

[HIGH COURT OF AUSTRALIA.]

THE COMMISSIONER OF STAMPS FOR
QUEENSLAND } APPELLANT;
RESPONDENT,

AND

ELLIOTT BROTHERS LIMITED RESPONDENT.
PETITIONER,

ON APPEAL FROM THE SUPREME COURT OF
QUEENSLAND.

H. C. OF A. *Succession and Probate Duties—Foreign company carrying on business and having*
1919. *assets in Queensland—Duty on shares of deceased shareholder—Rate of duty—*
— *Succession and Probate Duties Act 1904 (Qd.) (4 Edw. VII. No. 17), sec. 11*
SYDNEY, *—Succession and Probate Duties Acts Amendment Act 1918 (Qd.) (9 Geo. V.*
Nov. 24; *No. 16), sec. 22.*
Dec. 4.

Knox C.J.,
Gavan Duffy
and Rich J.J.

By sec. 11 of the *Succession and Probate Duties Act of 1904 (Qd.)*, as amended by sec. 22 of the *Succession and Probate Duties Acts Amendment Act of 1918 (Qd.)*, it is provided that a "foreign company," which is defined as a company incorporated according to the laws of some country other than Queensland, shall, if it carries on business and has assets in Queensland, be registered there (sub-sec. 1). It is then provided by sub-sec. 7 that upon the death of a member of any such foreign company the company shall furnish certain particulars as to his death and as to the number and value of its shares held by him at the date of his death, and shall pay duty thereon. The sub-section then continues:—"Duty under this section shall be paid by the foreign company, at the rate mentioned in the table hereunder set out, on the value of the shares or other interest held by the deceased at the time of his death. . . . Table of Duties.—Where the value of the shares or other interest of the deceased does not exceed £500, 2 per cent. ; exceeds £500 but does not exceed £1,000, 3 per cent. ;" (and so on): "Provided that (i.) No duty shall be payable by a foreign company under this section where succession duty has been paid in Queensland in respect of all shares or other interest in the company held by the deceased at the time of his death ; (ii.) Where a foreign company carries on any business outside

Queensland, such part of the value of the shares or other interest on which duty is payable by the company under this section shall bear the same proportion to the full value of such shares or other interest as the assets of the company situated in Queensland bear to the total assets of the company."

Held, that when a foreign company carries on business and has assets in Queensland the duty payable by the company under sec. 11 of the Act of 1904 as amended by sec. 22 of the Act of 1918 is to be calculated in every respect, including the rate at which the duty is payable, as if the value of the shares held by the deceased shareholder were not the full value of such shares but such part of the full value of such shares as is ascertained in the manner prescribed by proviso (ii.) to sub-sec. 7.

Decision of the Supreme Court of Queensland : *Elliott Brothers Ltd. v. Commissioner of Stamps*, (1919) S.R. (Qd.), 262, affirmed.

H. C. OF A.
1919.

COMMISSIONER OF
STAMPS
(Qd.)

v.
ELLIOTT
BROS. LTD.

APPEAL from the Supreme Court of Queensland.

Elliott Brothers Ltd., by a petition under sec. 50 of the *Succession and Probate Duties Act of 1892* (Qd.), appealed to the Supreme Court from an assessment by the Commissioner of Stamps for Queensland of the duty payable by the Company under sec. 11 of the *Succession and Probate Duties Act of 1904* (Qd.), as amended by sec. 22 of the *Succession and Probate Duties Acts Amendment Act of 1918*. The petition was substantially as follows :—

1. Harry Solomon Levy, late of Woollahra, Sydney, in the State of New South Wales, wholesale druggist, died at Woollahra aforesaid on 4th December 1918. Probate of the will of the said Harry Solomon Levy was granted to Octavia Maud Levy of Sydney by the Supreme Court of New South Wales in its probate jurisdiction on 22nd January 1919, and the said grant of probate was resealed by the Supreme Court of Queensland on 8th May 1919.

2. Your petitioner (hereinafter called "the Company") is a company duly incorporated according to the laws of the State of New South Wales, and carries on business in Queensland and has assets in Queensland and has a duly registered office at Brisbane in Queensland for the purpose of sec. 11 of the *Succession and Probate Duties Act of 1904* as amended by the *Succession and Probate Duties Acts Amendment Act of 1918*, and is a foreign company within the meaning of the said section.

3. At the time of his death the said Harry Solomon Levy was domiciled in New South Wales, and was the registered holder of the

H. C. OF A. following shares in the Company, namely, 21,000 preference shares
1919. and 47,250 ordinary shares.

COMMISSIONER OF
STAMPS
(Q.D.)
v.
ELLIOTT
BROS. LTD.

4. The total value of the said shares is £83,431 5s.

5. Succession duty has not been paid in Queensland in respect of the said shares held by the said Harry Solomon Levy at the time of his death.

6. The part of the value of the said shares on which succession duty is payable by the Company under the provisions of sec. 11 of the *Succession and Probate Duties Act of 1904* as amended by the *Succession and Probate Duties Acts Amendment Act of 1918* is £10,328 15s. 10d.

7. On 15th July 1919 the Commissioner of Stamp Duties assessed the duty payable by the Company under the said sec. 11, in respect of the value of the said shares of the said Harry Solomon Levy in the Company, at £1,549 6s. 4d., being the amount calculated at the rate of 15 per cent. on the said sum of £10,328 15s. 10d.

8. The Company, being dissatisfied with the said assessment of succession duty, gave notice in writing on 29th July 1919 to the Commissioner of Stamp Duties of intention to appeal against the same, and duly furnished to the said Commissioner a statement of the grounds of such appeal pursuant to the provisions of sec. 50 of the *Succession and Probate Duties Act of 1892*.

9. The Company contends (1) that succession duty is payable by the Company under the provisions of sec. 11 aforesaid on the said sum of £10,328 15s. 10d. at a rate not greater than 9 per cent.; (2) that the assessment made by the said Commissioner is contrary to law.

10. The Commissioner of Stamp Duties contends that succession duty is payable by the Company under the said sec. 11 at the rate of 15 per cent. on the said sum of £10,328 15s. 10d.

Your petitioner therefore humbly prays that this Honourable Court will declare: (1) at what rate succession duty is to be assessed on the said sum of £10,328 15s. 10d.; (2) by whom the costs of and incidental to this petition and appeal should be paid.

The appeal was heard by the Full Court, which ordered and declared that the duty should be assessed at the rate of 9 per cent.

in lieu of the rate of 15 per cent. as assessed by the Commissioner : *H. C. OF A.*
Elliott Brothers Ltd. v. Commissioner of Stamps (1). 1919.

From that decision the Commissioner of Stamps now appealed to the High Court.

COMMISSIONER OF
STAMPS
(QD.)
v.
ELLIOTT
BROS. LTD.

Macrossan and Power, for the appellant.

Stumm K.C. and *S. A. Thompson*, for the respondent.

[During argument reference was made to *Archibald v. Commissioner of Stamps* (Qd.) (2) ; *In re Blissett* (3) ; *Re Hogarth's Will* (4) ; *Partington v. Attorney-General* (5).]

Cur. adv. vult.

The following judgments were read :—

Dec. 4.

KNOX C.J. AND GAVAN DUFFY J. The respondent Company was incorporated according to the laws of New South Wales, and at all relevant times carried on business in Queensland as well as in New South Wales and elsewhere. One H. S. Levy, who was domiciled in New South Wales, was, at the date of his death on 4th December 1918, the holder of 68,250 shares in the respondent Company. By virtue of sec. 22 of the Queensland Act of 1918 to amend the *Succession and Probate Duties Acts* 1892-1915, which substituted a new section for sec. 11 of the Act of 1904, the respondent Company became liable to pay duty in respect of these shares. The full value of the shares was £83,431 5s., but it was conceded that as the Company carried on business and had assets outside Queensland duty was payable by the Company on a portion only of such value, and that portion has been assessed at £10,328 15s. 10d. The question raised for our decision is as to the rate at which duty is to be calculated on this sum—the Commissioner claiming that 15 per cent., and the respondent Company that 9 per cent., is the proper rate. The solution of this question depends on the true construction of sub-sec. 7 of the new sec. 11 referred to above. The Supreme Court of Queensland, from whose decision this appeal is brought, held that the proper rate of duty was 9 per cent.

(1) (1919) S.R. (Qd.), 262.

(2) 8 C.L.R., 739, at pp. 748, 752.

(3) (1903) S.R. (Qd.), 320,

(4) 7 Q.L.J. (N.C.), 76.

(5) L.R. 4 H.L., 100, at p. 122.

H. C. OF A.
1919.

COMMISSIONER OF
STAMPS
(QD.)
v.

ELLIOTT
BROS. LTD.

KNOX C.J.
Gavan Duffy J.

Sub-sec. 1 of sec. 11 defines "a foreign company" as a company incorporated according to the laws of some country other than Queensland, and that sub-section and the succeeding sub-sections, 2, 3, 4, 5 and 6, provide for the registration in Queensland of every such company which carries on business and has assets in Queensland. Sub-sec. 7 enacts that on the death of a member of any such foreign company the company shall furnish certain particulars as to his death and as to the number and value of the shares in the company held by him at the date of his death, and shall pay the duty thereon. The portion of the sub-section on which the argument in this case turned is as follows:—"Duty under this section shall be paid by the foreign company, at the rate mentioned in the table hereunder set out, on the value of the shares or other interest held by the deceased at the time of his death, without any exemption or deduction whatsoever except as hereinafter provided, and such duty may be recovered by the Commissioners from the company as a debt due to His Majesty after the expiration of six months from the death of the deceased or such further time as the Commissioners may have allowed as aforesaid:—Table of Duties.—Where the value of the shares or other interest of the deceased does not exceed £500, 2 per cent.; exceeds £500 but does not exceed £1,000, 3 per cent.; exceeds £1,000 but does not exceed £2,000, 4 per cent.; exceeds £2,000 but does not exceed £3,000, 5 per cent.; exceeds £3,000 but does not exceed £5,000, 6 per cent.; exceeds £5,000 but does not exceed £7,500, 7 per cent.; exceeds £7,500 but does not exceed £10,000, 8 per cent.; exceeds £10,000 but does not exceed £15,000, 9 per cent.; exceeds £15,000, 9 per cent., together with an additional 1 per cent. on the total value for every £5,000 or part of £5,000 in excess of £15,000, but so that such rate shall not exceed 15 per cent.: Provided that (i.) No duty shall be payable by a foreign company under this section where succession duty has been paid in Queensland in respect of all shares or other interest in the company held by the deceased at the time of his death; (ii.) Where a foreign company carries on any business outside Queensland, such part of the value of the shares or other interest on which duty is payable by the company under this section shall bear the same proportion to the full value of such shares or other interest

as the assets of the company situated in Queensland bear to the total assets of the company.”

The opening sentences of the portion of the sub-section quoted above clearly direct payment of duty at the rate mentioned in the table set out therein on the value of shares held by the deceased without any exemption or deduction “except as hereinafter provided.” These words introduce the exemption contained in clause (i.) of the proviso and the modification or limitation contained in clause (ii.), on the true construction of which the decision in this case depends.

Clause (ii.) applies only to the case of a “foreign company” which carries on business outside Queensland and which the Legislature assumes to have assets both in and outside that State. In our opinion the effect of this clause is to provide that, notwithstanding anything to the contrary contained in the sub-section, the duty payable in the circumstances stated in the clause shall be paid, not on the value of the shares or other interest, but on the value of a part of the shares or other interest to be ascertained in the manner therein directed and that in applying the table of duties to a case within the clause the words “value of the shares or other interest of the deceased” shall mean the value of the part so ascertained. We think that the words used in the clause in question clearly express the intention of the Legislature to be that, when a foreign company carries on business and has assets both in and outside Queensland, the duty payable by it shall be calculated in every respect as if the value of the shares held by the deceased shareholder were not the full value of such shares but such part of the full value as is ascertained in the prescribed manner. The result is that, in the case of such a company, wherever the phrase “value of the shares or other interest” is used in connection with the calculation or ascertainment of the amount or rate of duty payable, this phrase must be construed in the light of the proviso and in accordance with the definition furnished thereby, *i.e.*, as meaning the value of a part of the shares having the same proportion to the full value thereof as the assets of the company in Queensland bear to its total assets.

It is clear that the definition furnished by the proviso must be applied in determining the value on which duty is payable, indeed

H. C. OF A.
1919.

COMMISSIONER OF
STAMPS
(QD.)

v.
ELLIOTT
BROS. LTD.

—
Knox C.J.
Gavan Duffy J.

H. C. OF A.
1919.

COMMISSIONER OF
STAMPS
(QD.)
v.

ELLIOTT
BROS. LTD.

Knox C.J.
Gavan Duffy J.

this was not disputed by the appellant, his contention being that even if this be so the literal meaning of the words at the head of the table of duties, "Where the value of the shares . . . of the deceased does not exceed," &c., is not affected by the definition contained in the proviso, but we see nothing to justify the construction for which he contends. We think the object of the Legislature as expressed in the sub-section including the proviso was to levy duty on an amount represented by so much of the value of shares in a "foreign company" as might fairly be regarded as attributable to assets of the company situate in Queensland and at a rate determined by that amount and not by the amount of the value of the shares. The construction which we have placed on the words used gives effect to the words of the sub-section and to the apparent intention of the Legislature.

For these reasons we think the decision of the Supreme Court of Queensland should be affirmed, and the appeal dismissed with costs.

RICH J. I agree that the appeal should be dismissed. As the Acts are so important and in the argument the Crown has emphasized that importance, suggesting further possible consideration, I think it my duty to express in my own words my view as to the interpretation of the Acts before us. The question for decision is whether the Crown is entitled to duty on £10,328 15s. 10d. at the rate of 9 per cent. on that amount, or to 15 per cent. on that amount. The amount itself, viz., £10,328 15s. 10d. is admittedly the proper amount on which to calculate the duty, the dispute being only as to the rate to be applied. The respondent says that the rate depends on the taxable amount; while the Crown contends that the rate depends on the full value of the interest of the deceased, the actual amount of tax payable being cut down to the proportion of the Queensland assets of the Company.

The decision turns on the proper construction of sub-sec. 7 of sec. 11 of the *Succession and Probate Duties Act of 1904* as inserted by sec. 22 of the Act of 1918. I find it necessary to read that sub-section as a whole in order to arrive at the true meaning of every part, and before even considering that sub-section we must read sec. 2 of the Act of 1895, as amended by sec. 9 of the Act of 1904

and sec. 19 of the Act of 1918. That section amending the general *Succession and Probate Duties Act of 1892* declared that all property within Queensland—*i.e.*, actually within Queensland—is to be subject to succession duty although the owner's domicile was not in Queensland. The section then deals with a particular kind of property belonging to a testator or intestate: where he holds a share or other interest in a company incorporated in Queensland and is registered in a branch register—which means that he is probably not domiciled in Queensland—his share or interest is deemed to be situated in Queensland for the purpose of succession duty as if he were registered at the head office in Queensland. So far, it is an extension of the individual liability. The section requires the company to “pay the duty”; the rate is fixed, and finally the section says that any payment by the company of the duty “shall be deemed to be a payment on behalf of the personal estate of such member,” and may be deducted, &c. Up to this point the Legislature was dealing with interests which might be said in a sense to be actually situated in Queensland. The Act of 1918, in the new sec. 11, deals with the case of a foreign company which carries on business in Queensland in whole or in part, and provides that on the death of a member of that company (and apparently wherever he is domiciled) the whole of his interest shall be deemed to be situated in Queensland and to be liable to succession duty as if the company were a Queensland company; in other words, though the company is foreign and its head office may be foreign and the member's domicile is foreign, his interest in the company is fictionally declared to be locally situate in Queensland. Up to this point, again, it is apparently an individual liability, and, if nothing more were said, the interest would be taken into account with the rest of any estate and effects of the deceased, subject to deductions under the general provisions of the Acts (see sec. 12 of the Act of 1892, as amended by sec. 7 of the Act of 1918).

The sub-section then provides that the company shall “pay the duty thereon,” and the duty is made a debt due by the company and payable at a rate mentioned. No question has been raised as to the competency of the Legislature to impose the tax; therefore, I do not consider how far the principle stated by Lord *Macnaghten*

H. C. OF A.
1919.

COMMISS-
SIONER OF
STAMPS
(QD.)

v.
ELLIOTT
BROS. LTD.

Rich J.

H. C. OF A.
1919.

COMMIS-
SIONER OF
STAMPS
(QD.)
v.

ELLIOTT
BROS. LTD.

Rich J.

in *Commercial Cable Co. v. Attorney-General of Newfoundland* (1) would apply. I cannot, however, help observing, should the question ever arise, that, in addition to the circumstance that the company is foreign and that its head office may be foreign and the member's domicile is foreign, it may also be that the member's nationality and allegiance are foreign and his interest in the company may according to the law of the company's incorporation have to some extent at least the character of realty with a foreign *situs*. However, for the reason I have stated I pass these matters by, and accordingly treat the matter as one of construction only.

The sub-section taxes what is fictionally taken to be the Queensland value of the deceased's interest in the company, the Queensland value being, (1) where the company trades solely in Queensland, the full value of that interest, called "the total value," and, (2) where the company trades partly in Queensland and partly elsewhere, the proportionate value of that interest measured by the proportion of the company's assets in Queensland relative to its total assets, and called "such part of the value." The table of duties applies to the taxable "value" of the deceased's Queensland interest, whichever of the two it may be found to be.

I do not think it reasonable to assume that the Queensland Legislature carried its fiction further than that. I also think that if the intention of the Act was that for which the Crown contends, the second proviso to sub-sec. 7 would not have made "part of the value" dutiable, but would rather have used some expression such as "deducted from the duty" as in sec. 12, sub-sec. 4 (a), of the Act of 1892, as amended by sec. 7 of the Act of 1918.

For these reasons I agree that the appeal fails.

Appeal dismissed with costs.

Solicitor for the appellant, *W. F. Webb*, Crown Solicitor for Queensland.

Solicitors for the respondent, *Foxton, Hobbs & Macnish*, Brisbane.

B. L.