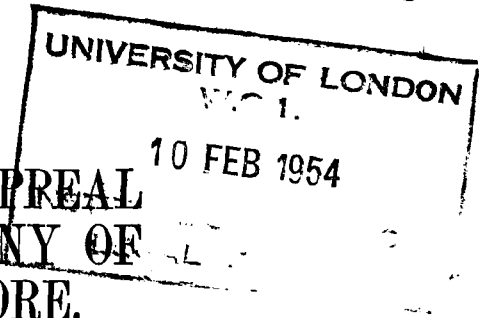


In the Privy Council.

ON APPEAL FROM THE COURT OF APPEAL
OF THE HIGH COURT OF THE COLONY OF
SINGAPORE, ISLAND OF SINGAPORE.



IN THE MATTER of THE ESTATE OF SIR MANASSEH MEYER
deceased

AND

IN THE MATTER of THE TRUSTS OF HIS WILL DATED
12th October, 1926.

BETWEEN :

ISAAC MANASSEH MEYER (Second Defendant) *Appellant,*

AND

1. REBECCA MEYER and
2. STANLEY ABBETT (Plaintiffs),
3. ISAAC BROOKE ABBETT (Third Defendant)
4. THE HONGKONG SHANGHAI BANK
(MALAYA) TRUSTEE LTD. (Legal
Personal Representatives of Reuben
Manasseh Meyer deceased) (First Defendants) *Respondents.*

Case for the Appellant.

RECORD.

1. This is an appeal from the Judgment of the Court of Appeal pp. 110, 113.
of the High Court of the Colony of Singapore (Evans, Storr and
Thorogood JJ.) dated the 18th September 1950 which dismissed the
appeal preferred by the Appellant against the Judgment of Murray-
Aynsley C.J. dated the 2nd June 1950.

p. 105.

2. The subject matter of this appeal relates to the administration
of the estate of Sir Manasseh Meyer deceased (hereinafter called "the

RECORD.

Testator ") and the question for determination in this appeal is whether on a proper interpretation of a Compromise agreement entered into between the parties the Trustees in making up the accounts are entitled to debit the appellant with interest on the value of a certain property known as " Meyer Chambers " which the Appellant had chosen out of the assets of the deceased in pursuance of the said Compromise agreement.

The facts out of which this appeal arises are as follows :—

p. 2, l. 25.

3. The Testator died on the 1st July 1930 domiciled in Singapore leaving a Will dated the 12th October 1926 and a Codicil dated the 10 31st May 1927. The Testator left very large estates both in the Colony of Singapore (consisting principally of immovable property) and outside the Colony. The value of the immovable property in the Colony was valued in 1930 for the purpose of estate duty at \$11,648,817.35 with debts amounting to \$1,101,950.0.

p. 122.

p. 2, l. 32.

p. 122, l. 10.

p. 114, l. 33.

4. By his said Will the Testator appointed his three sons Isaac (the appellant), Jacob and Reuben to be the Executors and Trustees of his said Will. Clause 10 of the Will which it is submitted is the only part of the said Will material for the purpose of this appeal is in the following terms :—

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p. 125, l. 1.

" 10. I give, devise and bequeath all my property whatsoever and wheresoever situate not hereby otherwise disposed of unto my Trustees Upon trust to pay thereout my funeral and testamentary expenses and debts and to provide thereout the funds to be raised for my grandchildren and the said legacies and my daughter Mozelle's fund and subject thereto Upon trust for my said sons Isaac, Jacob and Reuben in equal shares."

p. 114, l. 35.

5. The Supreme Court of the Straits Settlements at Singapore granted probate of the said Will and Codicil to Jacob on the 21st July 1930 and double probate of the said Will and Codicil was granted by 30 the said Court to Reuben on the 18th August 1930. The Appellant has never proved the said Will.

p. 115, l. 8.

6. The High Court of Singapore by order dated the 7th December 1934 made on Originating Summons No. 158 of 1934 appointed the Respondent Isaac Brooke Abbett (hereinafter referred to as " the third Respondent ") to be a Trustee of the Will and Codicil of the Testator.

7. Jacob died on the 27th December 1934 intestate and Letters of Administration to his estate and effects were granted by the High Court of Singapore on the 29th March 1935 to the Respondents Rebecca Meyer and Stanley Abbett (hereinafter called "the first Respondents").

RECORD.

p. 115, l. 16.

8. On the 31st August 1942 the Appellant instituted a suit in the High Court of Judicature at Fort William in Bengal for the administration of the Testator's estate wherein Reuben (since deceased) and the third Respondent were the defendants. The first Respondents were later added as administrators of the estate of Jacob, but they did not enter appearance.

p. 6, l. 30.

9. The first Respondents on the 11th June 1946 commenced proceedings by Originating Summons in the High Court of the Colony of Singapore against Reuben the Appellant and the third Respondent for the administration of the movable and immovable estate of the Testator and execution of the trusts of his said Will, and the High Court made an order for the administration of the Estate of the Testator on the 23rd September 1946. An appeal was preferred by the Appellant against the said order of the High Court.

p. 115, l. 28.

10. On the 21st August 1946 the first Respondents commenced an action in the High Court of Singapore against Reuben and the Appellant for the partition or sale of certain properties alleged to be held by the Appellant Reuben and the first Respondents (as Jacob's administrators) as tenants in common.

p. 8, l. 24.

11. On the 18th July 1947 an agreement in writing was entered into between the Appellant Reuben and first Respondents and the third Respondents, the purpose of which is set out in Clause 15 of the recitals thereto in the following terms:—

p. 6.

15. In order to put an end to the legal proceedings in Calcutta and in Singapore and to settle all disputes and matters difference amongst the parties hereto and by way of compromise all parties have agreed to the terms of settlement hereinafter set out."

p. 8, l. 34.

12. Clause 2 of the said agreement which is material for the purposes of the present appeal is as follows:—

p. 9, l. 14.

“(2) Isaac will agree to the sale of the property set out in the First and Second parts of the Second Schedule hereto; Isaac, Jacob’s administrators and Reuben will each be entitled in that order if they so desire to select one of the said properties for himself or themselves as the case may be. Such selection by any party shall be endorsed in writing and signed by the party or parties so selecting on this agreement at the time of execution hereof. Each party making any such selection shall be debited with the value of the said property as mentioned in the said Schedule, such value being inserted in the said Schedule for this 10 purpose only and not so as to affect or restrict the reserve prices to be put thereon in case of a sale by public auction. Any such selection must be so made as not to interfere with the sale of adjoining properties.”

13. The agreement contains two Clauses relating to the accounts of the administration of the Testator’s estate which are in the following terms :—

p. 12, l. 25.

“(13) Except as hereinafter provided all accounts of the administration of the Testator’s Estate and also of the management of the properties held in common from the date of the 20 Testator’s death to the 22nd November 1946 shall be deemed to be correct and to have been stated and settled between all the parties hereto; provided that the item of objections contained in Schedule hereto shall be referred to Messrs. & Co., and Messrs. Gattey & Bateman for their decision as arbitrators; and in the event of their not agreeing upon any item or items of the said objections, such disagreement shall be referred to the Registrar of the Supreme Court, Singapore, as umpire for his decision which shall be final and the accounts shall be adjusted 30 accordingly. The costs of such objections shall be in the discretion of the said arbitrators or of the said umpire as the case may be.

(14) In each half-yearly account of the estate, calculations have been made by the Accountants for interest on beneficiaries’ drawings and the principle upon which such calculations have been made is agreed to by all the parties and is as follows. The beneficiary who has drawn the least is not debited with any interest but the other two beneficiaries who are for the time being overdrawn as compared with the beneficiary who has drawn least are debited with interest on such overdrawings at the bank rate of interest.”

14. In pursuance of Clause 2 of the said agreement the Appellant p. 4, l. 18. selected " Meyer Chambers " out of the properties set out in the first part of the Second Schedule to the Compromise agreement. The value given against this property as set out in the Second Schedule was \$3,000,000.

15. The High Court of Singapore on the 6th August 1947 made an order in terms of the said Agreement dated the 18th July 1947 p. 127. upon motion made on behalf of the Appellant in the matter of Originating Summons No. 9 of 1946. Paragraph 10 of the said order p. 130. 10 directed Reuben and Isaac Brooke Abbett to convey to the Appellant the property known as " Meyer Chambers " at the agreed price of \$3,000,000 for his own use and benefit, his share of the estate of the Testator to be debited therewith.

16. In pursuance of the said order of the High Court dated the 6th August 1947 Reuben and Abbett as trustees by an Indenture p. 29. dated the 22nd October 1947 assigned to the Appellant the said p. 31, l. 8. leasehold property known as " Meyer Chambers ". The document made no mention of the Consideration Amount and was registered with a \$5 stamp.

20 17. In the accounts rendered by the Trustees of the estate for the half-year ending 31st December 1947 the Appellant has been debited with a sum of \$27,592.58 as interest on the sum of \$3,000,000 the agreed value of " Meyer Chambers " which is shown as an advance. Similar charges were made against the Appellant in the account rendered for the half-year ending 30th June 1948.

18. The Appellant on the 21st June 1949 took out a summons in chambers in the High Court of the Colony of Singapore for an p. 1. order that no interest was or is chargeable against the Appellant in respect of the agreed value of " Meyer Chambers " selected by the 30 Appellant as a residuary beneficiary of the Estate of Sir Manasseh Meyer deceased.

19. The Honourable The Chief Justice in chambers by order dated the 27th June 1948 adjourned the said application to open p. 27, l. 41. Court and subsequently by his judgment in open Court dated the 2nd June 1950 the learned Chief Justice dismissed the application.

20. The reasons given by His Lordship may be summarised as follows :—

RECORD.

p. 106, l. 35.

(a) The only right of the Appellant to the property arose from the Compromise Agreement and the transaction both by the language of the agreement and the terms of the order had the characteristic of a sale and the sum of \$3,000,000 was a drawing against the interest of the Appellant.

p. 107, l. 15.

(b) Clause 14 of the agreement which relates to interest was applicable to the case although the clause does not expressly deal with the point, but as a matter of construction the clause appears to lay down a method which can be applied to future as well as to past transactions, and as the parties were at the 10 time contemplating transactions which must result in increased inequalities in the immediate future it would be expected that the matter would be dealt with specifically if no interest was to be charged.

pp. 110, 113.

21. The Appellant preferred an appeal to the Court of Appeal against the said Judgment of the learned Chief Justice dated the 2nd June 1950 but the said appeal was dismissed with costs by the Court of Appeal (Evans, Storr and Thorogood JJ.) on the 18th September 1950.

p. 110, l. 34.

22. Evans J. who delivered the Judgment of the Court of Appeal 20 held that paragraph 13 is complete by itself and although paragraph 14 opens with a reference to the past the second and most important sentence is in the present, and in his view it was impossible to read this as anything other than a principle agreed between the parties by which their accounts are to be kept to arrive at the equality required by the Will.

p. 111, l. 3.

p. 111, l. 18.

23. The learned Judge further held that the transaction in question was a sale by the trustees to the beneficiary, that the clause expressly provided that the purchaser shall be debited with the amount and as it is shown from the accounts that on 31st December 1947 the trust 30 funds had not been finally set aside and no residue at that date had been ascertained, there was no question of distribution.

p. 111, l. 43.

p. 114, l. 8.

24. The Court of Appeal also allowed two sets of Costs against the Appellant.

p. 121.

25. The Appellant was granted leave to Appeal to Her Majesty in Council by order of the Court of Appeal in the High Court of the Colony of Singapore dated the 16th March 1951.

26. The Appellant submits that the said judgments of the Court of Appeal and of the High Court should be reversed and that it should be declared that no interest was or is chargeable against the Appellant in respect of the agreed value of " Meyer Chambers " for the following among other

REASONS

- 10 1. BECAUSE on the true construction of the terms of the Compromise agreement and the order of the Court the selection of " Meyer Chambers " in pursuance of Clause (2) of the agreement was not an advance, but in the nature of a partial distribution of the assets of the Testator's estate.
2. BECAUSE the question relating to the selection of " Meyer Chambers " is governed solely by the terms of Clause (2) of the said agreement and in the absence of any provision regarding interest in the said clause the Trustees have no power to charge interest on the value of the property.
3. BECAUSE the inequality between the Beneficiaries if any is contemplated in Clause (2) of the said agreement itself.
- 20 4. BECAUSE Clause (14) of the said agreement relates solely to Clause (13) of the agreement in the Case of advances drawn in the past, and does not and was never intended to provide for payment of interest in the future.
5. BECAUSE Clause (14) of the said agreement does not and
- 5A. BECAUSE the residuary account having been drawn up aid
prior to the transfer of the property to the Appellant no ent
interest is chargeable on the value of the said property or
any part thereof. ng
- 30 in law and are based on a wrong construction of the said
agreement and ought to be reversed.
7. BECAUSE the order allowing the Respondents two sets of Costs is contrary to the established principles which govern the exercise by the Court of its discretion as to costs.

ANDREW CLARK.
B. SEN.

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Re: THE ESTATE OF SIR MANASSEH MEYER
deceased

AND

Re: THE TRUSTS OF HIS WILL DATED
12th October 1926.

ISAAC MANASSEH MEYER

AND

REBECCA MEYER AND OTHERS.

Case for the Appellant.

COWARD, CHANCE & CO.,
ST. SWITHIN'S HOUSE,
WALBROOK, E.C.4,
Solicitors for the Appellant.