[HIGH COURT OF AUSTRALIA.]

ROBERT JOHN ARCHIBALD . . . APPELLANT;

AND

THE COMMISSIONERS OF STAMPS . . RESPONDENTS.

ON APPEAL FROM THE SUPREME COURT OF QUEENSLAND.

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BRISBANE, *May* 7, 10, 13.

Griffith C.J., O'Connor and Isaacs JJ.

Succession duties—Gifts made within 12 *months of death—Aggregation—Succession and Probate Duties Act* 1892 (*Q.*), (56 *Vict. No.* 13), *secs.* 3, 4, 12—*Succession and Probate Duties Act* 1904 (*Q.*), (4 *Edw. VII. No.* 17), *sec.* 4.

Sec. 12 of the *Succession and Probate Duties Act* 1892 is applicable to a gift coming under sec. 4 of the *Succession and Probate Duties Act* 1904, so as to render the donee liable to pay succession duty.

In estimating the amount of duty payable, the aggregate value of all the several successions passing to all persons to whom beneficial interests come on the death of the predecessor should be taken into consideration and not merely the independent value of each particular succession.

In re Blissett, 1903 St. R. Qd., 320, considered.

ON 24th of August 1906 the Honourable John Archibald transferred by way of immediate gift to each of his seven children, including the appellant, personal property approximately of the value of £4,100 in each case.

The Honourable John Archibald died on 20th day of May 1907, and on 23rd day of September 1907 probate of his will and codicil was granted. All his children survived him. In September 1907 the Commissioners of Stamps made an assessment on the appellant in the sum of £206 5s. 9d. in respect of the gift to him of the sum of £4,100, being at the rate of

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£5 per centum on that sum, whereupon the appellant, being dissatisfied with the assessment, duly gave notice in writing to the Commissioners of his intention to appeal against the assessment, and duly furnished the statement of the grounds of such appeal in accordance with the provisions of sec. 50 of the *Succession and Probate Duties Act* 1892. The appellant contended that no succession duty was payable on the gift to him, or, in the alternative, that if any succession duty was payable in respect of the gift, then such duty was payable, in any event, at no greater rate than £2 per centum on the £4,100 and should not have been assessed at a rate ascertained by aggregating the amounts of the gifts above mentioned, nor at a rate ascertained by aggregating those amounts with the value of the testator's estate, nor as if the gift to the appellant had formed part of such estate at the time of his death. The appellant asked the Supreme Court of Queensland to declare whether (1) any succession duty whatsoever was payable on the said gift to him; or (2) if any succession duty was found payable, at what rate should such duty be assessed. The Supreme Court answered (1) in the affirmative, and (2) at five per centum.

From this decision the appellant now appealed to the High Court.

The relevant provisions of the Statutes sufficiently appear in the judgments hereunder.

Stumm and *Fowles*, for the appellant. *Succession* is defined in sec. 3 of 56 Vict. No. 13, and sec. 12 of that Act levies the duty and provides for a reduction by one half in the case of a donee being the lineal issue of the predecessor. This Act was amended by 4 Edw. VII. No. 17, sec. 4 of which provided for payment of tax on gifts made *inter vivos* within twelve months of the testator's death. In the present case the succession is not dutiable, for it vested during the testator's life time, and 56 Vict. No. 13, sec. 12, only applies to gifts passing at testator's death. Gifts indicated in sec. 4 of 4 Edw. VII. No. 17, cannot come under sec. 12 of 56 Vict. No. 13. But, even if the succession were dutiable, the tax must be assessed on the separate value of each succession, and not on the aggregate value

of all the successsions ; each of the gifts was made by a separate deed, and the case of *In re Blissett* (1) does not apply. The Queensland Act was based upon the English *Succession Duties Act* 1853, 16 & 17 Vict. c. 51, and the words of that Act have never been construed to denote aggregations.

[O'CONNOR J.—But the Queensland Act is on a different plan].

Counsel also referred to *Heward* v. *The King* (2); *In the Will of Meares* (3); *Harding* v. *Commissioners of Stamps for Queensland* (4); *Wolverton (Baron)* v. *Attorney-General* (5).

O'Sullivan A.-G. and *Henchman*, for the respondents. The practice of the taxation office has always been to aggregate all the gifts, &c.; *Re Hogarths' Will* (6), and the case under notice comes directly within *In re Blissett* (1), the authority of which was accepted by the legislature in the amending Act of 1904. If contention for the appellant were right, then the legislature in the Act of 1904 merely repeated what was the case before, and in no way altered it. [*Bond* v. *Commonwealth of Australia* (7); and *In re Goggs* (8), were also referred to.]

Stumm in reply.

Cur. adv vult.

The following judgments were read:—

May 13.

GRIFFITH C.J. In this case special leave to appeal was asked for and granted to raise a question as to the interpretation and effect of the provisions of sec. 4 of the *Succession and Probate Duties Act* 1904, which provides that deeds of gifts *inter vivos* made by the donor within twelve months of his decease shall be deemed to confer a succession on the donee. On the hearing of the appeal the appellant sought to raise an additional point as to the construction of the *Succession and Probate Duties Act* 1892, and to impeach a construction of the taxing provisions of that Act which has been uniformly followed since the Act was passed, which was in 1903 declared by the Supreme Court of Queensland

(1) 1903 St. R. Qd., 320.
(2) 3 C.L.R., 117.
(3) (1905) V.L.R., 4; 26 A.L.T., 82.
(4) (1898) A.C., 769.
(5) (1898) A.C., 535.
(6) 7 Q.L.J. (N.C.), 76.
(7) 1 C.L.R., 13.
(8) 1909 St. R. Qd., 27.

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to be the true construction, which was accepted and modified by the legislature in the following year, and which, as I understand the notice of appeal, was not raised by it. For my part, I should have been reluctant to grant special leave to appeal to raise such a point. I will deal first with the point raised on the application for special leave.

The Principal Act of 1892 was based in many respects upon the English *Succession Duties Act* 1853, 16 & 17 Vict. c. 51. The term "succession" is defined (sec. 2) as denoting any property chargeable with duty under the Act. Sec. 4, corresponding to sec. 2 of the English Act, declares that every disposition of property by reason of which any person has become or shall become beneficially entitled to any property or the income thereof upon the death of any person dying after the commencement of the Act, either immediately or after an interval, and either certainly or contingently, and every devolution by law of any beneficial interest in property or the income thereof upon the death of any person dying after that time to any other person, in possession or expectancy, shall be deemed to confer a succession on the person entitled by reason of such disposition or devolution.

Sec. 12, which contains the taxing provisions, is as follows:—

"12. There shall be levied and paid to Her Majesty in respect of every such succession as aforesaid, according to the value thereof at the time when the succession takes effect, the following duties, that is to say:—

If the whole succession or successions derived from the same predecessor and passing upon any death to any person or persons amount in money or principal value to less than two hundred pounds, no duty;

If the same amount to two hundred pounds and to less than one thousand pounds, a duty at the rate of two per centum upon such amount;

If the same amount to one thousand pounds and to less than two thousand five hundred pounds, a duty at the rate of three per centum upon such amount;

If the same amount to two thousand five hundred pounds

and to less than five thousand pounds, a duty at the rate of four per centum upon such amount;

If the same amount to five thousand pounds and to less than ten thousand pounds, a duty at the rate of six per centum upon such amount;

If the same amount to ten thousand pounds and to less than twenty thousand pounds, a duty at the rate of eight per centum upon such amount;

If the same amount to twenty thousand pounds or upwards, a duty at the rate of ten per centum upon such amount:

"Provided that when the successor is the wife or husband or the lineal issue of the predecessor, the duty shall be charged at one-half of the rates aforesaid in respect of the succession coming to him or her:

"Provided also that when the successor is a stranger in blood to the predecessor the duty shall be charged at double the rates aforesaid:—

"And provided further that no duty shall be payable under this Act upon any succession, which, as estimated according to the provisions of this Act, is of less value than twenty pounds in the whole, or upon any moneys applied to the payment of the duty on any succession according to any trust for that purpose, and that no person shall be charged with duty under this Act in respect of any interest surrendered by him or extinguished before the time appointed for the commencement of this Act."

It will be noted that the rate of duty depends upon two variables, the relationship of the successor to the predecessor, and the value of the whole successions passing on the death of the predecessor.

It has always been understood in Queensland, and it was so decided by the Supreme Court in *In re Blissett* (1), that in the application of the rule prescribed by this section the total value of all the successions passing on the death of the predecessor must be aggregated together, and that the rate of duty payable by each successor in respect of his own succession is dependent upon the amount of the aggregate, and not upon the amount of the value of his own succession. I will return to this point later.

(1) 1903 St. R. Qd., 320.

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Sec. 4 of the Act of 1904 provides that:—"Every disposition of property made by any person less than twelve months before his death and purporting to operate as an immediate gift of the property *inter vivos* whether by way of transfer, delivery, declaration of trust, or otherwise, shall upon the death of the donor be deemed to confer a succession on the donee."

In the present case John Archibald within twelve months of his death executed seven separate deeds of gift, each of property worth about £4,000, in favour of seven of his children, of whom the appellant is one. The appellant, having been assessed to succession duty at a rate of 5 per cent., *i.e.*, half the rate of 10 per cent. payable in the case of the whole succession or successions passing on the death of any person amounting to £20,000 or upwards, appealed by petition to the Supreme Court under sec. 50 of the Act of 1892, which requires the appellant, before presenting his petition, to furnish the Commissioners with a statement in writing of the grounds of his intended appeal.

The contention set up in the petition was as follows:—

"Your petitioner contends that there is no succession duty whatever payable on the said gift to him.

"In the alternative, your petitioner contends that if any succession duty is payable in respect of the said gift, then such duty is payable in any event at no greater rate than two pounds per centum on the said sum of four thousand one hundred pounds, and must not be assessed at a rate ascertained by aggregating the amounts of the gifts mentioned in paragraph one hereof, nor at a rate ascertained by aggregating the said amount with the value of the testator's estate, nor as if the said gift to your petitioner had formed part of such estate at the time of his death."

I cannot find in these words any suggestion that it was a ground of appeal that the decision in *In re Blissett* (1) was wrong. The grounds are two: First, that no duty at all was payable, which was supported by an argument that the Act of 1904, although making the property in question a succession, had failed to make it taxable as such; and second, that if taxable at all, it must be treated as a single succession, not to be aggregated

(1) 1903 St. R. Qd., 320.

either with the other six gifts or with the value of the donor's estate.

The Act of 1904 is, by sec. 1, to be read with the Principal Act of 1892. Section 4 must therefore be construed as if it formed part of that Act, and were inserted before sec. 12, which must now be read as including in the term "succession" when used in it the new kind of succession declared by the amending Act. If this is done, the gift in question falls within the words "there shall be levied in respect of every such succession," &c., and the question is resolved adversely to the appellant. Reliance was, however, placed upon the words "passing upon any death," and it was contended that as the property in question passed before the death of the donor it was not within the words of the enacting provisions which fix the rate of duty. The plain answer to this argument is that the term "succession" itself connotes a passing of property upon death, so that, when the legislature says that for the purpose of an Act which taxes successions passing upon death a gift shall be deemed to confer a succession, it necessarily means that the fictional succession is to be deemed to pass upon the death of the donor.

This contention therefore fails.

The other point raised by the petition of appeal to the Supreme Court was that each fictional succession created by the Act of 1904 should be treated as something apart from any other succession passing upon the death of the donor. If, however, sec. 4 of the Act is regarded as inserted in the Principal Act before sec. 12, it is impossible to say that such successions do not fall within the words "whole succession or successions."

In my opinion, therefore, the appellant fails on the only grounds stated in his petition. This is sufficient to dispose of the case; but in deference to the views of my learned brothers I will proceed to deal with it on the assumption that the point not taken in the petition, and not mentioned on the application for leave or in the notice of appeal to this Court, is open to the appellant.

His contention on this point is, in effect, that the words "the whole succession or successions derived from the same predecessor and passing upon any death to any person or persons" are equiva-

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lent to "the succession or successions passing to the same person or persons." The words just quoted form the nominative to the whole series of six rules which immediately follow, and which prescribe the rate of duty. To my mind they are clear and unambiguous. It appears that in *In re Blissett* (1) I indicated some doubt on the point, but I am at present unable to see any foundation for the doubt. On the construction contended for no effect is given to the word "whole," except in the case of property which is to be enjoyed by several persons one after the other. No doubt the words include that case, but I see no reason for so limiting them. In such a case the value of all the successions together would, of course, be equal to the sum of the values of the successive interests, which (sec. 4) may be certain or contingent, original or substitutive, in possession or expectancy. Nor does that construction give any effect to the words "or persons." Under the form of drafting used in 1853 the singular was not used to include the plural, but under the modern system formulated by the Acts Shortening Acts the use of the plural in addition to the singular is no longer to be disregarded. Again, I can see no reason for substituting the words "the same" for "any" before "person or persons." Moreover, on this construction the last proviso, that no duty shall be paid upon any succession which, as estimated according to the provisions of the Act, is of less value than £20 in the whole, has no operation, for it had already been enacted that no duty should be payable if the whole value was less than £200. The reference to the mode of estimation relates to express provisions for estimating the values of annuities and reversionary interests. This proviso, on the face of it, means and says that, although the whole successions amount in value to £200, a successor who only succeeds to a succession of less value than £20 is exempt.

In re Blissett (1) was decided in September 1903. In that case a testator gave four legacies, each of £250, to strangers in blood. The rest of his estate amounted to £9,700, so that if the four legacies were added the whole sum exceeded £10,000. The question was whether the succession duty on the four legacies was to be calculated at the rate of 16 (*i.e.*, twice 8) per cent. as

(1) 1903 St. R. Qd., 320.

on four of several successions which altogether amounted to £10,000, or as on single successions of £250 each, as the appellant now seeks to contend. The Court adopted the former view. But, if the appellant's construction is sound, the duty payable by the four legatees was 4 (*i.e.*, twice 2) per cent. In the following year the legislature amended sec. 12 so as to deal with the very case. Sec. 7 of the Act of 1904 enacted, *inter alia*, that before the first proviso to sec. 12 the following words should be inserted: —"When the total value of a succession to which any one person becomes entitled as aforesaid is less than five hundred pounds, and such succession forms part of an estate the principal value whereof exceeds one thousand pounds, then the duty payable in respect of such succession shall, subject as hereinafter mentioned," (that is subject to the provisions for reducing and increasing the rate in certain cases) "be at the rate of two per centum of such total value," and that the following words should be added to the second proviso:—"In the second, third, and fourth cases of the above-mentioned list of rates, and at the rate of ten per centum in the fifth, sixth, and seventh cases of the above-mentioned list." The result was that in a case like *Blissett's Case* (1) the legatee would, unless a stranger in blood, pay a duty at the rate of two per cent. only, although "the succession forms part of an estate the principal value whereof exceeds £1,000." It is obvious that the word "estate" refers to the words "whole succession or successions . . . . passing upon any death" in sec. 12 (of which this proviso now forms part), and that the words "an estate the principal value whereof" &c. are used as synonymous with them. In any other sense the reference is idle and unintelligible. But, if sec. 12 originally meant what is now contended, this enactment made no alteration in the law, for under the circumstances defined the rate of duty payable on a succession of £500 to one person was already two per cent.

If, therefore, there were any room for doubt as to the construction of sec. 12, the Act of 1904 must, in my judgment, be regarded as a legislative adoption of the construction put upon that section by the Court in *In re Blissett* (1).

What answer, then, is made to these arguments? First, it is

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said that under the English Act of 1853 the rate of duty was calculated upon the value of the respective successions, and not upon the aggregate value of the whole, that this notion must, therefore, form part of the concept of "succession duty," and that a duty calculated on the aggregate value of the whole estate passing at death should be called "Estate Duty," as it was called by the British legislature in the *Finance Act* 1894, 57 & 58 Vict. c. 50. I am quite unable to see any necessary logical or conceptual connection between the value of property to be taxed and the rate at which it is to be taxed. In 1853 the British legislature thought fit to adopt a uniform rate of taxation, irrespective of the total value of the property taxed, and dependent only upon the relationship of the successor and the predecessor. In 1894 they adopted a different scheme. In 1892 the Queensland legislature, as I suppose, adopted a scheme of taxation of successions under which the rate of duty depended on the aggregate value, but called the duty "Succession Duty," not "Estate Duty," a term which had not then been used in England. Therefore, it is said, they must have meant to adopt the English scheme of 1853 in its entirety. I am quite unable to follow the argument.

If, however, any argument could, in any event, have been founded upon the identity of nomenclature in the English Act of 1853 and the Queensland Act of 1892, it is excluded by the fact that the term "Succession Duty," as used in Queensland before 1892, did not connote any such idea as that suggested. In 1886 an Act (50 Vict. No. 12) was passed, entitled "An Act to Impose Duties in respect of Estates transmitted upon death," the short title of which was "*The Succession Duties Act* 1886." The seventh section of that Act was as follows:—"There shall be paid to the Registrar, to be by him paid into the Consolidated Revenue of Queensland, by every executor, administrator of land or goods, and administrator with the will annexed, duty at the rates following, that is to say:—

Where the total value of the estate of the deceased person, after deducting all debts, does not exceed £100	No duty.
Where the value exceeds £100, and does not exceed £1,000	2 per cent.

Where the value exceeds £1,000, and does not exceed £10,000 ... ... 3 per cent.
Where the value exceeds £10,000, and does not exceed £20,000 ... ... 4 per cent.
And over the value of £20,000 ... ... 5 per cent.

Provided that—

(1) When the widow of a testator, or the widow and children of a testator, or the children of a testator, is or are the only person or persons entitled under his will, the duty in respect of his estate shall be calculated at one-half only of the percentage aforesaid; and when other persons are also entitled under the will the duty shall be calculated so as to charge only one-half of such percentage upon the property devised or bequeathed to the widow or children of the testator;

(2) When a person dies intestate leaving a widow, or a widow and children, or children, the only person or persons entitled in distribution to his estate, the duty shall be calculated at one-half of the percentage aforesaid; and when a person dies intestate leaving a widow and no children, the duty shall be calculated so as to charge one-half only of such duty upon the distributive share of the widow."

"Such duty shall be payable upon the whole of the estate disposed of by the will, or in respect whereof administration is granted, as the case may be."

The rate of duty, it will be observed, depended upon the total value of the estate transmitted on death. The duty imposed was identical in character with what under the English *Finance Act* 1894 is called "Estate Duty." But in Queensland it was called "Succession Duty," using the term of the Act of 1853, but adopting a different method of ascertaining the rate of duty. The duty was payable by the personal representative, but the burden of it fell on the beneficiaries in proportion to their share in the whole estate transmitted (sec. 11). The Act of 1892 uses the same term "Succession Duty" to describe the duty, and I can find no indication of any intention to depart from the general scheme of the earlier Act, except as to the time at which, and

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the persons by whom, the duty should be actually paid to the Treasury.

The other argument is that the same words which are used in the second enacting clause of sec. 12 are to be found in the English Act of 1853, where they do not refer to an aggregation of the successions. That is true; but they are used in a totally different context, in which they have only one possible meaning. The suggestion that, because words when used in one Act in one context have one meaning, they therefore have the same meaning when used in another Act in a totally different context is a departure from all recognized rules of construction, and was, very properly, repudiated by Mr. *Stumm*.

The question whether the scale of taxation of successions should be based upon the value of the property passing to the individual successors or upon the total value of the property passing on the decease of the predecessor is one for the legislature and not for the Court. There is no *a priori* presumption that the legislature will adopt either basis in preference to the other.

For these reasons I think that the appeal should be dismissed.

O'CONNOR J. This appeal raises two questions. First, whether sec. 12 of the Queensland *Succession and Probate Duties Act* 1892 is applicable to a gift coming under sec. 4 of the *Succession and Probate Duties Act* 1904 so as to render the donee liable to succession duty. Secondly, if it is so applicable, is the rate of duty payable to be calculated on the value of the donee's succession only or on the aggregate value of all the successions passing to all persons to whom beneficial interests come on the death of the same predecessor. Special leave to appeal was granted because of the importance of the first question; which I think fairly arises on the grounds of the appeal from the Commissioners to the Supreme Court. That was the only aspect of the case brought before this Court on the motion for leave. The order imposed no limitations on the grounds to be argued. Under these circumstances all grounds fairly taken in the notice of appeal are now, in my opinion, open to the appellant.

There can be, I think, little doubt as to the proper answer to

the first question. The Act of 1892, the Principal Act, and that of 1904, the Amending Act, are to be read together. Sec. 4 of the latter declares that every disposition of property shall upon the death of the donor be deemed to confer a succession on the donee. The appellant in this case is thus placed in the same position as if the property had come to him on his father's death in any of the various ways in which a succession within sec. 4 of the Principal Act may be conferred. The deed is treated as an evasion of succession duty, and the plain object of the section is to tax the beneficial interest vested thereby in the donee. Under the scheme of the Act of 1892 there is no mode of calculating the tax except under sec. 12. If that section does not apply, then sec. 4 of the Amending Act effects nothing. To give any meaning to its provisions it must be taken that the succession "deemed to be conferred" becomes on the death of the donor a succession to which sec. 12 of the Act of 1892 is to be applied in the same way as to other successions. It was contended that the words in sec. 12, "and passing upon any death to any person," are inapplicable to a deed of gift *inter vivos*. But the word "succession," as used in the Principal Act, necessarily imports a beneficial interest passing on the death of another, and in enacting expressly that the deed of gift shall on the death of the donor be deemed to have conferred a succession, the section clearly implies that for purposes of taxation the interest passing under the deed shall be dealt with as if it were a beneficial interest passing on death. It is to my mind clear, therefore, that the machinery of sec. 12 of the Principal Act can and must be applied in ascertaining the amount of the tax payable under sec. 4 of the Act of 1904. The rate at which duty is to be calculated depends upon which is the right construction of the second paragraph of sec. 12. That brings me at once to the consideration of the second question.

The issue involved is of considerable importance, affecting as it does the calculation of succession duty, not only in respect of deeds of gift under the Amending Act, but also in respect of a large proportion of the successions under the Principal Act. It appears that sec. 12 has from its first enactment, over sixteen years ago, been interpretated by the Commissioners as enabling

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them to aggregate all the successions in each estate for the purpose of fixing the rate of duty to be paid by each person on whom a succession has been conferred. Nearly six years ago the correctness of the interpretation was questioned on appeal to the Queensland Supreme Court in *In re Blissett* (1), and the Full Court upheld the Commissioners' reading of the law. This Court is now called upon to determine whether the view of the section in accordance with which succession duty has been charged and paid in Queensland for the last sixteen years is right or wrong, and whether *In re Blissett* (1) is good law. The portion of the section which has given rise to the controversy is as follows:—

"If the whole succession or successions derived from the same predecessor and passing upon any death to any person or persons amount in money or principal value to less than two hundred pounds, no duty."

The appellant's contention is that the expression "whole succession" means the whole of the successions passing to the same person on the death of the predecessor, that the tax is payable by each successor in respect only of successions which come to him, that in fixing the rate of duty the successions passing to him, if more than one pass to him, may all be aggregated, but that the Commissioners cannot fix the rate payable on his succession or successions by aggregating the total value of all the successions passing on the death of the same predecessor. The word "succession" has acquired no special meaning as a legal term. Different Statutes have used it in different senses. Its meaning in a Statute must depend upon the sense in which the particular Statute has defined and used it. Looking for the moment at the provisions of the Queensland Act of 1892 only, and taking the signification of "succession" to be that set forth in sec. 4, the interpretation adopted by the Court in *In re Blissett* (1) would appear to be in accordance with the ordinary grammatical meaning of the language used. Construed, as it must be, on the principle of *redendum singula singulis*, it provides for two sets of circumstances. First, there is the case where the whole succession passes from the same predecessor to any person. In that case the expression "whole succession" covers all succes-

(1) 1903 St. R. Qd., 320.

sions passing to that person on the death of the same predecessor. If that were the only set of circumstances in which the aggregation of values could take place, there would have been no necessity for any further words. But the section provides for another case. It uses "succession" a second time, and in the plural—"successions passing to any persons." Two sets of circumstances are therefore dealt with—successions passing to any person and successions passing to any persons. If the appellant's contention is right, the words "any persons" are superfluous and meaningless. It is not to be assumed that the legislature has used words that are superfluous and meaningless. One of the first rules of construction is to give a meaning as far as possible to every word of an enactment. The only way in which that full meaning can be given is by construing the section as empowering the Commissioners to aggregate the value of all successions passing to one person where they do pass on the same death to the one person, and also to aggregate all successions passing to several different persons where they pass on the same death to several different persons. In that view the section applies to both sets of circumstances and full effect is given to every word of it. Reading therefore the Act of 1892 according to the language it has used, and apart from its legislative history, that would seem to be the construction which best gives effect to the intention which the legislature has expressed. But there may, perhaps, be ground for the argument that the expressions used are not so free from ambiguity as to shut out the possibility of the construction contended for by the appellant. Under these circumstances it was inevitable that both sides should appeal to the history of the measure. The Act is taken very largely from the English *Succession Duties Act* 1853. The definition and the description of "succession" are adopted bodily, and the words in sec. 12 of the Principal Act which have caused the difficulty are taken directly from sec. 18. In *Hanson's* book on the English Death Duties it is stated that the expression "whole succession" in that section has been invariably construed as including only successions passing to the same person on the same death. The scheme of the Act is clearly to base the rate of duty payable in respect of each succession on the value of that succession, or if more than one on the value of

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all successions passing on the same death to the same person. Having regard to the scheme of the English Act and to the context in which the words of sec. 18 stand, it would be difficult to give them any other meaning. The appellant contends that, where words are adopted in the form in which these have been from an English Act, an inference necessarily arises that they have been used by the legislature adopting them with the meaning which had been fixed in England by judicial construction or general acquiescence for a long period. That is in general a sound rule of construction, but it is always subject to the qualification that no such inference can arise if the adopting legislature has applied the words in a different context or has indicated an intention to use them with a different meaning. It becomes essential, therefore, to inquire in what context or for what purpose has the Queensland Act of 1892 used the expressions under consideration. The first Queensland Statute imposing succession duty was passed over twenty years ago. Its title was "An Act to impose duties in respect of Estates transmitted upon death" and it was directed to be cited as the *Succession Duties Act* 1886. It levied a tax on all estates transmitted upon death in respect of which probate and letters of administration were necessary to complete title. The duty was imposed on the whole estate and was payable by the executor or administrator. The rate was calculated on the value of the whole estate transmitted, increasing in an ascending scale in accordance with the value of the whole estate. The executor or administrator was empowered to deduct from each share before paying it over the beneficiary's proportion of the total amount of duty paid. The word "succession" appears nowhere except in the title. It is plain, however, that in that Act the Queensland legislature used the word to describe the whole estate transmitted on the death of the testator or intestate though the estate might include separate beneficial interests to different persons each of which would be a succession within the meaning of the English Act of 1853. Although the liability to pay duty was not imposed directly on beneficiaries, each of them had eventually to bear the burden of his proportion of the duty and at a rate fixed in accordance with the value, not of his own

interest, but of the whole estate. That scheme of taxation, however, did not reach all the beneficial interests arising on death. Successions passing on the death of settlors, obligors and other persons on whose death successions in various ways might be conferred were still left free from taxation. The legislature therefore in 1892 repealed the *Succession Duties Act* 1886 and replaced it by the Act of 1892 which imposed duties directly on succession and levied a tax also on every grant of probate and letters of administration, at a rate proportioned to the net value of the property covered by the grant. In the interpretation therefore of sec. 12 of the Act of 1892, two things must be borne in mind. First, the legislature had used the expression "succession" to describe a whole estate consisting of many successions. Secondly, it had established the system of aggregation by exacting from each successor through the executor or administrator of the estate a rate of duty calculated on the value, not of his own succession only, but of all the successions passing from the same predecessor. It would appear, therefore, that the Queensland legislature, though adopting the words of the English section, has used them in a different context, and as part of a different scheme of assessment from that contained in the English Act. Under these circumstances it is clear that the generally accepted interpretation of the words in the English Act cannot determine the sense in which the legislature of Queensland has used them. On the contrary it is to the Queensland Statutes that we must look for guidance, to the Act of 1886, to the scheme which replaced it, and to the whole scope and purpose of the Act of 1892.

I turn now to the argument founded on Queensland legislation on the same subject matter since 1892. The Act of 1904 was passed, it must be assumed, with the knowledge of the law as laid down in *In re Blissett* (1). Sec. 7 of that Act, amongst other amendments of sec. 12, enacts the following:—

"When the total value of a succession to which any one person becomes entitled as aforesaid is less than five hundred pounds, and such succession forms part of an estate the principal value whereof exceeds one thousand pounds, then the duty payable in

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respect of such succession shall, subject as hereinafter mentioned, be at the rate of two per centum of such total value."

Assuming the proper interpretation of the original section to be that adopted in *In re Blissett* (1), the rate of duty payable in respect of the succession referred to would be ascertained by aggregating the values of all the successions passing on the same death—in other words, the whole estate of the predecessor. On that assumption one can understand the value of the whole estate of which the succession forms part being used as one of the factors in fixing the rate of duty. But, on the interpretation of sec. 12 relied on by the appellant, that factor in the calculation is meaningless. Under these circumstances a strong inference arises that the legislature in passing the Amending Act of 1904 assumed the meaning of sec. 12 to be that laid down in *In re Blissett* (1), and in its amendment adopted and acted on that view of the law. Turning now in the light of these considerations to the words which we are called upon to construe, the meaning which has been attached in England to the English Act becomes unimportant, and the intention of the Queensland legislature will, in my opinion, be best ascertained by following the most fundamental of all rules of interpretation. Give to the words as we find them their ordinary grammatical meaning; give to each as far as possible its full meaning; bear in mind the context, the scope and purpose of the whole Act and its legislative history. Applying these principles to the question of interpretation before us, I have come to the conclusion that the construction contended for by the Commissioners is that which must be adopted, and that *In re Blissett* (1) was rightly decided. It follows that in my opinion the judgment of the Supreme Court must be upheld, and the appeal dismissed.

ISAACS J. I agree with what has fallen from the learned Chief Justice as to these dispositions being, by force of the Amending Act, technically "successions" within the meaning of the Act of 1892, and liable to duty. I think with my learned brother *O'Connor* that the questions argued are open to the appellant.

On the main question I found my judgment entirely on the

(1) 1903 St. R. Qd., 320.

Act of 1904. If the matter still rested on the construction of the Act of 1892 alone, I should agree with the appellant. The former Act of 1886, although called "*The Succession Duties Act* 1886," was more nearly a Probate Duties Act. Sec. 7 of that Act made it clear the duty was imposed upon the whole of the estate of the deceased as such, and upon nothing else. The change from that system to the one introduced by the Act of 1892 was unmistakeable. From a distinct estate duty, looking to property as it *passed* from the deceased to his representatives, the impost became an equally distinct succession duty, looking to the *acquisition* of property upon death, whether out of deceased's estate or not. The basis of taxation was altered. To emphasize the completeness of the transition, therefore, probate duties are separately provided for. They are small but distinct. Now succession duty was well known in England since 1853, and the Queensland Act was based on the English Act. Such a duty seeks out the successor and inquires what property he has *received* by reason of his predecessor's death, and taxes him upon the benefit he has received: See *per Pollock* C.B. in *Attorney-General* v. *Middleton* (1). The same learned Judge subsequently expressed the principle in a few words: "When anybody gains by a death the State shares his benefit": *Attorney-General* v. *Gell* (2). Baron *Wilde*, in *Attorney-General* v. *Sefton* (*Earl*) (3), said:—"The object of taxation, therefore, was the actual benefit derived by the individual and not the property itself." Baron *Wilde's* judgment was approved by the House of Lords (4). Having thus found the subject matter of taxation we come to the imposition of the tax.

No doubt the rates and the method of arriving at them are different in the English Act and the Queensland Act. But the subject matter is the same, and the Privy Council has held in *Harding* v. *Commissioners* (5) that the terms used in this very Queensland Act are to be read in the sense affixed to them by the English tribunals. When the provisions of the Queensland Act are regarded as to what dispositions and devolutions are to be regarded as successions, it is seen that the same "predecessor," as he is technically called for the purposes of the Act, may have

(1) 3 H. & N., 125, at pp. 137, 138.
(2) 3 H. & C., 615, at p. 631.
(3) 2 H. & C., 362, at p. 374.
(4) 11 H.L.C., 257, at p. 268.
(5) (1898) A.C., 769, at p. 775.

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"successors" in the technical sense, that have no fact in common with each other except the predecessor's death. All his own estate may go to one set of successors; and all his other "successors" as defined by the Act may have no share at all in the deceased's own estate, as, for instance, where a person becomes a successor under sec. 7 on the extinction of a charge on his own property. A "successor" may even be his own "predecessor" under sec. 14, so technical are some of the provisions which create "successions." A man may have no estate at all, and yet be predecessor to several successors under the Act. Some of the successions may not arise until long after his death. It may be utterly impossible to say at his death what is the value of all the successions as to which he may ultimately prove to be the predecessor, and therefore utterly impossible to calculate at once the proper rate of duty if *In re Blissett* (1) be followed. If that decision be maintained I do not think it possible to work the Acts consistently as they stand at present. Secs. 6 and 7 are examples of the difficulty. In addition to that, the departure from the basic principle of a succession duty Act and the inherent unfairness of making one man pay for the benefit conferred upon another, and sometimes not by the same person, would make me require the most cogent words to decide that was the law. With reference to this very Act the Privy Council said in *Harding* v. *Commissioners of Stamps for Queensland* (2) that it fell within the canon of construction that as against the persons sought to be affected it should be shown quite clearly and strictly to affect them.

I do not find such clear and strict words in the Act of 1892. The words there are in themselves certainly ambiguous, and if that Act stood alone I would hold upon the whole Statute that one successor was not required to pay a higher rate merely because someone else succeeded to totally different property which possibly was not even part of the predecessor's estate.

But the Act of 1904 raises a serious difficulty. It was passed in the year immediately following *In re Blissett* (1) which decided in effect that all the "successions" attributed by the Act to the same "predecessors" were to be bunched together and the rate thereby fixed for all the successions. A bunch not exceeding £1,000

(1) 1903 St. R. Qd., 320.

(2) (1898) A.C., 769, at p. 776.

carried a rate of 2 per cent., and as the total values rose, the rate rose up to 10 per cent.—subject always to provisoes. A succession of £500 in favour of one person might have to bear a rate of from 2 to 10 per cent. according to the total value of all the successions flowing from the predecessor, whether part of his estate or not. The legislature have now enacted that if any one person obtains a succession not exceeding £500 which is part of an estate exceeding £1,000—meaning evidently "even exceeding £1,000"—it shall not bear more than 2 per cent. The value of the whole estate was, according to *In re Blissett* (1), the measure of the rate. In the particular case mentioned that value is no longer to affect the rate. Very reluctantly I have been forced to the conclusion that the legislature by the Act of 1904 adopted the construction arrived at in *In re Blissett* (1). They have to a certain extent modified its operation, and have by what seems to me necessary implication deliberately left it otherwise to stand. Whether further modification is desirable either for consistency or practicable working or any other reason is for Parliament itself to determine. As a matter of law, the case appears to me to be governed by *Attorney-General* v. *Clarkson* (2), approved though distinguished by the Privy Council in *Attorney-General for Victoria* v. *Melbourne Corporation* (3). The observations of *Sir Francis Jeune*, in *Clarkson's Case* (4), are in point. He said:—"Our duty is to interpret the meaning of the legislature, and if the legislature in one Act have used language which is admittedly ambiguous, and in a subsequent Act have used language which proceeds upon the hypothesis that a particular interpretation is to be placed upon the earlier Act, I think the Judges have no choice but to read the two Acts together, and to say that the legislature have acted as their own interpreters of the earlier Act."

On these grounds I concur in the judgment that this appeal should be dismissed.

Appeal dismissed.

Solicitors, for appellant, *Atthow & McGregor.*

Solicitor, for respondents, *G. V. Hellicar*, Crown Solicitor.

H. V. J.

(1) 1903 St. R. Qd., 320.
(2) (1900) 1 Q.B., 156.
(3) (1907) A.C., 469, at p. 474.
(4) (1900) 1 Q.B., 156, at p. 165.