

1967/16

No. **31** OF **1966**

In the Privy Council

ON APPEAL

FROM THE FULL COURT OF HONG KONG

BETWEEN

ERIC BLECHYNDEN MOLLER

RALPH BLECHYNDEN MOLLER - - - - - *Appellants*

AND

COMMISSIONER OF ESTATE DUTY - - - - - *Respondent*

RECORD OF PROCEEDINGS

Solicitors for the Respondent.

Solicitors for the Appellants.

91460

UNIVERSITY OF LONDON
INSTITUTE OF ADVANCED
LEGAL STUDIES
18 MAR 1968
25 RUSSELL SQUARE
LONDON, W.C.1.

In the Privy Council

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AND

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RECORD OF PROCEEDINGS

Solicitors for the Respondent.

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In The Privy Council.

ON APPEAL
FROM THE FULL COURT OF HONG KONG

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ERIC BLECHYNDEN MOLLER
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AND

COMMISSIONER OF ESTATE DUTY - - - - - *Respondent*

RECORD OF PROCEEDINGS

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ON APPEAL

FROM THE FULL COURT OF HONG KONG

BETWEEN

ERIC BLECHYNDEN MOLLER
RALPH BLECHYNDEN MOLLER - - - - - *Appellants*

AND

COMMISSIONER OF ESTATE DUTY - - - - - *Respondent*

10

RECORD OF PROCEEDINGS

IN THE SUPREME COURT OF HONG KONG
ORIGINAL JURISDICTION
MISCELLANEOUS PROCEEDINGS
ACTION No. 239 OF 1966

*In the
Supreme
Court of
Hong Kong
Original
Jurisdiction*

BETWEEN

ERIC BLECHYNDEN MOLLER
RALPH BLECHYNDEN MOLLER - - - - - *Plaintiffs*

AND

COMMISSIONER OF ESTATE DUTY - - - - - *Defendant*

No. 1
Special case
Pursuant to
Order 9 Rule
8 of the Code
of Civil
Procedure
23rd May,
1966

20

No. 1

**SPECIAL CASE PURSUANT TO ORDER 9 RULE 8
OF THE CODE OF CIVIL PROCEDURE**

1. The parties hereto are interested in a question cognizable by the Court as to the construction of Section 19 of the Estate Duty Ordinance and have concurred in stating such question of law arising therefrom in the form of a Special Case for the opinion of the Court pursuant to Order 9 Rule 8 of the Code of Civil Procedure.

*In the
Supreme
Court of
Hong Kong
Original
Jurisdiction*

No. 1
Special case
Pursuant to
Order 9 Rule
8 of the Code
of Civil
Procedure
23rd May,
1966
continued

2. For the purpose of determining the question of law the facts and matters agreed by and between the parties are as follows:—

- (i) Nils Eric Amelon Moller (hereinafter called “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 day of March, 1955.
- (ii) The Plaintiffs are two of the four sons of the deceased. None of the four sons was an executor of the deceased’s Will.
- (iii) On the 15th day of May 1940, following an exchange of letters dated 26th April 1940 and 29th April 1940 the deceased transferred 10 certain shares in eleven Shanghai-registered companies to his four sons. The said companies were China Companies as defined by the Companies Ordinance No. 39 of 1932. The said transfers were acknowledged by the deceased in a Memorandum of Gift executed on the same day.
- (iv) On 19th August, 1940 the four sons transferred the said shares to Mollers Trusts Ltd. a Company incorporated on 27th June, 1940, in Shanghai, under the Hong Kong Companies Ordinance, 1932.
- (v) On the 30th September, 1941, by a Deed of Undertaking and 20 Guarantee, the four 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 Ltd. covenanted *inter alia* to pay the said monthly sum if default was made in the payment of the same by the four sons.
- (vi) The Defendant 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” on 18th March, 1966, at the sum of \$46,423,149.60. 30
- (vii) 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 Defendant 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.
- (viii) The Plaintiffs 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 either under Section 5 or Section 6 (1) (c) of the Estate Duty Ordinance or at all and the Plaintiffs further rely *inter alia* on Section 7 (a) and Section 7 (b) of the Estate Duty Ordinance 40 and Section 352 (2) of the Companies Ordinance 1932.

3. It is the contention of the Plaintiffs that the appeal procedure provided by Section 19 of the Estate Duty Ordinance is not applicable to the Plaintiffs who dispute and deny the validity of the claim for Estate Duty and any liability to Estate Duty on the said shares.

*In the
Supreme
Court of
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Original
Jurisdiction*

4. It is the contention of the Defendant that the appeal procedure provided by Section 19 aforesaid is applicable to the Plaintiffs notwithstanding that they dispute and deny the validity of the claim for Estate Duty and any liability to Estate Duty on the said shares.

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Special case
Pursuant to
Order 9 Rule
8 of the Code
of Civil
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23rd May,
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continued

5. Exhibits A1 to A9 inclusive are accepted by the parties hereto
10 as true copies of the documents mentioned in sub-paragraphs (i), (ii), (iv) and (v) of this Special Case.

6. The question of law for the opinion of the Court is:—

Whether Section 19 of the Estate Duty Ordinance applies to the Plaintiffs who dispute and deny the validity of the claim for Estate Duty and any liability to Estate Duty on the said shares.

7. A declaration in terms of the answer of the Court to the said question shall be made without any order as to costs.

Dated the 23rd day of May 1966.

20

(Sgd.) D. A. L. WRIGHT
Counsel for the Plaintiffs.

(Sgd.) D. A. O'CONNOR
Crown Counsel for the Defendant.

No. 2

SUMMONS INTER PARTES

To the Commissioner of Estate Duty and The Honourable the Attorney-General.

No. 2
Summons
inter partes
23rd May,
1966

Let the Defendant attend The Honourable Sir Michael Hogan, C.M.G., Chief Justice, at his Chambers at the Supreme Court, at 9.15 o'clock a.m. on Tuesday the 24th day of May 1966, on the hearing of an application
30 on the part of the Plaintiffs for a direction by the Chief Justice in accordance with the provisions of Section 27 of the Supreme Court Ordinance that the Special case herein should be heard before the Full Court.

Dated the 23rd day of May 1966.

(Chopped) C. M. STEVENS
Registrar. (L.S.)

This application was taken out by Johnson, Stokes & Master, Solicitors for the Plaintiffs.

(Sgd.) JOHNSON, STOKES & MASTER

(Estimated time not exceeding 15 minutes).

*In the
Supreme
Court of
Hong Kong
Original
Jurisdiction*

No. 3

AFFIDAVIT OF BRIAN SHANE McELNEY

Dated the 23rd day of May 1966

No. 3
Affidavit of
Brian Shane
McElney
23rd May,
1966

I BRIAN SHANE McELNEY of Flat 304 Rockymount, 39 Conduit Road, in the Colony of Hong Kong, solicitor, make oath and say as follows:—

1. I am one of the partners of Messrs. Johnson, Stokes & Master and I am the solicitor having the conduct of the proceedings herein on the part of the Plaintiffs.
2. The point upon which the decision of the Court is sought by the Special Case herein has not previously come before the Courts in Hong Kong for a decision. It is a matter of great importance to the Plaintiffs who, if Section 19 of the Estate Duty Ordinance applies, have to pay over \$46,000,000 Estate Duty or find security for the same before they can appeal within the three months period prescribed by the Section. I am also advised by Counsel that it is also an important matter for persons who in the future may be in the same position as the Plaintiffs to have a clear decision of the Full Court as to the proper procedure for the recovery of estate duty in cases such as this where all liability is denied and the validity of the claim for Estate Duty is disputed.
3. I verily believe that the Defendant will support the application for the Special Case to be heard by the Full Court.
4. This matter is one of great urgency owing to the time limit set by Section 19 of the said Ordinance and the Plaintiffs respectfully ask for the earliest possible date for the hearing of this Special Case.

Sworn, etc.

No. 4
Order
directing the
Special Case
be heard
before the
Full Court
24th May,
1966

No. 4

ORDER OF THE CHIEF JUSTICE IN CHAMBERS

Dated the 24th day of May, 1966

**DIRECTING SPECIAL CASE BE HEARD BEFORE
THE FULL COURT**

Upon the Application of the Plaintiffs and upon hearing Counsel for the Plaintiffs and Counsel for the Defendant and upon reading the Affidavit of Brian Shane McElney filed herein the 23rd day of May, 1966 and by consent IT IS ORDERED AND DIRECTED that in accordance with the provisions of Section 27 of the Supreme Court Ordinance Cap. 4 the Special case herein be heard before the Full Court.

(*Sd.*) C. M. STEVENS
Registrar. (L.S.)

No. 5

JUDGMENT OF THE HONOURABLE MR. JUSTICE RIGBY,
PRESIDENT OF THE FULL COURT

*In the
Supreme
Court of
Hong Kong
Original
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The short — but nonetheless important — practical point for consideration in this case concerns the proper application of Section 19 of the Estate Duty Ordinance. The plaintiffs are two of the four sons of the late Nils Moller; the defendant is the Commissioner of Estate Duty.

No. 5
Judgment of
Mr. Justice
Rigby
President of
the Full Court
22nd June,
1966

The matter comes before this Court in this way. In May 1940 the late Nils Moller, then resident in Shanghai, was minded to retire to a very large extent from the active and successful business life which he had hitherto led. With that object in view, he sought to transfer certain shares in eleven of his Shanghai-registered companies to his four sons. However, to provide for the future of himself and his wife, he required his sons to pay him a sum of £1,000 per month during the joint lives of himself and his wife and thereafter to the survivor during his or her life. The sons agreed to this arrangement and the requisite deeds were entered into by the parties to give effect to it. In March 1955 Nils Moller died in Singapore. Probate of his last Will and Testament was issued from the Supreme Court of Hong Kong in March 1955. Estate Duty was duly paid by his executors; none of his four sons was an executor of the Will.

The Commissioner of Estate Duty claims that by virtue of Sections 5 and 6 (1) (c) of the Estate Duty Ordinance, estate duty was, and is, payable on the death of the deceased in respect of the said shares transferred by him to the four sons in 1940, and he has assessed such duty, with accrued interest, on an assessment memorandum, dated the 18th of March, 1966, at the sum of \$46,423,149.60. On the other hand, the plaintiffs from the outset have disputed that any estate duty was, or is, payable in respect of the shares.

In support of their contention that no estate duty was, or is, payable on the shares, the plaintiffs rely on Section 352(2) of the Companies Ordinance 1932 (the legislation then in force at the material time) and Section 7A and 7B of the Estate Duty Ordinance.

None of the four sons has ever submitted, or been called upon to submit, an account or affidavit, within the meaning of the Estate Duty Ordinance, in respect of the said shares, and none of them has ever paid any estate duty on the said shares or at all. It is, however, an admitted fact that the plaintiffs or their solicitors, without prejudice to their denial of liability as to payment of duty right from the outset, have, in the course of the considerable correspondence over a lengthy period of time that has passed between the parties, supplied the Commissioner from time to time with details of the shares and interest held by them under the disposition to them from their father. Indeed, it is again not disputed that it was at any rate partly upon the basis of this information so supplied by them that the Commissioner has arrived at his assessment. Notice of that assessment was given to the plaintiffs' solicitors on the 18th of March, 1966. Upon the

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solicitors raising certain queries, the Commissioner replied thereto by a letter dated the 14th of April stating *inter alia*:

“ With regard to the second and third paragraphs of your letter I would inform you, upon Counsel’s advice, that the Crown holds the four sons abovenamed jointly and severally liable for the duty claimed; further, that notice to you is accordingly sufficient notice for the purposes of a decision under Section 19. However, in view of the doubts expressed in your letter of 30th March I am prepared to agree that this present letter now be regarded as due notice of a decision under Section 19 in place of my earlier notice of 18th March. The period of three months for an appeal accordingly commences to run from the date hereof.” 10

The plaintiffs maintain that the appeal procedure provided by Section 19 of the Estate Duty Ordinance is not applicable in a case, where the right of the Commissioner to assess, as distinct from the quantum he has assessed, has been disputed from the outset. The Commissioner, on the other hand, contends that he has given a decision both as to the liability to pay and the amount to be paid and the proper procedure for any person aggrieved by that decision is provided by Section 19. It is of assistance to break up the provisions of that section into its material parts. It provides that: 20

“ Any person aggrieved by the decision of the Commissioner:—

- (1) with respect to the amount of estate duty payable on an affidavit or account; or
 - (2) with respect to the repayment of any excess duty; or
 - (3) to any claim for additional duty by the Commissioner,
- and whether he is aggrieved:—
- (a) on the ground of the value of any property; or
 - (b) on rate charged; or
 - (c) 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 three 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.” 30

Mr. D’Almada, for the plaintiffs, contended that the whole structure of the section and the words used clearly envisaged, and only contemplated, that an appeal should lie from the decision of the Commissioner where the taxpayer was aggrieved as to the imposed amount of estate duty payable and that it was then for the appellate court to “determine” the amount of the duty payable, and if the duty already paid by the taxpayer to the Commissioner in conformity with his decision was in excess of the amount 40

determined by the Court, such excess was to be repaid to the taxpayer. Mr. D'Almada urged that the very foundation of the Commissioner's power to make a decision as to the amount or quantum of duty payable was an admission of liability by the taxpayer, based upon an account furnished by him to the Commissioner, that some duty was payable. It was only in such circumstances that the Commissioner could make his decision as to the amount of duty payable. Before the taxpayer could appeal against that decision as to the quantum or amount of duty payable he was required, subject to exemption by the Court under Section 19 (4) on the grounds of hardship,
10 as a condition precedent to his appeal to pay the whole of the duty claimed or to give security therefor. Two arguments were then put forward.

First, in the absence of clear provision in the section itself, it would be wholly inequitable to require the taxpayer to deposit the amount on the assessment, or to give security therefor, in a case where the taxpayer disputed not the quantum of duty assessed but the very fact of liability to assessment. It was contended that in such a case the proper procedure was for the Commissioner to cause to be instituted civil proceedings under the Crown Proceedings Ordinance so that the issue of liability or otherwise to estate duty could be determined by the courts in the ordinary manner. (See for
20 example the English cases of *Attorney General v. Adamson*⁽¹⁾ and *Attorney General v. Oldham*⁽²⁾).

Secondly, it was argued that before the Commissioner could make his assessment he would require to have before him, whether by way of disclosure by affidavit or account, details of the property said by him to be subject to duty. It is admitted that in this case there was no proper "account" or "affidavit", within the definition of those expressions in the Ordinance, furnished by the plaintiffs or their solicitors.

It is the case for the Commissioner that his assessment was a "decision" in respect of a "claim" made by him for "additional duty" under what I
30 would refer to as the third limb of Section 19 (1) of the Ordinance.

Estate duty is defined under the Ordinance as "duty chargeable under the Ordinance" but certain duties have, of course, duly been paid by the executors of the Will of the deceased. What is now being claimed is additional duty upon property deemed under Section 6 (1) (c) of the Ordinance to have passed upon the death of the deceased in March 1955. Mr. O'Connor contends that it matters not that additional duty is being claimed from persons other than the executor under the Will: it is a decision by the Commissioner making a claim for additional duty irrespective as to who paid it, and it therefore falls within Section 19.

40 Section 19 of the Ordinance is itself based on Section 10 of the Finance Act, 1894, with the important distinction that the English Act omits the third limb of Section 19, that is to say, the words "or to any claim for additional duty by the Commissioner", are not included in the Act. It

(1) (1932) 2 K.B. 159.

(2) (1940) 1 K.B. 599.

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is for that reason that Mr. O'Connor maintains that the opinions expressed by textbook writers that the procedure by way of appeal from a decision of the Commissioner as provided by Section 10 (1) of the English Act is only applicable where the liability to some duty is admitted but the amount only is in dispute, has no application when considering the purport and intent of our Ordinance.

The Commissioner's powers in relation to the discovery of further property said to be liable to estate duty stems from Section 11 (12) of the Ordinance. That section provides:

“(12) Where the Commissioner discovers that any property 10
which ought to have been disclosed by affidavit or account has not
been so disclosed he shall notify the 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 thereon.”

Upon a consideration of that subsection the question at once arises: Who is to decide whether such property “ought to have been disclosed by affidavit 20
or account” as being subject to estate duty? Is it to be left to the arbitrary
decision of the Commissioner subject to a right of appeal under Section 19
with the onerous obligations as to payment of the estate duty prescribed by
the Commissioner, or security for such payment in lieu thereof, as a condition
precedent to the lodging of any appeal or, on the other hand, is the
fundamental issue of liability to be decided by the courts in accordance
with the normally accepted principle that he who claims that money is due
to him should prove it?

I was impressed by the argument of Mr. Wright who, together with
Mr. D'Almada, appeared for the plaintiffs. Mr. Wright contended that the 30
words “additional duty” in Section 19 must be strictly construed and, insofar
as the plaintiffs are concerned, this is not a claim for additional duty but
an original claim for duty. As Mr. Wright pointed out, once it is accepted
or established that further individual property of which estate duty has not
been paid by the executor is deemed to have passed upon the death of
the testator then, of course, it attracts death duty and the over-all effect may
well be to increase the value of the testator's estate so that, quite apart
from the estate duty payable upon that particular piece of undisclosed
property, the aggregate value of the estate has been substantially increased
so as to make the executor liable to pay “additional duty” on the whole 40
of the estate. In such a case, the fact of liability having been established,
only the question of quantum of additional duty payable remains. The
decision of the Commissioner on that point may well be a matter likely to
provide grounds for an appeal, under the provisions of Section 19, by the
executor saddled with the payment of the additional duty.

Again, for myself, I have had some doubt as to whether there is
anything in Section 11 (12) or in any other of the sections to which we

have been referred that confers a right upon the Commissioner, as distinct from the courts, himself arbitrarily to determine the issue of liability to duty, as distinct from the quantum of duty payable. It is settled law that the onus of establishing a liability to duty is upon the Crown. It is equally well settled that taxing acts must be construed strictly, that no charge can be levied upon the the subject except by clear and unequivocal language, and that if an act is ambiguous the subject is entitled to the benefit of the doubt.

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For myself, I have had considerable doubt as to whether the provisions of the Ordinance can be so construed as to make the Commissioner the
10 judge in his own cause for the purpose of arbitrarily imposing a liability to duty upon a taxpayer who, for reasons at least *prima facie* valid, disputes liability and thereby compell him to set in motion the machinery provided under Section 19 of the Ordinance with all the restrictive provisions, both as to the time for filing the appeal, and a monetary deposit, or security in lieu thereof, equivalent to the assessment made, as an essential prerequisite before he can lodge any such appeal.

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However, since preparing this judgment I have had the advantage of reading the cogent reasoning contained in the judgments about to be delivered by my fellow members of this court. Having carefully considered these
20 judgments, although I am not left entirely free from doubt, I am unable to dissent from the final conclusion they have reached as to the determination of this case.

(IVO RIGBY)

President.

22nd June, 1966.

No. 6

**JUDGMENT OF THE HONOURABLE MR. JUSTICE HUGGINS,
JUDGE OF THE FULL COURT**

No. 6
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Judge of the
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The Commissioner contends that he has made a “decision with respect
30 to a claim” and that the claim is for “additional duty”. It is not in dispute that the plaintiffs, if they are accountable at all, are accountable under s.11(5). They, of course, deny (and have from the outset denied) that there is any property passing on the death of the deceased for which they are accountable. On the other hand, the Commissioner alleges that he has discovered property which ought to have been disclosed and, as I understand it, he has purported to proceed (albeit somewhat informally) under the provisions of s.11(12). That subsection says:

40 “ 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 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

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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 thereon.”

It is conceded that the Commissioner has not called upon the plaintiffs to “disclose” the property but he has called upon them to pay the estate duty on it, he having sent them a Revised Assessment Memorandum. Clearly, therefore, a claim has been made. I attach no significance to the fact that the Commissioner gave notice that the Memorandum was “to be regarded as due notice of a decision of the Commissioner” nor do I believe the Commissioner ever purported to exercise a power to deem that which was not a decision to be a decision: I think what he intended by the final paragraph of his letter of 18th March was to extend the time for appeal under s.19(1) beyond the 3 months which started to run when he made his earlier claim for a higher amount. A claim having been made it is impossible to say that there has been no decision at all in respect of any claim — the Commissioner has decided to make a claim. What the plaintiffs argue is that the word “decision” is to be given a limited construction — that it is referable only to a decision as to quantum and assumes a previous decision as to liability (a distinction with which we are familiar in claims for damages). 10

The greater part of s.19(1) is in substance the same as s.10 of the Finance Act, 1894 of the United Kingdom and it is common ground that in England at least s.10 is applicable only to decisions as to quantum and not as to liability. The principal distinction between the United Kingdom section and our own is the addition here of the words “or to any claim for additional duty by the Commissioner” and counsel for the plaintiffs submits that those words are not sufficient to alter the whole ambit of the section. There is, however, the further distinction that the order of the references to claims for duty and to repayment of excess duty has been reversed. Where the object of a statute is clear this may assist in its construction, but it may be dangerous to endeavour to spell out the object of a provision solely from an alteration in the wording where the alteration is not manifestly made for a particular purpose: the ways of legislatures are often as much past finding out as are those of God. No one has suggested that the change in the order of the words has any particular significance and it may be that the draftsman of the Ordinance was merely oppressed by the illogicality of referring to “repayment” before the claim to duty from which the repayment must necessarily arise. 20 30

Before considering the only other distinction between s.19(1) of the Ordinance and s.10 of the Act I must observe that the Commissioner’s case rests upon there being here a claim for “additional duty”. The plaintiffs contest that there is. The Commissioner relies upon the definition of “estate duty” and, pointing out the admitted fact that estate duty has been paid by the executor, says that any duty claimed from the plaintiffs must be “additional duty”. The plaintiffs, looking at the matter from their own point of view and not that of the estate as a whole, say they have paid no estate duty and that any claim now made cannot be “additional”, for that would be an abuse of language. This necessarily involves that estate duty payable under s.11(12) may or may not be “additional duty” within the meaning of s.19(1) according 40

to who is the accountable person and whether or not he personally has previously paid estate duty. That seems to me an artificial interpretation. I think Mr. O'Connor is right when he asks us to look at the matter from the point of view of the estate as a whole, and I think some support for this conclusion is to be found in the terms of s.9(2).

*In the
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The need to refer expressly to claims for additional duty in s.19(1) arose from the substitution of the words "payable on an affidavit or account" for the words "claimed by the Commissioner". If we want to find a reason for that particular change it is perhaps to be found in the enactment of s.11(12) which has no equivalent in the Act: although no variation of the wording of s.10 of the Act was probably necessary it may be that the draftsman wished at the same time to leave no doubt that claims under s.11(12) were covered and to maintain the logical order of his arrangement. Was the intention to distinguish claims for additional duty from other claims for duty so that it might then be provided that decisions as to claims for additional duty should be appealable not merely on the question of quantum? I do not question that such an interpretation is possible but what has caused me anxiety is whether the language is sufficiently clear to justify the very wide power which the Commissioner claims. If the Commissioner is right in his contention it would mean that under s.11(12) the subject would be compelled to pay the tax unless upon an appeal he could prove that the condition precedent to the service of a notification and of a claim (*i.e.* that the Commissioner has discovered property which ought to have been disclosed by affidavit or account) did not exist. That, in effect, would be to read s.19(1) as permitting something akin to what, as Mr. D'Almada has pointed out, is euphemistically called a "protective assessment" under s.59 of the Inland Revenue Ordinance. I attach no weight to the accepted fact that the Commissioner has, without challenge up to now, construed s.19(1) as covering decisions on the question of liability where liability is disputed, for it is only the vast size of the estate with which we are at present concerned that has made it worth while stating a case for the opinion of the Court in order to avoid (if possible) the payment of, or giving security for, the duty claimed. On the other hand, the same factor is relevant as showing the very serious injury that might be done to the plaintiffs if a claim by the Commissioner under s.11(12) be unfounded in law. It is true that injury may be done where the Commissioner wrongly assesses the duty payable consequent upon an admitted liability but it is likely to be much less than where there is an error of law as to liability. To put the matter the other way, is there anything which we can reasonably say is a fair alternative interpretation of the subsection? If so, I have no doubt that we should construe the statute in favour of the subject.

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There was some discussion as to the proper grammatical construction of the first part of s.19(1) and I think some analysis of it may be useful. I would sub-divide it as follows:

"Any person aggrieved by the decision of the Commissioner

- (a) with respect to the amount of estate duty payable on an affidavit or account or

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- (b) with respect
 - (i) to the repayment of any excess duty or
 - (ii) to any claim for additional duty by the Commissioner . . .”.

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The significance of this analysis is to show the close link between decisions in respect of excess duty and decisions in respect of additional duty. It having been conceded that decisions in respect of excess duty means decisions as to quantum only it might be said to be a little surprising if decisions in respect of additional duty were of wider scope. The reply is, of course, that no question of liability can arise in respect of repayment — at least in relation to the taxpayer: there may be a question of the liability of the Crown to repay, but that liability would necessarily depend on a question of quantum. 10

Counsel for the plaintiffs seek support for their construction of s.19(1) from the later parts of the subsection. For my part I do not attach any weight to the submission that the words “or otherwise” in relation to the cause of the subject’s aggrivement must be read *ejusdem generis* with the words which precede them and that the genus of complaint is revealed by the words “value” and “rate charged”: the *ejusdem generis* rule is excluded in Hong Kong where the conjunction “or” is used without words implying similarity: s.3(1) of the Interpretation Ordinance. But counsel then refer to the power of the Court upon an appeal: namely power to determine “the amount of the duty”. They say that this presupposes a positive amount and excludes a determination that the amount is nil because the subject is not taxable. They were inclined, I think, to concede that there might conceivably be a determination that the amount was nil because the property in question was found to have no value. 20

Counsel argue that if s.19(1) gives a right of appeal on a question of liability s.26(2) must be surplusage. Section 26(1) raises a presumption that on the death of a person registered as the owner of shares such shares are part of his estate for the purposes of estate duty unless the Commissioner decides to the contrary. An appeal against his decision lies to the Supreme Court under subsection (2). Counsel say that such a provision would be unnecessary if s.19(1) gave a general right to appeal on questions of liability. I do not think counsel for the Commissioner contends for a general right of appeal under s.19(1) on questions of liability but only on questions of liability to additional duty: in so far as the words of the section are the same as the words of the Finance Act, 1894 he is disposed to give them the same construction as has been given to them in England. If that be correct then s.26(2) is not surplusage even though questions of liability to additional duty are within s.19(1). 30 40

There is a further argument which was directed to showing that there had been no “decision” within the meaning of s.19(1) and that was that the Commissioner did not have the material on which any decision must be based. It is not disputed that the Commissioner did not follow strictly the provision of s.11(12): as I have said, he did not call upon the plaintiffs

to disclose the property which he alleges ought to have been disclosed by affidavit or account. He did not have any affidavit or account, but the very terms of s.11(12) contemplate a claim for estate duty before the property has been disclosed by affidavit or account. That being so it does not matter that there was no account as defined by the Ordinance before the Commissioner made his claim: he was entitled to make it and to assess its quantum on such information as had led to the "discovery" of the property. But I cannot agree that the Commissioner had a sufficient "account" if one were necessary. Even so I do not see that the absence
10 of a particular form of account could alone prevent the Commissioner from arriving at "a decision" any more than a verdict upon a trial would fail to be a decision because it was reached upon wholly inadmissible evidence or upon no evidence at all.

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The matter has been very fairly argued on both sides and although at one stage I had some doubts I have come to the conclusion that the Commissioner's contentions are sound. Whatever may be the consequences I see no real basis for giving the words of s.19(1) the restrictive meaning contended for by the plaintiffs, while it would have been a simple matter to repeat the words "the amount of" before "any claims for additional duty"
20 if it had been the intention to restrict the nature of the appeal: the absence of those words is conclusive.

My answer to the question put to us would be Yes.

(ALAN HUGGINS)
Puisne Judge.

No. 7

**JUDGMENT OF THE HONOURABLE MR. JUSTICE JENNINGS,
JUDGE OF THE FULL COURT**

This special case concerns a decision of the Commissioner of Estate Duty, the defendant, in which he in effect has decided three matters: firstly,
30 that certain shares were property passing on the death of the deceased; secondly, that the value of this part of the estate is \$46,000,000; and thirdly that the Estate Duty and interest payable thereon is \$46,423,149.60. The plaintiffs, two of the transferees of these shares, dispute, at the present stage of the proceedings, the first of these matters. It is only if they are unsuccessful in this that the second and third matters in the decision arise for consideration. Section 19 of the Estate Duty Ordinance provides for appeals against certain types of decisions made by the Commissioner. The plaintiffs contend that the decision on the first of these matters, being one as to liability, is not a decision which the Commissioner is empowered to
40 make, and consequently that the provisions of the section are irrelevant. The parties have therefore asked this court for its opinion on the following question of law:

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“Whether Section 19 of the Estate Duty Ordinance applies to the

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plaintiffs who dispute and deny the validity of the claim for Estate Duty and any liability to Estate Duty on the said shares”.

Section 19 of the Ordinance in-so-far as it is material is as follows. I set it out in the manner in which both parties agree it is phrased:

“ 19 (1)

“ Any person aggrieved by the decision of the Commissioner

- i. “ with respect to the amount of estate duty payable on an affidavit
“ or account or
- ii. “ with respect to the repayment of any excess duty or
- iii. “ to any claim for additional duty by the Commissioner, 10
“ and whether he is aggrieved on the ground of
 - a. “ the value of any property or
 - b. “ the rate charged or
 - c. “ otherwise
“ may
“ on payment of, or giving security for, as hereinafter mentioned
“ the duty claimed by the Commissioner
“ or such proportion of it as is then payable by him
“ appeal to the Supreme Court
“ within three months from the date of the decision 20
“ 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”

and I set out similarly the corresponding subsection of the Finance Act of 1894 (57 & 58 Vict. c. 30) referred to in the marginal note to our section 19.

“ 10 (1)

“ Any person aggrieved
“ by the decision of the Commissioners

- ii. “ with respect to the repayment of any excess of duty paid, 30
- i. “ or the amount of duty claimed by the Commissioners,
“ whether on the ground of
 - a. “ the value of any property or
 - b. “ the rate charged, or
 - c. “ otherwise,
“ may”

It is clear that subsection 19(1) is not applicable to every decision made by the Commissioner under the Ordinance: it is applicable only where the decision is with respect to any of the three matters which I have marked as “i”, “ii” and “iii” against the quotation.

As to the first of these three types of decision — a decision with respect to the amount of estate duty payable on an affidavit or account — there can be no such decision unless it is based on an affidavit or account. Such an affidavit would seem to be “an affidavit for the Commissioner” — an expression which is defined in s.3(1) of the Ordinance as meaning, unless the context otherwise requires:

“an affidavit in such form as may be prescribed by the Governor in Council verifying the particulars and value of the estate of a deceased person.”

10 “Account” is also given a special meaning in s.3(1) as follows, unless the context otherwise requires:

“‘account’ means an account of the particulars and value of the estate of a deceased person in such form as may be prescribed by the Governor in Council, and verified by affidavit.”

It is admitted that no affidavit or account has been delivered in respect of these shares by any of the transferees thereof or called for by the Commissioner; and there is no evidence that any such affidavit or account relating to these shares has been delivered by anyone else. The plaintiffs therefore submit that whatever was the information on which the
20 Commissioner based his decision it was not a decision on an affidavit or account and consequently does not come within this first type of decisions. The Commissioner does not contend before us that this is a decision on an affidavit or account, or that it is one that comes within the first type of decisions specified in the subsection; nor does he contend that it is a decision with respect to the repayment of any excess duty — the matter set out against the second group of decisions in subsection 19(1).

On behalf of the Commissioner it is contended that the decision in question is one with respect to a claim for additional duty by the Commissioner — the third matter in our subsection. It appears that certain
30 estate duty has already been paid by the executors in respect of this estate; and the contention is that any subsequent claim for estate duty is a claim for additional duty, and that it matters not whether it is made against the executors or against any other accountable person. I think this is so; and I agree with the further contention that since no prerequisite is specified in the subsection for a valid claim for additional duty such a claim does not have to be delayed until the accountable person delivers an original or a further account or affidavit. Power is given to the Commissioner in s.11(12) of the Ordinance to require an accountable person to disclose within a month
40 such property which the Commissioner discovers ought to have been disclosed by affidavit or account and at the same time to pay the estate duty thereon. In my view this power authorises the Commissioner to decide what property, which has not been disclosed by affidavit or account, ought to have been so disclosed and to assess forthwith the duty payable thereon, and consequently empowers him to decide questions of liability as well as quantum in respect of additional duty. If such a person, having been called upon to disclose such property and to pay the estate duty thereon, fails

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within the month to deliver an original or further account disclosing it and at the same time to pay the estate duty thereon he becomes liable under s.11(14) to pay that duty and a fine. It would seem that the Commissioner, acting under s.11(12) does not have to demand in any prescribed form the particulars of the undisclosed property or to demand that such particulars be delivered by way of affidavit or account. He is empowered to call upon the accountable person to disclose such property and pay the estate duty thereon. It is the law and not the Commissioner that requires such particulars to be delivered by way of an account. What seems to have happened in this case is that in some document the existence of the shares 10 in question came to the notice of the Commissioner; that he asked for particulars of those shares; that in reply he received, without prejudice and with a denial of liability to estate duty, certain particulars; and that it was on these particulars that he based his decision. The fact that the particulars were supplied in this way and not by affidavit or account does not in itself entitle the plaintiffs to avoid liability under s.11(14).

The plaintiffs contend that section 19 is applicable only to decisions made by the Commissioner as to quantum: that it does not cover decisions made on the question of liability; that s.19(1) is modelled on s.10(1) of the Finance Act of 1894; that the textbooks on this section of the Act indicate 20 that in England these provisions are applicable only where the amount is in dispute; that the same is the position here; that at least our section is open to a similar interpretation; that if a section is capable of more than one interpretation the court excludes that one which is inequitable; and that it would be inequitable if the plaintiffs are compelled, before they can appeal on the question of liability, to pay or give security for the \$46,423,149.60 duty claimed by the Commissioner.

The defendant does not contend that the English subsection applies to appeals other than on quantum. He draws our attention to the fact that the English and the Hong Kong subsections are worded differently; that the 30 subsection in the Act does not refer specifically to a decision of the Commissioner claiming additional duty. It is correct that the following words appearing in our subsection do not appear in the English subsection:

“to any claim for additional duty by the Commissioner.”

I find it difficult to believe that the Commissioners in England may not claim additional estate duty, and that if they do claim it, that a person might not be aggrieved by the amount so claimed — apart from any grievance he may have on the question of liability; and I cannot see why such a grievance as to the amount would not be held to be caused “by the amount of duty claimed by the Commissioner”, and so come within s.10(1) of the Act. I 40 do not therefore think that it was merely because our Legislature wished to bring within this subsection appeals relating to additional duty that it did not adopt the wording of the Act. The manner in which it distinguishes decisions as to estate duty and decisions as to additional duty, and its use of words and phrases which are in some instances quite different from those appearing in the Act suggest some other reason; and it must be accepted that it made each of these changes deliberately.

It would have been a simple matter for our Legislature to have adopted the following words of the Act:

“ Any person aggrieved by the amount of duty claimed by the Commissioner(s) ”

to describe the decisions as to the amount of duty or additional duty it wished to bring within the subsection. Instead it enacted

“ Any person aggrieved by the decision of the Commissioner with respect to the amount of estate duty payable on an affidavit or account ”;

10 and

“ Any person aggrieved by the decision of the Commissioner with respect to any claim for additional duty by the Commissioner.”

These words in the Act more clearly indicate a grievance against quantum than the corresponding words appearing in Ordinance relating to additional duty. In the Act the grievance may perhaps be restricted to so much of the decision as relates to the amount claimed — and it may be so in the Ordinance in the first part of the above extract; but in the second part of the extract from the Ordinance the grievance may be with respect to any claim. In the case before us the grievance is against the Commissioner's claim that certain shares passed on the death of the deceased. Why, in the Ordinance, a claim for estate duty is so distinguished from a claim for additional duty, when both seem to be treated alike in the Act, is I think partly explained by the desire of our Legislature to restrict a decision of the Commissioner as to the amount of estate duty to the disclosures made in the affidavit or account and not to restrict in this way a claim for additional duty. Had both such decisions been described in the one way in the Ordinance the words “an affidavit or account” would either have to be deleted altogether or else applied to both — in which latter event the claim for additional duty would not come within the subsection at all unless, the property, the subject matter of the additional duty, was disclosed in an affidavit or account as defined in the Ordinance.

In making his decision as to the amount of estate duty payable, the specified prerequisite in the Ordinance is that the Commissioner has to rely on an affidavit or account in which the particulars and value of the estate are set out and verified by the person accounting. I cannot visualise such a person disputing that what he affirms is the estate is not liable to estate duty: his dispute would be confined to the amount of the estate duty payable on his affidavit or account. In respect of additional duty claimed by the Commissioner there could well be a dispute as to liability since there may be no affidavit or account which would stop such a dispute. This difference as to the type of disputes that may arise over the question of duty and over the question of additional duty is appreciated by the Legislature and is in my view provided for in subsection 19(1).

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No. 7
Judgment of
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22nd June,
1966
continued

Our subsection, it is true, adopted the wording of the Act relating to decisions with respect to the repayment of any excess duty. In such appeals no question of hardship to the appellant arises over having to pay or give security for the duty claimed before he proceeds with his appeal: the duty has already been paid. Whatever may be the position in England I do not see why such an appeal could not be brought here under s.19(1) of the Ordinance even if what was disputed was a question of liability.

I am therefore of the opinion that Section 19 of the Estate Duty Ordinance applies to the plaintiffs in their dispute in this case.

(B. J. JENNINGS)
Acting Puisne Judge

10

No. 8
Petition for
leave to
Appeal to the
Privy Council
2nd July,
1966

No. 8

PETITION FOR LEAVE TO APPEAL TO THE PRIVY COUNCIL
Dated the 2nd day of July 1966

The Honourable the Judges of the Supreme Court of Hong Kong

The Humble Petition of the abovenamed Eric Blechynden Moller and
Ralph Blechynden Moller

RESPECTFULLY SHEWETH:—

1. The question in dispute in these proceedings is whether the appeal procedure provided by Section 19 of the Estate Duty Ordinance, Chapter III, is applicable to Your Petitioners who dispute and deny the validity of, and liability for, a claim by the Commissioner of Estate Duty that Estate Duty is payable on the death of Nils Eric Amelon Moller who died on 13th March, 1954, in respect of certain shares which he transferred in Shanghai on 15th May, 1940, to his four sons including Your Petitioners. 20
2. That the said question in dispute was the subject of a Special Case agreed between the parties and dated the 23rd day of May, 1966.
3. That pursuant to Section 27 of the Supreme Court Ordinance Chapter 4, the Honourable the Chief Justice on the 24th day of May, 1966, directed that the Special Case should be heard before the Full Court. 30
4. That on the 9th day of June, 1966, the Special Case was heard before the Full Court consisting of the Honourable Sir Ivo Rigby, Kt., Senior Puisne Judge, Mr. Justice Huggins, and Mr. Justice Jennings, Puisne Judges.
5. That on the 22nd day of June, 1966, Judgment was delivered by the Full Court that Section 19 of the Estate Duty Ordinance applies to Your Petitioners who dispute and deny both the validity of the

claim for Estate Duty made by the Commissioner of Estate Duty herein and any liability to Estate Duty on the shares alleged by the Commissioner of Estate Duty to have passed on the death of Nils Eric Amelon Moller deceased.

*In the
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6. Your Petitioners feel aggrieved by the said Judgment of the Full Court and desire to appeal therefrom.

No. 8
Petition for
leave to
Appeal to the
Privy Council
2nd July,
1966
continued

10 7. The said Judgment involves indirectly a claim to or question respecting property amounting to or of the value of \$5,000 or upwards, and moreover the question involved in the appeal is one of great general or public importance in that it affects the nature and extent of the rights of taxpayers in the Colony in respect of disputes as to claims for Estate Duty made by the Commissioner of Estate Duty, and the onus of proof upon such claims. Furthermore, involved in this matter is the heavy burden placed on the tax-payer of having to pay the amount of duty claimed or to furnish security in lieu thereof.

8. Your Petitioners therefore pray:—

20 (1) That this Honourable Court will be pleased to grant Your Petitioners leave to appeal from the said Judgment to Her Majesty the Queen in her Privy Council.

(2) That this Honourable Court may make such further or other Order in the premises as may seem just.

AND Your Petitioners will ever pray, etc.

Dated Hong Kong the 2nd day of July, 1966.

(Sgd.) D. A. L. WRIGHT
Counsel for the above-named Petitioners.

(Sgd.) JOHNSON, STOKES & MASTER
Solicitors for the above-named Petitioners.

30 This Petition is filed by Messrs. Johnson, Stokes and Master of Hong Kong & Shanghai Bank Building, No. 1 Queen's Road Central, Victoria in the Colony of Hong Kong, Solicitors for the above-named Petitioners.

It is intended to serve this Petition on:—

(a) The Commissioner of Estate Duty and

(b) D. A. O'Connor, Esq., Crown Counsel, Legal Department, Central Government Offices, representing the Commissioner of Estate Duty.

*In the
Supreme
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No. 9

**AFFIDAVIT OF BRIAN SHANE McELNEY
IN SUPPORT OF PETITION**

Dated the 2nd day of July 1966

No. 9
Affidavit of
Brian Shane
McElney
2nd July,
1966

I, BRIAN SHANE McELNEY of Flat 304 Rockymount, 39 Conduit Road, Victoria in the Colony of Hong Kong, solicitor make oath and say as follows:—

1. I am the solicitor for the Plaintiffs Eric Blechynden Moller and Ralph Blechynden Moller and as such I have the conduct and management of these proceedings. 10
2. The Statements made in the Petition filed herein on even date for leave to appeal to Her Majesty the Queen in Her Privy Council from the judgment of this Honourable Court delivered in these proceedings on the 22nd day of June 1966 are to the best of my knowledge information and belief true in substance and in fact.

Sworn, etc.

No. 10
Order Giving
Provisional
Leave to
Appeal to the
Privy Council
25th July,
1966

No. 10

**ORDER OF THE FULL COURT
Dated the 25th day of July, 1966
GIVING PROVISIONAL LEAVE TO APPEAL**

20

Upon the Petition of the Plaintiffs filed herein on the 2nd day of July, 1966 and upon hearing Counsel for the Plaintiffs and Counsel for the Defendant and upon reading the said Petition and the Affidavit of Brian Shane McElney filed herein on the 2nd day of July, 1966 IT IS ORDERED THAT leave be granted to the Plaintiffs to appeal to Her Majesty the Queen in Her Privy Council against the judgment of the Full Court herein dated the 22nd day of June 1966 conditional upon the Plaintiffs within 14 days from the date hereof entering into good and sufficient security for the sum of \$10,000 either by payment in cash or provision of security to the satisfaction of the Registrar of this Court for the due prosecution of the Appeal, and the payment of all such costs as may become payable to the Defendant in the event of the Plaintiffs not obtaining an order granting him final leave to appeal, or of the appeal being dismissed for non-prosecution or of Her Majesty in Council ordering the Plaintiffs to pay the Defendant's costs of the Appeal (as the case may be), IT IS ALSO ORDERED THAT the said Plaintiffs prepare and dispatch to England the record of these proceedings within a period of three months from the date hereof. 30

(Sd.) B. L. JONES
Assistant Registrar. (L.S.)

No. 10A

**ORDER OF THE FULL COURT
Dated the 10th day of October, 1966
GIVING FINAL LEAVE TO APPEAL**

*In the
Supreme
Court of
Hong Kong
Original
Jurisdiction*

UPON the Motion of the Plaintiffs and UPON reading the Petition of the Plaintiffs filed herein on the 2nd day of July 1966 for leave to Appeal to Her Majesty in Her Privy Council from the Judgment of the Full Court dated the 22nd day of June 1966 and Upon reading the Order herein dated the 25th day of July 1966 made on the said Petition and the affidavit of 10 Brian Shane McElney filed the 7th day of October 1966 and Upon hearing Counsel for the Plaintiffs and Crown Counsel for the Defendant This Court Doth Order that the final leave to Appeal prayed for be granted.

No. 10A
Order Giving
Final Leave to
Appeal to the
Privy Council
10th October,
1966

(*Sd.*) B. L. JONES
Assistant Registrar.

Exhibits

Exhibit A1
Probate of
Nils Eric
Amelon
Moller's last
Will and
Testament
issued from
the Supreme
Court of
Hong Kong
28th March,
1955

Referred to in
Doc. No. 1
continued

I, NILS ERIC AMELON MOLLER of c/o The Chartered Bank of India Australia and China, 38 Bishopsgate, London, E.C.2., Retired Shipowner
HEREBY REVOKE all former Wills and Testamentary dispositions made by me AND DECLARE this to be my last Will as follows:—

1. I APPOINT Lawrence Green of Messrs. A. R. Loxley & Co., (China) Ltd., Hong Kong and Philip Charles Smith, Managing Clerk to Messrs. Arthur Robson Solicitors of 11 Maddox Street, London, W.1., (hereinafter called "my Trustees") to be the Executors and Trustees of this my Will and in case either or both of them shall die in my lifetime or shall refuse or be unable to act in the office of Executor and Trustee then I APPOINT The Chartered Bank of India Australia and China (hereinafter called "the Bank") to fill any vacancy in the office of Executor and Trustee hereof that may occur by reason of such death refusal or inability as aforesaid. 10
2. I DECLARE that the Bank may act on the Bank's terms and conditions in force and at the rates of remuneration charged by the Bank at the date of my death.
3. I DECLARE that the expression "my Trustees" in this Will shall include (where the context permits) the Trustees or Trustee for the time being hereof whether original or substituted and if there shall be no such Trustees or Trustee shall (where the context permits) include the persons or person empowered by statute to exercise or perform any power or trust hereby or by statute conferred upon the Trustees hereof and willing or bound to exercise or perform the same. 20
4. I DESIRE that Messrs. Arthur Robson of 11 Maddox Street London aforesaid shall be employed as Solicitors in connection with my Estate.
5. I DECLARE that my Trustee being a Solicitor or other person engaged in any profession or business may be so employed or act and shall be entitled to charge and be paid all professional or other charges for any business or act done by him or his firm in connection with the trusts hereof including acts which a Trustee could have done personally. 30
6. I BEQUEATH the following legacies free of duty:—
 - (a) To the said Lawrence Green if he shall prove my Will and act in the trusts thereof the sum of Five hundred pounds
 - (b) To the said Philip Charles Smith the sum of Two hundred and fifty pounds as a token of his kindness to me when a total stranger in London 40

Exhibits

- (c) To Miss Moi Hackett of 79 Purrett Road, Plumstead, London, S.E.18., the sum of One thousand pounds
- (d) To Miss Marjorie Hackett of 79 Purrett Road aforesaid the sum of One thousand pounds
- (e) To Mrs. Alice Smith of 34 Cranbrook Road, Chiswick, London, W.4., the sum of One thousand pounds
- (f) To my godchild Angela Green c/o Messrs. A. R. Loxley & Co., (China) Ltd., Hong Kong the sum of One thousand pounds upon her reaching the age of Twenty-one years
- 10 (g) To my little namesake Nils Erik Aaby of Geilo, Norway the sum of Five hundred pounds upon his reaching the age of twenty-six years
- (h) To my Godchild Henrietta Louise Buckleton the daughter of my niece Molly Buckleton of "Tairee", Tuhikaramea, New Zealand the sum of Five hundred pounds upon her reaching the age of twenty-one years
- (i) To my Grandson and Godchild Richard Hamilton the sum Five hundred pounds upon his reaching the age of Twenty-one years
- 20 7. WHEREAS my Sister Mrs. Daisy Ethel Littmann of 10 Shinkelstrasse Grunwald, Berlin-West, Germany is now receiving from me the sum of Twenty-five pounds per month I BEQUEATH to my said Sister an annuity of Twenty-five pounds per month during her life to be payable on the last day of every month and I DIRECT my Trustees if they see fit to purchase in their names and at the expense of my Estate from some insurance office of repute an annuity for the life of my said Sister of the above amount AND I DECLARE that my Trustees shall stand possessed of such annuity when purchased UPON TRUST to pay
- 30 the same to my said Sister in manner above directed and that until such purchase the said annuity shall be paid out of the income of my residuary Estate
- 40 8. I GIVE DEVISE AND BEQUEATH all my real and personal property whatsoever and wheresoever not hereby or by any codicil hereto otherwise disposed of unto my Trustees ON TRUST to sell the same with power to postpone the sale thereof so long as they shall in their absolute discretion think fit and to stand possessed of the proceeds of such sale UPON TRUST for my two daughters Isabel Elizabeth Feeney of Durban South Africa and Nancy Rosalie Hamilton of 68 Caldicutt Hill, Singapore in equal shares absolutely

Exhibit A1
Probate of
Nils Eric
Amelon
Moller's last
Will and
Testament
issued from
the Supreme
Court of
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28th March,
1955

Referred to in
Doc. No. 1
continued

Exhibits

Exhibit A1
Probate of
Nils Eric
Amelon
Moller's last
Will and
Testament
issued from
the Supreme
Court of
Hong Kong
28th March,
1955

Referred to in
Doc. No. 1
continued

- 9. PROVIDED ALWAYS that if either or both of my said daughters shall die in my lifetime leaving issue living at my death who being male attain the age of Twenty six years or being female attain the age of Twenty one years such issue shall stand in the place of such deceased daughter or daughters and take per stirpes and equally between them if more than one the share of my residuary Estate which such deceased daughter or daughters would have taken if she or they had survived me and attained a vested interest
- 10. IF my Wife Isabel Elizabeth Moller shall be living at my death IT IS MY WISH that she shall with the approval of my Trustees be entitled to select and keep in priority to the bequest contained in Clause 11 hereof any ten items of my personal chattels as a token of remembrance 10
- 11. MY Sons and their issue are aware that I have made no provision for them in this my Will as they have already been amply provided for by me IT IS MY WISH however that each of my Sons and Daughters living at my death shall with the approval of my Trustees be entitled to select and keep five items each of my personal chattels as a token of remembrance

AS WITNESS my hand to this my Will the Third day of July One 20 thousand nine hundred and fifty three

SIGNED by the said NILS ERIC AMELON MOLLER as and for his last Will in the presence of us both being present at the same time who at his request and in his presence and in the presence of each other have hereunto subscribed our names as witnesses:—

Sgd. NILS ERIC AMELON MOLLER

Sgd. ANGELA M. SCHNEIDER
Secretary with Messrs. Arthur Robson
11 Maddox Street,
London, W.1.

30

Sgd. RITA K. SHEARD
Clerk as above.

Ref: E.D. No. 411/1954

Exhibits

PROVISIONAL SCHEDULE of the property disclosed on the death of NILS ERIC AMELON MOLLER deceased in respect of which estate duty has been paid on that death.

Exhibit A1
Probate of
Nils Eric
Amelon
Moller's last
Will and
Testament
issued from
the Supreme
Court of
Hong Kong
28th March,
1955

Referred to in
Doc. No. 1
continued

	1. Credit balance of current account with The Chartered Bank of India, Australia & China £439.2.4.	\$ 7,025.87
	2. Credit balance of deposit account with The Chartered Bank of India, Australia & China	1,665.74
	3. Amount due by Harriman Realty Co., Ltd.	5,712.61
10	4. 48,100 shares in Amalgamated Rubber Estates Ltd. at 76 cents per share	36,556.00
	5. 210 shares in Hall & Holtz Ltd.	Nil
	6. 20,956 shares in Rubber Trust Ltd. at \$1.00 per share	20,956.00
	7. 100 shares in the Mollers Properties Ltd. at \$330.00 per share	33,000.00
	8. Household goods	9,093.00
	9. Pictures & Curios	14,115.00
	10. Jewels	2,000.00
	11. Refund due by B.O.A.C. in connection with ticket issued to the deceased for journey Hong Kong/Singapore/Sydney/Singapore/Hong Kong	1,987.20
20	Total provisional value of estate	\$132,111.42
	Less deductions	34,469.65
	Nett total provisional value	\$ 97,641.77

(L.S.) Sd. W. F. WATSON
Estate Duty Commissioner.
11th March, 1955.

Memorandum:
This Provisional Schedule is cancelled and substituted by the Revised Provisional Schedule dated the 22nd February, 1957.

30 Sd. L. W. CREW
Deputy Estate Duty Commissioner.
22nd February, 1957.

Exhibits Ref: E.D. No. 411/1954

Exhibit A1
Probate of
Nils Eric
Amelon
Moller's last
Will and
Testament
issued from
the Supreme
Court of
Hong Kong
28th March,
1955

Referred to in
Doc. No. 1
continued

REVISED PROVISIONAL SCHEDULE of the property disclosed on the death of
NILS ERIC AMELON MOLLER deceased in respect of which estate duty has been paid
on that death.

1.	Credit balance of current account with The Chartered Bank of India, Australia & China £439.2.4.	\$ 7,025.87	
2.	Credit balance of deposit account with The Chartered Bank of India, Australia & China	1,665.74	
3.	82,550 shares in Amalgamated Rubber Estates Ltd., valued at 76 cents per share	62,738.00	10
4.	398 shares in Hall & Holtz Ltd., valued at \$2.46 per share ...	979.08	
5.	36,364 shares in Rubber Trust Ltd., valued at \$1.00 per share ...	36,364.00	
6.	100 shares in Mollers Properties Ltd., valued at \$330.00 per share	33,000.00	
7.	100 Management and 2,460 Ordinary Shares in Mollers' Investments Ltd. valued at	17,395.84	
8.	7,000 shares in Java Consolidated Rubber & Coffee Estates Ltd., valued at 22 cents each	1,540.00	
9.	1,000 shares in Kroewoek Java Planations Ltd. valued at 30 cents per share	300.00	
10.	1,000 shares in Padang Rubber Co., Ltd., valued at \$1.50 each \$1,500.00 Less Official Receiver's Commission 12.90		20
	<u>\$1,487.10</u>	1,487.10	
11.	100 shares in Maatschappij tot Mijn-Bosch-en Landbouwexploitatie in Langkat, N.V., valued at 80 cents per share	80.00	
12.	Household goods	9,093.00	
13.	Household goods	14,115.00	
14.	Jewels	2,000.00	
15.	Proportion of allowance @ £700 per month from Moller's Trusts Ltd. for period 1st to 13th March, 1954 £293.11/- @ 1/3 under an Exchange of letters dated 26th and 29th April, 1940 between deceased and his four sons	4,696.80	30
	(L.S.)		
	<i>Carried forward</i> ...	\$192,480.45	

Ref: E.D. No. 411/1954

Exhibits

REVISED PROVISIONAL SCHEDULE of the property disclosed on the death of NILS ERIC AMELON MOLLER deceased in respect of which estate duty has been paid on that death.

Exhibit A1
Probate of
Nils Eric
Amelon
Moller's last
Will and
Testament
issued from
the Supreme
Court of
Hong Kong
28th March,
1955

Referred to in
Doc. No. 1
continued

	<i>Brought forward ...</i>	\$192,480.43
16.	Refund due by B.O.A.C. in connection with ticket issued to the deceased for journey Hong Kong/Singapore/Sydney/Singapore/Hong Kong	1,987.20
	Total Provisional value of estate	\$194,467.63
10	Less Provisional deductions	46,215.05
	Net Provisional total	<u>\$148,252.58</u>

Memorandum:

This Revised Provisional Schedule is issued in substitution for the Provisional Schedule dated the 11th March, 1955.

(L.S.)

Sd. L. W. CREW
Deputy Estate Duty Commissioner.
22nd February, 1957.

Exhibits

EXHIBIT A 2

Exhibit A2
Letter of Nils
Eric Amelon
Moller to
Lindsay
Blechynden
Moller
26th April,
1940

Referred to in
Doc. No. 1

COPY

MOLLERS' LIMITED

Lindsay B. Moller, Esq.,

Shanghai, 26th April, 1940.

Referred to in
Doc. No. 1

PRESENT.

STRICTLY CONFIDENTIAL

My dear Lindsay,

On the 15th May, 1940 — will be the anniversary of the day I joined this office in 1891 — and ever since then, my life has been full of activity 10 and laborious work.

I have decided that the time has come and is ripe for me to slacken up — and so, I am herewith advising you Boys that I am desirous of relinquishing my activities with the Firm — either on the 15th May, 1940 — or, definitely at the latest on the 30th June, 1940.

I want you to understand that this present decision which I am advising you of — will be irrevocable as far as I am concerned — and that I feel that you Four Boys can carry on very well without me — as you are all bright, alert, and far beyond with your business knowledge, than Myself when I was at your age. 20

My resignation will bring about a serious decision and atmosphere surrounding the Business — but I would like to adjust this as much as possible by keeping everything in the same channel and manner as it is at present being run — under such circumstances, all the Registered Companies will go over to you Four Boys (except Mollers' Investments, Ltd.) as a Going Concern, as from the date of my resignation.

Whether you decide to continue to carry out a Trust or not — I leave that to you Boys to decide, so long as I am treated with protection when I leave the Firm.

In deciding upon this important change — I would state that I have 30 no desire whatsoever of keeping any of the Shares in any of the Companies — even including the Management Shares — and therefore, you can remain assured that all will be transferred over to you, upon my resignation.

Now, I come to the arrangement that I desire after leaving the Firm; it will be responsible — it will be equitable — and it will not in any way embarrass you Children — and, I will forecast your financial position — say, for the 30th June, 1940:—

Exhibits

Exhibit A2
Letter of Nils
Eric Amelon
Moller to
Lindsay
Blechynden
Moller
26th April,
1940
Referred to in
Doc. No. 1
continued

1. You should have in your various Banking Accounts — in actual cash — possibly a little over £125,000.0.0 (British Pounds Sterling One Hundred Twenty Five Thousand) — which should be fully sufficient for all emergencies, quite apart from the earnings which must come in from time to time, on the steamers.
2. You will have all the steamers — the tug-boats — and the lighters entirely free.
3. You will have all the Engineering Works — land — buildings and machinery entirely free.
- 10 4. You will have all the “Old Dock” property entirely free.
5. You will have all the French Bund land entirely free.

The above leaves to you Boys — and also a proportion to Nancy and Didoo a very valuable property indeed, which — if properly taken care of — will protect you Boys indefinitely for ever — with a great living and a grand future outlook.

Now, I come to the protection of Myself and Mother — from the day that I leave the Firm — and this is what I propose to take with me — which incidentally will cause no embarrassment whatsoever to the vast Undertaking which I am leaving to you:—

- 20 A. Mollers’ Investments, Ltd.
- B. The Shanghai Power Company Debentures.
- C. The finance — in Dollars — now placed at the disposal of Messrs. Swan, Culbertson & Fritz, in change-over.
- D. The wiping off of any small Current Accounts which I may have with the Firm.
- E. A monthly allowance to Mother and Myself — to commence on the 1st July, 1940 — of:—

£1,000.0.0 (British Pounds Sterling One Thousand)

- 30 which is to automatically stop immediately upon the death of both of us — but should Mother survive me or *vice versa*, the monthly payment is still to be paid to the one that is living, until the time of his or her death.
- F. That the small Residence at Repulse Bay in Hong Kong be retained by me, in case any of us go down to that port.
- G. I want the Office building on the premises of Mollers’ Wharves, Ltd. to be completed at the cost — and for, and on behalf of Mollers’ Wharves, Ltd. — but such building to be left over to

Exhibits

Exhibit A2
Letter of Nils
Eric Amelon
Moller to
Lindsay
Blechynden
Moller
26th April,
1940

Referred to in
Doc. No. 1
continued

me, free of rental — during my life-time, when the building will revert back to Mollers' Wharves, Ltd.

In making you this request, it is because I have been associated with that property and building ever since I was a little Boy — and somehow, the attachments to that building are such that rather than see it be pulled down, I prefer to rebuild about it — and use the premises after my resignation from your Interests.

- H. You will note that I have taken nothing in Sterling out of the Firm — but leave you with all this sound Currency.
- I. It is my desire and wish to advertise officially my resignation 10 from the Moller's Interests in a fitting manner, so that The Public be aware that you Four Boys are now in full control of the same, as from the 1st July, 1940.
- J. It is naturally understood, that when handing all this property over to my Children, the Firm shall remain in existence and shall not be sold up, until at least after my death — as I do not wish to see anything like this occur during my life-time.

Please also guide Mr. Eric to this effect, as I omitted it out of my letter to him — many thanks.

Nancy and Dido: This is the point which I wish to bring up and 20 get settled before the 30th June, 1940; you Boys seem to think that they are not entitled to anything out of the Firm — Mother and I do not quite agree with this — and under such circumstances, if you do not wish to give them any participation in the stock — what sort of a monthly allowance do you propose to give to them?

This is a rough draft of the outline which I consider will bring about a definite and satisfactory adjustment of all Interests — and, as I am now getting a little old, I would be ever so grateful if you Boys would not bring forward any suggestions or proposals which might tempt me to change my mind, as I feel that I would like to carry out the wishes mentioned herein. 30

In sending you this letter — I wish you all, the greatest luck and the grandest future that a Father can wish to his Sons — and may you try to carry out your duties on the large properties which I am leaving you — to the best of your ability and care, so that the results of your lives will in later years go down to your credit.

I remain, My dear Lindsay,
Yours affectionately,
(Sgd.) ERIC MOLLER.

EXHIBIT A 3

Referred to in
Doc. No. 1

Exhibits

Exhibit A3
Letter of
E. B. Moller
L. B. Moller
R. B. Moller
and
C. B. Moller
to Nils
Eric Amelon
Moller
29th April,
1940

COPY

MOLLERS' LIMITED

29th April, 1940.

Eric Moller, Esq.,
PRESENT.

Referred to in
Doc. No. 1

Dear Daddy,

The three of us here, Eric, Lindsay, Budgy and on behalf of Chrys
10 away, we write to accept your offer addressed to us under date of April 26th.

We would like to sincerely thank you for coming forward and making
us such a fair proposition.

Dido and Nancy: We confirm that we will see that Dido and Nancy
are protected with an equitable and reasonable allowance.

We have together discussed the question of trust between us and have
decided that the best thing would be to draw up a trust or agreement between
ourselves, and therefore we have decided to place the whole matter in the
hands of Mr. John McNeill whom we think is the best party to handle
everything for us.

20 We think that the best date to fix the arranging of all matters would
be the 15th May as in this manner everything could be cleared up right
away.

We have therefore written to Mr. John McNeill as per copy of
letter herewith attached.

Thanking you once again,

We are

Your affectionate Sons,

(Sgd.) E. B. MOLLER

„ L. B. MOLLER

„ R. B. MOLLER

„ BUDGY

for C. B. MOLLER

30

Exhibits

EXHIBIT A 4

Exhibit A4
Letter of
E. B. Moller
L. B. Moller
R. B. Moller COPY
and
C. B. Moller
to John
McNeill
29th April
1940.

Referred to in
Doc. No. 1

29th April 1940.

Referred to in
Doc. No. 1

John McNeill, Esq.,
2, Peking Road,
SHANGHAI.

Dear Mr. McNeill,

We have received the attached letter from our Father, and have written to him as per copy herewith attached. 10

Upon reading through the contents you will note exactly what has taken place.

We also add this paragraph to advise you that we three and acting on behalf of our Brother, Chrys, who is away, have decided to ask you to kindly handle everything on our behalf.

We would therefore greatly appreciate if you would kindly advise us what exactly is required so that we may get everything properly settled up.

We beg to remain,

Dear Mr. McNeill,

Yours very truly, 20

(Sgd.) E. B. MOLLER
E. B. MOLLER

(Sgd.) L. B. MOLLER
L. B. MOLLER

(Sgd.) R. B. MOLLER
R. B. MOLLER

And on behalf of:
C. B. MOLLER

EBM:RB

EXHIBIT A5

Referred to in
Doc. No. 1

Exhibits

Exhibit A5
Nils Eric
Amelon
Moller's
Memorandum
of Gift
15th May,
1940

Referred to in
Doc. No. 1

COPY

MEMORANDUM OF GIFT

MEMORANDUM that I the undersigned Nils Eric Amelon Moller of 30 Foochow Road Shanghai China have this 15th day of May One thousand nine hundred and forty by divers instruments under my hand transferred to my sons Eric Blechynden Moller Lindsay Bechynden Moller Ralph Blechynden Moller and Christopher Blechynden Moller all of 30
10 Foochow Road Shanghai aforesaid (hereinafter referred to as the Donees) the shares specified in the Schedule hereto And that the said shares were so transferred by me by way of gift to the intent that the same should become and be the absolute property of the Donees free from any resulting trust in my favour.

The SCHEDULE above referred to

	Company.	Management Shares.	Ordinary Shares.
	Mollers' Limited	100	9,860
	Moller Line Limited	100	149,830
20	Mollers' Towages, Limited	100	9,860
	Mollers' Engineering Works, Limited	100	9,860
	Mollers' Underwriters Limited	100	860
	Mollers' Sui Dah Shipbreakers, Limited	—	200
	Anglo-Chinese Shipping Co., Limited	—	30
	Mollers' Wharves, Limited	100	—
	Mollers' Stores, Limited	100	—
	Mollers' Lands, Limited	100	—
	Mollers', Lindskog (Civil Engineers) Limited	100	2,700

30 Witness to the signature
 of the above-named Nils } Nils Eric Moller (*Signed*)
 Eric Amelon Moller }

John McNeill, 2 Peking Road, Shanghai
Barrister-at-law.

Exhibits

Exhibit A6
Deed of
Undertaking
and
Guarantee
30th
September,
1941

Referred to in
Doc. No. 1

EXHIBIT A 6

Referred to in
Doc. No. 1

Dated 30th September, 1941.

E. MOLLER

— and —

MRS. I. B. MOLLER

— and —

E. B. MOLLER, L. B. MOLLER, R. B. MOLLER
and C. B. MOLLER

10

— and —

MOLLERS' TRUSTS LIMITED

DEED

— of —

UNDERTAKING AND GUARANTEE

JOHN McNEILL,
2, Peking Road,
Shanghai.

THIS DEED is made the thirtieth day of September One thousand
nine hundred and forty-one BETWEEN ERIC MOLLER and ISABEL 20
ELIZABETH MOLLER both of Shanghai of the first part ERIC
BLECHYNDEN MOLLER, LINDSAY BLECHYNDEN MOLLER,
RALPH BLECHYNDEN MOLLER and CHRISTOPHER BLECHYNDEN
MOLLER of Shanghai (hereinafter called "the Sons") of the second part
and MOLLERS' TRUSTS LIMITED of Shanghai (hereinafter called "the
Company") of the third part WHEREAS by a Memorandum of Gift dated
the fifteenth day of May One thousand nine hundred and forty the said Eric
Moller gave and assigned to the Sons the securities therein specified AND
WHEREAS the Sons then intended to incorporate a company under the
Companies Ordinances of Hong Kong under the name of Mollers' Trusts 30
Limited AND WHEREAS the said company being the party hereto of the
third part was duly incorporated on the twenty-seventh day of June One
thousand nine hundred and forty the Sons being the only voting shareholders
thereof AND WHEREAS the said gift was granted upon certain conditions
whereof some are set out in a letter dated the twenty-sixth day of April
One thousand nine hundred and forty and addressed by the said
Eric Moller to each of the Sons whereof copies are hereto annexed and
in a reply thereto dated the twenty-ninth day of April One thousand nine

hundred and forty and addressed by the Sons to the said Eric Moller AND WHEREAS it was one of the said conditions that the Sons should undertake to pay the monthly sum of One thousand pounds (£1,000) to the said Eric Moller during his life and after his death to his wife Isabel Elizabeth Moller during her life AND WHEREAS it was another of the said conditions that payment of the said monthly sum should be secured in manner approved by the said Eric Moller AND WHEREAS the said Eric Moller has agreed that the guarantee of the Company hereinafter contained shall be sufficient security NOW THIS DEED WITNESSETH as follows:—

Exhibits

Exhibit A6
Deed of
Undertaking
and
Guarantee
30th
September,
1941

Referred to in
Doc. No. 1
continued

- 10 1. In consideration of the promises the Sons hereby covenant and each of them severally hereby covenants with the said Eric Moller and his said wife Isabel Elizabeth Moller and either of them to pay to the said Eric Moller during his life and after his death to his said wife Isabel Elizabeth Moller during her life the sum of One thousand pounds (£1,000) on the first day of each calendar month.
2. In consideration of the promises the Company hereby covenants with the said Eric Moller and the said wife Isabel Elizabeth Moller as follows:—
- 20 (a) That if and whenever the Sons shall make default in the payment in any month of the sum of One thousand pounds (£1,000) or any part thereof to the said Eric Moller or his said wife Isabel Elizabeth Moller in accordance with the covenant in that behalf hereinbefore contained the Company will within one calendar month after demand in writing pay to the said Eric Moller or his said wife Isabel Elizabeth Moller as the case may be the amount so unpaid.
- (b) That the Company will during the life or lives of the said Eric Moller and Isabel Elizabeth Moller or the survivor of them at all times retain in a special reserve account the sum of fifty thousand pounds (£50,000) in the form either of money to the said amount or securities to the value thereof according to current market values as security for the due fulfillment of the covenant on the part of the Company contained in the preceding paragraph of this clause to the intent that if the said monthly payment is at any time in arrear for the space of three months the Company will on demand in writing pay such arrears or any part thereof out of the said special reserve account.
- 30
- (c) That the Company will at the end of each half year of each calendar year, and at any other reasonable time upon demand in writing, furnish to the said Eric Moller or the said Isabel Elizabeth Moller as the case may be a certificate signed by the Company's Auditors certifying the amount or value of the money or securities standing in the said special reserve account.
- 40

Exhibits
Exhibit A6
Deed of
Undertaking
and
Guarantee
30th
September,
1941
Referred to in
Doc. No. 1
continued

And the Company hereby declares that this guarantee is a continuing one and shall bind its assigns but the benefit thereof shall not be transferable.

IN WITNESS whereof the parties hereto have executed these presents the day and year first above mentioned.

SIGNED SEALED AND DELIVERED }
by the said ERIC MOLLER in the } (Sgd.) ERIC MOLLER (L.S.)
presence of, }

(Sgd.) JOHN MCNEILL
Barrister-at-law,
Shanghai.

10

SIGNED SEALED AND DELIVERED } (Sgd.) ISABEL ELIZABETH MOLLER
by the said ISABEL ELIZABETH } *By her Attorney (L.S.)*
MOLLER in the presence of, } ERIC MOLLER.

(Sgd.) JOHN MCNEILL
(as above)

SIGNED SEALED AND DELIVERED } (Sgd.) E. B. MOLLER (L.S.)
by the said ERIC BLECHYNDEN }
MOLLER in the presence of, }

(Sgd.) J. W. JONES.

SIGNED SEALED AND DELIVERED } (Sgd.) LINDSAY B. MOLLER 20
by the said LINDSAY BLECHYNDEN } E. B. MOLLER (L.S.)
MOLLER in the presence of, } *Attorney*

(Sgd.) J. W. JONES.

SIGNED SEALED AND DELIVERED } (Sgd.) RALPH B. MOLLER
by the said RALPH BLECHYNDEN } E. B. MOLLER (L.S.)
MOLLER in the presence of, } *Attorney*

(Sgd.) J. W. JONES.

SIGNED SEALED AND DELIVERED } (Sgd.) CHRYS. MOLLER (L.S.)
by the said CHRISTOPHER BLECHYNDEN }
DEN MOLLER in the presence of, }

(Sgd.) J. W. JONES.

30

The Seal of MOLLERS' TRUSTS } MOLLERS' TRUSTS LIMITED
LIMITED was hereunto affixed the day } (Sgd.) E. B. MOLLER
and year first above mentioned in the } (Sgd.) CHRYS. MOLLER
presence of Eric Blechynden Moller and } *Joint Managers.*
Christopher Blechynden Moller Directors } (Seal)
and James William Jones Secretary. } (Sgd.) J. W. JONES
Secretary
MOLLERS' TRUSTS LTD.

EXHIBIT A 7

Referred to in
Doc. No. 1

INLAND REVENUE DEPARTMENT
ESTATE DUTY OFFICE
Central Government Offices
(West Wing — 3rd Floor)
Ice House Street
Hong Kong

Exhibits

Exhibit A7
Letter of
V. A. Ladd
(Deputy
Estate Duty
Commissioner) to
Johnson,
Stokes &
Master
18th March,
1966

Referred to in
Doc. No. 1

10 Ref. No. E.D.U-3/G/29

COMMISSIONER OF INLAND REVENUE
P. O. Box 132
Hong Kong

18th March, 1966.

Messrs. Johnson, Stokes & Master,
Solicitors,
Hongkong & Shanghai Bank Bldg.,
Hong Kong.

Gentlemen,

20

Re: N. E. A. MOLLER, deceased.

As you know, at the end of 1963, the Estate Duty Commissioner engaged the services of independent experts to consider the values to be placed upon the various shares transferred by the deceased to his sons by a Memorandum of Gift dated 15th May 1940. You will be pleased to learn that the final reports of the firms retained have now been received and that these indicate that the values originally placed on the disposition, as notified to you in an Assessment Memorandum dated 1st April 1960, would now appear to be excessive.

30 Accordingly, upon the advice of Crown Counsel, I write to inform you that it is not now proposed to pursue further the full amount of the original demand for estate duty on the shares transferred.

However, I now enclose a Revised Assessment Memorandum, dated 18th March, 1966, which amends the original of 1st April 1960 and sets out details of the duty and interest now demanded. For your information, I also enclose a summary indicating how the revised value of the disposition has been determined.

Exhibits

Exhibit A7
Letter of
V. A. Ladd
(Deputy
Estate Duty
Commission-
er) to
Johnson,
Stokes &
Master
18th March,
1966

VAL/he

Referred to in
Doc. No. 1
continued

Finally, and again upon Counsel's advice, I would notify you that, for the purposes of Section 19 of the Estate Duty Ordinance, the enclosed Revised Assessment Memorandum is to be considered a decision of the Commissioner, and the period of three months for an appeal to the Supreme Court accordingly commences to run with effect from 18th March, 1966.

Yours faithfully,

V. A. LADD

Deputy Estate Duty Commissioner.

Ref. No. E.D. U-3/G/29 10

N. E. A. MOLLER, deceased.

Value of disposition of sons (based on valuations made by independent experts)

(i) Valuation of shares transferred to sons — at date of Memorandum of Gift	£1,876,694	
(ii) <i>Deduct:</i> Company assets, etc. taken over (or retained) by deceased. (per Moore, Stephens & Co. report dated 7th April 1961) C.N.C.\$6,950,926 at C.N.C.\$48 to £ = £144,811		
(iii) Value of annuities to deceased, wife and daughters (per Moore, Stephens & Co. report dated 7th April 1961) £264,246	409,057	20
‘Bounty element’ in gift	£1,467,637	
(iv) Ratio of gift element to total value of shares transferred = $\frac{1,467,637}{1,876,694} = (\text{say}) 78\%$		
(v) Valuation of shares transferred to sons — at date of death	HK\$59,637,910	
(say)	\$59,000,000	
78% thereof = (say)	\$46,000,000	

EXHIBIT A8

Referred to in
Doc. No. 1

INLAND REVENUE DEPARTMENT
ESTATE DUTY OFFICE
Central Government Offices
(West Wing — 3rd Floor)
Ice House Street
Hong Kong

Exhibits

Exhibit A8
Revised
Assessment
Memorandum
18th March,
1966

Referred to in
Doc. No. 1

10 Ref. No. E.D. U-3/G/29

Hong Kong, 18th March, 1966.

REVISED

ASSESSMENT MEMORANDUM

Gentlemen,

N. E. A. MOLLER, deceased.

I have the honour to notify you that I have now assessed the value of part of the above estate at \$46,000,000.00 and shall, on payment of the sum set out below, deliver to you or your authorized representative my certificate for presentation to the Probate Registrar.

I have the honour to be,

Gentlemen,

Your obedient servant,

V. A. LADD

Deputy Estate Duty Commissioner.

20

Duty at % on \$.....
Addition under Section 29 of Estate Duty
Ordinance (Revised Edition, 1950)

Total Duty

Interest at 4% on \$.....
30 from to

= months and days.
Interest at 8% on \$.....
from to

= years and days.
Amount paid on

Interest at 8% on \$.....
from to

40 = years and days.
Balance due

Estate Duty.	Interest.	Remarks.
\$		
\$		
	\$	
	\$	
		Total.
\$	\$	\$
\$	\$	\$
\$	\$	\$
\$	\$	\$

Please See Statement Attached.

NOTE: — Interest has been calculated to the date of this memorandum only, and is accruing at the rate of \$5,242.73967 a day, but provided payment is made within one week no recalculation will be required. After the lapse of one week the Commissioner may take such steps as may be necessary to recover duty and full accrued interest without further notice.

Cheques, Drafts and Cashier's Orders should be made payable to "Hong Kong Government" and crossed. They should not be made payable to any individual officer.

Messrs. Johnson, Stokes & Master, Solicitors,
Hong Kong & Shanghai Bank Building, Hong Kong.

Exhibits Ref. No. E.D. U-3/G/29

Exhibit A8
Revised
Assessment
Memorandum
18th March,
1966

REVISED

Statement of Estate Duty & Interest

Re: N. E. A. MOLLER, deceased.

Referred to
in Doc.
No. 1
continued

Value of estate on which duty is to be paid = \$46,000,000.00

	Duty	Interest	Total
	\$	\$	\$
Duty at 52% on \$46,000,000.00	23,920,000.00		23,920,000.00
Interest at 4% on \$23,920,000.00 from 14.3.54 to 13.9.54 = 6 months		478,400.00	478,400.00 10
Interest at 8% on \$23,920,000.00 from 14.9.54 to 18.3.66 = 11 years and 186 days		22,024,749.60	22,024,749.60
Balance due	<u>23,920,000.00</u>	<u>22,503,149.60</u>	<u>46,423,149.60</u>

V. A. LADD

Deputy Estate Duty Commissioner.

18th March, 1966.

VAL/he

EXHIBIT A9

Referred to in
Doc. No. 1

INLAND REVENUE DEPARTMENT
ESTATE DUTY OFFICE
Central Government Offices
(West Wing — 3rd Floor)
Ice House Street
Hong Kong

Exhibits

Exhibit A9
Letter of
V. A. Ladd
(Deputy
Estate Duty
Commissioner) to
Johnson,
Stokes &
Master
14th April,
1966

Referred to in
Doc. No. 1

10 COMMISSIONER OF INLAND REVENUE
P. O. Box 132
Hong Kong

Ref. No. E.D. U-3/G/29
Your Ref: FGN/sl

14th April 1966.

Messrs. Johnson, Stokes & Master,
Solicitors,
Hongkong & Shanghai Bank Bldg.,
Hong Kong.

20 Gentlemen,

Re: N. E. A. MOLLER, deceased.

I have to acknowledge receipt of your letter of 30th March, from which I am surprised to learn that you are in doubt as to the persons upon whom an obligation is imposed by the Assessment Memorandum which accompanied my letter of 18th March 1966. The persons are, of course, those same individuals upon whom the original obligations were imposed by the Assessment Memorandum dated 1st April, 1960 — that is to say, the gentlemen named as donees in the Memorandum of Gift executed by the deceased on 15th May 1940, *i.e.* the deceased's sons ERIC BLECHYNDEN MOLLER, LINDSAY BLECHYNDEN MOLLER, RALPH BLECHYNDEN MOLLER and CHRISTOPHER BLECHYNDEN MOLLER. Until the receipt of your abovementioned letter, my information was that you act for at least three of these gentlemen. I now understand that you are endeavouring to confirm your instructions from Mr. Lindsay Moller, but in any event that you continue to act for Messrs. Eric and Ralph.

Exhibits

Exhibit A9
Letter of
V. A. Ladd
(Deputy
Estate Duty
Commission-
er) to
Johnson,
Stokes &
Master
14th April,
1966

Referred to in
Doc. No. 1
continued

With regard to the second and third paragraphs of your letter I would inform you, upon Counsel's advice, that the Crown holds the four sons abovenamed jointly and severally liable for the duty claimed; further, that notice to you is accordingly sufficient notice for the purposes of a decision under Section 19. However, in view of the doubts expressed in your letter of 30th March I am prepared to agree that this present letter now be regarded as due notice of a decision under Section 19 in place of my earlier notice of 18th March. The period of three months for an appeal accordingly commences to run from the date hereof.

I trust that the Crown's position in this matter is now clear to you. 10
No doubt you will inform your clients accordingly.

Yours faithfully,

V. A. LADD

Deputy Estate Duty Commissioner.

VAL : lkf

In the Privy Council

ON APPEAL

FROM THE FULL COURT OF HONG KONG

BETWEEN

ERIC BLECHYNDEN MOLLER

RALPH BLECHYNDEN MOLLER - - - - - *Appellants*

AND

COMMISSIONER OF ESTATE DUTY - - - - - *Respondent*

RECORD OF PROCEEDINGS

Solicitors for the Respondent.

Solicitors for the Appellants.
