Appl Jekyll v Commissioner of Stamp Duties (Qld) (1962) 106 CLR 353

Appl Stamp Duties Commissioner of (NSW) v Pearse (1951) 84 CLR 490

[HIGH COURT OF AUSTRALIA.]

THE COMMISSIONER OF STAMP DUTIES FOR QUEENSLAND . . . . Appellant;
Respondent,

AND

BEAK AND OTHERS . . . . . Respondents.
Appellants,

ON APPEAL FROM THE SUPREME COURT OF QUEENSLAND.

H. C. OF A. 1931.

SYDNEY, Nov. 18, 19; Dec. 3.

Gavan Duffy C.J., Starke, Dixon and McTiernan JJ.

Succession Duty—Disposition of property—Family company—Father, sons and daughters—Gift of shares to children—Liability to duty—Beneficial ownership—Reservations in favour of donor—Surrounding circumstances and subsequent conduct of parties—"Engagement, secret trust, or arrangement"—Value of shares—Commissioner's discretion and opinion—Appeal therefrom—Succession and Probate Duties Acts 1892 *to* 1920 (*Q.*) (56 *Vict. No.* 13—10 *Geo. V. No.* 29), *secs.* 10 (2)*, (3)*, 47*, 50.*

In 1910 the deceased, who had six sons and three daughters, formed a company for the purpose of taking over his five stations, and carrying on the business of a grazier. The capital of the company was £40,000 consisting of 4,000 £10 shares, 3,910 of which were issued as fully paid to the deceased the remainder being equally divided among his children; the shares of one son and one daughter being subsequently acquired by the deceased by devolution and transfer respectively. The deceased, who became a director in 1914 after his return from overseas, acted as managing director. The sons were employed

* The *Succession and Probate Duties Acts* 1892 *to* 1920 (Q.) provide by sec. 10 that "(1) When a disposition of property is made to take effect at a period ascertainable only by reference to the date of the death of a person . . . such disposition shall be deemed to confer a succession on the person in whose favour the same is made. (2) When a disposition of property purports to take effect presently . . . but by the effect or in consequence of any engagement, secret trust, or arrangement (whether or not such engagement, trust, or arrangement is legally enforceable), the beneficial ownership, use, or enjoyment of such property, or any . . . dividends, or income derived therefrom, does not bona fide pass according to such disposition, but in fact is wholly

H. C. OF A. 1931. COMMISSIONER OF STAMP DUTIES (Q.) v. BEAK.

in the management of stations of the company or otherwise in the conduct of its business at comparatively small salaries, their living expenses being charged to the company's account. From time to time the deceased obtained large sums of money from the company's funds for a great variety of private purposes. On 20th May 1920 he made transfers by way of gift of 486 shares to each of his surviving five sons, and in October of that year reserves of profits were capitalized, 2,800 £10 bonus shares fully paid being issued to the shareholders, of which each son received 347 and two daughters 7 each. In the same year new articles were adopted by which the deceased was given the power of vetoing anything of which he did not approve. The company suffered some losses between 1920 and 1925, but in October 1925 and December 1926 dividends of 12½ per cent and 10 per cent respectively were declared for the financial years immediately preceding, such dividends not being credited to the children's accounts until after the declaration of the second dividend. Upon the death of the deceased in 1927 the Commissioner of Stamp Duties claimed succession duty on the shares transferred to the children. It was shown that in 1919 the deceased borrowed some £60,000 without interest from the company, and distributed it among his three daughters, who deposited the money with the company as a loan without interest; the daughters subsequently agreed to accept a smaller sum than that lent, and to accept payment, less any interim payments, at the company's convenience after the death of the deceased.

Held, that succession duty was not payable with respect to the shares transferred to the children, because (1) the facts did not disclose, either directly or inferentially, the existence of any "engagement, secret trust, or arrangement," within the meaning of sec. 10 (2) of the *Succession and Probate Duties Acts* 1892 *to* 1920 (Q.), between the deceased and his children in relation to the shares

or in part received, enjoyed, or used by the disponor until his death . . . then such person shall be deemed to acquire the property as a succession derived from the person making the disposition as the predecessor. The burden of proving that the beneficial ownership, use, and enjoyment of such property, or of the . . . dividends, and income (if any) derived therefrom, wholly took effect in favour of and passed to such person immediately on such disposition of property shall lie upon him, and failing such proof he shall be deemed to have acquired the property as a succession derived as aforesaid. (3) When a disposition of shares . . . (*a*) Purports to have been made by way of immediate gift *inter vivos* . . . and the disponee did not during the lifetime of the disponor derive a yearly benefit in respect of such shares . . . of not less than the income which the value of such shares . . . each year would have produced if prudently invested in authorized investments, within the meaning of the *Trustees and Executors Acts* 1897 *to* 1906, then such disponee shall be deemed to acquire such shares . . . as a succession derived from the disponor . . . as the predecessor. . . . The burden of proving . . . (*b*) That the disponee of any shares . . . derived a yearly benefit in respect of such shares . . . to the extent aforesaid, shall lie upon the disponee" &c. Sec. 47 provides that "The Commissioner may, in his discretion, adopt as the value of any shares . . . in any company . . . such sum as, in the opinion of the Commissioner, the holder thereof would receive in the event of the company being voluntarily wound up on the date when the succession took effect." Sec. 50 provides that "Any accountable party dissatisfied with the assessment of the Commissioner may . . . appeal by petition . . . to the Supreme Court of Queensland."

in question, and (2) as the revenues received or receivable by the children in respect of the shares had not been diminished or withheld by reason of any condition imposed by the deceased or other transaction between him and his children, the matter was not affected by the provisions of sec. 10 (3) of those Acts.

Held, also, that the provision in sec. 10 (2) of the *Succession and Probate Duties Acts* 1892 *to* 1920 as to onus of proof should not be interpreted so as to make the liability to succession duty depend wholly upon proof of the immediate and complete enjoyment of the gift and all its advantages.

Held, further, that the power conferred upon the Commissioner by sec. 47 of the *Succession and Probate Duties Acts* 1892 *to* 1920 is a power to be exercised in the making of an assessment, and is, therefore, open to review under sec. 50 of those Acts.

Decision of the Supreme Court of Queensland (Full Court): *Commissioner of Stamp Duties* v. *Beak*, (1931) S.R. (Q.) 219, affirmed.

APPEAL from the Supreme Court of Queensland.

In two assessments made by him under the *Succession and Probate Duties Acts* 1892 *to* 1920 (Q.) in relation to the death of Montague Beak, who died on 16th April 1927, the Commissioner of Stamp Duties for the State of Queensland claimed that certain shares in the Beak Pastoral Co. Ltd., which at the time of the death of the said Montague Beak were held respectively by each of five of his sons and each of two of his daughters, were acquired, or should be deemed to have been acquired, as a succession derived by his respective children from him as the predecessor. Also, although in the return submitted by the executors of Beak's will the value of shares in the Beak Pastoral Co. Ltd. was shown as being £22 each, the Commissioner assessed the value of each such share at £32 10s., by the process of taking the values of properties as disclosed in the Company's balance-sheets less the liabilities and dividing the resultant sum by the number of shares issued; the latter sum being, in his opinion, the amount per share that the holders would have received on a voluntary winding-up of the Company.

Against the assessments, the deceased's children (two of whom were the executors of his will) appealed by way of petition to the Supreme Court of Queensland, on the ground that the shares in question were not, in the circumstances, a succession to them respectively within the meaning of the *Succession and Probate Duties Acts* 1892

H. C. OF A. 1931.

COMMISSIONER OF STAMP DUTIES (Q.) v. BEAK.

to 1920, and, further, that the value of the shares was as stated in the return, and not as assessed by the Commissioner. As to the latter the Commissioner contended that as he had adopted the value in the assessment in the exercise of a discretion conferred upon him by sec. 47 of the *Succession and Probate Duties Acts* 1892 *to* 1920, there was no appeal therefrom. The appeal was heard before *E. A. Douglas* J., who held that the shares were not liable to succession duty, and also that, on a proper construction of secs. 47 and 50 of the *Succession and Probate Duties Acts* 1892 *to* 1920, it could not properly be held that the Legislature had committed to the Commissioner of Stamp Duties without any appeal the right to fix the value of shares or stock of any company. On the evidence before him his Honor fixed the value of the shares in question at £25 each.

An appeal by the Commissioner to the Full Court from this decision was dismissed: *Commissioner of Stamp Duties* v. *Beak* (1).

From the decision of the Full Court the Commissioner now appealed to the High Court both as to liability to succession duty and the right of appeal from the Commissioner's assessment of the value of the shares, but not as to the value of the shares as fixed by the Court.

Further material facts appear in the judgment hereunder.

Flannery K.C. (with him *Fahey* and *Grove*), for the appellant. Pursuant to an arrangement between the deceased and the other shareholders, his sons and daughters, and also by virtue of the power of veto conferred upon him by the articles, the deceased had at all times complete control of the Company to the exclusion of the other shareholders. The whole arrangement in connection with the transmission of the shares to the children, contemplated from the beginning and carried out step by step, amounted to a transaction which, so far as the benefits received by the children are concerned, was a succession within the meaning of the *Succession and Probate Duties Acts*. The Court should look at the surrounding circumstances in order to ascertain whether the shares in question were transferred in such a manner as to bring them within sec. 10 (2)

(1) (1931) S.R. (Q.) 219.

of those Acts. Such circumstances show that the beneficial enjoyment of the shares did not pass from the deceased to the children. The children have failed to discharge the onus, which is upon them, of showing that such beneficial enjoyment did entirely pass to them; e.g., they have failed to show the receipt by them of dividends said to have been declared on two or three occasions. The children of the deceased did not, in his lifetime, derive a yearly benefit in respect of the shares within the meaning of sec. 10 (3) of the Acts, inasmuch as they did not in each year receive a dividend. No matter how absurd the provisions of the Acts may seem, if the words are clear full effect must be given to them. The discretion conferred upon the Commissioner by sec. 47 of the Acts was properly exercised by him: the sum adopted by him as being the value of the shares was based upon figures supplied by the respondents. The decision so arrived at is final, and the general provisions of sec. 50 as to appeals are not applicable (*Thomson* v. *Federal Commissioner of Taxation* (1)).

Macgregor (with him *Hart*), for the respondents. The shares in question were an absolute gift from the deceased to his children, and, as such, do not come within sec. 10 (3). That sub-section does not apply in the case of a bona fide immediate gift of shares. The words "yearly benefit" appearing in the sub-section do not mean "in each year" as contended by the Commissioner, but mean "average yearly benefit" calculated from the date of the gift to the date of the death of the disponor. On such a basis the children received a greater return or benefit than they would have received from trustee investments. There is no time fixed by sec. 10 (3) as to when succession commences. The gift in question does not come within sec. 10 (2), which refers only to colourable transactions (*In re Alexander Stewart, deceased* (2)). The power of veto possessed by the deceased did not extend to the stopping of dividends, and in any event he could have been outvoted by his co-directors. There was no secret trust or arrangement between the deceased and his children in respect of the shares in question; the transfer was bona fide and without any reservation in favour of the deceased. Sec. 10

(1) (1923) 33 C.L.R. 73.

(2) (1920) S.R. (Q.) 207.

H. C. OF A. 1931.

COMMISSIONER OF STAMP DUTIES (Q.) v. BEAK.

was dealt with by this Court in *Manson* v. *Commissioner of Stamp Duties* (1).

[He was stopped on this point.]

The adoption by the Commissioner, under the discretionary power conferred upon him by sec. 47, of a certain sum as being the value of the shares in question is only a step in the act of assessment, from which an appeal will lie under sec. 50. The Court should not interfere with the concurrent findings by the trial Judge and the Full Court (*Major* v. *Bretherton* (2)).

Flannery K.C., in reply. The children have failed to show that they received the full advantages, that is, payment in cash, of the dividends declared by the Company. The evidence shows that the benefits flowing from the Company were directed to the deceased and away from the children, which indicates the existence of an arrangement between the deceased and his children.

Cur. adv. vult.

Dec 3.

THE COURT delivered the following written judgment :—

Two questions are raised upon this appeal with respect to the assessment of succession duties under the Queensland *Succession and Probate Duties Acts* 1892 *to* 1920 in relation to the death of Montague Beak, who died on 16th April 1927.

The first question is whether all or any part of some shares in a company called the " Beak Pastoral Company Limited," which at the time of his death were held respectively by each of five sons and each of two daughters of the deceased, were acquired, or should be deemed to be acquired, as a succession derived by his respective children from him as the predecessor. The second question is whether the sum adopted by the Commissioner as the value of these and other shares included in the assessment, which the Supreme Court considered excessive, may be reviewed upon appeal or is conclusive. Both these questions were decided against the Crown by the Full Court of Queensland, which affirmed a judgment of *E. A. Douglas* J.

(1) (1930) 42 C.L.R. 597 ; (1930) S.R. (Q.) 295. (2) (1928) 41 C.L.R. 62.

The Beak Pastoral Co. Ltd. was formed in 1910 by the deceased to carry on the business of stock and station holders and breeders and graziers and to acquire from him five stations or runs which he held in Queensland. The capital of the Company at the time of its incorporation consisted of 4,000 shares of £10 each, all of which, except seven shares subscribed for in the memorandum of association by himself and members of his family, were issued as fully paid up to him or at his direction as consideration for his stations which the Company took over. Of these shares 3,910 were allotted to him. Upon his nomination the remaining shares were allotted to his six sons and three daughters so that, with the single shares which some of them had subscribed for in the memorandum, each child obtained ten shares. During his life the deceased acquired the ten shares of one son by devolution and of one daughter by transfer, but at his death the other five sons and two daughters retained their ten shares so allotted. On 20th May 1920 the deceased made transfers by way of gift of 486 shares to each of these five sons. At the same time proceedings were put in course for increasing the capital, and in October 1920 reserves of profit amounting to £28,000 were capitalized, and 2,800 bonus shares of £10 fully paid were distributed among the shareholders. Each of the five sons received in respect of the shares which he already held 347 new shares, making his total holding 843 shares, and each of the two daughters 7 shares, making her total holding 17 shares. The Commissioner contends that all these shares were acquired as "successions" in which the deceased was "predecessor." It is said that this result should be reached as an inference of fact, or a conclusion of law or both, upon a consideration of the constitution of the Company, the circumstances attending the original gifts of shares and the subsequent conduct of the father and the children.

It appears that, although the deceased was not named as one of its directors in the articles of association adopted at the registration of the Company, this was only because he was then abroad; and that in 1914 he took his seat on the board with two of his sons, the vacancy being caused by the resignation of a director, a man of business, who became secretary of the Company. In 1920 new

H. C. OF A. 1931.

COMMISSIONER OF STAMP DUTIES (Q.) v. BEAK.

Gavan Duffy C.J. Starke J. Dixon J. McTiernan J.

articles were adopted which appointed the deceased and two of his sons directors until resignation, death, insolvency or incapacity, and conferred upon the deceased a power " of vetoing any proposed item of business or any proposed course of action of which he does not approve."

The deceased's sons were employed in the management of stations of the Company or otherwise in the conduct of its business at salaries, fixed in 1919, at various amounts between £200 and £400 per annum. The deceased acted as " managing director " at a salary fixed at the same time at £3,000 a year. Each of the sons was authorized to draw cheques upon some bank account of the Company for the purposes of defraying the expenses of managing the station of which he had charge, or of the business he was performing. Their practice was to pay their ordinary living expenses in this way, and, although they were frugal enough, no distinction was maintained between expenditure incurred on their private account and on account of the Company. The deceased drew upon the Company's account for a great variety of purposes. He obtained from time to time large sums from the funds of the Company which he applied in investing in war loan, in shares in companies, in acquiring property, in paying heavy life insurance premiums and in paying taxes as well as in meeting a considerable private expenditure. In the books of the Company its accountants kept a loan account in the deceased's name, to which his drawings were debited and his salary and the proceeds realized by some of these investments were credited, as well as, ultimately, some dividends. Ledger accounts for each of the sons were put in evidence, and, although the Crown suggests that these accounts were written up after the deceased's death and the evidence is somewhat unsatisfactory, it seems probable that the accounts were in fact opened and written up regularly each year in his lifetime.

Dividends payable in cash were declared in October 1925 at the rate of $12\frac{1}{2}$ per cent out of the profits for the year ended 30th June 1925, and in December 1926 at the rate of 10 per cent out of the profits for the year ended 30th June 1926. There is some reason to think that these declarations, as well as the capitalization of 1920, were prompted rather by the provisions of sec. 21 of the

Commonwealth *Income Tax Assessment Act* 1922 and the corresponding previous enactment, than a desire to distribute profits for the benefit of shareholders. In some of the years between 1920 and 1925 losses appear to have been incurred. The dividend of 1925 was credited to the shareholders in a "sundry shareholders" account and was not carried to their individual accounts before 1926. It was credited to the individual accounts at the same time as the dividend of 1926, which appears to have been carried directly to those accounts. The resolutions declaring the dividends fixed no date of payment.

In 1919 the deceased divided equally among his three daughters a sum amounting, in effect, to £60,000 by borrowing it from the Company without interest, and procuring his daughters to lend it again to the Company without interest. In other words, he established a credit with the Company in favour of each of his daughters. These sums have been saddled with succession duty and are not the subject of controversy in this appeal, and the transaction is material only because it is said to give colour to the distribution of the shares. In June 1922, after the Company had suffered some losses, the deceased, having consulted with his sons, obtained from each of his daughters a letter to the secretary of the Company in the following terms: "With reference to the amount of £20,000 which is shown as due and owing to me in the Company's books, I have agreed with the Company's directors to reduce the amount named to £15,000 less any interim payments, such amount to be paid at the Company's convenience after the death of Mr. Montague Beak, interest being calculated as from such date of death."

Upon the whole of these facts, which have been briefly summarized, the Commissioner asserts that an engagement or arrangement, whether legally enforceable or not, was arrived at or made between the deceased and his children in relation to the shares they obtained, by the effect of which, or in consequence of which, the beneficial ownership, use or enjoyment of the shares or of the dividends derived therefrom did not bona fide pass according to the disposition of the shares in their favour, but was in fact in part received, enjoyed or used by the deceased until his death, so that the disposition of the shares amounted to a succession under sec. 10 (2). Sec.

H. C. OF A. 1931.

COMMISSIONER OF STAMP DUTIES (Q.) v. BEAK.

Gavan Duffy C.J. Starke J. Dixon J. McTiernan J.

10 (2) requires as a necessary condition of the operation of the sub-section that an engagement, secret trust, or arrangement, whether legally enforceable or not, shall exist.

Although no doubt the engagement or arrangement need not be express but may be tacit or implied, yet it must be real. In this case two Courts already have refused to infer that an arrangement or engagement was made and entered into between the deceased and any of his children controlling or affecting the beneficial ownership, use or enjoyment of the shares or the dividends or income derived therefrom. The facts are consistent with the view that the members of a united family were prepared to co-operate and to confide in each other, and were content to rely upon the fairness and fatherly affection of the head of the family. Probably the children preferred that he should enjoy the advantages of a father rather than that he should strictly perform the duties of a managing director. In matters of family relationship the hypothesis of a contract, agreement or arrangement is not needed to explain a disregard of proprietary rights or deviations from the course of legal duty. There appears to be no reason for disturbing the finding that no engagement or arrangement in relation to the shares subsisted in fact. It was suggested, however, that the constitution of the Company enabled the deceased to exercise control over the profits or dividends, and that consequently a transfer of shares when accepted by the transferee and registered by the Company involved an engagement or arrangement within the sub-section. It is true that the deceased was managing director, that his shares gave him a large voting power and that he had a right of veto. It does not appear that he ever exercised his voting power or his right of veto. But in any case it could not be said that a transfer of shares under the articles of association containing such powers gave rise to an engagement or arrangement by the effect or in consequence of which the beneficial ownership, use or enjoyment of the shares or of any dividends or income derived therefrom did not pass according to the disposition, namely, the transfer. Nor could it be said that by the effect thereof, or in consequence thereof, the shares or the dividends or the income of

the shares were in part received, enjoyed or used by the deceased until his death.

The final paragraph of the sub-section in its present form was relied upon as substituting a single issue for the requirements set out in the earlier portion of the provision. The paragraph is as follows: "The burden of proving that the beneficial ownership, use, and enjoyment of such property, or of the rents, profits, dividends, and income (if any) derived therefrom, wholly took effect in favour of and passed to such person immediately on such disposition of property shall lie upon him, and failing such proof he shall be deemed to have acquired the property as a succession derived as aforesaid." To interpret this provision as making the liability depend wholly upon proof of what may be called the immediate and complete enjoyment of the gift and all its advantages would render superfluous much of the earlier portion of the sub-section, and would transform a provision relating to burden of proof into an important alteration of the criteria of liability. Further, the word "such" seems to go back to the preceding words of the sub-section in order to describe what are the precise matters dealt with.

It was then said that sub-sec. 3 of sec. 10 applied to the facts of the case. The material words of this provision require that a disponee of shares or other interest in a company shall be deemed to acquire them as a succession from the disponor as the predecessor, if the disposition purports to have been by way of immediate gift *inter vivos* and the disponee did not, during the lifetime of the disponor, derive a yearly benefit in respect of such shares or interest of not less than the income which the value of such shares or interest each year would have produced if prudently invested in investments authorized for trustees. The sub-section concludes with a paragraph dealing with burden of proof. According to the interpretation given to this provision by the Commissioner, a gift of shares becomes a succession if in any year before the donor's death dividends are not declared not less in amount than the income which would be earned if the capital value of the shares were invested in trustee securities. No other fact is needed except the failure to produce income in a year at a rate not less than that

H. C. OF A. 1931.

COMMISSIONER OF STAMP DUTIES (Q.) v. BEAK.

Gavan Duffy C.J. Starke J. Dixon J. McTiernan J.

earned by trustee investments. This interpretation disregards the canon of construction which is expressed by the maxim *Verba generalia restringuntur ad habilitatem personæ, vel ad aptitudinem rei.* The subject dealt with is succession on death. The duty is levied in respect of every succession, actual or presumptive, according to the value thereof when the succession takes effect (sec. 12). The provision proceeds upon the assumption that upon the death of the disponor the disponee will be better off because the shares will give him a larger income. In other words, it assumes that during the lifetime of the disponor the disponee derives less income than the shares do, or at least might but for some action of the disponor, produce. In fixing the arbitrary rate of trustee investment, the sub-section is not dealing with the profit-earning capacity of companies and discriminating between gifts of shares in profitable enterprises and gifts of shares in unprofitable enterprises. It assumes the profit and deals with the case in which the entire profit is not liberated or released to the disponee until the death of the disponor. If no impediment or obstacle is interposed which prevents the disponee receiving in each year an amount at least equal to the earnings of a trustee investment, a succession is not created by the provision. But if the disposition of the shares or other interests is of such a nature or is so conditioned that of the income which the share bears, or perhaps ought to bear, the disponee receives less than such an amount, a succession is created. It is not easy to say what devices for bringing about such a result are within the contemplation of the sub-section. It may be confined to conditions, stipulations or arrangements made between the disponor and disponee affecting the transfer or disposition of the shares or interest. It may extend, possibly, to cases in which the disponor before disposing of the shares has caused the company to be so constituted that until his death the distributable profits are withheld in respect of the shares subsequently given. The circumstances of this case do not require a solution of these difficulties, for it cannot be said that either by reason of conditions or attributes with which the disponor had surrounded the subject of the disposition, namely, the shares, or by reason of any transaction between the disponor and the disponees affecting the disposition

the revenues received or receivable in respect of the shares by the disponees were diminished or withheld. For these reasons a "succession" did not result from the disposition of any of the shares.

The second question arises upon the final paragraph of sec. 47, which provides that "The Commissioner may, in his discretion, adopt as the value of any shares or stock in any company or corporation such sum as, in the opinion of the Commissioner, the holder thereof would receive in the event of the company being voluntarily wound up on the date when the succession took effect."

The Commissioner adopted a value of £32 10s. each for the shares in the Company belonging to the deceased. *E. A. Douglas* J. found the value to be £25 a share, and his finding is not attacked. The contention of the Commissioner is that the appeal given by sec. 50 does not extend to enabling the Court to review the value adopted for shares by the Commissioner in the exercise of the discretion conferred by the last paragraph in sec. 47. But this paragraph, although occurring at the end of the section, gives a power to be exercised in making the assessment under the earlier words. That assessment is subject to appeal under sec. 50. Clear words would be needed to withdraw from the general power of review given by sec. 50 a particular process in making up the assessment essential to the result. A reference to discretion and opinion is not enough for the purpose. The function of valuation is performed by means of discretion and opinion, and it is because as between the Crown and the subject a judgment of an officer of the revenue should not be conclusive that an appeal is given. Sec. 50 governs the whole assessment made under sec. 47.

The judgment of the Supreme Court should be affirmed and the appeal dismissed with costs.

Appeal dismissed with costs.

Solicitor for the appellant, *H. J. Henchman*, Crown Solicitor for Queensland.

Solicitors for the respondents, *B. M. Lilley & Lilley*, Rockhampton, by *Tully & Wilson*, Brisbane,

J. B.