

In the Privy Council.

ON APPEAL
FROM THE SUPREME COURT OF ONTARIO
(APPELLATE DIVISION).

BETWEEN—

THE ATTORNEY-GENERAL OF ONTARIO
(Plaintiff) *Appellant*

— AND —

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NATIONAL TRUST COMPANY LIMITED,
Executor of the last Will of William Edward
Wilder, deceased, and MARY MARJORIE
WILDER - (Defendants) *Respondents*.

RESPONDENTS' CASE.

RECORD.

1. This is an appeal from a judgment of the Appellate Division of the Supreme Court of Ontario dated 9th March, 1931, affirming a judgment of the Honourable Mr. Justice Orde dated 20th August, 1930, in favour of the Respondents.

p. 30.

p. 11.

20 2. This appeal raises the question whether gifts *inter vivos* when taxed for succession duty purposes under the Succession Duty Act, R.S.O. 1927, cap. 26, and amendments, must be taxed on the value of the thing given as at the date of the gift or as at the date of the death of the donor.

3. The provisions of the Succession Duty Act and the contentions of the Appellant are stated by the Honourable Mr. Justice Orde as follows:—

p. 6, l. 26
to
p. 7, l. 25.

The sections of the Act upon which the Attorney-General chiefly relies are Section 4, Section 8, and particularly Paragraph (b) (ii) of Sub-section 2 thereof, Paragraph (a) of Sub-section 1 of Section 12, and Sub-section 5 of Section 13.

Section 4 provides that "in determining the dutiable value of property or the value of a beneficial interest in property the fair market value shall be taken as at the date of the death of the deceased and allowances shall be made for reasonable funeral expenses, debts and encumbrances and Surrogate Court fees." 10

By Paragraph (b) of Section 1, "dutiable value" is defined in much the same language, with the additional inclusion in the deductions of "other allowances and exemptions authorised by this Act."

Section 8 provides generally that "all property situate in Ontario and any income therefrom passing on the death of any person . . . shall be subject to duty"

Sub-section 2 of Section 8 is designed to impose duty upon property which but for some such statutory provision could not be subject to duty as part of the deceased's estate. It affects property transferred by the deceased in contemplation of death, donations *mortis causa*, gifts *inter vivos*, gifts of property over which the donor retained the possession and enjoyment, etc., etc. That part of the sub-section applicable to the issue here reads as follows:— 20

"(2) Property passing on the death of the deceased shall be deemed to include for all purposes of this Act the following property:—

"(b) (ii) Any property taken under a disposition operating or purporting to operate as an immediate gift *inter vivos*, whether by way of transfer, delivery, declaration of trust or otherwise, made since the 1st day of July, 1892." 30

Section 12 (1) makes every heir, legatee, donee, or other successor, and every person to whom property passes for any beneficial interest, liable for the duty upon so much of the property as so passes to him, and requires him within six months of the death of the deceased to file a statement shewing "(a) a full inventory in detail of all the property of the deceased person and the fair market value thereof on the date of his death."

Section 13 sets forth the procedure which the Provincial Treasurer may adopt when dissatisfied with the inventory and the values therein, and provides means for a valuation by the Sheriff. Sub-section (5) requires the Sheriff, in that event, to "appraise the property mentioned in the inventory, or any 40

“part thereof, as directed by the Surrogate Judge, or any property wrongfully omitted, at its fair market value at the date of the death.”

The contention of the Attorney-General is that under those provisions the property so given during the deceased's lifetime is to be treated as if it had remained the property of the donor, and had not passed to the donee until the donor's death; and that it must be valued accordingly.

4. The Respondent National Trust Company Limited is the sole Executor and Trustee of the last Will of William Edward Wilder, late of the City of Toronto, in the Province of Ontario, Investment Banker, deceased, whose death occurred at the said City of Toronto, where he was domiciled, on the 28th May, 1929. The Respondent Mary Marjorie Wilder, who was added as a Defendant to the Action by Order of the Honourable Mr. Justice Orde, dated the 4th April, 1930, is the widow of the deceased.

5. The deceased, in his lifetime, on the 30th December, 1925, gave to his then wife, the Respondent Mary Marjorie Wilder, absolutely, as an immediate gift *inter vivos* within the meaning of Clause (ii) of Paragraph (b) of Sub-section (2) of Section 8 of the Succession Duty Act, 500 shares of the par value of \$100 each in the capital stock of Picton Securities, Limited.

6. Picton Securities, Limited, is a private Company incorporated under the provisions of the Companies Act (Ontario) having its head office in the said Province of Ontario. Its shares are not transferable to any person not already a shareholder without the previous consent of the directors of the Company. None of its shares have ever been sold or offered for sale.

7. The value of the said 500 shares at the date of the gift was \$50,240, and the value at the date of the death of Mr. Wilder was \$264,182.50.

8. This Action was brought by the Appellant for a declaration that the date as at which the value of the shares in question should be taken for purposes of succession duty under the Succession Duty Act is the date of the death of Mr. Wilder and not the date of the gift *inter vivos* and for a declaration that the Province of Ontario is entitled to recover succession duty under the Act in respect of the value of the 500 shares so calculated.

9. The Honourable Mr. Justice Orde on a motion for judgment upon the facts admitted by the pleadings made by the Appellant the 29th March, 1930, held by a judgment pronounced the 20th August,

1930, that the gift *inter vivos* should be taxed for succession duty purposes on the value of the 500 shares as at the date of the gift, namely the 30th December, 1925, and not as at the date of the death of Mr. Wilder, namely the 28th May, 1929. He said that the Succession Duty Act having declared that all property passing on the death of any person shall be subject to duty merely provides that property given during the lifetime of the deceased shall be included in that category and that the effect of this is to make the gift with all its attributes as to value and the person to be taxed and the death of the donor coincident.

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10. The Appellant appealed from this judgment to the Appellate Division of the Supreme Court of Ontario, and on the 9th March, 1931, that Court made an order (Magee, J.A., dissenting) dismissing the appeal.

Grant, J.A., thought that Section 4 in providing the manner in which dutiable value of property is to be determined does not refer to property which only notionally passes on the death of the deceased but to property which was actually part of the deceased's estate and that the statute does not provide in clear and unambiguous language that the value of the subject matter of the gift *inter vivos* upon which the duty is to be calculated is to be such value as the property may have at the date of the donor's death. He would dismiss the appeal.

Mulock, C.J.O., agreed with Grant, J.A.

Hodgins, J.A., who was also in favour of dismissing the appeal, was of opinion that inasmuch as the shares in question did not pass at the death, but are only deemed to have done so for the purposes of the Act, Section 4 is not applicable and that the shares are taxable only at the value they had when transferred by Mr. Wilder to his wife.

Middleton, J.A., concurring in the result arrived at by Grant, J.A., thought that Section 8 should be regarded as merely bringing gifts *inter vivos* within the net spread for the imposition of taxation and Section 4 would then receive its legitimate operation by confining it to the ascertaining of the value of the property actually passing at the date of death.

Magee, J.A., (dissenting) was of opinion that the property given should be valued as of the date of the donor's death but would reserve the question of what was to be valued and what was the dutiable value until a reference should be had to ascertain what caused the increase in the value of the shares in question between the date of the gift and the death of Mr. Wilder.

The Respondents submit that this appeal should be dismissed with costs and the judgment appealed from affirmed for the following, among other

REASONS.

1. Because upon the true construction of the Succession Duty Act the property comprised in a gift *inter vivos* and which is deemed to pass on the death of the deceased is the property with all its attributes as it existed at the date of the gift having a value as at that date.
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2. Because the Act makes the property subject to taxation but does not require it to be valued as of the death.
3. Because if the construction contended for by the Appellant is right, the Act would be *ultra vires* as imposing indirect taxation.
4. Because the construction put upon the Act by the Appellant leads to harsh and absurd results while that put upon it by the Respondents is a reasonable one and expresses the true intention of the Legislature.
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5. Because the judgments of the Courts below are right and should be affirmed.

W. N. TILLEY.

J. S. D. TORY.

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RESPONDENTS' CASE.

LAWRENCE JONES & Co.,
Lloyd's Building,
Leadenhall Street,
London, E.C.3.