Judgment of the Lords of the Judicial Committee of the Privy Council on the Appeal of The Commissioner of Stamp Duties v. *Charles Julian Byrnes and others, from the Supreme Court of New South Wales, delivered the 4th April* 1911.

PRESENT AT THE HEARING:

LORD MACNAGHTEN.
LORD ATKINSON.
LORD SHAW.
LORD ROBSON.
SIR ARTHUR WILSON.

[DELIVERED BY LORD MACNAGHTEN.]

This seems to be a very plain case. It is an appeal by the Commissioner of Stamps for the State of New South Wales against a judgment of the Supreme Court pronounced on a special case stated by the Commissioner. The judgment under appeal disallows a claim preferred by the Commissioner against the executors of a Mr. Byrnes in respect of certain advances made by Mr. Byrnes in his lifetime to two of his sons.

Mr. Byrnes was a gentleman of considerable wealth. In addition to personal estate amounting to 10,000*l.* or thereabouts, he was possessed of land worth about 30,000*l.* Mr. Byrnes died on the 11th of January 1909. He left five children—three sons and two daughters. The sons to whom the advances in question were made were Charles and Lionel. Charles, who was born in

1877, lived with his father till the father's death; Lionel, who was born in 1884, lived with his father till his marriage in March 1906.

Mr. Byrnes seems to have treated his family liberally. He was on excellent terms with his sons. The two who lived at home were supplied with everything they wanted, but they had no independent means nor had they any fixed allowance.

Some years before he died Mr. Byrnes bought three properties in the name of his son Charles:

(1) A property in King Street, Newtown, near Sydney, in 1904;
(2) A property in Willoughby Road, North Sydney, in 1904; and
(3) A property in Ernest Street, North Sydney, in 1906.

The aggregate purchase money of these three properties, together with costs and stamp duty, has been taken by the Commissioner as being 5,772*l*.

In 1905 the testator bought a property in Norton Street, Leichhardt, in the name of his son Lionel. The purchase money of this property, together with costs and stamp duty, has been taken as being 1,366*l*.

The special case, together with certain issues agreed upon between the parties, came on to be heard before Pring, J., and a jury of four, on the 13th of December 1909, when it was arranged that the evidence of the two sons Charles and Lionel, who offered themselves for examination, should be taken before the Judge and annexed to the special case, and that the matter should be heard and determined by the Full Court, who were to be at liberty to draw inferences and deal with the matter as a jury. The jury in attendance was then discharged.

In delivering the judgment of the Full Court Pring, J., stated that he had no hesitation in

saying that the two sons who were examined and cross-examined before him were honest, reliable, and truthful witnesses. "They told not only the "truth," he said, "but the whole truth. They "kept back nothing." And he added, "I im- "plicitly believe them." Charles stated positively that there was no arrangement or understanding whatever on the occasion of any one of the three purchases as to what should be done with the property or the rents coming from it. In the case of the Newtown property, after the completion of the purchase—not very long afterwards—his father said to him, "you had better "make arrangements about the collection of those "rents, or else, if you like, you can have them "paid into my account along with my other "rents." He said "very well," and that was the only conversation they had about those rents. As regards the Willoughby property Charles said to his father it would be as well to have the rents paid into his account the same as the rents of the Newtown property, and to this his father assented. The rents of the Ernest Street property were also paid in to the father's account.

As regards the property purchased in Lionel's name, Lionel said that he had no conversation with his father about the property until some time after it was bought, when one day, as he and his father were driving past, his father said, "these are your two places that I bought for you "—you are to be a good boy." That was all that passed. He never had any conversation with his father about the rents, but Charles told him that the rents were collected by an agent and paid in to his father's account, and he was, he said, quite willing that it should be so.

Mr. Byrnes paid the rates on the properties bought in the names of his sons as well as the cost of all repairs.

Now, that is the whole of the evidence in the matter. In these circumstances the Commissioner of Stamps contends—

(1.) That Mr. Byrnes made these gifts "with "intent to evade payment of duty" within the meaning of Section 52 of the Stamp Duties Act, 1898.

(2.) That it must be inferred that there was an agreement or understanding between Mr. Byrnes and his sons to the effect that the father was to be entitled to receive the rents and profits during his lifetime.

In their Lordships' opinion there is no ground for suggesting that these gifts or advances were made to the sons "with intent to evade payment "of duty" within the meaning of that expression in the Stamp Duties Act, 1898. It has been laid down more than once by this Board that the transactions struck at by the Australian Stamp Duties Acts, which are all on the same lines, are transactions that are merely colourable. In this case the advances were gifts out and out, passing the property to the sons to the exclusion of all interest in the father.

It was argued, but argued faintly, that although it might be that the advances in question were not made with intent to evade payment of duty, yet they must be "deemed" to have been so made in accordance with the provision in the last words of section 52, subsection 1. But that provision applies only when the conveyance or gift "is made to take effect upon the death of "the person making the same." In the present case the conveyance took effect on its execution. From that moment the property conveyed vested in the donee. It was his to mortgage—to sell—to deal with in any way he pleased—and if he had become bankrupt in the father's lifetime the property would have passed to the trustee or assignee in his bankruptcy.

The principal argument on behalf of the Appellant was of course devoted to the contention, on the part of the Commissioner of Stamps, that the admitted facts of the case point to an implied reservation for the father's benefit. It was so strange it was said that a father should convey property to a son, and that the son should then hand over the rents and profits of that property to the father! To their Lordships the transaction seems not unnatural. Long before death duties assumed their present proportions in taxation, or became an object of terror to mortal men, it was by no means unusual for a father, himself well to do, to transfer property to a son who was not fully advanced, and for the son to let the father take the rents and profits of that property during his lifetime without any previous arrangement or understanding to that effect. Such an advance on the part of the father would be a mark of confidence in the son, and would tend to give the son, who might be wholly dependent on his father's bounty, some sense of independence. In the present case, having regard to the state of the family and the relations subsisting between Mr. Byrnes and his two sons who were living at home, it seems very natural that the sons receiving advances should yet feel a delicacy in taking the fruits during their father's lifetime. They had everything they wanted as things were, and if they were unduly favoured it might possibly have created some feeling of jealousy among the rest. It may be that in making these advances Mr. Byrnes was not insensible to the advantage of diminishing the burthen of death duties, but there is nothing wrong in that. No one may act in contravention of the law. But no one is bound to leave his property at the mercy of the Revenue authorities if he can legally escape their grasp. The Commissioner of Stamps

detects some sinister object in the transaction which he challenges in these proceedings, and a conspiracy to defraud the Revenue. Long ago a famous Chancellor placed a more benignant and a more common sense construction on similar transactions between father and son. He set down the son's acquiescence in his father taking the rents and profits to "good manners" and "reverence," that is, the respect which a child owes to his parent. In the case *Grey* v. *Grey* "a very short one but of a very nice and curious "debate" decided in 1677, and reported from Lord Nottingham's MSS. in 2 Sw. 594. Lord Nottingham had to consider in what cases a purchase by a father in the name of his son —a presumptive advancement—may import a trust in favour of the father. His Lordship observes "it is not reasonable that the father's "perception of profit, or making leases, or doing "such acts as these which the son in good "manners does not contradict, should turn a "presumptive advancement into a trust," p. 599. And again, "If the son be not at all or but in "part advanced, then if he suffer the father, who "purchased in his name, to recover the profits, "&c., this act of reverence and good manners "will not contradict the nature of things and "turn a presumptive advancement into a trust," p. 600.

In the present case their Lordships do not think there is any substance in the contention put forward on behalf of the Commissioner of Stamps, or even any reasonable ground for suspicion.

Their Lordships will therefore humbly advise His Majesty that the Appeal ought to be dismissed.

The Appellant will pay the costs of the Appeal.

In the Privy Council.

THE COMMISSIONER OF STAMP DUTIES

v.

CHARLES JULIAN BYRNES AND OTHERS.

LONDON:
PRINTED BY EYRE AND SPOTTISWOODE, LTD.,
PRINTERS TO THE KING'S MOST EXCELLENT MAJESTY.

1911.