

[HIGH COURT OF AUSTRALIA.]

THE REGISTRAR OF PROBATES FOR } APPELLANT;
SOUTH AUSTRALIA }

AND

RYMILL AND OTHERS RESPONDENTS.

THE REGISTRAR OF PROBATES FOR } APPELLANT;
SOUTH AUSTRALIA }

AND

ELDER'S TRUSTEE AND EXECUTOR COM- } RESPONDENTS.
PANY LIMITED }

ON APPEAL FROM THE SUPREME COURT OF
SOUTH AUSTRALIA.

Succession Duty—Assessment—Property derived from deceased person—Net present value of property derived—Deduction—Commonwealth estate duty—Succession Duties Act 1893 (S.A.) (No. 567), secs. 6, 7, 8; Sched. 2—Estate Duty Act 1914 (No. 25 of 1914), sec. 3. H. C. OF A.
1917.

ADELAIDE,
May 31;
June 1.

By sec. 6 of the *Succession Duties Act 1893* (S.A.) it is provided that "Every administrator" (which term includes an executor) "shall pay to the Registrar" of Probates "succession duties, to be assessed by the Registrar, according to the rates mentioned in the Second Schedule to this Act." By the Second Schedule, which is headed "Duties on property derived by any person from a deceased person to be assessed upon the net present value of such property," rates of duty are specified which vary according to the net present

Isaacs, Powers
and Rich JJ.

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value of the property and the relationship of the beneficiary to the deceased. By sec. 7 it is provided that "For the purposes of this Act property derived from a deceased person shall be subject to duty in so far as it comprises or is portion of, or is payable out of—(a) His real property in the said province . . . : (b) His personal property, wherever the same shall be . . . , if the deceased was, at the time of his death, domiciled in the said province : or (c) His personal property in the said province . . . , including all debts, money, and choses in action receivable or recoverable by the administrator in the said province, if the deceased had, at the time of his death, a foreign domicile. All duties lawfully paid in any place out of the said province in respect of property being out of the province, and derived from any deceased person, may be deducted from the duty to which the same property is liable under this Act." Sec. 8 provides that "The duty payable under this Act shall be a first charge upon the property derived from the deceased person."

Held, that, for the purpose of assessing succession duties under that Act, the "property derived by any person from a deceased person" is the property or a share of the property as owned by the latter at the time of his death.

In re Gray, (1899) S.A.L.R., 68, approved.

Held, that in ascertaining the "net present value" of the "property derived by any person from a deceased person" there should not be deducted from the value of the property a proportional part or any part of the duty payable to the Commonwealth in respect of the estate of the deceased person under the Commonwealth *Estate Duty Act* 1914.

Decision of the Supreme Court of South Australia, reversed.

APPEALS from the Supreme Court of South Australia.

Frank Rymill, who died on 26th May 1915, left real property in South Australia of the value of £40,383 and in New South Wales of the value of £1,000, and personal property in South Australia of the value of £138,951 18s. 9d. and in Victoria, Queensland and Western Australia of the value of £10,692 5s. 9d. Estate duty upon the estate of the testator was payable to the Commonwealth under the *Estate Duty Act* 1914, and amounted to about £17,253. For the purposes of the assessment of the succession duty payable in respect of the testator's estate under the South Australian *Succession Duties Act* 1893 the testator's executrix, Annie Rymill, and his executors, Harry Esmond Rymill and Sidney Rymill, claimed that the amount payable under the Commonwealth *Estate Duty Act* 1914 should be allowed as a deduction. The Registrar of Probates disallowed the deduction, and assessed the dutiable net

value of the property derived from the deceased by each of the persons beneficially entitled and the amount of duty payable thereon without having regard to the amount claimed as a deduction. Thereupon the executrix and executors appealed to the Supreme Court by way of summons, asking for an order setting aside or varying the assessment made by the Registrar; a declaration that the deduction had been improperly disallowed, that the estate duty payable to the Commonwealth was a lawful and proper deduction to be made in ascertaining the dutiable net value of the property derived from the deceased by each of the persons beneficially entitled, and that the amounts of duty assessed by the Registrar were excessive by reason of the Registrar not having allowed the deduction; and an order that the assessment be varied and reduced in accordance with such declaration.

In a similar appeal by Elder's Trustee and Executor Co. Ltd., executor of the will of James Harvey, deceased, in respect of a similar assessment by the Registrar in respect of the property derived from the deceased, the same question of law arose upon a similar state of facts.

The two appeals were heard together by *Gordon J.*, sitting as a Full Court, and in each case he made the orders and declaration asked for.

The Registrar of Probates in each case now appealed to the High Court, and the two appeals were heard together.

Cleland K.C. (with him *Richards* and *Hicks*), for the appellant. Whether the duty imposed by the *Succession Duties Act* 1893 be regarded as a succession duty or not, there is no justification for deducting the Federal estate duty. The duty is imposed on the administrator, and the amount of the duty is to be ascertained by reference to the share of a particular beneficiary of the net present value of the estate of the deceased, and not by reference to the net value of his share of the estate. The net present value of the state is the surplus of the assets of the deceased over his liabilities, and there is no authority to deduct anything from the value of his assets except his liabilities. [He referred to *In re Lyell* (1)].

(1) 8 N.Z.L.R., 414.

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H. C. OF A. *Piper* K.C. and *Bennett*, for the respondents. The duty imposed
 1917. by the *Succession Duties Act* 1893 is a succession duty, and
 { REGISTRAR is imposed upon that which ultimately comes to the hands of
 OF PROBATES the beneficiaries. The intention is to tax the benefit derived.
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 RYMILL In ascertaining the net present value at the time of the death of the
 AND deceased, it would therefore be necessary to take into account the
 ELDER'S charge made by the Federal Parliament in the shape of estate duty.
 TRUSTEE That charge is a testamentary expense (*Peter v. Stirling* (1); *Re*
 AND *Maurice*; *Brown v. Maurice* (2)). [They also referred to *Archibald*
 EXECUTOR *v. Commissioners of Stamps* (3); *In re Gray* (4).]
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Cleland K.C. was not called upon to reply.

Cur. adv. vult.

June 1.

The judgment of the COURT, which was read by ISAACS J., was as follows :—

The point which is the same in both cases is a very short one. It is really whether the “property derived” by a successor from his deceased predecessor is the property or a share of the property as owned by the predecessor at the time of his death, or is that property or a share of that property less the amount of Commonwealth estate duty. In our opinion it is the former.

The nature of the succession duty under the Act of 1893 (No. 567) is a duty, as the name denotes, on the succession by the derivative owner from the predecessor and the duty is substantially on the property derived by the successor. It has been correctly dealt with in *In re Gray* (4). So far we agree with the contention of the respondents. So did the learned primary Judge. The respondents, however, maintained that, in arriving at the net present value of the derived property, there should be deducted, among any other obligations, an adjusted allowance in respect of the Commonwealth estate duty upon the whole estate of the deceased. It is said the Federal Act is paramount, and taps, so to speak, the deceased's estate before it reaches the successors, who get the residue only.

(1) 10 Ch. D., 279, at p. 284.

(2) 75 L.T., 415.

3) 8 C.L.R., 739.

4) (1899) S.A.L.R., 68.

That is based on a misconception and a misinterpretation of the State Act. H. C. OF A. 1917.

That Act, passed in 1893, must have the same meaning to-day as it had then. Sec. 6 makes the administrator the hand for payment of the duties prescribed by the Second Schedule, but he is bound by sec. 31 to adjust their incidence. The basis of taxation is declared by the Second Schedule to be the "net present value" of the property derived. Sec. 7 declares how far the "property derived" is subject to the duty. Sec. 8 makes the duty "a first charge" on the "property derived."

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It is clear, and indeed was admitted in argument, that the "net present value" of the derived property was its value undiminished by the State duty although that was declared "a first charge." Now, what does that connote? It necessarily connotes that the Legislature meant the "derived property" which was taxed to be the property just as it passed from the predecessor to the successor. In other words, it is the identical property which the predecessor held, that is either the whole or the proper portion derived by the successor according to the ordinary law of devolution and irrespective of taxation.

If confirmation of this view were needed, it is found in the Second Schedule itself as well as in the Third Schedule. The provisoes to those schedules declare that in the case of certain beneficiaries half rates shall be charged "if the net present value of the whole of the estate of the deceased is under £2,000." Nothing is there said about actual benefit received, and the words obviously relate to the net value of the estate as the deceased left it. Reading that in connection with the words already interpreted, no room seems left for any doubt.

That, then, was the legislative will of the Parliament of South Australia. The mere fact that another competent legislature for its own purposes has since imposed another tax upon the estate of the deceased does not alter the meaning of the South Australian Act. The Commonwealth Act and the State Act operate simultaneously and independently. Each imposes a tax on the occasion of the predecessor's death—the one based on the value of the estate he leaves, and the other on the value of the share or shares of that

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property to which according to the ordinary law his successor or successors become entitled by reason of his death. The mere fact that the Commonwealth charge takes precedence of the State charge is immaterial to the point we are considering ; it is a superior remedy, but it does not alter the nature of the right.

For these reasons we are of opinion that the Registrar's contention is correct, and that the appeals should be allowed with costs in both Courts.

Appeals allowed. Orders appealed from discharged. Appeals to Supreme Court dismissed with costs. Appellant to have costs of appeals to this Court.

Solicitor for the appellant, *F. W. Richards*, Crown Solicitor for South Australia.

Solicitors for the respondents, *Stock & Bennett ; Bakewell, Stow & Piper.*

B. L.