

(1961) 10 CAL CK 0002
In the Calcutta High Court

RENNELL

APPELLANT

Vs

INLAND REVENUE COMMISSIONERS.

RESPONDENT

Date of Decision : 30-10-1961

Acts Referred:

Finance Act, 1894 — Section 2(1)(c)
Finance Act, 1910 — Section 59

Citation : (1963) 49 ITR 73

Hon'ble Judges : Evershed, J;Donovan, J;Danckwerts, J

Bench : Full Bench

Judgement

LORD EVERSLED M. R. We have had an opportunity of considering this case since the conclusion of the arguments and having reached a clear conclusion upon it, we have thought that there would be no point in reserving our judgment.

The question raised by the summons is whether certain property, which, according to the evidence at the material date amounted in value to some pounds 450,000, is liable to estate duty as deemed to pass on the death of the settlor, the late Augustine Courtauld, that death having occurred on March 3, 1959. The property in question is subject to a settlement dated nearly three years before namely, March 20, 1956, made by the settlor on the occasion (and I now deliberately use a neutral word) of the marriage of his daughter Perina to Christopher Fordham, the parties to the instrument being first, the settlor, second, the daughter Perina Courtauld, third, Christopher Fordham, the intending bridegroom, and fourth, the trustees who are the plaintiffs in the present proceedings. The short effect of the settlement was that the beneficial interests thereby created were to take effect only on the happening of the marriage between Christopher Fordham and Perina Courtauld and then there was, for a specified period beginning with the marriage a trust as to both capital subject to certain limitations, and as to income at the entire discretion of the trustees in favour of a large class namely, the wife, her issue and all other the issue of the settlor Christopher Fordham and the husband or wife of any of the settlors issue. At the end of the specified period the remaining corpus was then divisible among

the living issue per stripes of the settlor and there was a final limitation in favour of Perina Courtauld and her personal representatives.

Mr. Stamp, in arguing for the Crown suggested that discretionary trusts of this character were a very unusual subject-matter of a marriage settlement in the year 1910, and that the legislators of that year, in passing the Finance (1909-10) Act, 1910, could not have contemplated marriage settlements in which the beneficial interests were of this discretionary character. Whether that view is right or not, it no doubt is unusual, as a form of settlement on the marriage of one child only, to find dispositions of this kind, whether discretionary or otherwise in favour not only of that child and the issue of that child intending marriage but of the issue of all the children of the settlor, of which in this case there were in truth, six. If, therefore, the judge was right, as I think that he was, there is no doubt something starting in the conclusion that this property should be free of duty as having been made in consideration of the marriage of Perina within the terms of section 59 of the Act of 1910. I agree also with Mr. Goff that it would be quite impossible to evaluate, in any sensible way whatever, the interest which Perina Courtauld, her intending husband and the issue of her marriage were entitled to enjoy under the settlement. The argument put forward by Sir Lynn Ungood-Thomas on behalf of the trustees following such decisions as that of *Newstead v. Searles* and *Mackie v. Herbertson* was to this effect : that where the interests of the parties to the marriage in question and the issue of that marriage that is those strictly within the marriage consideration were so mixed up with the interests of other persons, either in being or to come into being, but quoad that marriage, volunteers, as to be incapable of severance, it was legitimate to treat all the beneficial interests as being within the marriage consideration; or, to put it the other way round, if it were necessary to show, in order to get the benefit of section 59 of the Act of 1910, that the gift had to be in favour of persons within the consideration of the marriage which was the occasion of the gift, it was sufficient that some, at any rate, of such persons were within that consideration and that they were so inextricably mixed with the other beneficiaries. Per contra, Mr. Goff contended that the cases referred to did not establish any such broad proposition, being rather directed to a more limited and different question, for example whether, in certain circumstances, gifts to volunteers properly so called were liable to be overridden by a subsequent transfer of the property concerned to a purchaser for value. In that connection Mr. Goff strongly relied upon the language of Lindley L. J. in *Attorney-General v. Jacobs Smith*, a case on which he indeed much founded himself. Lindley L. J. said : "I do not think you can read *Newstead v. Searles* or any other case as going the whole length of saying that those persons to whom I have alluded are not volunteers. They are volunteers but not liable to be defeated under the Statute of 27 Eliz. c. 4. The Revenue Act with which we are now dealing" - and that was the Customs and Inland Revenue Act, 1881 - "has nothing to do with that question." Having regard to the conclusion I have reached upon the whole matter, I find it unnecessary to express any view upon this matter debated

between Sir Lynn and Mr. Goff.

Having referred, however, to *Attorney-General v. Jacobs Smith* it would be convenient if I further stated that case arose under the Customs and Inland Revenue Acts of 1881 and 1889, and the relevant date was prior to the passing of the Act of 1894. It was concerned with a settlement made on the second marriage of a widow whereunder certain property became payable to children of the widows former marriage, and the question was whether that settlement was or was not within the ambit of the Customs and Inland Revenue Acts. In the course of their judgments Lindley, Lopes and Kay L. JJ. made very clear the point that the marriage consideration covers only the husband and wife and the issue of the particular marriage in respect to which the consideration passes and does not cover anyone else. It was held quite clearly that the children of the former marriage of the widow were for the purposes of taxation, volunteers.

The question now before us depends first and last upon the meaning of the statutory language which is relevant, as found in the series of Acts beginning with Customs and Inland Revenue Act, 1881, and ending with section 59 of the Finance (1909-10) Act, 1910. The language is familiar. It begins with section 38(2) of the Act of 1881, which refers among other things to property taken under a voluntary disposition purporting to operate as an immediate gift inter vivos which shall not have been made before a period, now increased to five years, before the death of the deceased. By section 11 of the Act of 1889 that provision was further amended. Finally by section 2 (1) of the Act of 1894 it was provided that "Property passing on the death of the deceased shall be deemed to include... (c). Property which would be required on the death of the deceased to be included in an account u/s 38 of the Customs and Inland Revenue Act, 1881, as amended by section 11 of the Customs and Inland Revenue Act, 1889, if those sections were herein enacted and extended to real property as well as personal property and the words voluntary and voluntarily and a reference to a volunteer - those references being found in other provisions of section 38 of the 1881 Act - "were omitted therefrom." Then finally to complete my citations, in section 59 of the Act of 1910 it is provided : "So much of paragraph (c) of subsection (1) of section 2 of the principal Act and this section as makes gifts inter vivos property which is deemed to pass on the death of the deceased shall not apply to gifts which are made in consideration of marriage...."

It is true to say, as Mr. Goff stressed that the relevant disposition is no doubt the disposition to the trustees and that the property taken is the whole of the settled property which is the subject of the disposition and not merely, or not limited to, or not limited to or not the same as, the beneficial interests under the disposition or any of those beneficial interest. So Mr. Goff said that the question is whether the disposition of the whole fund was a disposition purporting to operate as an immediate gift inter vivos in consideration of marriage. So far I am not at all disposed to dissent from Mr. Goffs formulation of the question. But then it is said on behalf of the Crown that, as a matter of law the test posed by section 59 of

the Act of 1910 cannot be satisfied unless the beneficial interests taken under the disposition are taken exclusively or, at any rate, primarily by persons within the marriage consideration; that is in this case following what was laid down in *Attorney-General v. Jacobs Smith, Perina Courtauld and Christopher Fordham* after their marriage and the issue of that marriage. That conclusion, it is said, is inherent in the formula in section 59, "gifts made in consideration of marriage," when read in conjunction with the earlier section which speaks of dispositions of property. The answer to the question obviously depends upon the meaning of the words which Parliament has used. True the language of section 59 of the Act of 1910 departs in some degree from the formulation inherent in the earlier legislation. But still the phrase is there and on the face of it, not one difficult of comprehension - "gifts which are made in consideration of marriage." Buckley J. below referred to the well-known statement of Rowlatt J. in *Cape Brandy Syndicate v. Inland Revenue Commissioner*, cited in *Canadian Eagle Oil Co. Ltd. v. The Kings*, where it is stated that the duty of the court is to construe the words as English words without preconceived ideas as to what might have been intended - unless of course you can gather the intention beyond peradventure from some other context in the Act.

It is at this stage perhaps not unhelpful to bear in mind, so far as relevant the history of liability to duty in regard to property settled on marriage prior to the passing of the Act of 1910. Thus, as Sir Lynn pointed out there were (and one should bear in mind that there were) always two classes of such settlements, namely, a settlement made by a man upon his own marriage and a settlement made by a settlor not upon his own marriage but upon the marriage of someone else, commonly of course but not necessarily, the marriage of one of his children. In both cases the beneficial interests might be confined to the persons within the marriage consideration, that is the consideration of the marriage in question or they might not be so confined and might extend to or might be exclusively in favour of volunteers so far as that marriage consideration is concerned. As I understand it, as the law stood from 1894 to 1910, if you had a settlement by a settlor upon the occasion of his own marriage in favour of persons within that marriage consideration, then it was never in doubt that the property in question was not within the scope of the 1881 to 1894 legislation and the parties were not in any sense volunteers. As Kay L. J. pointed out, they were parties to the most solemn consideration in the world. On the other hand, if the beneficial interest created by the settlement made by the settlor on his own marriage were in favour of volunteers as regards that marriage consideration, then the persons how took would be volunteers and the disposition would be in favour of volunteers. When you turn to the other class of settlement, a settlement by a settlor not in consideration of his own marriage but upon the marriage of someone else, then it is clear that prior to 1910 the subject-matter was always liable to duty, whether or not the beneficial interests were exclusively in favour of persons within the consideration of the marriage in question. I take that to be the conclusion of the well-known decision of *Palles C. B.* in the Irish case of

Attorney-General v. Smyth and for my statement I rely upon the discussion of that case in the judgment of Lord Blanesburgh in the Privy Council in Attorney-General for Ontario v. Perry.

It was in that state of affairs that there came to be passed the Act of 1910, and it is important therefore to have in mind that it was passed in light of the circumstances that the only case in which property settled upon a marriage settlement would be regarded as free from duty if the settlors death occurred within the relevant time, was the case of a settlement by a settlor upon his own marriage in favour of persons within the consideration of that marriage. In those circumstances, this simple phrase was inserted in the statute "gifts which are made in consideration of marriage." Mr. Goff observed that the section contains no such reference as "made wholly in consideration of marriage" and he contrasted that omission with the language for example, of section 3 (2) of the Finance Act, 1894, where it is stated : "Where any such purchase was made... for partial consideration." etc. But as Sir Lynn pointed out the language of section 3 (2) is to be read in conjunction with what is said in the preceding subsection which deals with "full consideration in money or moneys worth." I cannot therefore, get any assistance from the fact that there is no word of qualification in section 59 to the noun "consideration". I conclude, therefore, as a matter of law that if, in fact and in truth and as a matter of ordinary sense you find that the settlement in question was made in consideration of marriage, as those words are understood in our language, then, if the settlors death occurs within the relevant time, the property the subject of the disposition is free from the impost of duty, whether the beneficial interests are only in favour or primarily in favour of parties within the marriage consideration in question or whether they are not. If one is considering what the section says and does not say it is perhaps fair to observe as one of my brethren pointed out to me, that had the legislature intended such a limitation as that for which Mr. Goff contends it would have been indeed simple to insert into the section after the words "gifts which are made in consideration of marriage," the words "in favour of persons within the marriage consideration" but the legislature did not so provide.

One other point I mention in passing is that it was suggested on the side of the Crown, that section 59 being what was called an exempting section, there was an onus upon the subject to show that he brought himself within the exemption. That consideration may be relevant in considering the matter of fact, and it may therefore be appropriate to mention it now; but for my part I do not think that in this case there is any real force in this question of onus. As was observed by Donovan L. J., in the course of the argument, you are here dealing with property which does not in fact pass but is by the terms of the Act of 1894 deemed to pass. That property is defined by section 2 in the Act of 1894, and that section has been modified so that the scope of the property now deemed to pass is limited as a result of the Act of 1910. I do not think in the circumstances that the result is to impose such an onus as was underlying Mr. Goffs contention.

I come, accordingly, to the question of fact. Applying the ordinary standards of the sense of language and in light of the not inconsiderable evidence, of which the judge had the benefit, can it here be said that this settlement of March, 1956, was in truth made in consideration of the marriage of Perina Courtauld to Christopher Fordham ? The judge concluded that question of fact affirmatively. He put the matter summarily thus : "The matters which seem to me to point to the view that this settlement is one which ought properly to be described as having been made in consideration of the marriage are these : First, that in terms it is so expressed"; and that is incontrovertible; "secondly that it was made as part of a bargain under which Mr. Fordham himself executed a settlement on himself, his wife and his family" - to that heading I will return - "thirdly that the settlement was one which I am satisfied the settlor contemplated would confer substantial benefits on Mr. and Mrs. Fordham" - that is the daughter Perina and her husband - "fourthly, that the trusts are trusts of a kind which could not come into force unless the marriage was solemnised" - and that last matter is again incontrovertible. Sir Lynn did indicate in the course of his argument the benefits which is truth could be expected to be enjoyed by the parties to the Fordham marriage and their issue. The figures show that Perina Fordham has had a share of income though it is right to say that one of the other children has had an appreciably larger share of that income. I think it necessary to go no further than to state that the matter, as Sir Leslie Farrer pointed out in the evidence was deliberately left to the complete discretion of the trustees who as each period of distribution arose, would consider the real needs of all the family including the needs of the Fordhams and (now) their one child subsequently born. In other words, at least this may be said, that the interest which the Fordham marriage and those within the Fordham marriage took was certainly by no means illusory and it was clearly established that it was not intended so to be.

But returning to this second head, stated thus by the judge, "that it was made as part of a bargain," etc. it was Mr. Goffs contention (and I think I may fairly say that this was the main burden of his attack upon the matter of fact) that if you examined the story in the light of the evidence, you would be led inevitably, or at least properly to the conclusion that, although when the engagement of Perina Courtauld first occurred her father communicated with Sir Leslie and said : "What about a marriage settlement ?" or words to that effect by the time the matter was completed the idea of a marriage settlement upon Perinas marriage a marriage settlement of the more ordinary kind as would be commonly understood had been altogether dropped and had been superseded by a quite different idea, namely, that of making a very substantial settlement, not limited to those within Perinas marriage consideration but covering the settlors entire family of six children, the other five of whom were then unmarried, and covering also their issue, if and when they should subsequently marry. It is, as I have said a question of fact, and the inferences to be drawn from it. No doubt, as Sir Leslie Farrer pointed out in his evidence when you come to deal in a case of this kind

with the daughter of an extremely wealthy man marrying someone who was, I understand, an estate agent, the idea of a bargain in any very strict, certainly in a commercial sense is not a reality. On the other hand, having read carefully Sir Leslie's evidence, I cannot accept the view that there was a deliberate abandonment or even if you will, a subconscious abandonment of the idea of a marriage settlement in favour of something essentially and inherently different but rather that when the question of making a settlement arose, it was Sir Leslie's suggestion which the settlor accepted that the occasion should be taken to make a settlement not confined to those within the particular marriage consideration but covering the rest of the family; and it is no doubt true to say, as Sir Leslie pointed out, that he expressed the hope of his client that if that were done, they might get the benefit of exemption u/s 59 should the calamity occur which he observed the settlor as I follow it had then no reason to anticipate of his dying as a relatively young man not three years after the settlement.

It would be an undue elaboration to take too much time pursuing matters in the transcript. I will, however, make one or two references. On this matter of bargain this question was put in cross-examination to Sir Leslie : "You do not suggest that there was a solemn treaty between all the different parties concerned ? There was not any negotiation about it ?" to which the answer was : "I think they had all discussed it. My recollection is that when Perina came to see me she knew all about it. She said her father had told her about it." Then after being invited to look at certain recitals, this question is put : "On the treaty for the said intending marriage.... It cannot be a different treaty can it if there was one from the treaty referred to in the bride's father's settlement ? (A.) Yes, I think that is right. They were, so to speak interlocked." Then later Sir Leslie pointed out that the draft of the settlement he prepared for his client, the settlor was exchanged by him for the draft of the settlement emerging from the husband's side prepared by the husband's solicitors and in answer to questions put Sir Leslie said that if on the other side any point had been taken of the unusual character of the settlement it was a point he would no doubt have taken up in the ordinary course with his client; but no such point was taken. Finally, I turn to another question and answer, and it is at this point as it seems to me, that the case for the Crown by way of cross-examination was put at its highest, and I would observe that it might have been put higher if the case suggested was really to be put to Sir Leslie. The question is : "You really seized on this marriage to suggest to the settlor that it was just a good opportunity with a view to the enactments relating to stamp duty" - that obviously meant estate duty - to settle a much larger sum than he would have settled if he had been concerned with Perina and her husband and children and remoter issue of that marriage," to which the answer was; "I am not quite sure I would put it quite like that, but if he wanted to make a settlement which he did, on the marriage, I certainly told him that I thought we could hope that it might save duty a settlement in this form."

Having made those allusions, I say for my part that the impression on my mind

of the whole of the evidence is that in truth, in reality, and in substance this was a settlement made within the meaning of the section in consideration of Perinas marriage and, if that is so, it falls within the language of the relevant section of the Act of 1910. Taking that view on the facts, therefore, and having expressed my conclusion about the law. I think that this appeal must be dismissed.

DONOVAN L. J. - In view of the comprehensive judgment delivered by the Master of the Rolles, I can limit what I have to say although I may cover part of the ground again.

It will be seen that the settlors daughter and her intended husband were not even the principal beneficiaries under this settlement. They were simply members of a wide class of potential beneficiaries and as such they might never receive anything at all. In fact for the period between the execution of the settlement and March 3, 1959, the date the settlor died the daughter now Mrs. Fordham, received the total sum of pound 4,290, being settlement income distributed to her. In the same period her brother Augustine received like distributed totalling pound 18,330. Other beneficiaries received sums of income in the same period not substantially different from Mr. Fordhams receipts.

The Crown now claims duty on the settled fund u/s 2 (1) (c) of the Finance Act, 1894, as being to put the matter quite broadly a gift inter vivos made by the settlor within five years of his death. The trustees of the settlement resist the claim on the ground that the gift was made in consideration of marriage and so is exempt from estate duty u/s 59 (2) of the Finance (1909-10) Act, 1910. The arguments by which these rival claims are supported are, in summary, these : Mr. Goff, for the Crown, says that the transaction is colourable meaning thereby that the recital in the settlement : "now in consideration of the said intended marriage" is untrue; and that the truth is that this was a settlement made by the settlor on his whole family out of ordinary feelings of love and affection, the marriage of his daughter being simply the occasion for the settlement and not the consideration for it. Alternatively, he says that in law this settlement cannot be a gift in consideration of marriage, for the parties to the marriage do not take the whole of the otherwise taxable property. Most of the beneficiaries are strangers to the marriage consideration and this defeats the claim to exemption. Sir Lynn Ungood-Thomas, for the trustees, maintains that the consideration for the settlement was the marriage and it is immaterial that strangers to the marriage consideration may benefit under the terms of the settlement. The exemption still operates.

In my opinion the first contention for the Crown cannot be sustained. It would involve that the original intention to make a marriage settlement was abandoned and an intention to make a family settlement, but behind the facade of a marriage settlement, substituted. The evidence does not support that conclusion, it being clear, among things, that had there been no marriage, this settlement would not have operated. The most one can say is this : that the opportunity was taken to include in a marriage settlement beneficiaries outside the marriage

consideration itself. That raises the question of law : is such inclusion fatal to the exemption ? It is certainly surprising at first sight, and contrary to the notions one has hitherto entertained, if the exemption accorded to gifts under a marriage settlement can be turned to account in this way. There would seem to be sound reason for exempting newly married couples from the burden of estate duty on gifts which when the donor subsequently died, would have probably been already expended on the home or if they took the form of income under a marriage settlement would have determined their style of living. There is no similar reason in the case of strangers to the marriage. Nevertheless, in the end, one simply has to look at the words of the statute and construe them fairly and reasonably and if such a construction yields anomalous results in particular cases, it is common-place that they must be accepted, whether it be the Crown or the taxpayer who is thereby advantaged.

The words to be construed are "gifts which are made in consideration of marriage in the context of section 59 (2). There had been no express exemption of such gifts before the Act of 1910. The short history of the matter is this : in 1881 account duty was imposed to make good the loss of probate duty which occurred in cases where property was given away shortly before death or under a disposition which was substantially a substitute for a will. The duty was levied on personal or movable property only and at the same rates as probate duty, Pursuant to this purpose section 38 (2) (a) of the Customs and Inland Revenue Act, 1881 (as amended), levied the duty *inter alia* upon "Any property taken under a voluntary disposition... purporting to operate as an immediate gift *inter vivos*... which shall not have been bona fide made [three months] before the death of the deceased." This provision was amended by the Customs and Inland Revenue Act, 1889, s. 11 by substituting 12 months for three months and in other ways not material to the present case. In 1895 it was decided by the Court of Appeal that the children of a first marriage to whom their mother gave certain property under a marriage settlement which she made, on her second marriage took such property under a "voluntary disposition" within the meaning of section 38 of the Act of 1881. They were "volunteers" and not within the consideration of the second marriage. Had it been otherwise account duty would not have been payable, since the consideration of marriage would have deprived the disposition of its voluntary character. This was the decision in *Attorney-General v. Jacobs Smith*. The court there said that consideration of marriage extends only to the husband and wife and children of that marriage. In 1894, when estate duty superseded both probate duty the account duty, the provisions of the Acts of 1881 were further amended. Section 2 (1) (c) of the Finance Act, 1894, imposed estate duty on the property formerly liable to account duty u/s 38 (2) (a) of the Act of 1881 but widened the net. It did this by removing the necessity for the disposition to be voluntary, and extending the charge to real property. Section 2 (1) (c) of the Finance Act, 1894, reads thus : "Property passing on the death of the deceased shall be deemed to include the property following, that is to say..... (c) Property which would be required on the death of the deceased to be

included in an account u/s 38 of the Customs and Inland Revenue Act, 1881, as amended by section 11 of the Customs and Inland Revenue Act, 1889 if those sections were herein enacted and extended to real property as well as personal property and the words voluntary and voluntarily and a reference to a volunteer were omitted therefrom."

In that state of the law *Attorney-General v. Smyth* came before Palles C. B. He there decided that estate duty was payable upon the death of a settlor within 12 months of making a marriage settlement on his son. He reached this conclusion because by section 2 (1) (c) of the Act of 1894 the property no longer had to be the subject of a voluntary disposition; and although the son was within the marriage consideration nevertheless the property was taken under a disposition "purporting to operate as an immediate gift inter vivos." This decision has been subsequently criticised : see, for example, the decision of Danckwerts J. in the *In re Earl Fitzwilliams Agreement*. But it was the law when the Finance Act of 1910 came to be passed. The situation was then as follows : first, property settled by A upon his own marriage escaped estate duty even if he died within 12 months. There was here no voluntary disposition and no gift. A received consideration in the shape of the marriage. Secondly, property settled by A upon the children of a former marriage, the settlement being in consideration of his second marriage, was liable to estate duty if A died within 12 months. The children of the first marriage gave no consideration "they took the property as a gift. Thirdly, property settled by A upon the marriage of his own son was now liable" for although the son was within the marriage consideration he took the property as a gift.

It is against this background that one has to consider section 59 (2) of the Finance (1909-10) Act, 1910. If all that the legislature desired to do was to undo the effect of *Attorney-General v. Symth* and restore the immunity from estate duty of property taken upon marriage by a person within the marriage consideration (that is, husband, wife and issue), it would have been extremely easy to say so. We are now asked to read that limitation into the exempting words in section 59 (2) "gifts made in consideration of marriage." The justification urged is that the burden of estate duty in the case of gifts falls upon the donee. Why should a donee, who is outside the marriage consideration be relieved of this burden ? There being no satisfactory answer to this question section 59 (2) should be construed as requiring that the parties to the marriage consideration should take the whole of the otherwise taxable property. Mr. Goff relied very strongly upon the decision in *Attorney-General v. Jacobs Smith* but it seems to me to be inconclusive of the present case. Granted that Mrs. Fordhams brothers and sisters are volunteers the question of construction of section 59(2) still remains. On that question there is no direct authority and there seems little point, therefore in going through the various authorities canvassed in the course of the argument.

For my part I think that the difference in language between the taxing enactment

and the exempting one is significant. The duty is upon "property taken" etc. The exemption is of "gifts which are made." etc. So that when one is considering what property is "taken" it is natural to consider the matter from the point of view of the taker. When one is considering gifts "made" in consideration of marriage, it is natural to consider the matter from the point of view of the maker of the gift. It is, of course, true, that in the present case nothing in the way of consideration moves from Perinas brothers and sisters to the settlor; but section 59 (2) does not, in terms at any rate, require that it should. The test propounded is whether the gift was made in consideration of marriage, and as a matter of language, I do not see how this question can be answered in the negative merely because persons outside the marriage consideration take as well as those inside it. It is not an impossible conception that a gift may be made by A to B, C and D in consideration only of the marriage of B. Why should not a father say to a daughter : If you will marry so and so, I will make a gift not only to you but to your brothers and sisters ? There ought to be some compelling reason for limiting the exemption in the way the Crown wishes, since the literal language of section 59 (2) does not do it. I find no such compelling reason. I admit there are plausible reasons of social justice perhaps which can be appealed to, but that is not enough and, perhaps, not even relevant. The fact here is that this gift was made in consideration of marriage and that seems to me to bring the case within the four corners of the exemption as it is expressed.

That being so, it is unnecessary for me to consider the alternative argument for the taxpayer, that even if strangers to the marriage are outside the marriage consideration, in this particular case their interests cannot be severed, and so the exemption still applies in full.

I agree that the appeal should be dismissed.

DANCKWERTS L. J. I agree, and I can put my view quite shortly. The settlement is expressed to be made by the settlor in consideration of the intended marriage, and though it is agreed that evidence of the facts is admissible, it seems to me that the statement in the deed must stand, unless the evidence shows it to be untrue. The Crown contends that on the provisions contained in the settlement, which provide on an equal footing for persons who are not within the class regarded under the rules of equity as being within the marriage consideration as well as those persons within that class, (1) the settlement is in fact not a marriage settlement or a settlement made in consideration of marriage, and if there was an intention to make a marriage settlement it was abandoned by the settlor in favour of a larger scheme; and (2), as a matter of law, a settlement of the nature of the settlement under consideration cannot be "a gift which is made in consideration of marriage" within the terms of the exemption in section 59 (2) of the Act of 1910.

As regards the question of fact, in my opinion the Crown failed to prove, on the evidence that the statement in the settlement is untrue. The evidence established that the marriage of Mr. Fordham was the reason why the settlor

made the settlement and if the marriage had not taken place, the settlement would not have been made.

On the question of law, in the words of Rowlatt J. in *Cape Brandy Syndicate v. Inland Revenue Commissioner* : "in a taxing Act one has to look merely at what is clearly said." In my view, the words in section 59 (2) of the Act of 1910 are perfectly clear; the taxing provisions "shall not apply to gifts which are made in consideration of marriage." These words are plainly directed to the position of the maker of the settlement and (except possibly in an extreme case where the nature of the beneficiaries indicates that the marriage cannot have been the consideration) the benefits taken by the beneficiaries under the settlement are not the test. The terms of the exemption provision in section 59 (2) of the Act of 1910 are in the strong contrast with those of section 38 (2) (a) of the Act of 1881, which are "taken under a voluntary disposition made by any person so dying," which may well refer to the position of the donees. The removal of the word "voluntary" by the Finance Act, 1894, seems to me to make no difference on this point.

This construction is also strengthened when it is realised that those marriage settlements which are made by a husband on his wife and future children on his marriage ("the most valuable consideration imaginable," it has been said) were never subject to the provisions of section 38 (2) (a) of the Act of 1881 (being regarded as made for valuable consideration), so that the exempting provisions of section 59 (2) of the Act of 1910 must have been aimed at a wider class of marriage settlements. If that was not the intention, it would have been easy for the legislature to have said so. I do not feel that it is necessary to refer to the cases in which a distinction has been made for certain purposes between those persons who were regarded as being within the marriage consideration and others who were regarded as volunteers. That highly artificial rule seems to me to have nothing to do with the questions which have to be decided in the present case.

I think that the decision of the judge was right and I agree that the appeal should be dismissed.

Appeal dismissed with costs.