[HIGH COURT OF AUSTRALIA.]

DAY . . . . . APPELLANT;
PETITIONER,

AND

THE COMMISSIONER OF STAMP DUTIES (QUEENSLAND) . . . . . RESPONDENT.
RESPONDENT,

ON APPEAL FROM THE SUPREME COURT OF QUEENSLAND.

H. C. OF A. 1940.

SYDNEY, *Nov.* 25; *Dec.* 5.

Rich A.C.J., Starke, McTiernan and Williams JJ.

Stamp Duties (Q.)—Gift duty—Assessment—Land—Sale by father to son—Purchase money—Deposit—Balance secured by mortgage—Inadequate consideration—Amount assessable to duty—Gift Duty Act of 1926 (*Q.*) (17 *Geo. V. No.* 23), *secs.* 2, 8, 14.

Sec. 2 of the *Gift Duty Act of* 1926 (Q.) provides that "in this Act . . . 'Gift' means and includes any disposition of property which is made otherwise than by will . . . without fully adequate consideration in money or money's worth passing from the disponee to the disponor. If any such disposition is made for a consideration in money or money's worth which in the opinion of the commissioner is inadequate . . . the disposition shall be deemed to be a gift to the extent of that inadequacy and gift duty shall be assessable accordingly." Sec. 14 provides that, "when any gift is made in consideration or with the reservation of any benefit or advantage to or in favour of a donor, whether by way of . . . mortgage or charge . . . whether that benefit or advantage is charged upon or otherwise affects the property the subject of the gift or not, no deduction or allowance shall be made in respect of that benefit or advantage in computing the value of the gift, and the gift shall be valued and gift duty shall be paid as if the gift had been made without any such consideration or reservation."

A father transferred to his son certain land in consideration of the sum of £3,000. The son paid £500 in cash as a deposit and executed a mortgage over the land to secure the repayment of the balance of £2,500, such amount to be repayable on demand and in the meantime to bear interest at the rate of three per cent per annum. The transaction was in no wise colourable. The true value of the land was £3,300. The Commissioner of Stamp Duties

assessed duty under the *Gift Duty Act of* 1926 (Q.) on the sum of £2,800, being the true value of the land less the amount of the deposit, on the basis that, pursuant to sec. 14, no deduction should be made in respect of the amount of the mortgage. The Full Court of Queensland confirmed the assessment.

On appeal to the High Court *Rich* A.C.J. and *McTiernan* J. were of opinion that the appeal should be allowed; *Starke* and *Williams* JJ. were of opinion that the appeal should be dismissed.

The court being equally divided, the decision of the Supreme Court of Queensland (Full Court) was affirmed.

APPEAL from the Supreme Court of Queensland.

George Edward Day, a master builder, of New Farm, Brisbane, appealed to the Full Court of the Supreme Court of Queensland by petition under sec. 22 of the *Gift Duty Act of* 1926 (Q.) against an assessment of the Commissioner of Stamp Duties (Q.) of gift duty on a memorandum of transfer of certain land from the petitioner to his son George Henry Day.

The petition set out that in or about August 1938 the petitioner entered into an oral agreement with his son whereby he agreed to sell and his son agreed to purchase certain freehold land for the sum of £3,000. Of that sum the sum of £500 was to be paid as a deposit and the balance of £2,500 was to be secured by mortgage and made payable on demand thereunder, as a sum of £2,500 would have been repayable if advanced on mortgage by a bank. It was further agreed that the son should pay interest on the balance of purchase money remaining unpaid from time to time at the rate of three pounds per cent per annum.

Pursuant to this agreement the petitioner, on 24th September 1938, executed a memorandum of transfer of the land and his son paid to him the sum of £500 and executed an instrument of mortgage.

In October 1938, at the request of the Commissioner of Stamp Duties, the petitioner made a declaration in which he set forth (*a*) that the full market value of the property was £3,300, the freehold being valued at £600 and the improvements at £2,700; (*b*) that the true and only consideration paid and to be paid to him for the transfer of the property was £3,000; and (*c*) that during the preceding twelve months he had not made any gifts other than the £300 represented by the difference between the full market value of the property and the purchase price thereof agreed upon.

The commissioner assessed the transaction to duty under the *Gift Duty Act* at the rate of five per cent on the sum of £2,800, being the difference between the market value of £3,300 and the cash deposit of £500.

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In an affidavit made in support of the petition the petitioner stated that when he had any moneys on hand for which he had no immediate use it was his practice to place the same with his bankers at a fixed deposit for a short term. His reason for so placing such moneys was that he could avail himself of those moneys in the event of his firm securing a large building contract. He further stated that in fixing the interest payable by his son under the mortgage he took into consideration the rate of interest he would have received if the moneys had been placed at fixed deposit and he considered that the rate payable under the mortgage was greater than he would have received from a bank.

The petition was dismissed.

From that decision the petitioner appealed, by special leave, to the High Court.

Lynam, for the appellant. The respondent adopted the wrong basis of assessment. The transaction was a disposition of property for a consideration in money or money's worth within the meaning of sec. 2 of the *Gift Duty Act of* 1926 (Q.) (*Commissioner of Stamps* v. *Finch* (1)). The consideration was inadequate to the extent of £300 only, therefore, by virtue of sec. 8 of that Act, the transaction was not liable to duty. The word "gift," as it appears in sec. 14 of the Act, cannot apply to a disposition of property which is deemed to be a gift under sec. 2, because that is a fictional gift created by the statute, and the word "gift" as there used should bear its ordinary meaning. The word "gift" in sec. 14 does not mean the whole disposition, but means the property the subject of the disposition. The gift was only part of the disposition; therefore the words of sec. 14 are inappropriate and inapplicable. That part of the disposition was not made in consideration, or with the reservation, of any benefit or advantage in favour of the donor by way of mortgage. Sec. 14 was intended to operate in respect of colourable transactions. The transaction in *Taylor* v. *Commissioner of Stamp Duties* (2) was not a disposition of money or money's worth, and as the transfer was expressed to be for natural love and affection it could not be regarded as coming within sec. 2. That case is distinguishable, because there was not any mortgage; the transferror parted with her entire property. If, as decided in *Finch's Case* (1), a cash payment is not deductible under sec. 14, then a mortgage, being money's worth, also is not deductible under that section. Sec. 14 should not be regarded as prevailing over or against sec. 2.

(1) (1912) 32 N.Z.L.R. 514.

(2) (1924) N.Z.L.R. 499.

Particular or express provisions prevail over general provisions in the same statute (*Pretty* v. *Solly* (1)). [He was stopped.]

Hart, for the respondent. The honesty or bona fides of the subject transaction are not impugned in the slightest degree. The whole disposition is deemed to be the gift and such gift is assessable to the extent of the inadequacy of consideration under sec. 2. The precise meaning of the word " gift " as used in the various sections is very important. Every disposition which is not for full adequate consideration is, under the Act, a gift. By the combined effect of sec. 2 and sec. 14 the value of the gift is £3,300. The opening words of sec. 14 relate back to the definition of " gift " as used in sec. 2 (*Taylor* v. *Commissioner of Stamps* (2)). A transaction is deemed to be a gift to the extent of the inadequacy of consideration only for the purposes of the *Gift Duty Act* (*Hill* v. *East and West India Dock Co.* (3)). It is admitted that duty is not payable on the gift if it is a gift only to the extent of £300. The Act should be construed as one compendious whole and not as containing particular and general provisions.

Cur. adv. vult.

Dec 5.

The following written judgments were delivered :—

RICH A.C.J. The facts of this case are of a simple description. A father, being possessed of a property worth £3,300 according to its admitted value, sold and transferred it to his son for £3,000, receiving £500 as a deposit in cash and taking a mortgage over the land to secure the balance of the purchase money. The documents were not actually registered, but I see no importance in that fact. The Commissioner of Stamp Duties has treated the transaction as a gift and has assessed duty at the rate of five per cent on a value of £2,800. The question for decision is not whether the transaction includes a gift, but whether the value of the gift is not £2,800 but £300, the difference between £3,000, the consideration for the sale, and £3,300, the value of the property.

The *Gift Duty Act of* 1926 (Q.), sec. 2, contains a definition the material parts of which are :—" ' Gift ' means and includes any disposition of property which is made otherwise than by will (whether with or without an instrument in writing), without fully adequate consideration in money or money's worth passing from the disponee to the disponor. If any such disposition is made for a

(1) (1859) 26 Beav. 606 [53 E.R. 1032].
(2) (1923) G.L.R. (N.Z.) 701, at p. 702.
(3) (1884) 9 App. Cas. 448, at p. 456.

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consideration in money or money's worth which in the opinion of the commissioner is inadequate (or is found on an appeal from an assessment of the commissioner to be inadequate), the disposition shall be deemed to be a gift to the extent of that inadequacy and gift duty shall be assessable accordingly." In my opinion the latter part of this definition clearly applies to the case. It is said that the words " in the opinion of the commissioner " make the provision inapplicable to the case where the inadequacy is admitted, and this view was adopted by *Philp* J. The latter put the view tersely as follows :—" In my opinion that second paragraph does not apply to such a case as the present where the question of inadequacy of consideration is not a matter of the commissioner's opinion but is a matter of admitted fact." I am unable to agree with this interpretation of the provision. It appears to me to apply to every case in which the fact appears to the commissioner to be that the consideration is inadequate, whether it appears conclusively by the candid admission of the party or inferentially from circumstances ascertained by him.

In the present case the transaction is an out and out sale for money and money's worth (the mortgage). The consideration for the sale and transfer is inadequate to the extent of £300. Adopting what *Sankey* L.J., as he then was, said in *Leitch* v. *Emmott* (1), " the word ' deemed ' introduces an artificial definition which, in my view, is only intended to be applied as long as the conditions exist to which it is intended to apply." Thus, the disposition is a gift to the extent of the inadequacy and no further, i.e., £300. There is no ground in the general law and none in the statute, except the definition, for treating the sale to the son as a gift at all. The definition, however, makes it a gift to the extent of £300. Then sec. 3 (1) imposes a duty on that " gift."

Turning to sec. 14 with that view clearly in mind, it appears to me impossible to understand its relevance or application. The gift of £300 (" the disposition to the extent of " £300, to quote the words of the definition) is not " made in consideration of any benefit or advantage to or in favour of a donor." The disposition of the £300 is plainly regarded as in excess of the price, not forming part of it, and it is the price only which the mortgage secures (i.e., as to the balance unpaid, £2,500). And it is not " reserved " out of the £300. Further no one seeks a deduction or allowance from the £300 in respect of the mortgage. The £300 is in fact " valued as if the gift had been made without any such consideration or reservation." The £300 is treated just as if the whole purchase money

(1) (1929) 2 K.B. 236, at p. 248.

had been paid or as if none of it had been paid but all remained owing. However one looks at it, sec. 14 appears to have nothing to do with the facts of the present case. And the New-Zealand cases upon which counsel for the commissioner relied have nothing to say against this view. I must confess I do not understand the observation of *Hosking* J. in *Taylor* v. *Commissioner of Stamp Duties* (1). However, his Honour's grounds for the conclusion in that case were that " natural love and affection " governed the whole transaction, that being part of the consideration expressed. That, I presume, was held to destroy the characteristic of a sale. I should add that counsel for the commissioner prefaced his argument in this case by a very emphatic statement that the transaction was bona fide and not collusive nor colourable.

In my opinion the appeal should be allowed, the judgment of the Supreme Court of Queensland set aside, and in lieu thereof judgment entered for the appellant.

STARKE J. The appellant was the proprietor of certain lands in the City of Brisbane, upon which he had built a brick residence. He sold this land to his son for £3,000. The terms of sale were that the son should pay a deposit of £500 and give a mortgage for the balance of the purchase money, £2,500, with interest at a rate of three per cent per annum. The son paid the deposit, the appellant executed a transfer of the land to the son, and the son executed a mortgage of the land to the appellant to secure £2,500 with interest at the rate of three per cent per annum. Neither the transfer nor the mortgage appear to have been registered, but they operate as dispositions in equity of the land. The commissioner concedes that the transaction between the father and the son was a genuine sale and in no wise colourable. But it appears that the true value of the land with the residence thereon was £3,300.

The Commissioner of Stamp Duties assessed this disposition of the land from the appellant to his son as a gift in the sum of £2,800, pursuant to the provisions of the *Gift Duty Act of* 1926 (Q.). This sum represents the true value of the land, £3,300, less the amount, £500, paid as deposit. The result is surprising, for the disposition is not a gift in any ordinary signification of that word. But the commissioner submits that his assessment is nevertheless justified by the express provisions of the *Gift Duty Act*.

So the provisions of that Act must be considered. Reference, however, may first be made to the *Stamp Acts* 1894-1930 of Queensland, which imposed a stamp duty upon the conveyance of transfer

(1) (1924) N.Z.L.R., at the top of p. 502.

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or sale of any property and also upon any settlement, deed of gift, or voluntary conveyance of any property containing any trust or declaration of trust having the effect of such settlement, deed or conveyance. Then in 1926 came the *Gift Duty Act of* 1926, which appears to have been copied from New-Zealand legislation, to make provision for the payment of duties on properties disposed of by way of gift. It imposed a duty, called a gift duty, in respect of every gift made after the commencement of the Act, and also provided (sec. 10) that stamp duty chargeable on any instrument of gift in respect of which gift duty was payable should be ten shillings. It is not, therefore, a stamp duty, but a new and independent duty. "Gift," for the purpose of the *Gift Duty Act*, "means and includes any disposition of property which is made otherwise than by will (whether with or without an instrument in writing), without fully adequate consideration in money or money's worth passing from the disponee to the disponor. If any such disposition is made for a consideration in money or money's worth which in the opinion of the commissioner is inadequate (or is found on an appeal from an assessment of the commissioner to be inadequate), the disposition shall be deemed to be a gift to the extent of that inadequacy and gift duty shall be assessable accordingly." A "disposition of property" includes (see sec. 2) "any conveyance, transfer . . . or other alienation of property," and every interest in property whether at law or in equity.

The absence of consideration seems the criterion of a gift for the purposes of this Act and, to the extent of any inadequacy, a disposition of property is deemed a gift. Dispositions by will are excluded, but otherwise all dispositions of property as defined by the Act appear to fall within its terms, including dispositions in the ordinary course of business other than for adequate consideration in money or money's worth passing from the disponee to the disponor: Cf. *Collector of Imposts (Vict.)* v. *Cuming Campbell Investments Pty. Ltd.* (1). But the critical provision of the Act in this case is sec. 14 which, so far as material, is as follows:—"When any gift is made in consideration or with the reservation of any benefit or advantage to or in favour of a donor, whether by way of . . . (*b*) mortgage or charge; . . . whether that benefit or advantage is charged upon or otherwise affects the property the subject of the gift or not, no deduction or allowance shall be made in respect of that benefit or advantage in computing the value of the gift, and the gift shall be valued and gift duty shall be paid as if the gift had been made without any such consideration or reservation." That provision

(1) (1940) 63 C.L.R. 619.

only operates, however, "when any gift is made," that is to say (sec. 2), when any disposition of property is made without fully adequate consideration in money or money's worth passing from the disponee to the disponor. Thus sec. 14 "extends alike to a gift where an inadequate consideration passes as to a gift in which none passes" (*Taylor* v. *Commissioner of Stamp Duties* (1)). But it is said that the Act explicitly provides in sec. 2 that gift duty shall only be assessable to the extent of the inadequacy of the consideration. That is true, except in so far as sec. 14 provides for the exclusion of certain classes of monetary considerations in the determination of what is and what is not the value of a gift for the purposes of gift duty. The exclusions are far reaching but are designed to prevent any evasion of taxation: See *Commissioner of Stamps* v. *Finch* (2).

The appellant in the present case made a gift, that is to say, he made a disposition of property to his son for a consideration that was not fully adequate, a sum of £500 and the benefit or advantage in his favour by way of the mortgage for £2,500. But in computing the value of the gift, the mortgage is one of the monetary considerations in respect of which sec. 14 explicitly provides that no deduction or allowance shall be made.

It may be that the Act goes beyond what is reasonable in the case of ordinary business transactions, but that is a matter for the legislature and cannot alter the proper construction of the section, which is as already indicated. Moreover, the construction suggested —that duty is only assessable to the extent of the inadequacy of the consideration—would render sec. 14 inoperative, though perhaps that would not be a good reason for making a taxing Act mean that which it does not say.

In my judgment, the assessment of the commissioner was in accordance with the provisions of the *Gift Duty Act*, and, accordingly, this appeal should be dismissed.

McTiernan J. The question for decision is whether a transfer of property by a father to his son is liable to gift duty under the *Gift Duty Act of* 1926 (Q.). The father agreed to sell and the son agreed to buy the property, which consisted of a house and land, for the sum of £3,000. The son paid in cash the sum of £500 on account of the contract price, and the father transferred the property to the son and he mortgaged it to his father to secure the sum of £2,500, the balance of the purchase money. The valuable consideration in money and money's worth was in fact given by the

(1) (1924) N.Z.L.R. 499.

(2) (1912) 32 N.Z.L.R. 514.

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son to his father. But the amount of the consideration was £300 less than the value of the property.

The rate of duty under the Act is assessed on the value of the gift in respect of which the duty is levied, but no duty is levied on a gift which is less than £1,000 in value (sec. 8). In this case the commissioner has levied a rate of duty appropriate to a gift of a value of £2,800. This amount is reached by adding the sum of £300, the amount of the inadequacy of the consideration given by the son, to the mortgage of £2,500.

The agreement for the sale of the property, which was carried into effect by the transfer and mortgage, was not a disguise for a gift by the father to his son. But as the consideration passing from the son to the father was not adequate in amount, the transfer of the property comes within sec. 2 of the *Gift Duty Act*. The section defines a gift to mean and include "any disposition of property which is made otherwise than by will (whether with or without an instrument in writing), without fully adequate consideration in money or money's worth passing from the disponee to the disponor." The section continues: "If any such disposition is made for a consideration in money or money's worth which in the opinion of the commissioner is inadequate (or is found on an appeal from an assessment of the commissioner to be inadequate), the disposition shall be deemed to be a gift to the extent of that inadequacy and gift duty shall be assessable accordingly." The intention of the section is to make a disposition liable to duty if it is made for valuable consideration but not adequate consideration. But the section does not treat such a disposition as a gift of the whole property. It does not for the purpose of levying duty in respect of the disposition adopt the assumption that the disponee did not give anything in money or money's worth for the property. The intention of the section is that the standard to be applied for measuring the value of the gift which is deemed to be made by the disposition shall be the difference between the value of the property and the valuable consideration which was given by the disponee.

The transfer in the present case was, as has been observed, made for valuable consideration but inadequate consideration. Although it was not a cloak for a gift, yet the father is by force of sec. 2 deemed to have made a gift to his son by transferring the property to him for less than its true value. The gift which is presumed to have been made is a gift only to the extent of the inadequacy of the consideration and the amount of the inadequacy is £300 and no more. But the commissioner has assessed the value of the gift for the purposes of the Act at £2,800. This sum represents neither the

value of the property nor the value of the gift which is deemed to have been made. Is the duty to be levied at a rate appropriate to a gift having a value of £2,800, although sec. 2 enacts that "the disposition shall be deemed to be a gift to the extent of that inadequacy" (£300) "and gift duty shall be assessable accordingly"? The commissioner relies upon sec. 14 to justify the assessment. The plain object of that section is to prohibit deductions from the value of a gift; and, if the value of the gift which is deemed to have been made in the present case is £300, sec. 14 may prohibit deductions from that value, but it clearly cannot authorize any addition to it.

The value of the gift for the purposes of the Act is ascertained apart from sec. 14. That section prohibits any deduction of the nature specified in the section from that value of the gift. It is true that the section as expressed applies to any gift which comes within the scope of the Act. Hence where there is a disposition for valuable but inadequate consideration in money or money's worth the section literally includes within its scope the gift which, according to the statutory fiction introduced by sec. 2, is made by the disposition. In that case the gift is not equivalent to the disposition itself; nor is it to be taken as equivalent to any amount in excess of the inadequacy of the consideration. The disposition in the case mentioned is deemed to be a gift only "to the extent of the inadequacy of the consideration," and, as has been observed, sec. 2 provides that "gift duty shall be assessed accordingly." It would be contrary to the intention expressed in sec. 2 to adopt any assumption for the purpose of applying sec. 14 other than that the value of the gift for levying gift duty is £300. If it were claimed that the actual extent of the gift is less than £300, because no part of the property representing the gift which is deemed to have been made is segregated and the gift bears its proportion of the mortgage debt, sec. 14, which applies generally to all gifts within the scope of the Act, might well prevent any deduction from the value of £300. In my opinion, sec. 14 could not possibly operate to increase the value of the disposition, which is deemed to be a gift only to the extent of £300, by the sum of £2,500.

It remains to refer to the case of *Taylor* v. *Commissioner of Stamp Duties* (1). The conclusion that the amount of the mortgage is not required by sec. 14 to be added to the amount of the inadequacy of the price paid by the son is not opposed to the decision in that case or to its *ratio decidendi*. There the disposition upon which the duty was levied was made in consideration of natural love and affection

(1) (1924) N.Z.L.R. 499.

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and of a sum of £4,660, which, according to the agreement between the disponor and disponee, was payable in the future. The total value of the property, the subject of the disposition, was £5,731. The extent of the gift in that case was not limited to the excess of £5,731 over £4,660. The value of the gift was £5,731. In the circumstances it was held that because of the operation of sec. 49 of the *Death Duties Act* 1921, which has provisions similar to sec. 14 of the Queensland *Gift Duty Act*, no deduction or allowance could be made in respect of the agreement providing for the payment of £4,660 in the future. As the donor got a benefit or advantage by way of agreement, the net value of the gift passing to the donee was less than the value of the property, but the agreement because of sec. 49 could not be made a ground for any deduction or allowance. The *ratio decidendi* of the case does not suggest that, if the gift which was made was limited to £1,071, that is, the extent of inadequacy of the sum agreed to be paid for the property, sec. 49 would have required the addition of the sum of £4,660 to the sum of £1,071 in order to compute the duty payable in respect of the disposition of the property.

In my opinion, gift duty is not payable in respect of the transfer and mortgage, duty not being levied by the Act on any gift of a value of less than £1,000. The appeal should be allowed, and the assessment for gift duty and the judgment of the Supreme Court set aside.

WILLIAMS J. In August 1938, the appellant agreed to transfer to his son certain land in Queensland in consideration of the sum of £3,000 to be paid £500 in cash and the balance, £2,500, to be secured by a mortgage over the land, the principal sum to be payable on demand and in the meantime to bear interest at three per cent per annum.

Pursuant to this agreement the appellant, in September 1938, executed a transfer of the land to his son and the son paid the appellant the sum of £500 and executed the mortgage which had been agreed upon. The true value of the land at the date of the sale and transfer was £3,300, so that the consideration was inadequate to the extent of £300. The Commissioner of Stamp Duties for Queensland has claimed gift duty under the *Gift Duty Act of* 1926 on the sum of £2,800, being the addition of the two above amounts of £2,500 and £300.

The Act contains the following provisions:—Sec. 2: "In this Act, unless the context otherwise indicates, the following terms

have the meanings set against them respectively, that is to say:— . . . 'Gift' means and includes any disposition of property which is made otherwise than by will (whether with or without an instrument in writing), without fully adequate consideration in money or money's worth passing from the disponee to the disponor. If any such disposition is made for a consideration in money or money's worth which in the opinion of the commissioner is inadequate (or is found on an appeal from an assessment of the commissioner to be inadequate) the disposition shall be deemed to be a gift to the extent of that inadequacy and gift duty shall be assessable accordingly." Sec. 8 (1): "Where the value of any gift which together with the value of any other gift or gifts made at the same time and within twelve months previously (whether wholly before or wholly after or as to some of them before and as to others of them after the commencement of this Act) and twelve months subsequently by the same donor to the same or any other donee does not amount to one thousand pounds—No duty." Sec. 14: "When any gift is made in consideration or with the reservation of any benefit or advantage to or in favour of a donor, whether by way of . . . (*b*) Mortgage or charge . . . whether that benefit or advantage is charged upon or otherwise affects the property the subject of the gift or not, no deduction or allowance shall be made in respect of that benefit or advantage in computing the value of the gift, and the gift shall be valued and gift duty shall be paid as if the gift had been made without any such consideration or reservation."

If the Act did not contain sec. 14, it is clear that the value of the gift for the purpose of duty would have been £300 and no duty would have been payable under sec. 8. It is necessary, however, to consider the effect of sec. 14. The Act must be construed as a whole, and for that purpose secs. 2 and 14 must be read together. If this is done, it becomes apparent that the word "gift" in sec. 14 refers, not to the amount of the inadequacy of the consideration determined by sec. 2, but to the disposition of the property the subject of the gift. The section contemplates that the benefits or advantages referred to may be charged upon or otherwise affect this property and provides that no deduction or allowance shall be made in respect of that benefit or advantage in computing the value of the gift. If the gift referred to in sec. 14 is the amount of the inadequacy of the consideration, the section could have no operation, because this inadequacy is only arrived at after deducting the consideration in money or money's worth and such consideration would include the value of such benefit or advantage. It is obvious that

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in many cases where land is transferred for an inadequate consideration, and feelings of natural love and affection enter into the transaction, the giving of such a benefit or advantage might be only colourable and not be intended to be enforced by the donor. The legislature has therefore said that, whether colourable or not, gift duty must be paid as if the disposition of the property had been made without any such consideration or reservation. The difficulty is caused by the amount of space between secs. 2 and 14, but really sec. 14 should be read as one of three provisions dealing with the computation of the value of the gift. To make this computation you first of all value the property disposed of; you then deduct therefrom the consideration in money or money's worth other than the value of the consideration referred to in sec. 14, which is not to be taken into account; and the figure so arrived at is the amount on which gift duty is to be assessed.

The appeal should be dismissed.

The court being equally divided in opinion (Judiciary Act 1903-1937, *sec.* 23 (2) (*a*)), *the appeal is dismissed with costs.*

Solicitors for the appellant, *D. J. O'Mara & Robinson*, Brisbane, by *Percy L. Williamson & Co.*

Solicitor for the respondent, *W. G. Hamilton*, Crown Solicitor for Queensland.

J. B.