

In the Privy Council.

<p><b>ON APPEAL</b>  <i>FROM THE HIGH COURT OF AUSTRALIA</i></p>	<p>UNIVERSITY OF LONDON  V.C.I.  10 FEB 1954</p>
<p>BETWEEN</p>	<p>INSTITUTE OF ADVANCED  LEGAL STUDIES</p>

THE COMMISSIONER OF STAMP DUTIES OF THE STATE OF NEW SOUTH WALES ... .. *Appellant*

AND

HAZEL MAY PEARSE, THOMAS ARCHDALL LANGLEY  
10 and PERPETUAL TRUSTEE COMPANY (LIMITED) *Respondents*

**Case for the Respondents**  
ON THE APPELLANT'S APPEAL

RECORD.

1. This is an Appeal (brought by Special leave of Her Majesty the Queen in Council by Order dated the 4th day of September 1952) from an Order of the High Court of Australia (Dixon C.J., McTiernan, Williams, Webb and Fullagar, J.J.) dated the 27th day of July 1951 dismissing an Appeal by the above named Appellant, the Commissioner of Stamp Duties of the State of New South Wales from an Order and Rule of the Supreme Court of New South Wales (Street C.J., Maxwell and Owen J.J.) dated the 30th day of October 1950.

20 The Appeal arises upon a Case Stated by the Appellant under Section 124 of the New South Wales Stamp Duties Act 1920-1940 (hereinafter called "the Stamp Duties Act") and concerns the method of valuation for the assessment of death duty of certain shares forming part of the estate of one Henry Bowen Aylmer Pearse (hereinafter called "the Testator") of whose Will the above named Respondents are the executors.

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2. The questions for decision on the Appellant's Appeal are:—

(a) Whether, in a matter where the Appellant has decided to value shares by the method of valuation permitted by Section 127 Sub-section (1) (c) of the Stamp Duties Act, the Court is entitled, in determining a question submitted to it by Case Stated under Section 124 of that Act and in exercising its function of assessing the death duty chargeable, itself to determine the method of valuation to be adopted in valuing such shares being assets in the dutiable estate.

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(b) Whether, on the facts, the Appellant in determining to adopt the method aforesaid in respect of certain shares forming part of the Testator's estate, exercised the discretion given to him by Section 127 Sub-section 1 (c) aforesaid in accordance with law.

(c) Whether, on the facts, the proper method of valuation of the shares aforesaid is that permitted by Section 127 Sub-section 1 (c) of the Stamp Duties Act.

3. The directly relevant provisions of the Stamp Duties Act, so far as now material are as follows:—

101D. (1) In the case of every person who dies after the commencement of the Stamp Duties (Amendment) Act, 1939, whether in New South Wales or elsewhere, and who was at the date of his death domiciled in New South Wales, duty (hereinafter called death duty) at the rates mentioned in the Seventh Schedule to this Act, shall subject to this section, be assessed and paid upon the final balance of the estate of the deceased as determined in accordance with this Act; 10

Provided that the amount of death duty so payable upon the final balance of the estate at the rate or rates applicable thereto under the Seventh Schedule to this Act shall, where necessary, be reduced so as not to exceed the amount of duty which would be payable on such final balance at the next lower rate or rates under the said Schedule with the addition of the amount by which such final balance exceeds that final balance on which the highest amount of duty would be so payable at the lower rate or rates, but so that the amount of duty payable in any case shall not be reduced by the operation of this proviso to an amount less than one pound. 20

. . . . .

s. 102. For the purposes of the assessment and payment of death duty but subject as hereinafter provided, the estate of a deceased person shall be deemed to include and consist of the following classes of property:—

(1) (a) All property of the deceased which is situate in New South Wales at his death and in addition where the deceased was domiciled in New South Wales all personal property of the deceased situate outside New South Wales at his death to which any person becomes entitled under the Will or upon the intestacy of the deceased, except property held by the deceased as trustee for another person under a disposition not made by the deceased. 30

. . . . .

s. 104. The estate of a deceased person constituted as provided in sections one hundred and two and one hundred and three is in this Act referred to as his dutiable estate.

s. 105. (1) The final balance of the estate of a deceased person shall be computed as being the total value of his dutiable estate after making such allowances as are hereinafter authorised in respect of the debts of the deceased. 40

(2) Save as in this Act expressly provided, the value of the property included in his dutiable estate shall be estimated as at the date of the death of the deceased.

s. 113. (1) Death duty shall be a stamp duty, and shall be assessed and collected by the Commissioner in accordance with this Act.

. . . . .

115 (1) Death duty shall become due and payable on the assessment thereof by the Commissioner, or if not duly so assessed within six months from the death of the deceased then on the expiration of that period of six months.

10 (2) Such duty shall constitute as from his death a charge upon so much of his dutiable estate as is situate in New South Wales and upon all property situate in New South Wales the value of which is or which is included in that estate, whether vested in the administrator or not, but no such charge shall affect the title of a *bona fide* purchaser for value (whether before or after the death of the deceased) without notice.

. . . . .

s. 117. (1) No probate or letters or other administration of the estate of any deceased person shall be granted unless the applicant lodges with his application an affidavit of value in the prescribed form verifying an account containing the prescribed particulars with respect to the dutiable estate of the deceased and all allowances claimed in respect of debts owing by the deceased at the time of his death.

20 (2) The Registrar of the Probate Jurisdiction of the Supreme Court shall transmit to the Commissioner every such affidavit and account together with a copy of the Will or letters of administration to which they relate, within thirty days from the granting of any such administration under a penalty not exceeding fifty pounds for any neglect therein.

(3) The Applicant shall furnish the Commissioner with such other evidence, including valuations by competent valuers, as may be prescribed or as the Commissioner may in any case require to enable him to ascertain all the property liable to death duty and the value thereof, and all allowances to be made in respect of debts owing by the deceased, and to assess the duty payable.

30 (4) The Commissioner shall assess the duty on the final balance of the estate of the deceased, according to the rate applicable thereto under the provisions of this Act, and upon payment of the duty such probate or letters shall be stamped accordingly.

. . . . .

40 s. 124. (1) Any person liable to the payment of duty in respect of any instrument, and any administrator liable to the payment of death duty, who is dissatisfied with the assessment of the Commissioner may, within thirty days after the date of the assessment in the case of an instrument and within thirty days after notice of the assessment has been given to the administrator in the case of death duty, and on payment of duty in conformity with the assessment, and of the sum of twenty pounds as security for costs, deliver to the Commissioner a notice in writing requiring him to state a case for the opinion of the Supreme Court.

(2) The Commissioner shall thereupon state and sign a case accordingly, setting forth the facts before him on making the assessment, the assessment made by him, and the question to be decided, and shall deliver the case so signed to the person by whom the same is required (hereinafter referred to as the Appellant).

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(3) The Appellant shall within seven days after receiving the case cause the same to be set down for hearing before the next sittings of the Full Court at which the same can be heard.

(4) On the hearing of the case the Court shall determine the question submitted, and shall assess the duty chargeable and also decide the question of costs.

(5) If it is decided by the Court that the assessment of the Commissioner is erroneous, any excess of duty paid in conformity with such erroneous assessment, together with any fine paid in consequence thereof, and the sum paid as security for costs shall be ordered by the Court to be repaid to the Appellant. 10

(6) If it appears to the Court that the facts necessary to enable the questions submitted to be determined are not sufficiently set forth in the case or that such facts are in dispute, the Court may direct all such inquiries to be made or issues to be tried as it deems necessary in order to ascertain such necessary facts, and, if it deems fit, may amend the case. Any such inquiry may be made before a judge of the Court or the Master in Equity, and any such issue may be tried by any such judge or a judge of any District Court sitting either with or without a jury as the Court may direct.

(7) On the hearing of the case the Court shall be at liberty to draw from the facts and documents stated in the case any inference whether of fact or law which might have been drawn therefrom if proved at a trial. 20

. . . . .

s. 125. (1) In every case in which the Commissioner deems it necessary to ascertain the value of any property for the purpose of assessing duty under this Act he may ascertain such value by such means as he thinks fit, subject in the case of land or any interest therein the value of which exceeds two hundred pounds to the Valuation of Land Act 1916.

. . . . .

(3) The Commissioner may assess the duty payable on the footing of the value so ascertained as aforesaid, subject to appeal therefrom in accordance with section one hundred and twenty-four. 30

s. 127 (1) (a) For the purposes of this Act, the valuation of shares in any company, whether incorporated in or out of New South Wales, shall be made upon the basis that the memorandum and articles of association or rules of the company satisfy the requirements prescribed by the committee or governing authority of the stock exchange at the place where the share register in which the shares being valued are registered is, to enable that company to be placed on the current official list of such stock exchange at the relevant time.

(b) No provision in the memorandum or articles of association or rules of any company whereby or whereunder the value of the shares of a deceased or other member is to be determined shall be applicable in determining the value of the shares for the purposes of this Act. 40

(c) Notwithstanding anything contained in the foregoing provisions of this sub-section the Commissioner may in his discretion adopt as the value of a share of any class in any company the shares of which of that class are not listed on a stock exchange such sum as in the opinion of the Commissioner the holder of

that share would have received in respect of that share in the event of the company being voluntarily wound up on the date upon which the value of the share is to be ascertained for the purposes of this Act.

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Section 127 (1) (c) above set out was introduced by the Stamp Duties Amendment Act 1939 (Act No. 30, 1939).

4. The Testator, late of Plashett, Jerry's Plains, in the State of New South Wales, Company Director, died on the 19th day of February 1946 leaving a Will dated the 17th day of February 1946 of which the Respondents were appointed executors. Probate of the Testator's Will was granted to the Respondents on the 30th day of May 1946.

5. The Testator's estate comprised *inter alia* 800 "A" Cumulative Preference Shares each fully paid to £8 and 2,986 "B" Ordinary Shares each fully paid to £8 in Plashett Pastoral Co. Pty. Limited (hereinafter called "the company"). The Appellant's appeal concerns only the method of valuation of the 2,986 "B" Ordinary shares.

6. The Company was incorporated in 1913 being formed principally to acquire a station property known as Plashett then owned by the Testator's father, one William Pearse and to carry on in all its branches the business of a Pastoralist, Station Owner, Grazier, Farmer, Land Owner, Agriculturalist or any branch or department of such business. The Company duly acquired the station property and has ever since run the same as a pastoral business. It became a proprietary company on the 21st day of June 1937.

7. At the date of the Testator's death the directors of the Company were the Testator, his nephew Frank Leslie Crane and his brother-in-law Allan Ewer Mackenzie, the two last named having been appointed by the Company in general meeting, and the issued capital of the Company comprised 800 "A" Cumulative Preference shares and 7,207 "B" Ordinary shares held as follows:

30	<i>Pref.</i>	<i>Ord.</i>	
	800	2986	The Testator
		301	J. W. Pearse
		1000	Mrs. M. M. Nash
		1000	Mrs. I. J. Crane
		1000	Mrs. S. A. K. McKenzie
		1	A. E. McKenzie
		111	Mrs. J. A. L. Restall
		111	Mrs. N. A. Birch
		111	Mrs. B. A. Bayldon
		114	F. L. Crane
40		111	M. L. Crane
		111	W. L. Crane
		813	Mrs. H. M. Alexander
		83	Reverend L. L. Nash
		83	Reverend C. J. Nash
		1	T. A. Langley
	800	7207	

Brothers and sisters of the Testator

Husband of S. A. K. McKenzie

Daughters of A. E. and S. A. K. McKenzie

Sons of Mrs. I. J. Crane

Children of Mrs. M. M. Nash

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8. The Articles of Association of the Company to which the Respondents crave leave to refer for their full terms provide *inter alia* as follows:—

p. 3, ll. 31-42

“9. The first issue of shares after providing for the subscribers’ original seven shares shall comprise 800 “A” shares and 7,200 “B” shares. The “A” shares shall be issued as fully paid up and shall entitle the holders thereof for the time being to a preferential cumulative dividend at the rate of and limited to six pounds per centum per annum and in the event of the Company being wound up to a preferential right to be paid in full the nominal paid up value of such “A” shares out of the surplus assets of the Company. The “B” shares shall also be issued as fully paid up but the holders thereof shall not be entitled to any dividend thereon until a dividend at the rate of six pounds per centum per annum has been paid on the “A” shares.” 10

p. 3, l. 43

“10. The profits or dividends declared by the Company shall be calculated and payable as to the “A” and “B” shares on their nominal paid up value but as to all other shares only in proportion to so much capital including premiums if any received by the Company as shall for the time being be actually paid up thereon or received in respect thereof by the Company.”

p. 6, ll. 35-39

“76. Every question submitted to a meeting shall be decided in the first instance by a show of hands, and in the case of an equality of votes the chairman shall both on show of hands and at a poll have a casting vote in addition to the vote or votes to which he may be entitled as member.” 20

p. 6, ll. 40-48

“77. At any general meeting, unless a poll is demanded by a member entitled to vote holding at least 500 shares, or by two or more members entitled to vote holding at least 500 shares in the aggregate, a declaration by the chairman that a resolution has been carried by a particular majority, or lost or not carried by a particular majority, and an entry to that effect in the book of proceedings of the Company, shall be conclusive evidence of the fact without proof of the number or proportion of the votes recorded in favour of or against such resolution.”

p. 7, ll. 1-6

“82. On a show of hands every member present personally or by proxy or by attorney shall have one vote, and upon a poll every member present in person or by proxy, attorney or agent shall have one vote for every share held by him. Where a corporation being a member is present by a proxy who is not a member such proxy shall be entitled to vote for such corporation on a show of hands.” 30

p. 10, l. 12

By reason of a number of the Articles of Association of the Company its shares cannot be listed on the relevant stock exchange.

9. By reason of the provisions of the Articles of Association and Sections 97 and 260 of the Companies Act 1936, although the Testator had sufficient voting power to prevent the carriage of any resolution for the voluntary winding up of the Company he had not sufficient power himself to carry such a resolution. 40

p. 10, ll. 17-24

10. In pursuance of their obligations under the Stamp Duties Act, section 117 and the regulations made thereunder the Respondents lodged an inventory setting forth, *inter alia*, the value of the 2,986 “B” Ordinary shares of the Company as £2. 6s. 6d. per share and attached to this inventory was a valuation

of those shares by Robertson, Crane & Gibbons, Chartered Accountants, of 117, Pitt Street, Sydney, together with an annexure setting out the basis upon which such valuation was made. That basis may be conveniently described as a "profits basis".

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p. 13, ll. 1-21  
p. 13, l. 22

11. In further pursuance of their obligations under section 117 of the Stamp Duties Act the Respondents also furnished to the Appellant (i) copies of the Balance Sheets of the Company as at 30th June 1945 and 30th June 1946 and (ii) a statement of the taxable income of the Company and the incomes taxes assessed thereon or estimated in respect thereof for each of the years ended 30th June 1941, 1942, 1943, 1944 and 1945. The Appellant also caused to be prepared a more detailed statement of the profits or losses of the Company for the said years and also for the year 1946.

p. 10, l. 27

pp. 15-16

p. 17

pp. 18-19

The differences between the Appellant's figures and the Respondents' figures of net profit and loss are slight. The Appellant's figures are as follows: -

p. 18

	1941	Loss	2,253
	1942	Profit	2,304
	1943	„	2,761
	1944	„	3,639
	1945	„	1,006
20	1946	„	5,191

12. The only sales of the "B" Ordinary shares which have taken place since 1940 are as follows: —

p. 1

p. 10, ll. 39-44

24 October 1940	...	...	...	1 share at £3.	11.	6
30 December	...	...	...	83 „ „	£5.	17. 6
12 May 1947	...	..	...	296 „ „	£4.	17. 11
						to nearest penny.

13. On the basis of the foregoing facts and documents the Appellant determined to value the shares in the Company held by the Testator at his death on the liquidation basis provided for by section 127, sub-section 1 (c) of the Stamp Duties Act and so informed the Respondents on the 12th day of October 1947. On such basis he valued the 2,986 "B" Ordinary Shares at £7. 16s. 10d. per share and included such valuation in his overall valuation of the final balance of the estate of the Testator on which final balance he assessed the duty payable in the amount of £7,112. 9s. 0d.

p. 11, ll. 1-5

p. 11, ll. 6-9

p. 12, l. 1

14. Notice of such assessment was issued by the Appellant on the 8th day of July 1948 and duty in accordance therewith was duly paid by the Respondents but they being dissatisfied with such assessment on the 6th day of August 1948 delivered to the Appellant notice in writing requiring him to state a case for the opinion of the Supreme Court of New South Wales.

p. 12, l. 4

p. 12, ll. 6-9

15. In accordance with such notice and his obligations under section 124, sub-section 2 of the Stamp Duties Act on the 2nd day of August 1950 the Appellant stated and signed a case for the opinion of the Supreme Court of New South Wales on a number of questions of which two are relevant to the Appellant's appeal namely: —

pp. 1-12

RECORD.

p. 12, ll. 12-15

(1) Whether in valuing the 2,986 "B" Ordinary shares in the Company the Appellant was justified in exercising the discretion conferred upon him by section 127, sub-section (1) (c) of the Stamp Duties Act to value such shares on a liquidation basis.

(2) Whether the amount of duty chargeable on the said Estate was £7,112. 9s. 0d. or if not what other sum.

p. 22, l. 16

p. 25, l. 4

16. The case stated by the Appellant came on for hearing before the Full Court of the Supreme Court of New South Wales on the 5th and 6th days of October 1950, when it was contended by the Appellant (a) that he, having exercised the discretion conferred upon him by section 127, sub-section 1 (c) of the Stamp Duties Act, the Court was not entitled in the circumstances to substitute its discretion for his (b) that even if it was so entitled the proper method of valuing the 2,986 "B" Ordinary shares was in the circumstances that set out in section 127, sub-section 1 (c). 10

p. 22

17. On the 30th day of October 1950 the Supreme Court gave judgment unanimously rejecting both the contentions of Appellant and ordered *inter alia* that the question set out in paragraph 15 hereof should be answered in the negative.

p. 25, ll. 33-43

18. By his judgment with which Maxwell J. agreed, Chief Justice Street held:— 20

p. 25, l. 48  
p. 26, l. 29

(a) That although under the Income Tax Acts the Court was only entitled to interfere with the exercise by the Commissioner of Taxation of a discretion given him under those Acts if it considered that he had proceeded upon some wrong principle of law or had exercised his discretion by consideration of irrelevant or extraneous matters, appeals under section 124 of the Stamp Duties Act had been dealt with on a different basis.

p. 27, ll. 31-34

(b) That in the *Commissioners of Stamp Duties v. Beak*, 46 C.L.R. 585 (decided in the year 1931) the High Court of Australia had considered two sections of the relevant Queensland Statute which substantially corresponded with sections 124 and 127 sub-section 1 (c) of the Stamp Duties Act was conclusive on the first contention of the Appellant and that the Court was entitled to reconsider the matter unfettered by the manner in which the Appellant had already exercised his discretion. 30

p. 28, ll. 6-27

(c) That in valuing shares in a company for estate duty the general rule was that the value was to be ascertained by deciding the price which a willing but not too anxious vendor could reasonably expect to obtain and a hypothetical willing, but not too anxious, purchaser could reasonably expect to have to pay for the shares if the vendor and purchaser had got together and agreed on a price in friendly negotiations. 40

pp. 29-30

(d) That where the company whose shares were being valued was a going concern only in rare cases would it be proper to value under section 127 (1) (c); that the present case was not such a rare instance; that it was not therefore a case in which the Appellant was entitled to exercise the discretion conferred upon him by that sub-section.

Owen J. delivered judgment substantially to the same effect.



19. From this judgment and order the Appellant appealed to the High Court of Australia and the Appeal was heard on the 19th, 20th and 23rd days of April, 1951, when the Appellant repeated the contentions advanced by him before the Supreme Court of New South Wales. It was however conceded by the Appellant that the values put by him upon the shares on the hypothetical winding up were fully examinable.

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p. 33, l. 20

p. 42, l. 49

20. On the 27th day of July 1951 the High Court in a judgment delivered by Williams J. unanimously rejected the Appellant's contentions and ordered *inter alia* that the Appellant's appeal be dismissed. In their unanimous judgment the Court held:—

p. 33

pp. 40-44

(a) That the Company was thoroughly solvent, that there was no indication whatever that the shareholders had ever desired that the Company should go into voluntary liquidation and that no shareholder held sufficient shares to pass a special resolution for that purpose.

p. 40, l. 45 to  
p. 41, l. 7

(b) That if the Appellant's opinion as to value on the hypothetical winding up was fully examinable so also was the method of valuation to be applied. Either each and every activity of the Appellant under section 127, sub-section 1 (c) was subject to complete judicial review under section 124 or each and every activity could only be reviewed to the same limited extent.

p. 43, ll. 1-10

(c) That if section 127, sub-section 1 (c) meant that the Appellant was to be the sole judge of the appropriate method to adopt in valuing shares then the Court could not interfere unless it could be shown that the Commissioner had acted in contravention of some principle of law.

p. 42, ll. 36-41

(d) That section 127, sub-section 1 (c) did not make the Appellant sole judge. It related to the discretion of the Appellant in performing his administrative duties under the Act. It had no application to the jurisdictions of the Court in performing its judicial functions under section 124. That section imposed on the Court the duty of itself assessing the duty chargeable. It therefore followed that the Court must itself value the property included in the dutiable estate.

p. 43, ll. 11-14  
p. 44, ll. 1-5

p. 43, ll. 25-27

(e) That the method of valuation prescribed by section 127, sub-section 1 (c) was not a proper mode for valuing the 2,986 "B" Ordinary Shares of the Company. The usual mode of valuing shares in a company which was a going concern had been established by many judicial decisions. Scope for the use of the method prescribed by section 127, sub-section 1 (c) could be found in special cases but this was not one of them.

p. 44, l. 13

p. 44, ll. 15-17

p. 44, l. 27

21. The contentions of the Respondents may be summarised in the following submissions:—

(a) (i) That an assessment of death duty under the Stamp Duties Act involves (a) the ascertainment of the property liable to death duty, the means by which such property should be valued and the amount of the allowances authorised by the Act in respect of the debts of the deceased.

40

(b) The valuation of the property liable to death duty by the means ascertained.

(c) The calculation of the duty payable on the valuation so made after making the allowances so ascertained.

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(ii) That the duty and power of the Court on the hearing of a case under Section 124 of the Stamp Duties Act is, *inter alia*, to assess the duty chargeable.

(iii) That the Court is therefore both entitled and bound on the hearing of a case to approach the matter of assessment untrammelled by the views of the Commissioner and itself to carry out the functions involved in assessment of death duty, in particular the function of ascertaining the means by which any property should be valued.

(b) That substantially similar sections to sections 124 and 127 sub-section 1 (c) of the Stamp Duties Act were construed by the High Court of Australia in 1931 in the manner set out in the last preceding sub-paragraph hereof and that the same construction should therefore be applied to the sections of the Stamp Duties Act aforementioned. 10

(c) That the extent to which the discretion given by wording substantially the same as that used in section 127, sub-section 1 (c) of the Stamp Duties Act could be reviewed by the Court under the power given to the Court by wording substantially the same as that used in section 124 of the Stamp Duties Act had been determined by the High Court of Australia in 1931 and that the Legislature of the State of New South Wales must be taken to have intended that the discretion given to the Appellant in 1939 by section 127 1 (c) of the Stamp Duties Act should be subject to a like review. 20

(d) That the discretions dealt with in such cases as *Pioneer Laundry and Dry Cleaners Ltd. v. Minister of National Revenue* (1940) A. C. 127; *Minister of National Revenue v. Wright's Canadian Ropes Ltd.* (1947) A. C. 109; and *D. R. Fraser & Co. Ltd. v. Minister of National Revenue* (1949) A. C. 24 are not in *pari materia* with that given by Section 127, sub-section (1) (c) and that such cases are inapplicable to the instant circumstances and are distinguishable.

(e) That the "discretion" given to the Commissioner by Section 127, sub-section (1) (c) is no more than a liberty or permission given to him in the course of his administrative functions to value shares on a particular footing and that it was not intended thereby to bind the Court in the performance of its judicial functions and duties when the matter was removed to its jurisdiction by means of a Case Stated under Section 124. 30

(f) (i) That where the shares to be valued are shares of a company which is a going concern, the discretion given by Section 127, sub-section 1 (c) is only exercisable in special cases, *e.g.* where the owner of the shares in question himself owns or controls sufficient shares to enable him to carry a special resolution for the voluntary winding up of the Company whose shares are being valued.

(ii) That there was no evidence that the present case was such a special case as would enable the Appellant to exercise such discretion. 40

(iii) That accordingly whether or no the Court is entitled to approach the matter of valuation of the 2,986 "B" Ordinary shares *de novo*, the Appellant in determining to adopt the method of valuation prescribed by Section 127 1 (c) acted in contravention of law or on insufficient material, and the purported exercise of his discretion can therefore be disregarded.

(g) That the proper method of valuation of the 2,986 "B" Ordinary shares was to ascertain the price that they could reasonably have been expected to obtain on a sale by negotiation at the date of the Testator's death between a hypothetical willing, but not too anxious seller, and a hypothetical willing, but not too anxious buyer.

RECORD.

22. The Respondents humbly submit that the Judgments of the High Court of Australia and of the Supreme Court of New South Wales are correct and should be affirmed for the following amongst other

## REASONS

- 10 (1) BECAUSE the Court was entitled to decide for itself the method of valuing the 2,986 "B" Ordinary shares unfettered by the circumstance that the Appellant in the course of his administrative functions determined to value the same by the method permitted by sub-section 1 (c) of Section 127 of the Stamp Duties Act.
- (2) BECAUSE the Appellant in determining to adopt the method so permitted acted in contravention of law or on insufficient materials.
- 20 (3) BECAUSE the proper method of valuation of the shares was not that so permitted.
- (4) BECAUSE the Judgment delivered in the Supreme Court of New South Wales and the High Court of Australia were right.

GARFIELD BARWICK.

R. J. PARKER.

No. 9 of 1953.

**In the Privy Council.**

*ON APPEAL FROM THE HIGH COURT  
OF AUSTRALIA.*

THE COMMISSIONER OF STAMP DUTIES  
OF THE STATE OF NEW SOUTH WALES  
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AND

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**Case for the Respondents**

ON THE APPELLANT'S APPEAL.

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