

1976, 10

IN THE PRIVY COUNCIL

10

No. 41 OF 1975

ON APPEAL FROM THE SUPREME COURT OF NEW SOUTH WALES

ADMINISTRATIVE LAW DIVISION

BETWEEN:

PERPETUAL TRUSTEE COMPANY LIMITED

Appellant

AND:

THE COMMISSIONER OF STAMP DUTIES

Respondent

RECORD OF PROCEEDINGS

SOLICITORS FOR THE APPELLANT

Kearney, Boyd & Johns,
86-88 Pitt Street,
SYDNEY.

By their Agents:

Kidd, Rapinet, Budge & Co.,
1-2 Gray's Inn Place,
Gray's Inn,
LONDON.
W.C. IR SDZ

SOLICITOR FOR THE RESPONDENT

R.J. McKay,
State Crown Solicitor,
Chifley Square,
SYDNEY.

By his Agent:

Light & Fulton,
24 John Street,
Bedford Row,
LONDON.
W.C. IN 2DA

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RECORD OF PROCEEDINGS

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IN THE SUPREME COURT
OF NEW SOUTH WALES
COMMON LAW DIVISION

No. 14 of 1974.

BETWEEN:

PERPETUAL TRUSTEE COMPANY LIMITED

Plaintiff

AND:

COMMISSIONER OF STAMP DUTIES

Defendant

SUMMONS

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The Plaintiff claims:

1. A declaration -

(a) That the property comprising the residuary Estate of Everest Reginald York Seymour deceased was wrongly included in the dutiable Estate for death duty purposes of the said deceased, and

(b) That the Defendant is liable to repay to the Plaintiff as Executor of the Will of the said deceased the sum of \$470,069.99 being the amount of death duty and interest thereon paid by the Plaintiff to the Defendant in respect of the said residuary Estate.

20

2. An order and judgment that the Defendant pay to the Plaintiff \$470,069.99 with costs.

To the Defendant:

Summons

You are liable to suffer judgment or an order against you unless the prescribed form of notice of your appearance is received in the Registry within 14 days after service of this Summons upon you.

Plaintiff: Perpetual Trustee Company Limited
a Company having its registered
office at 33-39 Hunter Street, Sydney
and being the Executor of the Will of
Everest Reginald York Seymour deceased. 10

Solicitor: Clive James Curwood of Messrs.
Robinson & Curwood. Solicitors, 141
Elizabeth Street, Sydney, Telephone
26-1721.

**Plaintiff's address
for Service:** C/o its said Solicitor.

**Address of the
Registry:** Common Law Office, Supreme Court,
King Street, Sydney.

Filed 15th March 1974.

20

IN THE SUPREME COURT)
OF NEW SOUTH WALES)
COMMON LAW DIVISION)

No. 14 of 1974.

BETWEEN:

PERPETUAL TRUSTEE COMPANY LIMITED

Plaintiff

AND:

COMMISSIONER OF STAMP DUTIES

Defendant

ON 25th March, 1974, I, BEN BOYD ASH SCOBIE of 33-39 10
Hunter Street, Sydney in the State of New South Wales,
Trustee Company Manager, say on oath:-

1. I am the Manager of Perpetual Trustee Company
Limited, the Plaintiff in this proceeding.

2. On 9th January 1966 Everest Reginald York Seymour
late of Wollstonecraft in the State of New South Wales,
Merchant deceased died having made and published his
last Will and two Codicils thereto Probate whereof was
on 29th August, 1966 duly granted by this Honourable
Court in its Probate Jurisdiction to the Plaintiff one 20
of the Executors therein named. Reginald Clement Tobin
the other Executor named therein having pre-deceased
the Testator. Hereunto annexed and marked with the
letter "A" is an office copy of the said Will and
Codicils as admitted to Probate.

3. By Decretal Order made on 9th November, 1966 in
Suit No. 934 of 1966 in the Equitable Jurisdiction of

Affidavit of Ben Boyd
3. Ash Scobie

Affidavit of Ben Boyd
Ash Scobie

this Honourable Court the direction in the said Will of the deceased relating to his residuary Estate was declared to constitute a valid trust for charitable purposes. Hereunto annexed and marked with the letter "B" is an office copy of the said Decretal Order.

4. On 29th October 1970 a resolution was passed at a duly constituted meeting of the Board of Directors of the Plaintiff that the University of Sydney, be selected as the body to which the residuary Estate of the deceased be paid and transferred. Hereunto annexed and marked with the letter "C" is a true copy of the said resolution.

10

J.W. Jackson

B.A. Scobie

-2-

5. On 23rd November 1970 judicial advice was given to the Plaintiff in Summons No. 1519 of 1970 in the Equitable Jurisdiction of this Honourable Court as to the transfer of the residuary Estate of the deceased by the Plaintiff to the University of Sydney. Hereunto annexed and marked with the letter "D" is an office copy of the said judicial advice.

20

6. On 4th March 1971 the University of Sydney by Deed in a form approved by the Plaintiff and by Her Majesty's Attorney-General in and for the State of New South Wales gave undertaking as mentioned in the said

Affidavit of Ben Boyd
Ash Scobie

judicial advice. Hereunto annexed and marked with the letter "E" is a true copy of the said Deed.

7. Thereafter the major part of the funds and assets representing the net residuary Estate of the deceased then available for distribution were paid and transferred by the Plaintiff to the University of Sydney.

8. Following lodgment of the application for Probate but prior to issue of a Notice of Assessment of Death Duty the Plaintiff on 16th January 1967 paid to the Defendant the sum of \$40,400.00 as a payment in advance of the amount of Death Duty then estimated by the Plaintiff to be properly payable on the basis that the dutiable Estate of the deceased did not include his residuary Estate.

10

9. On 16th October 1967 the Defendant gave Notice of Assessment of Death Duty payable in respect of the Estate of the deceased including in such Assessment an amount of \$429,370.00 as duty attributable to the residuary Estate of the deceased the amount of which was assessed at \$1,717,480.00. Hereunto annexed and marked with the letter "F" is a true copy of the Notice of Assessment of Death Duty and adjustment sheet issued by the Defendant on 16th October 1967.

20

10. Hereunto annexed and marked with the letter "G" JWJ is a copy of a letter from the Plaintiff to the Defendant dated 3rd December 1970.

J.W. Jackson

B.A. Scobie
Affidavit of Ben Boyd
Ash Scobie

Affidavit of Ben Boyd
Ash Scobie

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11. Hereunto annexed and marked with the letter "H" is copy letter dated 3rd March 1971 received by the Plaintiff from the Defendant.

12. On 16th March 1971 the Plaintiff paid to the Defendant the sum of \$429,699.99 comprising \$429,669.99 balance of Death Duty claimed by the Defendant and \$30.00 for interest thereon calculated to the said date of payment. 10

13. The lastmentioned payment of Death Duty and interest was made under cover of letter dated 16th March J W J 1971 from the solicitors for the Plaintiff to the Defendant copy whereof is hereunto annexed and marked with the letter "I". Hereunto annexed and marked with the letter "J" is copy reply dated 26th March 1971 received by the solicitors for the Plaintiff from the Defendant.

SWORN by the Deponent at Sydney on the day and the year herein before mentioned. 20

J.W. Jackson J.P.

Justice of the Peace

B.A. Scobie

"A"

ESTATE LATE EVEREST YORK SEYMOUR

NO. 620325

This is the Annexure marked "A" referred to in the Affidavit of Ben Boyd Ash Scobie signed before me on the 25th day of March, 1974. J.W. Jackson JP Justice of the Peace.

THIS IS THE WILL of me EVEREST YORK SEYMOUR of Wollstonecraft near Sydney in the State of New South Wales, Merchant. I REVOKE all Wills and testamentary dispositions heretofore made by me AND I APPOINT Perpetual Trustee Company (Limited) of Sydney aforesaid and Reginald Clement Tobin of Sydney, Solicitor (hereinafter called my Trustees) Executors and Trustees of this my Will.

10

1. I GIVE DEVISE and BEQUEATH all my property both real and personal of whatsoever kind and wheresoever situated UNTO my Trustees UPON TRUST to pay thereout my debts funeral and testamentary expenses and all State Death and Federal Estate Duties payable on my Estate and thereafter.

2. UPON TRUST to pay thereout the annuities allowances and legacies (free of all State and Federal Estate Duties) following that is to say:

20

(a) An annuity of the sum of One thousand Pounds per year to my Mother Amy Isabel Seymour for her life which annuity shall commence from the date of my death and be payable monthly thereafter without deduction of any kind.

Annexure "A" to the
Affidavit of Ben Boyd
Ash Scobie

(b) An annuity of the sum of Five hundred and Twenty Pounds per year to my Sister Phyllis Frances Culpin for her life which annuity shall commence from the date of my death and be payable monthly thereafter without deductions of any kind.

(c) An annuity of the sum of Five hundred and twenty pounds per year to my Brother Granby Richard York Seymour for his life which annuity shall commence from (E. Y. Seymour Dorothy A.B. Morris J. Bannister) the date of my death and be payable monthly thereafter without deduction of any kind. 10

(d) An annuity of the sum of five hundred and twenty pounds per year to my Nephew David Culpin for his life which annuity shall commence from the date of my death and be payable monthly thereafter without deduction of any kind. IN THE EVENT of the said David Culpin being still a minor at the date of my death THEN I DIRECT my 20

ESTATE LATE EVEREST YORK SEYMOUR

2.

Trustees to pay the monthly sums payable under such annuity from the date of my death until the said David Culpin shall

Annexure "A" to the
Affidavit of Ben Boyd
Ash Scobie

attain the age of twenty-one years to his
Mother the said Phyllis Frances Culpin so
that she may expend the same for the main-
tenance education support benefit and ad-
vantage of the said David Culpin during the
minority and the receipts of the said Phyllis
Frances Culpin for such sums paid to her
shall be a sufficient receipt to my Trustees
for all moneys so paid to her.

10

- (e) A legacy of the sum of two thousand pounds
to the said Phyllis Frances Culpin.
- (f) A legacy of the sum of Two thousand Pounds
to the said David Culpin to be paid to him
on his attaining the age of twenty-five
years Provided he live to attain such age.

(Stamp)
SUPREME COURT
No. 620325

20

- (g) A legacy of the sum of Two thousand Pounds
to the said Granby Richard York Seymour.
- (h) A legacy of the sum of One thousand Pounds
to my Mother the said Amy Isabel Seymour.
- (i) A legacy of the sum of One thousand Pounds
to my Aunt Florence Middleton (E. Y.
Seymour Dorothy A.B. Morris J. Bannister)
- (j) A legacy of the sum of One thousand Pounds

Annexure "A" to the
Affidavit of Ben Boyd
Ash Scobie

Annexure "A" to the
Affidavit of Ben Boyd
Ash Scobie

to Jack Hardy of Lovelle Street Moss Vale
the herdsman in charge of my dairy herd at
Moss Vale Provided he be in my employment
at the date of my death.

(k) A legacy of the sum of One thousand pounds
to Ina Murray.

(l) A legacy of the sum of One thousand pounds 10
to Nellie Hopping.

(m) A legacy of the sum of One thousand pounds
to Ernest Williams and

(n) A legacy of the sum of One thousand Pounds
to the said Reginald Clement Tobin.

3. WITH REGARD to my freehold property at the corner
of Lovelle and Spencer Streets Moss Vale together with
the house thereon and the furniture and contents there-
in at the date of my death IT IS MY

ESTATE LATE EVEREST YORK SEYMOUR

3. 20

WISH that the land surrounding the house be used as a
Park for the use of the Public and that the house and
contents other than such of the contents as may be
selected and taken by my sister and her son within
twelve months from the date of my death be used as a
Library for the benefit of the residents of the Moss
Vale District AND I accordingly direct my Trustees to
dedicate or vest not earlier than twelve months after

Annexure "A" to the
Affidavit of Ben Boyd
Ash Scobie

the date of my death the same in the Shire or Municipal Council controlling Moss Vale or such other body as my Trustees shall consider fit for the purposes mentioned AND I also direct my Trustees to hand over to such Council or other Public Authority the sum of Two thousand Pounds to be used for the purpose of equipping the house with books for the Library and any balance for the purpose of making the land suitable for Park purposes.

10

4. WITH REGARD to the Company known as Fosseys Pty. Limited of which I am one of the principal shareholders IT IS MY WISH that such Company be floated into a Public (E. Y. Seymour Dorothy A. B. Morris J. Bannister) Company when but not before the paid up ordinary capital of such Company reaches the sum of Two hundred thousand Pounds and that my Trustees endeavour to arrange for such Company to be listed on the Sydney Stock Exchange so soon as possible after flotation into a Public Company and that a sufficient number of the shares therein belonging to myself and other shareholders

20

No. 620325

(Stamp
SUPREME COURT

in the Company should be sold to the Public so as to facilitate listing on the Sydney Stock Exchange and any other Stock Exchange that my Trustees may consider

11. Annexure "A" to the
Affidavit of Ben Boyd
Ash Scobie

Annexure "A" to the
Affidavit of Ben Boyd
Ash Scobie

advisable BUT so that my Trustees shall only sell for such purpose shares in proportion to the holdings of my Trustees and of my co-shareholders in the said Company and so that my Estate shall retain its rights on the present proportion of shares now held by me.

5. AS TO the entire residue of my Estate of whatsoever kind and

10

ESTATE LATE EVEREST YORK SEYMOUR

4.

wheresoever situated IT IS MY WISH that my Trustees shall use the same for the purpose of the purchase or construction of a building (or to go towards a Fund for the purchase or construction of a building) in the City of Sydney to serve as a Centre for the cultivation, education and performance of musical and dramatic Arts befitting the City of Sydney AND I DIRECT my Trustees to transfer to or vest such residue of my Estate for the purposes mentioned in the Council of the Municipality of the City of Sydney or the University of Sydney or the New South Wales Government or in such other Public Authority as my Trustees shall consider fit. (E. Y. Seymour Dorothy A. B. Morris J. Bannister)

20

6. WITH REGARD to the annuities abovementioned given to my Mother, my Sister and my Nephew David Culpin, as it will be some time after the date of my death before my Trustees shall be able to make payments of such

Annexure "A" to the
Affidavit of Ben Boyd
Ash Scobie

annuities IT IS MY DESIRE that my Trustees shall endeavour to arrange with the said Company known as Fosseys Pty. Limited to pay to the said annuitants the monthly instalments payable under such annuities until such time as my Trustees shall be able to make the payments thereunder, my Trustees thereupon to recoup the said Fosseys Pty. Limited for all or any moneys so expended by the said Company in connection with my estate. 10

7. LASTLY I DECLARE that my Trustee the said Reginald Clement Tobin who is a Solicitor or any other Solicitor who may be acting in the trusts hereof shall be entitled to charge for all work done by him or any firm of which he is a member his or their clerks servants or agents in connection with the proving of this my Will and the carrying out of the trusts hereof.

IN WITNESS whereof I have to this my Will set my hand at Sydney aforesaid this fourth day of April in the year of Our Lord one thousand nine hundred and forty-nine. 20

ESTATE LATE EVEREST YORK SEYMOUR

5.

Annexure "A" to the
Affidavit of Ben Boyd
Ash Scobie

SIGNED by the Testator the said EVEREST)
YORK SEYMOUR as and for his last Will)
and Testament in the presence of us)
both present at the same time and we at)
his request in his sight and presence)
and in the presence of each other have)
hereunto subscribed our names as)
witnesses:)

(Signed)
E. Y. Seymour

10

Dorothy A. B. Morris
Clerk to R. H. Shorter & Tobin
Solicitors Sydney

J. Bannister,
Clerk to R. H. Shorter & Tobin
Solicitors, Sydney.

(STAMP)
SUPREME COURT

CORRECT COPY OF SUPREME COURT COPY

..... G. Ross8/12/66

20

..... B. Moore
Clerks to Perpetual Trustee Company (Limited)

THE ESTATE LATE EVEREST YORK SEYMOUR

NO. 620325

THIS IS A CODICIL to the Will of me EVEREST YORK SEYMOUR
which Will was executed by me earlier this day WHEREAS
by my said Will I directed the payment of certain annui-
ties NOW I HEREBY DECLARE that with regard to such
annuities my Trustees shall in their absolute discre- 10
tion be entitled to purchase outright from the
Australian Mutual Provident Society or some other repu-
table or dependable Society or Company with moneys be-
longing to me thereout annuities for the said Annuitants
mentioned in my said Will or at their discretion at any
time or times to set apart and appropriate out of my
residuary estate moneys funds or securities sufficient
at the period of setting apart or appropriation for
answering the said annuities AND in the meantime to pay
the said annuities out of my Estate AND I DIRECT that 20
if any such moneys funds or securities fall in they
shall form part of my Estate AND I DECLARE that in any
such setting apart or appropriation my Trustees shall
not be responsible for the diminution of the said se-
curities.

In all other respects I confirm the said Will.

DATED at Sydney this fourth day of April one thousand
nine hundred and forty-nine.

Annexure "A" to the
Affidavit of Ben Boyd
Ash Scobie

SIGNED by the Testator as and for a)
Codicil to his last Will in the)
presence of us both present at the)
same time and we at his request in)
his sight and presence and in the)
presence of each other have here-)
unto subscribed our names as)
witnesses:)

(Signed) E. Y. SEYMOUR

10

(Signed) Dorothy A. B. Morris,
Clerk to R.H. Shorter and Tobin
Solicitors, Sydney

(Signed) J. Bannister,
Clerk to R.H. Shorter & Tobin
Solicitors, Sydney

I forgive my sister Phyllis Culpin all debts owing to
me or in any way to my estate.

(Signed) E. Y. SEYMOUR

11 March 1955

20

Witnesses (Signed) R. C. Tobin
M. Davies

(STAMP
SUPREME COURT

ESTATE LATE EVEREST YORK SEYMOUR

No. 620325 In the Will and two Codicils of EVEREST
REGINALD YORK SEYMOUR (known as Everest
York Seymour)

9.11.1966 By order of the Court dated Twenty ninth
day of August one thousand nine hundred and 10
sixty six Probate of the Will and two
Codicils was granted to PERPETUAL TRUSTEE
COMPANY (LIMITED) one of the executors named
therein (Reginald Clement Tobin the other
executor named therein having predeceased
the testator)

Testator died 9.1.1966.

SUPREME COURT STAMP

CORRECT COPY OF SUPREME COURT COPY

G. Ross8/12/66. 20

B. Moore
Clerks to Perpetual Trustee Company (Limited)

IN THE SUPREME COURT)
OF NEW SOUTH WALES)
IN EQUITY)

No. 934 of 1966

IN THE MATTER of the Trusts of the Will of EVEREST
REGINALD YORK SEYMOUR (Known as EVEREST YORK SEYMOUR)
late of Wollstonecraft and Exeter in the State of
New South Wales Merchant deceased

BETWEEN:

PERPETUAL TRUSTEE COMPANY LIMITED

Plaintiff 10

A N D:

GRANBY RICHARD YORK SEYMOUR PHYLLIS
FRANCES CULPIN and THE ATTORNEY GENERAL
IN AND FOR THE STATE OF NEW SOUTH
WALES

Defendants

WEDNESDAY the ninth day of November One thousand
nine hundred and sixty six THIS SUIT instituted by
originating summons coming on to be heard this day be-
fore the Honourable Laurence Whistler Street a Judge of 20
the Supreme Court sitting in Equity WHEREUPON AND UPON
HEARING READ the said originating summons the two several
affidavits of John Sanders sworn respectively the fif-
teenth and twenty second days of September last and the
affidavit of Reginald Harold Jopling sworn the thirteenth
day of September last all filed herein AND UPON READING
AND EXAMINING the exhibits put in evidence on behalf of
the plaintiff and marked with the letters "A" "B" and
"C" respectively AND UPON HEARING what was alleged by
Mr. J.B. Kearney with whom was Mr. Rodney Parker of 30

Annexure "B" to the
Affidavit of Ben Boyd
18. Ash Scobie

Annexure "B" to the
Affidavit of Ben Boyd
Ash Scobie

Counsel for the plaintiff by Mr. Hermann Jenkins of
Queens Counsel with whom was Mr. B.R. Murphy of Counsel
for the defendant Granby Richard York Seymour by Mr. B.R.
Murphy of Counsel for the defendant Phyllis Frances
Culpin and by Mr. E.T. Perrignon of Counsel for the
Attorney-General in and for the State of New South Wales

THIS COURT DOTH BY CONSENT DECLARE that upon the true 10

construction of the Will of the abovenamed Testator
Everest Reginald York Seymour and in the events which
have happened the direction in Clause 3 of the said Will
relating to the land therein described as "my freehold
property at the corner of Lovelle and Spencer streets
Moss Vale" is a valid trust for the charitable purposes

AND THIS COURT DOTH BY CONSENT FURTHER DECLARE that upon
the true construction of the said Will and in the events
which have happended the direction of Clause 3 of the
said Will relating to payment of the sum of Two thousand 20

pounds (£2,000.0.0) is a valid trust for charitable pur-
poses AND THIS COURT DOTH FURTHER DECLARE that upon the
true construction of the said Will and in the events
which have happened the direction in Clause 5 of the said
Will relating to the residuary estate of the Testator is
a valid trust for charitable purposes AND THIS COURT DOTH
BY CONSENT FURTHER DECLARE that an enquiry ought not to be
directed as to whether at the date of death of the

Annexure "B" to the
Affidavit of Ben Boyd
Ash Scobie

testator it was practicable to carry into execution the respective directions contained in Clause 3 of the said Will AND THIS COURT DOTH FURTHER DECLARE that an enquiry ought not to be directed

- 2 -

as to whether at the date of death of the testator it was practicable to carry into execution the direction 10
contained in Clause 5 of the said Will AND THIS COURT DOTH FURTHER DECLARE that upon the true construction of the said Will and in the events which have happened the defendants Granby Richard York Seymour and Phyllis Frances Culpin as the persons entitled upon the death of the testator partially intestate are not immediately and absolutely entitled to the residuary estate of the Testator AND THIS COURT DOTH RESERVE further consideration of Questions 2 5 and 7 of the said originating summons and the costs of this Suit other than herein 20
provided AND THIS COURT DOTH ORDER accordingly that the said originating summons do stand over generally with liberty to any party to restore on seven days notice AND THIS COURT DOTH GRANT LEAVE to the plaintiff to proceed with the settlement passing and entering of the decretal order in terms of the declarations and orders herein contained AND THIS COURT DOTH FURTHER ORDER that it be referred to the Deputy Master and Registrar the

Annexure "B" to the
Affidavit of Ben Boyd
Ash Scobie

Deputy Registrar or Chief Clerk in Equity to tax and certify the costs and expenses of the plaintiff of and incident to this suit up to and including the taking out of this Decretal Order and to tax as between solicitor and client and certify the costs of the respective defendants of this suit up to and including this Decretal Order AND that such costs and expenses when so taxed and certified be paid out of the estate of the Testator in manner following that is to say the costs and expenses of the plaintiff be retained by it or paid to its solicitor the costs of the defendants be paid to them respectively or to their respective solicitors AND THIS COURT DOTH FURTHER ORDER that the said exhibit marked "C" be handed out of Court to the plaintiff or to its Solicitor AND all parties are to be at liberty to apply as they may be advised.

10

PASSED this Nineteenth day of January, 1967.

AVR

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ENTERED same day.

SH

(Sgd) A.V. RITCHIE (LS)
DEPUTY REGISTRAR IN EQUITY

"C"

Extract from Minutes of Meeting of Board of Directors of Perpetual Trustee Company Limited held 29th October 1970.

Estate late Everest York Seymour.

As to, subject to receipt of Judicial Advice that the Company as Trustee of the testator's Will would be justified in so doing, transferring to and/or vesting in the University of Sydney the residue of the estate for the construction of a building in the City of Sydney to serve as a centre for the cultivation, education and performance of musical and dramatic Arts befitting the City of Sydney, provided the University complies with the following conditions

10

- (a) to submit for approval detailed plans and specifications and an estimate of the cost.
- (b) to complete the building and to furnish and equip it in accordance with the plans and specifications in the agreed period of time.
- (c) to enter into a Declaration of Trust to maintain and conduct the Centre for the purposes laid down in the Will.

20

Approved.

This is the Annexure marked "C" referred to in the Affidavit of Ben Boyd Ash Scobie signed before me on the 25th day of March, 1974.

J.W. Jackson J.P.
..... Justice of the Peace

"D"
T.O.'s
INITIALS

T.D./

IN THE SUPREME COURT
OF NEW SOUTH WALES
IN EQUITY.

No. 1519 of 1970.

COPY OF ORIGINAL DEED

IN THE MATTER of the Trusts of
EVEREST YORK SEYMOUR deceased late of
Wollstonecraft in the said State.

10

AND IN THE MATTER of the Trustee Act
1925-1942 Section 63.

MONDAY the twenty-third day of November One
thousand nine hundred and seventy.

UPON APPLICATION made the sixth day of November in-
stant and this day unto the Honourable Laurence
Whistler Street a Judge of the Supreme Court
sitting in Equity by counsel on behalf of Perpetual
Trustee Company Limited the Trustee of the Will of
the abovenamed Testator Everest York Seymour de-
ceased in pursuance of Summons filed herein the
third day of November instant WHEREUPON AND UPON

20

HEARING READ the said Summons and Statement of
Facts filed therewith and the supplementary State-
ment of Facts filed the sixth day of November
instant AND UPON READING AND EXAMINING the
Exhibits put in evidence on behalf of the Appli-
cant and marked with the letters "A" "B" "C" and
"D" respectively AND UPON HEARING what was

alleged by Mr. Kearney of Counsel for the

30

This is the Annexure marked "D" referred to in the Affidavit of Ben Boyd
Ash Scobie signed before me on the 25th day of March, 1974.
J.V. Jacks J.P.

Annexure "D" to the
Affidavit of Ben Boyd
Ash Scobie

Annexure "D" to the
Affidavit of Ben Boyd
Ash Scobie

Applicant and by Mr. Perrignon of Counsel for the Res-
pondent Attorney-General in and for the State of New
South Wales THE SAID JUDGE DOTH ADVISE that the Appli-
cant as Executor of the Will of Everest York Seymour de-
ceased would be justified in transferring the residue
of the Estate of the deceased to the University of
Sydney for the construction of a building in the City of 10
Sydney to serve as a Centre for the cultivation educa-
tion and performance of musical and

2.

dramatic arts befitting the City of Sydney upon the
University of Sydney by Deed in a form approved by the
said Trustee and by the Attorney General in and for the
State of New South Wales undertaking -

- (a) to apply the said residue of the said Estate for
the aforesaid purpose;
- (b) to commence within a reasonable time and carry 20
through to completion the building and other work
involved in providing such Centre upon the site at
Corner of Darlington Road and Cleveland Street
Darlington mentioned in and so as to implement the
project described in its letter dated the fif-
teenth day of October one thousand nine hundred
and seventy and attached documents styled
"Seymour Bequest Submission" addressed to the
said Executor and being Exhibit "D" herein;

Annexure "D" to the
Affidavit of Ben Boyd
Ash Scobie

Annexure "D" to the
Affidavit of Ben Boyd
Ash Scobie

(c) to hold the land constituting the said site and to maintain and use such Centre thereon for the purposes prescribed in relation to such Centre by the trusts of the Will of Everest York Seymour deceased AND THE SAID JUDGE DOTH ORDER that it be referred to the Deputy Master and Registrar or Deputy Registrar or Chief Clerk in Equity to tax and certify the costs and expenses of the Applicant of and incident to this application and to tax as between Solicitor and client and certify the costs of the Attorney General of this application AND that such costs and expenses and costs be paid out of the estate of the testator in manner following that is to say the costs and expenses of the Applicant be retained by it or paid to its solicitor and the costs of the Attorney-General be paid to him or to his Solicitor AND

T.O.'s
INITIALS

T.D./

3.

COPY OF ORIGINAL DEED

THE SAID JUDGE DOTH FURTHER ORDER that the said Exhibits do remain in Court AND both parties are to be at liberty to apply on two days' notice to the other as they may be advised.

Annexure "D" to the
Affidavit of Ben Boyd
Ash Scobie

PASSED this Twenty-seventh day of January 1971.

A.V.R.

ENTERED same day.

AM.

(Sgd.) A.V. Ritchie (L.S.)

DEPUTY MASTER AND REGISTRAR IN EQUITY

CORRECT COPY OF CARBON COPY OF ORIGINAL)

10

P.W. Tatham

} 2/3/1971

J. Grocott

E
NEW SOUTH WALES
\$0300 \$3-00
STAMP DUTY

THIS TRUST DEED is made on the 4th day of March, one thousand nine hundred and seventy-one by THE UNIVERSITY OF SYDNEY of Parramatta Road, Camperdown a body duly incorporated and constituted under the University and University Colleges Act, 1900 as amended (hereinafter called "the Trustee")

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WHEREAS:--

1. Everest Reginald York Seymour known as Everest York Seymour having duly made and published his last Will and Testament and two Codicils thereto died on the ninth day of January one thousand nine hundred and sixty-six; and

2. Probate of the said Will and Codicils was on the ninth day of November one thousand nine hundred and sixty-six granted by the Supreme Court of New South Wales in its Probate Jurisdiction to Perpetual Trustee Company Limited (hereinafter called "the Company") one of the Executors in the said Will named the other Executor therein named having predeceased the said testator; and

20

3. The said testator by his said Will having first directed payment of his debts funeral and testamentary expenses and bequeathed certain annuities and pecuniary legacies thereafter by Clause 5 of his said Will devised and bequeathed the

Annexure "E" to the Affidavit of Ben Boyd Ash Scobie

This is the Annexure marked "E" referred to in the Affidavit of Ben Boyd Ash Scobie signed before me on the 25th day of March, 1974.

J.W. Jackson J.P.
.....
Justice of the Peace.

Annexure "E" to the
Affidavit of Ben Boyd
Ash Scobie

residue of his Estate in the following manner that is to
say:--

"5. AS TO the entire residue of my Estate of
whatsoever kind and wheresoever situated it is MY
WISH that my Trustees shall use the same for the
purpose of the purchase or construction of a build- 10
ing (or to go towards the Fund for the purchase or
construction of a building) in the

-2-

City of Sydney to serve as a Centre for the culti-
vation, education and performance of musical and
dramatic Arts befitting the City of Sydney AND I
DIRECT my Trustees to transfer to or vest such
residue of my Estate for the purposes mentioned in
the Council of the Municipality of the City of
Sydney or the University of Sydney or the New
South Wales Government or in such other Public 20
Authority as my Trustee shall consider fit;" and

4. The Supreme Court of New South Wales in its Equit-
able Jurisdiction by Decretal Order made on the ninth
day of November one thousand nine hundred and sixty-six
in Suit No. 934 of 1966 declared that the direction in
Clause 5 of the said Will relating to the residuary
estate of the said testator was a valid trust for chari-
table purposes; and

5. The Trustee submitted to the Company an
Annexure "E" to the
Affidavit of Ben Boyd
28. Ash Scobie

Annexure "E" to the
Affidavit of Ben Boyd
Ash Scobie

application for the Trustee to be selected as the body to which the said residuary estate ought to be transferred pursuant to Clause 5 of the said Will which said application was constituted by the letter and documents styled "Seymour Bequest Submission" comprised in the First Schedule hereto; and

6. The Company as trustee of the said Will after consideration of the said application and applications submitted to it by other interested bodies selected on the twenty-ninth day of October one thousand nine hundred and seventy the Trustee as the body to which the said residuary estate should be transferred; and J.P. 10

-3-

7. The Honourable Laurence Whistler Street a Judge of the Supreme Court of New South Wales sitting in Equity advised the Company on the twenty-third day of November one thousand nine hundred and seventy that the Company would be justified in transferring to the Trustee the said residuary estate upon the Trustee executing a Deed in a form approved by the Company and the Attorney General containing the terms and conditions mentioned in the advice upon which the said residuary estate might be transferred; and 20

8. The Trustee is willing to accept the said residuary estate upon those terms and conditions.

NOW IT IS HEREBY DECLARED by the Trustee that upon the Annexure "E" to the Affidavit of Ben Boyd Ash Scobie

Annexure "E" to the
Affidavit of Ben Boyd
Ash Scobie

Company transferring to the Trustee the said residuary estate the Trustee will hold the said residuary estate UPON TRUST to apply the same within a reasonable time for the purpose of the construction of a building in the City of Sydney within the site described in the Second Schedule hereto so as to implement the project described in the letter and documents styled "Seymour Bequest Submission" comprised in the First Schedule hereto AND IT IS HEREBY FURTHER DECLARED by the Trustee that upon the completion of the said building the Trustee will hold the said building and that part of the site upon which the building stands UPON TRUST to maintain and use the same for the purpose of a centre for the cultivation education and performance of musical and dramatic Arts befitting the City of Sydney prescribed in relation to such centre by the trusts of the Will of Everest York Seymour Deceased.

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FIRST SCHEDULE

The documents annexed hereto and styled "The Seymour Bequest Submission". J.P.

-4-

SECOND SCHEDULE

ALL THAT land within the City of Sydney bounded on the west by the eastern alignment of Darlington Road on the north by the southern alignment of Cleveland Street on the east by the western alignment of the Annexure "E" to the Affidavit of Ben Boyd Ash Scobie

30.

Annexure "E" to the
Affidavit of Ben Boyd
Ash Scobie

former Rose Street prior to its closure, and on the south by the northern alignment of the former Ivy Street prior to its closure EXCLUDING THEREFROM lots 15, 2, 3, 4, 5, 6, 7 and 8 in Deposited Plan No. 237979 which are intended to be acquired for road upon the widening of Cleveland Street.

EXECUTED at Sydney the day and the year first hereinbefore written.

10

THE COMMON SEAL of the UNIVERSITY)

OF SYDNEY was hereunto affixed authority of the pursuant to a ~~resolution of the~~ Chancellor granted in letter dated the 23rd day of February, 1971.

Senate

) P.B. Fisher
) Acting Registrar
) B.R. Williams
) Vice-Chancellor
)

The Perpetual Trustee Company Limited approves of the within Deed of Trust.

20

THE SEAL of the PERPETUAL TRUSTEE)

COMPANY LIMITED was hereunto affixed by order of the Board of Directors in the presence of:

) Directors.
)
)
)

J. Sanders
Manager

I approve of the within Deed of Trust.

THE UNIVERSITY OF SYDNEY
SEYMOUR BEQUEST SUBMISSION

Crest Rec. 15 OCT 1970
Ansd.

The University of Sydney

From the Vice-Chancellor and Principal, Sydney N.S.W.,
Professor Bruce R. Williams, 2006
M.A., M.A. (Econ.)

10

15th October, 1970.

Mr. J. Sanders,
Manager,
Perpetual Trustee Company Limited,
33-39 Hunter Street,
SYDNEY, N.S.W. 2000.

Dear Mr. Sanders,

In my letter to you on 27th May, 1970, I said that
the new Vice-Chancellor of The University of New South
Wales had reaffirmed his support for the joint proposal
from The University of Sydney and The University of New
South Wales, put forward in my letter to you of 29th
July, 1968.

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On 25th September last I received a letter from
the Vice-Chancellor of The University of New South
Wales to say that after further thought he had decided
to make a separate proposal as from The University of
New South Wales.

I will therefore in this letter revert to the
University's original proposal, but I would like to make
it clear that we would, if successful in our applica-
tion, be very ready to co-operate with other bodies, in-
cluding The University of New South Wales, who are con-
cerned with the presentation of musical and dramatic
works and with the serious study of, or research into,
these arts.

30

We propose the erection of a building to be called
the "Everest York Seymour Building" or the "Seymour
Centre" to meet three functional requirements:

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1. To meet the needs for teaching and research
in musical and dramatic works,

Annexure "E" to the
Affidavit of Ben Boyd

Annexure "E" to the
Affidavit of Ben Boyd
Ash Scobie

2. To provide the facilities to assist those interested to cultivate such arts, and
3. To provide a fitting forum for the production and presentation of musical and dramatic works in an area which would be readily available to the general public.

Location

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We have given further thought to the location of the building. In an earlier letter I mentioned a site between City Road and Alma Street. Further investigation has convinced us that this site is too restricted for both the Seymour Centre and the Power Gallery of Fine Arts. My view that these buildings should be associated has been greatly strengthened by information given me recently by Dr. Grahame Edgar that the late Mr. Seymour had this idea himself. I have also discovered on file at the University a letter from the late Mr. J.A. Ferguson dated 18th October, 1966,

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J.P.

Mr. J. Sanders

Page 2

which reads:

"I was privileged to regard the late Mr. York Seymour as a personal friend and I have no doubt that it would be his fervent wish that The University of Sydney would receive the bequest, if it is at all possible, to erect a building for Music and Dramatic Arts adjacent to the Power Bequest Gallery."

30

We have an excellent site on the corner of Darling-ton Road and Cleveland Street for the Seymour Centre, the Power Institute and Gallery, and the Music Department. The site is across the road from International House and the Faculty of Architecture. I attach herewith five notional diagrams and two photographic reproductions of plans of the City of Sydney. These two photographic reproductions show the location of the site in relation to the Local Government area of the City of Sydney and adjoining municipalities, and clearly illustrate the excellent relationship of the site to all forms of public and private transport. It will be seen that the site is ideally located for access from the metropolitan railway system at either Redfern or Central Stations and for private transport from both the

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Annexure "E" to the
Affidavit of Ben Boyd
Ash Scobie

Annexure "E" to the
Affidavit of Ben Boyd
Ash Scobie

Southern and Western Distributors. Public buses frequently pass along City Road and there is an existing bus stop on the corner of Cleveland Street which would well serve the needs of people going to the Centre by omnibus. There will be adequate space in the adjacent Engineering precinct for parking for members of the public attending the Centre during the evenings and at weekends. We will ensure that there is provision of loading dock facilities and for some parking for people working in the Centre during the day. There is also reasonable parking in streets nearby.

10

The Seymour Bequest does not provide for any running expenses at the Centre. It is therefore important that the beneficiary be financially able and willing to conduct the Centre for the specified purposes. We are fortunate to be in that position in that we have an extensive range of relevant staff and activities in music and drama from which the work of the Centre can grow and attract cultural grants.

20

Music

Our Music Department can provide, and is anxious to provide, for an extension of education and performance. The Department presents annually at least one opera, a number of orchestral concerts, a wide range of chamber music and solo recitals for the benefit of the University community and the general public. In the educational field the Department has pioneered the study of early music, contemporary music and non-western music. In much of this work it has striven to carry the public with it by the formation of societies such as the Australian section of the International Society for Contemporary Music, the Musicological Society of Australia, the Australian Society for Music Education, and the Pro Musica Society of The University of Sydney.

30

There are in addition several other music societies such as the Sydney University Musical Society Graduate Group, and the Sydney University Musical Society. These societies are handicapped by the lack of appropriate accommodation for practice, rehearsal and performance. When recently the Music Department performed Vaughan Williams' Opera "Sir John In Love" it was severely handicapped by the inadequate stage at our Union Theatre, and by inability to get sufficient time for rehearsals. Despite these difficulties the Opera was splendidly performed. The Seymour Centre would make

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J.P.

Annexure "E" to the
Affidavit of Ben Boyd
Ash Scobie

possible the presentation of a wider range of operas without having to overcome so many obstacles for a first rate performance, and we would expect other musical bodies to derive similar benefits.

Drama

In Drama we have a longstanding and diverse set of dramatic interests and activities. These are bound to arise in an educational institution of some 18,000 to 20,000 people. The various literature and language Departments stage medieval and foreign language plays. The Sydney University Dramatic Society over the years met an important need for the staging of both classical and avant garde English plays, and is now reviving after a quiet period. Each year since 1957 the University has, through the generosity of Miss Kathleen Robinson, organised a series of lectures open to the public and devoted to drama.

10

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There have been persistent demands within the University for experimental theatre facilities which we cannot provide. We have made provision to appoint a Director of Drama to undertake the co-ordination and development of the University's activities. If we can provide small theatres, we expect a considerable growth of interest in the creation and performance of dramas of varying types, and we would expect many people outside the University to take advantage of the facilities to do likewise.

30

There is an opportunity to develop the dramatic possibilities of cinema and television. We have noticed within the University a marked growth of interest in the possibilities of these media, stimulated in part by the work of our own Television Centre, in part by the marketing of relatively cheap video-tape equipment. We know from what has been achieved in North American universities that with suitable facilities, such as could be provided in the Seymour Centre, there could be exciting developments in these fields and in combining them with traditional drama. Or in the case of music we would expect the Seymour facilities to attract other grants, and we would encourage this.

40

Public Use

Apart from the natural attraction that the Seymour

Centre would provide, we have a fine tradition of drawing members of the community into a variety of educational pursuits through our Adult Education Department. Apart from normal public performances by University or other organisations, we would organise summer and weekend schools to see that the maximum use was made of the Seymour Centre.

10

Facilities

We have made first order estimates of the division of funds between building and equipment. From this we have gone on to draw in very general terms a possible plan for the building. These sketches follow the perspective diagram which follows this letter.

We propose an auditorium large enough to make occasional expensive productions economically viable, together with two small theatres, one of which will be used for experimental theatre. There is provision for practice rooms, workshop areas, and facilities for all forms of theatre including music, dance and ballet, music drama, prose drama, cinema art, radio and television drama. There is

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Mr. J. Sanders

J.P.
Page 4

provision also for experiment with and performance of electronic music. Already within our Music Department there is a powerful interest in electronic music but we are unable to provide adequate facilities. Provision for experiment and performance would provide a great stimulus to composers and in the Seymour Centre provide an ideal opportunity to exploit its potentialities in relation to various forms of drama.

30

It should be possible as part of the proposed complex of building and site works to provide an open air theatre. Australia is behind many countries in this form of dramatic performance, even though climatic conditions should encourage it. But at this stage it would not be appropriate to go into more detail. If our application is successful we would appoint architects and consultants to elaborate our ideas and prepare detailed plans.

40

I again confirm the University's agreement to the formal declaration required in connection with the University's application:

Annexure "E" to the
Affidavit of Ben Boyd
Ash Scobie

"If the residue of the Seymour Estate is vested
in The University of Sydney, the University:

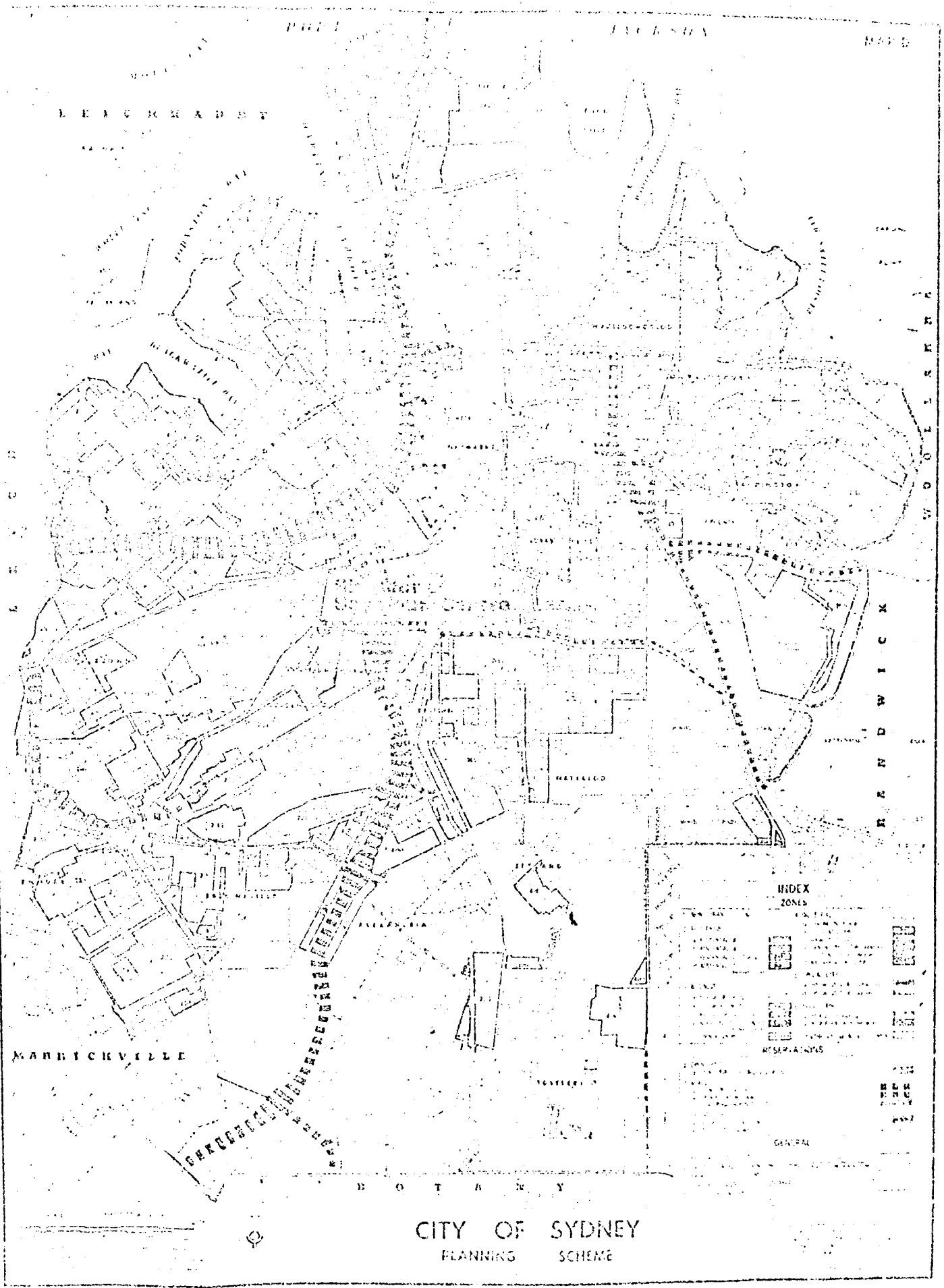
- (a) will provide within the limits of the total funds available, a suitable group of buildings equipped with musical instruments and theatrical paraphernalia so as to render it fully available for the operation of the centre, 10
- (b) is willing and considers itself eminently capable of conducting the centre for the specified purposes,
- (c) will, given adequate time, provide plans and specifications of the proposed centre, together with the appointed architects' estimate of time of construction and cost,
- (d) is willing after discussion, and if necessary, negotiation with the Trustee, to enter into a Declaration of Trust ensuring the carrying out of the Testator's wishes, 20
- (e) believe that it falls within the scope of the purpose nominated, and
- (f) will confer with the Perpetual Trustee Company Ltd. in the preparation of an appropriate announcement for public release of the news."

We have a site in the City of Sydney, a site befitting the scale and concept of the Bequest, and we have no doubt that we could provide on the site the building and facilities and the activities that the Late Everest York Seymour had in mind. 30

Yours sincerely,

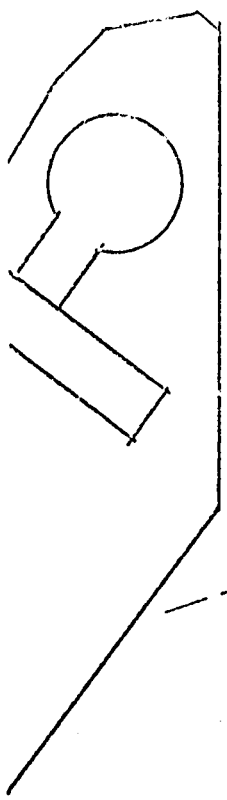
Bruce Williams.

Annexure "E" to the
Affidavit of Ben Boyd
Ash Scobie



CITY OF SYDNEY
PLANNING SCHEME

39. Annexure "E" to the Affidavit of Ben Boyd Ash Scobie

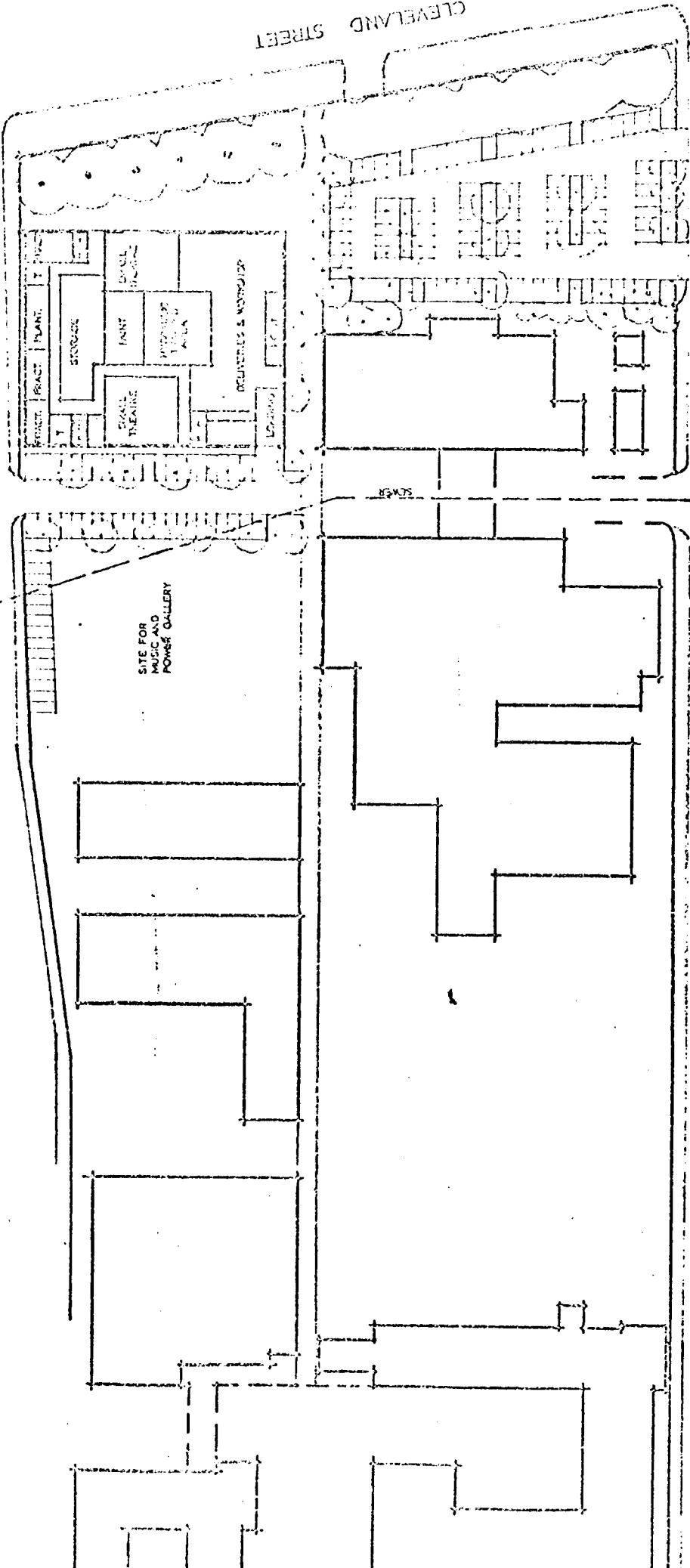


DARLINGTON ROAD

CLEVELAND STREET

SHEPHERD STREET

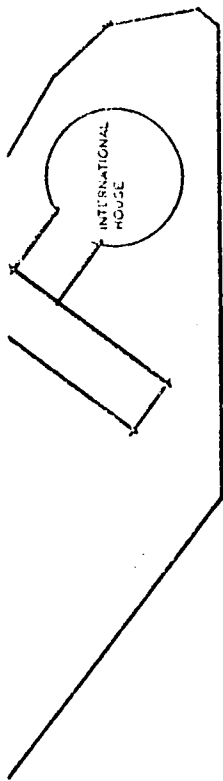
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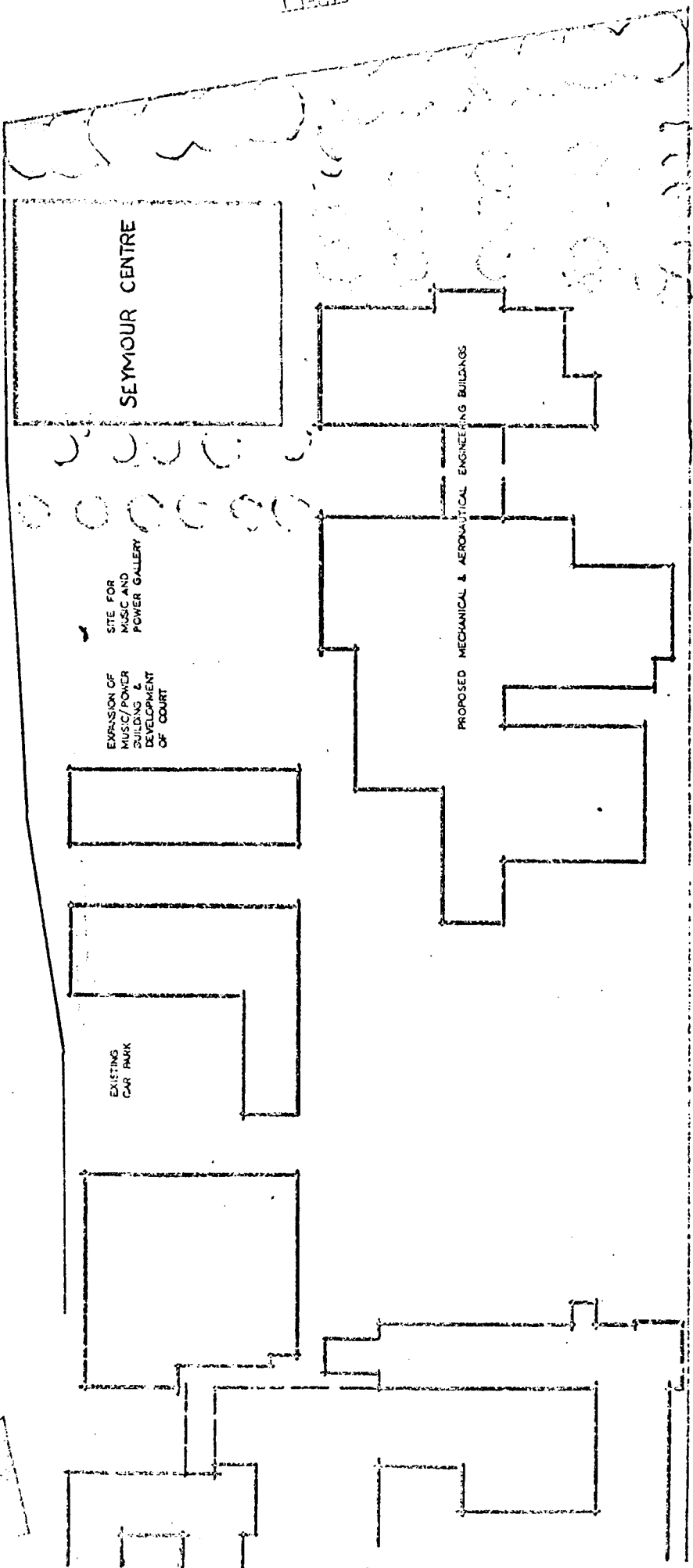
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40. Annexure "E" to the Affidavit of Ben Boyd Ash Scobie

CLEVELAND STREET



DARLINGTON ROAD

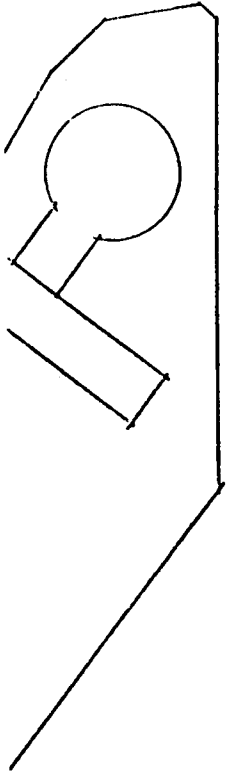


SHEPHERD STREET

ANNEXURE

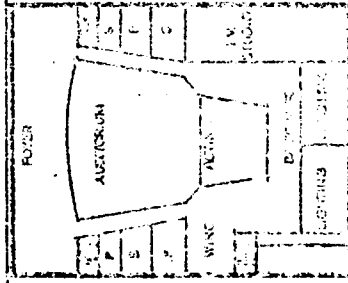
ANNEXURE "E" TO THE AFFIDAVIT OF BEN BOYD ASH SCOBIE

41. Annexure "E" to the Affidavit of Ben Boyd Ash Scobie

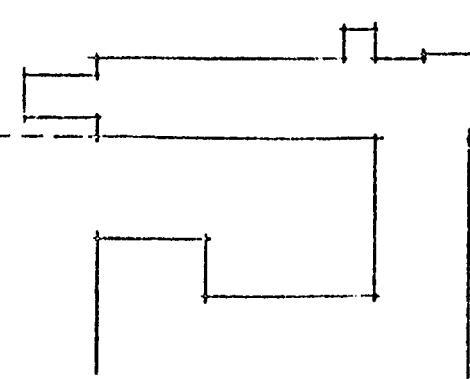
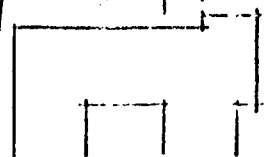
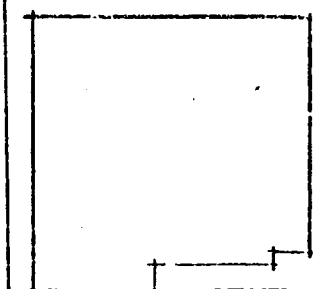
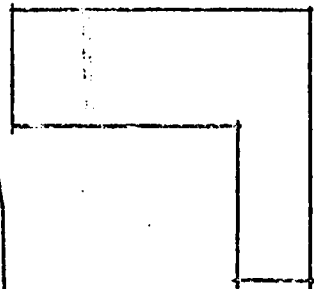
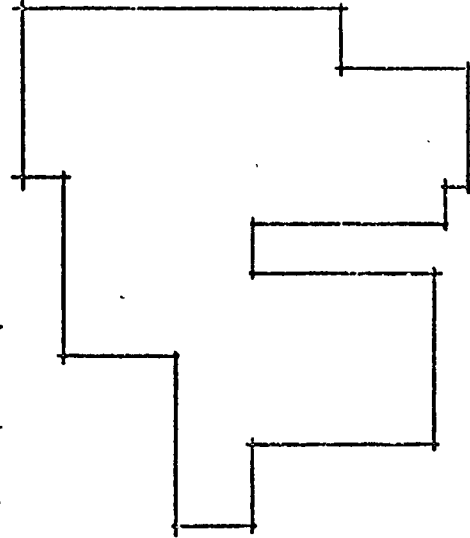
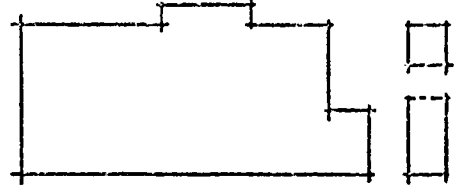


DARLINGTON ROAD

CLEVELAND STREET



SITE FOR MUSIC AND POWER GALLERY

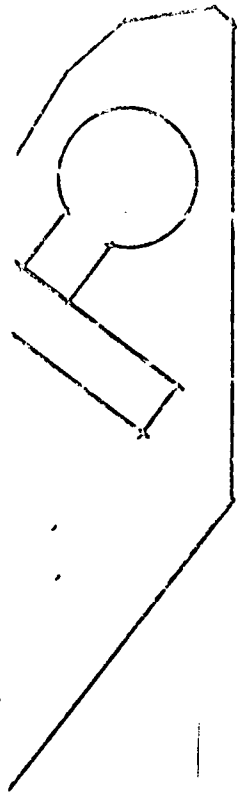


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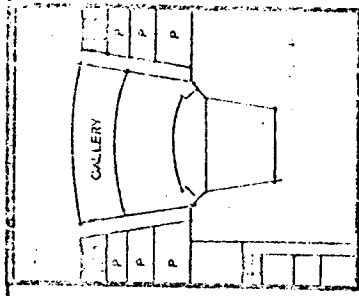
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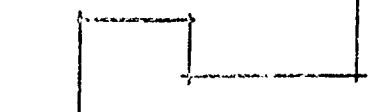
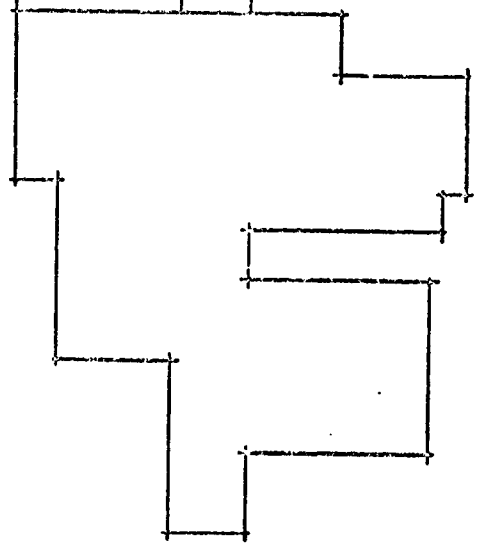
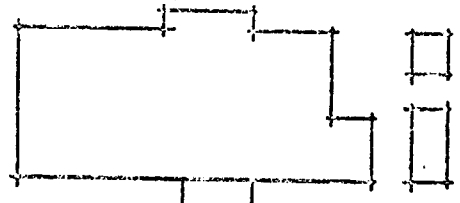
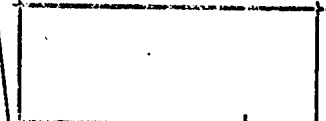
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DARLINGTON ROAD



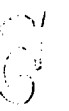
SITE FOR
MUSIC AND
POWER GALLERY



CLEVELAND STREET

SHEPHERD STREET

level



0 20 50 100

This is the Annexure marked "F" referred to in the Affidavit of Ben Boyd Ash Scobie signed before me on the 25th day of March, 1974.

Justice of the Peace.

F264(b)

OFFICIAL RECEIPT

STAMP DUTIES OFFICE
SYDNEY

NOTICE OF ASSESSMENT OF DEATH DUTY -1

67604

Estate of
late of

EVEREST REGINALD YORK SEYMOUR
WOLLSTONECRAFT

deceased Estate No.
Date of death

D68725

9.1.66

Date of issue	Final Balance of Estate	Total Duty Assessed	Less Payments in Advance	
16.10.68	\$1,855,461	\$470,069-99	\$40,400-00	\$429,669-99

In accordance with the provisions of the Stamp Duties Act, 1920 as amended, I have assessed the amount of death duty payable in respect of the above estate as detailed in this assessment.

N.B.—Interest is payable as from 9.7.6 at 8 % per annum on such duty as may be unpaid. The amount of interest accrued to date of payment should be included in your remittance.

Interest Details—	Interest on duty paid to date of payment	
		\$1,691-27
	Interest on unpaid duty to	
	Further interest accrues at	per day
	from	to date of payment.

IMPORTANT.—This notice must be produced when making the final duty payment together with the attached payment form duly completed. Receipt of the payment will be acknowledged by cash register imprint on this notice.

H. K. LIPSCOMB,
Commissioner of Stamp Duties.

ORIGINAL/ASSESSMENT

DETAILED ASSESSMENT

Class of Beneficiary	Assessable Amount	Rate	Duty
Widow or lineal issue			
Widow or lineal issue			
Widow or lineal issue or brother or sister or issue of brother or sister or spouse or widow or sister	\$ 115,131 ✓	29% ✓	\$ 33,387-99
Public hospitals for relief of poverty or for promotion of education	\$1,717,480	25% ✓	\$429,370-00
All others	\$ 22,850 ✓	32% ✓	\$ 7,312-00
Advances as detailed			
	\$1,855,461		\$470,069-99

To the Administrator,

Messrs. Robinson Curwood & Small,
Solicitors,
107 Elizabeth Street,
SYDNEY.

\$ 115,131
22,850
\$ 137,981

ADJUSTMENT SHEET

In the Estate of E.R.Y. SEYMOUR deceased.

..... V.C.N. Blight, Government Printer

	\$	¢	
Final balance of estate as per affidavit.	\$2,014,033-43		10
ADD:- Sched. 9 - 5070 ord. shares in Fosseys Pty. Ltd. @ £5. 15. 10 Understated		8,027-50	
		<u>\$2,022,060-93</u>	
LESS:- Sched 9 - shares (returned at nominal \$1,250,000) Overstated	\$166,200-00		
Sched 16 - livestock Overstated	\$ 400-00		
		<u>\$ 166,600-00</u>	20
		\$1,855,460-93	

G

BB.

3.12.70

GMP.

3rd December, 1970.

The Commissioner of Stamp Duties,
Phillip Street,
Sydney. 2000.

Dear Sir,

Estate late Everest York Seymour.

Estate No. D68725.

10

Your reference : FC:YB.

We refer to previous correspondence concerning the application of the residuary estate and now write to inform you that the proposals submitted to us by organisations have been considered and this company as trustee has decided to pay the residue of the estate to the University of Sydney for the purposes of the trusts of the Will.

It might be mentioned that having made its decision, the trustee sought and was given Judicial Advice that it would be justified in paying the residuary estate to the University of Sydney for the purpose submitted by that body.

20

In the light of the decision, we should be glad to know whether you are now prepared to reassess New South Wales Death Duty on the basis that the residuary beneficiary is a body exempt from duty by virtue of The Educational Institutions (Stamp Duties Exemption) Act, 1961.

Yours faithfully,

30

G.P.
(G. McA. PONT),
Trust Officer.

This is the Annexure marked "G" referred to in the Affidavit of Ben Boyd Ash Scobie signed before me on the 25th day of March, 1974.

J.W. Jackson J.P.
.....Justice of the Peace

Annexure "G" to the
Affidavit of Ben Boyd
Ash Scobie
46.

H
STAMP DUTIES OFFICE

NEW SOUTH WALES
ST. JAMES HALL
169 PHILLIP STREET, SYDNEY

The Manager,
Perpetual Trustee Co. Ltd., No. 20318
33-39 Hunter Street, D68725
SYDNEY. FC:YB

RECD. 9 MAR 1971 10
ANSD.....

3rd March, 1971.

Dear Sir,

Re: Estate of Everest Reginald York
Seymour.

I refer to your letter of 3rd December, 1970
(ref. GMP) and desire to inform you that the Crown
Solicitor has advised me that death duty is pro- 20
perly payable in respect of the request of residue
at Column 3 rating Schedule 7A.

Accordingly, my assessment which issue on 16th
October, 1967 must stand and you are requested to
forward your cheque in payment of the balance of
duty outstanding together with interest owing.

For your information the balance of duty payable
has been calculated as follows:-

Duty assessed	
Col. 2 \$115,131 x 29%	= \$33,387.00
Col. 4 \$ 22,850 x 32%	= \$ 7,312.00
	\$137,981
Col. 3 \$1,717,480 x 25%	= \$429,370.00
	\$1,855,461
Duty paid 16/1/67	\$ 40,400.00
Balance of duty payable	\$429,699.99
Interest at 8% p.a.	
on \$40,000 from 9/7/66	
to 16/1/67	
191 days \$	\$ 1,691.27
on \$429,670 from 9/7/66	
to 2/3/71	
4 years 237 days	
	\$159,813.69

Annexure "H" to the
Affidavit of Ben Boyd
Ash Scobie

This is the Annexure marked "H" referred to in the Affidavit of
Ben Boyd Ash Scobie signed before me on the 25th day of March, 1974.
J.W. Jackson J.P.
Justice of the Peace.

Annexure "H" to the
Affidavit of Ben Boyd
Ash Scobie

Total Interest		<u>\$161,504.96</u>
Total duty & interest owing at		
	3/3/71 =	<u>\$591,204.95</u>

Further interest accrues as from 3rd March, 1971 at \$94 per day.

Your cheque to cover duty and interest payable is now awaited.

10

Yours faithfully,

for C. V. Simpson,
Commissioner of Stamp Duties

16th March, 1971.

The Commissioner of Stamp Duty,
St. James Hall,
169 Phillip Street,
S Y D N E Y. 2000.

Dear Sir:

RE: Estate Late E. Y. Seymour

We act for the Perpetual Trustee Company, the Executors of the Estate of the Late Everest York Seymour. 10

We enclose herewith our Client's cheque in the sum of \$429,699-99 being the balance of duty determined by Notice of Assessment dated 16th October, 1967.

We have been instructed by our Client to inform you that of the total amount of duty hereby paid, the sum of \$429,370-00 is referable to the residuary estate having an assessable value in the aforementioned Notice of Assessment of \$1,717,480-00. 20

We are further instructed to submit that the payment of duty so far as it relates to the residuary estate is made by our Client under protest as it is claimed that the residuary estate has been wrongly included as part of the dutiable estate in the Notice of Assessment.

We have also been asked by our Client to make an application for a waiver or remission of the interest levied against the Estate. 30

It is noted that the balance of duty owed is only \$429,669-99 and we request that the additional amount of \$30-00 paid at this time be credited against any other amount that may be found due to the Commissioner by our Client, or refunded to our Client, as the case may be. Would you please note that this error in the amount of duty payable appears in the Commissioner's letter to our Client dated the 3rd March, 1971.

Yours faithfully,
ROBINSON & CURWOOD, 40

Encl.

per:
Annexure "I" to the
Affidavit of Ben Boyd
Ash Scobie

This is the Annexure marked "I" referred to in the Affidavit of Ben Boyd Ash Scobie signed before me on the 25th day of March, 1974.
J.W. Jackson J.P.
Justice of the Peace.

STAMP DUTIES OFFICE

Messrs. Robinson & Curwood,
Solicitors,
Philip Court,
141 Elizabeth Street,
SYDNEY.

NEW SOUTH WALES
ST. JAMES HALL,
169 PHILLIP STREET,
SYDNEY
No. 20318

RECEIVED
29 MAR 1971
Ans'd.....

D68725
FC:YB

10

26th March, 1971.

Dear Sirs,

Re: Estate of Everest Reginald York Seymour.
Stamp Duties Act 1920/65.

With reference to your letter of 16th March, 1971, I confirm that the balance of duty payable herein is \$429,669.99, not \$429,699.99 as stated in my letter of 3rd March, 1971. The excess payment of \$30 has been credited to interest accrued.

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The amount of interest payable, however, remains unchanged at \$161,504.96, and after deduction of the aforesaid amount of \$30, the balance now outstanding is \$161,474.96.

I note your request for a waiver or remission of interest levied but wish to point out that any remission thereof, wholly or in part, is dependant on whether "the delay in payment of the duty is not due to the default of the Administrator or other person liable" (Sec. 121). You are advised, therefore, that full details of the circumstances on which your claim is based should be furnished, and, in particular, the amount and rate of income earned since the date of death should be supplied, together with any other relevant information in support.

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With reference to your submission "that the payment of duty so far as it relates to the residuary estate is made by our Clients under protest as it is claimed that the residuary estate has been wrongly included as part of the dutiable estate", I would refer you to the provisions of Section 124. This Section provides that a Stated Case can proceed only where notice is given by the Administrator and the duty paid in conformity with the

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Annexure "J" to the
Affidavit of Ben Boyd
Ash Scobie

This is the Annexure marked "J" referred to in the Affidavit of Ben Boyd Ash Scobie signed before me on the 25th day of March, 1974.

J. W. Jackson J. P.
Justice of the Peace.

Annexure "J" to the
Affidavit of Ben Boyd
Ash Scobie

assessment within 60 days after notice of the
assessment has been given.

It would appear, therefore, that no grounds exist for
any action in terms of Section 124 abovementioned and
as a result your objection must be disallowed.

Yours faithfully,

(signed)

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for G. V. Simpson,
Commissioner of Stamp Duties.

All communications to be addressed to the Commissioner
of Stamp Duties, Box 4, G.P.O., Sydney, N.S.W. 2001.

IN THE SUPREME COURT
OF NEW SOUTH WALES
ADMINISTRATIVE LAW DIVISION

No. 14 of 1974.

CORAM: WADDELL, J.

FRIDAY, 7TH MARCH 1975.

PERPETUAL TRUSTEE COMPANY LIMITED v.

COMMISSIONER OF STAMP DUTIES

HIS HONOUR: The plaintiff is the executor of the Will of Everest Reginald York Seymour deceased. It claims a declaration that the property comprising the residuary estate of the deceased was wrongly included in his dutiable estate for death duty purposes and repayment by the defendant of the amount of death duty and interest paid by the plaintiff in respect thereof.

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The deceased died on the 9th January 1966. Probate of his Will and two Codicils thereto was granted to the plaintiff by this Court on the 29th August 1966. The Will of the deceased contains the following provision :

"5. As to the entire residue of my Estate of whatsoever kind and wheresoever situated IT IS MY WISH that my Trustees shall use the same for the purpose of the purchase or construction of a building (or to go towards a Fund for the purchase or construction of a building) in the City of Sydney to serve as a Centre for the cultivation, education and performance of musical and dramatic Arts befitting the City of Sydney AND I DIRECT my Trustees to transfer or to vest such residue of my Estate for the purposes mentioned in the Council of the Municipality of The City of Sydney or the University of Sydney or the New South Wales Government

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Reasons for Judgment
of his Honour

52. Mr. Justice Waddell

or in such other Public Authority as my
Trustees shall consider fit."

This provision is unaffected by either of the two
Codicils.

On the 9th November 1966 an order was made by
this Court in its Equitable Jurisdiction declaring that
the provisions of Clause 5 of the Will constitute a
valid trust for charitable purposes. 10

On the 16th October 1967 the defendant issued to
the plaintiff a notice of assessment of death duty pay-
able in respect of the estate of the deceased including
in that assessment an amount of \$429,370 as duty attri-
butable to the residuary estate of the deceased, the
amount of which was assessed at \$1,717,480. The
plaintiff did not pay this sum.

The plaintiff proceeded to consider proposals
submitted to it by organisations seeking to have the
residue of the estate vested in them for the purposes
provided by the Will. On the 29th October 1970 the
Board of Directors of the plaintiff resolved that,
subject to the receipt of judicial advice that the
Company would be justified in so doing, the residue of
the estate of the deceased be transferred to or vested
in the University of Sydney "for the construction of a
building in the City of Sydney to serve as a centre for
the cultivation, education and performance of musical 20

Reasons for Judgment
of his Honour
Mr. Justice Waddell

and dramatic Arts befitting the City of Sydney" provided the University complied with certain conditions including that it entered into a declaration of trust "to maintain and conduct the centre for the purposes laid down in the Will". On the 23rd November 1970 judicial advice was given to the plaintiff by this Court in its Equitable Jurisdiction that the plaintiff would be justified in transferring the residue of the estate of the deceased to the University of Sydney for the purposes and subject to the conditions mentioned.

10

The University entered into a deed of trust which is dated the 4th March 1971. It is provided by this deed that the University will hold the residuary estate of the deceased upon trust to apply the same for the purpose of the construction of a building as described in the second schedule to the deed and so as to implement the project described in the letter and document styled "Seymour Bequest Submission" comprised in the first schedule to the deed. The deed also provides that upon completion of the building the University will hold it and the site upon which it stands upon trust "to maintain and use the same for the purpose of a centre for the cultivation education and performance of musical and dramatic Arts befitting the City of

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Reasons for Judgment
of his Honour
Mr. Justice Waddell

Sydney prescribed in relation to such centre by the trusts" of the Will of the deceased.

Having made the decision to transfer the residue of the estate to the University of Sydney, the plaintiff, by letter of the 3rd December 1970, requested the defendant to reassess the liability of the estate to death duty on the basis that the University of Sydney is a body exempt from duty by virtue of the Educational Institutions (Stamp Duties Exemption) Act, 1961. By letter dated the 3rd March 1971 the defendant refused this request and claimed the balance of duty outstanding together with interest. On the 16th March 1971 the plaintiff paid the balance of duty under protest claiming that the residuary estate had been wrongly included as part of the dutiable estate by the notice of assessment. The plaintiff also applied to the defendant for a waiver or remission of the interest levied against the estate. By letter dated the 26th March 1971 the defendant deferred further consideration of this application until full details of the circumstances relied upon were furnished and pointed out that the provisions of s. 124 of the Stamp Duties Act, relating to the stating of a case for the opinion of the Supreme Court, depended upon the payment of duty in conformity with the assessment

Reasons for Judgment
of his Honour
Mr. Justice Waddell

within sixty days after notice of the assessment had been given.

The claim of the plaintiff is made pursuant to s. 140 of the Stamp Duties Act. That section provides :

- "140. (1) Where it is proved to the satisfaction of the Commissioner that any property has been wrongly included in the dutiable estate of a deceased person the death duty paid in respect of such property shall be repaid by him, but (except in accordance with an order of the Court under Section one hundred and twenty-four) no refund shall be made in respect of any property wrongly included in the dutiable estate of any person whether dying before or after the passing of the Stamp Duties (Amendment) Act, 1931, by reason of any mistake in the construction of this Act. 10
- (2) 20
- (3) The repayment of duty provided for in sub-section one of this section may be enforced by action or suit against the Commissioner in his official name as nominal defendant on behalf of the Crown in any court of competent jurisdiction and not otherwise. 30
- (4) No such action or suit shall be brought after the expiration of three years from the date of payment."

The defendant does not contend that the proceeding has been commenced out of time or that the inclusion of the residuary estate of the deceased in the dutiable estate was by reason of any mistake in the construction of the Stamp Duties Act. Accordingly, for the plaintiff to be

entitled to repayment of duty it must be established that the residuary estate of the deceased was wrongly included in his dutiable estate.

The plaintiff principally relies upon the provisions of the Educational Institutions (Stamp Duties Exemption) Act, 1961. S.2(1) provides that the Act applies to a number of named educational institutions which include the University of Sydney. S. 2(3) provides :

"2. (3) Nothing contained in the Stamp Duties Act, 1920, or in any Act amending that Act, whether passed before or after the commencement of this Act, applies to any real or personal property of any nature or kind whatsoever comprised in any gift, bequest or devise made to -

(a) any educational institution to which this Act applies or to the trustees of any such institution or to the person or authority governing and managing any such institution, or

(b)

I will refer to these as "the exempting provisions".

The plaintiff's basic submission on this part of its argument is that there is in the Will a provision for the disposition of the residue of the estate of the deceased; this was carried out by the plaintiff by nominating the University of Sydney and transferring to it the residue; there was no consideration passing from the University; hence the whole transaction should be

Reasons for Judgment
of his Honour
Mr. Justice Waddell

regarded in ordinary language as a gift. The consequence of the exempting provision is that nothing in the Stamp Duties Act applies to the property comprised in the gift, at any stage of the transactions which together constitute the gift. The residue of the estate of the deceased is, therefore, wrongly included in his dutiable estate. The correctness of treating the matters mentioned as together constituting a gift is supported by reference to the carrying into effect of a special power of appointment contained in a settlement or Will by an exercise of the power in favour of one or more of the objects designated. The Will or settlement is regarded as the instrument by which the property is imparted to the appointees once the power is exercised. The exercise of the power is but an element in the appointee's title. See Muir v. Muir, 1943 A.C. 468 at 483; Pedley-Smith v. Pedley-Smith, 88 C.L.R. 177 at 189. 10 20

The present case is distinguished from the line of cases concerning the corresponding exempting provision in s. 8(5) of the Estate Duty Assessment Act (Cth.) in two respects. Firstly, that provision limits gifts to gifts inter vivos. Secondly, the exempting provision, unlike the corresponding provision of the Estate Duty Act, does not limit the operation of the exempting provision to the date of death of the deceased. The plaintiff submits

Reasons for Judgment
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Mr. Justice Waddell

that the only temporal limitation on the operation of the exempting provision here in question is that the transaction of gift must be completed within three years of the payment of any duty sought to be recovered. If it is not, because of the limitation of action provision of s. 140 of the Stamp Duties Act, the payment is not recoverable.

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It is submitted for the defendant that death duty under the Stamp Duties Act must be assessed as at the date of death and by reference to the facts and the law as they exist at that date. At the date of death it could not be said that the property constituting the residue of the estate of the deceased was comprised in any gift bequest or devise made to the University of Sydney because the organisation to whom the residue was to be transferred had not then been selected. Accordingly, the residue was properly included in the dutiable estate of the deceased.

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In my view this submission is correct. S. 2(3) of the Educational Institutions (Stamp Duties Exemption) Act denies the application of the Stamp Duties Act to property if it is comprised in a gift devise or bequest made to one of the institutions designated. In determining the operation of this provision it seems to me that the first question to ask is when, in accordance with

Reasons for Judgment
of his Honour
Mr. Justice Waddell

the provisions of the Stamp Duties Act, did that Act apply to the property in question. The second question is, was the property at that time comprised in a gift devise or bequest to a designated institution.

In the present case the Stamp Duties Act became applicable to the property comprised in the residue of the estate of the deceased at the date of his death, because this is the date by reference to which the liability of the estate to duty and the extent of that liability are to be determined: Re Smith; Permanent Trustee Co. of N.S.W. v. Commissioner of Stamp Duties, (1965) 82 W.N. (Pt.1) (N.S.W.) 507 at 510-11. At this date that the property was not comprised in a gift devise or bequest to the University of Sydney and hence the application of the Stamp Duties Act to that property is not denied by the exempting provisions. On the other hand, if the transfer of any property forming part of the residue of the estate to the University of Sydney was effected by an instrument which would otherwise have been liable to duty, the exempting provision would deny the application of the Stamp Duties Act to that property at the time the liability attached, that is at the first execution of the instrument.

What I have said is sufficient to dispose of the principal submission made on behalf of the plaintiff.

Reasons for Judgment
of his Honour
Mr. Justice Waddell

I do not need to consider a number of subsidiary matters which were argued in relation to this submission.

These include whether or not it is correct to consider the matters mentioned as together constituting a gift by the deceased to the University of Sydney; whether the exempting provision applies only if the gift bequest or devise is made to a designated educational institution 10 for the proper purposes of that institution; whether, if this is so, the purpose for which the residue has been transferred to the University of Sydney; are university purposes which thus come within the exempting provision; and, finally, whether the line of decisions on s.8(5) of the Estate Duty Assessment Act (Cth.) such as Public Trustee v. F.C.T. (1964) 112 C.L.R. 326; Ryland v. F.C.T. (1973) 47 A.L.J.R. 358, preclude the principal submission made for the plaintiff.

I now turn to an alternative basis upon which 20 the plaintiff rests its case. It is submitted that the residue of the estate of the deceased does not come within either subsection (1) or subsection (2) of s.102 and, therefore, was wrongly included in his dutiable estate.

As to subsection (1) it is said that it relates only to property to which any person becomes entitled under the Will or upon the intestacy of the deceased.

Reasons for Judgment
of his Honour
Mr. Justice Waddell

In the present case the disposition of residue is for a public charitable purpose and, therefore, no person becomes entitled to the property comprising the residue. Reliance is placed upon the reasons for judgment of Williams, J. in Lemm v. F.C.T., (1942) 66 C.L.R. 399 where his Honour said, in relation to the charitable trusts of a Will "The trusts in the Will are intended to establish an institution and a fund the beneficial interests in which are not to be vested in any private person but are to belong inalienably to the public". This statement is relied upon as a description of the essential nature of a charitable trust. Clause 5 of the Will in the present case establishes a charitable trust and, therefore, it is submitted, the property included in the residuary estate is not property to which any person becomes entitled under the Will within the meaning of subsection (1).

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As to subsection (2), it is submitted that while the property comprised in the residue might at first sight appear to come within paragraph (a), subsection (1) should be construed as dealing with actual property and the various paragraphs of subsection (2) should be construed as dealing only with property which was not vested beneficially in the deceased at the time of his death. If subsection (2)(a) is given this construction,

then it does not bring in the residue as part of the estate of the deceased. In describing the general scheme of s.102 in their reasons for judgment in Thompson v. Commissioner for Stamp Duties, 1969 1 A.C. 320 at 332-3 the Privy Council said :

"The general scheme of section 102 is plain. Paragraph (1) applies to the actual property of the deceased, i.e., property actually belonging to him at the time of his death.....Paragraph (2) applies to various categories of what may conveniently be called 'notional' property of the deceased, including in certain cases property disposed of by him."

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However, the plaintiff does not submit that this passage embodies any principle of construction. It is merely submitted that the context in which the two subsections are to be found is sufficiently strong to deprive the introductory words of subsection (2)(a) of what would otherwise be their prima facie wide meaning. However, I do not consider that the context points to such a restricted construction.

20

Accordingly, I consider that if the property included in the residue of the estate of the deceased was not properly included in his dutiable estate pursuant to subsection (1) of s. 102, it was properly included under subsection (2)(a).

For the foregoing reasons, it is my opinion that the property comprising the residue of the estate of

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Reasons for Judgment
of his Honour
Mr. Justice Waddell

the deceased has not been wrongly included in his dutiable estate and that, consequently, the plaintiff is not entitled to a refund of the duty already paid in respect thereof.

The summons will, therefore, be dismissed with costs.

I certify that this and the preceding pages are a true copy of the reasons for judgment herein of his Honour Mr. Justice Waddell.

10

G. James
ASSOCIATE.

Date: 11th April, 1975.

IN THE SUPREME COURT
OF NEW SOUTH WALES
ADMINISTRATIVE LAW DIVISION

}
} No. 14 of 1974
}

BETWEEN:

PERPETUAL TRUSTEE COMPANY LIMITED

Plaintiff

AND:

THE COMMISSIONER OF STAMP DUTIES

Defendant

O R D E R

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THE COURT ORDERS that the Summons be dismissed with costs.

ORDERED 7th March, 1975.

AND ENTERED

REGISTRAR.

65. Order of
Mr. Justice Waddell

IN THE SUPREME COURT
OF NEW SOUTH WALES
ADMINISTRATIVE LAW DIVISION

No. 14 of 1974

BETWEEN:

PERPETUAL TRUSTEE COMPANY LIMITED

Plaintiff

AND:

THE COMMISSIONER OF STAMP DUTIES

Defendant

O R D E R

10

The Court orders that:-

1. That final leave to appeal to Her Majesty in Council from the judgment of Mr. Justice Waddell given and made herein on the 7th March, 1975, be and the same is hereby granted to the Appellant.

2. That upon payment by the Appellant of the costs of preparation of the Transcript Record and despatch thereof to England the sum of FIFTY DOLLARS (\$50.00) deposited in Court by the Appellant as security for and towards the costs thereof be paid out of Court to the Appellant or its Solicitors.

20

ORDERED, 22nd July, 1975.

ENTERED, 1975.

..... C.J. CURWOOD
Solicitor for the Plaintiff

Order Granting Leave to
Appeal to Her Majesty
in Council