that there is in this case no such mutual necessity as is contemplated by the statute; and that, therefore, even if the statute could be applied in Fiji, the present case is not within it. A question has been raised as to the sufficiency of the fence, and, if it is any satisfaction to the parties to know, it might be stated that the Court thinks that the fence is a good and sufficient one; but as I hold that the plaintiff has not made out a cause of action the judgment must be for the defendants, and with costs.

Judgment for defendants with costs.

[PROBATE JURISDICTION.]

June 15.

In re DAVID WHIPPY, SENIOR, DECEASED.

In re DAVID WHIPPY, JUNIOR, DECEASED.

Reference to Supreme Court by Commissioner of Stamps—Stamp Ordinance 1876—*Stamp Ordinance* 1880, *ss.* 29, 70, 71, 72—*Stamp Ordinance* 1883—*Stamp Duties Act of New South Wales*, 1871—55 *Geo. III.**

On a reference by the Commissioner of Stamps for the opinion of the Supreme Court, under s. 29 of the Stamp Ordinance 1880, as to whether duty was payable upon the estate of a person whose death had occurred before, but as to whose estate no grant of probate or administration had been applied for until after, the passing of that Ordinance,

Held, firstly, that, inasmuch as at the time the grants were made the Stamp Ordinance 1880 was in force, the amount of duty could not be assessed under the Stamp Ordinance 1883 (which repealed the earlier Ordinance) but must be assessed with reference to the law then existing.

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* Cap. 101 ?

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Secondly, that by the effect of ss. 70, 71, 72, of the Stamp Ordinance 1880, although the death was the event which gave rise to the payment of the duty, the grant of administration was the occasion upon which it must take effect; and that, therefore, the estate was liable to duty—and to duty calculated upon its present value—and that any inference that might be drawn from the New South Wales or English statute law, even supposing such law to have the effect contended for, could not prevail against the clearly expressed intention of the local legislature.

Held, further, that by the law of Fiji there is no difference in this respect between real and personal estate.

Mr. Scott for the representatives of the deceased.

The Commissioner of Stamps (Mr. H. G. C. Emberson) in person.

The case was argued on the 29th May, when the Court reserved its decision.

The facts and arguments sufficiently appear from the judgment.

FIELDING CLARKE, Acting C.J. These two cases, together with a case *In re The Estate of Simpson deceased* (relating to the same property), were referred to the Court by the Commissioner of Stamps, under s. 29 of the Stamp Ordinance, 1880, upon the question of the amount of stamp duty to be assessed in respect of certain lands constituting the respective estates.

At the hearing I decided the case of *In re Simpson* against the Crown upon the ground that I was satisfied that, although the parties interested in the estate have now become possessed of some valuable land, such land could in no sense be considered as having been part of the deceased's property upon which duty could be assessed.

In the case of the two Whippys, the land which the Commissioner of Stamps seeks to charge with stamp

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duty was undoubtedly the property of the deceased persons. In each case the deceased died before Annexation, but no application for probate or letters of administration was made until recently. The question to be considered is, whether, as a condition precedent to the issue of probate or administration, the Crown is entitled to any, and what, stamp duty? In Whippy senior's estate, the application was for probate; in Whippy junior's for administration; but no distinction arises on this difference. In both cases the grants were made at a time when the repealed Ordinance (No. I. of 1880) was in force. Mr. Scott, on behalf of those interested in the estates, contended that the amount of duty must be assessed with reference to the law then existing, and not with reference to the present law as contained in the amended Ordinance (No. VI.) of the present year. To that argument I accede.

Mr. Scott then contended that under the Ordinance of 1880—(1) That no duty is payable; and, (2) That if duty be payable, it is to be assessed upon the value of the estate at the time of the testator's death and not upon its present value. On the other hand, the Commissioner contended that duty on the full present value chargeable. With respect to the point last mentioned, it appeared, on the hearing, that the English authorities were opposed to Mr. Scott's contention; and, in fact, he admitted he could not support it. I reserved judgment, therefore, upon the first point only—viz., whether duty was payable at all.

I may say, in the first place, that I accept the rules of construction which Mr. Scott, by his able argument, impressed upon the Court—viz., (1) That Ordinances—especially where they impose a tax—are *primâ facie* to be deemed prospective only, *i.e.*, that no retrospective

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effect shall be given to them unless such effect be clearly and expressly stated; and (2) That if, in seeking to enforce fiscal legislation, the Crown cannot bring the subject within the letter of the law the subject is free, however apparently within the spirit of the law the case may otherwise appear to be.

On the other hand—as modifying any inferences which might be drawn from the above general rules—I may cite a case in which it was held that, although when an Act imposing a duty or toll is equally capable of two constructions it is to be construed so as to relieve and not to impose a burthen upon the subjects of the realm; yet, if of two constructions the one is reasonable and will effect the object of the Act, which the other construction will not, the former is to be adopted—*Hibernian Mining Company* v. *Faber*. (1)

After all, statutes and ordinances do not differ from other documents, in that they must be construed, if possible, according to their true meaning and intent; and, although it is a primary rule that the meaning of documents must be gathered from their language alone, it does not necessarily follow that a single phrase or sentence taken by itself is conclusive. On the contrary, a single phrase may undoubtedly be qualified or explained by the light of other parts of the document bearing upon the same subject; and this mode of construction, as applied to written law, has been termed by legal authority "the most natural and genuine exposition of a statute."

Mr. Scott came before the Court in a rather peculiar position. He had seen that under the Ordinance he could not get his grant without first making a statement of the value of the property—which, by s. 72,

(1) 8 Ir. C. L. R., Q. B. 321.

must be made in every case "in order to ascertain the amount of duty payable." He has, therefore, made his statement in due form, and filed it with the Commissioner; but, having done so, contends that no obligation to pay duty exists.

In support of this he says, firstly, the Ordinance declares (s. 70) that the duties "are payable upon the death"; and to enforce them with respect to a death which occurred long before the Ordinance passed would be to give the Ordinance an unfair and retrospective effect. Since all fees on probate and letters of administration are now abolished the legitimate result of this argument would be that the estate, whether real or personal, of any person who died before the Ordinance came into force would, if administered after that date, be liable to no duty at all. This—as regards personal estate at any rate—is, I am told, contrary to the practice which has obtained since the passing of the Ordinance; and, so far as inducing a fair result, would seem to me to give an obviously unfair advantage to those who might have delayed their application for a grant. However, the question is whether the language of the Ordinance can substantiate the argument.

In accordance with the rules of construction above adverted to, the sentence in question must be considered, not by itself but in connection with—(1) The subsequent clause in the same section, which says that the duty shall be in lieu of fees of grant of probate and letters of administration; (2) The provisions of s. 71 which, in effect, say that the grant of administration shall not issue except upon the payment of the duty; and lastly, The provisions of s. 72, to the effect that in order to ascertain the amount of duty payable every executor or administrator shall, within six months from

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the grant of administration, file with the Commissioner a statement of the assets.

Reading the above sections together, it appears that although the Ordinance says that the duty is payable on death, nothing is or can be, in reality, payable until administration has been granted. Until that event, no person can be liable for anything; nor can the means provided for the ascertaining of the amount due, or for enforcing its payment, be brought into play. It is clear to me that, although the death is the event which gives rise to the payment of duty, the tax is imposed, not upon the death (which would be a revolting idea) but upon the grant of administration consequent upon the death.

Construed in this way, the Ordinance is not retrospective, but purely prospective. It applies only to grants which may be made after it comes into force. Nor does this seem to me to be in any way unreasonable; since, in return for the payment, the parties get a disposing power sanctioned by law and the protection of the Court to ensure the proper appropriation and distribution of the assets according to the several interests.

"But," says Mr. Scott, "although the duty may be payable on personal estate it is not on real estate, because the duty is declared by the Ordinance to be in 'lieu of any fees of grant of probate or letters of administration,' and probate and administration fees were not payable on real property." This inference might be drawn from the words if there was nothing else in the Ordinance to contradict it; but the same section provides that the duty shall be payable in respect of all the property of or to which the deceased is possessed, seized (a word technically applicable to real estate only), or entitled

at the time of his death; and the statement required by s. 72 is expressly made to include land. As the Ordinance, therefore, makes no difference between real and personal estate the Court cannot do so either.

It is, therefore, ruled that duty is payable upon the value (*i.e.*, the present value) of these estates, and the matters are remitted to the Commissioner to be dealt with accordingly. With respect to the proof of value, I suggest for the Commissioner's consideration whether, if the explanation given by Mr. Scott in Court is accepted by him, the present statement would not be satisfactory; but I do not in any way wish to interfere with his discretion.

So much for the Court's decision.

There were two subsidiary points made in the argument, which, to my mind, do not affect the case, but which, out of respect to Mr. Scott, I will refer to very shortly.

Mr. Scott said that, prior to the Stamp Ordinance, no succession duty was payable on land. Considering (1) That all public general statutes of New South Wales were adopted in the Colony; and (2) That by the Stamp Ordinance 1876, the New South Wales statute (5 Vict. No. 20), which provides, *inter alia*, for the payment of succession duty, was expressly declared to be in force, I must regard this statement as at least open to argument; though I believe that, as a matter of fact, no succession duty was paid. Again I understood Mr. Scott to say that the effect of the English statute of 55 Geo. III. was expressly extended to the imposition of stamp duties upon grants of probate and administration where the testator or intestate had died after April 5th, 1805, a date ten years previous to the passing of the Act; that without such express extension it could

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not apply at all to deaths which had taken place before it passed; and that, in fact, it did not apply to cases where the death was previous to the date last mentioned. On reference to the Act, I find, however, that it is clearly meant to apply to grants consequent upon all deaths—at whatever time they may have happened—there being in the schedule one scale of fees expressly applicable where the death was on or before April 5th, 1805, and another where the death was after that date.

I cannot, therefore, accept the premises upon which these points are based. Supposing, however, that the Colonial law and the English statute respectively did have the effect and meaning ascribed to them by Mr. Scott, no inferences which could be drawn from them as to the intention of the Legislature in passing the Stamp Ordinance could, to my mind, prevail against what I consider to be the clear meaning of its provisions.

Case remitted to the Commissioner.

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April 23.

[CIVIL JURISDICTION.]

WILSON *v.* IRVINE.

Specific Performance—Lands Commission—Caveat—Ordinance XXV. of 1879, *s.* 20—*Civil Procedure Rules*, 270, 286—*Ordinance XXXIV. of* 1876.

Specific performance of agreement to transfer lands the subject of a claim before the Lands Commission decreed notwithstanding the bankruptcy of the vendor before the issue of the Crown grant, there being no evidence of any inadequacy of consideration or undue preference.

Held, further, that the purchaser was not bound to file a *caveat* under s. 20 of Ordinance XXV. of 1879 for the protection of his interests, such provision being permissive only and not obligatory;