

IN THE REVENUE COURT

REVENUE COURT APPEAL NO. 7 OF 1998

BETWEEN	ELAINE YVONNE BOLTON	APPELLANT
A N D	THE COMMISSIONER OF STAMP DUTY AND TRANSFER TAX	RESPONDENT

Dr Randolph Williams for the Appellant

Mr Frank Williams for the REspondent

Heard on the 19th day of Jánuary and the 26th day of March 1999.

JUDGMENT

COURTENAY ORR J

THE FACTUAL BACKGROUND

The late Mrs Vandolyn Bolton and her late husband Kenneth Donald Bolton were joint tenants of premises situate at 8 West Pine Way, Kingston 6, St Andrew (hereinafter referred to as "the premises"). Mr Bolton died on November 5, 1988. Mrs Bolton died intestate on the 26th day of June 1994, being then the sole remaining registered owner of the said premises. The appellant is the daughter of Mrs Bolton and her personal representative.

It is common ground between the parties that Mrs Bolton lived at the premises for about 20 years and during that time she had no other residence, so that in the words of paragraph 11(3) of Part II of the First Schedule of the Transfer Tax Act, hereafter called the Act the premises were her "principal residence". Indeed prior to the death of her husband it was the principal residence of both of them.

On his death no transfer tax was payable as paragraph 1(5) of the First Schedule of the Act (as it then read) had this effect.

Both sides are agreed that the gross taxable value of the premises is \$800,000.00 with net taxable value of \$766,350.00

after allowing for funeral expenses of \$33,650.00.

The Respondent issued a notice of assessment dated May 16, 1998, under cover of a letter dated June 1, 1998 advising that transfer tax of \$109,452.50 with interest of \$18,945.78 was payable in respect of the premises.

The appellant by a Notice of Objection dated June 18, 1998, contended that no tax was payable and sought a review of the assessment. The Respondent confirmed the assessment by a Notice of Decision dated July 10, 1998.

In spite of her objection the appellant paid the sum of \$50,000.00 in part payment of the sum assessed. She now appeals to this Court for the decision of the Respondent to be quashed.

THE RELEVANT STATUTORY PROVISIONS

Section 3(1) of the Act imposes Transfer Tax on "the amount or value of such money or money's worth as is, or may be treated under this Act as being, the consideration for each transfer after the 3rd day of April 1984, of any property;" and it continues:

"and tax charged in respect of any such transfer shall be borne by the transferor."

Section 5(1) of the Act deals with Transfer Tax on death. It reads as follows:

"5-(1) On the death of any individual after the 31st day of May 1974, all property of which he was, at his death, competent to dispose shall, for the purposes of taxation in conformity with subsections (2) and (3) of Section 12, be deemed to be, for a consideration equal to its market value at the date of his death, transferred by him at the date of his death to the persons to whom such property passes on his death."

Section 12(2) provides that:

"Tax shall on the assumption introduced by subsection (1) of Section 5, be imposed with respect to the total consideration for such transfer by an individual as that subsection describes."

It then goes on to state that the tax so imposed shall be computed on such consideration in accordance with the rates set out in that subsection.

Subsection 3 of Section 12 contains the following provisions:

"(3) In relation to tax imposed by virtue of subsection (1) of Section 5 -

(a) the provisions of Part II of the First Schedule shall have effect; and

(b) the other provisions of this Act (in so far as they are applicable in relation thereto) shall apply subject to the provisions of subsection (2) of this section and Part II of the First Schedule aforesaid." (emphasis supplied)

Part II of the First Schedule contains special provisions in respect to tax concerning transfers on death. Paragraph 11(5) of this schedule as originally enacted was amended by Section 8 of Act 19 of 1988.

This paragraph was further amended by an Order made by the Minister of Finance on July 2, 1997. It had the effect of expanding the categories of persons who could benefit from the exemption provided by paragraph 11(5); but it is agreed that this amendment of 1997 would not apply in the instant case as Mrs Bolton (the deceased) died in 1994.

The provisions of paragraph 11(3) are of particular importance. It reads:

"(3) The property passing on the death of an individual competent to dispose thereof shall be taken to include any property which (having been so disposable) passes -

(a) to his personal representative; or

(b) either immediately on his death or after any interval, either certainly or contingently, and either originally or by way of substantive limitation; or

(c) at a period ascertainable only by reference to the deceased's death."

Paragraph 11(5) as it stood in 1994 when Mrs Bolton died read thus:

"Nothing in sub-paragraph (3) shall apply in relation to any property which is shown to the satisfaction of the Commissioner to be a dwelling house which was -

(a) owned by the deceased or, as the case may be, by the deceased and his spouse jointly or as tenants in common; and

(b) used as the principal residence of each of them;

Provided that more than one residence of the deceased shall not be accepted as having been the principal residence for the purposes of this sub-paragraph."

THE GROUNDS OF OBJECTION

In her objection submitted by Dr Williams the appellant contended:

"It will be seen that the property passing on the death of the deceased was a dwelling house, the principal residence of the deceased.

In light of this new information and paragraph 11(3) and 11(5) of the First Schedule to the Transfer Tax Act I request your review of the assessment.

It appears no tax is payable and I would appreciate your issuing your certificate to that effect."

THE RESPONDENT'S DECISION

In a letter dated 10th July 1998 the Respondent wrote:

"I acknowledge receipt of your letter dated 18/6/98 and advise you further that duty is payable upon the death of Mrs Vandolyn Bolton since her husband had predeceased her. Therefore, there was no surviving spouse at the time of her death, the exemption now given to any other relative would not have applied in this case."

THE ISSUE TO BE DECIDED

This case revolves around the correct interpretation of

paragraphs 11(3) and 11(5) of Part II of the First Schedule of the Act. The respondent contends that the appellant's claim must fail. For a personal representative of a deceased to obtain an exemption, the deceased must have, inter alia left a surviving spouse.

The appellant maintains that a proper interpretation of the relevant provisions yields no such requirement, and that therefore the appellant is eligible for an exemption.

THE SUBMISSIONS ON BEHALF OF THE APPELLANT

Throughout the relevant statutory provisions, the Act speaks of the death of an individual. Paragraph 11(5) (a) makes it clear that there are two alternative circumstances in which the exemption may be claimed:

- (1) Where the dwelling house is owned by the deceased or
- (2) where the dwelling house is owned by the deceased and his spouse. It is wrong to interpret the words "each of them" in paragraph 11(5) (b) as meaning "both of them."

The respondent's interpretation involves deleting the words "the deceased, or as the case may be" after the words "owned by" in paragraph 11(5) (a).

Paragraph 11(5) (b) refers to the "principal residence of the deceased" not to the principal residence of the deceased and spouse.

The history of this legislation supports the appellant's interpretation.

THE SUBMISSIONS ON BEHALF OF THE RESPONDENT

Paragraph 11 in essence deals with property of which a person shall be deemed to have been competent to dispose of at his death.

The effect of paragraphs 11(3) and 11(5) of Part II of the First Schedule as they apply to this case is that an exemption is available only where the following conditions are satisfied.

(1) there are two parties (a) the deceased and (b) the deceased's spouse.

(2) The dwelling-house in question must have been owned by either the deceased alone or by the deceased and his spouse, and,

(3) The dwelling-house must have been the principal residence of both of them. The phrase "each of them" in paragraph 11 (5) (b) must be interpreted to mean "both of them". Even if the phrase is construed to mean "either of them", the hurdle of condition (i) would not have been cleared.

The appellant being the daughter and not the spouse of the deceased, could not benefit.

The 1997 amendment now permits a daughter to benefit from the exemption.

THE COURT'S ANALYSIS

GUIDELINES IN THE INTERPRETATION OF STATUTES

Both sides accepted as a guide the well known dictum of Rowlatt J in Cape Brandy Syndicate v I.R.C. [1921] KB64 where he said at p. 71.

"[In] a taxing Act one has merely to look at what is clearly said. There is no room for any intendment. There is no equity about a tax. Nothing is to be read in, nothing is to be implied. One can only look fairly at the language used."

It must also be remembered that it is a well established principle that the onus is on the Crown to prove that the subject falls within the charge. Viscount Simonds said in Hochstrasser v Mayes 19 T.C. 490 at 520:

"It is for the Crown seeking to tax the subject, to prove that the tax is exigible not for the subject to prove his case falls within exceptions which are not expressed in the statute but arbitrarily inferred from it."

The rule of strict interpretation enunciated by Rowlatt J, applies equally to the Crown and the subject. Lord Cairns in Parkington v Attorney General (1869) LR 4 HL 100 said at p. 122:

"If the person sought to be taxed comes within the letter of the law he must be taxed, however great the hardship may appear to the judicial mind to be. On the other hand, if the Crown, seeking to recover the tax, cannot bring the subject within the letter of the law, the subject is free, however apparently within the spirit of the law the case might otherwise appear to be. In other words, if there be admissible in any statute, what is called an equitable construction, certainly such a construction, is not admissible in a taxing statute where you can simply adhere to the words of the statute."

It is noteworthy that the Transfer Tax Act contains a special provision. Section 26(2) reads:

"(2) The onus of proving that the assessment or other decision of the Commissioner complained of is excessive or erroneous shall be on the person complaining."

In recent times courts of high authority have qualified the literal interpretation rule. Thus Lord Wilberforce speaking in relation to taxing Acts said in W.T. Ramsay Ltd. v I.R.C. [1982] AC 300 at 323:

"A subject is only to be taxed on clear words, not on intendment or on the equity of an Act.... What are 'clear words' is to be ascertained on normal principles; these do not confine the courts to literal interpretation. There may, indeed, should be considered the context and scheme of the relevant Act as a whole, and its purpose should be regarded....." (emphasis mine)

The need to read the whole Act cannot be too strongly stressed. Viscount Simonds emphasized the interpreters need to read and absorb the whole Act before deciding whether real doubt exists as to the legal meaning of an enactment. He said in A.G. v Prince Ernest Augustus of Hanover [1957] AC 436 at 463:

"....it must often be difficult to say that any terms are clear and unambiguous until they have been read in their context the elementary rule must be observed that no one should profess to understand any part of a

statute ... before he has read the whole of it. Until he has done so he is not entitled to say that it or any part of it is clear and unambiguous."

In the same case Lord Normand said at 465:

"It is the merest common place to say that words extracted from context may be meaningless or misleading,"

and Lord Somervell of Harrow added at p. 473:

"It is unreal to proceed as if the court looked first at the provision in dispute without knowing whether it was contained in a Finance Act or a Public Health Act."

As a general rule construction as a whole requires that unless the contrary appears three principles should be applied; (a) every word in the Act should be given a meaning, (b) the same word should be given the same meaning and (c) different words should be given different meanings.

The first principle derives from the presumption that Parliament does nothing in vain, and so the court must endeavour to give significance to every word in an enactment. Thus in A.G's Reference (No. 1 of 1975) [1975] QB773 at 778 it was held that in the Accessories and Abettors Act 1861 Section 8, the words "aid, abet, counsel or procure" must each be regarded as having a distinct meaning otherwise Parliament would be indulging in tautology in using the four words quoted. Thus in the instant case it is important to give effect to the words "as the case may be" in paragraph 11(5)(a). I shall return to that later.

A very useful technique in the interpretation of statutes is the use of communion - dividing a provision into its constituent parts. Thus the statutory provision is so set out that it spatially separates its constituent grammatical clauses, which may, to enhance comprehension, be given numbers.

At times this process may be assisted by omitting from

communion those components that have no relevance to the point at issue in the case under consideration. Such selective communion brings into sharp focus the relevant issues by removing irrelevant statutory material. In other words it isolates those express words of the statute that are relevant to the facts of the case being considered. .

In R v Anderson [1986] AC 27 at 37 Lord Bridge of Harwick used this to good advantage. Having read the definition of criminal conspiracy in the Criminal Law Act 1977 Section 1(1) he said:

"For purposes of analysis it is perhaps convenient to isolate the three classes each of which must be taken as indicating an essential ingredient of the offence as follows: (1) 'if a person agrees with any other person or persons that a course of conduct should be pursued' (2) 'which will necessarily amount to or involve the commission of any offence or offences by one or more of the parties to the agreement' (3) 'if the agreement is carried out in accordance with their intentions.'"

He then analysed the legal meaning by looking at each of these clauses in turn.

THE APPLICATION OF THE GUIDELINES

Mr Williams for the Respondent relied heavily on definitions drawn from the 7th and 9th editions of the Concise Oxford Dictionary as follows:

- "Each" - "every (one) taken separately." (7th)
 "every one or two or more persons or things"
 (9th)
- "Every" - "each single" (7th)
 "each without exception in a group or
 collection" (9th)
- "Them" - "see they" (7th)
 "objective case of they." (9th)

"They" - "plural of he, she, it." (7th)

"the people, animals, or things previously
named in question" (9th)

But I think to have restricted his search to those few
examples was not very helpful. Here are some more:

The Shorter Oxford Dictionary "EACH"

"A. adjective. Used before a singular noun to give the same sense in relation to individuals as does 'both' or 'all' before the plural noun in relation to the category or aggregate of them. (almost = EVERY but with reference rather to the separate members). (emphasis supplied)

B. pronoun. 1. Each one, each person referring individually to things or persons previously specified or implied, or following (after) OE

2. Distributed or in relation to each member of an aggregate. Frequently with reference to price, a piece, for each one."

The World Book Dictionary

each - adjective. every one (of two or more persons, things, etc.) considered separately or one by one: Each boy has a name.

Pronoun each one, this one and that one and the other ones"

Each emphasizes that one and all of a number or one and the other of two are thought of singly, as individuals.

Every - relating to a group means that one and all are included, with no exceptions. (emphasis supplied)

Guidance in the interpretation of paragraph 11(5) may be obtained from the following dictum of Lord Green MR in Re Bidie (deceased) [1948] 2 All ER 995 at 998F:

"The first thing one has to do I venture to think, in construing words in a section of an Act of Parliament is not to take those words in Vacuo, so to speak, and attribute to them what is sometimes called their natural or ordinary meaning. Few words in the English language have a natural or ordinary meaning in the sense that they must be so read that their meaning is entirely independent of their context. The method of construing statutes that I prefer is not to take particular words and attribute

to them a sort of Prima Facie meaning which you may displace or modify. It is to read the statute as a whole and ask oneself the question: 'In this state, in this context, relating to this subject matter, what is the true meaning of that word'." (emphasis supplied)

Add to this the necessity of giving meaning to the phrase "or as the case may be" in paragraph 5(a). The Shorter Oxford Dictionary defines this phrase as "according to the situation", and the Oxford Advanced Learner's Dictionary gives this description of its use: "(used when describing two or more alternatives)" as will be determined by the circumstances."

Hence the existence of a spouse is an alternative not a requirement.

If one selectively comminutes the provision one gets the following result:

Nothing in sub-paragraph 3 shall apply in relation to any property.

- (1) which is shown to the satisfaction of the Commissioner to be a dwelling house which was

Either

- (2) (a) owned by the deceased

OR

- (2) (b) in the situation where there is a spouse, owned by the deceased and his spouse jointly or as tenants in common,

And

- (3) is used by the principal residence of each of them."

Certainly in requirement 3, "them" cannot apply in all circumstances, because as we have seen the existence of a spouse is an alternative. Thus if one asks, like Lord Green in Re Bidie (supra).

"In this state, in this context, relating to this subject-matter; what is the true meaning of the phrase 'each of them?'" One must go back to the alternatives pointed at (2) (a) the deceased (b) deceased and spouse.

The words "each of them" cannot apply literally to alternative 2 (a), hence it cannot apply in all circumstances, but only in the alternative where there is an existing spouse.

12.

The appeal is therefore allowed and the decision of the Commissioner made on 10th July, 1988, is set aside.

Costs to the appellant to be taxed if not agreed.

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