

IN THE PRIVY COUNCIL

No. 29 of 1982

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O N A P P E A L

FROM THE FIJI COURT OF APPEAL

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B E T W E E N :

FIJI RESORTS LIMITED

Appellant  
(Original Defendant)

- and -

THE COMMISSIONER OF ESTATE  
AND GIFT DUTIES

Respondent  
(Original Plaintiff)

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RECORD OF PROCEEDINGS

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COWARD CHANCE,  
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Solicitors for the  
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CHARLES RUSSELL & CO.,  
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Solicitors for the  
Respondent

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FROM THE FIJI COURT OF APPEAL

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B E T W E E N :

FIJI RESORTS LIMITED Appellant  
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THE COMMISSIONER OF ESTATE  
AND GIFT DUTIES Respondent  
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RECORD OF PROCEEDINGS

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INDEX OF REFERENCE

No.	Description of Document	Date	Page No.
<u>IN THE SUPREME COURT</u>			
1	Judgment of Stuart J.	9th November 1977	1
<u>IN THE COURT OF APPEAL</u>			
2	Notice of Appeal	21st December 1977	9
3	Judgment	3rd August 1978	10
<u>IN THE PRIVY COUNCIL</u>			
4	Order granting special leave to appeal to Her Majesty in Council	18th May 1982	Separately reproduced

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O N A P P E A L  
FROM THE FIJI COURT OF APPEAL

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B E T W E E N :

FIJI RESORTS LIMITED Appellant  
(Original Defendant)

- and -

THE COMMISSIONER OF ESTATE AND GIFT DUTIES Respondent  
(Original Plaintiff)

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R E C O R D O F P R O C E E D I N G S

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No. 1

JUDGMENT OF STUART J.

In the Supreme Court

No.1  
Judgment of  
Stuart J.

IN THE SUPREME COURT OF FIJI (WESTERN DIVISION)  
AT LAUTOKA

9th November  
1977

Civil Jurisdiction  
Action No. 205 of 1976

BETWEEN:

20

THE COMMISSIONER OF ESTATE AND GIFT DUTIES Plaintiff

- and -

FIJI RESORTS LIMITED Defendant

Mr. M.J.Scott, Counsel for the Plaintiff  
Mr. P.I. Knight, Counsel for the Defendant

JUDGMENT

This is an application by the Commissioner of Estate and Gift Duties under s.31 of the Estate and Gift Duties Act Cap.178 which is as follows :-

In the Supreme  
Court

No.1  
Judgment of  
Stuart J.

9th November  
1977

(continued)

"31.(1) If any person takes possession of or in any manner deals with any part of the estate of any deceased person without obtaining administration of his estate within six months after his decease, or within two months after the termination of any action or dispute respecting the grant of administration of the estate, or within such further time as may be allowed by the Commissioner on application, the Commissioner may apply to the Supreme Court for an order that the person so taking possession or dealing as aforesaid deliver to the Commissioner within such time as the Commissioner may determine, a statement as required by subsection (1) of section 28 of this Ordinance, and to pay such duty as would have been payable if administration had been obtained, together with the cost of the proceedings, or to show cause to the contrary." 10 20

By consent of the parties, the only application to be dealt with at the moment is the question as to whether the plaintiff is entitled to have an order requiring the defendant to deliver the statement described in sec.28(1) of the Act, namely a statement containing the particulars prescribed by the Estate and Gift Duties Act with respect to the dutiable estate of the deceased Alan Emmett Davis and with respect of the interests of the several successors of the deceased and containing such other particulars, if any, as may be prescribed for the purpose of the Act. 30

Alan Emmett Davis died at Lautoka on 28th February 1972. He was a citizen of the United States of America domiciled in California, one of the states of the Union. At the time of his death he was the holder, in his own name alone, of 25180 stock units of \$2 Fiji each in Yanuca Island Limited and was the holder, jointly with his wife, Doris Anita Davis of 37,354 stock units of \$2 Fiji each in Fiji Mocambo Holdings Limited. Subsequent to the death of Alan Emmett Davis whom I will hereafter refer to as the deceased, the Yanuca Island Limited stock units were converted into 131,661 stock units of \$1 each in Fiji Resorts Limited the defendants to this action and the Fiji Mocambo Holdings Limited stock units were converted into 101,404 stock units of \$1 each in Fiji Resorts Limited. Subsequently to the death of the deceased his estate became entitled - the Court was not told how - to a further 56,281 stock units in Fiji 40 50

Resorts Limited.

In the Supreme  
Court

No.1  
Judgment of  
Stuart J.

9th November  
1977

(continued)

10 The deceased left a will and the First  
National Bank of San Jose California the  
executor named therein, proved the will in  
California on 2nd May 1972, but probate was not  
resealed in Fiji, nor any administration of  
the property of the deceased granted in Fiji.  
By 26th September 1973 the position was that  
there were 187,942 stock units in the defendant  
company registered in the name of the deceased  
alone, and 101,404 stock units in the defendant  
company registered in the name of the deceased  
and his wife above named jointly. On that date  
187,942 stock units in the defendant company in  
the sole name of the deceased were transferred  
to Qantas Airways Limited, and on that same  
date 95,123 stock units in the defendant  
company in the joint names of the deceased and  
his wife were also transferred to Qantas Airways  
20 Limited. On 18th April 1974 1,500 stock units  
in the defendant company in the joint names of  
the deceased and his wife were transferred to  
McClintock Metal Fabricators Inc. All those  
transfers of stock units were duly stamped, and  
registered by the defendant company although  
there is no evidence to show how those transfers  
were effected. Mr. Knight stated at the Bar  
that there were transfers signed by the Californ-  
ian executors and I accept that in the absence  
30 of better evidence. The parties also agree  
that in October 1961 the deceased entered into  
an agreement with his wife, but nothing turns  
upon that agreement in this part of the case.  
It is also agreed that Probate was granted in  
Fiji but not until 29th November 1976 and such  
probate has been impounded by the Commissioner.  
Probate was granted to the First National Bank  
of San Jose and deceased's estate was sworn  
at \$118,541.80. Apart from those agreed facts  
40 the only evidence is that put forward by the  
Commissioner in two affidavits of Ross Thomas  
Holmes. The defendant company has put forward  
no evidence. I think that I must deal with the  
matter as at the date when the application was  
made, viz 17th September 1976, that is before  
any application was made for Probate. The law  
on the matter would appear to be summed up in  
two sentences in the article on companies in  
the fourth edition of Halsbury Vol.7 para.417  
50 where the learned author says :

"On the death of a shareholder domiciled  
abroad the company can only act upon a  
grant of probate or administration in this  
country. If therefore the company registers

In the Supreme  
Court

No.1  
Judgment of  
Stuart J.

9th November  
1977

(continued)

the name of or a transfer by any person who has not obtained such a grant or pays dividends to any such person, it becomes an executor de son tort, and is liable to penalties and to pay such duties as would have been payable on a grant of probate."

The authority given for the statement in the first sentence is In re Commercial Bank Corporation of India and the East (1870) 5 L.R. Chancery Appeals 314 where Giffard L.J. was asked to make an order concerning the Indian assets of an English Company the proceeds of which assets had been remitted to England. A creditor domiciled in Bombay died and his dependents without taking out probate asked for payment of the moneys due by way of dividend. The learned Lord Justice held that the official liquidator should act only on probate granted in England. He also pointed out that the Stamp Act 1815 made subject to a penalty every person who administered without first proving and paying certain duties. The statement in the second sentence is supported by New York Breweries v. Attorney General (1899) A.C.62 upon which the Commissioner relies and which must be now discussed.

10

20

That was a case wherein a man named Clausen a citizen of New York and domiciled there died in 1893 having by his will appointed two persons in New York as his executors. Probate of the will was granted to them in New York but they took no probate or administration in England. Clausen was the registered holder of ordinary and preference shares in the company and of debentures and the executors requested the company to transfer to them all Clausen's shares and debentures and to pay them the interest and dividends due. The company did so, after notice to the Inland Revenue, and the Attorney General filed an information against the company claiming an account and payment of duty. At first instance the information was dismissed but in the Court of Appeal an order was made declaring that the appellants were liable to deliver to the Commissioners of Inland Revenue an account of the shares and debentures in the company registered in Clausen's name at his death and of the dividends and interest thereon being the personal estate of Clausen and of the value of the said estate and to pay such duty as would have been payable if probate or administration had been duly obtained in England in respect of the personal estate of Clausen.

30

40

50

Mr. Knight sought to distinguish this case upon three grounds. First he said that there the company had deliberately inter-meddled in the estate. I can see no distinction between that case and this, for in this case, although there may be no element of deliberation, the effect is achieved in the same way as if there had been. Moreover the passage which I have already referred to in Halsbury simply states that if the company registered a transfer it becomes an executor de son tort. That is what the defendant company has done. Then Mr. Knight refers to the difference in wording between s.31 of Cap. 178 and s.37 of the Stamp Act 1815. The latter begins:

In the Supreme Court

No.1  
Judgment of  
Stuart J.  
9th November  
1977  
(continued)

"If any person shall take possession of and in any manner administer any part of the personal estate and effects of any person deceased without obtaining probate ....."

He seeks to make a distinction between the words 'deal with' in the Fiji Act and 'administer' in the English Act, although he did not pursue the matter to the extent of citing authority. Those words 'deal with' are not unknown to Courts in Fiji. They have been considered in connection with the Native Lands Trust Act Cap.115 s.12 and the Crown Lands Act Cap.113 s.13. In both cases the words used state that it shall not be lawful for a lessee "to alienate or deal with the land comprised in the lease....whether by sale transfer or sublease or in any other manner whatsoever.....". The Fiji Court of Appeal has discussed them on several occasions and at least two cases have gone as far as the Privy Council. In both of these their Lordships found it convenient to consider whether the transactions fell within the scope of the legislation as dealings. In *Chalmers v Pardoe* (1963) 3 AER 552 there was a license to occupy coupled with possession, for the purpose of erecting a dwelling house and accessory buildings, and there it was held that a dealing took place. In *Kulamma v Manadan* (1968) A.C. 1062: 2 WLR 1074 a share-farming agreement was held to be of a purely personal and contractual character and not to amount to a dealing in land. The words used in the Fiji statute are 'in any manner deals with'. This particular statute has not been the subject of judicial interpretation, but those words would appear to be at least as comprehensive as those used in the land legislation. I think that the answer to Mr.Knight

In the Supreme Court

No.1  
Judgment of  
Stuart J.

9th November  
1977

(continued)

is to be found in what the defendant company did. It is agreed that the transfers of the stock units formerly owned by the deceased were registered by the defendant company and they passed from the name of the deceased to that of Qantas Airways Limited. In the New York Breweries case in the Court of Queen Bench, (1897) 1 Q.B. 736, Wills J. at p.745 says :

"It is unnecessary to concern ourselves with the words "in any manner administered" because if they took possession they certainly administered - they dealt with the property, and if they did not take possession, neither did they administer." 10

I would have thought the defendant company by registering a transfer of shares had certainly dealt with them, not only in an administrative manner - I mean administrative in the sense that the registration would be an act in administering the affairs of the company - but by actually putting them into someone else's name. The defendant company in the words of Lord Halsbury L.C. at p.71 of the House of Lords report : 20

"Knew that by the entry in their register which they made they enabled property to be diverted from one person who in this country was by law entitled to it, to another person who had no such title at all." 30

That to my mind is clearly a dealing with the shares. Then Mr. Knight says that in the New York Breweries case the transfer was from the deceased into the name of the executor but here there was a transfer from the foreign executor to a third person. I would have thought that far from being a mark of distinction from the New York Breweries case, that was a circumstance of aggravation. Here Articles 34 and 35 of the defendant company's articles of association are relevant. Those articles read : 40

"34. The legal personal representative of a deceased sole holder of a share shall be the only person recognised by the Company as having any title to the share. In the case of a share registered in the names of two or more holders, the survivor or survivors, or the legal personal representatives of the deceased survivor, 50



shall be the only person recognised by the Company as having any title to the share.

In the Supreme Court

No.1

Judgment of Stuart J.

9th November 1977

(continued)

10

35. Any person becoming entitled to a share in consequence of the death or bankruptcy of a member shall, upon such evidence being produced as may from time to time be properly required by the Directors have the right, either to be registered as a member in respect of the share or, instead of being registered himself, to make such transfer of the share as the deceased or bankrupt person could have made; but the Directors shall in either case, have the same right to decline or suspend registration as they would have had in the case of a transfer of the share by the deceased or bankrupt person before the death or bankruptcy."

20

Now Fiji Resorts Limited is a Fiji company and the only possible meaning of the term 'the legal personal representative of a deceased' consonant with the law as expounded in the New York Breweries case is the legal personal representative appointed by the proper authority in Fiji, The Supreme Court of Fiji: see the Succession Probate and Administration Act 1970. I adopt the words of the Lord Chancellor at page 69 of the report of the House of Lords decision in the New York Breweries Case :

30

40

"Here is an incorporated company and the deceased person is entitled to his aliquot share of the profits earned by that company. He dies, and according to the constitution of the company when a shareholder is dead the only person who is to be recognised as having a right to deal with his share is - I will put in the word which by implication is manifestly there - an English executor or an English administrator. The company, therefore, being now in possession of the share of the profits which belonged to the deceased person, are bound to see that they do not hand it over, or hand over anything that represents it to any person who is not entitled to deal with it. That is their duty according to their constitution and according to law because they are in possession of something which is available as assets of the testator's estate, bona notabilia in this country."

50

Then Lord Davey at p.77 said :

In the Supreme Court

No.1  
Judgment of  
Stuart J.

9th November  
1977

(continued)

"In my opinion the company by the action which they took of altering the name in the register taking the shares out of the names of the deceased shareholder and putting them in the names of two gentlemen who requested them to do so without the authority of an executor, or administrator duly authorised to give such direction by the laws of the country, did appropriate in their hands and took upon themselves to exercise control and dominion over both the shares and the debenture and also the dividends."

10

Now it seems to me that what the defendant company did here was exactly what the company did in that case. They purported to exercise dominion and control over the shares of the deceased and took them out of his name and put them into the name of someone else without recourse to their own constitution which required that the legal personal representative - and that of course as Lord Halsbury explains, means the legal person representative in Fiji - was to be the only person recognised by the company. If the defendant in the New York Breweries Case took possession of the shares, so did the defendant company in this case. But I think not merely did the defendant company take possession of the personal estate of the deceased, they also dealt with his estate. The statements already furnished by the defendant's solicitors were furnished before Probate was granted and are therefore not relevant, and doubtless the executor will file proper statements. However quite apart from anything that the executor may furnish, the Commissioner is entitled to the order which he seeks, and there will be an Order that the defendant company deliver to the Commissioner a statement as required by s.28(1) of the Estate and Gift Duties Act Cap.178, such statement to be furnished within 21 days from the date hereof and show cause why they should not pay the duty assessed by the Commissioner. The costs of this part of the proceedings will be paid by the defendant company.

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30

40

(Sgd) K.A. Stuart  
JUDGE

LAUTOKA,  
9th November, 1977

CERTIFIED TRUE COPY  
Sgd.  
CHIEF REGISTRAR

50

No. 2  
NOTICE OF APPEAL

In the Court  
of Appeal

No.2  
Notice of  
Appeal

21st December  
1977

IN THE FIJI COURT OF APPEAL  
CIVIL JURISDICTION

FEES PAID  
\$20-00  
R.R.109983  
On 21/12/77

Civil Appeal No.60 of  
1978

On Appeal from the  
Supreme Court of Fiji  
(Western Division)  
Civil Action No.205 of  
1976

10

BETWEEN: FIJI RESORTS LIMITED Appellant  
(Original Defendant)

AND THE COMMISSIONER OF  
ESTATE AND GIFT DUTIES Respondent  
(Original Plaintiff)

20

TAKE NOTICE that the Fiji Court of Appeal will be moved at the expiration of 14 days from the service upon you of this Notice of Appeal or so soon thereafter as Counsel can be heard by Counsel for the above-named Appellant for an order that the decision herein of the Honourable Mr Justice Stuart given at Lautoka on the 9th day of November 1977 whereby it was ordered that the Appellant deliver to the Respondent a statement as required by section 28(1) of the Estate and Gift Duties Ordinance Cap.178 be set aside and for an Order that the costs of this Appeal be paid by the Respondent to the Appellant and for such further or other order as the Fiji Court of Appeal shall seem just

30

AND FURTHER TAKE NOTICE that the grounds of the appeal are as follows

1. That the learned Judge erred in fact and in law in holding that by registering the transfer of the stock in question the Appellant took possession of and dealt with a part of the estate of Alan Emmett Davis deceased.

DATED the 21st day of December 1977

40

Cromptons

per  
Solicitors for the Appellant



assessed by the respondent.

In the Court  
of Appeal

The facts may be shortly stated.

No. 3  
Judgment

3rd August  
1978

(continued)

10 Alan Emmett Davis died at Lautoka on  
28th February 1972. At the date of his death  
he was domiciled in California in the United  
States of America and was a citizen thereof.  
The deceased left a will, and appointed the  
First National Bank of San Jose California  
executor thereof. The will was duly proved in  
California on 2nd May 1972, but at all material  
times so far as this appeal is concerned the  
probate of deceased's will had not been resealed,  
nor had any grant of administration in his  
estate been made in Fiji. As at the 26th  
September 1973, 187,942 stock units in the  
appellant company were registered in the name  
of Alan Emmett Davis deceased solely; and  
101,404 stock units in the appellant company  
were registered in the names of Alan Emmett  
20 Davis deceased and his wife Doris Anita Davis  
jointly. On the 26th September 1973, 187,942  
stock units in the appellant company in the sole  
name of Alan Emmett Davis deceased were sold to  
Qantas Airways Limited; on the same date 95,123  
stock units in the appellant company in the  
joint names of the said Alan Emmett Davis  
deceased and his said wife were likewise sold  
to Qantas Airways Limited. The above transfers  
were duly stamped on 19th April 1974 and  
30 presented to and registered by the appellant  
company so that Qantas Airways Limited became  
the duly registered holders of the above stock  
units in Fiji Resorts Limited.

40 On 18th April 1974, 1,500 stock units in  
the appellant company in the joint names of the  
said Alan Emmett Davis and his said wife were  
sold to McClintock Metal Fabricators Inc. A  
transfer in respect thereof was duly stamped on  
19th April 1974 and presented to, and registered  
by the appellant company with the result that  
the purchaser company became the registered  
holder of the 1,500 stock units.

50 It would appear that all transfers were  
signed by the executor, named in the will - but  
as at the date of registration of all the above  
transfers no grant of administration, or  
resealing of probate, in the deceased's estate  
had been made in Fiji in accordance with the  
laws of this country.

50 On 17th September 1976 an application under  
Section 31 of the Estate and Gift Duties Act

In the Court  
of Appeal

No. 3  
Judgment

3rd August  
1978

(continued)

Cap.178 was filed in the Supreme Court at Lautoka by the Commissioner of Estate and Gift Duties. It will be convenient to set out the provisions of Section 31 of the said Act.

"31.(1) If any person takes possession of or in any manner deals with any part of the estate of any deceased person without obtaining administration of his estate within six months after his decease, or within two months after the termination of any action or dispute respecting the grant of administration of the estate, or within such further time as may be allowed by the Commissioner on application, the Commissioner may apply to the Supreme Court for an order that the person so taking possession or dealing as aforesaid deliver to the Commissioner within such time as the Commissioner may determine, a statement as required by subsection (1) of Section 28 of this Ordinance, and to pay such duty as would have been payable if administration had been obtained, together with the cost of the proceedings, or to show cause to the contrary." 10  
20

The learned judge in the Court below held that the appellant company had clearly dealt with assets owned by the estate of Alan Emmett Davis deceased; had exercised control and dominion thereof by registering in the books of the appellant company the transfers of stock units in favour of Qantas Airways Limited and McClintock Metal Fabricators Inc. In so doing it had acted without the authority or direction of any executor or administrator of the deceased's estate appointed in accordance with the Laws of Fiji. The learned judge referred to various authorities, and, in particular to the principles laid down by the House of Lords in *New York Breweries Company Limited v. Attorney General* (1899) A.C.62. The application sought by the Commissioner was duly granted and orders made pursuant to Section 31 of Estate and Gift Duties Act Cap.178. 30  
40

The ground of appeal stated in the notice of appeal reads :-

"That the learned Judge erred in fact and in law in holding that by registering the transfer of the stock in question the Appellant took possession of and dealt with a part of the estate of Alan Emmett Davis deceased." 50

Counsel for the appellant submitted in arguing his ground of appeal that in registering the transfers of the stock units the appellant company - Fiji Resorts Limited - had acted as the agent of the American executor and on the authority of Sykes v. Sykes (1870) L.R. 5 C.P. 113 the appellant could not be treated as an executor de son tort whether the will had been proved or not. In the course of his argument counsel for the appellant conceded that if this Court concluded that the principles enunciated in New York Breweries Company Limited v. Attorney General (Supra) were applicable to the facts of this case, as opposed to the decision in Sykes' Case (Supra), the appeal must fail.

In the Court  
of Appeal

No. 3  
Judgment

3rd August  
1978

(continued)

10

It is necessary now to examine the law applicable to the facts of this case.

In Halsbury's Laws of England 4th Edition Vol.7 p.231 paragraph 417 it is stated :

20

"On the death of a shareholder domiciled abroad the company can only act upon a grant of probate or administration in this country. If therefore the company registers the name of or a transfer by any person who has not obtained such a grant or pays dividends to any such person, it becomes an executor de son tort, and is liable to penalties and to pay such duties as would have been payable on a grant of probate."

30

In the case under appeal no executor or administrator had been appointed, in accordance with the Laws of Fiji to sell or transfer stock units owned by the deceased in Fiji Resorts Limited to Qantas Airways Limited or McClintock Metal Fabricators Inc. The facts in New York Breweries Company Limited v. Attorney General (1899) A.C. 62 were :

40

".....a man named Clausen a citizen of New York and domiciled there died in 1893 having by his will appointed two persons in New York as his executors. Probate of the will was granted to them in New York but they took no probate or administration in England. Clausen was the registered holder of ordinary and preference shares in the company and of debentures and the executors requested the company to transfer to them all Clausen's shares and debentures and to pay them the interest and dividends due. The company did so, after notice to the Inland Revenue, and the Attorney General

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In the Court  
of Appeal

No. 3  
Judgment

3rd August  
1978

(continued)

filed an information against the company claiming an account and payment of duty. At first instance the information was dismissed, but in the Court of Appeal an order was made declaring that the appellants were liable to deliver to the Commissioners of Inland Revenue an account of the shares and debentures in the company registered in Clausen's name at his death and of the dividends and interest thereon being the personal estate of Clausen and of the value of the said estate and to pay such duty as would have been payable if probate or administration had been duly obtained in England in respect of the personal estate of Clausen. The House of Lords affirmed the decision of the Court of Appeal. "

10

Earl of Halsbury L.C. in *New York Breweries Company Limited v. Attorney General (Supra)* at p.69 said :

20

"Here is an incorporated company and the deceased person is entitled to his aliquot share of the profits earned by that company. He dies, and according to the constitution of the company when a shareholder is dead the only person who is to be recognised as having a right to deal with his shares is - I will put in the word which by implication is manifestly there - an English executor or an English administrator. The company, therefore, being now in possession of the share of the profits which belonged to the deceased person, are bound to see that they do not hand it over, or hand over anything that represents it to any person who is not entitled to deal with it. That is their duty according to their constitution and according to law because they are in possession of something which is available as assets of the testator's estate, bona notabilia in this country."

30

40

Mr. Ramrakha endeavoured to distinguish the case of *New York Breweries Company Limited v. Attorney General (Supra)* on the basis that an agent for a named executor can never be liable as executor de son tort since the acts of his principal, even before probate, cannot properly be characterised as unlawful. In support of this submission he relied on *Sykes v. Sykes (supra)* and a statement to the above effect in *Williams and Mortimer Executors Administrators and Probate (15th Edn.)* at p.44.

50



The headnote in Sykes v. Sykes (supra)  
reads :

In the Court  
of Appeal

"A person who deals with the goods of a  
testator, as agent of the executor, cannot  
be treated as executor de son tort whether  
the will has been proved or not."

No.3  
Judgment  
3rd August  
1978

(continued)

10

On the facts of the instant case we do  
not agree that Sykes' case goes as far as Mr.  
Ramrakha claims and we prefer to adopt the  
reasoning of the Court of Appeal in Attorney  
General v. New York Breweries Company Limited  
(1898) 1 Q.B. 205 where Sykes' case was  
considered and discussed. Collins L.J. at p.224  
said :

20

"The head-note of Sykes v. Sykes is  
misleading. There Shaw had been manager  
of certain works which had been carried  
on by a deceased person. After her death  
he at the request of her executors, who had  
not proved her will, continued to manage  
the works and to deal with the property.  
Judgment was obtained against him as  
executor de son tort by a creditor of the  
deceased, and execution was levied on "the  
goods in his hands as executor to be  
administered." The executors afterwards  
took out probate and brought trover against  
the execution creditor and the sheriff,  
and it was held that they were entitled to  
judgment as the agent of a rightful executor  
was not a tortfeasor in obeying their  
orders. Here, probate having been taken  
out before the executors' action, the Court  
was able to see that they were executors,  
and as such capable of justifying the acts  
of Shaw, which consequently were not  
tortious; but the case is far from deciding  
that had the executors not taken out probate  
before action the acts of Shaw could have  
been treated as other than tortious. In  
contemplation of the Court he must have been  
a wrongdoer if he could not prove that he  
had the authority of the executors."

30

40

Accordingly on the facts of the present  
case on appeal we are satisfied that the learned  
judge in the Court below was correct in applying  
thereto the principles laid down by the House of  
Lords in New York Breweries Company Limited v.  
Attorney General (1899) A.C.62 when he said:-

50

"Now it seems to me that what the defendant  
company did here was exactly what the

In the Court  
of Appeal

No. 3  
Judgment

3rd August  
1978

(continued)

company did in that case. They purported to exercise dominion and control over the shares of the deceased and took them out of his name and put them into the name of someone else without recourse to their own constitution which required that the legal personal representative - and that of course as Lord Halsbury explains, means the legal person representative in Fiji - was to be the only person recognised by the company. If the defendant in the New York Breweries Case took possession of the shares, so did the defendant company in this case. But I think not merely did the defendant company take possession of the personal estate of the deceased, they also dealt with his estate."

10

Therefore we dismiss this appeal with costs to the respondent together with the sum of \$75.00 for the costs of and incidental to the earlier appearance before this Court.

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Sgd. (Illegible)  
Vice President

Sgd. (Illegible)  
Judge of Appeal

Sgd. (Illegible)  
Judge of Appeal

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Sgd.  
CHIEF REGISTRAR

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IN THE PRIVY COUNCIL

No. 29 of 1982

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O N A P P E A L  
FROM THE FIJI COURT OF APPEAL

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B E T W E E N :

FIJI RESORTS LIMITED

Appellant  
(Original Defendant)

- and -

THE COMMISSIONER OF ESTATE  
AND GIFT DUTIES

Respondent  
(Original Plaintiff)

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RECORD OF PROCEEDINGS

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COWARD CHANCE,  
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London, EC2V 7LD

Solicitors for the  
Appellant

CHARLES RUSSELL & CO.,  
Hale Court,  
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Solicitors for the  
Respondent