*Judgment of the Lords of the Judicial Committee of the Privy Council on the Appeal of Armytage and others v. the Master in Equity of the Supreme Court of Victoria, from the Supreme Court of the Colony of Victoria; delivered 22nd February*, 1878.

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Present:

Sir James W. Colvile.
Sir Barnes Peacock.
Sir Montague E. Smith.
Sir Robert P. Collier.

THE question which this Appeal seeks to have determined is the rate of duty, in the nature of probate duty, which is chargeable upon the estate of the late Mr. Charles Henry Armytage, who died in the Colony of Victoria, testate, on the 19th April, 1876. He left a widow, the first-named of the appellants; several children, all of whom were at the date of their father's death under age and unmarried; and a considerable fortune, it being an admitted fact, material to the determination of the question raised by the Appeal, that the residue of his estate, after deducting the amount of the debts due by him, exceeded the sum of 121,000*l.*

By his will, dated the 7th February, 1870, after vesting all his estate, real and personal, in his wife and five other persons, as trustees, executrix, and executors, upon certain trusts, for sale, management, collection and investment, declaring that his real estate, though sale of it or part of it might be delayed, should be transmissible as personal estate, and should be considered as converted in equity from the time of his decease, he disposed of the beneficial interest in the whole estate as follows:—

He first made what is admitted to be an absolute gift to his wife of one-third part of the net moneys to arise from the sale, conversion, and getting in of his real and personal estate, and from the rents, interests, and income thereof, until sale and conversion, after payment of his debts, funeral and testamentary expenses, and the expenses of, and incidental to, the execution of the preceding trusts; and directed that in case his wife should predecease him, this one-third should be held by his trustees upon the trusts next to be declared concerning the remaining two-thirds of the same net moneys. Those trusts, so far as it is material to state them, are expressed in the following words:—"I will and direct my said trustees to stand possessed of the securities in or upon which the said two-thirds of the said net moneys shall be invested as aforesaid in trust for my child, if only one, or for all my children, if more than one, in equal shares, and so that the interest of a son or sons shall be absolutely vested at the age of twenty-one years, and of a daughter or daughters at that age or marriage, and so that the share or shares, as well original as accruing, of a son or sons dying under the age of twenty-one years, or of a daughter or daughters dying under that age, or without having been married, shall accrue to the other or others of my said children, and if more than one, in equal shares, and be vested as aforesaid, and so that the share or shares, as well original as accruing, of each daughter, shall be received, enjoyed, and disposed of as her separate estate, &c. And I declare that in case any child of mine being a son shall die under the age of twenty-one years leaving issue, then the share, as well original as accruing, which the child so dying would have acquired if he had lived to attain the age of twenty-one years, shall be held by my trustees upon trusts, and subject to provisions in favour of the issue of the child of mine so dying corresponding with the trusts and provisions hereinbefore contained in favour of my child and children, and on the failure of such trusts and provisions shall be disposable as if this declaration had not been inserted."

Then follows the clause which has given rise to the present question:—"But if no object of the trusts hereinbefore declared concerning the said two-third parts of the said net moneys shall acquire an

absolutely vested interest, then, if my said wife shall be living at the time of the failure of the said trusts, the said two-third parts of the said net moneys and the investments thereof shall be in trust for her absolutely; but if my said wife shall not then be living, the same shall be in trust for such of the children of my brothers George Armytage, Frederick William Armytage, Felix Ferdinand Armytage, and of my brothers-in-law George Fairbairn, John Charles Galletly, and John Prout Hopkins, as shall be living at such last-mentioned time, in equal shares, the share of each of such children being a male to vest at the age of twenty-one years, and being a female at that age or marriage." This disposition is followed by a clause for maintenance and advancement in the following terms:—"I declare that my said trustees shall have power to apply the whole or any part of the annual income to which each or any object, being a minor, of the respective trusts and provisions hereinbefore contained shall be entitled, or presumptively entitled, in or towards the maintenance and education or otherwise for the benefit of such object during minority, whether such object being a female shall be married or not, and the unapplied incomes shall be accumulated, and the accumulation thereof shall be liable to be applied in like manner, and, subject to such liability, shall be deemed accretions to the capital whence the same income arose, and that my said trustees shall also have power to apply any part not exceeding one-third of the capital to which each or any male object of the same respective trusts shall be entitled, or presumptively entitled, in or towards the establishment or advancement in the world of such object."

By a codicil, dated the 7th February, 1870, the testator gave some specific legacies and other further benefits to his wife; declared that during her lifetime the share or shares original and accruing of each child who should live to acquire an absolutely vested interest under the will should not, without her approval, be paid over to such child until he or she should attain twenty-five years; and enlarged in some respects the powers of the trustees.

On the 6th July, 1876, probate of this will and codicil was granted by the Supreme Court to the Appellants, Caroline Morel Armytage and George

Fairbairn; power being reserved to the other executors named in the will to come in and prove the same. One only, the Appellant Frederick William Armitage, has since availed himself of this power.

Probate having been thus granted, the question of the amount of the duty chargeable on the estate arose; and this was determinable by the Colonial Statute intituled "Duties on the Estates of Deceased Persons Statute, 1870" (Act No. 388), as amended by that intituled "Duties on Estates Amendment Act, 1876" (Act No. 253). It will be convenient to speak of them by their shorter designations. It may be necessary hereafter to refer more particularly to some of the provisions of the former of these Statutes. At present it is sufficient to state that the latter affects the question only in so far as it has raised the scale of the duties chargeable under the former; that the effect of the two taken together was to make the duty payable to the Master in Equity of the Supreme Court on account of the Consolidated Revenue; to constitute that duty a debt due from the testator to the Crown, ascertainable at the date of his death, according to the circumstances then existing; to prohibit the issue of the probate from the Master's Office without an indorsement by that officer certifying that the duty had been paid; and to fix the rate of duty payable upon the balance of the estate remaining after the deduction of debts, being upwards of 100,000*l.*, at 10 per cent.; subject to the provisions of the twenty-fourth section of Act No. 388, by which the rate of duty payable upon so much of the property as was bequeathed to the widow, or widow and children, or the children of the testator, was reducible to 5 per cent.

In this case the Master, whilst he only claimed duty at the lower rate upon 47,545*l.* 10*s.* 5*d.*, which he took to be the value of what was given to the widow by the will and codicil; required the Appellants to pay duty at the full rate of 10 per cent. upon the sum of 73,925*l.* 10*s.* 6½*d.*, being the residue of the final balance, and refused to issue the probate until such duty should be paid.

The Appellants resisted this claim, on the ground that the sum in question having been bequeathed by the testator to his children, or to

them and his grandchildren, who, by another Colonial Statute (Act No. 403) have, in this respect, been placed in the same category as children, the duty properly chargeable was only 5 per cent.; and on the 7th December, 1870, they obtained a rule from the Supreme Court calling upon the Master in Equity to show cause why a mandamus should not issue, or an order be made, or a rule granted, as the Court should see fit, directing him forthwith to issue probate of the testator's will and codicil upon payment by the executrix and executors of duty upon the said estate at the rate of half the percentage mentioned in the Schedule to Act No. 523, in accordance with section 24 of Act No. 388.

The Master did not appear, but in his absence, and on the 13th December, 1876, Mr. Justice Molesworth discharged the rule nisi upon the ground that upon the true construction of Act 388, section 24, the full duty was payable upon the two-thirds of the residue of the estate which were the subject of the disposition of the testator in favour of his children.

The present Appeal is against that decision. It was allowed in the Colony, notwithstanding the opposition of the Master in Equity, appearing by the Crown Solicitor.

Before considering whether Mr. Justice Molesworth's construction of the Statute is correct, it is necessary to determine the question of jurisdiction, which was argued at the Bar, and is raised by the first of the reasons with which the Respondent's case concludes in these terms, "Because the Court had no jurisdiction in the matter, nor any power to make absolute a rule for a mandamus to the Master."

The cases cited by Mr. Justice Molesworth, which will be afterwards referred to, show that the Supreme Court of the Colony has entertained questions similar to that raised by the present Appeal. It is said, however, that this has been done by consent or under protest; and it seems to be agreed that the jurisdiction of the Court to do so as of right has not been settled by any course of decision in the Colony. An Appeal (Bell *v.* the Master in Equity, 2 L. R., P. C. 560) in which the question was whether the duty chargeable upon an

estate was to be calculated according to the scale of Act No. 388, or that of Act No. 523, which had come into operation since the testator's death, has, however, been heard and determined by this Committee.

That "the Court has no jurisdiction in the matter" is a proposition which, if it means that the Supreme Court has in no circumstances, and by no form of proceeding, power to determine, as between the subject and the Crown, what, upon the true construction of this fiscal Statute, is the amount of duty properly chargeable upon an estate, is a proposition which cannot be maintained.

The only provision in Act No. 388 which imports the finality of any proceeding or ruling by the Master is contained in the 16th section, which declares that his certificate of "the final balance" shall be "final, conclusive, and subject to no appeal," and is limited to that. The "final balance" is the balance or sum resulting from the statement filed in his office upon which the amount of duty chargeable is to be calculated. There is nothing in the Act to exclude the general jurisdiction of the Court as a Court of Probate or otherwise. By the 10th and 21st sections it is required to exercise jurisdiction in a particular case. It is certainly conceivable that even upon the special proceeding contemplated by the 10th section, the proper amount of duty chargeable might come to be a question between the parties which would have to be determined by the Court.

Their Lordships however infer, from the argument addressed to them at the Bar, that the objection taken by the Respondent is directed not so much against the jurisdiction of the Court over the subject matter as against its power to make an order of a mandatory character upon the Master in relation to the duty claimed by him under the Statute. And even upon this point they understood the Attorney-General to admit that if the Master is to be regarded as acting in this matter as an officer of Court, the Court, by virtue of its inherent power over its officers, might make a summary order directing him to do what it thought the justice of the case upon the true construction of the Statute required. The Attorney-General, however, attributed to the Master two distinct characters; one, that of an officer of

Court responsible to the Court for the due performance of his functions in that capacity; the other, that of a Revenue officer charged with the collection and payment into the Treasury of the duties imposed by the Statute according to its provisions, and responsible as such to the Crown. And he contended that against him in this latter character mandamus would not lie.

Their Lordships are not prepared to admit that the latter proposition is correct, even if the character and position of the Respondent be what the argument of the learned Counsel for the Respondent assumes them to be. It is true that in the case cited, the Queen *v.* the Lords of the Treasury, L. R. 7, Q. B. 387, the Court of Queen's Bench refused to grant a mandamus to compel the application in a particular way of money appropriated by Parliament to the payment of the costs of criminal prosecutions. But the grounds of the decision are thus stated by Mr. Justice Blackburn, "the general principle, not merely applicable to mandamus, but running through all the law, is, that when an obligation is cast upon the principal and not upon the servant, we cannot enforce it against the servant as long as he is merely acting as servant. To take a familiar instance if a mandamus were applied for against the secretary of a railway company to do something, it would not be granted merely because the railway company, his masters, had an obligation to perform that duty, and it makes no difference that the master, or the principal, or the Sovereign, is only suable by petition of right or perhaps not all." In a subsequent passage he says, "that being so, the question comes to this, whether it can be shown that in any way a duty is cast upon the Lords of the Treasury towards third persons, not merely a duty to the Queen to advise, but a duty to third persons to issue the minute which it is the object of the mandamus to make them issue." It is clear that if the latter state of things had existed, the learned Judge would have held that a mandamus ought to be granted. But upon full consideration of the particular Statute, he came to the conclusion that its provisions amounted to nothing more than this, that Her Majesty, to whom the money was granted in law, was to administer it according to the advice of her responsible advisers, and must do it through

the hands of her servants; and that the duty of the Lords of the Treasury was only that of advising Her Majesty in the discharge of the obligation, such as it was, which this Act of Parliament had, so to speak, imposed upon her.

In an earlier case, The Queen *v.* Price 6 L. R., Q. B. 419, the same learned Judge said, "When the Common Law or the Legislature has cast on a persont he obligation, where certain facts exist, not to form his opinion, or exercise a discretion, but to do a certain thing, then no doubt there is a preliminary inquiry whether those facts exist, and to some extent it is necessary to exercise common sense, and see whether the facts do exist. If the facts exist, we have then the power to issue a peremptory mandamus, ordering the person to do the thing which the law makes it incumbent upon him to do." And applying that principle, the Court issued a mandamus to the Commissioners appointed by the Crown for the investigation of corrupt practices in a borough, commanding them to grant a certificate of indemnity to a witness who had been examined before them.

The present case seems to fall still more directly within the principle enunciated by Mr. Justice Blackburn. The 12th section of Act No. 388, whilst it enjoins the Respondent to retain the probate until the amount of the duty properly chargeable upon the estate has been paid, imposes upon him, or leaves him subject to, the obligation of issuing that probate to the persons entitled thereto, with the certificate necessary to make it receivable in evidence indorsed upon it, so soon as the statutory lien has been satisfied by the payment of the proper amount of duty. He has no discretion in the matter. When the facts, of which the amount of duty chargeable under the Statute is one, have been ascertained—and, if disputed, they are ascertainable by the Court—his duty to the executors becomes absolute, and would seem to be enforcible by mandamus.

It was further argued by Sir James Stephen that mandamus will not lie where there is another remedy. But he failed to show what other remedy existed in this case; nor is it easy to see by what remedy other than a mandatory order of some kind the executors can obtain the delivery to them, in

its proper form, of the document essential to their title.

Their Lordships, however, do not deem it necessary to decide that the prerogative writ of mandamus ought to be issued in a case like the present, because they are of opinion that the foundation of the Respondent's objection to the jurisdiction of the Court to entertain the application against him fails, inasmuch as it is based upon a misconception of his true character and functions.

Before the passing of Act No. 388, or of any other Act *in pari materiâ*, the Master in Equity was unquestionably an officer of the Supreme Court, whose especial functions in this matter were to carry out the orders of the Court, sitting as a Court of Probate, by delivering to the parties interested, upon their performance of the obligations and compliance with the formalities prescribed by law, probates or letters of administration, as the case might be. That this was so is shown by Act No. 10 of the 15th Vict., being "the Act to make provision for the Administration of Justice in the Colony of Victoria," and from the 1st and 8th chapters of the Rules made under the authority of that statute (see Victoria Statutes, vol. iii, p. 267). By Act No. 388 the Legislature increased the legal obligations of executors and administrators by susperadding that of paying before they received their document of title the duty chargeable on the estate which they were to administer, and added to the obligations and responsibilities of the Master in Equity by imposing upon him the new functions of collecting and accounting for the duties on the estates of deceased persons. But it did not otherwise affect the duty which he owed to executors and administrators, or to the Court And neither by express words, nor, as their Lordships think, by necessary implication, did it withdraw him from the general control and supervision of the Court to which, as its officer, he was already subject. The 25th section in particular is so far from attributing to him two distinct characters—one as a revenue officer and the other as an officer of Court—that it deals with him as one public officer exercising his original as well as his new functions, and modifies, subject to the special orders of the Court or Judge, the amount of the security

which he could only as an officer of Court take from an administrator.

Hence, if, as their Lordships have already endeavoured to show, the Court has generally jurisdiction, in case of dispute, to determine as between the Master acting on behalf of the Crown and the other parties interested, such a question as has here arisen on the construction of a fiscal Statute, there seems to be no reason why it should not exercise that jurisdiction by the machinery of a summary order upon its officer. That form of procedure was adopted, with the sanction of this Committee, in the case of Bell *v.* the Master in Equity, already referred to; and it seems to be the simplest and the most convenient.

Their Lordships have now to consider whether the decision of Mr. Justice Molesworth upon the merits of the application to him is correct.

They must begin by expressing their dissent from the principle which seems to have influenced Mr. Justice Molesworth in this and some of the earlier cases, viz., that the provisions of the 24th section, because they establish an exception to the general rule, are to be construed strictly against those who invoke their benefit. That principle is opposed to the rule expressed by Lord Ellenborough in Warrington *v.* Furbor, 8 East, 242, and followed and confirmed in Hobson *v.* Niel, 17 Beav., 185. Lord Ellenborough's words are:—"I think that when the subject is to be charged with a duty, the cases in which it is to attach ought to be fairly marked out, and we should give a liberal construction to words of exception confining the operation of the duty." It is only, however, in the event of there being a real difficulty in ascertaining the meaning of a particular enactment that the question of strictness or of liberality of construction need arise. Again, in the case of *re* Hamilton, 3 Australian Jurist, p. 95, Mr. Justice Molesworth seems to have been influenced in his construction of this statute by the consideration of certain fiscal consequencees. He said: "If this system of a man locking up property under a series of limitations, first to his children, and then to more remote descendants, gets any protection, the revenue will be a loser. If, instead of the property passsing through several successive bequests from parent to child, and so on, it is limited

to children and then to grandchildren, instead of there being two or three devolutions, each subject to duty, and each paying 2½ per cent., theoriginal locker-up would have exempted his estate for several generations from paying more than a single duty. The broad view is this, that it is the obvious policy of the Act to obtain payment at once of all the duty with which the estate may be chargeable, and it does not deal with contingencies which may arise after many years." Upon this it is to be observed, that in *re* Willsmore, a case which arose subsequently, and was taken by appeal from Mr. Justice Molesworth to the full Court (2 Vict. Law Rep., Probate Cases, 30), the two learned Judges who affirmed Mr. Justice Molesworth's decision in that particular case repudiate the construction of the Statute which in *re* Hamilton he would have applied to successive limitations of the same fund in favour of a wife, with remainder to children, with remainder to grandchildren, and say: "In order to bring a case within section 24, it appears to us that the whole corpus of the estate (or that portion of it in respect of which the exemption from full duty is claimed) must either be divided between the widow and children in certain proportions absolutely, or, if not so divided, the whole interest (or part, as the case may be) must, by means of particular estates and remainders, be so bequeathed that no one but the widow and children are entitled under the will to any part of the corpus, an interest in which has been so bequeathed to them."

Their Lordships fully concur in that construction so far as it is in favour of children or grandchildren taking by successive limitations, but that of course leaves untouched the question whether in the case of property bequeathed by a testator to his children, with a gift over on a contingency to remoter relatives or strangers, the children by reason of that gift over are to lose the benefit of the provisions of the 24th section of the Statute—a question upon which the weight of Colonial authority seems to be against the Appellant.

Upon this question their Lordships observe that by the 24th section the Legislature has manifested a general intention in favour of the widow and children of a testator. It has *expressed* no intention to tax the children at the higher rate, because the

testator in the exercise of his testamentary power may make a gift over in the event of the failure of the trusts and provisions in favour of his children. There seems to be no reason why, as suggested by Mr. Justice Stephen, in *re* Willsmore, the value of the respective interests of the children, and of the strangers, if they are capable of appreciation, should not be calculated in the usual way, and the duty levied accordingly.

In the present case it certainly would not be easy to appreciate the value of the possible interest of the class consisting of the testator's nephews and nieces, depending as it does upon a triple contingency, viz., 1st, that no child or grandchild of the testator being male shall attain the age of 21 years, or being a female shall attain that age or be married; 2ndly, that on this failure of the testator's issue, his widow shall be dead; 3rdly, that at the time of the happening of those two contingencies one at least of the objects of the contingent gift shall be living.

Again, though the statutory lien necessarily ceases on the delivery of the probate, there seems to be no reason why the Legislature should not have provided, if it has not provided, for the recovery of the additional duty on the happening of the contingency, as a Crown debt *debitum in præsenti solvendum in futuro*. But if no such means of meeting the difficulty as those above suggested exist or can be provided, there still seems to be no reason why the general intention of the Legislature in favour of the children should be defeated by making the consequences of that state of things fall upon them rather than upon the State, unless that particular intention is necessarily to be inferred from the words of the 24th section and the other provisions of the Statute. In the view which their Lordships take of the present case, the difficulty does not arise.

The words of the 24th section are: "When the widow of a testator or widow and children of a testator, are the only persons entitled under his will, the duty shall be calculated at one-half only of the percentage mentioned in the Schedule; and when other persons are entitled under such will the duty shall be calculated so as to charge only one-half of the percentage mentioned in the Schedule upon the

property devised or bequeathed to the widow of a testator, or widow and children of a testator, or children of a testator."

In order to decide how far the present case falls within these provisions or either of them, it is material to determine the question, so much argued at the Bar, whether upon the true construction of the testator's will the interests given to the children are vested or contingent.

Their Lordships are of opinion that these interests were at the date of the testator's death vested, though subject in certain events to be devested.

In the present case, the trustees are directed to hold the fund in trust "for my child (if only one), or for all my children (if more than one), in equal shares." So far the gift is absolute. To what extent is it controlled by what follows? The qualification is thus expressed: "and so that the interest of a son or sons shall be absolutely vested at the age of 21 years, and of a daughter or daughters at that age or marriage." The authorities show that the word "vest" may, if the context of he will is in favour of that construction, be read as importing only that the interest previously vested is at a specified time to become absolute and indefeasible. Such a construction was put upon the word not only by Vice-Chancellor Parker, in the case of "Taylor *v.* Frobisher, 5 De Gex and Smale," p. 191, which was so much relied upon at the Bar, but also by the Lords Commissioners (including Lord Cottenham) in the earlier case of "Berkeley *v.* Swinburne," 16 Sim, 275, and by Vice-Chancellor Page Wood, in the later case of "Poole *v.* Bott," 11 Hare, p. 33. Here the grounds for such a construction are strengthened by the testator's use of the word "absolutely," which in the case of the limitation in favour of the children precedes the word "vested," but does not precede or qualify that word in the case of the contingent limitation in favour of the nephews and nieces. In other respects, many of the circumstances relied upon in the cases just referred to as evidencing a general intention that the shares should vest in interest at the time of the testator's death, though subject to be devested in the events contemplated, occur also in the will now in question. It speaks, like that construed in

"Berkeley *v.* Swinburne," of the "original and accruing share" of any child who may die under 21; it also contains provisions for maintenance and advancement out of "the annual income to which each or any object, being a minor, of the respective trusts and provisions hereinbefore contained shall be entitled or presumptively entitled" (the term "entitled" seems to refer to the children, the term "presumptively entitled" to the remoter objects of the testator's bounty), with a direction that "the unapplied income shall be accumulated, and the accumulation thereof shall be liable to be applied in like manner, and, subject to such liability, shall be deemed accretions to the capital whence the said income arose." This last provision points distinctly to the ascertainment and vesting in interest of the original share of each child from the date of the testator's death. And the whole will seems to their Lordships to afford an inference at least as strong, if not stronger, than that which the Lords Commissioners drew from the will before them in "Berkeley *v.* Swinburne," p. 283, viz., "that the testator could not have meant that the shares of the sons should not vest in them until they attained twenty-one, or that the shares of the daughters should not vest in them until they attained twenty-one or married. What he did mean was, that until these events happened their shares should not be indefeasible."

If this be so, and the shares of the children were vested in interest, though subject to be devested, it seems clear that at the date of the testator's death the whole beneficial interest in his estate was in his widow and children. They were "the only persons entitled under the will." All the property was "property bequeathed to the widow and children of a testator." It is equally clear that this state of things would continue until the happening of the remote contingency upon which the gift over in favour of the nephews and nieces was to take effect; for up to that time the defeasible character of each child's interest could only affect the shares of the children or grandchildren *inter se*. That the nephews and nieces, who had only a remote and contingent interest, can, in the proper sense of the term, be said to be "persons entitled under the will" is negatived by the construction put by Lord Justice James upon the word "entitled" in

"Umbers *v.* Jaggard." (Law Rep. 9 Eq. 200.) That "they are not entitled and may never become entitled" is even more predicable of them than of the person to whom the expression was applied in that case, whose contingent interest was that he was tenant in tail in remainder expectant on failure of the sons of an uncle. Their Lordships are therefore of opinion that, in this case, the property bequeathed in trust for the testator's children is property on which, upon the true construction of the Statute, duty was chargeable only at the lower rate.

It is unnecessary in this case to decide that this would equally have been the case had the shares of the children not been vested in interest, and so expressly to overrule the decision of the Supreme Court of Victoria in "*Re* Thomas Willsmore's Estate." The gift in that case being only to "such child or children of the testator as being a son should attain the age of 21 years, or being a daughter should attain that age or be married," it is clear that his child (there was but one) had not at the time of the testator's death a vested interest. Their Lordships neither affirm nor disaffirm the correctness of the ruling of the majority of the Court in that case. In this case they will humbly advise Her Majesty to reverse the order of Mr. Justice Molesworth, and in lieu thereof to make an order absolute upon the Master in Equity directing him, upon payment by the Appellants of duty upon the whole of the estate of Charles Henry Armytage, deceased, at the rate of half the percentage mentioned in the Schedule to the "Act to amend the Duties of Deceased Persons' Statute, 1870," to deliver to them the probate of the will and codicil of the said deceased, with the usual and necessary certificate of the payment of duty endorsed thereon.

Their Lordships think that each party should bear their own costs of the proceedings in the Court of Victoria, but that the Appellants must have their costs of this Appeal. That was the course followed in Bell *v.* The Master in Equity.

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