at the time. The conclusion that the interest of the beneficiary is affected by a contingency inevitably follows. This being so the Commissioner was bound to compute the value for the purposes of duty in accordance with the terms of Sections 46 and 15 of the Ordinance."

RECORD.

The learned Chief Justice therefore held that the value of the gift for the purposes of the Ordinance should be computed under Section 46 (1).

16. By a Notice of Appeal dated the 13th May, 1952, the Appellant signified his intention to appeal to the Fiji Court of Appeal against the said judgment of the Supreme Court. By their judgment dated the 22nd August, 1952, the Court of Appeal declared that they had no jurisdiction to entertain the said appeal as it was not an appeal from a judge of the Supreme Court sitting at first instance. (Court of Appeal Ordinance No. 2 of 1949, Section 11.)

17. On the 12th September, 1952, the Court of Appeal granted leave to appeal from their said judgment to Her Majesty in Council. Special leave to appeal from the judgment of the Supreme Court of Fiji was granted by an Order in Council dated the 30th April, 1953.

18. The Appellant humbly submits that these appeals should be allowed for the following among other

REASONS:—

A. As to the appeal against the judgment of the Supreme Court.

1. Because the learned Chief Justice was wrong in holding that the Respondent was not bound in law to determine the value of the said gift by obtaining a valuation made by an official valuer pursuant to Section 66 of the Ordinance.
2. Because since this was an out and out gift it is not subject to any contingency and Section 46 (1) does not apply.
3. Because the interest of the donee in the gift was vested and not contingent.
4. Because the learned Chief Justice was wrong in holding that the value of the gift fell to be determined under sub-section 1 of Section 46 and not under sub-section 2.

RECORD.

It is submitted that sub-section 2 is the appropriate section and that the value of the gift at the time when it was made was the market or surrender value.

B. As to the appeal against the judgment of the Court of Appeal.

1. Because the Court of Appeal were wrong in holding that the hearing before the learned Chief Justice was not a hearing at first instance.
2. Because on the true interpretation of the Court of Appeal Ordinance, No. 2 of 1949, the Court of Appeal had 10 jurisdiction to entertain the said Appeal.

DINGLE FOOT.

BIDEN ASHBROOKE.

BARROW ROGERS & NEVILL,
Whitehall House,
41, Whitehall, S.W.1.
Appellant's Solicitors.

ANNEXURE.

DEATH AND GIFT DUTIES ORDINANCE (CAP. 151).

15. (1) For the purposes of succession duty every contingency affecting the succession shall be deemed to have determined in the manner in which, in the opinion of the Commissioner, it probably will determine, and the succession shall be valued and succession duty assessed and paid accordingly.

(2) An appeal to the Supreme Court by way of case stated shall lie from any decision of the Commissioner under the last preceding subsection in the same manner as if that decision was the determination of a question of law, and all the provisions hereinafter contained as to appeals to the Supreme Court shall apply accordingly. If no such appeal is commenced within thirty days and duly prosecuted the decision of the Commissioner shall be final and conclusive.

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46. (1) For the purpose of computing the value of a gift the interests of beneficiaries, so far as those interests are affected by any contingency, shall be valued in the same manner as the contingent interests of successors in the case of succession duty, and the provisions of Part II of this Ordinance with respect to reassessment, payment of deficient duty and refund of duty in excess shall extend and apply, accordingly to gift duty with all necessary modifications.

(2) Subject to the provisions of this Part of this Ordinance the value of a gift shall be deemed and taken to be the present value thereof at the time of the making of the gift.

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51. (As amended by Ordinance No. 32 of 1948, Section 5.)

(1) Within one month after the making of any gift the value of which is not less than one thousand pounds, or the value of which, added to the value of any other gifts made by the donor within twelve months previously, amounts to not less than one thousand pounds, the donor shall deliver to the Commissioner a statement in the prescribed form, verified by statutory declaration in the prescribed form and manner, and containing all such particulars with respect to the gift or gifts as are necessary to enable the Commissioner to determine whether the same is or are dutiable and to assess the duty thereon, if any, and the Commissioner shall thereupon proceed to assess and recover gift duty accordingly.

(2) If any gift has been created or is evidenced by any written instrument the donor shall deposit with the Commissioner along with the statement aforesaid, the said instrument or a copy thereof verified as a true copy by statutory declaration.

RECORD.

(3) After the delivery of the aforesaid statement it shall be the duty of the donor, and of every beneficiary or trustee of a beneficiary, to furnish the Commissioner with such additional evidence as he reasonably requires for the purposes of this Ordinance with respect to the gift.

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57. If a donor makes default in delivering to the Commissioner within one month after the making of the gift the statement required by section 51 of this Ordinance to be so delivered, the Commissioner may thereupon proceed to assess and recover the duty payable on the gift in the same manner as if the statement had been duly delivered. 10

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59. (1) Any administrator who is dissatisfied in point of law with any assessment of death duty made by the Commissioner, and any donor who is dissatisfied in point of law with any assessment of gift duty so made, may, within thirty days after notice of the assessment has been given to him, deliver to the Commissioner a notice in writing requiring him to state a case for the opinion of the Supreme Court.

(2) The Commissioner shall thereupon state and sign a case accordingly setting forth the facts, the question of law to be decided and the assessment made by him, and shall deliver the case so signed to the administrator or donor (hereinafter referred to as the appellant). 20

(3) The appellant shall, within fourteen days after receiving the case, transmit the same to the Registrar of the Supreme Court, and the Registrar shall thereupon enter the case for hearing at the next sitting of the Court and shall give notice thereof to the appellant and to the Commissioner.

(4) On the hearing of the case the Supreme Court shall determine the question submitted, and the Commissioner shall thereupon assess the duty payable in accordance with that determination. 30

(5) The Supreme Court may, if it thinks fit, cause the case to be sent back to the Commissioner for amendment, and thereupon the case shall be amended accordingly and the Court shall thereupon proceed to hear and determine the question so submitted.

(6) The costs of any such appeal to the Supreme Court shall be in the discretion of the Court having regard to the extent to which the Commissioner's assessment exceeds the amount admitted by the appellant before the appeal commenced and the extent to which the Commissioner's assessment is upheld or varied.

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66. (1) For the purpose of assessing death duty or gift duty, if the Commissioner is not satisfied as to the value as stated by the administrator or donor, as the case may be, of any portion of the dutiable estate of the

deceased or any portion of the subject of a gift, he may determine it either by agreement between himself and the administrator in the case of death duty or between himself and the donor in the case of gift duty, or in the event of a failure to agree, by a valuation made by an official valuer appointed under the Stamp Duties Ordinance. RECORD
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(2) There shall be payable to the official valuer by the administrator in the case of death duty, or by the donor in the case of gift duty, in respect of any such valuation such fee as may be prescribed by the Governor in Council in each case.

10 (3) Any administrator in the case of death duty, or any donor in the case of gift duty, or the Commissioner in either case, may, within one month from the date upon which a valuation by an official valuer is communicated to him, appeal by way of originating summons against such valuation to the Supreme Court.

COURT OF APPEAL ORDINANCE No. 2 of 1949.

11. An appeal shall lie in any cause or matter, not being a criminal proceeding, to the Court of Appeal from a single Judge of the Supreme Court of Fiji sitting in first instance in the following cases—

- 20 (a) from all final orders, judgments and decisions provided that no appeal shall lie except by special leave of the Judge of first instance or of the Court of Appeal from an order made by consent or as to costs only;
- (b) by special leave of the Judge of first instance or the Court of Appeal but not otherwise from all interlocutory orders, judgments and decisions made in the course of any cause or matter.

In the Privy Council.

ON APPEAL

*FROM THE FIJI COURT OF APPEAL AND
THE SUPREME COURT OF FIJI.*

BETWEEN

PHILLIP RICE - - - - *Appellant,*

AND

COMMISSIONER OF STAMP

DUTIES - - - - *Respondent.*

AND

PHILLIP RICE - - - - *Appellant,*

AND

COMMISSIONER OF STAMP

DUTIES - - - - *Respondent.*

(Consolidated Appeals.)

CASE FOR THE APPELLANT.

BARROW ROGERS & NEVILL,
Whitehall House,
41, *Whitehall, S.W.1.*
Appellant's Solicitors.