

1937

Present : Moseley J. and Fernando A.J.

MARTIN *et al.* v. COMMISSIONER OF STAMPS.

23—D. C. (Inty.), Colombo, 1,201.

*Estate duty—Settled property—Life interest in favour of widow—No settlement estate duty paid on death of testator—Death of widow—Liability to estate duty on cesser of life interest—Ordinance No. 8 of 1919, s. 16 (1) and (2).*

Property was bequeathed by last will to trustees upon trust as to half the annual income for the testator's two sons and as to the remainder of such income for his wife during her widowhood, and upon her death or marriage the entire estate was bequeathed to the two sons.

On the death of the testator estate duty was paid in respect of the property but no "settlement estate duty" was paid in view of the exemption created by section 16 (1) (a) of the Estate Duty Ordinance.

*Held*, that on the death of the widow no estate duty was payable on the footing of the cesser of her life interest in half the estate.

THIS was an appeal from an order condemning the appellants to pay estate duty in respect of the estate of Rear-Admiral Baker, deceased, on the death of the latter's widow. The appellants who are trustees under the last will of Rear-Admiral Baker paid estate duty on the value of his property in Ceylon on his death in 1922. The estate was bequeathed to the trustees upon trust as to half the annual income for the testator's two sons and as to the remainder of such income for his wife during her widowhood.

The widow died in 1934 and the Commissioner of Stamps assessed estate duty on the footing that the cesser of her life interest in half the property was liable to duty.

*H. V. Perera, K.C.* (with him *F. C. W. van Geysel*), for the appellants.—By the provisions of section 16 the legislature intended to exempt from the payment of estate duty more than once, property settled in accordance with the section until that property passed out of the settlement and in order to counteract the benefit of such exemption section 16 (a) imposed a further duty called settlement estate duty leviable at the rate of one per cent; where, however, the settlement was in favour of a surviving spouse even this additional duty is not levied.

The words "under the last preceding sub-section" occurring in section 16 (2) must be read as qualifying the words "settled property" which they follow. They are not found in the corresponding section of the English Act and it is submitted that they were introduced into the local section in order to make it quite clear that the exemption was restricted to settlements within the meaning of section 16 (1).

There are two objections to the respondent's contention that the words "under the last preceding sub-section" qualify "paid", namely:—

- (1) it would lead to the anomaly that property settled in favour of a stranger and therefore paying the comparatively small settlement estate duty would escape further taxation until the settlement came to an end whereas no such exemption would operate where the settlement was in favour of a spouse, and

- (2) if that had been the intention of the legislature the draftsman would either have used the term settlement estate duty in sub-section (2) or have interposed the words "under the last preceding sub-section" after the words "estate duty" on the word "paid" in the first line of sub-section (2).

*J. E. M. Obeyesekere, C.C.*, for the Commissioner of Stamps, respondent.—Lady Baker had an interest in one-half of Mahagastotte estate, which was terminable upon her death. This interest is property passing on her death, within the meaning of section 8 (1) (b) of the Estate Duty Ordinance, No. 8 of 1919. Estate duty is payable on such property unless the appellants can bring the case under some exemption to be found in the Ordinance. Section 16 (2) does not apply because estate duty has not been paid in respect of this property under section 16 (1). The words "under the last preceding sub-section" occurring in section 16 (2), qualify the word "paid". Estate duty paid under section 16 (1) is settlement estate duty. No settlement estate duty was paid on the death of Admiral Baker. The exemption created by section 16 (2) does not therefore apply and estate duty is consequently payable on Lady Baker's interest in the estate, which ceased upon her death.

*Cur. adv. vult.*

June 14, 1937. MOSELEY J.—

The appellants are the trustees appointed under the last will of Rear-Admiral Julien Alleyne Baker, deceased. On his death in 1922 estate duty was paid on the value of his assets in Ceylon, which included the Mahagastotte estate. That estate was bequeathed to the trustees upon trust as to half the annual income for the testator's two sons and as to the remainder of such income for his wife during her widowhood. Upon her death or marriage the entire estate was bequeathed to the said two sons.

The widow died in 1934, and the Commissioner of Stamps has assessed estate duty on the footing that the cesser of her life interest in half the Mahagastotte estate is liable to estate duty.

It may be convenient to set out here the relevant portion of the section of the Estate Duties Ordinance, No. 8 of 1919, which regulates the payment of estate duty on settled property. It is as follows:—

"16 (1) Where property in respect of which estate duty is leviable is settled by the will of the deceased, or having been settled by the deceased by some other disposition passes under that disposition on the death of the deceased to some person not competent to dispose of the property—

(a) A further estate duty (called settlement estate duty) on the value of the settled property shall be levied at the rate hereinafter specified, except where the only life interest in the property after the death of the deceased is that of a wife or husband of the deceased; but

(b) During the continuance of the settlement, the settlement estate duty shall not be payable more than once.

(2) If estate duty has already been paid in respect of any settled property under the last preceding sub-section since the date of the settlement, the estate duty shall not be payable in respect thereof until the death of a person who was at the time of his death, or had been at any time during the continuance of the settlement, competent to dispose of such property”.

The appellants appealed against the assessment on the ground that the widow had not at any time been competent to dispose of the property, that estate duty has already been paid in respect of it, and that consequently in view of the exemption contained in section 16 (2) no estate duty was payable on her death. The appeal was dismissed and the appellants have now appealed to this Court.

Now, sub-sections (1) and (2) of section 16 of the Ceylon Ordinance follow practically verbatim sub-sections (1) and (2) of section 5 of the Finance Act, 1894. There is one notable difference and that is the insertion in sub-section (2) of the local Ordinance after the words “settled property” of the words “under the last preceding sub-section”.

The last preceding sub-section provides for the payment, in the case of property settled in specified manner, of a special estate duty, called “settlement estate duty”. That duty has been fixed at one per cent. of the value of the estate. The obvious purpose of such a duty is to relieve an estate which is comprised of property subject to a succession of life interests from paying the full duty on the cesser of each life interest. Settlement estate duty is paid in such cases, “except where the only life interest in the property after the death of the deceased is that of a wife or husband of the deceased”.

In the case now before us the only life interest was that of the wife of the deceased. Consequently settlement estate duty was not paid. This fact, coupled with the insertion in section 16 (2) of the words above mentioned, has led to the difference of opinion between the trustees and the Commissioner.

On behalf of the appellants it is contended that the words “under the last preceding sub-section” qualify the words “settled property” which immediately precede them, the intention being to make it quite clear that the exemption from payment of estate duty can only be claimed in respect of settled property within the meaning of sub-section (1), and not in respect of settled property generally. If that contention is accepted, it follows that, since estate duty was paid on the death of Admiral Baker on settled property coming within the meaning of sub-section (1), no further estate duty is payable until the death of some person competent to dispose of the property. Geraldine Baker, the widow, is no such person.

The argument put forward on behalf of the Commissioner is that the words “under the last preceding sub-section” qualify the opening words of sub-section (2) viz., “If estate duty has already been paid”, so that the estate duty referred to is the settlement estate duty. In support of this argument Counsel contended that the expression “settled property under the last preceding sub-section” is ungrammatical and that neither the legislature nor the draftsman would have been a party

to a solecism of such a nature. While it must be conceded that the expression lacks elegance, it is not an unusual one, and, assuming that it bears the meaning attributed to it by the appellants, is not, I venture to think, an example of bad grammar. On the other hand, to read the words as interpolated where the Commissioner would have us read them, one has to find that the draftsman avoided at least two more obvious and neater methods of giving expression to his intention. Firstly, he might have inserted the words in the place where we are invited to read them, and secondly, and still better, he might have used the phrase which he had just coined, if I may use the term, in sub-section (1) (a), viz., "settlement estate duty". In this connection it is noteworthy that the phrase is repeated in sub-section (1) (b). It is difficult therefore to believe that the draftsman having used the expression twice has immediately afterwards employed a paraphrase.

Moreover, Counsel for the appellants has pointed out that to read the words in dispute as the Commissioner would have them read would lead to a manifest absurdity in that, in the case of the disposition of a life interest to a stranger with remainder to the testator's children, only "estate duty" and "settlement estate duty" would be paid, whereas, in the case of a disposition of a life interest to the testator's widow with remainder to the children, estate duty would be payable twice at the full rate. Such partiality can hardly have been the intention of the legislature which, while imposing the settlement estate duty, expressly exempts from liability thereto the case where the only life interest in the property is that of a wife or a husband of the deceased. Again, if we are to hold that the words "estate duty" where they first occur in sub-section (2) mean "settlement estate duty" then surely the same meaning must be applied to the words where they recur in the same sub-section, a process which would lead to another absurdity.

Counsel for the Commissioner has invited us not to assume that the intention of the local legislature was to follow exactly English law, while Counsel for the appellants urges that we should not assume an intention to depart from the model. I do not know that it is necessary in this case to estimate the intention of the legislature, except in so far as it can be gathered from giving to the words used their ordinary meaning. If I were in any doubt as to that meaning, I should feel inclined to hold that the insertion of the words which do not appear in the model was made with the intention of removing any doubt as to the class of settled property to which the sub-section applies. In spite of the inelegance of the expression, however, I have no doubt but that that is what the words mean.

Finally, it is fundamental that the intention to impose a charge on the subject must be shown by clear and unambiguous language, and that in cases of doubtful expression the party sought to be made liable must be deemed to be exempt.

The appeal is allowed with costs here and in the Court below.