



**THE COURT OF APPEAL
CIVIL**

Neutral Citation No.: [2022] IECA 127

Appeal Number: 2021/170

**Costello J.
Haughton J.
Allen J.**

BETWEEN

YESREB HOLDINGS LIMITED

APPELLANT

AND

REVENUE COMMISSIONERS

RESPONDENT

JUDGMENT of Mr. Justice Allen delivered on the 1st day of June, 2022

Prologue

1. This is an appeal from two judgments of the High Court (O'Connor J.) on an appeal by case stated by the appellant from a determination of the Tax Appeals Commission issued on 23rd December, 2019.

The issues on the appeal

2. By agreement in writing dated 1st July, 2005 in more or less the Law Society of Ireland printed form (2001 Edition) made between Caroline Crowley and Eamon Walsh as legal personal representatives of Patrick Aloysius Duggan (*"the executors"*) and Sean Dunne (*"Mr. Dunne"*), the executors agreed to sell and Mr. Dunne to purchase a house called Walford at 24 Shrewsbury Road, Ballsbridge, in the City of Dublin for €57,950,000. The contract provide for completion on 14th December, 2005 but the sale and purchase was not then or thereafter completed.
3. Instead, by deed of conveyance dated 29th March, 2013 made between the executors, Mr. Dunne, Mrs. Gayle Dunne (nee Killilea) (*"Mrs. Dunne"*), Matsack Nominees Limited (*"Matsack"*) and Yesreb Holdings Limited (*"the appellant"*) the property was assured to the appellant.

4. The primary issue on this appeal – as it was in the High Court, and as it was before the Tax Appeals Commission – is whether the conveyance to Yesreb was a sub-sale of the property. If it was, the conveyance was sufficiently stamped for €270,000. If it was not, the conveyance attracted a liability for stamp duty of €1,429,000, as well as interest.
5. There is a secondary issue on the appeal as to whether even if the deed was subject to the higher amount of duty, the appellant is the "*accountable person*" in respect of any more than the €270,000 which it paid.

The case stated

6. The appeal to the High Court was by way of case stated pursuant to s. 949AQ of the Taxes Consolidation Act, 1997, as amended ("*TCA*") by which the Commissioner stated three questions of law for the opinion of the High Court which were: -
 1. Whether, on the facts proved or admitted, she was correct in law in her determination that the conditions necessary to avail of sub-sale relief in accordance with s. 46 of the Stamp Duties Consolidation Act, 1999 ("*SDCA*") in respect of the deed of conveyance dated 29 March 2013, were not met and that the appellant was thereby unable to avail of sub-sale relief.
 2. Whether, on the facts proved or admitted, she was correct in law in her determination that the appellant was the accountable person in respect of the conveyance on sale dated 29 March 2013, in accordance with s. 1 SDCA 1999.
 3. Whether, on the facts proved or admitted, she was correct in law in her determination that where sub-sale relief does not apply, the sub-purchaser is liable for stamp duty in respect of the deed of conveyance including the first sale.
7. The parties were agreed that the substance of the third question was the same as the second.

The determination of the Tax Appeals Commission

8. The appellant accepts, as it must, that it is bound by the findings of fact of the Tax Appeals Commission. That being so, the first relevant event is the contract dated 1st July, 2005 made between the executors and Mr. Dunne for the sale and purchase of *Walford*.
9. Part of the case made by the appellant before the Tax Appeals Commission – and all the appearances are that it was a significant part of the case then made – was that by reference to a manuscript document dated 23rd March, 2005 which was described as

"*Property Transfer Agreement*" and expressed to have been made between Mr. Dunne and Mrs. Dunne and by which Mr. Dunne undertook to give to Mrs. Dunne seventy per cent of the profits accrued from the sale of six identified properties, the subsequent contract for the purchase of *Walford* had been made in trust for Mrs. Dunne. But that was rejected by the Commissioner and the appellant accepts that it is bound by the determination.

10. The contract of 1st July, 2005 provided for a deposit of €5,795,000 which, in the ordinary way, was to be paid to the vendors' solicitors to be held by them as stakeholders and the stakeholder receipt was duly completed.
11. The contract was subject to a number of special conditions notably, for present purposes, special condition 14, which provided that:-

"This agreement is personal to the purchaser who shall not assign, mortgage, charge or otherwise deal with the benefit thereof in whole or in part (other than to a related company within the meaning of section 4(5) of the Companies (Amendment) Act, 1990 without the previous consent in writing of the vendors. The vendors shall not be required to deliver a deed of assurance in favour of any party other than the purchaser named in the contract or a member or members of his immediate family or a company controlled by him or them."

12. By a manuscript declaration of trust dated 23rd July, 2005 Mr. Dunne declared that his entire interest in the contract for the purchase of *Walford* was held by him in trust for Mrs. Dunne, on foot of the Property Transfer Agreement of 23rd March, 2005 and confirmed that he would transfer *Walford* to her or her nominee when called upon to do so.
13. The contract of 1st July, 2005, as I have said, provided for completion on 14th December, 2005. The sale and purchase were not then completed but in July, 2006 the balance of the purchase monies were paid, the documents of title were delivered, and possession passed. The determination of the Tax Appeals Commission does not expressly say so, but the conveyance of the property on 29th March, 2013 shows that the entire purchase price of €57,950,000 – the receipt of which the executors thereby acknowledged – had been paid by Mrs. Dunne.
14. By a nominee agreement dated 9th October, 2006 made between Matsack and Mrs. Dunne, Matsack agreed to hold the "*Trust Fund*" – comprising the property at *Walford* and a sum of €25,000 in cash – upon trust to retain it but with power to sell, convey, charge, mortgage, licence or otherwise deal with the property with the prior instruction in writing of Mrs. Dunne. The agreement provided that the power to remove the nominee or to appoint a new or additional nominee would be held by Mrs. Dunne.
15. By October, 2011 Matsack had secured the agreement of the executors' solicitors that they would execute a conveyance at the request of Matsack, as opposed to Mr. Dunne,

the purchaser under the contract. At that time the property was offered for sale by tender. The tender documents and the draft contract identified Matsack as the vendor.

16. On 28th March, 2013 a contract in more or less the Law Society of Ireland printed form was signed by "Sean Dunne (as trustee for Gayle Dunne)" as vendor and the appellant as purchaser, by which Mr. Dunne agreed to sell and the appellant to purchase *Walford* for €14,000,000. The contract provided for payment of a deposit of €1,400,000 and for completion on the same day. Included in the documents schedule were the declaration of trust of Mr. Dunne of 23rd July, 2005 and the Matsack nominee agreement of 9th October, 2006.
17. On the following day, 29th March, 2013, the original vendors, the executors, executed a conveyance of the property to the appellant.
18. The deed described the executors as "the vendors", Mr. Dunne as "the original trustee", Mrs. Dunne as "the beneficial owner", Matsack as "the present trustee", and the appellant as "the sub-purchaser". It recited the contract for sale of 1st July, 2005 for the sale to Mr. Dunne; the declaration of trust of 23rd July, 2005 by which Mr. Dunne had confirmed that he held the interest in the contract and the premises in trust for Mrs. Dunne; the nominee agreement by which Mrs. Dunne had nominated Matsack to hold the premises on her behalf on the terms of the nominee agreement; the agreement of Mr. Dunne acting on behalf of Mrs. Dunne for the sale of the premises to the appellant for the sum of €14,000,000; and the agreement of the parties that the sale to Matsack should be effected by way of sub-sale in the manner therein appearing. The deed went on immediately to provide:-

"That in pursuance of the said respective agreements and in consideration of the sum of €57,950,000 (fifty seven million nine hundred and fifty thousand euro) paid by the Beneficial Owner to the Vendors (the receipt whereof the Vendors hereby acknowledge) and in consideration of the sum of €14,000,000 (fourteen million euro) now paid by the Sub-Purchaser to the Beneficial Owner (the receipt of which the Beneficial Owner hereby acknowledges) the Vendors as Personal Representatives of the Testator by the direction of the Beneficial Owner hereby GRANT AND CONVEY and the Beneficial Owner as beneficial owner hereby GRANTS CONVEYS AND CONFIRMS and the Original Trustee and the Present Trustee hereby GRANT, CONVEY AND CONFIRM unto the Sub-Purchaser ALL THAT AND THOSE the Premises TO HOLD the same unto and to the use of the Sub-Purchaser in fee simple."

19. Shortly before the conveyance of the property to Yesreb, a loan agreement was executed by Mrs. Dunne and Yesreb pursuant to which Mrs. Dunne was to make available to Yesreb a credit facility in the sum of €15,000,000 to finance the purchase of *Walford*. This loan agreement recited that Mrs. Dunne had advanced the facility amount and – as will have been seen – the conveyance acknowledged payment of the purchase price of €14,000,000, but no money ever changed hands. At about the time of the purchase by Yesreb, an escrow agreement was executed between Mrs. Dunne, as lender, Yesreb, as

borrower, and a firm of solicitors, as escrow agent, by which the solicitors were to hold the title deeds to the property as escrow agent by way of equitable security for the repayment of the loan.

20. On 26th April, 2013 Yesreb made a self-assessed stamp duty return of €270,000, calculated on the consideration of €14,000,000 which it had paid, on the basis that it was entitled to sub-sale relief in accordance with s. 46(1) of the Stamp Duties Consolidation Act, 1999. The Revenue Commissioners took the view that the appellant was not entitled to avail of sub-sale relief and on 17th February, 2016 raised an assessment to stamp duty in the sum of €1,429,000, together with interest of €269,670, with credit for the €270,000 which had been paid.
21. Yesreb appealed the assessment to the Tax Appeals Commission.
22. The Commissioner found that s. 26 SDCA was in the nature of a relieving provision and that, on the authority of *Revenue Commissioners v. Doorley* [1933] I.R. 750, the onus was on the appellant to show that it fell squarely within the exemption.
23. The Commissioner found that although it was clear from special condition 14 that the contract was personal to Mr. Dunne, there was no evidence that the executors were ever asked for, or provided, their consent to the trust arrangement with Mrs. Dunne. The contract of 1st July, 2005 being one which predated the enactment of the Land and Conveyancing Law Reform Act, 2009, she found that, on the authority of *Tempany v. Hynes* [1976] I.R. 101, Mr. Dunne, would have held a ten percent beneficial interest in the property.
24. The Commissioner found that the effect of the declaration of trust of 23rd July, 2005 was that Mr. Dunne was thereafter no more than a bare trustee or nominee in respect of Mr. Dunne's ten percent. On the execution of the declaration of trust, Mr. Dunne retained no powers of management and had no power of sale in respect of *Walford*. Accordingly, she found, Mr. Dunne had divested himself of his beneficial interest in the property.
25. The Commissioner found that with effect from the execution of the nominee agreement on 9th October, 2006, Mr. Dunne ceased to hold a bare trusteeship in relation to the property. Thereafter he had no legal or equitable interest in the property and no capacity as a trustee, because Mrs. Dunne had appointed Matsack as a new trustee.
26. In coming to the conclusion which she did as to the effect of the nominee agreement – or in support of that conclusion – the Commissioner referred to a passage from a judgment of Costello J. in *Christopher Lehane (official assignee) v. Gayle Dunne* [2017] IEHC 511 in which it was noted that:-

"At para. 54 of his grounding affidavit the plaintiff quotes from the affidavit of [Mr. Dunne] sworn on 12th October, 2016 where he states that *Walford*:-

'... was held in trust by me for my wife Gail (sic.) Dunne until 9 October 2006 when Matsack Nominees Ltd. a nominee company controlled by the partners of Matheson Solicitors, assumed the role of trustee.'"

27. The Commissioner found that the identification of Mr. Dunne in the contract of 28th March, 2013 as "*Sean Dunne (as trustee for Gayle Dunne)*" was inconsistent with this evidence. She concluded that in 2013 Mr. Dunne had no interest in the property and no capacity to enter a contract in respect of the property.
28. The Commissioner examined an exchange of correspondence between September, 2011 and October, 2011 between the solicitors for Matsack and the solicitors for the executors in relation to a proposed sale of the property by Matsack. This correspondence showed that at that time Matsack had secured the agreement of the executors that they would execute a deed of assurance of the property at the request of Matsack, which, the Commissioner thought, was inconsistent with the case made on behalf of the appellant that Mr. Dunne was the only party who could require the executors to execute a conveyance.
29. The Commissioner found that although the conveyance provided that the property was conveyed by the executors at the direction of the beneficial owner (through Matsack) it was, in fact, conveyed at the direction of the beneficial owner.
30. At the hearing of the appeal before the Tax Appeals Commission, as in the High Court, as on the hearing of the appeal before this court, both parties referred to a case of *Fitch Lovell v. Inland Revenue Commissioners* [1962] 2 1 W.L.R. 1325, which I will examine later. Having considered the wording of s. 46 and the judgment in *Fitch Lovell*, the Commissioner found that in order to avail of s. 46(1) SDCA 1999, three conditions must be met by the taxpayer, namely:-
 1. "*Identity*" – the purchaser in the main contract and the vendor in the sub-sale contract must be the same person, not the same name, but the same person.
 2. "*In consequence*" - the conveyance must have been in consequence of both the original contract and the sub-sale contract and must arise from contracts which are enforceable by means of specific performance.
 3. "*No intervening act*" – there must be no act other than the signing of the sub-sale contract, between the main contract and the execution of the conveyance
31. On the evidence, the Commissioner found that whatever Mr. Dunne's capacity was when he entered the 2005 contract and when he signed the 2013 contract, it was not the same so that the purchaser under the original contract and the vendor under the sub-sale contract was not the same person.
32. The Commissioner found that to come within s. 46 the conveyance must have been "*in consequence*" of two separate contracts. She concluded that since Mr. Dunne had no interest, legal or equitable, in the property at the date of the sub-sale contract, he had no

capacity to conclude the contract. The sub-sale contract was not capable of enforcement by a decree of specific performance and so it could not be said that the conveyance was "*in consequence*" of the 2013 contract.

33. On the authority of *Fitch Lovell* and affording s. 46 its natural and ordinary meaning, the Commissioner found that there must be no intervening act between the original contract and the conveyance. The Commissioner found that the declaration of trust signed by Mr. Dunne was such an act. By executing the declaration of trust, Mr. Dunne had divested himself of capacity to enter a legally enforceable sub-sale contract.
34. Apart from its argument that the conveyance attracted sub-sale relief, Yesreb argued that it was not the "*accountable person*" for any duty that might be payable in respect of the €57,950,000. The Commissioner concluded that only one accountable person had been identified, which was Yesreb, which was the accountable person.
35. The Commissioner determined that the conditions necessary to avail of sub-sale relief in accordance with s. 46 SDCA 1999 had not been met; that Yesreb was the accountable person; and that the assessment of 17th February, 2016 should stand.

The approach of the High Court to the questions of law posed

36. The first argument made by the appellant in its written submissions on this appeal is that the High Court judge failed to identify and to answer the questions of law arising in the case stated, specifically by ignoring the question of law raised by the appellant in its s. 949AP notice.
37. With respect, it seems to me that this submission confuses the issues and arguments canvassed before the Tax Appeals Commission, and later the High Court, and the questions of law which needed to be answered. The correct approach, it seems to me, is evident from the form of the appellant's submissions which first identifies the two questions of law to be decided on the appeal – whether, on the facts found by the Commission and on the correct interpretation of s. 46 SDCA the appellant had established an entitlement to relief, and if not, whether the appellant was the accountable person for the consideration moving under the contract of 1st July, 2005 – and then sets out, in detail, the arguments on each issue. The determination of each of the questions of law will require a consideration of all of the relevant arguments and, it might be said, the issues arising on each of the issues but it was not necessary that the High Court should have treated each of the grounds on which the appellant requisitioned the case stated as a separate question of law.
38. The appellant's position on this aspect of the appeal was clarified in the course of the oral hearing. It was only touched upon in the appellant's written submission but by reference to the notice of appeal the appellant was understood by Revenue to be contending that the High Court judge ought to have dealt with and answered *seriatim* the nineteen

grounds set out in the appellants s. 949AP notice on which it was suggested that the Commissioner had erred in law. On the basis of that understanding – or misunderstanding – Revenue countered that if the appellant was dissatisfied with the questions of law formulated by the Commissioner it could have applied to the High Court pursuant to s. 949AR(2) to have the case stated sent back to the Appeal Commissioners for amendment, or, perhaps, have asked the High Court to reformulate the questions.

39. At the opening of the oral hearing of the appeal before this court, Ms. Clohessy S.C., for the appellant, formulated this issue as being whether the High Court was confined to the questions as formulated by the Commissioner or could look also at the s. 949AP notice. The short answer, it seems to me, is yes, and yes. And I did not understand Revenue to contend otherwise.
40. Section 949AP(2) TCA provides that a party to an appeal to the Tax Appeals Commission who is dissatisfied with the determination as being erroneous on a point of law may by notice in writing require the Appeal Commissioners to state and sign a case for the opinion of the High Court. By s. 949AP(3)(b) any such notice must state in what particular the determination is alleged to be erroneous in point of law.
41. By s. 949AQ, the case stated must contain the point of law as set out in in the s. 949AP(2) notice on which the opinion of the High Court is sought. The responsibility for the drafting of a case stated is nowadays that of the Appeal Commissioners, but before completing and signing it, they must send a draft to the parties, with an invitation to the parties to make representations in relation to the draft before it is finalised.
42. There was not, in this case, any suggestion that either before the case stated was completed and signed, or before the hearing in the High Court, either party was dissatisfied with the questions of law as formulated by the Commissioner. Indeed the High Court, and this court, were urged to answer the questions so formulated.
43. Reference was made in argument to the judgment of Barrett J. in *McNamara v. Revenue Commissioners* [2021] IEHC 485. That was a case in which the High Court, on the application of the taxpayer, made an order pursuant to s. 949AR(2) TCA directing that the case stated be sent back to the Tax Appeals Commission for amendment. It did so because the questions in the case stated did not properly or fully set out the points of law contained in the appellant's s. 949AP(2) notice. This is not such a case. In the case stated the nineteen points of law raised by the notice were distilled into two questions of law. That is something that is routinely done and is perfectly permissible. To hold otherwise would mean in effect that the party requesting the Commissioner to state a case would continue to draft the case stated notwithstanding the amendment of the TCA in that regard.
44. In the end, it seems to me that the substance of the appeal is that the High Court judge did not sufficiently engage with the appellant's arguments and when, and to the extent to which he did, he was wrong. There was no contest as to the entitlement of the appellant to make that case.

The High Court judgment

45. The introduction to the judgment of the High Court identified the issues on the appeal before it as two substantive issues as to (i) the availability of sub-sale relief for a particular deed of conveyance, and (ii) absent such relief, whether Yesreb was accountable for the entirety of the duty assessed on the deed; and an incidental issue about the advancement of a point relying on the Statute of Frauds which had not been addressed at first instance.
46. The High Court judge first recalled the principles to be applied by the High Court in considering an appeal by way of case stated as set out in *O’Culacháin v. McMullan Bros. Ltd.* [1995] 2 I.R. 217 and then emphasised the similarly limited jurisdiction in the revised structure introduced by the Finance (Tax Appeals) Act, 2015.
47. He went on to summarise the arguments advanced on behalf of each of the parties.
48. The substance of the appellant’s case was that the Commissioner was wrong to have identified the three conditions of “*identity*”, “*in consequence*” and “*no intervening act*”. The Act, it was said, was focussed on the property assured and the capacity in which Mr. Dunne entered the contracts was irrelevant. The averments made by Mr. Dunne in other proceedings, it was said, could not affect the legal position.
49. The judge noted the alternative submission that it was illogical that Yesreb should have to pay stamp duty on the combined consideration under the two contracts and so it could not be the “*accountable person*”.
50. At para. 44 of his judgment, the judge emphasised that he was summarising the parties’ submissions. He considered that there was little point in elongating the judgment to mention each and every point addressed by the parties and considered by the court. At para. 48 he identified seven areas of disagreement.
51. It was common case in the High Court that from and after the declaration of trust on 23rd July, 2005 Mr. Dunne held whatever interest he had in the property or the contract in trust for Mrs. Dunne and that following the payment of the balance of the purchase price, Mr. Dunne’s interest in the 2005 contract was held in trust for Mrs. Dunne.
52. One of the areas of disagreement was the effect on Mr. Dunne’s trustee status of the Matsack nominee agreement. The judge noted that by the terms of the nominee agreement Matsack had agreed to hold the property and to deal with it on the direction of Mrs. Dunne and that there had been no evidence that any direction had been given by Mrs. Dunne to Mr. Dunne to sign any contract for the sale of the property.
53. At para. 51 of his judgment, the judge noted an argument sought to be made on behalf of the appellant that there could have been no valid assignment of the trust unless it was in

writing and signed by the person assigning it: in this case Mr. Dunne. That was not an argument that had been made before the Tax Appeals Commission and the judge noted that it was not included in the appellant's original written submissions but the appellant's case was that the provisions of the Statute of Frauds supported its argument that there must be – and that there had not been – an assignment of the trust. Although Revenue appeared willing to deal with the argument, the judge took the view that the appellant's argument – and Revenue's answer to it – would depend on an analysis of facts which had not been found. He held that the introduction of new or additional case law on the hearing of an appeal to bolster an argument made before the Commission was different to introducing an argument which necessarily involved eliciting facts from the summary given by the Commissioner who had another focus when preparing the summary of facts for the case stated.

54. Unfortunately, the judge rather gave a hostage to fortune when he said, at the end of para. 54, that the court was not aware whether one or other of the parties could or would urge the court to return the case stated for amendment pursuant to section 949AR. I will return to this.
55. Starting at para. 56 of his judgment, the High Court judge dealt quite briefly with what he referred to as the crux of the appeal: which he identified as being whether Mr. Dunne had any interest in the property to convey in the 2013 conveyance.
56. The judge did not accept an argument made on behalf of Revenue and which had found favour with the Commissioner that "*a person simply cannot contract to sell something over which he has no right or title*" but agreed with the finding of the Commissioner that s. 46 requires that the person who contracted to purchase the property originally and the person who later sub-sells should have the same identity. He said that an act involving the cessation of interest of that person was not facilitated by the plain wording of the section. Applying the facts found by the Commissioner having regard to the correspondence between the solicitors as to how the various parties conducted themselves, the judge said that he would not gainsay the finding that Mr. Dunne no longer had an interest in the 2005 contract. He said that the appellant had failed to establish that the nominee agreement was not recognised by the relevant parties and that the Commissioner had not erred in finding that as of 9th October, 2006 Mr. Dunne ceased to hold a bare trusteeship. The judge expressed the view that this conclusion was bolstered by the affidavit of Mr. Dunne – to which I have referred – the tender documents for the contemplated sale by tender by Matsack, the correspondence between the solicitors, and the finding of fact that the property was intended to be conveyed at the direction of the beneficial owner, through Matsack.
57. The notice of appeal complains that the High Court judge failed to clearly distinguish between issues of law and issues of fact and to engage with the issues of law raised by the case stated. With all due respect to the trial judge, I believe that he could have been clearer in the language he used as to his approach to the findings of the Commissioner but I believe that taking the judgment as a whole it is evident that the judge identified

and applied himself to the main legal issues on the appeal before him. He found that a person who in the meantime had divested himself of all legal and beneficial interest in a property could not enter an enforceable contract to sell the property to any other person. Consequently, he found that the conveyance could not have been "*in consequence*" of the 2013 contract. He found that the natural and ordinary meaning of "*person*" in s. 46 meant a person who could contract for and complete a sale of the property.

58. As to the argument that the appellant was not the "*accountable person*" the High Court judge – as the Commissioner had – dealt with this shortly. The "*accountable person*", he said, was the "*purchaser or transferee*" under the conveyance, which was the appellant.

The application to send back the case stated to the Tax Appeals Commission

59. I suggested earlier that the High Court judge rather gave a hostage to fortune when he said, at the end of para. 54 of his judgment, that the court was not aware whether one or other of the parties could or would urge the court to return the case stated for amendment pursuant to section 949AR.
60. The judgment of the High Court was delivered electronically on 6th May, 2021 and the appeal was listed for final orders on 9th June, 2021. The transcript of the hearing on 9th June, 2021 shows that late on the previous evening the appellant's legal team was instructed to apply to have the case stated sent back to the Commissioner for amendment. As there had not been at the time the draft case stated was provided to the appellant, neither was there then any suggestion that it was deficient but – as I understand the argument – it was proposed that the Commissioner might review the transcript of the evidence on the appeal before the Commission and should endeavour to abstract such evidence as there might be in relation to the presence or absence of a sufficient note or memorandum of any assignment by Mr. Dunne to Matsack and/or part performance of any oral agreement for any such transfer.
61. Ms. O'Brien S.C., for Revenue, objected to the application. There was no jurisdiction to hear further evidence and the Commissioner, it was said, was *functus officio*. The effect of what was proposed, it was submitted, would be to require the Commissioner to reconsider her determination. The case stated, it was said, could not be amended to deal with issues that had not been ventilated below. What the appellant was asking the court to do, it was said, was to send the case back for amendment of the determination, not the case stated, and there was no jurisdiction to do that. In any event, it was submitted, any technical non-compliance with the Statute of Frauds could not change what was said to be a matter of law that the conveyance was not in consequence of the 2013 contract.
62. In an *ex tempore* judgment on 9th June, 2021 the judge accepted the submission which had been made on behalf of the Revenue. He said that the whole thrust of the new appeals process was that the matter must be aired fully before the Appeal Commissioners

and that the effect of what he had been asked to do was to re-open the appeal rather than revisit the case stated.

The construction of taxing Acts

63. There was some discussion in the course of argument as to whether s. 46 SDCA was a charging provision or a relieving provision but it was accepted by the appellant that this was unlikely to be determinative.
64. Mr. Conor Bourke S.C., for the respondents, referred the court to a passage from the judgment of Kennedy C.J. in *Revenue Commissioners v. Doorley* [1933] I.R. 750 where he said:-

"I have been discussing taxing legislation from the point of view of the imposition of tax. Now the exemption from tax, with which we are immediately concerned, is governed by the same considerations. If it is clear that a tax is imposed by the Act under consideration, then exemption from that tax must be given expressly and in clear and unambiguous terms, within the letter of the statute as interpreted with the assistance of the ordinary canons for the interpretation of statutes. This arises from the nature of the subject matter under consideration and is complimentary to what I have already said in its regard. The court is not, by greater indulgence in delimiting the area of exemptions, to enlarge their operation beyond what the statute, clearly and without doubt and in express terms, excepts for some good reason from the burden of a tax thereby imposed generally on that description of subject matter. As the imposition of, so the exemption from, the tax must be brought within the letter of the taxing Act as interpreted by the canons of construction so far as applicable"

65. Immediately before the passage particularly relied on by Revenue, Kennedy C.J. said:-

"The duty of the Court, as it appears to me, is to reject an a priori line of reasoning and to examine the text of the taxing Act in question and determine whether the tax in question is thereby imposed expressly and in clear and unambiguous terms, on the alleged subject of taxation, for no person or property is to be subjected to taxation unless brought within the letter of the taxing statute, ie, within the letter of the statute as interpreted with the assistance of the ordinary canons of interpretation applicable to Acts of Parliament so far as they can be applied without violating the proper character of taxing Acts to which I have referred."

66. There was agreement between the parties that the principles to be followed in construing a taxing statutes were those set out in the judgment of O'Donnell J. in *Bookfinders Ltd. v. Revenue Commissioners* [2020] IESC 60. That, it seems to me, was a judgment which dealt in particular with the construction of difficult provisions of tax Acts. While the parties to this appeal make diametrically opposed submissions as to whether the

conveyance did or did not come within the section, neither argues that it is particularly difficult to construe.

67. If, superficially, and read on its own, the section might be said to impose a tax on sub-sales, it seems to me that in the context of the Act as a whole it is clear that s. 46 treats conveyances by way of sub-sale more favourably than conveyances which do not meet the conditions of the section. The scheme of the legislation – by s. 2(1) – is to make chargeable with stamp duty any instrument which is specified in Schedule 1 and relates to property situated in the State, and – by s. 7 – to impose a separate and distinct charge on an instrument containing or relating to several distinct matters in respect of each of the matters. *Pace* for the moment the appellant's argument as to whether it is the accountable person, it is clear that s. 46 is a relieving provision and falls to be construed accordingly. I am fortified in this conclusion by the fact that the issue in the case has consistently been identified on all sides as being whether the appellant is entitled to sub-sale relief.

The correct construction of s. 46(1) of the Stamp Duties Consolidation Act, 1999

68. Section 46, sub-s. 1 of the Stamp Duties Consolidation Act, 1999 provides that:-

"46. – (1) Where –

(a) *a person having contracted for the purchase of any property, but not having obtained a conveyance of that property, contracts to sell the same to any other person, and*

(b) *the property is in consequence conveyed immediately to the sub-purchaser,*
then the conveyance shall be charged with ad valorem duty in respect of the consideration moving from the sub-purchaser."

69. Both parties relied on the judgment of Wilberforce J. (as he then, quite briefly, was) in *Fitch Lovell Ltd. v. Inland Revenue Commissioners* [1962] 2 1 W.L.R. 1325. The facts of that case were quite different to this and the core issue was whether blank share transfer forms were liable to stamp duty as conveyances or transfers on sale, but there was an argument in the alternative based on s. 58(4) of the Stamp Act, 1891 which, as the shoulder note to s. 46 SDCA shows, was its immediate predecessor. As always, the words of the judge are to be read and understood in the context in which they were used.
70. The ingenious plan which was devised by the solicitors for Fitch Lovell in the hope of avoiding stamp duty on the takeover of a quoted company called I.B.S. Limited, and the execution of that plan, is set out in great detail in the report but it is distilled in the headnote.

71. Fitch Lovell made an offer to all of the shareholders in I.B.S. to buy their shares in exchange for shares in Fitch Lovell. The I.B.S. shareholders were invited to sign a form of acceptance and a share transfer form which was left blank as to the date, the purchase consideration, and the name of the transferee. Sufficient of the I.B.S. shareholders accepted the offer and Fitch Lovell allotted the new shares and took possession of the blank share transfer forms. The offer to the I.B.S. shareholders valued their shares at 30s. 4d. each.
72. Fitch Lovell then agreed to sell its I.B.S. shares to an associated company, Lovell & Christmas, for 1d. per share but before that sale was completed a resolution was passed by an extraordinary general meeting I.B.S. Limited to create a new class of what at an early stage of the planning had been referred to as "*master shares*" with preferential dividend and distribution rights such as reduced the value of the ordinary shares to 1d. For the benefit of younger readers, 30s. 4d. was the equivalent of 364 old pence, which goes to show that the scheme was as ambitious as it was ingenious. The sub-sale by Fitch Lovell to Lovell & Christmas was completed by the execution by Lovell & Christmas of a document stating that it was the transferee of all of the shares covered by the transfers.
73. As was the plan, the Commissioners of Inland Revenue considered that the document executed by Lovell & Christmas was a conveyance or transfer on the sale by Fitch Lovell and assessed it to ad valorem stamp duty on the sub-sale consideration of 1d. per share, the total duty being £36. However, the Commissioners also assessed the transfers by the I.B.S. shareholders to duty on the consideration of 30s. 4d. per share, the total duty being £13,238 6s., against which Fitch Lovell appealed.
74. The *ratio* of the judgment of Wilberforce J., correctly abstracted by the reporter for the Weekly Law Reports, was:-
- "(1) that it is sufficient for a document to amount to a conveyance or transfer on sale if it is the instrument chosen by the parties to complete the sale in such a way that they did not intend any other instrument to be executed.*
- (2) that, in the circumstances of the present case, a position was created and intended to be created such that [Fitch Lovell] had the sale in its favour completed by the documents which were intended between it and the vendors, the I.B.S. shareholders, to be the documents of completion of the sale and consequently the transfers, even though not completed, should be regarded as conveyances on sale within the Schedule to the Stamp Act, 1891, and that, therefore, the assessment of those documents to stamp duty was correct and the appeal should be dismissed."*
75. The conclusion in *Fitch Lovell* that each of the transfers was chargeable as a conveyance or transfer on sale was dispositive of the appeal but Wilberforce J. went on to consider the alternative argument that the sub-sale by Fitch Lovell to Lovell & Christmas came within s. 58(4) of the Act of 1891. Both parties relied on the judgement as a correct statement of the law and the Tax Appeals Commission drew heavily on it in the formulation of the

three stage test which it propounded and applied, and which was approved by the High Court.

76. The conclusion of Wilberforce J. on the alternative argument was captured by the law reporter for the All England Reports [1962] 3 All E.R. 685 where the headnote goes on to say:-

"If, however, the transfers should not be regarded as conveyances on sale to the appellant company, there had been, on the facts, two sales considerations, and ad valorem duty on the consideration of 30 s 4 d per share on the first sale to the appellant company was exigible (in addition to the £36 on the second or sub-sale), the exemption conferred by s 58(4) of the Stamp Duty Act, 1891, where property passed unaltered on sub-sale, being inapplicable because, by reason of the steps taken to reduce the value of the ordinary shares of IBS Ltd, before the sale to the subsidiary, what was sold to the subsidiary was not the same property (within s 58(4)) as the appellant company had contracted to buy pursuant to its offer of 5 November 1958."

77. Starting at p. 1341 of the report in the Weekly Law Reports, Wilberforce J. said:-

*"If that conclusion is correct, then, as I have said, it is not necessary to consider the provisions of section 58 (4). But on the assumption that I am wrong and that there was no conveyance on sale to Fitch Lovell, then the position must be that the shares were transferred direct by the vendor shareholders to the sub-purchasers, there having been two sales and two considerations: a sale to Fitch Lovell for 30s. 4d. and a sale to Lovell & Christmas for 1d. per I.B.S. share. Prima facie in those circumstances, double tax, that is to say, tax on each consideration, is chargeable unless the case comes within section 58 (4) of the Stamp Act. On that I refer to the speech of Lord Somervell in *Escoigne Properties Ltd. v. Inland Revenue Commissioners*. [1958] A.C. 549. Is, then, this case within section 58 (4) of the Stamp Act, 1891? I observe in the first place, generally, that this seems to be a transaction of quite a different character from that which the subsection has in mind. That subsection contemplates a contract by a vendor followed by a sub-contract by the purchaser and then, before any act other than that of signing the contract of sale has been done by the vendor and before any alteration in the character of the property, an act of conveyance in consequence of the sub-contract direct to the sub-purchaser, bypassing the purchaser. Here the vendors acted before the sub-purchaser came on the scene at all, not merely agreeing to sell but taking a step that was certainly complete and final. She — I am referring to the typical case of Miss Abraham, an I.B.S. shareholder — had signed her transfer giving authority to I.B.S. to deliver it and complete it and passed over the documents of title. At that point she stepped completely off the stage. Any act which was done later was done not by her: she did nothing in consequence of the sub-contract; it was done by the purchaser, Fitch Lovell. Nor can it be said that the act of conveyance went immediately to the sub-purchaser, bypassing the*

purchaser. The purchaser had enough hold on the shares to extract from them the whole kernel of the nut before passing on the empty shell."

78. The judge then went on to consider three arguments made by the Inland Revenue against the applicability of section 58(4) of the Act of 1891. The first was that the section only applied where the purchaser had not taken a conveyance of the property which he had agreed to purchase, which Fitch Lovell had. That, as the judge said, was the same point which he had just considered, namely, whether there was any document to be treated as a conveyance on sale to the purchaser. The second was an argument, said to have been based on the facts, that the sale by Fitch Lovell to Lovell & Christmas had pre-dated the contract by Fitch Lovell for the purchase of the shares, which the judge rejected on the evidence.

79. At p. 1342 of the report, Wilberforce J. came to the Inland Revenue's third argument, which is of significance in this case:-

"Then the third point is taken on the words '... contracts to sell the same to any other person,' and it is said that that requires the subject-matter of the sub-sale to be the same as that which was the subject-matter of the main sale. Without placing any undue weight on the words 'the same,' it does seem to me quite plain that the intention of the subsection is that there should be identity between the property conveyed on the main sale and that which is passed on by the sub-sale; and therefore I have to face the question here, whether that condition exists. The point is, in a sense, of a metaphysical character, rather like the familiar dilemma, whether a river is the same river. It involves consideration of what a share consists of and for what purpose it is relevant to consider its identity. Various arguments are put forward by the taxpayer in support of the contention that the property sold on was the same as that which was sold in the first place."

80. Now the nature of the property *Fitch Lovell* was plainly different to the nature of the property in the instant case but the arguments advanced and considered as to the identity of the property are nevertheless instructive. Continuing on p. 1342, Wilberforce J. said:-

"First, there was what I might call a nominalistic argument. It is said these were ordinary shares, indeed specific ordinary shares in I.B.S., both at the start and at the end. Now, it may well be that an identification in this way by a label may be sufficient for some purposes, for example, for considering whether the ultimate shares would pass under a bequest of ordinary shares, but I cannot accept that it is adequate here to rely on a mere label without inquiring into the content of the package.

Then there was a more sophisticated argument put forward based on the articles of association. It is said that these are the ordinary shares in the company as described in and with the rights conferred by the articles of association. They are the shares which take whatever is left after whatever preference or prior right

shares there may be for the time being in existence. I was referred to *John Smith's Tadcaster Brewery Co. Ltd. v. Gresham Life Assurance Society* [1951] Ch. 308 and *White v. Bristol Aeroplane Co. Ltd.*, [1953] Ch. 65 which are cases on what 'affects' the rights of the existing shares. If one were to approach the matter in this way, the correct question to ask would, in my judgment, be whether the chose in action, which an ordinary share is, conferred the same rights after the sale to Fitch Lovell but before the sub-sale, as it did on the sub-sale to Lovell & Christmas. On and after the main sale the shares had a right, subject to certain powers of the directors, to profits of the company after payment of dividends on the 5½ per cent. preference shares had been satisfied, subject to this, that by a resolution in which 51 per cent. of those voting had to concur — and I point out here that Fitch Lovell itself had more than 51 per cent. and so could prevent any such step being taken — a further class of preference or prior shares could be issued. After the sub-sale, on the other hand, the rights of the ordinary shares as to profits and assets had been, for practical purposes, extinguished, and I might refer in this connection to the figures which are set out in the chairman's letter, which show that there was no possibility of profits or assets coming to the holders of ordinary shares. This was done through the placing ahead of them of shares which, whatever 51 per cent. or 100 per cent. of the ordinary shares could do, were preferentially entitled to the whole of the profits and assets in I.B.S. Looked at purely technically, therefore, it seems to me there is much to be said for the proposition that the chose in action was not the same before and after these irrevocable transactions. A potential displacement of rights, as to which the shareholder in question held the master key, had been replaced by an actual irreversible and total loss of rights. But I think that the matter requires to be looked at more fully in the light of the evident purpose of section 58 (4), which is to give a concession as regards stamp duty where property passes unaltered. Here the purchaser, Fitch Lovell, becoming entitled to shares whose aggregate rights were worth 30s. 4d. each, concurred in an arrangement whereby the whole of that aggregate, or the whole less a nominal amount, was shifted to a separate item of property, namely, the 286 preferred ordinary shares, themselves acquired by Fitch Lovell.

It seems to me that an analysis of this transaction which seeks to produce the result that the property resold is the same property as that first sold, if it can be made at all, involves a degree of formalism which the law in the application of section 58 (4) should not endorse. I therefore decline to hold that section 58 (4) would apply to this case.

That means this, that whatever document conveyed the shares to the sub-purchaser is chargeable with two duties ad valorem, and it remains to consider what that document is. Here there is a technical objection taken on behalf of the taxpayer that the covering document which is presented as a composite document including the general adaptation of the transfers so as to make Lovell & Christmas the transferees, has been stamped £36 and has been adjudged duly stamped by the commissioners themselves. So, they say, no further stamp can be placed on it.

But the commissioners, while doing this, have also stamped the transfers themselves ad valorem in respect of the 30s. 4d. On the basis that these were conveyances on sale to Fitch Lovell, that assessment is correct. On the basis that they were conveyances on sale to the sub-purchaser the stamping, in my judgment, is equally correct. Undoubtedly, whether they were filled in or not, they were intended to complete the transfer to Lovell & Christmas, if not to Fitch Lovell, no doubt with the aid of the covering sheet or the schedule attached. But it was in them that the vendor's name appeared and the reference to the shares transferred. It seems to me that either the covering document, as to the aggregate, or each transfer separately, as to its separate consideration, can quite well be stamped, and the latter having in fact been done, I hold the commissioners have acted correctly. The appeal is therefore dismissed with costs."

81. In the wording of s. 46(1) and by reference to *Fitch Lovell* the Commissioner identified three conditions which needed to be satisfied if the conveyance was to qualify for stamp duty calculated by reference only to the sub-sale price. The High Court judge approved what he referred to as this "*interweaving analysis*" as helpful in explaining how a person who has contracted to purchase a property cannot be considered to be the person who sub-sells it after losing all legal and equitable interests in the contract and property.
82. On the plain wording of s. 46(1) the person who contracts to buy must be the same person as the person who contracts to sell, and the sub-sale must be of the same property as the contract to purchase. The requirement that the property must be conveyed "*immediately*" – that is directly – to the sub-purchaser necessarily requires that it should be legally unaltered. If this is so, it seems to me to follow that the person who contracts to buy and to sell must do so in the same capacity, or else what is sold is not that which was bought.
83. Ms. Clohessy submits that the property which Mr. Dunne contracted to buy and the property sub-sold was the same, namely, the house on Shrewsbury Road called *Walford*. This, it seems to me, is what Wilberforce J. referred to as a nominative argument. The house may have been the same house but by 2013 Mr. Dunne had no interest in it, and, on any analysis, no right to sell it. Immediately after the execution of the contract on 1st July, 2005 Mr. Dunne had the right, on payment of the balance of the purchase price, to call for a conveyance. Save with the prior consent of the executors, Mr. Dunne could insist only on a conveyance to himself. By his declaration of trust of 23rd July, 2005 Mr. Dunne divested himself of any interest he had in the property and contract. He expressly acknowledged his obligation to deal with the contract and property as directed by Mrs. Dunne and did not reserve any power of sale.
84. I respectfully agree with the High Court judge that the fact that Mr. Dunne did not have a power of sale was not necessarily an impediment to his executing a contract for sale of the property but, again I agree with the judge, no such contract could be performed without the concurrence of the executors and the beneficial owner. By special condition 14, absent the prior consent in writing of the executors, Mr. Dunne could not call for a

conveyance to anyone other than himself. The Commissioner and the High Court focussed on the fact that the executors had, in fact, been persuaded by Matsack to execute a conveyance on the direction of Matsack but it seems to me that the gap, in law, between the contract signed by Mr. Dunne on 28th March, 2013 and the conveyance to Yesreb on the following day is apparent not so much from the previous agreement with Matsack but by the absence of any prior consent of the executors given to Mr. Dunne to execute an assurance to anyone other than Mr. Dunne. Absent any legal entitlement on the part of Mr. Dunne either to sell the property without the concurrence of Mrs. Dunne or to call for a conveyance to anyone other than himself, it cannot be said that the conveyance was "in consequence" of the contract.

85. The appellant now argues that the trial judge erred in law in finding that Mr. Dunne had no interest in the property to convey but does not say what that interest was. Even if, for the sake of argument, some theoretical vestige of the 2005 contract survived the payment by Mrs. Dunne of the purchase money, the delivery to her of the deeds, and the Matsack nominee agreement, anything he might have contracted to sell cannot have been the same as that which he contracted to buy.
86. In principle, I accept the appellant's argument that the fact that Matsack contemplated offering the property for sale was not determinative of – or even really relevant to – its ability in law to do so. Similarly, I do not believe that the declared belief of Mr. Dunne or the number or experience of the conveyancing solicitors who were involved was material to the assessment of the legal effect of the deed of conveyance. However, by the time of the conveyance to Yesreb whatever prospect there was at the time of the 2005 contract or his declaration of trust that Mr. Dunne might come to own the house had been overtaken by the fact that Mrs. Dunne had paid for it and by the fact that Mrs. Dunne, by Matsack, had the title deeds. If Mr. Dunne signed a contract to sell the property to Yesreb as trustee of Mrs. Dunne, there was not only no evidence of his authority to do so but his arrogation of such capacity was inconsistent with the Matsack nominee agreement and the deed of conveyance of the following day by which, by his acknowledgement that Matsack was the present trustee, Mr. Dunne confirmed that he was not. The conveyance of the property by the executors at the direction of the beneficial owner could not have been in consequence of the contract to which neither of them had been party.
87. Before dealing with the next point, I pause to observe that it is interesting to contemplate whether, if the point had been made before the Tax Appeals Commission, the conveyance itself might have been thought to have been a sufficient note or memorandum of the transfer of the trust to Matsack.
88. The appellant accepts that the onus is on it to establish the facts necessary to bring the conveyance within section 46. It is now said that there is no evidence of an assignment by Mr. Dunne to Matsack but that is a new argument which the appellant first sought to make before the High Court. I do not accept that the alleged absence of a sufficient note or memorandum is something that bolsters the appellant's other argument. Rather, as

the High Court judge found, it is an argument that would depend on issues of fact and of law which were not canvassed before the Commissioner.

89. I am satisfied that the High Court judge was correct to conclude that the application by the appellant to have the case stated sent back to the Commissioner was misconceived and that he had no jurisdiction to do that. Any appeal from a determination of the Tax Appeals Commission is an appeal on a question of law only. The function of finding the facts is exclusively that of the Commissioner and necessarily the Commissioner will find only such facts as are material to the issues raised by the parties. The proposition that the case stated might be amended to set out such facts as might be necessary to allow the High Court to engage with the argument which the appellant might make as to compliance with the requirements of the Statute of Frauds and such response as the Revenue might make presupposed that the Commissioner might have made findings of fact on issues which had never been canvassed. Counsel, having been instructed beyond the eleventh hour to make the application, was rather tentative as to the basis on which the case stated might be sent back. It was not proposed, necessarily, unless the court or the Appeal Commissioner thought it was appropriate, that there would be any new evidence but I cannot see how the factual ground could have been laid without reopening the determination. That, I am satisfied, and as the High Court judge found, would have been beyond the statutory jurisdiction of the court in dealing with the appeal.
90. Moreover, the suggestion in the course of argument on the remittal application that the Commissioner might add a question to the case stated was inconsistent with the scheme of the legislation which permits an appeal, the starting point of which is that the losing party must express his dissatisfaction with a determination of the Appeal Commissioners as being erroneous on a point of law. It makes no sense to contemplate that a party might be dissatisfied with a determination as being erroneous on a point of law which was never decided.
91. I add for completeness that the notice of appeal seeks, in the alternative to an order declaring that the questions of law in the case stated should be answered in the negative, an order pursuant to s. 949AR remitting the matter to the Tax Appeals Commission for consideration of the evidence and for a finding as to whether there was a direction from Mrs. Dunne to Mr. Dunne to transfer the interest held by him on trust for her, that was not pursued. If it had, it would inevitably have gone the same way as the argument that case stated might have been sent back to have the determination re-opened on any other ground.

Summary and conclusions on the sub-sale issues

92. Mr. Dunne, not having had a power of sale on 28th March, 2013 cannot have validly contracted for a sub-sale to Yesreb.

93. Mr. Dunne having no power to sell, there could be no legal nexus between the contract of 28th March, 2013 and the conveyance of the following day. Therefore the conveyance cannot have been in consequence of that contract.
94. Whatever, if any, notional residual interest Mr. Dunne might have retained in the 2005 contract, the conveyance to Yesreb required the concurrence of the executors and Mrs. Dunne, at least, if not also of Matsack. That being so, it cannot be said that the same property was immediately conveyed to Yesreb.
95. I am satisfied that the High Court was correct in answering the first question of law in the case stated in the affirmative and in refusing the appellant's application for an order pursuant to s. 949AR remitting the case stated to the Appeal Commissioner for amendment.

Accountable person

96. Section 1, sub-s. 1 of the Stamp Duties Consolidation Act, 1999 provides, as far as is material:-

"1. - (1) In this Act, unless the context otherwise requires -

'accountable person' means -

- (a) the person referred to in column (2) of the Table to this definition in respect of the corresponding instruments set out in column (1) of that Table by reference to the appropriate heading in Schedule 1, ...*

TABLE

<i>Instrument Heading specified in Schedule 1</i>	<i>Accountable person</i>
<i>(1)</i>	<i>(2)</i>
<i>CONVEYANCE or TRANSFER on sale of any stocks or marketable securities.</i>	<i>The purchaser or transferee.</i>
<i>CONVEYANCE or TRANSFER on sale of any property other than stocks or marketable securities or a policy of insurance or a policy of life insurance.</i>	<i>The purchaser or transferee.</i>

97. The deed of conveyance dated 29th March, 2013 was unquestionably a conveyance on sale of property other than stocks or marketable securities. The purchaser was unquestionably the appellant. It is not suggested that the *ad valorem* duty on the instrument was not correctly calculated. It is accepted that if the sale to the appellant was a sub-sale, the appellant is the accountable person, and so, that the appellant was the accountable person in respect of the duty on the money paid by it. In effect, the argument is that the appellant's accountability is limited to the duty on the money paid by it.
98. The appellant asks, plaintively, whether if sub-sale relief is not available to it does the appellant pay duty on both transactions? It is submitted that this would be quite an extraordinary penalty and could only be so if the appellant is "*the 'accountable person' for both contracts of sale.*" (Emphasis added.)
99. To be sure the duty assessed on the conveyance to the appellant is substantial but the extent of the liability does not necessarily mean that it is penal. If the parties to this appeal were agreed on nothing else, they were agreed that stamp duty is exigible on the conveyance, and not on the contracts. The extent of the liability is calculated by reference to the value of the contracts but the duty is payable on the conveyance by the purchaser or transferee.
100. Later, it is suggested that the conveyance of 29th March, 2013 comprises two instruments: which, of course, it does not. It is a single instrument which gives effect to two transactions. As the appellant correctly points out, s. 7(a) SDCA provides that an instrument containing or relating to several distinct matters shall be separately charged, as if it were a separate instrument in respect of each of the matters. The duty is calculated by reference to the total consideration but it is charged on the instrument and it to be paid by the accountable person.
101. It is suggested that if sub-sale relief is denied, then it can only be on the basis that the "*sale in 2005*" was completed by another document or that it is completed as a separate transaction by the 2013 conveyance. That, it seems to me, misunderstands the scheme of the legislation. I am satisfied that Revenue is correct in its submission that s. 7 deals only with the computation of the duty and does not identify the accountable person. I cannot accept that this is illogical or that the accountable person cannot be identified without interrogating the transactions. The accountable person is to be identified by simply establishing the identity of the purchaser under the conveyance or transfer.
102. If, it is submitted, Revenue is correct they are requiring the final purchaser, in this case the appellant, to be accountable for stamp duty for two separate and distinct agreements for sale. This is loosely correct but is better recast as saying that if Revenue is correct the legislation requires that the purchaser should be accountable for the stamp duty.
103. The appellant asks, incredulously, what is to prevent a situation arising where the last person in a number of sub-sales is to pay stamp duty in respect of the value of all of those sales? The answer is, s. 46 SDCA, provided the sub-sales qualify or come within

the meaning of the section. Or, perhaps, a purchase price that reflects the stamp duty that will be payable on the conveyance. Or, perhaps, in a case where there is doubt as to the extent to which the accountable person will be accountable, security for such part of the apprehended liability as is not referable to the price paid by the person to whom the property is to be conveyed.

104. The argument that the appellant is not the accountable person also fails.

Conclusion

105. For these reasons I am not persuaded that there was any error in the determination of the High Court on the questions of law and the appeal must be dismissed.

106. My preliminary view is that the respondent has been entirely successful on the appeal and accordingly should be entitled to the costs of the appeal. If any party wishes to argue for a different order as to costs they may contact the office of the Court of Appeal within ten days of the delivery of this judgment and request a short hearing, bearing in mind that they may be required to pay the costs of the additional hearing if they do not succeed in altering the indicative order as to costs.

107. Costello and Haughton JJ. have read this judgment in draft and indicated their agreement with it.