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UNIVERSITY OF LONDON  
W.C.1.  
19 FEB 1957  
INSTITUTE OF ADVANCED  
LEGAL STUDIES  
No. 8 of 1955

15519

In the Privy Council.

ON APPEAL FROM THE COURT OF APPEAL  
OF NEW ZEALAND

BETWEEN

THE COMMISSIONER OF STAMP DUTIES ... .. APPELLANT

AND

THE NEW ZEALAND INSURANCE COMPANY  
LIMITED ... .. RESPONDENT.

CASE FOR THE RESPONDENT

RECORD

1.—This is an Appeal from a Judgment dated 18th December, 1953, of the Court of Appeal of New Zealand, Fair, Stanton and Hay, JJ., reversing unanimously a Judgment dated 17th December, 1952, of the Supreme Court of New Zealand (Northcroft, J.). The Case is reported in the Supreme Court in 1953 New Zealand Law Reports, page 438, and in the Court of Appeal in 1954, New Zealand Law Reports, page 239.

2.—The action was brought as a Case Stated under Section 62 of The Death Duties Act, 1921, to contest an assessment of Death Duty made by the Commissioner of Stamp Duties in the Estate of the late F. J. Rolleston (hereinafter called the deceased).

3.—The deceased entered into a Deed dated the 16th April, 1941, in which he covenanted with three others to pay his sister, Helen Mary Rolleston, during her life time the sum of £31 5s. 0d. per month in New Zealand currency.

4.—The consideration for the covenant contained in this Deed was an assignment by the said Helen Mary Rolleston to the deceased and the other parties to the Deed of a legacy of £2,000, and a one-seventh share of residue given to her by the Will of her mother, Elizabeth Mary Rolleston.

5.—At the date of the Deed the value of the interests assigned by Helen Mary Rolleston was £4,576 15s. 5d. and the present value of the

RECORD — said monthly payments of £31 5s. 0d. was £4,822 0s. 8d. based on the expectation of life of the said Helen Mary Rolleston.

6.—The important fact about this transaction from the Respondent's point of view is that the Estate of the deceased was increased by the assets he received from Helen Mary Rolleston.

7.—The facts of the Case resulting in the assessment of Duty objected to were shortly as follows :—

p. 1, l. 17 8.—The deceased died at Timaru on the 8th September, 1946, leaving his liability to pay one-quarter of the monthly payments under the provisions of the Deed dated the 16th April, 1941, the remaining three- 10 quarters being paid by the other parties to the Deed.

p. 2, l. 20 9.—At the date of death of the deceased the proportion of the said monthly payments of £31 5s. 0d. accrued due to the said Helen Mary Rolleston was £7 5s. 8d. of which the deceased was liable for a one-fourth share amounting to £1 16s. 5d.

p. 2, l. 24 10.—The Respondent claimed that the debts owing by the deceased at his death for which it claimed an allowance under Section 9 of the Death Duties Act, 1921, included in addition to the sum of £1 16s. 5d. the sum of £1,052 9s. 0d. being the value calculated actuarially of the deceased's liability to continue making one-quarter of the monthly payments due to 20 Helen Mary Rolleston under the said Deed.

p. 2, l. 28 11.—The Appellant for the purpose of assessment of Succession Duty estimated the value of the annuity actuarially as being the sum of £1,052 9s. 0d. and has deducted this sum in order to arrive at the value of the successions of the beneficiaries in the deceased's estate.

12.—The Appellant by assessing the estate in this manner has included the value of the assets acquired by the deceased under the said Deed in the final balance of the estate but has allowed as a deduction only the present value as at the date of death of the deceased of payments actually made on account of the monthly payments for a period of three years 30 after the date of death.

p. 2, l. 37 13.—In computing the final balance of the deceased's estate the Appellant—

p. 2, l. 38 (a) Made allowance pursuant to Section 9 (1) of the said Act for the said sum of £1 16s. 5d.

p. 2, l. 41 (b) Made no allowance pursuant to Section 9 (1) of the said Act for the said sum of £1,052 9s. 0d. because of Section 9 (2) (d) thereof, but

(c) Made allowance pursuant to Section 9 (3) of the said Act for the sum of £281 5s. 0d. which represents the deceased's share of the said monthly payments of £31 5s. 0d. which became actually payable within three years after the date of death of the deceased; and the Appellant assessed the Estate Duty accordingly. p. 3, l. 1

14.—The Respondent objected to the said assessment of Estate Duty in so far as no allowance was made for the said sum of £1,052 9s. 0d. other than the allowances referred to in paragraph 13 (a) and (b) hereof. p. 3, l. 7

10 15.—The Case Stated was heard on 29th October, 1952, by the Honourable Mr. Justice Northcroft, who based his decision mainly on Section 9 (2) (d) of the said Act which in his view prohibited the allowance of a contingent debt which in the opinion of the Appellant was incapable of estimation. The learned Judge allowed the Appellant the costs of the action. p. 7, l. 21  
p. 9, l. 26  
p. 12, l. 22

16.—The present Respondent appealed against the decision to the Court of Appeal on 21st September 1953 and all three Judges were in agreement in allowing the appeal with costs. pp. 13-21

20 17.—Mr. Justice Fair in giving Judgment dealt with the nature of a contingent debt for the purposes of the Act and said: "Where, however, there is an existing legal liability, and although the amount of it may be uncertain and depend, as in this case, on the duration of life, there does not seem to be any justification for refusing to allow its deduction unless it is incapable of reasonable estimation," and the reasoning of Mr. Justice Stanton and Mr. Justice Hay was similar. p. 13, l. 29  
p. 15, l. 19  
pp. 17-21

18.—The Respondent humbly submits that the Judgment appealed from is right for the following among other

### REASONS

- 30 (1) BECAUSE the debt of the deceased in respect of the monthly payments was such as shall be allowed in accordance with Section 9 (1) of the said Act.
- (2) BECAUSE although the continuation of the monthly payments is dependent on the duration of Helen Mary Rolleston's life there was at the date of the death of the deceased an existing liability to make the payments which constituted a pecuniary liability existing at the date of death within the definition of the word "debt" in Section 2 of the said Act.

- (3) BECAUSE the said debt was neither a contingent debt nor one that was incapable of estimation (being capable of calculation on well recognised principles) within the meaning of Section 9 (2) (d) of the said Act.
- (4) ALTERNATIVELY, if it be that the said debt was a contingent debt within the meaning of Section 9 (2) (d) of the said Act, it was a debt that was not incapable of estimation for the reasons aforesaid and was therefore not within the provisions of the said Section.
- (5) THE said debt was such that the Commissioner was not 10 entitled to hold the opinion that it was incapable of estimation.
- (6) BECAUSE liability under a taxing statute should not be deemed to be imposed without clear language and where there is doubt the construction should be in favour of the taxpayer.
- (7) BECAUSE the Judgment appealed from is right.
- (8) FOR the reasons given in the Judgments of the Court of Appeal.
- (9) FOR the reasons given in the body of this Case.

WILFRID J. SIM.  
GARTH H. GOULD. 20

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BETWEEN  
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THE NEW ZEALAND INSURANCE  
COMPANY LIMITED ... RESPONDENT.

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CASE FOR THE RESPONDENT

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