

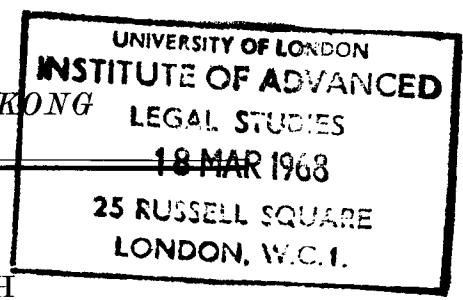
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No. 31 of 1966.

1967/16

In the Privy Council

ON APPEAL
FROM THE FULL COURT OF HONG KONG



BETWEEN
ERIC BLECHYNDEN MOLLER and RALPH
BLECHYNDEN MOLLER *Appellants*

AND
COMMISSIONER FOR ESTATE DUTY *Respondent.*

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Case for the Appellants

RECORD.

1. This is an appeal from a judgment of the Full Court of Hong Kong consisting of the Honourable Sir Ivo Rigby Kt. Senior Puisne Judge and the Honourable Mr. Justice Huggins and the Honourable Mr. Justice Jennings Puisne Judges given on the 22nd June, 1966, whereby it was adjudged that Section 19 of the Hong Kong Estate Duty Ordinance Chapter 111 applies to the Appellants in relation to a claim by the Respondent against the Appellants for estate duty on the death of the late Nils Eric Amelon Moller (hereinafter called "the deceased") in respect of certain shares which he transferred to his four sons namely the
20 Appellants and Lindsay Blechynden Moller and Christopher Blechynden Moller in Shanghai on the 15th May, 1940.

2. On the 15th May, 1940, following an exchange of letters dated the 26th April, 1940, and the 29th April, 1940, the deceased transferred
certain shares in eleven Shanghai-registered Companies to his said four sons and by a Memorandum of Gift executed by the deceased on the
same day the deceased declared that the said shares (particulars of which
were set out in the Schedule thereto) had been so transferred by way of
gift. On the 19th August, 1940, the deceased's said sons transferred the
said shares to Mollers Trusts Limited, a Company incorporated on
27th June, 1940, in Shanghai under the Hong Kong Companies Ordinance,
1932. By a Deed of Undertaking and Guarantee dated the 30th September,
1941, the deceased's said sons covenanted to pay to the deceased during
his life and after his death to his wife Isabel Elizabeth Moller during her
life the sum of £1,000 per month and Mollers Trusts Limited covenanted
inter alia to pay the said monthly sums if default was made in the payment
of the same by the deceased's said sons.
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pp. 32-35.

p. 37.

pp. 38-40.

p. 25.

3. The deceased died in Singapore on the 13th day of March, 1954, and Probate of his last Will and Testament was issued from the Supreme Court of Hong Kong on the 28th March, 1955. None of the deceased's said sons was an executor of the deceased's said Will.

4. The Respondent claims that estate duty became exigible on the death of the deceased in respect of the said shares by reason of Section 5 and Section 6 (1) (c) of the Estate Duty Ordinance in force at his death and that the Appellants are jointly and severally liable for the estate duty so payable. The Appellants have at all times disputed and denied that any estate duty became payable on the death of the deceased in respect of the said shares and have further contended that if any estate duty became payable on the death of the deceased each of the Appellants is liable only for one-quarter of the amount of such estate duty and that they are not jointly and severally liable for the whole thereof. 10

5. No account or affidavit within the meaning of the Estate Duty Ordinance has been delivered by any of the deceased's said sons or called for by the Respondent in regard to the said shares and none of the deceased's said sons has ever paid any estate duty in connection with the death of the deceased on the said shares or at all.

pp. 41-44.

6. By a letter dated the 18th March, 1966, the Respondent demanded from the Appellants estate duty on the said shares with interest as set out in a document headed "Revised Assessment Memorandum" also dated the 18th March, 1966, and enclosed with the said letter. By the said letter the Respondent purported to notify the Appellants that for the purposes of Section 19 of the Estate Duty Ordinance the said Memorandum was to be considered a decision of the Respondent and that the period of three months for an appeal against the said Assessment under Section 19 commenced to run on the 18th March, 1966. 20

pp. 45-46.

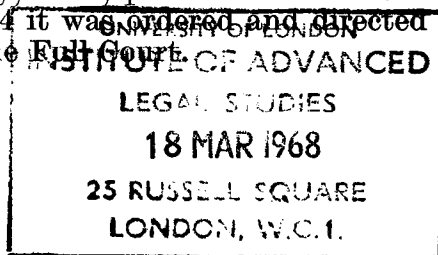
7. By a letter dated the 14th April, 1966, the Respondent contended that the deceased's said four sons were jointly and severally liable for the duty claimed in the said Revised Assessment Memorandum and that notice to the Appellants' Solicitors was sufficient notice for the purposes of a decision under the said Section 19. In the said letter the Respondent also purported to notify the Appellants that the said letter should be considered due notice of a decision under the said Section 19 and that the period of three months for the purposes of an appeal under the said Section commenced to run from the date thereof. 30

pp. 5-7.

8. By a Special Case dated 23rd May, 1966, the Appellants and the Respondent pursuant to Order 9 Rule 8 of the Code of Civil Procedure concurred in submitting for the decision of the Supreme Court of Hong Kong the question whether in the circumstances hereinbefore set out Section 19 of the Estate Duty Ordinance applied to the Appellants. 40

p. 8.

9. By an Order of the Chief Justice made in Chambers on the 24th May, 1966, pursuant to Section 27 of the Supreme Court Ordinance Chapter 4 it was ordered and directed that the said Special Case be heard before the Full Court. 40



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10. The said Special Case was heard by the Full Court on the 8th June, 1966. The learned Judges decided the question raised by the Special Case in favour of the Respondent upon the ground that the said letter dated the 18th March, 1966, and the said "Revised Assessment Memorandum" together constituted or evidenced a decision of the Respondent with respect to a claim for additional duty within Section 19 (1). pp. 9-22.

11. By an Order of the Full Court made on the 10th October, 1966, the Appellants were granted final leave to Appeal to this Honourable Court against the said judgment. p. 24 (a).

10 12. The Appellants submit that the judgment of the Full Court should be reversed for the following among other

REASONS

(1) BECAUSE Section 19 provides for an appeal by a person who is aggrieved by a decision of the Respondent with respect to some one or more of the following matters (and in respect of some one or more of the following matters only) namely—

(A) the amount of any estate duty payable by such person on delivery of an affidavit or account or

20 (B) the repayment to such person of any excess duty paid on delivery of an affidavit or account or

(C) the amount of any additional estate duty payable by such person in respect of property included in an affidavit or account delivered by him.

30 (2) BECAUSE no decision can be made by the Respondent for the purposes of Section 19 in relation to the claim for estate duty alleged to be payable by the Appellants unless and until it is determined by a Court of competent jurisdiction that the Appellants are accountable for estate duty on the death of the deceased in respect of the said shares and are bound to deliver an affidavit or account to the Respondent in respect thereof.

(3) BECAUSE no decision can be made by the Respondent for the purposes of Section 19 in relation to the said claim unless and until it has been determined by a Court of competent jurisdiction that the Appellants are jointly and severally accountable for the whole amount of the estate duty alleged to be payable in respect of the said shares.

E. I. Goulding & Co.
JOHN VINELÖTT.

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COMMISSIONER FOR
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Case for Appellants

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