Case no 448/88
/MC

IN THE SUPREME COURT OF SOUTH AFRICA

(APPELLATE DIVISION)

Between:

COMMISSIONER FOR INLAND REVENUE — Appellant

and

ESTATE LATE D.J.L. HULETT — Respondent

CORAM: CORBETT CJ et JOUBERT, NESTADT JJA et FRIEDMAN, NIENABER AJJA.

HEARD: 2 March 1990.

DELIVERED: 23 March 1990.

J U D G M E N T

FRIEDMAN AJA:

This is an appeal by the Commissioner for Inland Revenue against a decision of the Natal Income Tax Special Court upholding an objection to the inclusion of the value of certain immovable property donated to a wife by her husband during his lifetime, in the calculation of liability for estate duty in terms of the Estate Duty Act, 45 of 1955.

The late Deon James Liege Hulett ("the deceased") died on 30 June 1982. On 10 October 1971 the deceased's wife purchased certain immovable property at Umhlanga Rocks on which was situated a dwelling house known as "Villa Thorn". The purchase price of R72 500 was paid by the deceased but the property was by agreement between the deceased and his wife registered in the latter's name.

After the death of the deceased the Master of the Supreme Court, Natal Provincial Division, acting on behalf of the appellant, in his determination of the estate's liability for estate duty, included the said immovable property in the deceased's estate at a value of R200 000 which was said to be its fair market value at the date of the deceased's death. An objection by the executors of the deceased's estate to the inclusion by the Master of this amount in his assessment of estate duty was dismissed. An appeal was noted to the Natal Income Tax Special Court which upheld the objection and held that the property was not to be regarded as property of the deceased for the purposes of the Estate Duty Act. Leave having been granted in terms of section 86A(5) of the Income Tax Act, 1962, the appellant now appeals to this Court

against the decision of the Income Tax Special Court.

This appeal turns on the question whether the property donated by the deceased to his wife is deemed, for the purposes of sec 3 of the Estate Duty Act, to be property of the deceased. That in turn involves the question whether the donation falls within the ambit of the words "property donated under a donation" in sec 3(3)(c) of the Estate Duty Act.

Sec 3(1) of the Estate Duty Act provides that for the purposes of that Act -

> "the estate of any person shall consist of all property of that person as at the date of his death and of all property which in accordance with this Act is deemed to be property of that person at that date."

Section 3(3) enumerates what property shall be deemed

to be the property of the deceased. At the relevant time, namely the date of the deceased's death, this subsection provided inter alia that property which is deemed to be property of the deceased included -

> "(b) any property donated under a donatio mortis causa;
>
> (c) any property donated under a donation (other than a donation to a spouse under a duly registered ante-nuptial or post-nuptial contract or a donatio mortis causa) made -
>
> (i) ..... by the deceased."

Both in Roman Law and in Roman-Dutch Law a distinction is drawn between a donation properly so called (propria or mera) and a donation improperly so called (impropria or non mera). It is unnecessary to

refer to the Roman or the Roman-Dutch Law authorities in this regard; they have been dealt with fully in Avis v Verseput 1943 AD 331 in which it was held that only a donation prompted by sheer liberality or inspired solely by a disinterested benevolence on the part of the donor, could be described as a donation propria. Following Avis's case, this Court in Estate Sayle v Commissioner for Inland Revenue 1945 AD 388, in construing the words donatio inter vivos as used in the Death Duties Act, 29 of 1922, which was the forerunner of the Estate Duty Act, held (at 393) that these words "must be given their proper legal meaning" i.e. a donation properly so called. See also Commissioner for Inland Revenue v Estate Kohler and Others 1953(2) SA 584(A) at 594C and De Jager v Grunder 1964(1) SA 446 (A) at 463 D-E.

In argument before this Court appellant's counsel contended, firstly, that the word "donation" in sec 3(3)(c) of the Estate Duty Act bears the same meaning as in the Income Tax Act, 31 of 1941, i.e. any gratuitous disposal of property, and secondly, that the section referred not only to donations properly so called, but also to donations improperly so called. It will be convenient to deal with this latter contention first.

In support of his argument that for the purposes of sec 3(3)(c) of the Estate Duty Act, "donation" was not limited to donations properly so called, appellant's counsel relied strongly on the difference in wording between sec 3(3)(c) of the Estate Duty Act and the corresponding section of the Death Duties Act. The Death Duties Act provided in sec

3(1)(b) that for the purposes of determining estate duty, the estate of any person shall consist, inter alia, of all property which, in accordance with that section, is deemed to pass on his death. Sec 3(4) of that Act provided, in so far as is relevant, that property which is deemed to pass on the death of any person shall include -

> "(e) any property passing under a donatio mortis causa made by such person;
>
> (f) any property exceeding in value one hundred pounds passing under a donatio inter vivos made -
>
> (i) ...by the deceased....."

Appellant's counsel argued that when the Death Duties Act was repealed and replaced by the Estate Duty Act,

the legislature no longer referred to a "donatio inter vivos" in the deeming provision, but merely to "donation". This change, so it was argued, was introduced by the legislature to overcome the narrow meaning that had been placed on the words "donatio inter vivos" by this Court in Avis's case and the cases which followed it.

I do not agree. The Death Duties Act was one relating to the payment of duty upon the estates of deceased persons. The Estate Duty Act also provides for the levy of a duty on the estates of deceased persons. The latter Act is, to a large extent - although there are differences between them - a continuation of the former. When the Estate Duty Act was enacted, the words "donatio inter vivos" in the corresponding section of the Death Duties Act had been

authoritatively interpreted by this Court to mean a donation properly so called. Had the legislature intended, when it enacted the Estate Duty Act, to bring about the radical change in the meaning of "donation" suggested by appellant's counsel, one would have expected it to have done so explicitly. The addition of the words "inter vivos" after the word "donation" does not add anything to the word "donation"; they merely serve to distinguish that donation from one mortis causa. The elimination of the words "inter vivos" therefore does not warrant the word "donation" in the phrase "property donated under a donation" being interpreted more widely than was done in Avis's case. In Kohler's case, supra, SCHREINER JA, in dealing with the phrase "property .... passing under a donatio inter vivos" in sec 3(4) of the Death Duties Act, pointed out

at p 602 D that the word "pass" was borrowed from English Law "where it is more at home than with us" and that "perhaps as a result it evinces various shades of meaning as used in our Acts". It seems that the legislature, when it enacted the Estate Duty Act, was mindful of these remarks and accordingly changed the terminology from "property ... passing under a donatio inter vivos" to "property donated under a donation". Why the legislature chose to substitute "donation" for "donatio inter vivos" is not clear. It is, however, not significant. The word "donation" has acquired under our law the meaning of a gratuitous disposal of property prompted by motives of sheer liberality or disinterested benevolence and the change in terminology from "donatio inter vivos" to "donation" does not warrant a wider connotation being placed on the word

"donation".

Appellant's counsel submitted, further, that there were other indications that the legislature intended that the word "donation" should be more widely construed. Thus he submitted that had the legislature intended the word "donation" in the phrase "any property donated under a donation" as used in sec 3(3)(c) of the Estate Duty Act to continue to bear the narrow meaning of donation properly so called, it would not have been necessary to exclude from the deeming provision the donations referred to in the brackets, viz donations to a spouse under a duly registered ante-nuptial contract or post-nuptial contract or a donatio mortis causa. Donations made in terms of a duly registered ante-nuptial or post-nuptial contract, not being made from motives of sheer

liberality or disinterested benevolence were, so it was argued, donations improperly so called. Had the word "donation" in the phrase "donated under a donation" been limited to donations properly so called, donations referred to in the brackets would not have fallen within the ambit of the words "any property donated under a donation" and it would therefore not have been necessary to exclude them specifically from the operation of sec 3(3)(c).

Respondent's counsel sought to meet this point by contending that not every donation made in terms of an ante-nuptial or post-nuptial contract was necessarily a donation improperly so called. That may be so but generally speaking such donations are not donations properly so called. (See Commissioner of Inland Revenue v Estate Greenacre, 1936 NPD 225 at 232;

Wulff v Wulff 1956(4) SA 297 (D) at 308 F-H.) There is accordingly a certain amount of merit in appellant's counsel's argument. However, this does not appear to me to be a sufficiently strong indication of an intention on the part of the legislature to broaden the meaning of the word "donation" in the earlier part of the sub-sec. It was, in my judgment, more likely that the exclusions contained in the brackets were inserted ex abundante cautela to ensure that donations made in terms of an ante-nuptial or post-nuptial contract or a donatio mortis causa by one spouse to another were not to be deemed to be property of the deceased, and to remove any doubt in that regard. The intention clearly was to exclude those donations referred to in the brackets from the deeming provisions of the subsection. To that extent the words in

brackets were equivalent to a saving clause which is not infrequently inserted in legislation ex majori cautela (cf R v Abel 1948(1) SA 654(A) at 662).

Appellant's counsel's next argument was that sec 3(4)(a) of the Estate Duty Act constituted an indication that "donation" in sec 3(3)(c) was not confined to a donatio propria. Sec 3(4)(a) of the Estate Duty Act provided that -

> "For the purposes of paragraph (c) of sub-section (3) -
>
> (a) any disposition whereby any person becomes entitled to receive or acquire any property, for a consideration which, in the opinion of the Commissioner, is not a full consideration for that property, shall, to the extent to which the fair market value

of the property exceeds the said consideration, be deemed to be a donation."

This section, appellant's counsel argued, tied in with the notion of a "disposition" in sec 54 ter (1) (ii) of the Income Tax Act, 31 of 1941 (as amended). That is an argument I shall deal with later when I consider the provisions of the Income Tax Act on which counsel relied. Appellant's counsel's argument with regard to sec 3(4) of the Estate Duty Act, was that if some consideration, however small, were given for the receipt or acquisition of property, the disposition of that property would be deemed to be a donation to the extent to which the fair market value of the property exceeds the consideration. In the result - so the argument ran - a donation not made from sheer

liberality but for a consideration and which was therefore not a donatio propria, was deemed to be a donation in part. It would be absurd, counsel argued, if a donation for which some consideration was received, were deemed to be a donation of the balance, but a donation for which no consideration was received, were not deemed to be a donation at all.

Sec 3(4) of the Estate Duty Act was to all intents and purposes a re-enactment of a provision in the Death Duties Act, namely sec 3(6), which was inserted by Act 33 of 1944 and which read as follows -

> "For the purposes of this section any disposition whereby any person becomes entitled to receive or acquire any property for a consideration which is, in the opinion of the Commissioner, a nominal consideration,

> shall, to the extent to which the fair market value of the property, as determined by a sworn appraisement by some impartial person or persons appointed by the Master, exceeds the consideration, be deemed to be a donatio."

Despite that provision this Court in Kohler's case, supra, interpreted "donation" for the purposes of sec 3(4) of the Death Duties Act as meaning a donation properly so called. As appears from the judgment of SCHREINER JA who delivered the majority judgment, the Court, in arriving at its decision, was not unmindful of sec 3(6) of the Death Duties Act. (See p 598 G-H).

In any event sec 3(4) of the Estate Duty Act deals with a different concept from that dealt with in sec 3(3)(c). The latter section deals with donations whereas sec 3(4) deals with a disposition which is

deemed to be a donation. A "disposition" is a much wider concept than a donation (cf Kohler's case, supra, at 600B-F). Moreover both sec 3(6) of the Death Duties Act and sec 3(4) of the Estate Duty Act were dealing with transactions which were not in fact donations but which were artificially dealt with as donations. As STEYN CJ pointed out in Estate Furman & Others v Commissioner for Inland Revenue 1962(3) SA 517 (A) at 527 F :

> "What the subsection (sec 3(6) of the Death Duties Act) set out to do, was to prescribe the pre-requisites for a fictitious donation."

It is true that the operation of sec 3(4) of the Estate Duty Act does give rise to the somewhat anomalous result that a remuneratory donation for which

no consideration is given, falls outside the ambit of sec 3(3)(c) of the Estate Duty Act whereas a disposition involving an inadequate counter-prestation is deemed to be a donation in terms of sec 3(4). The manifest object of sec 3(6) was to prevent a person from avoiding the payment of estate duty by disposing of his property in such a manner that the impression is created that he is doing so pursuant to a contract involving a genuine counter-prestation. The legislature chose to achieve that object by means of the deeming provisions of sec 3(6). If, in the result, an anomaly was created, that is, in the circumstances, not a sufficiently strong indication of an intention on the part of the legislature to depart, in sec 3(3), from the established common law meaning of donation.

I turn now to the Income Tax Act. It was argued on behalf of appellant that the Estate Duty Act and the Income Tax Act, 43 of 1955, by which donations tax was introduced, were in pari materia as well as being interrelated in certain respects; it was therefore permissible to have regard to the provisions of the Income Tax Act in interpreting the Estate Duty Act in so far as there is uncertainty or ambiguity in the latter Act. Appellant's counsel sought to argue from this premise that the definition of donation in the Income Tax Act was equally applicable to a donation for the purposes of sec 3(3)(c) of the Estate Duty Act.

Sec 54 bis of the Income Tax Act, 31 of 1941, as inserted by sec 10 of Act 43 of 1955, provided that donations tax was payable on all property disposed of under donations which took effect after 24 March 1955.

In sec 54 ter (1)(ii) "donation" was defined as meaning "any gratuitous disposal of property including any gratuitous waiver or renunciation of a right". The two Acts, i.e. the Income Tax Act, 43 of 1955, and the Estate Duty Act, were assented to on 13 and 15 June 1955 respectively. The relevant portion of the former Act came into operation on 24 March and the latter on 1 April 1955. The interrelationship between the two Acts is demonstrated, according to appellant's counsel, by sec 16(b) of the Estate Duty Act which provided that there shall be deducted from any duty payable under that Act -

> "any donations tax which is proved to the satisfaction of the Commissioner to have been paid under the Income Tax Act, 1962 (Act No 58 of 1962), in respect of any property which, in accordance with paragraph (c) of sub-section (3) of section three of this Act

is deemed to be property of the deceased."

A gratuitous disposal of property may, so it was argued, be a donation not properly so called. The argument proceeded as follows: If "donation" in sec 3(3)(c) of the Estate Duty Act were to be construed as meaning "a gratuitous disposal of property", it would explain why sec 3(4) was included in the Act. Firstly, it "ties up the notion in that section of a 'disposition' with reference to a disposition as defined in sec 54 ter (1)(ii) of the Income Tax Act". Secondly, it explains why it was necessary to deem that part of a disposition which exceeds in value the consideration given, to be a donation. A disposition for which any consideration, however small, was received, would not be a gratuitous disposition; it would therefore not be included in a donation as

contemplated by sec 3(3)(c) of the Estate Duty Act at all. To the extent that the excess was intended to be a donation, it was necessary for the legislature to say so, and it did in sec 3(4).

This line of reasoning is to my mind unsound. It involves reading into one Act (the Estate Duty Act) a definition from another Act (the Income Tax Act) for a word (donation) which, although undefined in the former Act, has a settled common law meaning differing substantially from the statutory definition sought, by this argument, to be attributed to it.

Although the two Acts are interrelated in the sense that sec 16(b) of the Estate Duty Act provides for credit to be given in the computation of estate duty, for donations tax paid on property which is, in terms of the Estate Duty Act, deemed to be

property of the deceased, this does not warrant assigning to the word "donation" in sec 3(3)(c) of the Estate Duty Act, the statutory definition of "donation" contained in the Income Tax Act. Firstly, the two Acts were passed virtually at the same time and I cannot accept that had the legislature intended the definition of "donation" contained in the Income Tax Act to apply to the Estate Duty Act, it would not expressly or by incorporation by reference have included the Income Tax definition of "donation" in the Estate Duty Act. Secondly, this Court had, not long before these Acts were passed and in relation to the Death Duties Act, laid down that "donation" means a donatio propria. The legislature must have been aware of this but nevertheless chose to use the word "donation" in sec 3(3)(c) of the Estate Duty Act

without defining it. Thirdly, the fact that the legislature elected, in the Income Tax Act, to define "donation" does not justify that definition being applied to the Estate Duty Act which, despite their interrelationship, is an entirely separate legislative enactment. Moreover, the two Acts are not, as counsel contended, in pari materia. Statutes are said to be in pari materia when they relate to the same person or thing or to the same class of persons or things; it is not enough that they deal with a similar subject matter. See Craies on Statute Law 7th ed 134; Maxwell on Interpretation of Statutes 12th ed 66. See also Powell v Cleland [1948] 1 KB 262 (CA) where, in regard to an argument that the word "purchaser" in the Rent Restriction Act should have the meaning assigned to that word in the Law of Property Act, EVERSHED LJ

said at 273 that the two Acts could not be regarded as in pari materia

> "and counsel was unable to cite any instance where a word or phrase in one Act of Parliament - having either technical or non-technical import - was held to have the technical meaning supplied by a definition in another Act, not in pari materia with the first, without any cross-reference to the latter Act".

The Estate Duty Act levies a duty on property which forms part of a deceased persons's estate and which is deemed to include property donated by the deceased during his lifetime, whereas the Income Tax Act levies a tax on donations. To that extent there is a similarity between them. They do not, however, deal with the same person or thing or the same class of

persons or things. Nor does the fact that there is an interrelationship between them to the extent referred to above entitle the two enactments to be classified as being in pari materia. There is accordingly no warrant, in the absence of any cross-reference to the Income Tax Act, for assigning the definition in that Act, to the word "donation" in sec 3(3)(c) of the Estate Duty Act.

It was suggested in argument that it would be anomalous, having regard to the interrelationship between the two Acts as appears from sec 16(b) of the Estate Duty Act, to place upon the word "donation" in sec 3(3)(c) the narrow meaning of donatio propria, and that this was a further indication that the word "donation" in that section should be construed in accordance with the definition in the Income Tax Act. There is no merit in this argument. The deduction provided for in sec 16(b) arises only if

donations tax has been paid in respect of property which is deemed, in terms of sec 3(3)(c) to be property of the deceased. If property is donated in terms of a donation properly so called, that would - subject to the exceptions contained in the Income Tax Act - attract donations tax which would be deducted from estate duty levied in respect of such property. This cannot be said to be anomalous.

Respondent's counsel argued that guidance could be obtained as to the meaning of "donation" in sec 3(3)(c) of the Estate Duty Act by having regard to the amendment to that section by Act 81 of 1985. By sec 4(1)(b) of Act 81 of 1985, sec 3(3)(c) was amended to read -

> "any property donated under a donation (other than a donation to a spouse under a duly registered ante-nuptial or post-nuptial

> contract, or a notarial contract entered into under section 21 of the Matrimonial Property Act, 1984 (Act No 88 of 1984), or a donatio mortis causa or, in the case of the estate of any person who died or dies on or after 1 November 1984, a donation contemplated in section 56(1)(b) of the Income Tax Act, 1962), made" (by the deceased).

(Section 56(1)(b) of the Income Tax Act exempts from donations tax, donations "to or for the benefit of the spouse of the donor who is not separated from him under a judicial order or notarial deed of separation".) Respondent's counsel submitted that this was "an amendment which would have been unnecessary if donations not properly so called had already been covered" by sec 3(3)(c) in its original form. Appellant's counsel, on the other hand, contended that to the extent that the amendment by Act 81 of 1985 may be relevant, which he submitted it was not, it may be that the legislature was merely making it clear that it intended sec 3(3)(c) to apply to a concept wider than a donation properly so called.

Whether a subsequent amendment may be taken into account in interpreting the section as it was worded at the relevant time, is a controversial question. See Greeff NO v Registrar of Deeds, Cape Town, and Another 1986(1) SA 175(A) at 187 A-C. As the meaning of sec 3(3)(c) of the Estate Duty Act at the relevant time is in my judgment, for the reasons indicated above, clear, namely that the word "donation", as used in that section, relates, as was held in Avis's case, supra, to a donation in the proper sense only, I do not propose to consider the effect of the 1985 amendment to sec 3(3)(c).

I turn now to the facts in order to decide whether the donation in casu was a donation properly so called or not. The deceased and his wife were married by ante-nuptial contract on 3 July 1954. The deceased was an electrical engineer who worked most of his life

in the sugar industry. He and his wife had three children: a daughter who was born in 1955 and two sons who were born in 1957 and 1959 respectively. Until 1969 the deceased was employed by a large sugar company in Natal. During the period of his employment with the company the deceased and his family lived in a house provided by his employer. At the end of 1969 the deceased resigned from his employment and set up practice in partnership as a consulting engineer. It then became necessary for the parties for the first time to acquire a home of their own. The deceased, although he was a beneficiary of a sizeable estate from his late father, had very little cash. His late father had bequeathed his estate to the deceased and the latter's brother and adopted sister, with a usufruct in favour of the deceased's

stepmother. However, the deceased had no readily realisable assets with which to purchase a house for his wife and family. A small house was accordingly purchased by the deceased's wife at Weaver Crescent, Umhlanga Rocks. She paid the deposit out of monies she had saved from her earnings as a school teacher. She also paid the bond instalments out of the house-keeping allowance with which the deceased provided her. In December 1970 while they were living at Weaver Crescent a tragedy befell the family : their elder son was burnt to death as a result of an accident which occurred in the garage of their home. This incident understandably caused tremendous distress to the deceased and his wife. Because of the tragedy the deceased's wife no longer wished to continue living at Weaver Crescent. At about the time of the boy's death

the deceased and his brother were in the process of negotiating with the other beneficiaries in their late father's estate and with the Tongaat Sugar Company for the deceased to buy out the interests of the other beneficiaries in a farm which formed part of the estate and then to sell the farm to Tongaat. These negotiations were successfully concluded and in about September 1971 the deceased received the first cash payment amounting to R76 000.

The deceased's wife testified before the Income Tax Special Court that when the deceased received this money, he indicated to her that they could now move from Weaver Crescent. Her evidence proceeded as follows -

> "Well, he knew that because of the tragedy that I wanted to move from Weaver Crescent and he had promised me that as soon as we could, we would

move somewhere else and there was the possibility of money from the farm and when he received this cheque, he said well, now it will be our opportunity perhaps of finding a house, moving or building or something and it does so happen that at that time this beautiful house came on the market and I fell in love with it and suggested that we buy it."

She explained further -

"Well, my husband had always promised that one day he would provide us with a really nice home and the little Weaver Crescent home which I bought was really just a make do. His decision to leave the company was very, very sudden and it was going to be a make do as it were. He was not able to provide us himself but I had the wherewithall to do so."

The opportunity to purchase a better home arose in October 1971 when the deceased's wife found her

"dream house", Villa Thorn. The deceased looked at the house and told his wife that if she wanted it, she should sign the papers and buy it, which she did. The purchase price was paid by the deceased. The question then arose as to who should take transfer. The deceased had been told by his partner that it would be a good idea for transfer to be taken in the name of a company in which the deceased's wife should hold all or most of the shares. The deceased discussed this with his attorney, Sylvia Oversby, who advised him against it, firstly because the company which it was suggested be used, was one in which the deceased's partner had an interest and, secondly, because she did not believe that a family home should be registered in the name of a company. The deceased then enquired from his attorney whether, if the house were registered in his

wife's name, it could be attached for partnership debts. She assured him that it could not. He then instructed her to register the house in his wife's name. Thereafter on three occasions the deceased suggested to his wife that the house be bonded in order to raise money for the partnership but she consistently and steadfastly refused to agree to this. It appears that the deceased, although apparently a very good engineer, had very little business acumen. As his wife explained, (people) "always saw him coming with an open cheque book".

Villa Thorn became and remained the family home. In 1973, two years after it was purchased, the deceased went to Brazil where he established a consultancy practice. His wife joined him there in 1974. However, they retained Villa Thorn: the servants

remained, as did their dog and her motor car; and the children continued to live in the house. It was occasionally leased to selected tenants, always, however, on the understanding that when the deceased and his wife returned in the summer months the tenants had to vacate the property. The deceased and his wife in any event never leased the whole house; there was a flatlet attached to the house which was used by the children. It was always the deceased's intention to return to South Africa and to live in Villa Thorn, but this intention was not realised: in 1982, while still in Brazil, he died as a result of an accident.

The Special Income Tax Court found the deceased's wife to be "totally honest in the evidence she gave". It is, in the nature of things, not possible to determine precisely what the deceased's

motive was in registering the house in his wife's name, and the Special Income Tax Court was mindful of this difficulty. However, judging the deceased's intention from the objective facts, the Income Tax Special Court found, on the probabilities, that the deceased considered it his moral duty to provide his wife and family with the security of a home and that the most probable explanation of his action in donating this property to his wife was that he wished thereby to discharge that moral duty, bearing in mind that he had never before provided her with a home and that the home in which they had been living was one which had been purchased by her. The Income Tax Special Court accordingly came to the conclusion that the donation of a house "was not inspired by sheer liberality or disinterested benevolence".

Although one is obviously in the realm of inference, the evidence seems fairly clear that the deceased's motive in registering the property in his wife's name was his feeling that he should, as part of his marital duty, provide a house for his wife and family. His desire to avoid the house being attached at the instance of partnership creditors, which was substantiated by the evidence of his attorney, strengthens this interpretation of the deceased's motives.

In order to qualify as a donation properly so called sheer liberality or disinterested benevolence must be the only motive. There is no reason for differing from the Special Income Tax Court's finding that the gift of the house to his wife was not inspired

by sheer liberality or disinterested benevolence.

The appeal is dismissed with costs.

G. FRIEDMAN AJA.

CORBETT CJ)
JOUBERT JA)
NESTADT JA) Concurred.
NIENABER AJA)