

91462

1967/16

31 OF 1966

IN THE PRIVY COUNCIL

ON APPEAL
FROM THE FULL COURT OF HONG KONG

BETWEEN:

ERIC BLECHYNDEN MOLLER and
RALPH BLECHYNDEN MOLLER

Appellants

- and -

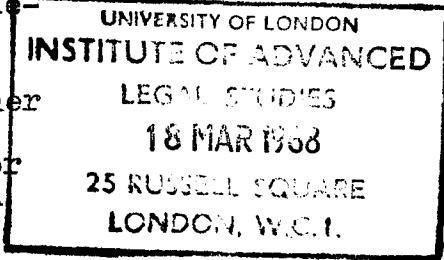
COMMISSIONERS OF ESTATE DUTY

Respondent

CASE FOR THE RESPONDENT

Record

10 1. This is an Appeal from the Judgment of the Full
 Court of Hong Kong (Rigby, Huggins and Jennings
 J.J.) dated the 22nd June, 1966 whereby it was de-
 15 clared that section 19 of the Hong Kong Estate
 Duty Ordinance, which deals with appeals from
 decisions made by the Respondent, the Commissioner
 of Estate Duty, applies to the Appellants who
 20 dispute and deny the validity of a claim made for
 Estate Duty and any liability for Estate Duty on
 the subject matter of the claim.



2. The said Judgment was delivered in answer
 to a Special Case, for the purposes of which
 the facts and matters were agreed between the
 parties and may be summarised as follows:-

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(1) The deceased Nils Eric Amelon Moller,
 following an exchange of letters dated the
 26th April, 1940 and 29th April, 1940
 transferred, on the 15th May 1940 certain
 shares in 11 Shanghai registered companies
 30 to his four sons, two of whom are the
 Appellants, and by a Memorandum of Gift
 dated the 15th May 1944 acknowledged that
 the transfers were made by way of Gift. On
 the 19th August, 1940 the four sons
 transferred the shares to a Company
 incorporated on the 27th June, 1940 in
 Shanghai under the Hong Kong Companies
 Ordinance 1932.

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p.32, 35
p.6 l.10

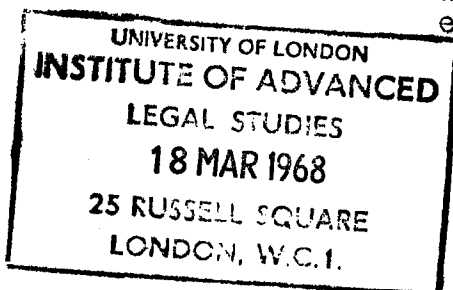
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p.6 l.16

1.

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- p.38 (2) On the 30th September, 1941, by a Deed of Undertaking and Guarantee, the four sons covenanted to pay to the deceased during his life and after his death to his Wife Isabel, during her life, the sum of £1,000 per month.
- p.25 (3) The deceased died on the 13th March, 1954 and his last Will was proved in the Supreme Court of Hong Kong on the 28th March, 1955 by Executors who did not include any of the four sons, and estate duty was paid by the Executors on the free estate of the deceased. 10
- p.25
- p.43 (4) The Respondent claims that estate duty is payable on the death of the deceased upon the said shares under sections 5 and 6 (1) (c) of the Estate Duty Ordinance and has computed such duty with accrued interest on an Assessment Memorandum.
- p.6 l.31 (5) No account or Affidavit within the meaning of the Estate Duty Ordinance has been delivered by any of the four sons or called for by the Respondent in regard to the said shares and none of the four sons has ever paid any estate duty in connection with the death of the deceased on the said shares or at all. 20
- p.6 l.36 (6) The Appellants have at all times disputed and denied that any Estate Duty at all is payable on the deceased's death in respect of the shares.
3. (1) Section 5 of the Estate Duty Ordinance provides that in the case of every deceased person estate duty "shall be levied and paid on the principal value, ascertained as hereinafter provided, of all property passing on the death of such person....." 30
- (2) Section 6(1) provides that "Property passing on the death of the deceased shall be deemed to include (c) property..... taken under any gift, whenever made, of which property bona fide possession and enjoyment shall not have been assumed by 40



the donee immediately upon the gift and thenceforth retained to the entire exclusion of the donor or of any benefit to him by contract or otherwise;"

- 10 (3) Section 9(2) provides that "the executor of the deceased shall pay the estate duty in respect of all property, of which the deceased was competent to dispose at the date of his death, on delivering the Affidavit for the Commissioner,....."
- (4) Section 9 (4) provides that "Estate Duty so far as not paid by the executor shall be paid by stamps affixed to an account setting forth the particulars of the property and delivered to the Commissioner within 6 months after the death, by the person accountable for the estate duty"
- 20 (5) Section 11 (5) provides that "Where property passes on the death of the deceased and the executor is not accountable for the estate duty in respect of that property, every person to whom any property so passes for any beneficial interest in possession, and also to the extent of the property actually received or disposed of by him, every trustee guardian committee or other person in whom
30 any interest in the property so passing or the management thereof is at any time vested.....shall be accountable for the estate duty on the property, and shall within the time required by this Ordinance or at such later time as the Commissioner allows, deliver to the Commissioner an appropriate account specifying the property in question to the best of his knowledge and belief:"
- 40 (6) Section 11 (12) provides that "Where the Commissioner discovers that any property which ought to have been disclosed by affidavit or account has not been so disclosed he shall notify the

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accountable person and call upon him to disclose such property and pay the estate duty thereon, and the accountable person shall, within one month of the giving of such notice by the Commissioner, deliver an original or a further account, as the case may require, disclosing such property, and shall at the same time pay the estate duty thereof."

- (7) Section 19 (1) provides that "Any person aggrieved by the decision of the Commissioner with respect to the amount of estate duty payable on an affidavit or account, with respect to the repayment of any excess duty or to any claim for additional duty by the Commissioner, and whether he is agreed on the ground of the value of any property or the rate charged or otherwise, may, on payment of, or giving security for, as hereinafter mentioned, the duty claimed by the Commissioner or such portion of it as is then payable by him, appeal to the Supreme Court within 3 months from the date of the decision and the amount of the duty shall be determined by the Supreme Court and if the duty is less than that paid to the Commissioner the excess shall be repaid". 10 20
4. (1) The submission of the Respondent, which was accepted by the Full Court (Rigby J. dubitante) is, that the Respondent decided to claim additional duty and section 19(1) of the Estate Duty Ordinance applies to that decision. 30
- (2) The decision to make the claim is contained in the letter and Revised Assessment Memorandum dated the 18th March 1966 addressed to the solicitors acting for the Appellants.
- (3) The claim is for duty which is additional to the duty already received by the Respondent in respect of property passing on the death of the deceased. 40
- (4) Alternatively any claim for duty which

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has neither been paid nor been admitted to be payable is a claim for additional duty

5. The main submissions for the Appellants were as follows:-

- (1) Section 19 only applies to a decision with regard to quantum, and not to a decision with regard to liability.

10 This argument was expressly rejected by Huggins and Jennings J.J. and also by implication by Rigby J. on the grounds that Section 19 does not refer to a decision regarding "the amount of any claims for additional duty" but to a decision with regard to "any claims for additional duty".

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20 It is submitted that the suggested distinction between a decision regarding quantum, and a decision regarding liability is unsound. In the present case, for example, the Respondent is in a position to claim additional duty from the Executors of the deceased on the grounds that the shares are dutiable and aggregable and increase the rate of duty from 6% to 52%. This claim clearly falls within section 19(1) of the Estate Duty Ordinance but the issue to be decided is an issue of liability and not quantum.

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- (2) The Respondent cannot come to a decision for the purposes of section 19 save in respect of property which is included in an Affidavit or an account, by a person who thereby admits liability.

40 Rigby J. doubted whether the Respondent had the right arbitrarily to determine the issue of liability. Huggins J. and Jennings J. accepted section 11(12) enabled the Respondent to claim estate duty, whether or not an Affidavit or an account had been delivered.

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The machinery of section 19 could, if the Appellants' submission is correct, be avoided if the accounting party failed to deliver an Affidavit or account or omitted from an Affidavit or account property which passed on the death of the deceased. Any decision by the Respondent can be reviewed by the Court under section 19.

p.12 l.21

- (3) There can be no claim for additional duty, unless the accounting party has already paid or admitted liability for some duty.

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This submission was rejected, it is submitted rightly by Huggins J. on the grounds that the machinery of section 19 could not depend on whether the person aggrieved by the decision of the Respondent admitted liability for estate duty on property which was not in dispute.

6. On behalf of the Respondent it will be contended that the decision of the Full Court is right and should be upheld for the following and other

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R E A S O N S

- (1) THE Respondent decided to make a claim for additional duty under sections 5 and 6(1) of the Estate Duty Ordinance
- (2) THE Appellants are accountable for the additional duty under section 11 (5)
- (3) THE Respondent decided to call upon the Appellants to pay the duty under section 11 (12)
- (4) THE Appellants are persons aggrieved by the decisions of the Respondent with respect to a claim for estate duty under section 19(1).

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S. W. TEMPLEMAN

D. A. O'CONNOR

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COMMISSIONERS OF ESTATE DUTY
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C A S E F O R T H E R E S P O N D E N T

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Solicitors for the Respondent