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THE ESTATE DUTY ACT 1953

BY

KASTURI SESHAGIRI RAO, M.A., B.L.
Advocate, High Court, Madras

AND

T. V. BALAKRISHNAN, M.A., B.L.,
Advocate, High Court, Madras

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PREFACE

The Estate Duty Act, 1953, is in the main, a reproduction of the Finance Act, 1894, as amended from time to time by subsequent Finance Acts in the United Kingdom till 1951.

Lord Macnaghten said of the Finance Act, 1894 in Cowley's case [(1899) A. C. 198]: "The first section contains the pith and substance of the enactment....The other provisions of the Act....are strangely confused and singularly ill-drawn."

As our Parliament has passed this Act which undoubtedly contained the technicalities of the law of England, Courts in India must construe its provisions not according to the technicalities of the Law of England or Scotland, but according to the popular use of the language employed in it.

During the last nearly sixty years, Courts in the United Kingdom, including the House of Lords and the Privy Council (the latter deciding cases which arose from the Dominions where similar legislation obtains) have construed and interpreted almost every provision of the Act. Thus there is copious case law on the subject of death duties.

It is therefore possible to write a commentary on the Indian Act expounding the principles explaining the meaning of each section of the Act with reference to the decided cases in the United Kingdom. It is hoped that the task of the High Courts and the Supreme Court in India is an easy one; they will be concerned for the most part with the application of the principles of the law as laid down by the decisions to the facts of each case as it arises for decision before them.

There is a deliberate departure from the United Kingdom Act in 3 respects:—

1. the provision providing for an appeal to the High Court in respect of valuation and determination of estate duty by the estate duty authorities;
2. the provision permitting (immovable or leasehold property) to be given in payment of estate duty; and
3. the provision enabling accountable persons to file applications in the High Court for determination and adjustment of their rights *inter se* which obviates the necessity of going to ordinary Courts for obtaining the relief they seek.

Whether the departure constituted merits or defects of the Act, experience alone can tell.

The only material contribution by the Indian draftsmen consists in sections 7, 32, 35, 39, 50, 58, 63 to 65, 72, 73, and 78 to 85. The object kept in view in the preparation of the book is to make it a complete guide regarding all matters that are likely to arise under the Act; the Appendices are intended to secure this object. It is inevitable that some errors should have crept into the book; short time available did not permit certain improvements to be made in the work. These and other suggestions which

users of this book are hereby invited to make for improvements will be given effect to in the next edition.

In the preparation of this book one obligation stands apart from all other obligations on a special footing and that is the enthusiasm, encouragement displayed and ready help given by Chi. K. G. Shanker. A special debt of thanks and appreciation is due to him.

Thanks are also due to Chi. K. V. Subba Rao, Kumari K. Prameela Ranee, Messrs. Kasturi Sivaprasad Rao, R. Narayanan, Advocates and K. Satakopan, B.A., F.C.A., partner of Suri and Co., Madras who helped in the preparation of the illustrations and examples.

Madras
6th Jan. 1954

THE AUTHORS

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THE ESTATE DUTY ACT, 1953

No. 34 of 1953

[*6th October*, 1953.

An Act to provide for the levy and collection of an estate duty.

BE it enacted by Parliament as follows :—

PART I—PRELIMINARY

1. **Short title, extent and commencement.**—(1) This Act may be called THE ESTATE DUTY ACT, 1953.

(2) It extends to the whole of India except the State of Jammu and Kashmir.

(3) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint.

2. **Definitions.**—In this Act, unless the context otherwise requires,—

(1) "affidavit of valuation" means the affidavit of valuation made under section 19-I of the Court-fees Act, 1870 (VII of 1870), in connection with an application for the grant of representation ;

(2) "Board" means the Central Board of Revenue constituted under the Central Board of Revenue Act, 1924 (IV of 1924) ;

(3) "company" includes any body corporate wheresoever incorporated ;

(4) "controlled company" means a company as defined in section 17 ;

(5) "Controller" means a person appointed to be a Controller of Estate Duty under section 4 and includes a person appointed to be a Deputy Controller of Estate Duty or an Assistant Controller of Estate Duty ;

(6) "deceased person" and "the deceased" mean a person dying after the commencement of this Act ;

(7) "estate duty" means estate duty under this Act ;

(8) "executor" means the executor or administrator of a deceased person ;

(9) "general power" includes every power or authority enabling the donee or other holder thereof to appoint or dispose of property as he thinks fit, whether exercisable by instrument *inter vivos* or by will or both, but exclusive of any power exercisable in a fiduciary capacity under a disposition not made by himself or exercisable as mortgagee ;

(10) "incumbrances" includes mortgages and terminable charges ;

(11) "interest in expectancy" includes an estate in remainder or reversion and every other future interest whether vested or contingent, but does not include reversions expectant upon the determination of leases ;

(12) "legal representative" means a person who in law represents the estate of a deceased person, and includes—

(*i*) an executor,

(*ii*) as regards any obligation under this Act, any person who takes possession of, or intermeddles with, the estate of a deceased person or any part thereof, and

(*iii*) where the deceased was a coparcener of a Hindu family, the manager for the time being of the family ;

(13) " power to appoint property " means power to determine the disposition of property of which the person invested with the power is not the owner ;

(14) " prescribed " means prescribed by rules made under this Act.;

(15) " property " includes any interest in property, movable or immovable, the proceeds of sale thereof and any money or investment for the time being representing the proceeds of sale and also includes any property converted from one species into another by any method ;

Explanation 1.—The creation by a person or with his consent of a debt or other right enforceable against him personally or against property which he was or might become competent to dispose of, or to charge or burden for his own benefit, shall be deemed to have been a disposition made by that person, and in relation to such a disposition the expression " property " shall include the debt or right created.

Explanation 2.—The extinguishment at the expense of the deceased of a debt or other right shall be deemed to have been a disposition made by the deceased in favour of the person for whose benefit the debt or right was extinguished, and in relation to such a disposition the expression " property " shall include the benefit conferred by the extinguishment of the debt or right ;

(16) " property passing on the death " includes property passing either immediately on the death or after any interval, either certainly or contingently, and either originally or by way of substitutive limitation, and " on the death " includes " at a period ascertainable only by reference to the death " ;

(17) " public charitable purpose " includes relief of the poor, education, medical relief and the advancement of any other object of general public utility within the territory of India ;

(18) " representation " means probate of a will or letters of administration ;

(19) " settled property " means property which stands limited to, or in trust for, any persons, natural or juridical, by way of succession, whether the settlement took effect before or after the commencement of this Act ; and " settlement " means any disposition, including a dedication or endowment, whereby property is settled ;

(20) " Valuer " means a Valuer appointed under section 4.

3. **Interpretation.**—(1) For the purposes of this Act,—

(*a*) a person shall be deemed competent to dispose of property if he has such an estate or interest therein or such general power as would, if he were *sui juris*, enable him to dispose of the property ;

(*b*) a disposition taking effect out of the interest of the deceased shall be deemed to have been made by him, whether the concurrence of any other person was or was not required ;

(*c*) money which a person has a general power to charge on the property of another person shall be deemed to be an interest in that property of which the former has power to dispose ;

(*d*) the domicile of a person shall be determined as if the provisions of the Indian Succession Act, 1925 (XXXIX of 1925), on the subject applied to him.

(2) In Parts II and III of this Act, any reference to any interest disposed of, policy of insurance effected, annuity or other interest purchased or provided or to any gift, settlement, disposition or transfer of property made, shall be construed as including any such interest, policy, annuity, gift, settlement, disposition or transfer, as the case may be, whether it was disposed of, effected, purchased or provided, or made before or after the commencement of this Act.

4. **Estate duty authorities.**—(1) There shall be the following authorities for the purposes of this Act, namely :—

(*a*) the Board,

(*b*) Controllers of Estate Duty,

(*c*) Valuers.

(2) The Central Government may appoint as many Controllers of Estate Duty as it thinks fit and they shall, subject to the control of the Board, perform their functions in respect of such estates or classes of estates and such areas as are assigned to them by the Board :

Provided that, subject to such rules as may be made by the Board in this behalf, every Controller, within the local limits of whose jurisdiction any part of the estate of the deceased is situated, may exercise in relation to the whole estate or any part thereof any of the powers conferred on the Controller by this Act :

Provided further that the Board may, by general or special order, direct that any Controller specified by it in this behalf may exercise all or any of the powers conferred on the Controller by this Act to the exclusion of any other Controller.

(3) The Central Government shall, within twelve months after the commencement of this Act and may thereafter, from time to time, appoint a sufficient number of qualified persons to act as Valuers for the purposes of this Act and shall fix a scale of charges for the remuneration of such persons.

(4) Subject to the rules and orders of the Central Government regulating the conditions of service of persons in public services and posts, a Controller may appoint such executive or ministerial staff as may be necessary to assist him in the execution of his functions.

(5) All officers and persons employed in the execution of this Act, other than Valuers, shall observe and follow the orders, instructions and directions of the Board.

PART II.—IMPOSITION OF ESTATE DUTY

EXTENT OF CHARGE

5. **Levy of estate duty.**—(1) In the case of every person dying after the commencement of this Act, there shall, save as hereinafter expressly provided, be levied and paid upon the principal value ascertained as hereinafter provided of all property, settled or not settled, including agricultural land situate in the States specified in the First Schedule to this Act, which passes on the death of such person, a duty called " estate duty " at the rates fixed in accordance with section 35.

(2) The Central Government may, by notification in the Official Gazette, add the names of any other States to the First Schedule in respect whereof

resolutions have been passed by the Legislatures of those States adopting this Act under clause (1) of Article 252 of the Constitution in respect of estate duty on agricultural lands situate in those States, and on the issue of any such notification the States so added shall be deemed to be States specified in the First Schedule within the meaning of sub-section (1).

PROPERTY WHICH IS DEEMED TO PASS

6. **Property within disposing capacity.**—Property which the deceased was at the time of his death competent to dispose of shall be deemed to pass on his death.

7. **Interests ceasing on death.**—(1) Subject to the provisions of this section, property in which the deceased or any other person had an interest ceasing on the death of the deceased shall be deemed to pass on the deceased's death to the extent to which a benefit accrues or arises by the cesser of such interest, including, in particular, a coparcenary interest in the joint family property of a Hindu family governed by the Mitakshara, Marumakkattayam or Aliyasantana law.

(2) If a member of a Hindu coparcenary governed by the Mitakshara school of law dies, then the provisions of sub-section (1) shall apply with respect to the interest of the deceased in the coparcenary property only—

(*a*) if the deceased had completed his eighteenth year at the time of his death, or

(*b*) where he had not completed his eighteenth year at the time of his death, if his father or other male ascendant in the male line was not a coparcener of the same family at the time of his death.

Explanation.—Where the deceased was also a member of a sub-coparcenary (within the coparcenary) possessing separate property of its own, the provisions of this sub-section shall have effect separately in respect of the coparcenary and the sub-coparcenary.

(3) If a member of any *tarwad* or *tavazhi* governed by the Marumakkattayam rule of inheritance or a member of a *kutumba* or *kavaru* governed by the Aliyasantana rule of inheritance dies, then the provisions of sub-section (1) shall not apply with respect to the interest of the deceased in the property of the *tarwad*, *tavazhi*, *kutumba* or *kavaru*, as the case may be, unless the deceased had completed his eighteenth year.

(4) The provisions of sub-section (1) shall not apply to the property in which the deceased or any other person had an interest only as holder of an office or recipient of the benefits of a charity, or as a corporation sole.

Explanation.—For the removal of doubts, it is hereby declared that the holder of a *Sthanam* is neither the holder of an office nor a corporation sole within the meaning of this sub-section.

8. **Gifts** *mortis causa.*—Property taken as a gift made in contemplation of death shall be deemed to pass on the donor's death.

Explanation.—In this section, the expression "gift made in contemplation of death" has the same meaning as in section 191 of the Indian Succession Act, 1925 (XXXIX of 1925).

9. **Gifts within a certain period before death.**—(1) Property taken under a disposition made by the deceased purporting to operate as an immediate gift *inter vivos* whether by way of transfer, delivery, declaration of trust, settlement upon persons in succession, or otherwise, which shall not

have been *bona fide* made two years or more before the death of the deceased shall be deemed to pass on the death :

Provided that in the case of gifts made for public charitable purposes the period shall be six months.

(2) The provisions of sub-section (1) shall not apply to gifts made in consideration of marriage or which are proved to the satisfaction of the Controller to have been part of the normal expenditure of the deceased, but not exceeding rupees five thousand in the aggregate.

10. **Gifts whenever made where donor not entirely excluded.**— Property taken under any gift, whenever made, shall be deemed to pass on the donor's death to the extent that *bona fide* possession and enjoyment of it was not immediately assumed by the donee and thenceforward retained to the entire exclusion of the donor or of any benefit to him by contract or otherwise :

Provided that the property shall not be deemed to pass by reason only that it was, not, as from the date of the gift, exclusively retained as aforesaid, if, by means of the surrender of the reserved benefit or otherwise, it is subsequently enjoyed to the entire exclusion of the donor or of any benefit to him for at least two years before the death.

11. **Limited interests disposed of within a certain period before death.**—(1) Subject to the provisions of this section, where an interest limited to cease on a death has been disposed of or has determined, whether by surrender, assurance, divesting, forfeiture or in any other manner (except by the expiration of a fixed period at the expiration of which the interest was limited to cease), whether wholly or partly, and whether for value or not, after becoming an interest in possession, and the disposition or determination (or any of them if there are more than one) is not excepted by sub-section (2), then—

(*a*) if, had there been no disposition or determination, as aforesaid of that interest and no disposition of any interest expectant upon or subject to that interest, the property in which the interest subsisted would have passed on the death under section 5, that property shall be deemed by virtue of this section to be included as to the whole thereof in the property passing on the death ; or

(*b*) if, had there been no disposition or determination as aforesaid of that interest and no disposition of any interest expectant upon or subject to that interest, the property in which the interest subsisted would have been deemed by virtue of section 7 to be included to a particular extent in the property passing on the death, the property in which the interest subsisted shall be deemed by virtue of this section to be included to that extent in the property passing on the death.

(2) Where a disposition or determination of an interest limited to cease on the death was *bona fide* effected or suffered not less than two years before the death (or, if it was effected or suffered for public charitable purposes, not less than six months before the death), the disposition or determination shall be excepted by this sub-section—

(*a*) if *bona fide* possession and enjoyment of the property in which the interest subsisted was assumed immediately thereafter by the person becoming entitled by virtue of or upon the disposition or determination and thenceforward retained to the entire

exclusion of the person who immediately before the disposition or determination had the interest and of any benefit to him by contract or otherwise ; or

(*b*) in the case of a partial determination, if the conditions specified in the preceding paragraph were not satisfied by reason only of the retention or enjoyment by the deceased of possession of some part of the property, or of some benefit, by virtue of the provisions of the instrument under which he had the interest :

Provided that where *bona fide* possession and enjoyment of the property referred to in clause (*a*) was not assumed immediately after the disposition or determination of the interest limited to cease on death, the disposition or determination shall be excepted by this sub-section, if, by means of the surrender of the reserved benefit or otherwise, the property is subsequently enjoyed for at least two years before the death, to the entire exclusion of the person who immediately before the disposition or determination had the interest and of any benefit to him by contract or otherwise :

Provided further that nothing in this sub-section shall be construed as affecting any charge of estate duty arising otherwise than by virtue of the provisions of the preceding sub-section.

(3) In the application of sub-section (1) to a case in which an incumbrance on the property in which the interest in question subsisted has been created by associated operations (as hereinafter defined in section 27) which included a disposition of that interest, references to that property shall be construed as references to that property free from the incumbrance, except in a case in which the incumbrance was created for consideration in money or money's worth which was applied for purposes calculated to maintain or increase the value of that property, and, in that case, shall be construed as references to that property subject to the incumbrance to the extent to which the consideration was so applied.

(4) Where an interest limited to cease on a death has been disposed of or has determined, *bona fide* possession and enjoyment of the property shall not be deemed for the purposes of sub-section (2) to be assumed immediately thereafter and thenceforward retained to the entire exclusion of a person who had the interest and of any benefit to him by contract or otherwise, if at any time thereafter he has a benefit by virtue of any operations associated with the disposition or determination, nor while he has such a benefit shall the property be deemed to be enjoyed to the entire exclusion as aforesaid for the purposes of the first proviso to sub-section (2).

(5) In the preceding sub-section—

(*a*) the reference to any operations associated with the disposition shall be taken as referring to any associated operations as defined in section 27, of which the disposition is one ; and

(*b*) the reference to any operations associated with the determination shall be taken as referring to any associated operations as so defined of which any disposition resulting in, or effected in contemplation of or with reference to, the determination is one.

12. **Settlements with Reservation.**—(1) Property passing under any settlement made by the deceased by Deed or any other instrument not taking effect as a will whereby an interest in such property for life or any other period determinable by reference to death is reserved either expressly or by implication to the settlor or whereby the settlor may have reserved to himself the

right by the exercise of any power, to restore to himself or to reclaim the absolute interest in such property shall be deemed to pass on the settlor's death :

Provided that the property shall not be deemed to pass on the settlor's death by reason only that any such interest or right was so reserved if by means of the surrender of such interest or right the property is subsequently enjoyed to the entire exclusion of the settlor and of any benefit to him by contract or otherwise, for at least two years before his death.

Explanation.—A settlor reserving an interest in the settled property for the maintenance of himself and any of his relatives (as defined in section 27) shall be deemed to reserve an interest for himself within the meaning of this section.

(2) Notwithstanding anything contained in sub-section (1), where property is settled by a person on one or more other persons for their respective lives and after their death, on the settlor for life and thereafter on other persons and the settlor dies before his interest in the property becomes an interest in possession, the property shall not be deemed to pass on the settlor's death within the meaning of this section.

13. Joint investments.—Where a person, having been absolutely entitled to any property or to the funds with which any property was purchased, has caused it to be transferred to or vested in himself and any other person jointly, whether by disposition or otherwise, either by himself alone, or in concert, or by arrangement, with any other person so that the beneficial interest in some part of that property passes or accrues by survivorship on his death to the other person, the whole of that property shall be deemed to pass on the death.

14. Policies kept up for a donee.—(1) Money received under a policy of insurance effected by any person on his life, where the policy is wholly kept up by him for the benefit of a donee, whether nominee or assignee, or a part of such money in proportion to the premiums paid by him, where the policy is partially kept up by him for such benefit, shall be deemed to pass on the death of the assured.

Explanation.—A policy of insurance on the life of a deceased person effected by virtue or in consequence of a settlement made by the deceased shall be treated as having been effected by the deceased.

(2) For the purposes of sub-section (1), so much of the premiums paid on any policy of insurance as was, by virtue or in consequence of a settlement made by the deceased, paid out of property, whether or not provided by the deceased, comprised in the settlement or out of income, whether or not provided by the deceased, arising under the settlement, shall be treated as having been paid by the deceased :

Provided that any payments which were not made either out of property provided directly or indirectly by the deceased for the purposes of the settlement, or out of property representing that property, or out of income provided directly or indirectly by the deceased whether arising from such property or otherwise, shall not be treated as having been made by the deceased if the Controller is satisfied that those payments were not made as part of any reciprocal arrangements between the deceased and any other person.

(3) For the purposes of this section,—

(*a*) the expression "settlement" includes any disposition, trust, covenant, agreement, or arrangement ; and

(*b*) a person shall be deemed to have made a settlement if he has made or entered into the settlement directly or indirectly, and in particular (but without prejudice to the generality of the foregoing words of this clause) if he has provided or undertaken to provide funds directly or indirectly for the purposes of the settlement, or has made with any other person a reciprocal arrangement for that other person to make or enter into the settlement.

15. Annuity or other interest purchased or provided by the deceased.—Any annuity or other interest, purchased or provided by the deceased, either by himself alone or in concert or by arrangement with any other person shall be deemed to pass on his death to the extent of the beneficial interest accruing or arising, by survivorship or otherwise, on his death.

Explanation.—The extent of the beneficial interest must be ascertained without regard to any interest in expectancy which the beneficiary may have had therein before the death.

16. Annuity or other interest purchased or provided out of property derived from the deceased.—(1) Section 15 shall have effect in relation to any annuity or other interest that was purchased or provided wholly or in part by any person who was at any time entitled to, or amongst whose resources there was at any time included, any property derived from the deceased, as if that annuity or other interest had been provided by the deceased, or, if it is proved to the satisfaction of the Controller that the application of all the property derived from the deceased would have been insufficient to provide the whole of that annuity or other interest, as if a similar annuity or interest of an amount reduced to an extent proportionate to the insufficiency proved had been provided by the deceased :

Provided that for the purpose of determining whether there would have been any such insufficiency as aforesaid, and the extent thereof, there shall be excluded from the property derived from the deceased any part thereof as to which it is proved to the satisfaction of the Controller that the disposition of which it, or the property which it represented, was the subject-matter, was not made with reference to, or with a view to enabling or facilitating, the purchase or provision of the annuity or other interest, or the recoupment in any manner of the cost thereof.

(2) In this section the following expressions have the meanings hereby assigned to them respectively, namely :—

(*a*) " property derived from the deceased " means any property which was the subject-matter of a disposition made by the deceased, either by himself alone or in concert or by arrangement with any other person, otherwise than for full consideration in money or money's worth paid to him for his own use or benefit, or which represented any of the subject-matter of such a disposition, whether directly or indirectly, and whether by virtue of one or more intermediate dispositions and whether any such intermediate disposition was or was not for full or partial consideration :

Provided that where the first-mentioned disposition was for full consideration in money or money's worth paid to the deceased for his own use or benefit and it is proved to the satisfaction of the Controller that the disposition was not part of associated operations which included—

(*a*) a disposition by the deceased, either by himself alone or in concert or by arrangement with any other person, otherwise than for

full consideration in money or money's worth paid to the deceased for his own use or benefit ; or

(*b*) a disposition by any other person operating to reduce the value of the property of the deceased ;

then, in considering whether estate duty should be charged the said first mentioned disposition shall be left out of account as if this provision did not apply in relation to it ;

(*b*) " disposition " includes any trust, covenant, agreement or arrangement ; and

(*c*) " subject-matter " includes, in relation to any disposition, any annual or periodical payment made or payable under or by virtue of the disposition.

(3) For the purposes of section 34 the deceased shall be deemed to have had an interest in any property included by virtue of this section in the property passing on the death of the deceased.

SPECIAL PROVISIONS RELATING TO TRANSFERS TO COMPANIES

17. Property transferred to a controlled company.—(1) Where the deceased has made to a controlled company a transfer of any property (other than an interest limited to cease on his death or property which he transferred in a fiduciary capacity), and any benefits accruing to the deceased from the company accrued to him in the three years ending with his death, the assets of the company shall be deemed for the purposes of estate duty to be included in the property passing on his death to an extent determined in accordance with sub-section (2).

(2) The extent to which the assets of the company are to be deemed be included as aforesaid shall be the proportion ascertained by comparing the aggregate amount of the benefits accruing to the deceased from the company in the last three accounting years with the aggregate amount of the net income of the company for the said years :

Provided that—

(*a*) where, in any of the said accounting years, the company sustained a loss, the amount of that loss shall be deducted in ascertaining the said aggregate net income of the company ;

(*b*) where the company came into existence in the last year but one, or in the last, of the said accounting years, the references in this sub-section to the said accounting years shall be construed as references to the last two, or, as the case may be, the last, of those years.

(3) The assets of the company which are deemed to be included in the property passing on the death of the deceased by virtue of this section shall include any assets thereof which have been disposed of or distributed by the company at any time between the beginning of the first of the accounting years aforesaid and the death of the deceased either—

(*a*) in or towards satisfaction of rights attaching to shares in or debentures of the company, or

(*b*) otherwise howsoever except as follows, that is to say, by way of sale for full consideration in money or money's worth received by the company for its own use and benefit, or in or towards discharge of taxes or rates or other liability imposed by or under an enactment, or in or towards discharge of a fine or penalty

or a liability for tort incurred without collusion with the injured party, including assets which have been so disposed of or distributed in a winding up, whether continuing at or completed before the death :

Provided that this sub-section shall not apply to assets disposed of or distributed by way of payments from which income-tax was deductible, or which were assessable to income-tax, of amounts not exceeding in the aggregate, as respects payments made in any accounting year or in the period between the end of the last accounting year and the death of the deceased, the amount of the income of the company for that year or period.

(4) (*i*) A controlled company is any company which at any relevant time, was or would, if these provisions had always been in force, have been deemed to be, under the control of not more than five persons and which is not a subsidiary company or a company in which the public are substantially interested.

Explanation.—For the purposes of this sub-section,—

(*a*) a company shall be deemed to be a subsidiary company if, by reason of the beneficial ownership of shares therein, the control of the company is in the hands of a company not being a company to which the provisions of this sub-section apply, or of two or more companies none of which is a company to which the aforesaid provisions apply ;

(*b*) a company shall be deemed to be a company in which the public are substantially interested if shares of the company (not being shares entitled to a fixed rate of dividend, whether with or without a further right to participate in profits) carrying not less than twenty-five per cent. of the voting power have been allotted unconditionally to, or acquired unconditionally by, and are at the end of the year or other period for which the accounts of the company have been made up beneficially held by the public (not including a company to which the provisions of this sub-section apply) and any such shares have, in the course of such year or other period, been the subject of dealings on a recognised stock exchange or are in fact freely transferable by the holders to other members of the public.

(*ii*) A company shall be deemed to be under the control of not more than five persons—

(*a*) if any five or fewer persons together exercise, or are able to exercise or are entitled to acquire, control, whether direct or indirect, over the company's affairs, and in particular, but without prejudice to the generality of the foregoing words, if any five or fewer persons together possess, or are entitled to acquire, the greater part of the share capital or voting power of the company ; or

(*b*) if any five of fewer persons together possess, or are entitled to acquire, either the greater part of the issued share capital of the company, or such part of that capital as would, if the whole of the income of the company were in fact distributed to the members, entitled them to receive the greater part of the amount so distributed ; or

(*c*) if,—

(i) on the assumption that the company is a company to which this sub-section applies ; or

(ii) on the assumption that the company and any other company or companies are companies to which the said sub-section applies, more than one half of the income of the company (including any income which has been apportioned to it, or could on either of those assumptions be apportioned to it, for the purposes of the said sub-section) could be apportioned for those purposes among not more than five persons.

(*iii*) In determining whether a company is or is not under the control of not more than five persons, persons who are relatives of one another, persons who are nominees of any other persons together with that other person, persons in partnership, and persons interested in any shares or obligations of the company which are subject to any trust or are part of the estate of a deceased person, shall respectively be treated as a single person.

Explanation.—For the purpose of this clause,—

(*a*) the expression "relative" means a husband, wife, ancestor, lineal descendant, brother or sister ;

(*b*) a person shall be deemed to be the nominee of another person, if, whether directly or indirectly, he possesses on behalf of that other person, or may be required to exercise on the direction of or on behalf of that other person, any right or power which, by virtue of any of the provisions of this sub-section, is material in determining whether a company is or is not to be deemed to be under the control of not more than five persons.

(*iv*) An investment company shall be deemed to be under the control of not more than five persons if any five or fewer persons would, if the company were wound up, be entitled as members or loan creditors of the company to receive more than half of the assets of the Company which would be available for distribution to members and loan creditors.

(*v*) Notwithstanding anything contained in clause (*i*), a company which is deemed for the purposes of that clause to be under the control of not more than five persons shall not be deemed to be a subsidiary company, unless it can be deemed to be under the control of not more than five persons only by including among the persons mentioned in sub-clauses (*a*), (*b*) or (*c*) of clause (*ii*) or in clause (*iv*) a company to which the provisions of the said clause (*i*) do not apply and which is not the nominee of any other person.

(*vi*) The expression "relevant time" in this sub-section means any time during the period ending with the death of the deceased and beginning at the date of the disposition, transfer or other transaction or even relevant for the purposes of this Act, or, if that disposition, transfer or other transaction or event was one of associated operations, at the date of the earliest of those operations.

(5) For the purposes of section 34 the deceased shall be deemed to have had an interest in the property deemed by virtue of this section to be included in the property passing on his death.

18. Duty of company and officers of company to give information to Controller on death of transferor.—(1) Where the deceased has made a transfer of property to a controlled company, the company shall be under

obligation to inform the Controller within forty-five days from the date of the death of the deceased, of the death, of the fact that the deceased made a transfer of property to the company, and of the fact that benefits accrued to the deceased from the company, and every person who was a principal officer of the company at that date, or if the company has been wound up and dissolved before that date, who was a principal officer of the company at any time and who has been called upon to furnish any information under this section, shall be under the like obligation as respects such of the facts aforesaid as are within his knowledge, unless he knows, or has reasonable cause for believing, that the information in question has already been given to the Controller by the company or some other person.

(2) If the company or any such person as aforesaid who is under obligation by virtue of the preceding sub-section to give any information to the Controller makes default in the performance of that obligation, the Controller may impose upon the defaulter a penalty not exceeding one thousand rupees.

Explanation.—For the purposes of this section " principal officer " means a manager, managing agent or secretary, and includes any person connected with the company upon whom the Controller has served a notice under this section of treating him as the principal officer thereof.

19. Collection and incidence of duty under section 17.—(1) The following persons shall be accountable for the duty payable on the death of the deceased by virtue of section 17, namely :—

(*a*) the company ;

(*b*) any person (other than a *bona fide* purchaser for full consideration in money or money's worth received by the company for its own use and benefit) who receives, whether directly from the company or otherwise, or disposes of, any assets which the company had, whether as capital or as income, at the death or at any time thereafter ;

(*c*) any person who received any distributed assets of the company on their distribution :

Provided that a person shall not,—

(*i*) by virtue of clause (*b*), be accountable in respect of any assets for any duty in excess of the value of those assets, or

(*ii*) by virtue of clause (*c*), be accountable in respect of any assets for more than a part of the duty bearing to the whole thereof the same proportion as the value of the distribution of those assets bears to the principal value of the assets of the company passing on the death by virtue of section 17.

Explanation.—For the purposes of this sub-section the expressions " distributed assets " and " assets of the company passing on the death " do not include any distributed assets of the company which the deceased received on their distribution ; and a person who, having received any distributed assets of the company, has died before the deceased shall be deemed to have been a person accountable by virtue of clause (*c*).

(2) Where a company incorporated outside the territories to which this Act extends is accountable for any duty by virtue of the preceding sub-section or of this sub-section, every person who is a member of that company at the death shall also be accountable for a rateable part of that duty in proportion to the value of his interest in that company.

(3) A person accountable for any duty by virtue of this section shall, for the purpose of raising and paying the duty, have all the powers conferred on accountable parties.

(4) On a winding up of the company, sub-section (1) of section 230 of the Indian Companies Act, 1913 (VII of 1913), shall have effect as if there were included in clause (*a*) of that sub-section a reference to any duty payable in respect of assets of the company passing on a death by virtue of section 16 of this Act, and section 129 of the Indian Companies Act, 1913, shall have effect accordingly.

(5) The duty payable on the death of the deceased by virtue of section 17 shall be a first charge by way of floating security on the assets which the company had at the death or has at any time thereafter, and any part of the duty for which by virtue of clause (*c*) of sub-section (1) any person is accountable in respect of any distributed assets shall be a first charge also on those assets :

Provided that nothing in this sub-section shall operate to make any property chargeable as against a *bona fide* purchaser thereof for valuable consideration without notice.

(6) Where any duty has been—

(*a*) paid by a person accountable therefor by virtue only of clause (*c*) of sub-section (1) ; or

(*b*) raised by virtue of sub-section (5) out of any distributed assets charged therewith ;

that person or, as the case may be, the person who was entitled to those assets subject to the charge, may (without prejudice to any right of contribution or indemnity which he may have apart from this sub-section) recover the amount of the duty so paid or raised as aforesaid from any person who is accountable therefor otherwise than by virtue of the said clause (*c*).

(7) No part of the duty paid by the company shall be recoverable by it from any person on the ground only that he is entitled to any interest in, or to any sum charged on, the assets which the company had at the death of the deceased.

(8) The provisions of sub-sections (1) and (3) of section 53 shall not have effect in relation to the duty payable by virtue of section 17.

20. Power to make rules respecting controlled companies generally.—(1) The Board may make rules—

(*a*) prescribing the class of dispositions or operations which shall be deemed to be transfers to controlled companies within the meaning of section 17 ;

(*b*) prescribing the matters to be treated as benefits accruing to the deceased from any such controlled company, the manner in which their amount is to be determined, and the time at which they are to be treated as accruing ;

(*c*) prescribing the manner in which the net income and the value of the assets of any such company are to be determined ;

(*d*) prescribing the manner in which the accounting year of any such company is to be reckoned ;

(*e*) prescribing the manner in which the shares and debentures of any such company passing upon the death of the deceased are to be valued for estate duty ;

(*f*) providing an upper limit by reference to the value of the property transferred by the deceased to any such company and preventing

duplication of charge where duty would otherwise be payable in respect of both the assets of any such company (or a proportion of them) and the deceased's holding of shares and debentures in any such company ;

(*g*) prescribing the conditions upon which and the extent to which transactions in the name of any such company shall be deemed to be *bona fide* transactions for full consideration ; and

(*h*) generally for the purpose of checking the avoidance of estate duty through the machinery of any such company.

(2) All rules made under this section shall be laid before the House of the People for not less than fifteen days before the date of their final publication.

PART III.—EXCEPTIONS FROM THE CHARGE OF DUTY

21. Foreign property.—(1) There shall not be included in the property passing on the death of the deceased—

(*a*) immovable property situated outside the territories to which this Act extends ;

(*b*) movable property situated outside the territories to which this Act extends at the time of the death unless—

(*i*) in the case of any property, whether settled or not, the deceased was domiciled in the said territories at the time of his death ; or

(*ii*) in the case of settled property of which the deceased was a life tenant, the settlor was domiciled in the said territories at the date the settlement took effect.

(2) The Board may make rules regulating the manner in which the nature and locality of different classes of assets shall be determined for the purposes of this section.

22. Property held by the deceased as trustee.—Property passing on the death of the deceased shall not be deemed to include property held by the deceased as trustee for another person under a disposition not made by the deceased or under a disposition made by the deceased where (whether by virtue of the original disposition or of a subsequent surrender of any benefit originally reserved to the deceased or otherwise) possession and enjoyment of the property was *bona fide* assumed by the beneficiary at least two years before the death and thenceforward retained by him to the entire exclusion of the deceased or of any benefit to the deceased by contract or otherwise :

Provided that in the case of property held by the deceased as sole trustee for another person under a disposition made by himself, the period shall be five years.

23. Interest failing before becoming an interest in possession.—In the case of settled property where the interest of any person under the settlement fails or determines by reason of his death before it becomes an interest in possession, and one or more subsequent limitations under the settlement continue to subsist, the property shall not be deemed to pass on his death by reason only of the failure or determination of that interest.

Explanation 1.—Where property is settled by a person on himself for life and after his death on any other person, with an ultimate reversion of an absolute interest or absolute power of disposition to the settlor, the property shall not be deemed to pass to the settlor on the death of such other person by reason only that the settlor being then in possession of the property as

tenant for life becomes, in consequence of such death, entitled to the immediate reversion or acquires an absolute power to dispose of the whole property.

Explanation 2.—Where the interest of a person in settled property consists of an interest in the residue or part of the residue of an estate of a testator or intestate and the said estate continues to be under administration until the death of the person, the said interest of the person in the residue or part of the residue shall be deemed to have become an interest in possession on the date as from which the income from the residue or part of the residue would have been attributable to that interest if the residue had been ascertained immediately after the death of the testator or intestate.

24. Property reverting to disponer.—(1) Where by a disposition of any property an interest is conferred on any person, other than the disponer for the life of such person or determinable on his death, the remainder being conferred upon the disponer absolutely, and such person enters into possession of the interest, and thenceforward retains possession of it, then, on the death of such person, the property shall not be deemed to pass by reason only of its reverter to the disponer in his life time.

(2) Where by a disposition of any property any such interest as is mentioned in sub-section (1) is conferred on two or more persons either severally or jointly or in succession, sub-section (1) shall apply in like manner as where the interest is conferred on one person :

Provided that sub-section (1) shall not apply where such person or persons taking the said life or determinable interest had at any time prior to the disposition been himself or themselves competent to dispose of the said property.

25. Income of settled property acquired on death of spouse.—Where a husband or wife is entitled, either solely or jointly with the other, to the income of any property settled by the other under a disposition which took effect before the commencement of this Act and on his or her death the survivor becomes entitled to the income of the property (as distinguished from the property itself) settled by such survivor, estate duty shall not be payable in respect of that property until the death of that survivor.

26. Property passing by reason of a *bona fide* purchase for full or partial consideration in money.—(1) Subject to the provisions of section 27 and section 46 estate duty shall not be payable in respect of property passing on the death of the deceased by reason only of a *bona fide* purchase from the person under whose disposition the property passes, nor in respect of the falling into possession of the reversion on any lease for lives, nor in respect of the determination of any annuity for lives, where such purchase was made, or such lease or annuity granted, for full consideration in money or money's worth paid to the vendor or grantor for his own use or benefit, or in the case of a lease for the use or benefit of any person for whom the grantor was a trustee.

(2) Where any such purchase was made, or lease or annuity granted, for partial consideration in money or money's worth paid to the vendor or grantor for his own use or benefit, or in the case of a lease for the use or benefit of any person for whom the grantor was a trustee, the value of the consideration shall be allowed as a deduction from the value of the property for the purpose of estate duty.

27. Dispositions in favour of relatives.—(1) Any disposition made by the deceased in favour of a relative of his shall be treated for the purposes of section 9 as a gift unless—

(*a*) the disposition was made on the part of the deceased for full consideration in money or money's worth paid to him for his own use or benefit ; or

(*b*) the deceased was concerned in a fiduciary capacity imposed on him otherwise than by a disposition made by him and in such a capacity only ; and references to a gift in this Act shall be construed accordingly :

Provided that where the disposition was made on the part of the deceased for partial consideration in money or money's worth paid to him for his own use or benefit, the value of the consideration shall be allowed as a deduction from the value of the property for the purpose of estate duty.

(2) Where the deceased has made a disposition of property in favour of a relative of his, the creation or disposition in favour of the deceased of an annuity or other interest limited to cease on the death of the deceased or of any other person shall not be treated for the purposes of this section as consideration for the disposition made by the deceased.

(3) If a controlled company was concerned in a transaction in relation to which it is claimed that the provisions of clause (*a*) of or the proviso to sub-section (1) have effect, those provisions shall have effect in relation thereto if and only if, and to the extent only to which, the Controller is satisfied that those provisions would have had effect in the following circumstances, namely, if the assets of the company had been held by it on trust for the members thereof and any other person to whom it is under any liability incurred otherwise than for the purposes of the business of the company wholly and exclusively, in accordance with the rights attaching to the shares in and debentures of the company and the terms on which any such liability was incurred, and if the company had acted in the capacity of a trustee only with power to carry on the business of the company and to employ the assets of the company therein.

(4) Any gift made in favour of a relative of the deceased by a controlled company of which the deceased at the time of the gift had control within the meaning of section 17 shall be treated for the purposes of section 9 as a gift made by the deceased, and the property taken under the gift shall be treated as included by virtue of that section in the property passing on the death of the deceased, if and to the extent to which the Controller is satisfied that they would fall to be so treated in the circumstances mentioned in the last foregoing sub-section.

(5) If the deceased has made in favour of a controlled company a disposition which, if it had been made in favour of a relative of his, would have fallen within sub-section (2), this section shall have effect in like manner as if the disposition had been made in favour of a relative of his, unless it is shown to the satisfaction of the Controller that no relative of the deceased was, at the time of the disposition or subsequently during the life of the deceased, a member of the company.

Explanation.—For the purposes of this sub-section a person who is, or is deemed by virtue of this provision to be, a member of a controlled company which is a member of another such company shall be deemed to be a member of that other company.

(6) Where there have been associated operations effected with reference to the receiving by the deceased of any payment in respect of such an annuity

or other interest as is mentioned in sub-section (2), or effected with a view to enabling him to receive or to facilitating the receipt by him of any such payment, this section shall have effect in relation to each of those associated operations as it has effect in relation to the creation or disposition in favour of the deceased of such an annuity or other interest.

(7) In this section—

(*i*) "relative" means, in relation to the deceased,—

(*a*) the wife or husband of the deceased,

(*b*) the father, mother, children, uncles and aunts of the deceased, and

(*c*) any issue of any person falling within either of the preceding sub-clauses and the other party to a marriage with any such person or issue ;

(*ii*) reference to "children" and "issue" include reference to illegitimate children and to adopted children ;

(*iii*) "annuity" includes any series of payments, whether interconnected or not, whether of the same or of varying amounts, and whether payable at regular intervals or otherwise, and payments of dividends or interests on shares in or debentures of a company shall be treated for the purposes of this section as a series of payments constituting an annuity limited to cease on a death if the payments are liable to cease on the death, or the amounts thereof are liable to be reduced on the death, by reason directly or indirectly of the extinguishment or any alteration of rights attaching to, or of the issue of any shares in or debentures of a company ;

(*iv*) "associated operations" means any two or more operations of any kind being—

(*a*) operations which affect the same property, or one of which affects some property and the other or others of which affect property which represents, whether directly or indirectly, that property, or income arising from that property, or any property representing accumulations of any such income ; or

(*b*) any two operations of which one is effected with reference to the other, or with a view to enabling it to be effected or to facilitating its being effected, and any third operation having a like relation to either of those two, and any fourth operation having a like relation to any of those three, and so on ;

whether those operations are effected by the same person or by different persons, whether they are connected otherwise than as aforesaid or not, and whether they are contemporaneous or any of them precedes or follows any other.

28. Effect of new or increased rates of duty on certain prior sales and mortgages.—Where an interest in expectancy in any property has, whether before or after the commencement of this Act, been *bona fide* sold or mortgaged for full consideration in money or money's worth, and the rates of estate duty in force in the case of a person dying when the interest falls into possession are higher than the rates in force, if any, in the case of a person dying at the time of the sale or mortgage, then—

(*a*) no other duty on that property shall be payable by the purchaser or mortgagee when the interest falls into possession than the duty, if any, which would have been payable if the rates of estate duty applicable had been the rates in force, if any, in the case of a person dying at the time of the sale, or mortgage, and

(*b*) in the case of a mortgage, any higher duty payable by the mortgagor shall rank as a charge subsequent to that of the mortgagee.

29. Settled property in respect of which since the date of the settlement estate duty has been paid on the death of the deceased's spouse.—If estate duty has already been paid in respect of any settled property since the date of the settlement, on the death of one of the parties to a marriage, the estate duty shall not be payable in respect thereof on the death of the other party to the marriage, unless the latter was at the time of his death, or had been at any time during the continuance of the settlement, competent to dispose of such property, and, if on his death subsequent limitations under the settlement take effect in respect of such property, was *sui juris* at the time of his death, or had been *sui juris* at any time while so competent to dispose of the property.

30. Agreement for avoidance or relief of double taxation with respect to estate duty.—The Central Government may enter into an agreement with the Government of any reciprocating country for the avoidance or relief of double taxation with respect to estate duty leviable under this Act and under the corresponding law in force in the reciprocating country and may, by notification in the Official Gazette, make such provision as may be necessary for implementing the agreement.

Explanation.—The expression " reciprocating country " for the purposes of this Act means any country which the Central Government may, by notification in the Official Gazette, declare to be a reciprocating country.

31. Allowance for quick succession to property.—Where the Board is satisfied that estate duty has become payable on any property passing upon the death of any person, and that subsequently within five years estate duty has again become payable on the same property or any part thereof passing on the death of the person to whom the property passed on the first death, the amount of estate duty payable on the second death in respect of the property so passing shall be reduced as follows :—

Where the second death occurs within one year of the first death, by fifty per cent ;

Where the second death occurs within two years of the first death, by forty per cent ;

Where the second death occurs within three years of the first death, by thirty per cent ;

Where the second death occurs within four years of the first death, by twenty per cent ;

Where the second death occurs within five years of the first death, by ten per cent :

Provided that where the value on which the duty is payable of the property on the second death exceeds the value on which the duty was payable of the property on the first death, the latter value shall be substituted for the former for the purpose of calculating the amount of duty on which the reduction under this section is to be calculated.

Explanation 1.—For the purposes of this section every death shall be deemed to be a second death in relation to the death immediately preceding.

Explanation 2.—In computing any period for the purposes of this section, deaths occurring within a period of three months after the death of any person in respect of whose property estate duty has become payable, shall be treated

as one death, and no estate duty shall again be payable on the same property by reason of the subsequent deaths occurring within the said period of three months.

32. Exemption of interest of a Hindu widow devolving upon reversioners in certain cases.—Where on the death of any person governed by any school of Hindu law, his interest in any property has devolved on his widow, then, if the widow dies within seven years of her husband's death and the interest aforesaid devolves upon the reversioners or any of them, no estate duty shall be leviable in respect of the passing of the interest aforesaid on the death of the widow, if and in so far as estate duty had been paid in respect of the passing of such interest on the death of her husband.

33. Exemptions.—(1) To the extent specified against each of the clauses in this sub-section, no estate duty shall be payable in respect of property of any of the following kinds belonging to the deceased which passes on his death—

(*a*) property taken under a gift made by the deceased for a public charitable purpose within a period of six months before his death, to the extent of rupees two thousand and five hundred in value ;

(*b*) property taken under a gift made by the deceased for any other purpose within a period of two years before his death, to the extent of rupees one thousand and five hundred in value ;

(*c*) household goods, including tools of artisans, agricultural implements or any other tools or implements as were necessary to the deceased to enable him to earn his livelihood, to the extent of rupees two thousand and five hundred in value ;

(*d*) books not intended for sale ;

(*e*) wearing apparel, but not including any precious or semi-precious stones or ornaments worked or sewn into the wearing apparel ;

(*f*) moneys payable under one or more policies of insurance effected by the deceased on his life for the purpose of paying estate duty or assigned to the Government for the said purpose, to the extent of the amount of duty payable but not exceeding rupees fifty thousand ;

(*g*) moneys deposited with the Government in such manner as may be prescribed for the purpose of paying estate duty, together with the interest which has accrued due thereon at such rate as may be prescribed, to the extent of the amount of duty payable but not exceeding rupees fifty thousand ;

(*h*) moneys payable under one or more policies of insurance effected by the deceased on his life, to the extent of rupees five thousand ;

(*i*) drawings, paintings, prints, manuscripts, works of art or archaeological or scientific collections which are of national, scientific or historical interest and which are retained in the family of the deceased and dealt with or disposed of in accordance with such conditions as the Board may prescribe, or which are given absolutely or bequeathed to Government or to any University or other public institution ;

(*j*) drawings, paintings, photographs, prints, manuscripts and and other heir-loom, not falling within clause (*i*), which are retainey in the family of the deceased and are dealt with or disposed of

in accordance with such conditions as the Board may prescribe and are not intended for sale ;

(*k*) moneys earmarked under policies of insurance or declarations of trust or settlements effected or made by a deceased parent or natural guardian for the marriage of any of his female relatives dependent upon him for the necessaries of life, to the extent of rupees five thousand in respect of the marriage of each of such relatives.

(2) If the Central Government is of opinion that in respect of any class of property or class of persons the circumstances are such that some relief in addition to the reliefs provided in sub-section (1) should be given, it may, by notification in the Official Gazette, make any exemption, reduction in rate or other modification in respect of estate duty in favour of any such class of property or the whole or any part of the property of any class of persons, and any notification so issued shall be laid before both Houses of Parliament as soon as may be after it is issued.

PART IV.—AGGREGATION OF PROPERTY AND RATES OF DUTY

34. Aggregation.—(1) For determining the rate of estate duty to be paid on any property passing on the death of the deceased, all property so passing, excluding—

property exempted from duty under clauses (*c*), (*d*), (*e*), (*i*) and (*j*) of sub-section (1) of section 33,

but including—

(*i*) property on which no estate duty is leviable under section 35,

(*ii*) property exempted from duty under clauses (*a*), (*b*), (*f*), (*g*), (*h*) and (*k*) of section 33, and

(*iii*) agricultural land situate in any State not specified in the First Schedule,

shall be aggregated so as to form one estate and the duty shall be levied at the rate or rates applicable in respect of the principal value thereof :

Provided that any property so passing, in which the deceased never had an interest, not being a debt or right or benefit that is treated as property by virtue of the *Explanations* to clause (15) of section 2, shall not be aggregated with any other property, but shall be an estate by itself and the estate duty shall be leviable at the rate or rates applicable in respect of the principal value thereof.

(2) Every estate shall include all income accrued upon the property included therein down to and outstanding at the date of the death of the deceased.

(3) Property passing on any death shall not be aggregated more than once nor shall estate duty in respect thereof be levied more than once on the same death.

(4) Where an estate includes any property which is exempt from estate duty, the estate duty leviable on the property which is not so exempt shall be an amount bearing to the total amount of duty which would have been payable on the whole estate had no part of it been exempted the same proportion as the unexempted value of the property bears to the value of the whole estate.

Explanation.—For the purposes of this sub-section property which is exempt from estate duty means any property which is exempt from estate

duty under section 33 and also any agricultural land situate in any State not specified in the First Schedule.

35. Rates of estate duty on property including agricultural land.—(1) The rates of estate duty shall be as mentioned in the Second Schedule :

Provided that no such duty shall be levied upon—

(*a*) property which consists of an interest in the joint family property of a Hindu family governed by the Mitaskhara, Marumakkattayam or Aliyasantana law, to the extent to which the principal value of the estate does not exceed rupees fifty thousand ;

(*b*) property of any other kind, to the extent to which the principal value of the estate does not exceed rupees one lakh.

(2) Where an estate passing on the death of a person consists partly of property of the nature described in clause (*a*) of the proviso to sub-section (1) and partly of the nature described in clause (*b*) of the said proviso, the estate duty payable thereon shall be—

(*i*) the amount which bears to the total amount of estate duty which would have been payable on the estate had it wholly consisted of property of the nature described in clause (*a*) the same proportion as the value of such property bears to the value of the estate, *plus*

(*ii*) the amount which bears to the total amount of estate duty which would have been payable on the estate had it wholly consisted of property of the nature described in clause (*b*) the same proportion as the value of such property bears to the value of the estate.

(3) Notwithstanding anything contained in sub-section (1) and the Second Schedule, where any property passing on the death of any person consists wholly or in part of agricultural land and the principal value of the estate does not exceed rupees two lakhs, there shall be allowed by way of rebate—

(*a*) in the case of an estate which consists wholly of agricultural land, a sum representing one-fourth of the estate duty payable ; and

(*b*) in the case of an estate which consists in part only of agricultural land, a sum representing one-fourth of the estate duty payable on that part of the estate which consists of agricultural land, the duty on such part being a sum which bears to the total amount of estate duty the same proportion as the value of the agricultural land bears to the value of the estate.

PART V.—VALUE CHARGEABLE

36. Principal value how to be estimated.—(1) The principal value of any property shall be estimated to be the price which, in the opinion of the Controller it would fetch if sold in the open market at the time of the deceased's death.

(2) In estimating the principal value under this section the Controller shall fix the price of the property according to the market price at the time of the deceased's death and shall not make any reduction in the estimate on account of the estimate being made on the assumption that the whole property is to be placed on the market at one and the same time :

Provided that where it is proved to the satisfaction of the Controller that the value of the property has depreciated by reason of the death of the deceased, the depreciation shall be taken into account in fixing the price.

37. Valuation of shares in a private company where alienation is restricted.—Where the articles of association of a private company contain restrictive provisions as to the alienation of shares, the value of the shares, if not ascertainable by reference to the value of the total assets of the company, shall be estimated to be what they would fetch if they could be sold in the open market on the terms of the purchaser being entitled to be registered as holder subject to the articles, but the fact that a special buyer would for his own special reasons give a higher price than the price in the open market shall be disregarded.

38. Valuation of interests in expectancy.—Where an estate includes an interest in expectancy, estate duty in respect of that interest shall be paid, at the option of the person accountable for the duty, either with the duty in respect of the rest of the estate or when the interest falls into possession, and if the duty is not paid with the estate duty in respect of the rest of the estate, then—

(*a*) for the purpose of determining the rate of estate duty in respect of the rest of the estate, the value of the interest shall be its value at the date of the death of the deceased ; and

(*b*) the rate of estate duty in respect of the interest when it falls into possession shall be calculated according to its value when it falls into possession, together with the value of the rest of the estate as previously ascertained.

39. Valuation of interest in coparcenary property ceasing on death.—(1) The value of the benefit accruing or arising from the cesser of a coparcenary interest in any joint family property governed by the Mitakshara school of Hindu law which ceases on the death of a member thereof shall be the principal value of the share in the joint family property which would have been allotted to the deceased had there been a partition immediately before his death.

(2) The value of the benefit accruing or arising from the cesser of an interest in the property of a *tarwad* or *tavazhi* governed by the Marumakkattayam rule of inheritance or of a *kutumba* or *kavaru* governed by the Aliyasantana rule of inheritance which ceases on the death of a member thereof shall be the principal value of the share in the property of the *tarwad* or *tavazhi* or, as the case may be, the *kutumba* or *kavaru* which would have been allotted to the deceased had a partition taken place immediately before his death.

(3) For the purpose of estimating the principal value of the joint family property of a Hindu family governed by the Mitakshara, Marumakkattayam or Aliyasantana law in order to arrive at the share which would have been allotted to the deceased had a partition taken place immediately before his death, the provisions of this Act, so far as may be, shall apply as they would have applied if the whole of the joint family property had belonged to the deceased.

40. Valuation of benefits from interests ceasing on death.—The value of the benefit accruing or arising from the cesser of an interest ceasing on the death of the deceased shall—

(*a*) if the interest extended to the whole income of the property, be the principal value of that property ; and

(*b*) if the interest extended to less than the whole income of the property, be the principal value of an addition to the property equal to the income to which the interest extended.

41. Valuation to be made by the Controller.—Subject to the provisions of this Act, the value of any property for the purpose of estate duty shall be ascertained by the Controller in such manner and by such means as may be prescribed and if he authorises a person to inspect any property and to report the value thereof for the purposes of this Act, that person may enter upon the property and inspect it at such reasonable times as may be prescribed.

42. Costs of valuation.—Where the Controller requires any person to report on the value of any property for the purposes of this Act, the reasonable costs of such valuation shall be defrayed by the Controller.

43. Controller may accept and certify valuation when convenient.—The Controller on application from a person accountable for the duty on any property forming part of an estate shall, where he considers that it can conveniently be done, certify the amount of the valuation accepted by him for any class or description of property forming part of such estate.

PART VI.—DEDUCTIONS

44. Reasonable funeral expenses and, with some exceptions, debts and incumbrances to be allowed for in determining chargeable value of estate.—In determining the value of an estate for the purpose of estate duty, allowance shall be made for funeral expenses (not exceeding rupees one thousand) and for debts and incumbrances : but an allowance shall not be made—

(*a*) for debts incurred by the deceased, or incumbrances created by a disposition made by the deceased, unless, subject to the provisions of section 27, such debts or incumbrances were incurred or created *bona fide* for full consideration in money or money's worth wholly for the deceased's own use and benefit and take effect out of his interest, or

(*b*) for any debt in respect whereof there is right to reimbursement from any other estate or person, unless such reimbursement cannot be obtained, or

(*c*) more than once for the same debt or incumbrance charged upon different portions of the estate, or

(*d*) for debts incurred by or on behalf of the deceased by way of dower, to the extent to which such debts are in excess of rupees five thousand,

and any debt or incumbrance for which an allowance is made shall be deducted from the value of the property liable thereto.

Explanation.—For the purposes of this section, " funeral expenses " include all expenses which may have to be incurred in connection with the *sraddha* or *barsi* ceremonies of the deceased for a period of one year from his death.

45. Limitations on debts deductible.—Where a debt or incumbrance has been incurred or created in whole or in part for the purpose of or in consideration for the purchase or acquisition or extinction, whether by operation of law or otherwise of any interest in expectancy in any property passing or deemed to pass on the death of the deceased and any person whose interest in expectancy is so purchased, acquired, or extinguished becomes (under any disposition made by or through devolution of law from, or under the

intestacy of, the deceased) entitled to any interest in that property, then in determining the value of the estate of the deceased for the purpose of estate duty no allowance shall be made in respect of such debt or incumbrance, and any property charged with any such debt or incumbrance shall be deemed to pass freed from that debt or incumbrance :

Provided that—

(*a*) if part only of such debt or incumbrance was incurred or created for such purpose or as such consideration as aforesaid, this provision shall apply to that part of such debt or incumbrance only : and

(*b*) if a person whose interest in expectancy in the property so purchased, acquired or extinguished becomes entitled to an interest in part only of that property, this provision shall apply only to such part of the debt or incumbrance as bears the same proportion to the whole debt or incumbrance as the value of the part of the property to an interest in which he becomes entitled bears to the value of the whole of that property.

46. Further limitations.—(1) Any allowance which, but for this provision, would be made under section 44 for a debt incurred by the deceased as mentioned in clause (*a*) of that section, or for an incumbrance created by a disposition made by the deceased as therein mentioned, shall be subject to abatement to an extent proportionate to the value of any of the consideration given therefor which consisted of—

(*a*) property derived from the deceased ; or

(*b*) consideration not being such property as aforesaid, but given by any person who was at any time entitled to, or amongst whose resources there was at any time included, any property derived from the deceased :

Provided that if, where the whole or a part of the consideration given consisted of such consideration as is mentioned in clause (*b*) of this sub-section, it is proved to the satisfaction of the Controller that the value of the consideration given, or of that part thereof, as the case may be, exceeded that which could have been rendered available by application of all the property derived from the deceased, other than such (if any) of that property as is included in the consideration given or as to which the like facts are proved in relation to the giving of the consideration as are mentioned in the proviso to sub-section (1) of section 16 in relation to the purchase or provision of an annuity or other interest, no abatement shall be made in respect of the excess.

(2) Money or money's worth paid or applied by the deceased in or towards satisfaction or discharge of a debt or incumbrance in the case of which sub-section (1) would have had effect on his death if the debt or incumbrance had not been satisfied or discharged, or in reduction of a debt or incumbrance in the case of which that sub-section has effect on his death, shall, unless so paid or applied two years before the death, be treated as property deemed to be included in the property passing on the death and estate duty shall, notwithstanding anything in section 25, be payable in respect thereof accordingly.

(3) The provisions of sub-section (2) of section 16 shall have effect for the purpose of this section as they have effect for the purpose of that section.

47. Debts to persons resident in foreign country not to be deducted in first instance except from duty-paid property in that country.—An allowance shall not be made in the first instance for debts due from the

deceased to persons resident out of the territories to which this Act extends (unless contracted to be paid in the said territories or charged on properties situate within the said territories), except out of the value of any property of the deceased situate out of the said territories in respect of which estate duty is paid ; and there shall be no repayment of estate duty in respect of any such debts, except to the extent to which it is shown to the satisfaction of the Controller that the property of the deceased situate in the foreign country in which the person to whom such debts are due resides is insufficient for their payment.

48. Cost of realising or administering foreign property may be allowed for within certain limits.—Where the Controller is satisfied that any additional expense in administering or in realising property has been incurred by reason of the property being situate out of the territories to which this Act extends, he may make an allowance from the value of the property on account of such expense not exceeding in any case five per cent. on the value of the property.

49. Allowance for duty paid in a non-reciprocating country.—Where any property passing on the death of the deceased is situate in a non-reciprocating country and the Controller is satisfied that by reason of such death any duty is payable in that country in respect of that property, he may, subject to such rules as may be made by the Board in this behalf, make an allowance of the whole or any part of the amount of that duty from the value of the property.

Explanation.—In this section, the expression " non-reciprocating country " means any country other than India which has not been declared to be a reciprocating country for the purposes of this Act.

50. Relief from estate duty where court-fees have been paid for obtaining representation to estate of deceased.—Where any fees have been paid under any law relating to court-fees in force in any State other than the State of Jammu and Kashmir for obtaining probate, letters of administration or a succession certificate in respect of any property on which estate duty is leviable under this Act, the amount of the estate duty payable shall be reduced by an amount which is equal to the court-fees so paid.

PART VII.—COLLECTION OF THE DUTY

51. Method of collection of duty.—Estate duty may be collected by such means and in such manner as the Board may prescribe.

52. Payment of duty may be accepted in prescribed Government securities.—The Board may prescribe that Government securities shall be accepted in payment of estate duty on such terms as it thinks fit.

53. Persons accountable, and their duties and liabilities.—(1) Where any property passes on the death of the deceased—

(*a*) every legal representative to whom such property so passes for any beneficial interest in possession or in whom any interest in the property so passing is at any time vested,

(*b*) every trustee, guardian, committee or other person in whom any interest in the property so passing or the management thereof is at any time vested, and

(*c*) every person in whom any interest in the property so passing is vested in possession by alienation or other derivative title,

shall be accountable for the whole of the estate duty on the property passing on the death but shall not be liable for any duty in excess of the assets of the

deceased which he actually received or which, but for his own neglect or default, he might have received :

Provided that nothing in this section shall render a person accountable for duty who acts merely as agent or bailiff for another person in the management of property.

(2) Notwithstanding anything contained in sub-section (1), where an heir-at-law proves to the satisfaction of the Controller that some other person is in adverse possession of any assets of the deceased, the heir-at-law shall not be accountable for the portion of the estate duty payable in respect of such assets :

Provided that he shall become so accountable if, and to the extent that, he subsequently recovers possession of such assets

(3) Every person accountable for estate duty under the provisions of this section shall, within six months of the death of the deceased or such later time as the Controller may allow, deliver to the Controller and verify to the best of his knowledge and belief, an account of all the property in respect of which estate duty is payable.

(4) Where the person accountable knows of any property which he has not included in his account because he does not know its amount or value, he may state that such property exists, but he does not know the amount or value thereof and that he undertakes, as soon as the amount and value are ascertained to bring a supplementary account thereof and to pay both the duty for which he may be liable in respect of such property and any further duty payable by reason thereof for which he may be liable in respect of the property mentioned in the original account.

(5) Where two or more persons are accountable, whether in the same capacity or in different capacities, for estate duty in respect of any property passing on the death of the deceased, they shall be liable jointly and severally for the whole of the estate duty on the property so passing.

54. Persons accountable may include trustees in certain cases.— (1) Where an interest limited to cease on a death within the meaning of section 11 after becoming an interest in possession is disposed of or determines wholly or partly, then, whatever the nature of the property in which the interest subsisted, the following persons shall be accountable or any estate duty payable on the death by virtue of that section (in addition to any persons accountable therefor apart from this section), that is to say—

(*a*) if the settlement under which the interest subsisted is in existence at the death, the trustees for the time being of that settlement ; and

(*b*) if it is not, the persons who were the last trustees of that settlement.

(2) Where—

(*a*) the trustees of a settlement may become accountable for estate duty payable by virtue of section 11 in respect of any property ; and

(*b*) it is intended that the property or any part thereof shall cease to be comprised in the settlement ;

then if the trustees obtain from the Controller a certificate of the amount which in the opinion of the Controller may properly be treated as the prospective amount of the duty, and give the Controller all the information and evidence required by the Controller in connection with the application for

the certificate, no person shall be accountable as trustee of the settlement for the duty to which the certificate relates to an amount in excess of the amount certified.

(3) It is hereby declared that a person who may become accountable as trustee of a settlement for estate duty payable by virtue of section 11 on property which is or has been comprised in the settlement has a lien for the prospective amount of the duty and the costs in respect thereof on any property in his hands which is so comprised.

Explanation.—References in this section to the prospective amount of any duty are to be taken as referring to the prospective amount of the duty on the assumption that it will become chargeable.

55. Every person believed to be in possession to deliver statement of particulars of property as required by Controller.—Every person accountable for estate duty, every company to which, in the opinion of the Controller, a transfer of property has been made by the deceased as mentioned in section 17, every person who is or was at any time an officer or auditor of such a company, and every person whom the Controller believes to have taken possession of or administered any part of the estate in respect of which duty is leviable on the death of the deceased, or of the income of any part of such estate shall, if required by the Controller, deliver to him and verify, to the best of his knowledge and belief, a statement of such particulars together with such accounts, documents, evidence or information as the Controller may require relating to any property which he has reason to believe to form part of an estate in respect of which estate duty is leviable on the death of the deceased.

56. Penalty for default.—Any person who without reasonable cause has failed to comply with the provisions of section 53 or section 55 or has failed to comply with the said provisions within the time allowed, shall be liable to pay a penalty of one thousand rupees or a sum equal to double the amount of estate duty, if any, remaining unpaid for which he is accountable, according as the Controller may direct :

Provided that the Controller may reduce the penalty in any particular case.

57. Executor to specify all chargeable property with affidavit of valuation.—In all cases in which a grant of representation is applied for within six months of the death of the deceased—

(*a*) the executor of the deceased shall, to the best of his knowledge and belief, specify in an appropriate account annexed to the affidavit of valuation filed in court under section 19-I of the Court-fees Act, 1870 (VII of 1870), all the property in respect of which estate duty is payable upon the death of the deceased and shall deliver a copy of the affidavit with the account to the Controller, and

(*b*) no order entitling the applicant to the grant of representation shall be made upon his application until he has delivered the account prescribed in clause (*a*) and has produced a certificate from the Controller under section 60 or section 67 that the estate duty payable in respect of the property included in the account has been or will be paid, or that none is due, as the case may be.

58. Estate duty when due and how and when to be collected.—(1) Estate duty shall be due from the date of the death of the deceased and shall be collected upon the account delivered under section 53 or clause (*a*) of section 57 or the account prepared under sub-section (2) of section 61.

(2) When any estate duty, penalty, interest or any other sum chargeable under this Act has been determined in consequence of any order passed under or in pursuance of this Act, the Controller shall serve on the person accountable a notice of demand in the prescribed form specifying the sum so payable and the time within which and the place at which it is payable.

59. Limitation for commencing proceedings for levy of estate duty.—No proceeding for the levy of any estate duty under this Act shall be commenced after the expiration of twelve years from the date of death of the deceased in respect of whose property estate duty became leviable.

60. Duty to be paid or security for payment furnished on delivery of account and certificate to be granted thereupon.—Upon delivery of the account under section 53 or clause (*a*) of section 57, the person delivering it shall pay to the Controller, or furnish security to the satisfaction of the Controller for the payment of, the estate duty, if any, payable in respect of the property included in the account, and the Controller shall thereupon grant him a certificate that such duty has been or will be paid, or that none is due, as the case may be.

61. Controller's powers in respect of valuations.—(1) If the Controller is of opinion that the person delivering the account has under-estimated the value of the property in respect of which estate duty is payable (whether by placing too low a value on the property included in the account or by omitting to include therein property that ought to have been included), the Controller may inquire into the matter in such manner and by such means as he thinks fit and, if still of opinion that the value of the property has been under-estimated, may require him to amend the valuation, and if that person does not amend the valuation to the satisfaction of the Controller, the Controller may determine the valuation on the basis of which estate duty is payable after giving the person accountable an opportunity of being heard.

(2) In any case where no account has been delivered as required by section 53 or clause (*a*) of section 57, the Controller may cause an account of the property passing on the death of the deceased to be prepared in such manner and by such means as he thinks fit and may call upon any person who in his opinion is accountable for the payment of estate duty in respect of the property to accept such account, and if that person does not accept the account or his liability, the Controller may determine the estate duty payable by that person.

62. Rectification of mistakes relating to valuation for estate duty.—(1) If, after the determination of the estate duty payable in respect of any estate, it appears to the Controller that, by reason of any mistake apparent from the record or of any mistake in the valuation of any property in any case other than a case in which the valuation has been the subject matter of an appeal under this Act or of the omission of any property, the estate duty paid thereon is either in excess of or less than the actual duty payable, he may, either on his own motion or on the application of the person accountable and after obtaining the previous approval of the Board, at any time within three years from the date on which the estate duty was first determined—

(*a*) refund the excess duty paid, or, as the case may be,

(*b*) determine the additional duty payable on the property :

Provided that where the person accountable had fraudulently under-estimated the value of any property or omitted any property, the period shall be six years :

Provided further that no order shall be made under this sub-section unless the person accountable has been given an opportunity of being heard.

(2) Nothing contained in sub-section (1) shall render any person accountable to whom a certificate that the estate duty has been paid is granted liable for any additional duty in excess of the assets of the deceased which are still in his possession, unless the person accountable had fraudulently attempted to evade any part of the estate duty in the first instance.

63. Appeal against determination by Controller.—(1) Any person—

(*a*) objecting—

(*i*) to any valuation made by the Controller, or

(*ii*) to any order made by the Controller determining the estate duty payable, or

(*iii*) to any penalty levied by the Controller under section 56, or

(*iv*) to any final order or adjudication having the effect of imposing a liability or an obligation to pay estate duty in respect of any property, or

(*b*) denying his liability to account for the estate duty payable in respect of any property, or

(*c*) objecting to any order made by the Controller refusing to grant a certificate of discharge or any other certificate under this Act,

may, within ninety days of the date of the receipt of the notice of demand under section 58 in the cases specified in clauses (*a*) and (*b*), and within ninety days of the date of the order in the cases specified in clause (*c*), appeal to the Board in the prescribed form which shall be verified in the prescribed manner.

(2) The Board may admit an appeal after the expiry of ninety days referred to in sub-section (1) if it is satisfied that there was sufficient cause for not presenting it within that period.

(3) The Board may, in disposing of any appeal, hold or cause to be held such further inquiry as it thinks fit, and after giving the appellant an opportunity of being heard, pass, subject to the provisions of sub-section (4) such orders thereon as it thinks fit and shall send a copy of such orders to the appellant and the Controller.

(4) Where the dispute pertains to any valuation of property, the Board may, and if the appellant so requires, it shall, refer the question of disputed value to the arbitration of two valuers, one of whom shall be nominated by the Board and the other by the appellant, and the costs of any such arbitration shall be borne by the Board or the appellant, as the case may be, at whose instance the matter was referred to the valuers :

Provided that where the appellant has been wholly or partially successful in any reference made at his instance, the extent to which costs should be borne by the appellant shall be at the discretion of the Board :

Provided further that if there is a difference of opinion between the two valuers, the matter shall be referred to a third valuer nominated by agreement, or failing agreement by the Central Government, and his decision on the question of valuation shall be final.

(5) The valuers may, in disposing of any matter referred to them for arbitration under sub-section (4), hold or cause to be held such inquiry as they think fit, and, after giving the appellant and the Controller an oppor-

tunity of being heard, pass such orders thereon as they think fit and shall send a copy of such order to the appellant and to the Board.

(6) Notwithstanding that an appeal has been filed before the Board, so much of the estate duty as is not in dispute shall be payable by the appellant.

64. Statement of case by the Board to High Court.—(1) Within ninety days of the date upon which he is served with an order under sub-section (3) of section 63, the person accountable may present an application to the Board in the prescribed form, accompanied by a fee of one hundred rupees, requiring the Board to refer to the High Court any question of law arising out of such order, and the Board shall, if in its opinion a question of law arises out of such order, state the case for the opinion of the High Court :

Provided that the Board may admit such an application after the expiry of ninety days if it is satisfied that there was sufficient cause for not presenting it within the said period.

(2) If, on an application made under sub-section (1), the Board—

(*a*) refuses to state a case on the ground that no question of law arises, or

(*b*) rejects it on the ground that it is time-barred, the person accountable may, within three months from the date on which he is served with a notice of refusal or rejection, as the case may be, apply to the High Court, and the High Court may, if it is not satisfied with the correctness of the decision of the Board, require the Board to state the case to the High Court and on receipt of such requisition the Board shall state the case :

Provided that if, in any case where it has been required by a person accountable to state a case, the Board refuses to do so on the ground that no question of law arises, such person may within thirty days from the date on which he receives notice of the refusal to state the case, withdraw his application and if he does so the fee paid by him under sub-section (1) shall be refunded.

(3) Section 5 of the Indian Limitation Act, 1908 (IX of 1908) shall apply to an application to the High Court under sub-section (2).

(4) If, on an application made under sub-section (1), the Board is of opinion that either on account of the importance of any question of law involved in the case or on account of a conflict in the decisions of different High Courts in respect of any particular question of law arising therefrom, it is expedient that a case should be stated direct to the Supreme Court, the Board may state the case direct to the Supreme Court.

(5) The case shall set forth the facts, the determination of the Board and the questions of law which arise out of the case.

(6) If the High Court or the Supreme Court is not satisfied that the case as stated is sufficient to enable it to determine the questions of law raised thereby, the Court may require the Board to make such additions thereto, or alterations therein, as it may direct in this behalf.

(7) The High Court or the Supreme Court upon hearing any such case shall decide the question of law raised therein and in doing so may, if it thinks fit, alter the form of the question of law and shall deliver its judgment thereon containing the ground on which such decision is founded and shall send a copy of such judgment, under the seal of the Court and the signature of the Registrar, to the Board which shall pass such orders as are necessary to dispose of the case conformably to such judgment.

(8) The costs of any reference to the High Court or to the Supreme Court shall be in the discretion of the Court :

Provided that in case the case is referred to the Supreme Court under sub-section (4) of this section the party shall pay, if required to do so, the cost only as if reference has been made to a High Court and not the Supreme Court.

(9) Notwithstanding that a reference has been made under this section to the High Court or to the Supreme Court, estate duty shall be payable in accordance with the determination made by the Board.

(10) For the purposes of this section " High Court " means the High Court to which, or to a court subordinate to which, an application for grant of representation has been made, or where no such application has been made, the High Court which would have jurisdiction to entertain such an application :

Provided that in the case of Part C States, " High Court " means—

(*a*) in relation to Ajmer and Vindhya Pradesh, the High Court at Allahabad,

(*b*) in relation to Bhopal, the High Court at Nagpur,

(*c*) in relation to Bilaspur, Delhi and Himachal Pradesh, the High Court of Punjab,

(*d*) in relation to Coorg, the High Court of Mysore,

(*e*) in relation to Kutch, the High Court at Bombay,

(*f*) in relation to Manipur and Tripura, the High Court of Assam, and

(*g*) in relation to the Andaman and Nicobar Islands, the High Court at Calcutta.

65. Case to be heard by Benches of High Courts and appeal to lie in certain cases to the Supreme Court.—(1) When a case has been stated to the High Court under section 64, it shall be heard by a Bench of not less than two Judges of the High Court, and shall be decided in accordance with the opinion of such Judges or of the majority (if any) of such Judges :

Provided that where there is no such majority, the Judges shall state the point of law upon which they differ, and the case shall then be heard upon that point only by one or more of the other Judges of the High Court, and such point shall be decided according to the opinion of the majority of the Judges who have heard the case, including those who first heard it.

(2) An appeal shall lie to the Supreme Court from any judgment of the High Court delivered on a case stated under section 64 in any case which the High Court certifies to be a fit one for appeal to the Supreme Court.

(3) The provisions of the Code of Civil Procedure, 1908 (Act V of 1908), relating to appeals to the Supreme Court shall, so far as may be, apply in the case of appeals under this section in like manner as they apply in the case of appeals from decrees of a High Court :

Provided that nothing in this sub-section shall be deemed to affect the provisions of sub-section (7) of section 64 :

Provided further that the High Court may, on petition made for the execution of the order of the Supreme Court in respect of any costs awarded thereby, transmit the order for execution to any court subordinate to the High Court.

(4) Where the judgment of the High Court is varied or reversed in appeal under this section, effect shall be given to the order of the Supreme Court in the manner provided in sub-section (7) of section 64.

66. Grant of representation not to be delayed on reference to High Court.—Where any grant of representation has been applied for, it shall not be delayed by reason of any reference to a High Court under section 64.

67. Certificate of payment of duty, and penalty for non-payment.—(1) Where the valuation is amended by the person accountable upon the Controller's requisition under sub-section (1) of section 61 or is enhanced by the Court upon the Board's reference under section 64, and in any case where the original valuation has been discovered to be too low, such person shall, within two months of the amendment or enhancement or discovery, pay the deficit duty which is payable in respect of the property upon the amended or enhanced or full valuation and the Controller shall thereupon grant him a certificate accordingly.

(2) Where the valuation is reduced by the Court on the Board's reference under section 64, the Controller shall refund to the person accountable any excess duty paid by him within two months from the date of receipt by him of the order and shall grant to him a certificate that the full duty payable in respect of the property has been paid.

(3) In any case where no account has been delivered as required by section 53 or clause (*a*) of section 57 the person who is called upon to accept the account prepared by the Controller under sub-section (2) of section 61 shall, within two months of his acceptance or, as the case may be, of the final disposal of the reference made under sub-section (1) of section 64, pay the full duty payable in respect of the property and the Controller shall thereupon grant him a certificate accordingly.

(4) If the person accountable does not pay the amount of duty due from him under sub-section (1) or sub-section (3) within the period specified therein, he shall be liable to a penalty of one thousand rupees or a sum equal to twice the amount due according as the Controller may elect :

Provided that the Controller may in any particular case reduce the penalty.

(5) Where a person accountable for the estate duty in respect of any property passing on a death applies to the Controller at any time and delivers and verifies a full statement to the best of his knowledge and belief of all property passing on such death and the several persons entitled thereto, the Controller may determine the estate duty payable in respect of the property and on payment of that duty, the Controller shall give him a certificate accordingly.

68. Commutation of duty in respect of interest in expectancy.—The Controller in his discretion may, upon application by a person entitled to an interest in expectancy, commute the estate duty which would or might, but for the commutation, become payable in respect of such interest for a certain sum to be presently paid, and, for determining that sum, shall cause a present value to be set upon such duty, regard being had to the contingencies affecting the liability to and rate and amount of such duty, and interest being reckoned at three per cent. ; and on the receipt of such sum the Controller shall give a certificate accordingly.

69. Assessment in complicated cases.—Where by reason of the number of deaths upon which property has passed or of the complicated nature of the interests of different persons in property which has passed on death, or from any other cause, it is difficult to ascertain exactly the amount of estate duty payable in respect of any property or any interest therein or

so to ascertain the same without undue expense in proportion to the value of the property or interest, the Board, on the application of any person accountable for the duty and upon his giving to the Board all the information in his power respecting the amount of the property and the several interests therein and other circumstances of the case, may by way of composition for all or any of the duties payable in respect of the property or interest and the various interests therein or any of them, assess such sum on the value of the property or interest, as having regard to the circumstances appears proper, and may accept payment of the sum so assessed in full payment of all claims for estate duty in respect of such property or interest, and shall give a certificate accordingly.

70. Controller may allow postponement of payment on terms.—(1) Where the Controller is satisfied that the estate duty leviable in respect of any property cannot, without excessive sacrifice, be raised at once, he may allow payment to be postponed for such period, to such extent, and on payment of such interest not exceeding four per cent. per annum or any higher interest yielded by the property, and on such other terms as he may think fit.

(2) Notwithstanding anything contained in sub-section (1), estate duty in respect of immovable property may at the option of the person accountable be paid in eight equal yearly instalments, or sixteen equal half-yearly instalments with interest at the rate of four per cent. per annum or any higher interest yielded by the property from the date on which the first instalment is payable and the interest on the unpaid portion of the duty shall be added to each instalment and paid accordingly ; but the duty for the time being unpaid with such interest to the date of payment may be paid at any time and in case where the property is sold shall be paid on the completion of the sale and if not so paid shall be recovered in the manner specified in section 73.

71. Board may remit duty and interest outstanding after twenty years from death.—If after the expiration of twenty years from a death upon which estate duty became leviable any such duty remains unpaid, the Board may, if it thinks fit, on the application of any person accountable or liable for such duty or interested in the property, remit the payment of such duty or any part thereof or any interest thereon.

72. Forms.—All affidavits, accounts, certificates, statements and forms used for the purposes of this Part of this Act shall be in such form and contain such particulars as may be prescribed by the Board and, if so required by the Board, shall be in duplicate and accounts and statements shall be delivered and verified on oath and by production of books and documents in the manner prescribed by the Board and any person who wilfully fails to comply with the provisions of this section shall be liable to the penalty mentioned in section 56.

73. Recovery of duty and penalties.—Any estate duty or deficit duty and any interest or penalty payable under this Act may, on the certificate of the Controller, be recovered from the person liable thereto as if it were an arrear of land revenue by any Collector in any State.

PART VIII.—CHARGE OF ESTATE DUTY ON PROPERTY AND FACILITIES FOR RAISING IT

74. Estate duty a first charge on property liable thereto.—(1) Subject to the provisions of section 19, the estate duty payable in respect of property, movable or immovable, passing on the death of the deceased, shall be a first charge on the immovable property so passing (including agricultural land) in whomsoever it may vest on his death after the debts and incumbrances

allowable under Part VI of this Act ; and any private transfer or delivery of such property shall be void against any claim in respect of such estate duty.

(2) A rateable part of the estate duty on an estate, in proportion to the value of any beneficial interest in possession in movable property which passes to any person (other than the legal representative of the deceased) on the death of the deceased shall be a first charge on such interest :

Provided that the property shall not be so chargeable as against a *bona fide* purchaser thereof for valuable consideration without notice.

(3) The Controller may release the whole or any part of any property, whether movable or immovable, from charge under this section in such circumstances and on such conditions as he thinks fit.

75. Discharge from estate duty in certain cases.—A certificate granted by the Controller under section 67, or by the Board under section 69, shall discharge the property included therein and the grantee so far as regards that property from any further claim for estate duty, but shall not discharge any person or property from estate duty in case of fraud or failure to disclose material facts and shall not affect the duty payable in respect of any property afterwards shown to have passed on the death nor any further duty payable by reason thereof in respect of the property included in the certificate :

Provided nevertheless that a certificate purporting to be a discharge of the whole estate duty payable in respect of any property included in the certificate shall exonerate a *bona fide* purchaser for valuable consideration without notice from the duty notwithstanding any such fraud or failure.

76. Person accountable to be repaid by trustees and owners in certain cases.—If a person accountable under section 53 pays any part of the estate duty in respect of any property not passing to him, it shall, where occasion requires, be repaid to him by the trustees or owners of the property.

77. Facilities for paying duty or raising amount already paid.—(1) A person authorised or required to pay estate duty in respect of any property shall, for the purposes of paying the duty, or raising the amount of the duty when already paid, have power, whether the property is or is not vested in him, to raise the amount of such duty and any interest and expenses properly paid or incurred by him in respect thereof, by the sale or mortgage of or a terminable charge on that property or any part thereof :

Provided that any sum payable under any such sale, mortgage or terminable charge may be paid (to the extent to which such sum or part thereof represents the estate duty payable), not to the person raising the sum but to the Controller at the option of the person from whom the sum is being raised.

(2) A person having an interest in any property, who pays the estate duty in respect of that property, shall be entitled to the like charge, as the estate duty in respect of that property had been raised by means of a mortgage to him.

(3) Any money arising from the sale of property comprised in a settlement or held upon trust to lay out upon the trusts of a settlement may be expended in paying any estate duty in respect of property comprised in the settlement and held upon the same trusts.

PART IX.—MISCELLANEOUS

78. Jurisdiction of Courts barred in certain cases.—No suit shall be brought in any Civil Court to set aside or modify any estate duty determined under this Act and no prosecution suit or other proceedings shall lie against any officer of Government for anything in good faith done or intended to be done under this Act.

79. Power to take evidence on oath etc.—Every authority specified in sub-section (1) of section 4, other than valuers, shall for the purposes of this Act have the same powers as are vested in a court under the Code of Civil Procedure, 1908 (Act V of 1908) when trying a suit in respect of the following matters, namely :—

(*a*) enforcing the attendance of any person and examining him on oath ;

(*b*) requiring the discovery and production of documents ;

(*c*) receiving evidence on affidavit;

(*d*) issuing commissions for the examination of witnesses ;

and any proceeding before any such authority under this Act shall be deemed to be a judicial proceeding within the meaning of sections 193 and 228 of the Indian Penal Code (Act XLV of 1860).

80. Disclosure of information by a public servant.—The provisions of section 54 of the Indian Income-tax Act, 1922 (XI of 1922), shall apply to all accounts, statements, documents, evidence or affidavits, given, produced or obtained in connection with or in the course of the proceedings under this Act :

Provided that nothing in the said section 54 shall apply to the disclosure of any such particulars to any person acting in the execution of this Act or of the Indian Income-tax Act, 1922 (XI of 1922), where it is necessary or desirable to disclose the same to him for the purposes of either this Act or the said Act.

81. Arrangements with States to supply information.—The Central Government may make arrangements with the Government of any State for exchange of such information as may be necessary for the purposes of levying or realising any estate duty under this Act or under any other law for the time being in force in that State.

82. Service of Notices.—Any notice or requisition under this Act may be served on the person therein named either by post or as if it were a summons issued by a court under the Code of Civil Procedure, 1908 (Act V of 1908).

83. Appearance by authorised representatives.—Any person accountable for estate duty who is entitled or required to attend before any authority specified in sub-section (1) of section 4 in connection with any proceeding under this Act, otherwise than when required under section 79 to attend in person, may attend by a person authorised by him in writing in this behalf, being a relative of or a person regularly employed by that person, or a legal practitioner or a chartered accountant.

Explanation.—In this section—

(*a*) a person regularly employed by the accountable person shall include any officer of a Scheduled Bank with which the accountable person maintains a current account or has other regular dealings ;

(*b*) 'legal practitioner' means an advocate, vakil or attorney of any High Court in the territories to which this Act extends and includes a pleader practising in any part of the said territories ;

(*c*) 'chartered accountant' means a chartered accountant as defined in the Chartered Accountants Act, 1949 (XXXVIII of 1949).

84. Company to furnish particulars of deceased members to the Controller.—(1) Where a company incorporated outside India carries on business in the territories to which this Act extends and has been treated for the purposes of the Indian Income-tax Act, 1922 (XI of 1922), as resident for two out of the three completed assessments immediately preceding, such company shall, within three months of the receipt of intimation of the death of a member dying after the commencement of this Act, furnish to the Controller such particulars as may be prescribed in respect of the shares of the deceased member in the company, and shall be liable to pay estate duty at the rates mentioned in Part III of the Second Schedule, on the principal value of the shares held by the deceased in the company except in cases where the deceased member was a person domiciled in India and the person accountable has obtained a certificate from the Controller showing that either the estate duty in respect thereof has been paid or will be paid or that none is due, as the case may be.

(2) If any member of a company formed and registered under the Indian Companies Act, 1913 (VII of 1913) dies after the commencement of this Act and the company through any of its principal officers as defined in section 18, has knowledge of the death, it shall not be lawful for the company to register the transfer of any shares standing in the name of the deceased member unless the company is satisfied that the transferee has acquired such shares for valuable consideration or there is produced before it a certificate from the Controller that either the estate duty in respect thereof has been paid or will be paid or none is due, as the case may be.

(3) Any company which fails to comply with the provisions of sub-section (1) or sub-section (2) shall be liable to a penalty of one thousand rupees or a sum equal to double the amount of the estate duty payable according as the Controller may direct :

Provided that the Controller may reduce the penalty in any particular case.

85. Rule-making powers of the Board.—(1) Subject to the condition of previous publication and subject to the control of the Central Government, the Board may make rules not inconsistent with this Act prescribing all matters which by this Act are required or permitted to be prescribed, or which are necessary or convenient to be prescribed for carrying out the purposes of or giving effect to this Act.

(2) The power to make rules conferred by this section shall, on the first occasion of the exercise thereof, include the power to give retrospective effect to the rules or any of them from a date not earlier than the date of the commencement of this Act.

(3) All rules made under this Act shall be laid before both Houses of Parliament as soon as may be after they are made.

THE FIRST SCHEDULE

(*See* section 5)

States in which estate duty is leviable on agricultural land

Bombay.
Madhya Pradesh.
Orissa.
Punjab.
Uttar Pradesh.
Hyderabad.
Madhya Bharat.
Rajasthan.
Saurashtra.
All Part C States.

THE SECOND SCHEDULE

(*See* sections 5, 35 and 84)

RATES OF ESTATE DUTY

PART I

In the case of property which consists of an interest in the joint family property of a Hindu family governed by the Mitakshara, Marumakkattayam or Aliyasantana law—

	Rate of Duty.
(1) on the first Rs. 50,000 of the principal value of the estate	Nil
(2) on the next Rs. 50,000	5 per cent.
(3) on the next Rs. 50,000	7½ ,,
(4) on the next Rs. 50,000	10 ,,
(5) on the next Rs. 1,00,000	12½ ,,
(6) on the next Rs. 2,00,000	15 ,,
(7) on the next Rs. 5,00,000	20 ,,
(8) on the next Rs. 10,00,000	25 ,,
(9) on the next Rs. 10,00,000	30 ,,
(10) on the next Rs. 20,00,000	35 ,,
(11) on the balance of the principal value of the estate	40 ,,

PART II

In the case of property of any other kind—

	Rate of Duty.
(1) on the first Rs. 1,00,000 of the principal value of the estate	Nil
(2) on the next Rs. 50,000	7½ per cent.
(3) on the next Rs. 50,000	10 "
(4) on the next Rs. 1,00,000	12½ "
(5) on the next Rs. 2,00,000	15 "
(6) on the next Rs. 5,00,000	20 "
(7) on the next Rs. 10,00,000	25 "
(8) on the next Rs. 10,00,000	30 "
(9) on the next Rs. 20,00,000	35 "
(10) on the balance of the principal value of the estate	40 "

PART III

In the case of shares held by a deceased member in any such company as is referred to in sub-section (1) of section 84—

	Rate of Duty.
(1) If the principal value of the shares does not exceed Rs. 5,000	Nil
(2) If the principal value of the shares exceeds Rs. 5,000	7½ per cent.

RAJENDRA PRASAD,
President.

K. Y. BHANDARKAR,
Secy. to the Govt. of India.

CHAPTER I

PRINCIPLES OF CONSTRUCTION: INTERPRETATION THE ESTATE DUTY ACT, 1953

The Estate Duty Act is a taxing Statute. Sometimes a distinction is drawn between taxing statutes and non-taxing statutes as if they have to be construed and interpreted on different principles. This distinction now at any rate has lost all significance, the courts interpreting both the statutes on the same well-known principles. In the case of non-taxing statutes, it is said that the courts generally give themselves more latitude in the interpretation of the words in the statute. In the case of taxing statutes it is said that courts have no such latitude, but the courts must construe and interpret a taxing statute strictly. All Statutes, in other words, all Acts of Legislature must be so construed and interpreted as to find out the intention of the Act, having regard to the language of the Act. Stephen J., in the case of *A. G.* v. *Heywood* (1887) 19 Q.B.D. 326 said: "I do not understand the meaning of construing statutes in a strict, or a broad, or an equitable manner. The only proper method of construction, which I know, is to read the words through, and ascertain what they mean."

Words must be construed in their plain ordinary sense.

Words in an Act should not be construed in their literal sense, but in their ordinary sense. The meaning of words used in the Act, must be ascertained by construing them in their ordinary sense. If terms of art are used in the Act, they should be interpreted technically. The court is at liberty to refer to dictionaries and other authoritative works in order to ascertain the technical meaning of the terms of art although it is not permissible to adduce oral evidence as to the meaning of the terms of art.

Equitable consideration and considerations based on hardship, inconvenience and injustice are outside the construction of an Act.

"No question of convenience or inconvenience can in a clear case be allowed to have any weight in the interpretation of a statute"—per Dr. Lushington in *Morgan* v. *Leech,* (1841) 2 M.I.A. 428 at page 440. "Where the meaning of a statute is clear and undoubted, effect must be given to its provisions, however injurious the court may conceive the consequences to be"—per Dr. Lushington in *Queen* v. *Eduljee Byramjee,* (1846) 3 M.I.A. 468 at page 483. *Braybrooke* v. *The Attorney-General,* (1861) 9 H.L.C. 150; 11 E.R. 685. Per Lord Chancellor (Lord Campbell) "....I would beg leave to remind your Lordships of what all your Lordships who gave an opinion in the Saltoun case observed, that this statute, which, by the same enactments, imposes a tax on successions in every part of the United Kingdom, is to be construed, not according to the technicalities of law of real property in England or Scotland, but according to the popular use of the language employed; so that all such property may be subject to the succession duty, according to the general intention which the legislature has expressed.... This rule seems clear, easy to be applied, and not productive of any hardship beyond that felt from all fiscal impositions. In construing such statutes, we cannot consider what is fair and what is oppressive in taxation, except with a view to get at the probable intentions of the legislature where a doubt arises." See

also (1875) 2 I.A. 169, *Katama Natchiar* v. *Dorasinga Tevar*. The Privy Council in this case pointed out that courts in India had no power to entertain a suit to perpetuate a testimony because Sir James W. Colvile, who delivered the judgment of the Privy Council in this case said that because there was no law in India permitting suits to be brought for perpetuating testimony, the courts should not entertain such suits on equitable grounds. His Lordship has pointed out that the proper remedy for such a defect in the administration of justice is an Act of Legislature. It cannot be supplied by putting erroneous construction upon a statute, which has no reference to the subject.

Motives of parties affected should not be taken into account: the description given by the parties to the transactions or the forms in which they have been embodied are irrelevant.

"If the words of a law are clear and positive, they cannot be controlled by any consideration of the motives of the party to whom it is to be applied nor limit by what the judges, who applied it may suppose to have been the reasons for enacting it."—per Sir James Colvile in (1867) 11 M.I.A. 551 at page 604 (*Moonshee Buzloor Ruheem* v. *Shumsoonnisa Begum*). The court is not bound by the description of the document or instrument given by parties. The court is concerned to find out what the legal effect of the transaction is irrespective of the form in which the transaction is embodied and the name given to it by the parties. In other words, it can strip the transaction of its garb, and find what in law it has amounted to. The transaction which is described by the parties may on a true construction of the instrument embodying the transaction held by the court to be a licence; similarly a document styled a Will may be construed as a gift Deed. This power of the court is said to rest on the doctrine of "Substance of the Transaction".

Inland Revenue Commrs. v. Westminster (Duke) [1936 A.C. 1 : 104 L.J. K.B. 383 . 153 L.T. 223]

This House of Lords' case has set limits and laid down principles regarding a court's power to ascertain the substance of any transaction.

The short facts of the case are:—The Duke of Westminster covenanted by a Deed to pay his gardener a yearly sum of £98 16*s*., by weekly payments of £1 18*s*., for a period of seven years or during the joint lives of the parties. The question involved in the case was as to liability of the Duke to income-tax and sur-tax. It was held, Lord Atkin L.C. dissenting that sums paid yearly under the above-mentioned covenant were annual payments and were not payments of salary or wages, and consequently the Duke being entitled to deduct tax from the payments was entitled to deduct the payments themselves in arriving at his total income for the purposes of sur-tax.

Says Tomlin L.J.—Apart, however, from the question of contract with which I have dealt, it is said that in revenue cases there is a doctrine that the court may ignore the legal position and regard what is called "the substance of the matter" and that here the substance of the matter is that the assistant was serving the Duke for something equal to his former salary or wages, and that therefore, while he is so serving, the annuity, must be treated as salary or wages. This supposed doctrine upon which the commissioners, apparently acted, seems to rest for its support upon a misunderstanding of language used in some earlier cases. The sooner this misunderstanding is dispelled and the supposed doctrine given its quietus, the better it will be for all

concerned, for the doctrine seems to involve substituting, "the uncertain and crooked cord of discretion," for the "golden and straight mete wand of the law." Every man is entitled if he can to order his affairs so that the tax attaching under appropriate Acts is less than it otherwise would be. If he succeeds in ordering them so as to secure this result, then, however unappreciative the Commissioners of Inland Revenue, or his fellow tax-payers may be, of his ingenuity, he cannot be compelled to pay an increased tax. This so-called doctrine of "the substance" seems to me to be nothing more than an attempt to make a man pay notwithstanding that he so ordered his affairs that the amount of tax sought from him is not legally claimable.

The principal passages relied upon are from the opinions of Lord Herschell and Lord Halsbury in your Lordships' House. Lord Herschell L.C. in *Helby* v. *Mathews,* (1895) A.C. 47, observed—"It is said that the substance of the transaction evidenced by the agreement must be looked at, and not its mere words." I quite agree, but he went on to explain that the substance must be ascertained by a consideration of the rights and obligations of the parties to be derived from a consideration of the whole of the agreement. In short, Lord Herschell was saying that the substance of a transaction embodied in a written instrument is to be found by construing the document as a whole.

Support has also been sought by the appellants from the language of Lord Halsbury L.C. in *Secretary of State of India in Council* v. *Scoble,* (1903) A.C. 299, 302. There Lord Halsbury said "still looking at the whole nature and substance of the transaction (and it is agreed on all sides that we must look at the nature of the transaction and not be bound by the mere use of the words) this is not the case of a purchase of an annuity." Here again Lord Halsbury is only giving utterance to the indisputable rule that the surrounding circumstances must be regarded in construing a document. Neither of these passages in my opinion affords the appellants any support or has any application to the present case. The matter was put accurately by my noble and learned friend, Lord Warrington of Clyffe whereas Warrington L.J. in *In re Hinckes Dashwood* v. *Hincks* (1921) 1 Ch. 475 at p. 489, he used these words : "....in order to ascertain the substance I must look at the legal effect of the bargain which the parties have entered into." So here the substance is that which results from the legal rights and obligations of the parties ascertained upon ordinary legal principles and having regard to what I have already said the conclusion must be that each annuitant is entitled to an annuity which as between himself and the payer, is liable to deduction of income-tax by the payer and which the payer is entitled to treat as a deduction from the total income for sur-tax purposes.

There may of course be cases where documents are not *bona fide,* or not intended to be acted upon, but are only used as a cloak to conceal a different transaction. No such case is made or even suggested here. The deeds of covenant are admittedly *bona fide* and have been given their proper legal operation. They cannot be ignored or treated as operating in some different way because as a result less duty is payable than would have been the case if some other arrangement called for the purposes of the appellants' argument "the substance" had been made.

Per Lord Russell of Killowen :—"The Commissioners and Finlay J. took the opposite view on the ground that (as they said) looking at the substance

of the thing the payments were payments of wages. This simply means that the true legal position is disregarded, and a different legal right and liability is substituted in the place of the legal right and liability which the parties have created. I confess that I view with disfavour the doctrine that in taxation the subject is to be taxed if, in accordance with a court's view of what it considers the substance of the transaction, the court thinks that the case falls within the contemplation or spirit of the statute. The subject is not taxable by inference or by analogy, but only by the plain words of a statute applicable to the facts and the circumstances of the case. As Lord Cairns said many years ago in *Partington* v. *A. G.* (1890) L.R. 4 H.L. 100, 122, "As I understand, the principle of all fiscal legislation is this : If the person sought to be taxed comes within the letter of the law, he must be taxed, however great the hardship may appear to judicial mind be. On the other hand, if the Crown, seeking to recover the tax cannot bring the subject within the letter of the law, the subject is free, however apparently within the spirit of the law the case might otherwise appear to be." If all that is meant by the doctrine is that having once ascertained the legal rights of the parties you may disregard mere nomenclature and decide the question of taxability or non-taxability in accordance with the legal rights, well and good. That is what this House did in the case of Secretary of State in *Council of India* v. *Scoble* (1903) A.C. 299, that and no more. If, on the other hand the doctrine means that you may disregard the legal rights and liabilities arising under a contract between the parties and decide the question of taxability or non-taxability upon the footing of the rights and liabilities of the parties being different from what in law they are, then I entirely dissent from such a doctrine."

Per Lord Wright :—"....If the case were one in which it was found as a fact in regard to each of the deeds in question that it was never intended to operate as a legal document between the parties, but was concocted to cover up the payment of salary or wages, and to make these payments masquerade as annuities in order to avoid sur-tax, it may well be that the court would brush aside the semblance and hold that the payments were not what they seemed.... Later on he observed :

On the footing that the deed is genuine I do not see any possibility of going behind what appears on the face of the document or qualifying its effect by documents dehors the deed and in no way embodied in it, or regarding the payments as other than annual payments, as it is admitted that *ex facie* they are. And what the legal effect is as between the covenantor and the covenantee must determine for revenue purposes the character of the payments actually made.

I may add that I do not understand what is meant by the expression "payments for continuing services *ejusdem generis* with wages or salaries." The payments must be one thing or the other either annual payments or wages; there is no room for anything intermediate or in the nature of *cypres*. And once it is admitted that the deed is a genuine document, there is in my opinion no room for the phrase "in substance" or, more correctly, the true nature of the legal obligation, and nothing else is the "substance."

In two recent decisions of the House of Lords viz., (1951) A.C. 421 (*Commissioners of Inland Revenue* v. *Barclays Bank, Ltd.*) and (1951) A.C. 443 (*Potts' Executors* v. *Commissioners of Inland Revenue*) the remarks in

Partington v. *A. G.* (1890) L.R.H.L. 100, 122 were approved; see also the observations of Sir Raymond Evershed, M.R. in *Re Beit's Will Trusts, Beit and others* v. *Inland Revenue Commissioners,* (1951) 2 All. E.R. 1002. Lord Greene, M.R., in 1946 (2) All. E.R. 749 (*Inland Revenue Commissioners* v. *Wesleyan and General Assurance Society*) stated as follows :—

"There have been cases in the past where what has been called "the Substance of the Transaction" has been thought to enable the court to construe a document in such a way as to attract tax. That doctrine was, I hope, finally exploded by the decision of the House of Lords in *Inland Revenue Commissioners* v. *Westminster* (*Duke*) 1936 A.C. 1. The argument of the Crown in the present case when really understood appears to be an attempt to resurrect it. The doctrine means no more than that the language that the parties used is not necessarily to be adopted as to what the legal relationship is, that is indeed a common principle of construction. To take one example, where parties enter into a contract, though they describe it as licence, but the contract, according to its true interpretation creates the relationship of landlord and tenant, the parties can call it a licence as much as they like but it will be a lease. There are other cases in the book in which the parties have described a particular document as a lease when the relationship created by it is that of a licensor and licensee. In those cases it is not a lease but a licence. Similarly here if the parties have entered into a contract the legal result of which, on its true construction is to create an annuity, the parties cannot avoid the legal consequence by referring to the payments as loans." The Court of Appeal reversed the judgment of Macnaghten J., holding that the payments were loans, and not an annuity. It is to be noted that by means of the undoubted power of the court to find out the substance of the transaction both the revenue as well as the subject equally profit or lose. This doctrine will operate evenly in the case of the Revenue and the tax-payer.

Permissibility of referring to the corresponding English Law and the Statutes.

The Estate Duty Act is certainly based upon the English Finance Acts. The decisions of English courts interpreting the English Acts are most useful in the construction or interpretation of the corresponding provisions of the Indian Act. But it should be remembered that the English law principles should not be wholesale applied. Where the provisions of the Indian Act and those of the English Acts are *in pari materia* the English decisions will be of use. Lord Sinha had observed in 55 I.A. page 18 (*Mussamat Rama Nandikuer* v. *Mussamat Kala Watikuer*) "it has often been pointed out by this Board that where there is a positive enactment of the Indian Legislature the proper course is to examine the language of the statute and to ascertain its proper meaning uninfluenced by any consideration derived from the previous state of the law—or of the English law upon which it may be founded."

"Arguments from analogy may arise where a principle of law is involved; but where the courts are dealing with the positive enactments of a statute, reasons founded on analogy are scarcely applicable"—(*Ramchunder Dutt* v. *B. Jughesh Chunder Dutt*) (1873) 19 W.R. 353; so also "considerations founded on views as to business which are obviously of the greatest practical importance would be rather arguments for the invocation of the Legislature than an incentive to the putting of a forced construction on sections of an Act which in themselves were capable of only one interpretation" [Lord Dunedin in

Imperial Bank of India v. *U. Rai Gyaw Thu & Co.*, (1923) 50 I.A. 283 at page 293]. In 40 I.A. 24 (*Mulraj Khatan* v. *Vishwanath Prabhuram Vaidya*) the decision of the High Court at Calcutta was reversed by Lord Moulton on the ground that the High Court had applied the analogies of English law and failed to give effect to the positive terms of the Transfer of Property Act, 1900, section 130, sub-section (1). He stated "the error arose from the learned judges not having appreciated that the positive language of the section precluded the application in India of the principles of the English law on which they based their decision."

Straining of the language or of words in the enactment is not permissible.

In *Henrietta Muir Edward* v. *The Attorney-General of Canada* (58 M.L.J. 300) the Lord Chancellor has stated that in construing a statute the question to be considered is not what may be supposed to have been intended but what has been said. In 57 I.A. 49 (*Commissioner of Income-tax, Bombay Presidency* v. *Bombay Trust Corporation Ltd.*), Viscount Dunedin has stated "explicit words of a statute must rule whatever may be the general considerations as to what the legislature was minded or was likely to do." In *Crawford* v. *Spooner* (1846) 4 M.I A 179 at pages 187-8, Lord Brougham has stated as follows :—

"The construction of an Act must be taken from the bare words of the Act. We cannot fish out what possibly may have been the intention of the legislature, we cannot aid the legislature's defective phrasing of the statute, we cannot add, and mend, and, by construction, make up deficiencies which are left there. If the legislature did intend that which it has not expressed clearly, much more, if the legislature intended something very different; if the legislature intended something pretty nearly the opposite of what is said, it is not for judges to invent something which they do not meet within the words of the text (aiding their construction of the text always, of course, by the context); it is not for them so to supply a meaning, for, in reality, it would be supplying it; the true way in these cases is, to take the words as the legislature has given them, and to take the meaning which the words given naturally imply, unless where the construction of those words is, either by the preamble or by the context of the words in question, controlled or altered; and, therefore, if any other meaning was intended than that which the words purport plainly to import, then let another Act supply that meaning, and supply the defect in the previous Act."

In (1950) 1 All. E.R. 191 at page 198 (*Re-Earl Fitz-William's Agreement*) Danckwerts J., observed that the rules to be applied to such a statute are well known, but it is worth while to refer to the statement by Viscount Simon, L.C., (1945) 2 All. E.R. 506 in *Canadian Eagle Oil Co.* v. *R.*, where he said : "The late Rowlatt J., whose outstanding knowledge of this subject was coupled with a happy conciseness of phrase," said in *Cape Brandy Syndicate* v. *Inland Revenue Commrs.* (1921) 1 K.B. 71 : " In a taxing Act one has to look merely at what is clearly said. There is no room for any intendment. There is no equity about a tax, there is no presumption as to a tax. Nothing is to be read in, nothing is to be implied. One can only look fairly at the language used." " It is not the duty of courts to stretch the words used by the Legislature to fill in gaps or omissions in the provisions of an Act." See (1952) S.C.J. 533 (*Hira Devi* v. *District Board, Shajahanpur*).

Proceedings of Legislature : Speeches of members : Statement and objects or reasons.

" Proceedings of the Indian legislature cannot be referred to as legitimate aids to the construction of the Act in which they resu't. It is conceivable that the legislature whilst enacting one clause in plain terms might introduce into the same statute other enactments which to some extent qualify or neutralise its effect but a positive enactment in a statute of 1874 cannot be qualified or neutralised, by indications of intentions derived from previous legislation upon the same subject." See 22 I.A. 107 (*Administrator-General of Bengal* v. *Premlal Mullick*). In 47 I.A. 33 at p. 42, Viscount Finlay in construing the explanation to section 68 of the Indian Companies Act, 1882, held that to ascertain the meaning of the words used in the explanation a reference to the proceedings in the Legislative Council upon its enactment was not permissible. In A.I.R. 1951 A. 529, Kidwai J., stated " if the words used in a statute are so plain that, in the context in which they were placed, they can have only one meaning, no question of interpretation arises and that meaning must be given to them, however arbitrary or mischievous it may appear to be, and it is not open to the court to refuse to give effect to it on the ground that the legislature intended to do something else. If, however, the language used is capable of having more constructions than one placed upon it, the problem becomes one of interpretation, and the court has to proceed to ascertain the intention of the legislature. In order to ascertain the intention of the legislature, the whole of the enactment must be considered and, so far as possible, a consistent meaning must be given to all its parts. Assistance may be derived from the previous state of the legislation on the subject, and from contemporaneous exposite. The statement of the " Objects and Reasons " may also be considered. Further, so far as possible a rational construction must be placed on each provision and, for this purpose words may be given a wider or a narrower meaning than that which they usually bear."

" The speeches made by the Members of the House in the course of the debate are not admissible as extrinsic aids to the interpretation of statutory provisions. So too the statement of objects and reasons, appended to the Bill should be ruled out as an aid to the construction of a statute. Similarly, acceptance or rejection of amendments to a Bill in the course of Parliamentary Proceedings cannot be resorted to as extrinsic aid to construction of the words of the statute."—A.I.R. 1952 S.C. 369. (*Aswini Kumar Ghose* v. *Arabinda Bose*).

" Though the proceedings of the Legislature cannot be taken into consideration in interpreting the statute (1922 A.C. 339 and 22 Cal. 788, Ref. to) where the subject-matter with which the Legislature was dealing and the facts existing at the time with respect to which the Legislature was legislating requires clarification it is permissible to take them into consideration because these facts are " legitimate topics to consider in ascertaining what was the object and purpose of the Legislature in passing the Act they did."—A.I.R. 1952 All. 6 (F.B.) (*Pratap Vikram Shah* v. *Upendra Bahadur Shah*).

Kania C.J., in *Gopalan* v. *State of Madras,* 1950 S.C.J. 27, observed : " Our attention was drawn to the debates and report of the drafting committee of the Constituent Assembly in respect of the wording of this clause. The report may be read not to control the meaning of the Article, but may be seen in case of ambiguity. In *Municipal Council of Sydney* v. *Common-*

wealth, (1904) 1 Com. L.R. 208 it was thought that individual opinion of members of the Convention expressed in the debate cannot be referred to for the purpose of construing the Constitution. The same opinion was expressed in *United States* v. *Wong Kim Ark,* 169 U.S. 649 at p. 699. The result appears to be that while it is not proper to take into consideration the individual opinions of members of Parliament or Convention to construe the meaning of the particular clause, when a question is raised whether a certain phrase or expression was up for consideration at all or not, a reference to the debates may be permitted. In the present case the debates were referred to show that the expression "due process of law" was known to exist in the American Constitution and after a discussion was not adopted by the Constituent Assembly in our Constitution. In *Administrator-General of Bengal* v. *Premlal Mullick,* 22 I.A. 107 : (22 Cal. 788 P.C.) a reference to the proceedings of the Legislature which resulted in the passing of the Act was not considered legitimate aid in the construction of a particular section. The same reasons were held as cogent for excluding a reference to such debates in construing an Indian Statute. Resort may be had to these sources with great caution and only when latent ambiguities are to be resolved. See Craies' Statute Law (Edn. 4) p. 122, Maxwell on Interpretation of Statutes (Edn. 9) pp. 28-29 and Crawford on Statutory Construction (1940 Edition) p. 379, Art. 214. A perusal of the report of the drafting committee to which our attention was drawn shows clearly that the Constituent Assembly had before it the American Article and the expression "due process of law" but they deliberately dropped the use of that expression from our Constitution."

Preamble.

In 4 M.I.A. the Privy Council in the case of *Attorney-General* v. *Brodie,* 190 at p. 200 stated "if we are to rely upon the statute alone, the words of enactment are quite sufficient, and the effect of them is not abridged by the statement of the particular purpose, which is set forth in the preamble." See also 10 I.A. 39 at p. 44 (*Omrao Begum* v. *Govt. of India*) where it is stated that section 12 (Nawab Nazim's Debts Act) is not controlled by the preamble. In 46 I.A. 302 at page 309 in the case of *Secretary of State for India in Council* v. *Maharaja of Bobbili,* Lord Shaw stated "it is nevertheless true, as was indicated by Lord Parker in his judgment in *Kandukuri Balasurya Rao* v. *Secretary of State for India,* 44 I.A. 166, that section 1 of the amending Act makes operative provisions somewhat in excess of the apparent ambit of the preamble. If so, the section must govern."

Though, if the language of a section of an Act is clear it is not permissible to look at the preamble of the enactment, when the language is not clear and ambiguous, it is open to the court to construe the section in the light of the preamble, because the preamble supplies a clear guide as to what was the object of the legislature in placing the Act on the statute book (per Chagla, C.J., in *Tukaram Savalaram* v. *Narain Balkrishna,* I.L.R. 1952 Bom. 565.) In A.I.R. 1952 Cal. 150 (*Anwar Ali Sarkar* v. *State of West Bengal*) the judges observed: "There can be no doubt that where there is an ambiguity the preamble of an Act may be looked at to solve, if possible, the ambiguity. Where a word or words or a sentence in an Act is capable of two meanings then a meaning consonant with the preamble should be preferred. On the other hand, the preamble of an Act cannot be used to cut down the scope and plain meaning of a provision in an Act. The preamble may show the motive

for enacting a piece of legislation. But it does not by any means follow that in enacting the legislation, the legislature did not go further than giving merely effect to the motive." In A.I.R. 1952 Hyd. 58 (F.B.) (*Shamshir Ali* v. *Ratnaji*) it is stated "the preamble of a statute is an excellent aid to the construction of an ambiguous Act or one of doubtful meaning ; it is a key to the construction of the Act, and should be resorted to to unlock the minds of its makers."

Marginal Notes.

In 31 I.A. 132 at p. 142 (*Thakurain Balraj Kunwar* v. *Rae Jagat Pal Singh*) it is stated "Marginal notes to the sections of an Act of Parliament cannot be referred to for the purpose of construing the Act. There seems to be no reason for giving the marginal notes in an Indian Statute any greater authority than the marginal notes in an English Act of Parliament." In A.I.R. 1952 Bom. 16 (*State of Bombay* v. *Heman Santlal*), Chagla C.J. and Gajendra Gadkar J., stated as follows:—

"It is clear that marginal notes to sections in statutes may not be looked at for the purpose of construing the section. But though they form no part of the sections themselves, they are of some assistance, inasmuch as they show a drift of the sections. While it is perfectly true that if the sections by themselves make the meaning of the words used by the legislature plain and explicit, marginal notes cannot be invoked for the purpose of adding to, subtracting or altering the words used. When the words are ambiguous, there should be no objection to looking at the marginal notes in order to understand the drift of the sections."

Policy of the Act; General Scheme of the Act; Object of the Act; Theory underlying the Act; Background of the Act.

It is permissible to take into account the policy of the Act, the object of the Act, the background, general scheme of the Act and theory underlying it in construing the provisions of the Act. The authority for this proposition is 14 I.A. 89 (Waghela Rajsanji *v.* Shekh Masludin and others). In this case it is stated as follows:—"It may have been a very arbitrary way of dealing with creditors, but that was the policy of the act, and in construing the Act it must be remembered that it recites that Talukdari estates could not be lawfully charged, encumbered, or alienated. It is said that that recital was wrong. The High Court state it to be wrong, and they state moreover that it was put in merely as a justification to the Government for dealing in the summary manner in which they did with the creditors' rights. All that may be true. It may be true that the statement of the law is wrong, and the motive assigned may be true for aught their Lordship know. But supposing it is, it must be remembered that that was the idea in the mind of the Legislature, and all the provisions affecting creditors must be construed with reference to that idea, under which every benefit given to the creditor out of the Talukdari estate would be in the nature of an indulgence, because he got something which he could not enforce by law."

In *A. G.* v. *Beech* (1899 A.C. 53 at pp. 57 and 58) the Lord Chancellor (the Earl of Halsbury) stated : "It is not necessary here to say that taxing Acts must be precise and particular, and that you have to ascertain the object of the taxation, because I am really unable to fix upon any words which even by any doubtful construction can make the tax payable under these circumstances. It appears to me that it would go to the root of the whole principle

of the statute itself. The scheme of the Act (which I quite agree is a phrase quite proper to be used even in respect of a taxing Act) is to inflict taxation upon property passing by death."

Per Lord Ashbourne in the same case "this is a taxing Act, and it is essential to see that the tax is expressly imposed, that the subject is not taxed without clear words and that the natural construction is given to the words used."

Lord Hatherley, L.C., in L.R. 4 Ch. 740 (*Pardo* v. *Bingham*) stated: " To ascertain the intention regard should be had to the general scope and purview of the enactment, to the remedy sought to be applied, to the former state of the law, and to what was in contemplation of the Legislature." This statement has been quoted with approval by Lord Reading in 1916 (2 K.B 249 (*Rex* v. *Southampton Income-tax Commissioners*). See also 1901 A.C. 208 at p. 213 (*Inland Revenue Commissioners* v. *Pricstley*) and (1861) 9 H.L.C. 150 (*Braybrooke* v. *A.G.*). In (1929) S.C. 800 [*Strathcona* (*Lord*) v. *Inland Revenue Commissioners*] it was stated that the theory underlying a Revenue Act must bow to its express provisions, but that an appreciation of the theory might sometimes help to elucidation.

Proviso—Illustrations.

As to the meaning, significance, and construction of a proviso to a section in an Act it is stated as follows in A.I.R. 1952 Bom. 290 (*Cambatta & Co. Ltd.* v. *Commr. of Income-tax, Bombay City*) : " A proviso to a section in a statute is not an independent section calling for a construction entirely removed and detached from the construction to be placed on the main section. It must not be forgotten that a proviso is subsidiary to the main section and has to be construed in the light of the section itself. The object of the proviso is to carve out from the main section a class or category to which the main section does not apply ; but in carving out from the main section, the Court must always bear in mind what is the class referred to in the main section and must also remember that the carving out intended by the proviso is from the particular class dealt with by the main section and from no other class. The proviso cannot possibly deal with an entirely different topic or subject-matter." The proviso may sometimes have been inserted per Cautelam, and cannot be relied on as controlling the operative words. See 43 I.A. 113 p. 122 (*Meyappa Chetty* v. *Supramaniam Chetty*). In 46 I.A. 176, p. 186 (*Beasant* v *Advocate-General of Madras*) it is stated that there is no magic in words of proviso, and that the plain meaning must be given to the words of the Legislature. Illustrations to sections in an Act have been held to be parts of the Act itself See 35 M L.J 614, p. 617 (*Lala Balla Mal* v. *Ahad Shah.*) In *Mahomed Syedol Ariffin* v. *Yeoh Ooi Gark,* 43 I.A. 257, p. 263, the Privy Council stated as follows :—" Their Lordships are of opinion that in the construction of the Evidence Ordinance it is the duty of a Court of law to accept, if that can be done, the illustrations given as being both of relevance and value in the construction of the text. The illustrations should in no case be rejected because they do not square with ideas possibly derived from another system of jurisprudence as to the law with which they or the sections deal. And it would require a very special case to warrant their rejection on the ground of their assumed repugnancy to the sections themselves. It would be the very last resort of construction to make any such assumption. The great usefulness of the illustrations which have, although not part of the sections,

been expressly furnished by the Legislature as helpful in the working and application of the statute, should not be thus impaired." The object of illustrations is to make the meaning of the sections intelligible. It is however not possible for the Legislature to give illustrations to meet all possible circumstances.

Select Committee Report.

"If the words of a statute are clear and admit of no ambiguity, the Report of the Select Committee cannot be looked into for the purpose of giving an interpretation which the words used in the statute cannot bear. If, however, there is ambiguity the report of the Select Committee may be looked into as a matter of history to find out what was the previous law."—A.I.R. 1950 Pat. 542 (*Hira Mistry* v. *Ram Brikash Singh*).

Title or Heading to Section.

These generally cannot be considered in construing the sections, but it is permissible to have regard to them in the event of ambiguity or obscurity. They are never a determining factor, but they may throw light upon the meaning of the section, and, where it is not inconsistent with the section, one should presume that the title correctly describes the object of the provisions of the chapter. A.I.R. 1950 Cal. 349 (*Dwarik Prasad* v. *B. K. Roy*). The headings to sections are regarded as preamble to those sections and therefore they can be considered where the sections are ambiguous to find the meaning of the sections. Therefore they operate either to restrain or explain the meaning of the sections. See 54 C.W.N. 429 (*Corpn. of Calcutta* v. *Sub-Postmaster, Dharamtala Post Office*).

The Doctrine of Ejusdem Generis Rule.

If there are general words followed by specific enumeration the general words are so construed as to mean the things or matters analogous to those specified. This doctrine is equally applicable in the construction and interpretation of taxing and non-taxing statutes. Where the general words are clear and wide they must be given effect to, in spite of the fact, that the matter in the suit cannot be brought within the cases of specific enumeration. In the Estate Duty Act, there is not much scope for the application of this doctrine. The only words that occur in this Act are "or otherwise." Reference may be made to the cases of *Chajju Ram* v. *Neki*, 49 I.A. 144 (P.C.); and A.I.R. 1950 A. 162. For the application of this doctrine there must be a genus or class or category. Unless it is possible to find a category there is no room for the application of this doctrine. (A.I.R. 1950 A. 162, p. 164, column 2 : *Sir Iqbal Ahmed* v. *Rex*).

casus omissus.

A court is not competent to supply an omission, or gap or where the words of a section can be interpreted to avoid any repugnancy or inconsistency without doing any great violence to the language used a court of law would be justified in favouring an interpretation which avoids such ignorance or inconsistency. It is not the duty of the courts to stretch the words used by the legislature to fill in gaps or omissions in the provisions of an Act. A.I.R. 1952 S.C. 362. (*Hira Devi* v. *District Board, Shajahanpur*.)

Retrospective operation.

It is a general principle of interpretation of statutes that no statute shall be considered to have a retrospective operation unless its language is such as plainly to require that construction. This does not, however, mean that

when a statute is being considered the court in order to avoid retrospective operation will give to the words which it implies a meaning which they cannot possibly bear. When the effect of the adoption of the literal construction would be to take away a vested right, the court will be slow to accept such a construction, and insist upon it being satisfied, that was the intention of the legislature. It requires clear language for a statute to operate on, and extinguish vested rights. The Estate Duty Act, in all probability, will be accompanied by Annual Finance Acts. It may be expected that many changes will be made by subsequent Acts, and therefore, it is necessary to touch on this rule of retrospective and prospective operation of statutes. In the case of Principal and Amending Acts, the first rule is to bear in mind the scheme, which can be seen in clear outline of the principal Act, and amendments in later Acts should if possible be considered consistently with that scheme. Sometimes the reverse process may be found to be more appropriate, viz. the meaning of the later Act may throw considerable light on the earlier Act.

Punctuation and Grammar.

Sometimes a comma in a sentence in a section of the Act may be displaced with the result that the construction of the section may result in an alteration of the law. Therefore it has been held that in construing a statute a court of law is bound to read it without the commas inserted in the print (56 I.A. 93) (100-101) *Lewis Pugh* v. *Ashutosh Sen.* It is an error to rely on punctuation in construing Acts of the Legislature (per Lord Hobhouse in *Maharani of Burdwan* v. *Murtunjoy Singh* : [(1887) 14 I.A. 30 at pp. 35-36]. It is a well settled rule of interpretation that every clause of a statute should be construed with reference to the context and the other clauses of the Act, and, so far as possible, no clause, sentence or word should be considered superfluous, void or insignificant. A grammatical and literal construction is therefore to be avoided if such construction leads to absurdity, repugnancy or inconsistency with the rest of the construction. (30 Pat. 690 : *Champamani Bibi* v. *Mohammad Yunus*). Where the main object and the intention of a statute is clear it must not be reduced to a nullity by a draftsman's unskilfulness or ignorance of the law, in other words, where the language of the Act in its ordinary meaning and grammatical construction leads to a manifest contradiction of the apparent purpose of the Act, or to some inconvenience or absurdity, hardship or injustice presumably not intended, the court may put upon it a construction which modifies the meaning of the words and even the structure of the sentence (31 Pat. 296 : *Bihar Subai Sunni Maglis Awkaf* v. *Sitaram*). In construing statutes therefore rules of grammar have to yield to common sense [31 Pat. 493 (S.B.) : *Atmaram Budhia* v. *State of Bihar.*]

Harmonious construction.

The proper method of construing a statute which has different provisions is not to come to a conclusion that one part overrides another part of the statute, but to try and see whether the different parts of the statute can be reconciled so as to present one complete picture (A.I.R. 1950 Bom. 827 : *Mohanlal Chhotalal* v. *Commissioner of Income-tax*). Every Act must be interpreted in a manner congenial to the production of harmony and consistency amongst its various provisions (A.I.R. 1950 Orissa 198 : *Debendranath Mitra* v. *Gourisankar*). The true meaning of any part of a statute is that which best harmonizes with every other part of it, and a construction which

will leave without effect any part of a statute must be rejected (A.I.R. 1950 Bom. 273 : *Emperor* v. *Narji Bhalji*).

Presumptions.

In the interpretation of Acts certain presumptions have to be borne in mind. There is a presumption against violation of the principles of natural justice or destruction of vested rights (see 1950 K.L.T. 371 : *Nesamony* v. *T. M. Varghese*). There is a presumption against redundancy or superfluity (see I.L.R. 1949 Cuttack 483). There is also a presumption in favour of validity and constitutionality (see A.I.R. 1951 S.C. pp. 1-8 ; A.I.R. 1951 S.C. 41 ; 1950 S.C.J. 27 ; 1939 F.C.R. 18 ; 31 Pat. 493 ; A.I.R. 1953 S.C. 221).

In the Estate Duty Act, there are many sections in which power and discretion are given to the Controllers in the execution or performance of their duties under the Act. Thus the 'opinion of the Controller' or the 'satisfaction of the Controller' or 'acting or doing as he thinks just' appear to confer on the Controllers absolute and unfettered discretion. The Controller's decision becomes final in all these matters except in the case where the Act itself provides for an appeal against his decision. Section 36 (1) (in the opinion of the Controller," Section 36 proviso "where it is proved to the satisfaction of the Controller," Section 41 "shall be ascertained by the Controller in such a manner and by such means as may be prescribed," Section 43 "where he considers that it can conveniently be done," Section 46 "it is proved to the satisfaction of the Controller," Section 47 "it is shown to the satisfaction of the Controller," Section 48 "where the Controller is satisfied," Section 49 "the Controller is satisfied," Section 53 (2) "where an Heir-at-law proves to the satisfaction of the Controller," Section 54 (2) "which in the opinion of the Controller may properly be treated," Section 55 "in the opinion of the Controller" and "every person whom the Controller believes to have taken possession," Section 56 "according as the Controller may direct," Section 60 "furnish security to the satisfaction of the Controller," Section 61 (1) "if the Controller is of opinion," Section 62 "it appears to the Controller," and Section 70 "where the Controller is satisfied," Section 67 (4) "according as the Controller may elect," Section 68 "the Controller in his discre tion," Section 84 (3) "the Controller may reduce." Likewise Section 63, Sub-sections (2) and (3), Section 69, Section 71 and Section 74 (3) confer on the Board wide discretion. In all these cases except to the extent of the restricted right of appeal provided in the Act whatever the Controller or the Board decides is not open to challenge. Of course, the discretion which the Act has conferred on the Controller and the Board must be a *bona fide* exercise of discretion.

The following passage is taken from Maxwell's Interpretation of Statutes (p. 129). " Where, as in a multitude of Acts something is left to be done according to the discretion of the authority on whom the power of doing is conferred, the discretion must be exercised honestly and in the spirit of the statute." " According to his discretion " means, it has been said, according to the rules of reason and justice not private opinion, (Rookes case), according to law and not humour it is to be, not arbitrary, vague and fanciful but legal and regular (*Lord Mansfield, R.* v. *Wilkes,* Halsbury L.C., *Sharp* v. *Wakefield* : 1891 A.C. 79) to be exercised not capriciously, but on judicial grounds and for substantial reasons. [Jessel M. R.:—Taylor, Re 1877, 4 Ch. D. 160.

Lord Blackburn, Doherty v. *Allman* (1879) 3 A.C. p. 728]. And it must be exercised within the limits to which an honest man competent to the discharge of his office ought to confine himself [*Lord Kenyon, Wilson* v. *Rastall* (1792) 4 T.R. 757] that is within the limits and for the objects intended by the Legislature. These dicta may be summed up in the statement of Lord Esher that the discretion must be exercised without taking into account matters which the courts consider not to be proper for the guidance of their discretion, then in the eye of the law they have not exercised their discretion. (*R.* v. *St. Pancras* (1890) 24 Q.B.D. 375, *R.* v. *Board of Education* (1910) 79 L.J. K.B. 595).

" The opinion or satisfaction of the Controller " is not subject to objective scrutiny. The Act left the matter entirely to the subjective satisfaction of the Controller. This power of the Controller to arrive at decisions on very many important questions that come before him in the course of administration of the provisions of the Act, may usefully be likened to the powers given under the Preventive Detention Act, 1950, to certain authorities named in the Act to arrest and detain any person. When that authority is satisfied that the detention is necessary, no court is entitled to call in question the grounds of his satisfaction. In A.I.R. 1950 S.C. 27, *A. K. Gopalan* v. *State of Madras,* Kania C.J., said "Section 3 of the impugned Act is no delegation of legislative power to make laws. It only confers discretion on the officer to enforce the law made in the Legislature. Section 3 is also impugned on the ground that it does not provide an objective standard which the Court can utilize for determining whether the requirements of the law have been complied with. It is clear that no such objective standard of conduct can be prescribed, except as laying down conduct tending to achieve or to avoid a particular object. For Preventive Detention action must be taken on good suspicion. It is a subjective test based on the cumulative effect of different actions, perhaps spread over a considerable period. As observed by Lord Finlay in *The King* v. *Halliday,* (1917 A.C. 216 at p. 269), a court is the least appropriate tribunal to investigate question whether circumstances of suspicion exist warranting a restraint on a person. The contention is urged in respect of preventive detention and not punitive detention. Before a person can be held liable for an offence, it is obvious that he should be in a position to know what he may do or not do, and an omission to do or not to do will result in the State considering him guilty according to the penal enactment. When it comes however to preventive detention the very purpose is to prevent the individual not merely from acting in a particular way but, as the sub-heads summarized above show, from achieving a particular object. It will not be humanly possible to tabulate exhaustively all actions which may lead to a particular object. It has therefore been considered that a punitive detention Act which sufficiently prescribes the objects which the legislature considers have not to be worked upto is a sufficient standard to prevent the legislation being vague. In my opinion, therefore, the argument of the petitioner against Section 3 of the impugned Act fails."

The consideration of this question of absolute and unfettered discretion conferred by the provisions of the Act on the Controller and the Board leads to the consideration of another important topic. Ever since the passing of taxing statutes there has been going on a battle of manoeuvres and wits between the Revenue and its advisers on one side and the subjects aided by their

legal advisers on the other side. The courts of law have held " there is nothing unlawful in a scheme designed to minimise the incidence to duties by legal means and its success or failure must be judged by reference to the true legal effect of what has been done." *A. G.* v. *Hon. L. M. St. Aubyn* (No. 2) 1950 (1) All. E.R. 951, p. 958 per Jenkins, L.J. The tax-payers resort to all sorts of devices in order to escape taxation. Courts of law do not blame the tax-payers but on the other hand commend their methods as laudable provided that their methods are legal. The Revenue on the other side is concerned with promulgating new laws in order to meet the evasion of taxes. Every citizen is entitled to so arrange his affairs as not to attract taxes. Viscount Simon, L.C., thus observed in 1943 A.C. 377, at p. 381 (*Latilla* v. *Inland Revenue Commrs.*) "Judicial dicta may be cited which point out, however elaborate and artificial such methods may be, those who adopt them are entitled to do so. There is of course no doubt that they are within their legal rights, but that is no reason why their efforts or those of the professional gentlemen to assist them in the matter should be regarded as a commendable exercise of the duties of a good citizen. On the contrary, one result of such methods, if they succeed is of course to increase *protanto* the load of taxes on the shoulders of a great body of good citizens who do not desire, or do not know how, to adopt these manoeuvres. It is quite possible that the Legislature may enact stringent laws imposing severe penalties. It is also possible that in order to prevent all leakage and to check all evasions of the tax, the Legislature may enact laws whereby the net of taxation is thrown very wide. The third possibility is that the authorities who administer taxing statutes may exercise their unfettered and absolute discretion in such a way as to exact heavy penalties. In interpreting taxing statutes which contain wide language the courts of law are unable to reconstruct the doctrine of the substance of the transaction with the result that evasion of taxes becomes impossible or hazardous. The duties of citizenship require every citizen to pay the taxes due from him quite honestly." In 1942 (1) K.B 389 at pp. 396-397, (*Lord Howard de Walden* v. *Commrs. of Inland Revenue*), Lord Greene, M.R., stated "the courts will be prepared to find amending legislation assuming a "penal" character and will not shrink from enforcing it on such grounds. The statute is a penal one and its conclusions, whatever they may be, are intended to be an effective deterrent which will put a stop to practice which the Legislature considers to be against the public interest. For years a battle of manoeuvre has been waged between the Legislature and those who are minded to throw the burden of taxation off their own shoulders on to those of their fellow subjects. In that battle the legislature has often been worsted by the skill, determination and resourcefulness of its opponents of whom the present appellant has not been the least successful. It would not shock us in the least to find that the Legislature has determined to put an end to the struggle by imposing the severest of penalties. It scarcely lies in the mouth of the tax-payer who plays with fire to complain of burnt fingers." In *Chamberlain* v. *Commrs. of Inland Revenue* (1942) 25 Tax Cases 317 at p. 325, du Parcq L.J., stated "whenever the Legislature seeks to find a formula wide enough to include all new devices of human ingenuity, a draftsman lacking the gift of prophecy is bound to use words so all embracing that unexpected and sometimes inconvenient results may follow....but is generally recognised that the Legislature has an impossible task when it seeks to anticipate every astute move which may be

made by experts who pit their wits against the skilled advisers of the Crown. That being so, it is no matter for surprise if when Parliament turns to the more grateful task of administering relief it sometimes fails to provide a palliative for every conceivable case of distress." In 1943 A.C. 486 at p. 506 (*Lord Romer in Penang and General Investment Trust Ltd., and another* v. *Commrs. of Inland Revenue*) said: "It is reasonably plain from the history of this case that second appellant is one of those persons who, rightly or wrongly, exercise much ingenuity in discovering gaps in the nets spread by the Legislature from time to time for the purpose of collecting sur-tax for the national revenue, and in so arranging their affairs as to escape through one or more of such gaps, if (he) sees no impropriety in exercising for this purpose the powers of managing his affairs that are allowed to him by the laws of the country, it does not lie in his mouth to accuse the Special Commissioners of impropriety if they choose to exercise the powers given to them by these same laws in such a way as to defeat (his) object, and procure for the national revenue as much an amount of sur-tax as is possible in the circumstances."

Any mistake in law.

Any Estate Duty paid cannot be recovered by suit on the ground that payment had been made under an interpretation of law which since the date of payment had been overruled. Tax-payer will be well advised to pursue the remedy given to him under the Act, namely to have a case stated for decision by the court when he believes that the decision of the Controller is not correct.

CHAPTER II

Death Duties began to be levied in whatever form or by whatever name they were called from very early times. In England Probate Duty which really is a death duty began to be levied from 1694. Legacy Duty and Succession Duty respectively started in England in 1780 and 1853. The Legacy and Succession Duty were abolished in and by the Finance Act, 1949 in England. As the prosperity of a State advances, and large incomes are earned by the citizens of the State on account of commercial and industrial expansion inequalities of income result, and the peoples' ideas of a State also change. The conception of a Modern State is a welfare state. The people of a state do not exist for the state, but the state exists for the people. With the advancement of knowledge in all fields and closer co-operation among the peoples of the states, and the growing realisation that no one state can remain in isolation and that international co-operation is the only basis for the solution of the many problems of the peoples of the different states, it is not surprising that many states have adopted laws, on the one hand, for obtaining the necessary income for the growing expenditure of the state, and on the other, for remedying inequalities of income. The constitution of (Bharat) India sets out the following ideal : Preamble :

"We, The People of India, having solemnly resolved to constitute India into a Sovereign Democratic Republic and to secure to all its citizens :

Justice, social, economic and political ;
Liberty of thought, expression, belief, faith and worship ;
Equality of status and of opportunity ;
and to promote among them all.
Fraternity assuring the dignity of the individual and the unity of the Nation ;
In Our Constituent Assembly this twenty-sixth day of November 1949, do Hereby Adopt, Enact, And Give To Ourserves This Constitution."

Estate Duty in England was first introduced by the Finance Act of 1894. The feature and the history of English death duties are that every year a Finance Act is passed amending the law in the light of the experience gained in the working of the Acts. This method of annual Finance Acts is not commendable. The ordinary citizen is perplexed at the maze of statutory provisions, and he does not in fact know, what in certainty his liability to tax will be on his death. The rich experience gained by England in the administration of the Estate Duty Acts is now availed of by the Indian Legislature. The Estate Duty Act, 1953 is based wholly on the English Acts. Several of the sections in the Act copy word for word the language of the sections in the English Acts. The result as embodied in the Estate Duty Act, 1953 is that it is a comprehensive piece of legislation. Provisions designedly introduced into the English Acts to meet the high standards and complexities of legal development hardly come into play so far as India is concerned at the present time. The Indian Act made ample provision in advance for the introduction, adoption and increase of legal transactions in dealing with one's own property. The law of trusts has not developed in

India nor do the people of India resort to highly technical forms of conveyance. The majority of the people in India die even without making a Will. The Finance Minister speaking on the Estate Duty Bill which he introduced in Parliament, stated, that he was not sure what the income of the State would be under the head of Estate Duty.

There are altogether 85 sections in the Act divided into 9 parts. Part I is styled "Preliminary". Section 2 contains Definitions, Section 3 contains the 'interpretation clause,' Section 4 enumerates the Authorities for the purposes of the Act. Part II is styled imposition of Estate Duty. It is in this part that the charging sections are contained. Part III is styled exceptions from the charge of duty. This part contains exemptions and allowances, which can be claimed under the Act. Part IV is styled 'Aggregation of properties and Rates of duty.' The principles of 'aggregation' are stated in Section 34. Part V is styled 'Value chargeable.' It deals with the ascertainment of valuation of different kinds or categories of property passing or deemed to pass on the death. Part VI is styled 'Deductions.' It deals with the deductions that can be claimed from the duty chargeable. Although styled 'deductions' this part provides for certain allowances that can be claimed. Part VII is styled 'Collection of the Duty.' This part contains the machinery sections. It deals with the method of collection of duty, mode of payment, persons accountable and their duties and liabilities. Section 56 specifies 'penalty for default.' Section 59 enacts limitation for commencing proceedings for levy of Estate Duty. This part also provides for an appeal against determination of valuation by Controller. This part also deals with certificates which can be granted or obtained under the Act. Part VIII is styled Charge of Estate Duty on Property and Facilities for Raising it. Part IX is styled 'Miscellaneous.' Section 78 in this part bars the jurisdiction of civil courts. Section 85 in this part confers the right to make rules on the Board. There are only two Schedules appended to the Act and the First Schedule mentions the names of the States in which Estate Duty is leviable on agricultural land. The Second Schedule specifies the Rates of Estate Duty.

One noticeable defect in the Act is that it does not provide for an appeal to court or to an independant tribunal. The Act gives an appeal against the Controller's decision as to valuation of property to the Board. The Board itself is an authority and for the matter of that the highest authority mentioned in the Act. The suspicion in the tax-payer's mind that he cannot have a just decision by the Board can only be dispelled if an independant tribunal is provided to which appeals shall lie against the decisions of the Controller. When the Act is based on the English Acts, and when so much is copied from the English Acts it is reasonable to expect the Legislature to provide a right of appeal to an independant tribunal, both in respect of valuation arrived at, and the amount of duty determined by the Controller. The Finance Act, 1894, by section 10 gives a right of appeal to any person aggrieved by the decision of the Commissioner with respect to the amount of duty claimed by him whether on the ground of the value of any property or the rate charged or otherwise to the High Court. The Lands Tribunals Act 1949 was established in England to hear appeals against orders of the Commissioner as to valuation. Another defect is that instead of the Legislature enacting the necessary provisions in the Act itself as has been done in England, the Act confers on the Board the power to make rules with reference

to section 17 of the Act. The legitimate criticism is that the Legislature ought to have itself provided for all the matters referred to in section 20 instead of leaving to the Board to make rules in respect thereof. The third defect noticeable is that no provision is made for the taking over of the land or part of an estate in case of inability on the part of the assessee to pay the Estate Duty. The Finance (1909-10) Act, 1910, by section 56 permitted the Commissioners to accept in satisfaction of the whole or any part of Estate Duty any real including leasehold property as may be agreed upon between the Commissioners and the party. Sections 49 to 51 of the Finance Act (1946) as further amended by section 52 (10) of the Finance Act 1949 extended the scope of the provision. The National Land Fund was established by sections 48 to 50 of the Finance Act (1946).

In the Constitution of India, Parliament under section 246 read with list (1)—Union list, in the 7th schedule by items 82, 87 and 88 can legislate with regard to Estate Duty or taxes on income or duties in respect of succession to property except as regards agricultural land and agricultural income. In the same 7th schedule list (2)—State list, items 46, 47 and 48 enable the State Legislature to legislate as regards taxes on agricultural income, duties in respect of succession to agricultural land, and estate duty in respect of agricultural land. List (3)—Concurrent list—in the 7th schedule, item 6 is mentioned : Transfer of property other than agricultural land. Some States have passed legislation levying taxes or duties in respect of agricultural land and agricultural income. Therefore it is that the Estate Duty Act excepted such States from the operation of the Estate Duty Act so far as Estate Duties are concerned in relation to agricultural land situated therein. In the Schedule to the Act, Bombay, Madhya Pradesh, Orissa, Punjab, Uttar Pradesh, Hyderabad, Madhya Bharat, Rajasthan, Saurashtra, and all Part C States are mentioned as the States in which estate duty is leviable on agricultural land. Section 248 of the Constitution of India states (1) Parliament has exclusive power to make any law with respect to any matter not enumerated in the Concurrent List or State List, (2) such power will include the power of making any law, imposing a tax not mentioned in either of those lists. Section 249 states as follows :—

Power of Parliament to legislate with respect to a matter in the State List in the national interest.

249. (1) Notwithstanding anything in the foregoing provisions of this Chapter, if the Council of States has declared by resolution supported by not less than two-thirds of the members present and voting that it is necessary or expedient in the national interest that Parliament should make laws with respect to any matter enumerated in the State List specified in the resolution, it shall be lawful for Parliament to make laws for the whole or any part of the territory of India with respect to that matter while the resolution remains in force.

(2) A resolution passed under clause (1) shall remain in force for such period not exceeding one year as may be specified therein :

Provided that, if and so often as a resolution approving the continuance in force of any such resolution is passed in the manner provided in clause (1), such resolution shall continue in force for a further period of one year from the date on which under this clause it would otherwise have ceased to be in force.

(3) A law made by Parliament which Parliament would not but for the passing of a resolution under clause (1) have been competent to make shall, to the extent of the incompetency, cease to have effect on the expiration of a period of six months after the resolution has ceased to be in force, except as respects things done or omitted to be done before the expiration of the said period.

Power of Parliament to legislate with respect to any matter in the State List if a Proclamation of Emergency is in operation.

250. (1) Notwithstanding anything in this Chapter, Parliament shall, while a Proclamation of Emergency is in operation, have power to make laws for the whole or any part of the territory of India with respect to any of the matters enumerated in the State List.

(2) A law made by Parliament which Parliament would not but for the issue of a Proclamation of Emergency have been competent to make shall, to the extent of the incompetency, cease to have effect on the expiration of a period of six months after the Proclamation has ceased to operate, except as respects things done or omitted to be done before the expiration of the said period.

Inconsistency between laws made by Parliament under Articles 249 and 250 and laws made by the Legislatures of States.

251. Nothing in Articles 249 and 250 shall restrict the power of the Legislature of a State to make any law which under this Constitution it has power to make, but if any provision of a law made by the Legislature of a State is repugnant to any provision of a law made by Parliament which Parliament has under either of the said articles power to make, the law made by Parliament, whether passed before or after the law made by the Legislature of the State, shall prevail, and the law made by the Legislature of the State shall to the extent of the repugnancy, but so long only as the law made by Parliament continues to have effect, be inoperative.

Power of Parliament to legislate for two or more States by consent and adoption of such legislation by any other State.

252. (1) If it appears to the Legislatures of two or more States to be desirable that any of the matters with respect to which Parliament has no power to make laws for the States except as provided in Articles 249 and 250 should be regulated in such States by Parliament by law, and if resolutions to that effect are passed by all the Houses of the Legislatures of those States, it shall be lawful for Parliament to pass an Act for regulating that matter accordingly, and any Act so passed shall apply to such States and to any other State by which it is adopted afterwards by resolution passed in that behalf by the House or, where there are two Houses, by each of the Houses of the Legislature of that State.

(2) Any Act so passed by Parliament may be amended or repealed by an Act of Parliament passed or adopted in like manner but shall not, as respects any State to which it applies, be amended or repealed by an Act of the Legislature of that State.

The other States in the Union are expected to pass necessary resolutions under section 252 (1) of the Constitution so that the Act may become applicable to those States also in respect of agricultural land.

CHAPTER III

THE ESTATE DUTY ACT, 1953

No. 34 OF 1953

[6*th October*, 1953]

An Act to provide for the levy and collection of an estate duty.

BE it enacted by Parliament as follows :—

PART I.—PRELIMINARY

Section 1. *Short title, extent and commencement.*—(1) This Act may be called The Estate Duty Act, 1953.

(2) It extends to the whole of India except the State of Jammu and Kashmir.

(3) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint.

Section 2. *Definitions.*—In this Act, unless the context otherwise requires,—

(1) " affidavit of valuation " means the affidavit of valuation made under section 19-I of the Court-fees Act, 1870 (VII of 1870), in connection with an application for the grant of representation ;

(2) " Board " means the Central Board of Revenue constituted under the Central Board of Revenue Act, 1924 (IV of 1924) ;

(3) " company " includes any body corporate wheresoever incorporated ;

(4) " controlled company " means a company as defined in section 17 ;

(5) " Controller " means a person appointed to be a Controller of Estate Duty under section 4 and includes a person appointed to be a Deputy Controller of Estate Duty or an Assistant Controller of Estate Duty ;

(6) " deceased person " and " the deceased " means a person dying after the commencement of this Act ;

(7) " estate duty " means estate duty under this Act ;

(8) " executor " means the executor or administrator of a deceased person ;

(9) " general power " includes every power or authority enabling the donee or other holder thereof to appoint or dispose of property as he thinks fit, whether exercisable by instrument *inter vivos* or by will or both, but exclusive of any power exercisable in a fiduciary capacity under a disposition not made by himself or exercisable as mortgagee ;

(10) " incumbrances " includes mortgages and terminable charges ;

(11) " interest in expectancy " includes an estate in remainder or reversion and every other future interest whether vested or contingent, but does not include reversions expectant upon the determination of leases ;

(12) " legal representative " means a person who in law represents the estate of a deceased person, and includes—

(*i*) an executor,

(*ii*) as regards any obligation under this Act, any person who takes possession of, or intermeddles with, the estate of a deceased person or any part thereof, and

(*iii*) where the deceased was a coparcener of a Hindu family, the manager for the time being of the family ;

(13) " power to appoint property " means power to determine the disposition of property of which the person invested with the power is not the owner ;

(14) " prescribed " means prescribed by rules made under this Act ;

(15) " property " includes any interest in property, movable or immovable, the proceeds of sale thereof and any money or investment for the time being representing the proceeds of sale and also includes any property converted from one species into another by any method ;

Explanation 1.—The creation by a person or with his consent of a debt or other right enforceable against him personally or against property which he was or might become competent to dispose of, or to charge or burden for his own benefit, shall be deemed to have been a disposition made by that person, and in relation to such a disposition the expression " property " shall include the debt or right created.

Explanation 2.—The extinguishment at the expense of the deceased of a debt or other right shall be deemed to have been a disposition made by the deceased in favour of the person for whose benefit the debt or right was extinguished, and in relation to such a disposition the expression " property " shall include the benefit conferred by the extinguishment of the debt or right ;

(16) " property passing on the death " includes property passing either immediately on the death or after any interval, either certainly or contingently, and either originally or by way of substitutive limitation, and " on the death " includes " at a period ascertainable only by reference to the death " ;

(17) " public charitable purpose " includes relief of the poor, education, medical relief and the advancement of any other object of general public utility within the territory of India ;

(18) " representation " means probate of a will or letters of administration ;

(19) " settled property " means property which stands limited to, or in trust for, any persons, natural or juridical, by way of succession, whether the settlement took effect before or after the commencement of this Act ; and " settlement " means any disposition, including a dedication or endowment, whereby property is settled ;

(20) " Valuer " means a Valuer appointed under section 4.

Estate Duty Act came into force on 15-10-1953, a notification to this effect having been published by the Central Government in the Gazette of India. It extends to the whole of India except the State of Jammu and Kashmir.

The official Gazette referred to under sub-section (3) of Section 1 is the Gazette of India under the General Clauses Act [10 of 1897, Section 37 (A)]. Section 2 (1) Affidavit of valuation means the affidavit of valuation made under Section 19 (1) of the Court Fees Act 1870 (7 of 1870) in connection with an application for the grant of representation. Schedule of the said Act gives the form of affidavit of valuation.

SCHEDULE III

(See *Section* 19-1)

Form of valuation (to be used with such modifications, if any, as may be necessary.)

In the court of . . . . . Re. Probate of the Will of . . . . . (or administration of the property . . . . . and credits of . . . . .), deceased.

I . . . . . solemnly affirm . . . . . make oath and say that I am executor (or one of the executors or one of the next of kin) of . . . . . deceased and that I have truly set forth in Annexure A to this affidavit all the property and credits of which the abovenamed deceased died possessed or was entitled to at the time of his death, and which have come, or are likely to come, to my hands.

2. I further say that I have also truly set forth in Annexure B all the items I am by law allowed to deduct.

3. I further say that the said assets, exclusive only of such last-mentioned items, but inclusive of all rents, interest, dividends and increased values since the date of the death of the said deceased are under the value of :

ANNEXURE A

Valuation of the Movable and Immovable Property of Deceased.

	Rs.	A.	P.
Cash in the house and at the Banks, household goods, wearing-apparel, books, plate, jewels, etc. .. (State estimated value according to best of Executor's or Administrator's belief.)			
Property in Government securities transferable at the Public Debt Office .. (State description and value at the price of the day; also the interest separately, calculating it to the time of making the application.)			
Immovable property consisting of .. (State description, giving, in the case of houses, the assessed value, if any and the number of years' assessment, the market value is estimated at, and, in the case of land, the area, the market value and all rents that have accrued.)			
Leasehold property .. (If the deceased held any leases for years, determinable, state the number of years' purchase the profits rents are estimated to be worth and the value of such, inserting separately arrears due at the date of death and all rents received or due since that date to the time of making the application.)			
Property in public companies .. (State the particulars and the value calculated at the price of the day; also the interest separately calculating it to the time of making the application.)			
Policy of insurance upon life, money out on mortgage and other securities, such as bonds, mortgages, bills, notes and other securities for money .. (State the amount of the whole; also the interest separately, calculating it to the time of making the application.)			
Book debts .. (Other than bad.)			
Stock in trade .. (State the estimated value, if any.)			
Other property not comprised under the foregoing heads .. (State the estimated value, if any.)			
TOTAL ..			
DEDUCT amount shown in Annexure B not subject to duty ..			
NET TOTAL ..			

ANNEXURE B

Schedule of Debts, etc.

	Rs.	A.	P.
Amount of debts due and owing from the deceased, payable by law out of the estate ..			
Amount of funeral expenses ..			
Amount of mortgage incumbrances ..			
Property held in trust not beneficially or with general power to confer a beneficial interest ..			
Other property not subject to duty ..			
TOTAL ..			

Section 2 (2). The Central Board of Revenue Act 1924 (IV of 1924) states—

13th March, 1924.

An Act to provide for the constitution of a Central Board of Revenue and to amend certain enactments for the purpose of conferring powers and imposing duties on the said Board.

WHEREAS it is expedient to provide for the constitution of a Central Board of Revenue and to amend certain enactments for the purpose of conferring powers and imposing duties on the said Board; it is hereby enacted as follows:—

Short title and commencement.

1. (1) This Act may be called THE CENTRAL BOARD OF REVENUE ACT, 1924.

(2) It shall come into force on the first day of April, 1924.

Constitution of Central Board of Revenue.

2. As soon as may be after the commencement of this Act, the Central Government shall constitute a Central Board of Revenue, consisting of one or more persons appointed by it, which shall be subject to the control of the Central Government in the exercise of such powers and the performance of such duties as may be entrusted to it by the Central Government or by or under any law.

Procedure of the Board.

3. The Central Government may make rules for the purpose of regulating the transaction of business by the Central Board of Revenue, and every order made or act done in accordance with such rules shall be deemed to be the order or act, as the case may be, of the Central Board of Revenue.

For notification constituting the Central Board of Revenue see General Rules and Orders, Vol. V, 612 of The Civil Court Manual (Imperial Acts, 7th Edn., M.L.J. Office). Section 2, Sub-section (5) Controller means not merely a person appointed to be a Controller of Estate Duty under Section 4 but also Dy. Controller of Estate Duty or the Assistant Controller of Estate Duty. Section 2, Sub-section (6). This definition is word for word the same as in Section 22 (1) (*a*) of the Finance Act, 1894. Section 2, Sub-section (7). Here also the definition is word for word the same as in Section 22 (1) (*e*) of the Finance Act, 1894. Section 2, Sub-section (8) the definition of executor in Section 22 (1) (*d*) is as follows: "The expression 'executor' means the

executor or administrator of a deceased person, and includes, as regards any obligation under this Part of this Act, any person who takes possession of or intermeddles with the personal property of a deceased person." In the English Act it is stated that any one who intermeddles with the personal property of a deceased person is included in the expression "Executor." In England the trustees, the administrators, and executors act under deeds, and therefore, it is necessary to mention that persons who intermeddle with the personal property of a deceased person will also become executors. In India there may be no trustee, no will nor any other document and, therefore, it is necessary to widen the definition of executor so as to bring in all persons who intermeddle with the estate of the deceased person or any part thereof. This is done in the definition of "legal representative."—Section 2 (12). Section 2, Sub-section (9). This definition is word for word the same as in Section 22 (2) (*a*) leaving the former part of this section and omitting reference to the powers exercised as a tenant for life under the Settled Land Act 1882. Section 2, Sub-section (10). Here the definition is word for word the same as in Section 22 (1) (*k*) of the Finance Act, 1894. Section 2, Sub-section (11): here the definition is word for word the same as in Section 22 (1) (*j*) of the Finance Act, 1894. Section 2, Sub-section (12): The definition here is more or less that contained in Section 2, Sub-section (2) of the Code of Civil Procedure (V of 1908) except for the omission of the words "and where a party sues.... so suing or sued." There is an addition of the Manager of a Hindu family for the time being in the case where the deceased was a co-parcener of a Hindu family. This addition is necessary because the Manager of a Hindu family may not in law always represent a co-parcener of a Hindu family. Neither is possession of the property belonging to a co-parcener will in any way constitute intermeddling. Section 2 (13) "power to appoint property" means power to determine the disposition of property of which the person invested with the power is not the owner. See Section 3 Interpretation. Section 2 (14) "prescribed" means prescribed by rules made under this Act. Section 2 (15). The definition of "property" in Section 22 (1) (*f*) reads: The expression "property" includes real property and personal property and the proceeds of sale thereof respectively and any money or investment for the time being representing the proceeds of sale. The Indian definition substitutes "movable or immovable" for the words "personal" or "real." There is an addition in the Indian definition of the following words "and also includes any property converted from one species into another by any method." This addition seems hardly necessary because even this species of property will be included in the clause "any interest in property." Explanation (1) is word for word the same as in Section 45 (1) of the Finance Act, 1940. Explanation (2) also is word for word the same as in Section 45 (2) of the Finance Act, 1940. Section 2, Sub-section (16), the definition here of "property passing on the death" is word for word the same as in Section 22 (1) (*l*) of the Finance Act, 1894.

Property within the meaning of the Act.

Section 2 (15) : Property includes any interests in property, movable or immovable, the proceeds of sale thereby and any money or investment for the time being representing the proceeds of sale and also includes any property converted from one species into another by any method.

Explanation 1.—The creation by a person or with his consent of a debt or other right enforceable against him personally or against property which he

was or might become competent to dispose of, or to charge or burden for his own benefit, shall be deemed to have been a disposition made by that person, and in relation to such a disposition the expression "property" shall include the debt or right created.

Explanation 2.—The extinguishment at the expense of the deceased of a debt or other right shall be deemed to have been a disposition made by the deceased in favour of the person for whose benefit the debt or right was existing, and in relation to such a disposition the expression "property" shall include the benefit conferred by the extinguishment of the debt or right.

Section 2 (16) "property passing on the death" includes property passing immediately on the death or after any interval, either certainly or contingently or either originally or by way of substitutive limitation, and "on the death" includes "at a period ascertainable only by a reference to the death."

Section 2 (17) "public charitable purpose" includes relief of the poor, education, medical relief and the advancement of any other object of general public utility within the territory of India.

Section 2 (19) "settled property" means property which stands limited to or any trust for, any person natural or juridical by way of succession, whether the settlement took effect before or after the commencement of this Act, and "settlement" means any disposition including a dedication or endowment, whereby property is settled. It is seen that no exhaustive definition of property is attempted or given in the Act. It is therefore necessary to find out what property is by reference to various other sections and clauses in the Act. First and foremost it is to be remembered that property comprises whatever a person is competent to dispose of. It also includes whatever a person shall be deemed competent to dispose of. There must be some interest in property belonging to the deceased. What that interest is must next be ascertained.

Section 3 (1) states:—

(*a*) A person shall be deemed competent to dispose of property if he has such an estate, or interest therein or such general power as would, if he were *sui juris*, enable him to dispose of the property ;

(*b*) A person shall be deemed to dispose of property to which he has acquired title, even if he has acquired title to it in one form and disposes of it in another ;

(*c*) A disposition taking effect out of the interest of the deceased shall be deemed to have been made by him, whether the concurrence of any other person was or was not required ;

(*d*) Money, which a person has a general power to charge on the property of another person, shall be deemed to be an interest in that property of which the former has power to dispose.

Section 2 (9) "general power" includes every power or authority enabling the donee or other holder thereof to appoint or dispose of property as he thinks fit, whether exercisable by instrument *inter vivos* or by will or both, but exclusive of any power exercisable in a fiduciary capacity under a disposition not made by himself or exercisable as mortgagee.

Section 2 (10) "incumbrances" includes mortgages and terminable charges.

Section 2 (11) "interest in expectancy" includes an estate in remainder or reversion and every other future interest whether vested or contingent, but does not include reversions expectant upon the determination of leases.

Section 2 (13) "power to appoint property" means power to determine the disposition of property of which the person invested with the power is not the owner.

If a person is a full owner of movable or immovable property the case is obvious. If a person has any interest short of full ownership that interest is property within the meaning of the Act. Thus a life interest in a property and an interest for life in property belonging to another during the life of that other person is also property. This latter interest is called *pur autre vie* interest. If any interest in property is sold the proceeds of sale and any money or investment for the time being representing the proceeds of sale is 'property.' 'Property' converted from one species into another by any method is also 'property.' Gold coins converted into gold and further converted into articles of jewellery are 'property' within the meaning of the Act. Sale proceeds of a piece of land sold are 'property' and if the proceeds are invested, the investment is 'property.' Thus lands, houses, factories, mills, furniture, household goods (chattels), implements of artisan, agricultural implements, cash in the bank or anywhere else, investments secured under documents or shares in Companies are 'property.' Debts due to a person are 'property.' The creation of a debt by a person or with his consent or any other right enforceable against him personally or against property which he was or might become competent to dispose of or to charge or burden for his own benefit is 'property.' The converse case of a benefit consisting in the extinguishment at the expense of a deceased of a debt or other right also is 'property.' Interest in expectancy also is 'property.' General power or power to appoint property give rise to the existence of 'property.' *A* is given an estate for life and is also given general power to appoint that estate after his life estate to whomsoever he chooses by disposition or will as he thinks fit. This power enables him or confers on him capacity to dispose of the estate, and therefore it constitutes 'property' within the meaning of the Act. Sometimes even a limited power makes the owner of that power competent to dispose of. If *A* has a limited power to appoint property to the members of his class which includes himself he has capacity to dispose of the property because he can appoint the property to himself—See 1933 Ch. 793. If *A* grants by deed property to his son subject to a power to his wife (*A's* wife) to charge on it a sum of Rs. 1,000 by her will, even though A's wife dies without exercising this power on her death, she would be deemed competent to dispose of the sum of Rs. 1,000, and estate duty is leviable in respect thereof. *Pur autre vie* interests are also 'property' which are liable to pay Estate Duty. If the holder thereof dies then his interests are valued for the lives of the person during whose lives the interests continue and on that valuation Estate Duty is collected. Estate Duty will fall even on property in which the deceased had no interest at all. An illustration of this is where property is settled during the life of *A* to pay the income to *B* with a gift over on the death of *A* of the capital to *C*. On *A*'s death Estate Duty is paid even though *A* had no interest at all in the property. An interest in expectancy is also regarded as property on which Estate Duty becomes payable, see 1947 Ch. 402. Property is limited to *A* for life with remainder to *X* for life with remainder to *A* absolutely. *A* is deemed competent to dispose of his interest in expectancy and therefore it constitutes 'property' within the meaning of the Act, see *Cowley* v. *Commrs. of Inland Revenue,* 1899 A.C. 198. It is worth-while noticing in conjunction with

the definition of 'settled property'—section 2 (19) the following observation in the judgment reported in *L.D.A.D.V.* v. *Stewart's Trustees*, 1899 (1) F 416. "Settled property embraces every device known to conveyancers by which an enjoyment of estate under the same deed or will may be had by different persons succeeding to the estate in their order."

A person is entitled to settle property only subject to the rule of perpetuity. Section 14 of the Transfer of Property Act is: "No transfer of property can operate to create an interest which is to take effect after the lifetime of one or more persons living at the date of such transfer, and the minority of some person, shall be in existence at the expiration of that period, and to whom, if he attains full age, the interest created is to belong." This rule against perpetuity is founded on a general principle of public policy. In the year 1732 in 2 P. Wms. 686 Jekyll M.R. stated that if the rule were otherwise "the mischief that would arise to the public from estates remaining for ever, or for a long time unalienable or untransferable from one hand to another, being a damp to industry, and prejudice to trade, to which may be added the inconvenience and distress that would be brought on families whose estates are so fettered." Jarman on Wills, 7th Edition, Vol. 1, p. 267, set out as follows the modern English rule against perpetuity: "Subject to the exceptions to be presently mentioned, no contingent or executory interest in property can be validly created, unless it must necessarily vest within the maximum period of one or more lives in being and 21 years afterwards." In India the age of majority is attained on the completion of the 18th year. Section 114 of the Indian Succession Act 1925 is: "no bequest is valid whereby the vesting of the thing bequeathed may be delayed beyond the lifetime of one or more persons living at the testator's death, and the minority of some person, who shall be in existence at the expiration of that period, and to whom, if he attains full age the thing bequeathed is to belong." The rule is applicable to movable as well as immovable property. In England certain exceptions have been recognised to this rule. Hailsham Edition of Halsbury's Laws of England, Vol. 25, pp. 111-122, paras 206-220 set out the exceptions. Some of these exceptions have also been recognised by Courts in India. Section 18 of the Transfer of Property Act states that the restrictions in sections 14, 16 and 17 shall not apply in the case of a transfer of property for the benefit of the public in the advancement of religion, knowledge, commerce, health, safety or any other object beneficial to mankind.

Estate Duty is payable not only in respect of property which actually passes i.e., tangible property, movable or immovable which changes hands on death, but also in respect of property which is deemed to pass. Property is deemed to pass in all cases in which the deceased had the capacity to dispose of. It is not necessary that the deceased should have actually disposed of the property. Whether the property belonged to him or to another, if the deceased possessed the capacity to dispose of, property is deemed to pass and Estate Duty becomes payable. General power of appointment special or limited power of appointment *pur autre vie* interests, insurance policy moneys, and sums payable to the deceased's personal representatives under various Provident Fund schemes furnish examples of property which the deceased had capacity to dispose of, and therefore pass on his death, but property which had been given away to another and which has ceased to exist at or before the death of the deceased ceases to be property in respect of which Estate Duty is leviable.

For example, a race-horse had been gifted by the deceased, and the horse had died before the death of the deceased, no Estate Duty is payable. So also other kinds of property transferred or gifted away to others, if the same ceased to exist by reason of their destruction at or before the death of the deceased, no Estate Duty becomes payable. In England, it has been held that death gratuities payable under (Teachers Super Annuation Act 1925) were held liable to Estate Duty. Liability attaches also to sums or damages recoverable by the deceased if the cause of action had vested in him and survived for the benefit of his estate. This principle is applicable to all claims for money compensation if the cause of action vested in the deceased and survives for the benefit of his estate. Although with regard to the insurance policy moneys the property "comes into existence only on death," they are liable to Estate Duty on the basis that the deceased had the capacity to dispose of. With regard to the amounts payable to the personal representatives of the deceased under various Provident Fund schemes, the basis of liability may also be under sections 15 and 16 of the Act as interests purchased or provided by the deceased. Where under any scheme an employer pays to the employee any sum, the employer himself paying all the contributions, Estate Duty is payable. In this case, the deceased employee must be deemed to have contracted with the employer and entered into service only on the basis that the sums payable on his death form an attraction to the employee for his choice of service, in other words, the benefits of the Fund also form a part of his salary or remuneration. The usual type of Provident Fund schemes are those whereunder the employee makes monthly contributions, and the employer adds equal contributions. The rules of such Provident Fund Societies must be perused in order to determine whether the sum payable on the death of the deceased will be liable to Estate Duty or not. In England under the National Health Service Act 1946 as amended subsequently, a sum was set aside as compensation for the prohibition of selling goodwill of the medical practitioners who enter into service under that Act, and the compensation amount will be property on which Estate Duty becomes payable on the deaths of such medical practitioners. If a certain settlement of property is to *A* for life, and remainder to *B* absolutely and if *A* acquires by purchase the reversion, then the property on *A*'s death passes as his free estate, and estate duty is payable. If the settlement is to *A* for life, to *B* for life thereafter, and then to *A* absolutely, on *A*'s death the property passes as settled property; if Estate Duty has been paid under the settlement, the payment covers the reversionary interest. *Re Scot* [(1901) 1 K.B. 228] establishes liability to Estate Duty twice, once on the death of the testator and the other on the death of the beneficiary. The facts are, a testator left a bequest to his child. The child died before the testator, leaving issue. Section 33 of the Wills Act, 1837 saved the bequest from lapse. The beneficiary's issue would take the bequest, and the beneficiary would be deemed to have died after the testator, but in this case Estate Duty had to be paid once on the death of the testator and again a second time on the death of the beneficiary, who would be deemed to have died after the testator. If the testator himself in this case had provided in his will that if his child pre-deceased him his issue should take the bequest, then only once on the death of the testator Estate Duty would be payable. Supposing the child's issue also pre-deceased the testator then there is no liability in the issue's estate.

Section 2 (17). For a full comprehension of what "a public charitable purpose" is, see the following passages taken from Bouvier, Stroud's Judicial Dictionary, Wharton's Law Lexicon, and the following cases, reports of which are given below:

From *Stroud's Judicial Dictionary*:

Charity.—This "word, in its widest sense, denotes all the good affections men ought to bear towards each other; in its most restricted and common sense, Relief of the Poor. In neither of these senses is it employed in this (Chancery) Court. Here its signification is derived chiefly from the Statute of Elizabeth (43 Eliz. c. 4). Those purposes are considered charitable which that statute enumerates, or which by analogies are deemed within its spirit and intendment," (per Grant, M.R., *Morice* v. *Durham Bp.*, 9 Ves. 405), e.g. a bequest for keeping Chimes in repair (*Turner* v. *Ogden*, 1 *Cox, Ch.* 316), or for the use of a Vegetarian Socy. [*Webb* v. *Oldfield*: (1898) 1 I.R. 431], or of a Socy. for the protection of animals liable to vivisection (*Re Douglas*, 35 Ch. D. 472; 56 L.J. Ch. 913). The purposes enumerated by the Statute of Eliz. are "reliefe of aged *Impotent* and *Poore* people, some for maintenance of sicke and maymed souldiers and marriners, schools of learninge, free schooles and schollers in universities, some for repaire of bridges, portes, havens, causwaies, churches, seabankes and highewaies, some for educacon and pfermente of orphans, some for or towards reliefe stocke or maintenance for howses of correccon, some for mariages of poore maides, some for supportacon ayde and helpe of younge tradesmen, handicraftesmen and psons decayed, and others for reliefe or redemption of prisoners or captives, and for aide or ease of any poore inhabitant concninge payments of fifteenes, settinge out of souldiers (V. SET OUT) and other taxes." Though the Act is repealed, this enumeration is continued by the Mortmain Act of 1888 [Section 13 (2), 51 & 52, V.C. 42). It comprises four principal divisions:—(1) Relief of Poverty; (2) Advancement of Education; (3) Promotion of Religion; (4) Other purposes beneficial to the community [per Lord Macnaghten, *Income Tax Commrs.* v. *Pemsel*, 1891 A.C. 542; 61 L.J.Q.B. 290: *Re Foveaux*, (1895) 2 Ch. 501; 64 L.J. Ch. 856; 73 L.T. 202; 43 W.R. 661]. Vh, Tudor, Char. Trusts, 371: 1 Jarm. 205-250: Wms. Exs. 897 et seq, for collection of cases hereon: Va. *Beaument* v. *Oliverra*, 38 L.J.Ch. 62, 239; 4 Ch 309; 20 L.T. 53: 17 W.R. 269: SERVICE OF GOD.

A legacy for mere Sport or Game, is not a good Charity (*Re Nottage* 1895, 2 Ch. 649; 64 L.J.Ch. 695; 73 L.T. 269; 44 W.R. 22).

It has been said that the Inns of Chancery were all Charities (*A.G.* v. *Bowyer*, 3 Ves. 714); and though "some have been dealt with as private property," yet the conveyance (dated 29th March, 1618) from Lord Clifford of the property called Clifford's Inn, shows that that property is a Charity [*Smith* v. *Kerr*, (1900) 2 Ch. 511; 69 L.J. Ch. 755; 82 L.T. 795].

It has been held that Poverty in the recipient is not necessary to enable him to receive the benefits of a Charity (*Pease* v. *Pattinson*, 55 L.J. Ch. 617; 32 Ch. D. 154; 54 L.T. 209; 34 W.R. 361: Pemsel's Case, cited PUBLIC CHARITY.

Property purchased by a City Ward out of its own moneys and for its own purposes, is not a "Charity" within section 66, Charitable Trusts Act, 1853 (*Finnis to Forbes*, 53 L.J. Ch. 140, 141; 24 Ch. D. 587; 48 L.T. 813;

32 W.R. 55). But where there is a "Charity," it is within this section if its foundation and institution be in England or Wales, although its revenues are applied abroad (*Re Duncan,* 2 Ch. 356; 36 L.J. Ch. 513).

Other Stat. Def.—18 & 19 V.C. 124, sec. 48; 23 & 24 V.C. 134, sec. 8. As to mode of construing a gift for Charitable Purposes; Vide *Moggridge* v. *Thackwell,* 7 Ves. 36: *Mills* v. *Farmer,* 19 Ves. 482: *Biscoe* v. *Jackson,* 35 Ch. D. 460; 56 L.J. Ch. 540: *Re White,* 1893, 2 Ch. 42; 62 L.J. Ch. 342: *Re Macduff,* cited PHILANTHROPHIC:—And as to such a gift being void for Uncertainty, V. OR

V. ALMS: CHARITABLE PURPOSE: BENEVOLENCE: ENDOWMENT: EVANGELICAL: GENERAL UTILITY: GOSPEL: GREAT BRITAIN: RELIGIOUS: ECCLESIASTICAL CHARITY: PAROCHIAL CHARITY: PRISON: PUBLIC CHARITY.

One who from "Charity" helps another in an action, is not guilty of MAINTENANCE, even though his "charity" be indiscreet; wisdom is not an ingredient of the word (*Harris* v. *Brisco,* 55 L.J.Q.B. 423; 17 Q.B.D. 504; 55 L.T. 14; 34 W.R. 729).

"Charity," in a United States Sunday Act, includes everything which proceeds from a sense of moral duty, or kindness, or humanity, for the relief or comfort of another, and without any regard to one's own benefit or pleasure (*Doyle* v. *L. & B.R.R.,* 118 Mass. 197).

Shaving is not a "Work of Charity," within the English Sunday Observance Acts (*Phillips* v. *Innes,* cited HOLIDAY); like MERCY, there is no Work of "Charity" when the worker's object is gain (*ibid*).

Charitable Purpose.—A bequest for "Charitable" purposes, or for "Charities and other Public Purposes," is good (*Re Sutton,* 54 L.J. Ch. 613; 28 Ch. D. 464; 33 W.R. 519: *Dolan* v. *Macdermot,* 3 Ch. 676): but a bequest for "Charitable or Benevolent Purposes," or where "Charitable" is disjunctively associated with any other purpose not good as a CHARITY, the gift is bad, because the money may be applied to purposes not legally Charitable (*Re Macduff,* cited PHILANTHROPHIC:—Vide, AND: OR). A bequest "to be given in Private Charity" is not good (*Ommaney* v. *Butcher,* 1 T. & R. 260). Vide Tudor, Char. Trusts.

A bequest to an Anti-Vivisection Socy. is a good exercise of a Power to appoint "for some Charitable Purpose" (*Re Foveaux,* 1895, 2 Ch. 501; 64 L.J. Ch. 856; 73 L.T. 202; 43 W.R. 661).

V. CHARITY: DESERVING: HUMANE: PURPOSE.

In all English statutes, where there is no controlling context, "a technical meaning is attached to the word 'Charity,'" and synonymous therewith is "the word 'Charitable,' in such expressions as 'CHARITABLE USES,' 'CHARITABLE TRUSTS,' or 'Charitable Purposes'" (per Lord Macnaghten, *Income Tax Commrs.* v. *Pemsel,* 1891 A.C. 580; 61 L.J.Q.B. 289). In accordance with that view, it was there held by the majority of the H.L. (Halsbury C., and Lord Bramwell, diss.) that the exemption from Income Tax of property devoted to "Charitable Purposes,"—Income Tax Act, 1842, Sec. 61, Sch. A, *vi,*—does not require the ingredient of poverty in the objects of those purposes, and that the exemption extends to the income of the property devoted to Moravian Missions (1891 A.C. 531; 61 L.J.Q.B. 265; 55 J.P. 805; 65 L.T. 621).

That the Scotch meaning of "Charitable," in such a connection, connotes the same, or very nearly the same, technical meaning as in England was, in the case just cited, stoutly contended for by Lord Watson and urged by Lord Macnaghten; but whether that be so or not, semble that Pemsel's case overrules the Scotch decision in *Baird's Trustees* v. *Lord Advocate* (15 Sess. Ca., 4th Ser. 682).

As to whether poverty is a necessary ingredient in a "Charitable Purpose," even in its popular meaning, cf. judgment of Lords Watson, Herschell, and Macnaghten with those of Halsbury, C., and Lord Bramwell, in Pemsel's case; Vide the judgment in S.C. when in the Court of Appeal (58 L.J.Q.B. 200; 22 Q.B.D. 296).

"Charitable Purpose," Sec. 16, Succession Duty Act, 1853, is used in the technical sense of CHARITY (per Lords Watson and Macnaghten, Pemsel's case, sup.).

For an example of "Charitable Purpose" receiving a less extended meaning than its technical one; *V. Inl. Rev.* v. *Scott,* 1892, 2 Q.B. 152; 61 L.J.Q.B. 432; 67 L.T. 173; 40 W.R. 632. That was a decision on "Charitable Purpose," as used in sec. 11 (3), Customs and Inl. Rev. Act, 1885, *Re Linen & Woollen Drapers Institution,* 58 L.T. 949; *Glasgow Tailors* v. *Inl. Rev.,* 24 Scotch L.R. 516; 14 Sess. C.A. 4th Ser., 729.

"Public or Charitable Purpose"; *Vide* PUBLIC PURPOSE: PUBLIC CHARITY. *Vide* GODLY.

From *Bouvier*:

They embrace gifts to the poor of every class, including poor relations.... for the poor, though the distribution of the fund is private, and to private persons; for every description of college and school; that the state provides free education for children will not render a private bequest for the same purpose void; to all educational institutions for the advancement of Christian religion; to all Churches; foreign missions; for the education of two young men for all coming time for the Christian ministry; the advancement of Christianity among the infidels; the benefit of ministers of the gospel; for distributing Bibles and religious tracts; chapels, hospitals, and orphan asylums; even if discrimination is made in favour of members of one religious denomination; dispensaries; public libraries; friendly societies; Salvation Army; educational trusts; a volunteer corps; for the furtherance of the principles of food reform as advanced by certain named vegetarian societies; any religious society; (but not a Dominican convent for the promotion of private prayer by its own members; a society for the prevention of cruelty to animals; but not for the maintenance of animals) a drinking fountain for horses; to repair a sea dyke; to provide a scholarship; to repair a churchyard; to form a fund for pensioning old and wornout clerks of a firm; to establish a cemetery or maintain one; but not to repair a tomb; nor to erect a monument to a parent; nor to keep a testator's clock in repair; nor for the purpose of cleaning a painting every four years; nor a bequest for general public purposes; as supplying water or light to towns, building roads and bridges, keeping them in repair etc., a devise may be made to a municipal corporation for charitable uses; and a city may refuse to accept such a bequest.

In determining whether or not a gift is charitable, courts will consider the nature of the gift rather than the motives of the donor. Where a testator creates a trust which is invalid because it is one which the law will not permit

to be carried out, the trust fails. A bequest for a religious purpose is *prima facie* a bequest for a charitable purpose (1893) 2 Ch. 41. In England bequests for masses for the repose of the soul of the testator are void as being for superstitious uses. In the United States they have been held good charitable trusts. If money is given for poor souls it is a public charity, not being restricted to designated persons. In Ireland gifts for masses are generally held good charitable bequests. A charitable devise may become void for uncertainty as to the beneficiary.

Charities in England were formerly interpreted, sustained, controlled and applied by the Court of Chancery in virtue of its general jurisdiction in equity, aided by the Statute 43 Eliz. C. 4 and the prerogative of the Crown; the latter being exercised by the Lord Chancellor, as the delegate of the sovereign as *parens patriae;* Spence, Equity Jurisprudence. The subject has since been regulated by various statutes; the Charitable Trusts Act of 1853, 16 & 17 Vict. C. 137, amended by various subsequent Acts down to 1894.

The weight of judicial authority in England was in favour of the doctrine which, as will be seen, prevails in this country, that equity exercised an inherent jurisdiction over charitable uses independently of the statute of Elizabeth; that the statute did not create, but was in aid of, the jurisdiction. In support of this conclusion are found such judges as Lord Chancellor Northington in 1 Eden 10; Sir Jos. Jekyll in 2 P. Wms. 119; Lord Chancellor Redesdale in 1 Bligh 347. Lord Chancellor Hardwicke in 2 Ves. Sr. 327 : Lord Keeper Finch, in 2 Lev. 167; Lord Chancellor Sugden in 1 Dr. & W. 258, Lord Chancellor Somers, in 2 Veru 342, Lord Chancellor Elden in 1 Bligh 358, Lord Chancellor Lyndhurst in Bligh 335 and Sir John Leach in 1 Myl. & K. 376.

Wharton's Law Lexicon:—*Page* 158. *Charities or Public Trusts.* One of the earliest fruits of the Emperor Constantine's zeal or pretended zeal, for Christianity, was a permission to his subjects to bequeath their property to a church. This permission was soon abused to so great a degree as to induce the Emperor Valentinian to enact a Mortmain Act by which it was restrained. But this restraint was gradually relaxed; and in the time of Justinian it became a fixed maxim of Civil Law that legacies to pious uses (which included all legacies destined to works of charity, whether they related to spiritual or temporal Concerns), were entitled to peculiar favour, and to be deemed privileged testaments. Lord Thurlow was clearly of opinion that the doctrine of charities grew up from the Civil Law; and Lord Elden, in assenting to that opinion, has judiciously remarked, that at an early period the ordinary had the power to apply a portion of every man's personal estate to Charity; and when afterwards the statute compelled a distribution, it is not impossible that the same favour should have been extended to charity in wills which by their own force purported to authorise such a distribution.

Charity (as Sir William Grant has justly observed) in its widest sense, denotes all the good affections men ought to feel towards each other; in its more restricted and common sense, relief to the poor. In English Law it means a general public use—[*Commissioners of Income-Tax* v. *Pemsel* : (1891) A.C. 531], and comprehends 'relief of aged, impotent, and poor peoples; maintenance of sick, and maimed soldiers and mariners, school of learning, free schools, and scholars of Universities; repairs of bridges, ports, heavens, causeways, churches, sea banks, and highways; education and preferment of

orphans; the relief stock or maintenance of houses of correction; marriages of poor maids; supportation aids and help of young tradesmen, handicraftesmen, and persons decayed; relief or redemption of prisoners or captives; and aid or ease of any poor inhabitants, concerning payments of fifteenths, setting out of soldiers and other taxes.' These are the words of the preamble to 43 Eliz. C. 4 which is amongst the many statutes repealed by the consolidating Mortmain and Charitable Uses Act, 1888, 51 & 52 Vic. C. 52; but sec. 13, sub-sec. (2) of the Act recites this definition at length, and provides that 'whereas in diverse enactments and documents reference is made to the charities within the meaning of the said Act,' references to such charities shall be construed as references to charities within the meaning of the said preamble.

In general the question whether a gift is charitable depends not on whether it may, but whether it *must,* be applied to purposes strictly charitable; See *Morice* v. *Bishop of Durham* (1804) 9 Ves. 399, 406; *Re Davidson* (1909) 1 Ch. 567; if there is any option in the matter the gift will be void. To be valid a charitable bequest must be for the public benefit and the trust must be capable of being administered and controlled by the Court: whether gift or trust is for the public benefit is a question for the Court. [*In re Hummaltenberg, Beatty* v. *London Spiritualistic Alliance Ltd.* (1923) 1 Ch. 237] There are certain uses which, though not within the letter are yet deemed charitable within the equity of the Statute. Such is money given to maintain a preaching minister; to maintain a school master in a parish; for the setting up a hospital for the relief of poor people; for the building up of a sessions house for a city or county; for the making of a new, or for the repairing of an old, pulpit cushion, or pulpit-cloth; or for the setting of new bells where there were none, or for the mending of them when they are out of repair; or to pay ringers who would ring a peal of bells on the anniversary of the restoration of Charles II [*Re Pardoe* (1906) 2 Ch. 184] City Companies are not 'charities' in any legal sense of the word [*Re Meech* (1910) 1 Ch. 426]. A charitable gift pays legacy or succession duty at 10%, but charities generally speaking are exempt from income-tax.

In *Cocks* v. *Manners* (1871) L.R. 12 Eq., 574, Sir John Wickens, U. C., said "A voluntary association of women for the purpose of working out their own salvation by religious exercises and self-denial seems to me to have none of the requisites of a charitable institution, whether the word 'charitable' is used in its popular sense or its legal sense. It is said, in some of the cases, that religious purposes are charitable, but that can only be true as to religious services tending directly or indirectly towards the instruction or the edification of the public....

Gilmour v. *Coats* [(1949) 1 All E.R. 848] : (1949) A.C. 426 had to consider a trust for a certain Roman Catholic priory which consisted of cloistered nuns who devoted their life to prayers, contemplation, penance and self-sanctification within their convent and engaged in no exterior works. The House of Lords held that the element of public benefit essential to render a purpose charitable applied equally to religious as to other charities. The House of Lords by this decision not only confirmed the decision in *Cocks* v. *Manners,* but declined to go beyond the doctrine of *Cocks* v. *Manners.* Referring to these decisions Harman J. in *Re Warre's Will Trusts* (1953) 2 All E.R. 99 held that a trust establishing a 'retreat house' was a non-charitable

object, it lacking the element of public benefit essential to render a purpose charitable.

In *Baddeley and others* v. *Inland Revenue Commissioners* [(1953) 2 All E.R. 233] the Court of Appeal exhaustively considered the case law and held as follows:—

"(1) the sole object of each trust was the promotion of the religious (in the second case moral), social, and physical well-being of the residents, the remainder of the trusts being concerned with means to attain those ends and not being ends in themselves and the object being a single one with three aspects and not three objects.

(2) promotion of well-being denoted improvement and social and physical well-being meant in both cases, not mere social enjoyment or skill or fitness for sport, but the attainment of the standards of secular conduct and behaviour of a good neighbour and a good citizen and improvement of general bodily health, and moral well-being included religious improvement and the inculcation of a desirable code of secular ethics, these interpretations being reinforced by the inclusion of training as a means of attaining these objects and by the limitation of benefit to persons of insufficient means otherwise to enjoy the benefits povided.

(3) the trusts were not established for the relief of poverty, insufficiency of means otherwise to enjoy the advantages provided under the two conveyances not amounting to poverty for this purpose, although giving the trusts an affinity to charities for the relief of poverty and they were not established for the advancement of education, or, exclusively, of religion.

(4) charitable purposes beneficial to the community not falling under the heads of relief of poverty and advancement of education and religion included purposes analogous to purposes falling under those heads, and therefore, religious, moral, physical and social well-being as interpreted were charitable purposes.

(5) persons resident in the two county boroughs who in the opinion of the mission leaders were or were likely to become members of the Methodist Church, notwithstanding that power of selection were a sufficient section of the public for the purpose of establishing a charitable trust and the religious qualification did not render the trust void for uncertainty (especially the admission to participation was made dependent on the opinion of the leaders).

(6) given the requisite element of public benefit the question in any given case was whether the trust claimed to be charitable was within the spirit and intendment of the statute of Elizabeth I, and that question was to be answered by reference to the preamble as a whole, and in the light of the decided cases; the trusts were charitable trusts and the stamp duty on the conveyances must be determined accordingly."

The use of property conveyed exclusively for "social purposes," "recreation purposes," or "for a boarding house" would be outside the scope of exclusively charitable trusts.

Per Sir Raymond Evershed, M.R.: "It is not now in doubt that trusts which may be described as being for the encouragement of mere sport," would not be charitable. *Re Nottage* (1895) 2 Ch. 649...: It is in my judgment clear that trusts for the provision or promotion of recreation, even though comprehending organized games, may well qualify as charitable trusts, if, for example, they can in their context be regarded as educative in their main purpose. And in the most recent case of *Inland Revenue Commissioners* v.

City of Glasgow Police Athletic Assocn. (1953) 1 All E.R. 747 it was clearly indicated by Lord Normand at p. 753 of the report that the activities there under review, which were in the event held to amount in effect to those of a recreational club, would have qualified for the privileges of a charity had they been but incidental to the purpose of improving the efficiency of the police force and of the encouragement of recruiting thereto." Per Jenkins, L.J. : "The starting point . . . is the preamble to the statute of Elizabeth I (43 Eliz. I. C. 4). Of that enactment Lord Macnaghten said in *Income-Tax Special Purposes Commrs.* v. *Pemsel* (1891 A.C. 531) at p. 581 of the report. "The object of that statute was merely to provide new machinery for the reformation of abuses in regard to charities. But by a singular construction it was held to authorize certain gifts to charity which otherwise would have been void. And it contained in the preamble a list of charities so varied and comprehensive that it became the practice of the court to refer to it as a sort of index or chart. At the same time it has never been forgotten that 'the objects there enumerated' as Lord Cranworth, L.C., observes, 'are not to be taken as the only objects of charity but are given as instances.' "

In the same speech (*ibid,* 583) comes the celebrated classification of charitable purposes which, as pointed out by Lindley, L.J., *in Re Macduff* [(1896) 2 Ch. 467], is a paraphrase of Sir Samuel Romilly's argument in *Morice* v. *Bishop of Durham* (10 Ves. 532): " 'Charity' in its legal sense comprises four principal divisions: trusts for the relief of poverty; trusts for the advancement of education; trusts for the advancement of religion; and trusts for other purposes beneficial to the community, not falling under any of the preceding heads."

It is, of course, well settled that, although this classification only mentions benefit to the community under its fourth head, no trust, to whichever head it is sought to be assigned, is charitable unless it is directed to the public benefit: see *Oppenhein* v. *Tobacco Securities Trust Co., Ltd.* [(1951) 1 All E.R. 31] = 1951 A.C. 297. On the other hand it is equally well settled that a trust is not to be held as charitable merely because it is directed to the public benefit, and that to be so held a trust must be not only directed to the public benefit but also within the spirit and intendment of the statute of Elizabeth I. In other words, it must be both (*a*) beneficial to the community and (*b*) beneficial in a way the law regards as charitable: see *William's Trustees* v. *Inland Revenue Commrs.* [(1947) 1 All E.R. 519]. There is, however, a class of cases typified by *Goodman* v. *Saltash Corpn.* (1882), 7 App. Cas. 633 which are by no means easy to reconcile with the general proposition I have just stated, because they appear to proceed on the ground thus formulated by Lord Selborne, L.C., in that case at p. 642: "A gift subject to a condition or trust for the benefit of the inhabitants of a parish or town, or of any particular class of such inhabitants, is (as I understand the law) a charitable trust...."

In view of the comments made on this line of cases in *Williams' Trustees* v. *Inland Revenue Commrs.* (1947) 1 All E.R. 521 it would seem that they should not now be regarded as authoritative save in so far as they can be explained on the ground that the particular purpose was regarded as falling within the spirit and intendment of the preamble to the statute of Elizabeth I. ... I am not concerned to dispute the charitable character of a trust to provide a village green or a village hall for the use of the inhabitants of the village of *X*, or that the charitable character of such a trust is referable to

the fourth head of the classification. But I am concerned to dispute the proposition that the fourth head of the classification does not admit of the inclusion within the ambit of legal charity of purposes analogous to the relief of poverty, the advancement of education, and the advancement of religion, although not strictly comprised in any of those three heads. *Re Strakosch* [(1949) 2 All E.R. 6] = 1949 Ch. 529 was referred to, and it was suggested that support was to be found for the argument in the judgment of Lord Greene, M.R., where he said at page 8: "Lord Macnaghten's fourth class is represented in the preamble by the repair of bridges, etc., and possibly by the maintenance of houses of correction." But if the passage in which this sentence occurs is read as a whole I think it really tells the other way: "In *Williams' Trustees* v. *Inland Revenue Commrs.* the House of Lords has laid down very clearly that in order to come within Lord Macnaghten's fourth class the gift must be not only for the benefit of the community but beneficial in a way which the law regards as charitable. In order to satisfy the latter it must be within 'the spirit and intendment' of the preamble of the statute of Elizabeth I. That preamble set out what were then regarded as purposes which should be treated as charitable in law. It is obvious that as time passed and conditions changed common opinion as to what was covered by the word charitable also changed. This has been recognized by the courts as the most cursory examination of the cases shows. In order to be within the spirit and intendment of the preamble we take it that one must find something charitable in the same sense as the recited purposes are charitable. Lord Macnaghten's fourth class is represented by the preamble by the repair of bridges, etc., and possibly by the maintenance of houses of correction. This negatives any suggestion that 'charitable' must be confined to the poor [*Verge* v. *Somerville* : 1924 A.C. 502]. We have come to the conclusion that, though undoubtedly of benefit to the community, the purpose under consideration is not 'charitable' in the sense in which the benefits to the community instanced in the preamble are charitable. The benefit, as we understand it, does not have to be in any way *ejusdem generis* with the recited purposes, but it has to be charitable in the same sense."

There are many cases in the books in which purposes not falling within any of the first three heads have been held to be charitable when they could not possibly have been held such according to the method of applying the classification contended for on behalf of the crown. I need only refer to *Re Wedgwood* (1915) 1 Ch. 113 where a trust for the protection and benefit of animals was held, a good and valid charitable trust, on the ground that it was calculated to promote public morality by checking the innate tendency to cruelty, and *Inland Revenue Commrs.* v. *Yorkshire Agricultural Society* (1928) K.B. 611 where a society whose substantial object was the promotion of agriculture was also held charitable.

I think this well-known passage in the judgment of Chitty, J., *in Re Foveaux* (1895) 2 Ch. 504 still holds good :

Cases arise, such as the present, in which it is not easy to ascertain whether a particular institution is or is not a charity. Charity in law is a highly technical term. The method employed by the court is to consider the enumeration of charities in the statute of Elizabeth, bearing in mind that the enumeration is not exhaustive. Institutions whose objects are analogous to those mentioned in the statute are admitted to be charities and, again, institutions which are analogous to those already admitted by reported decisions

are held to be charitable. The pursuit of these analogies obviously requires caution and circumspection. After all, the best that can be done is to consider each case as it arises, upon its own special circumstances. "In my view, given the requisite element of public benefit, the question in any given case is simply whether the trust claimed to be charitable is within the spirit and intendment of the statute of Elizabeth I and that question is to be answered by reference to the preamble as a whole, and in the light of decided cases."... As Lord Haldane said in *A. G.* v. *National Provincial and Union Bank of England* (1924) A.C. 267: "In the case of a gift for charitable purposes there is a desire to profit people who would not be profited without your gift—that is the dominant motive."... *Re Nottage* (1895) 2 Ch. 649 was cited for the proposition that the encouragement of mere sport is not a charitable purpose. With regard to this authority I need only say that, in my view, neither of the trusts here in question is a trust for encouragement of mere sport. Somewhat nearer in point is the Irish case of *Shillington* v. *Portadown Urban Council,* (1911) 1 I.R. 247, where a trust for providing the means of healthy recreation for the residents of a named town and surrounding districts was held charitable. Reference was also made to *Re Mariette* and *Re Gray,* as bearing on the charitable character of trusts for the promotion of physical efficiency. In the former case the provision of facilities for games and a prize for athletic sports at a school, were held charitable on the ground that bodily development was just as much a part of education as mental development, and, accordingly, that these gifts were charitable as being for the advancement of education. In the latter case, the provision of the nucleus of a fund for the promotion of certain outdoor sports in a particular regiment was held charitable as being for the promotion of the physical efficiency of the army, following *Re Good,* where a trust to provide a library for an officers' mess was held charitable as tending to promote the mental efficiency of the army. These cases are, of course, far removed in subject-matter from the two cases now before the court, but I think they are of some assistance as showing that a trust for physical, no less than mental or moral, improvement may be charitable.

We were also referred to *Re Hadden,* where a trust, inter alia, to provide playing fields, parks and gymnasiums in, in effect, centres of working-class population, was held on construction to have for its object the health and welfare of the working classes by the supply of healthy recreation mainly in the open air, and, in particular, by providing playing fields, parks and gymnasiums, and as such to be a valid charitable gift, the learned judge founding himself primarily on the recognition contained in the Mortmain and Charitable Uses Act, 1888, section 6, of the dedication of land to the recreation of the public as a charitable use. In *Re Scowcroft,* a gift to the vicar for the time being of a parish or a building used as a village club and reading room

> "to be maintained for the furtherance of conservative principles and religious and mental improvement"

was held charitable, notwithstanding the inclusion of the reference to conservative principles, as being in effect a gift for the furtherance of religious and mental improvement amongst a section of the public. *Re Mann,* was a case of a gift to an institute established for the general benefit of the inhabitants of a named village, and this was held charitable as being for the benefit of the inhabitants. The authority of this case is, perhaps, open to question in view of what was said in *Williams' Trustees* v. *Inland Revenue Commrs.*

about the class of cases headed by *Goodman* v. *Saltash Corpn.* In *Re Spence,* a gift to a local authority for the erection of a hall for public purposes was held charitable. This is, perhaps, open to the same comment. In *Crystal Palace Trustees* v. *Minister of Town and Country Planning,* the objects of the Crystal Palace, which was to be held, inter alia, as a place of public resort and recreation, were held to be charitable.

Nearer the mark for present purposes is the Irish case of *Londonderry Presbyterian Church House Trustees* v. *Inland Revenue Commrs.* The objects of the trust there in question are thus set out at p. 435 of the report:

"The appellants are the present trustees of a deed of trust dated Nov. 21, 1922, whereby the trusts affecting the property concerned are declared in the following terms: Upon trust to permit the same or any part thereof to be used as a hall for meetings or for social or recreation purposes in connection with the various Presbyterian Churches in the City of Londonderry and the surrounding district or as a hostel or boarding house or as a library, or for such other purpose or purposes as the Board of Governors hereinafter defined or any Board of Governors or Committee to be substituted therefor in manner hereinafter appearing from time to time think fit it being the true intention and meaning of these presents that said premises shall be used for the purposes of assisting and helping in the religious, moral, social and recreative life of those connected with the Presbyterian Church in the City of Londonderry and surrounding district in such manner as the Board of Governors or substituted Board of Governors or Committee shall from time to time think right."

MacDermott, J., held these trusts to be charitable. His decision is reversed by the Court of Appeal. Sir James Andrews, C.J., said (*ibid* 446): "The authorities, whose number is legion, upon whether particular trusts fall within or without Lord Macnaghten's fourth category, baffle all efforts on my part to reconcile them with one another, and no useful purpose would be served in the circumstances by reviewing them. Judicial minds have operated not always consistently on facts admittedly different; and the result can only be described as in a measure chaotic. I shall simply content myself with saying that I find nothing in the statutes referred to which would assist me in holding that the trusts in the present case for religious, moral, social and recreative purposes, excluded as I have held them to be from Lord Macnaghten's third class, fall within the fourth class as a valid charitable trust. The test is not whether the objects or purposes aimed at are beneficial to or receive the general acceptance of the community. It is simply whether they conform or not to the requirements and essentials of a legal charity."

The case is also relevant on the question whether persons of a particular religious denomination resident in a specified area are or are not a sufficient section of the public for the purposes of a charitable gift. MacDermott, J., and Sir James Andrews, C.J., held that they did, Babington, L.J., held that they did not, while Black, J., expressed no opinion on the point.

Comparison of the trusts in the Londonderry case with those in the two conveyances with which we are here concerned seems to me to show that case to be clearly distinguishable. The trusts in the Londonderry be used and expended wholly or in part as such archibishop may judge most conducive to the good or religion in his diocese was not a good charitable bequest and was void. The expression used by the testator is not identical with the expression "for religious purposes". But as to the argument founded on

this case and *Marley* v. *Westminster Bank Ltd.* [(1939) 3 All E.R. 491], where a gift "for parish work" was held not to be charitable, I would observe that they proceeded on the ground that the objects authorised extended to purposes other than religious purposes in the strictly charitable sense, and that, purposes, there was no other head of charity to which they could be assigned. But, if the view I have formed as to the true construction of these two conveyances is right, then the object prescribed in each of the two cases is an exclusively charitable object.

We were also referred to *Inland Revenue Commrs.* v. *City of Glasgow Police Athletic Association* [(1953) 1 All E.R. 747], but I do not think it has any bearing here, the decision of the House of Lords being simply to the effect that the association there in question had two objects, one of which, viz., the increasing of the efficiency of the police force, was charitable, while the other, viz., the benefit of its own members as individuals, was not, and, accordingly, that the association was not established for charitable purposes only. I should, however, observe that with respect to *Re Good and Re Gray,* Lord Normand said [(1953) 1 All E.R. 749]:

"...so far as they are founded on the principle that gifts exclusively for the purpose of promoting the efficiency of the armed forces are good charitable gifts, they are, in my opinion, unassailable, but that the decision that the actual gifts were of that nature is more doubtful"; and that Lord Morton (*ibid,* 755) expressed his concurrence in this comment on those two cases. Finally, on this part of the case, I should mention, that in the course of the argument, we were referred to a large number of Acts of Parliament as giving in effect, statutory recognition to the charitable status of public open spaces, parks, recreation grounds and the like. I will not burden this already over-long judgment by referring to them in detail. Suffice it to say that, so far as they go, they, perhaps, afford some degree of support to the trustee's case (cf. *Re Hadden*), but, as I have said before, I think the issue really turns on the true construction of the two particular conveyances now before us, and I prefer to found my decision on that.

It remains to consider the question of public benefit. Are persons resident in the county boroughs of West Ham and Leyton who are, in the opinion of the leaders referred to, members or likely to become members of the Methodist Church a sufficient section of the public for the purposes of a charitable trust? Speaking for myself, I have no doubt that they are. The nexus provided by membership of a particular religious sect or persuasion has, so far as I know, never (except by Babington, L.J., in the Londonderry case) been held to be a private or personal one so as to make its members for the purposes of this branch of the law a mere aggregate of private individuals as the employees or former employees of a particular company, though numerous, were held to be in *Oppenheim* v. *Tobacco Securities Trust, Ltd.* Certainly this view has never been suggested in the case of educational trusts, although there must be very many educational trusts which are by their terms confined to persons of particular religious sects or persuasions. In particular, large numbers of educational trusts may have been set up since the Reformation for the exclusive benefit of members of the Church of England. All such trusts would be bad as not being for the public benefit if the members of a particular sect or persuasion were held not to constitute a section of the public. Again, trusts for the advancement of religion are com-

monly confined to members of some particular religious sect or denomination, but have never been held on that account to lack the necessary element of public benefit. If the members of a particular religious sect or denomination resident in a particular area are a section of the public for the purposes of educational or religious charities, I fail to see why they should not also be such for the purposes of any other form of charity, and, (accordingly notwithstanding the contrary views expressed by Babington, L.J., in the Londonderry case (27 Tax Cases 451), and submitted in argument on behalf of the Crown). I hold them to be such for the purposes of the present case. Plainly the inclusion of prospective or potential members of the particular denomination cannot make the class any the less a section of the public.

It remains only to deal with the submission made for the Crown to the effect that the religious qualification in this case has the effect of making the trusts void for uncertainty. So far as I know, this doctrine has never been applied to religious qualifications prescribed in charitable trusts, and *Re Mylne* [(1941) 1 All E.R. 405] and *Re Gott* [(1944) 1 All E.R. 293] provide some authority for the view that it is inapplicable. It is to be observed, moreover, that here the admission of persons to participation in case begin by enumerating a wide range of purposes by no means all of which would necessarily be charitable, and end by saying (*ibid.*, 435):

"...the true intention and meaning of these presents that said premises shall be used for the purposes of assisting and helping in the religious, moral, social and recreative life of those connected with the Presbyterian Church in the City of Londonderry and surrounding district in such manner as the said board of governors or substituted board of governors or committee shall from time to time think right."

Trusts in such a form are, I think, well capable of being held to range beyond the ambit of legal charity without involving a similar conclusion in the two present cases.

The case of *Williams' Trustees* v. *Inland Revenue Commrs.* is a decision of the House of Lords and as such, of course, binding on this court. But there, again, the objects were different from and wider than those in the present two cases. It is further to be observed that the basis of Lord Simonds' opinion is contained in this passage [(1947) 1 All E.R. 519]:

"But it is just because the purpose of the trust deed in this case is said to be beneficial to the community or a section of the community and for no other reason that its charitable character is asserted. It is not alleged that the trust is (*a*) for the benefit of the community and (*b*) beneficial in a way which the law regards as charitable. Therefore, as it seems to me, in its mere statement, the claim is imperfect and must fail."

It should be added that in summarising his view as to the quality of the trusts there in question Lord Normand said (*ibid.*, 521):

"In the present case the decision of the commissioners was that, while certain features of the institute conformed to the idea of charity, they were not so dominating nor was the general character of the institute such as effectively to distinguish it from an ordinary social club. In my opinion, this conclusion is amply supported by the facts and is well founded in law."

If, on the true construction of the two conveyances here in question the purposes of the trusts were those of a social club, then, of course, they would

not be charitable. If, on the other hand, the construction I have placed on the two conveyances is right, then, in my view, the trusts are charitable. In the end, all turns on the construction of the two conveyances.

Much reliance was placed for the Crown on *Dunne* v. *Byrne*, where to quote the headnote (1912 A.C. 407), it was held that a residuary bequest "to the Roman Catholic Archbishop of Brisbane and his successors to the benefit of the trust under each conveyance (apart from the exception already noted as regards the first) is made to depend on the leaders' opinion as to their membership of or the likelihood of their becoming members of the Methodist Church. The leaders must form an honest opinion on the matter to the best of their ability, and persons claiming to be eligible must be admitted or rejected in accordance with such opinion. Therefore, so far as I can see no question of uncertainty arises in the matter of religion, or, I should add, in the matter of insufficiency of means which is also referred to the opinion of the leaders.

Finally, I would say that, in reaching a conclusion favourable to the trustees on the question of public benefit, I have not overlooked what was said in *Williams' Trustees* v. *Inland Revenue Commrs.* as to the difficulty of finding wide definition of "Welsh People" contained in the trust deed, but I regard that case as clearly distinguishable, as there seems to me to be no similar difficulty in ascertaining the very differently constituted community to whose benefit the trusts of the two conveyances now before the court are directed. For these reasons I would allow both appeals.

Section 2 (18) is word for word same as in section 22 (1) (*c*) of the Finance Act, 1894. Section 2 (19) : section 22 (1) (*h*) and (*i*) of the Finance Act, 1894 are as follows : (*h*) The expression " settled property " means property comprised in a settlement. (*i*) The expression "settlement" means any instrument whether relating to real property or personal property, which is a settlement within the meaning of section 2 of the Settled Land Act, 1882, or if it related to real property would be a settlement within the meaning of that section, and includes a settlement effected by a parol trust. This definition accords with the conditions and notions prevalent in India. Under this definition any disposition by way of transfer, dedication or a Trust Deed whereby property movable or immovable is settled on another by way of succession is regarded as settled property. In other words the owner who is settling property parts with title and possession except where he remains under the terms of the settlement a trustee. The transfer may be to a natural or a juridical person which means a person in law which includes corporation and companies.

Section 3. *Interpretation.*—(1) For the purposes of this Act,—

(*a*) a person shall be deemed competent to dispose of property if he has such an estate or interest therein or such general power as would, if he were *sui juris*, enable him to dispose of the property ;

(*b*) a disposition taking effect out of the interest of the deceased shall be deemed to have been made by him, whether the concurrence of any other person was or was not required ;

(*c*) money which a person has a general power to charge on the property of another person shall be deemed

to be an interest in that property of which the former has power to dispose ;

(*d*) the domicile of a person shall be determined as if the provisions of the Indian Succession Act, 1925 (XXXIX of 1925), on the subject applied to him.

(2) In Parts II and III of this Act, any reference to any interest disposed of, policy of insurance effected, annuity or other interest purchased or provided or to any gift, settlement, disposition or transfer of property made, shall be construed as including any such interest, policy, annuity, gift, settlement, disposition or transfer, as the case may be, whether it was disposed of, effected, purchased or provided, or made before or after the commencement of this Act.

Sub-section (2) of section 3 in effect makes the provisions of Part II (containing the charging provisions) and Part III (containing exceptions from the charge of duty) applicable to all transactions referred to in the sub-section such as interest disposed of, policy of insurance effected, annuity or other interest purchased or provided etc. even if they took place before 15th October, 1953. Obviously any transaction taking place after this date will come under the provisions of the Act.

Wharton's Law Lexicon. Page 823, 13th Edition.

Sui Juris (Lat.) (of his own right). A person who is neither a minor nor insane, nor subject to any other disability is said to be *sui juris*.

Section 3, sub-section (1) (*d*). This Act, by this provision, makes the provisions of the Indian Succession Act, 1925 (39 of 1925) regarding the determination of a person's domicile applicable. Thus sections 5 to 19, both inclusive, of the Indian Succession Act are added as part and parcel of this Act. These sections are set out below:

Law regulating succession to deceased person's immovable and movable property respectively.

5. (1) Succession to the immovable property in British India of a person deceased shall be regulated by the law of British India, wherever such person may have had his domicile at the time of his death.

(2) Succession to the movable property of a person deceased is regulated by the law of the country in which such person had his domicile at the time of his death.

Illustrations

(*i*) *A*, having his domicile in British India, dies in France, leaving movable property in France, movable property in England, and property both movable and immovable in British India. The succession to the whole is regulated by the law of British India.

(*ii*) *A*, an Englishman, having his domicile in France, dies in British India, and leaves property, both movable and immovable, in British India. The succession to the movable property is regulated by the rules which govern, in France, the succession to the movable property of an Englishman dying domiciled in France and the succession to the immovable property is regulated by the law of British India.

One domicile only affects succession to movable.

6. A person can have only one domicile for the purpose of the succession to his movable property.

Domicile of origin of person of legitimate birth.

7. The domicile of origin of every person of legitimate birth is in the country in which at the time of his birth his father was domiciled ; or, if he is a posthumous child, in the country in which his father was domiciled at the time of the father's death.

Illustration

At the time of the birth of *A*, his father was domiciled in England. *A*'s domicile of origin is in England, whatever may be the country in which he was born.

Domicile of origin of illegitimate child.

8. The domicile of origin of an illegitimate child is in the country in which, at the time of his birth, his mother was domiciled.

Continuance of domicile of origin.

9. The domicile of origin prevails until a new domicile has been acquired.

Acquisition of new domicile.

10. A man acquires a new domicile by taking up his fixed habitation in a country which is not that of his domicile of origin.

Explanation.—A man is not to be deemed to have taken up his fixed habitation in British India merely by reason of his residing there in His Majesty's civil or military service, or in the exercise of any profession or calling.

Illustrations

(*i*) *A*, whose domicile of origin is in England, proceeds to British India, where he settles as a barrister or a merchant, intending to reside there during the remainder of his life. His domicile is now in British India.

(*ii*) *A*, whose domicile is in England, goes to Austria, and enters the Austrian service, intending to remain in that service. *A* has acquired a domicile in Austria.

(*iii*) *A*, whose domicile of origin is in France, comes to reside in British India under an engagement with the Government of India for a certain number of years. It is his intention to return to France at the end of that period. He does not acquire a domicile in British India.

(*iv*) *A*, whose domicile is in England, goes to reside in British India for the purpose of winding up the affairs of partnership which has been dissolved, and with the intention of returning to England as soon as the purpose is accomplished. He does not by such residence acquire a domicile in British India, however long the residence may last.

(*v*) *A*, having gone to reside in British India in the circumstances mentioned in the last preceding illustration, afterwards alters his intention, and takes up his fixed habitation in British India. *A* has acquired a domicile in British India.

(*vi*) *A*, whose domicile is in the French Settlement of Chandernagore, is compelled by political events to take refuge in Calcutta, and resides in Calcutta for many years in the hope of such political

changes as may enable him to return with safety to Chandernagore. He does not by such residence acquire a domicile in British India.

(*vii*) *A*, having come to Calcutta in the circumstances stated in the last preceding illustration, continues to reside there after such political changes have occurred as would enable him to return with safety to Chandernagore, and he intends that his residence in Calcutta shall be permanent. *A* has acquired a domicile in British India.

Special mode of acquiring domicile in British India.

11. Any person may acquire a domicile in British India by making and depositing in some office in British India, appointed in this behalf by the Local Government, a declaration in writing under his hand of his desire to acquire such domicile ; provided that he has been resident in British India for one year immediately preceding the time of his making such declaration.

Domicile not acquired by residence as representative of foreign Government, or as part of his family.

12. A person who is appointed by the Government of one country to be its ambassador, consul or other representative in another country does not acquire a domicile in the latter country by reason only of residing there in pursuance of his appointment ; nor does any other person acquire such domicile by reason only of residing with such first-mentioned person as part of his family, or as a servant.

Continuance of new domicile.

13. A new domicile continues until the former domicile has been resumed or another has been acquired.

Minor's domicile.

14. The domicile of a minor follows the domicile of the parent from whom he derived his domicile of origin.

Exception.—The domicile of a minor does not change with that of his parent, if the minor is married or holds any office or employment in the service of His Majesty, or has set up, with the consent of the parent, in any distinct business.

Domicile acquired by women on marriage.

15. By marriage a woman acquires the domicile of her husband, if she had not the same domicile before.

Wife's domicile during marriage.

16. A wife's domicile during her marriage follows the domicile of her husband.

Exception.—The wife's domicile no longer follows that of her husband if they are separated by the sentence of a competent Court, or if the husband is undergoing a sentence of transportation.

Minor's acquisition of new domicile.

17. Save as hereinbefore otherwise provided in this part, a person cannot, during minority, acquire a new domicile.

Lunatic's acquisition of new domicile.

18. An insane person cannot acquire a new domicile in any other way than by his domicile following the domicile of another person.

Succession to movable property in British India in absence of proof of domicile elsewhere.

19. If a person dies leaving movable property in British India, in the absence of proof of any domicile elsewhere, succession to the property is regulated by the law of British India.

Wharton's Law Lexicon, page 299 : *Domicile.*—The place where a person has his home :

By the term ' domicile ' in its ordinary acceptation, is meant the place where a person lives or has his home. In this sense the place where a person

has his actual residence, inhabitancy or commorancy is sometimes called his domicile. In a strict legal sense that is properly the domicile of a person where he has his true fixed permanent home and principal establishment, and to which whenever he is absent he has the intention of returning (*animus revertendi*).

Two things then must concur to constitute domicile : first residence ; and secondly the intention of making it the home of the party. There must be the fact and intent ; for as Pothier has truly observed, a person cannot establish a domicile except it be *animo et facto*.

From these considerations and rules the general conclusion may be deduced, that domicile is of three sorts : domicile by birth, domicile by choice, and domicile by operation of law. The first is the common case of the place of birth, *domiciliun originis* ; the second is that which is voluntarily acquired by a party, *proprio Monte* ; the last is consequential as that of the wife arising from marriage. Story's Conflict of Laws, section 46.

A good definition as applied to an acquired domicile is—that place in which a man has voluntarily fixed the habitation of himself and family not for a mere special or temporary purpose, but with the present intention of making a permanent home, until some unexpected event shall occur to induce him to adopt some other permanent home : *Lord* v. *Colvin*, (1859) 4 Drew 366, per Kindersley, V. C. But no definition is perhaps quite satisfactory. Dicey's Conflict of Laws, p. 731.

If a person leaves his own country with the intention of remaining abroad till death, he, nevertheless, retains his domicile of origin until he fixes his domicile in some particular place.

It is clearly established rule that the validity of a will, disposing of personal estate, as regards form, is regulated by the law of the country in which the deceased as domiciled at the time of his death. The application of this rule to the case of British Subjects dying abroad and of foreigners dying in this country, gave rise to great inconvenience to remove which two statutes were passed in 1861.

By the first of these, The Wills Act, 1861, 24 and 25 Vict. c. 114, it is enacted among other things that every will made out of the United Kingdom by a British Subject (whatever may have been his domicile), shall, as regards personal estate, be held to be will executed, for the purpose of probate, and in Scotland of Confirmation, if the same be made according to the law of the place where the deceased was domiciled when it was made, or the laws then in force in that part of the dominions of the Crown where he had his domicile of origin.

By the second statute, 24 and 25 Vict. c. 121, in cases where a convention shall have been entered into between the Crown and any foreign state it is enacted that no British Subject of such foreign state dying here, shall be deemed to have acquired a domicile in the place of his death unless he shall have remained there for one year ; but no Convention having been entered into with any foreign state, this enactment is inoperative. Dicey's Conflict of Laws, 6th Edn. 1949.

RULE I. The domicile of any person is the country which is considered by English Law to be his permanent home—per Lord Cranworth in *Whicker* v. *Hume* (1858) 28 L.J. Ch. 396 ; [*A.G.* v. *Rowe*, (1862) 31 L.J. Ex. 314, 320]—Domicile meant permanent home, and if that was not understood by itself, no illustration could help to make it intelligible.

This is

(*i*) in general the country which is in fact his permanent home.

(*ii*) in some cases, the country which, whether it be in fact his home or not, is determined to be so by a rule of English Law.

RULE II.—No person can at any time be without a domicile :—*Udny* v. *Udny* (1869) L.R. 1 Sc. App. 441. *Bell* v. *Kennedy* (1868) L.R. 1 Sc. App. 307 esp. per Lord Westbury at p. 320. See also *Govt.* v. *Cinitian* (1922) 1 A.C. 105.

RULE III.—No person can have at the same time more than one domicile.

RULE IV.—A domicile once acquired is retained until it is changed

(*i*) in the case of an independent person by his own act.

(*ii*) in the case of a dependent person by the act of some one on whom he is dependent.

RULE V.—Every independent person has at any given moment either

(*i*) the domicile received by him at his birth (which domicile is hereinafter called the domicile of origin), or

(*ii*) a domicile (not being the same as his domicile of origin) acquired or retained by him while independent by his own act (which domicile is hereinafter called a domicile of choice).

RULE VI.—Every person receives at (or as from) birth a domicile of origin.

(*i*) In the case of a legitimate child born during the father's lifetime the domicile of origin of the child is the domicile of the father at the time of the child's birth.

(*ii*) In the case of an illegitimate or posthumous, or legitimated child the domicile of origin is the domicile of his mother at the time of his birth.

(*iii*) In the case of a foundling, the domicile of origin is the country where he is found.

RULE VII.—Every independent person can acquire a domicile of choice, by the combination of residence (*factum*) and intention of permanent or indefinite residence (*animus manendi*) but not otherwise :—(Some cases quoted).

RULE VIII.—(*i*) The domicile of origin is retained until a domicile of choice in fact is acquired.

(*ii*) A domicile of choice is retained until it is abandoned, whereupon either

(*a*) a new domicile of choice is acquired ; or

(*b*) the domicile of origin is resumed.

RULE IX.—The domicile of every dependent person is the same as, and changes (if at all) with, the domicile of the person on whom he is as regards his domicile legally dependent. Sub-rule (*i*), subject to the exceptions hereinafter mentioned, the domicile of an infant is during infancy determined as follows :—

1. The domicile of a legitimate or legitimated infant is, during the lifetime of his father the same as and changes with, the domicile of the father.

2. The domicile of an illegitimate infant or of an infant whose father is dead is, whilst the infant lives with his mother, the same as and changes with the domicile of his mother.

3. The domicile of an infant without living parents or of an illegitimate infant without a living mother, probably cannot be changed by his guardian.

4. The domicile of an adopted infant is, during the lifetime of the adopting parent the same and changes with the domicile of that parent.

Exception to sub-rule 1. The domicile of an infant is not automatically changed merely by a change of his mother's domicile by reason of remarriage.

Exception to sub-rule 1. The change of an infant's home by a mother, if made with a fraudulent purpose, possibly does not change the infant's domicile.

Sub-rule 2. The domicile of a married woman is during coverture the same, as and changes with, the domicile of her husband.

RULE X.—The domicile cannot be acquired by a dependent person through his own act.

Where there is no person capable of changing an infant's domicile he retains until the termination of his infancy, the last domicile which he has received.

RULE XI.—The last domicile which a person receives while he is a dependent person continues on his becoming an independent person, unchanged until it is changed by his own act.

SUB-RULE I.—A person on attaining his majority retains the last domicile which he had during his infancy until he changes it.

SUB-RULE II.—A widow retains her late husband's last domicile until she changes it.

SUB-RULE III.—A woman who is divorced or whose marriage is declared a nullity, retains the domicile which she had immediately before, or at the moment of divorce or declaration of nullity, until she changes it.

RULE XII.—The domicile of a person can always be ascertained by means of either

(*i*) legal presumption ; or

(*ii*) the known facts of the case.

RULE XIII.—When a person is known to have had a domicile in a given country, he is presumed in the absence of proof of a change, to retain such domicile.

RULE XIV.—Any circumstance may be evidence of domicile which is evidence either of a person's residence (*factum*) of his intention to reside permanently (*animus*) within a particular country.

RULE XV.—Expressions of intention to reside permanently in a country are evidence of such an intention, and in so far evidence of domicile.

RULE XVI.—Residence in a country is *prima facie* evidence of the intention to reside there permanently (*animus manendi*) and in so far evidence of domicile.

RULE XVII—Residence in a country is not even *prima facie* evidence of domicile, when the nature of residence either is inconsistent with or rebuts the presumption of, an intention to reside there permanently (*animo manendi*).

RULE XVIII.—The domicile of a corporation is the country in which it is registered. If it is not required by Law to be registered, its domicile is the country by the law of which it is incorporated. Pages 76-130, Dicey.

On the subject of domicile the reader is further referred to the following books :—

1. Dicey on Conflict of Laws.

2. Hailsham Edition of Halsbury's Laws of England, Volume VI, pp. 198-212.

3. Jarman on Wills.
4. Williams on Executors.

Section 4. *Estate duty authorities.*—(1) There shall be the following authorities for the purposes of this Act, namely :—

(*a*) the Board,

(*b*) Controllers of Estate Duty,

(*c*) Valuers.

(2) The Central Government may appoint as many Controllers of Estate Duty as it thinks fit and they shall, subject to the control of the Board, perform their functions in respect of such estates or classes of estates and such areas as are assigned to them by the Board :

Provided that, subject to such rules as may be made by the Board in this behalf, every Controller, within the local limits of whose jurisdiction any part of the estate of the deceased is situated, may exercise in relation to the whole estate or any part thereof any of the powers conferred on the Controller by this Act :

Provided further that the Board may, by general or special order, direct that any Controller specified by it in this behalf may exercise all or any of the powers conferred on the Controller by this Act to the exclusion of any other Controller.

(3) The Central Government shall, within twelve months after the commencement of this Act and may thereafter, from time to time, appoint a sufficient number of qualified persons to act as Valuers for the purposes of this Act and shall fix a scale of charges for the remuneration of such persons.

(4) Subject to the rules and orders of the Central Government regulating the conditions of service of persons in public services and posts, a Controller may appoint such executive or ministerial staff as may be necessary to assist him in the execution of his functions.

(5) All officers and persons employed in the execution of this Act, other than Valuers, shall observe and follow the orders, instructions and directions of the Board.

The Board, Controllers of Estate Duty and Valuers are mentioned as the Authorities for the purposes of the Act. By section 2 (5), Controller includes Deputy Controller of Estate Duty and the Assistant Controller of Estate Duty. By sub-section (2) the Central Government reserves to itself the power to appoint as many Controllers as it thinks fit. The Controllers are required to perform their functions subject to the control of the Board. The Board is authorised to assign and limit the jurisdiction of Controllers. If any part of the estate of a deceased is situated within the jurisdiction of a Controller the Controller can exercise his jurisdiction over the entire estate of the deceased even though the bulk of the estate lies within the jurisdiction of another Controller. The Board reserves to itself under the second proviso

the power to specify by general or special order a Controller who may be invested by the Board with all or any of the powers conferred on the Controller by this Act to the exclusion of any other Controller. Sub-section (3) provides for the appointment by the Central Government all Valuers within a period of twelve months from 15-10-1953, when the Act came into force. It is the Central Government that fixes a scale of charges for the remuneration of Valuers. Sub-section (4) is self-explanatory. Except Valuers, all officers and persons employed in the execution of the Act, are placed under the control of the Board [sub-section (5)].

IMPOSITION OF ESTATE DUTY

Extent of charge

Section 5. *Levy of estate duty.*—(1) In the case of every person dying after the commencement of this Act, there shall, save as hereinafter expressly provided, be levied and paid upon the principal value ascertained as hereinafter provided of all property, settled or not settled, including agricultural land situate in the States specified in the First Schedule to this Act, which passes on the death of such person, a duty called " estate duty " at the rates fixed in accordance with section 35.

(2) The Central Government may, by notification in the Official Gazette, add the names of any other States to the First Schedule in respect whereof resolutions have been passed by the Legislatures of those States adopting this Act under clause (1) of article 252 of the Constitution in respect of estate duty on agricultural lands situate in those States, and on the issue of any such notification the States so added shall be deemed to be States specified in the First Schedule within the meaning of sub-section (1).

Property which is deemed to pass

Section 6. *Property within disposing capacity.*—Property which the deceased was at the time of his death competent to dispose of shall be deemed to pass on his death.

" Property " is defined in the Act. " Property passing on the death " is also defined, but the definition statedly is not exhaustive. " Settled property " also is defined in the Act. In section 3, " Interpretation," it is stated when a person shall be deemed competent to dispose of the property. Section 5 of the Act charges to Estate Duty all property settled or not settled which passes on the death of a person dying after the commencement of the Act. Under the General Clauses Act, immovable property is defined ; section 3 (25) thereof is as follows : " immovable property " shall include land, benefits to arise out of land and things attached to the earth, or permanently fastened to anything attached to the earth. Section 3 (34), thereof states " movable property " shall mean property of every description, except immovable property. In various Acts of the Indian Legislature the word property is defined but that definition will apply for purposes of those Acts only. The definition of " property " and of " property passing on the death " and " settled property " read with section 3 of the Act give the widest meaning

to the expression " property " for purposes of the Act. The expression passing on the death does not bear any technical meaning. The word " passing " is a very general word and carries with it the widest possible meaning. Lord Parker in *A.G.* v. *Milne* (1914 A.C. 765 at p. 779), observed " the expression passing on the death is evidently used to denote some actual change in the title or possession of property as a whole which takes place at the death." It was pointed out by him that it was absolutely immaterial to whom or by virtue of what disposition, the property passed. Under section 5 estate duty is levied on the property passing on the death ; therefore it is immaterial to consider the several interests of the persons beneficially entitled on the death. It is equally immaterial to whom the property passed. The only question to be considered is whether property has passed at all. Lord Haldane in *Nevil* v. *Inland Revenue Commrs.*, 1924 A.C. 385 at p. 389, stated as follows : " ' Passes ' may be taken as meaning ' changes ' hands."

In England it has been held with reference to sections 1 and 2 of the Finance Act, 1894, corresponding to sections 5 and 6 of the Act that when a case falls within section 1 it cannot also come within section 2 and that the two sections are mutually exclusive. The leading case in England is that of *Earl Cowley* v. *Commrs. of Inland Revenue,* 1899 A.C. 198. In India also the same principle, it is submitted, will apply. Where property actually passes the levy of estate duty is on the principal value of the property passing. Where property is deemed to pass but does not actually pass the principal value of the property deemed to pass forms the basis for assessment of the estate duty. In practice it will turn out that there will be no actual difference, and most often the estate of a person dying will consist of property which passes as well as property which is deemed to pass and the ascertainment of principal value of each category of property will have to be in accordance with the principles and conditions mentioned in the Act itself. But really difficult questions will arise in which a court of law is called upon to decide whether there is an actual passing or whether there is only a notional passing. The decision one way or the other will of course affect the extent of duty that becomes payable. The leading cases in England are those of *Re Cassel Public Trustee* v. *Mountbatten* (No. 2) [(1927) 2 Chancery 275] and *Re Duke of Norfolk's Will Trusts, Public Trustee* v. *Commrs. of Inland Revenue* [1950 (1) All E.R. 664]. They illustrate the necessities of the questions of law that arise.

Cassel In re : *Public Trustee* v. *Mountbatten* (1927) 2 Ch. 275. The facts of this case are briefly these. The testator bequeathed " Brook House and contents and other property the leases of which would expire in 1995 to trustees on trust. The trustees were to give to Mrs. Cassel a life interest in the properties, and after termination of that life interest to Lady Mountbatten a life interest. The trustees were to expend all necessary sums on the properties for the upkeep and preservation of the properties from out of the residuary personal estate of the testator. Mrs. Cassel died and Lady Mountbatten's life interest commenced. The questions involved in the case were : (1) whether there was a passing under section 1 of the Finance Act; (2) how is the principal value of the property passing to be ascertained; (3) how the estate duty, payable on Mrs. Cassel's death in respect of the benefit of the annual expenditure on Brook House should be borne as between Lady Mountbatten and the residuary estate; and (4) how it should be assessed.

Russel, J., stated that he was bound by the decision of the House of Lords in *Cowley's case* (1899 A.C. 198) and that the property in question passed under section 1 of the Finance Act, 1894. The property that passed on Mrs. Cassel's death was the benefit of the annual sum of £5000—the expenditure incurred for upkeep and preservation. As regards valuation of the property that

passed. Russel, J., stated " The machinery provided by the Act is section 7, sub-section (5), supplemented to some extent by section 7, sub-section (8). That machinery does not exactly fit the present case, because from the personal nature of the provision, the benefit of it could not be sold at all ; an outside purchaser would not obtain delivery of the goods. Nevertheless, the machinery must be made to fit it, and I think it can be made to fit. It was made to fit in the Irish case of *Attorney-General* v. *Jameson* (1904) 2 I.R. 218. The value cannot be ascertained by reference to market price, because there can be no market. But a hypothetical market price at Mrs. Cassel's death could be fixed by ascertaining the value of the £5000 per annum over the unexpired period of the special clause. This value should not be the full value, for the owner of the Brook House does not receive the annual sum, she only enjoys the benefits of payments made in respect of her property, all of which do not necessarily represent payments which she would otherwise have made out of her own pocket. To some extent, therefore, the full value would be in excess of the true value. Further, there is always a possibility of the special clause, ceasing to operate before 1995, in the event of Brook House being sold. . . . " As regards (3) and (4) questions, Russel, J., said, " It would, I think, be wrong to say that the present tenant for life must herself pay the duty out of her own pocket. The duty at 29 per cent. must obviously be a large sum ; and her period of enjoyment of the benefits of the special clause might not be sufficiently prolonged to recoup to her the disbursement. On the other hand, residue has not benefited by the death of Mrs. Cassel. The charge on residue continues throughout the duration of the term. The death of Mrs. Cassel has not reduced or diminished the burden. Accordingly, in my opinion, residue should not permanently bear any part of the burden. The burden must be borne by the person to whom the property passed—but upon equitable terms. The extent of her burden should be made as far as possible payable out of and commensurate with her benefit. This can in my opinion be properly achieved in the following manner : Let the amount of the estate duty be raised and paid out of the residuary estate. Let a policy of assurance be effected on the life of Lady Louis to cover the amount of such duty, and let that policy of assurance be assigned to the trustees. Let the interest on the amount of the duty and the premiums on the policy be retained paid by the trustees out of the annual sum which would otherwise be payable under the special clause. The result will be that on the death of Lady Louis residue will be fully recouped and she will have borne the burden of the duty to the extent of the annual diminution of her benefit under the special clause."

To understand the above case it is necessary to know what was the construction put on the special clause in (1926) Ch. 358 (In re *Cassel*), in which the provisions of the will of the testator Sir Ernest Cassel were considered and construed.

Extracts from the judgments of Sir Raymond Evershed, M.R. and Jenkins, L.J. in the case of *Re. Duke of Norfolk's Will Trusts, Public Trustee* v. *Inland Revenue Commissioners* 1950 (1) All E.R. 664 are given below :—

Sir Raymond Evershed, M.R. (read by Sommervell, L.J.) :

According to this head of the Crown's argument, there arose on the death of the testator's brother, Viscount Fitzalan, who had enjoyed the first life interest in the annuity of £2,000 per annum bequeathed by the will and codicils, two distinct subject-matters of taxation, namely (*i*) the annuity itself, *i.e.*, the right to receive the sum of £2,000 per annum for the remainder of the life of Viscount Fitzalan's son ; and (*ii*) the benefit which accrued to the Norfolk estates by the cesser of Viscount Fitzalan's right to enjoy the annuity. It is clear that the first subject falls to be taxed exclusively by refer-

ence to section 1 of the Act of 1894, but that the second can only be taxed (if at all) by virtue of section 2 (1) (*b*) of the Act. Wynn-Parry, J., was of opinion that the simultaneous existence of a right to tax under section 1 and section 2 was inconsistent with the well-known statement of Lord Macnaghten in *Earl Cowley* v. *Inland Revenue Commrs.*, and could not, therefore, be sustained. I agree with him. It is true that the actual language used by Lord Macnaghten, and, particularly, his phrase (1899 A.C. 212), " . . . . section 2 does not apply to an interest in property which passes on the death of the deceased," was used in reference to a case in which only one possible subject-matter of taxation was under consideration and that is of the essence of the Crown's argument in the present case that there are two distinct proprietary interests. Counsel for the Crown observed further that the celebrated pronouncement of Lord Macnaghten, which has constituted one of the most significant decisions on the interpretation of the Finance Act, 1894, did not, in fact, represent the determination of an issue argued in the Cowley case. Nevertheless, I think with Wynn-Parry, J., that Lord Macnaghten's opinion ought not to be regarded as subject to such refinement, and that the law at any rate in the courts of first instance and in this court must be taken to be that as regards any such single benefaction as that with which we are concerned the application of section 2 of the Act is necessarily excluded by the application to the annuity itself of section 1.

In conceding that the Crown had only an option under this part of his argument counsel for the Crown stated that he was compelled so to do by the terms of section 7 (10) of the Act which provides :

" Property passing on any death shall not be aggregated more than once, nor shall estate duty in respect thereof be more than once levied on the same death."

I am inclined to think that counsel is thereby shown to be on the horns of a dilemma, for, if he is right in saying that there are here, in truth, two distinct properties, two distinct subject-matters of taxation, then *prima facie*, I should have thought section 7 (10) would be inapplicable. In the other hand, if there is but one property, one subject-matter of taxation [as the invocation of section 7 (10) seems to import], the argument necessarily fails in limine.

Wynn-Parry, J., felt himself further bound by the decision of Russell, J., in the second case of *Re Cassel* (1927) 2 Ch. 275. Again I think the learned judge was right, but since there has been in this court considerable argument on the true effect of that decision and of the views taken of it in subsequent cases, including, particularly, *Christie* v. *Lord Advocate* (1936) 1 All E.R. 443, and since the consideration of this matter is pertinent also to the first head of the Crown's argument before us, I will give my reasons for construing the decision of Russell, J., in the way which Wynn-Parry, J., adopted. The subject-matter in *Re Cassel*, which gave rise to the claim for duty was a direction in the testator's will that during a period of years ending in 1995 the trustees should provide the annual sums required for payment of rent, rates and certain other outgoings in respect of premises known as Brook House, which was itself bequeathed in trust for the benefit of several persons in succession. The first of these persons had died. Russell, J., expressed his own view that, apart from authority, he would have supposed in the case of a gift to *A* for life followed by an absolute gift of the same subject-matter to *B*, that no property " passed " within the meaning of section 1 of the Finance Act, 1894, and that tax would have been levied as on the cesser of an interest by virtue of section 2 (1) (*b*), but he regarded himself bound by the Cowley case to hold that there was in truth a passing within section 1. He further stated that,

had he been at liberty to follow his own inclinations in the case before him, he would, in accordance with section 7 (7) (*b*) of the Act, and by taking the average amount expended annually by the trustees in respect of rent and other outgoings at £5,000, have fixed the " slice " deemed to have passed at £78,250. Since, however, *ex hypothesi*, this method of assessment was not open to him and there was a direct " passing " of property, namely, the right to receive or enjoy the benefit of the variable annual sums, he was faced with the difficulty of determining, pursuant to section 7 (5) of the Act, the principal value " in the open market " of something which, from its nature, could have no market and was in other respects obviously most difficult of estimation.

The above is, in my judgment, a brief but essentially accurate statement of Russell, J's., decision so far as relevant to the present case, and it involves necessarily the determination that, for estate duty purposes, an annual sum bequeathed to or for the benefit of several persons in succession is the property which passes on the deaths of such persons (save the last) and that the duty is exigible in respect of its capital value. Thus the learned judge said (1927) 2 Ch. 280 :

" What then is the property which passes on Mrs. Cassel's death ? In my opinion the true answer is the benefit of the annual sum payable under the special clause.... What passes is the right to enjoy the benefit of that annual sum. That is the property which passed on the death of Mrs. Cassel." In my judgment, accordingly, Wynn-Parry, J., rightly held that the present case, at least so far as he was concerned, was governed by *Re Cassel*. In this court we were invited to take a different view and to hold either (*i*) that *Re Cassel* was a decision depending solely on its own peculiar facts and inapplicable in principle to a case of an ordinary continuing annuity, or (*ii*) that it was wrongly decided.

To the first ground of criticism, colour is undoubtedly lent by certain observations, first of Maugham, J., in *Re Northcliffe* (1929) 1 Ch. 327, and secondly of Lord Russell himself as a member of the House of Lords in *Christie* v. *Lord Advocate*. Both the two last mentioned cases were instances of dispositions of aliquot shares of the general income of an estate to be enjoyed in succession, as distinct from an annuity or yearly sum which, even though variable (as in *Re Cassel*), is in no way dependent on, or related to, the general income of the estate, and they constitute authority for the proposition that on the death of the first taker of the aliquot share of income there is a " passing " within section 1 of the Act of a like share of the corpus, but they are in my judgment and for reasons which I will later give, no authority for the view that on the death of the first taker of a continuing annuity there is a passing of any part of the corpus of the property out of which the annuity is raised or on which it may be charged. In distinguishing from his own case of *Re Northcliffe* that of *Re Cassel*, Maugham, J., used of the latter these words (1929) 1 Ch. 333 :

" It was therefore almost impossible to say that the principal value of the property out of which that sum had to be paid passed on the death of the first tenant for life. Accordingly, quite naturally as I think, he (Russell, J.), came to the conclusion that the case was of a very special character, and there being no section of the Act of 1894 which really exactly applied, it had to be met by holding that what passed was the benefit of the annual sum which was payable under the special clause."

It is true that the relevant provision in *Re Cassel* was of a " very special," that is, unusual character, but with the greatest respect to Maugham, J., in other respects he appears to me to have misapprehended Russell, J's. decision and the basis on which it rested. As I have already stated, Russell, J's.

own opinion would have favoured, in the case before him as in the case of successive interests in all aliquot share of general income, a notional passing under section 2 of the Act. Had he been free so to decide, he would have found no difficulty in arriving at the appropriate capital sum. He, in fact, did the calculation and arrived at the figure of £78,250, but he held himself (rightly) bound to treat both types of case as falling under section 1 of the Act. There was thus no question but that section 1 did in fact and " exactly " apply to the annual sums in question, and the property to which it applied was " the benefit of the annual sum payable under the special clause."

Accepting without reservation that in the case of aliquot shares of the general income of an estate there is, having regard to the language of section 1 of the Act, and, particularly, the use of the words " settled or not settled " a " passing " of a corresponding part or share of the corpus of the estate, it does not, in my judgment, follow either as a principle of construction of the statute (established by authority) or in logic that there is a similar passing of corpus in the case of a continuing annuity. Indeed, in my opinion, the principle underlying the former class of case is wholly inapplicable and cannot be sensibly related to the latter. In the case of one who has enjoyed for his life the income of (say) one-fourth of the income of an estate, it seems to me in accordance with common sense and a natural use of language to say that he enjoyed for his life, that he was life tenant of, a fourth part of the (corpus of the) estate, and, accordingly, that on his death a fourth part of the estate passed to the next successor. But no such language can, in my judgment, appropriately be used in the case of an annuitant. He is in no way concerned with changes in the yield of the estate. His right to his annuity will continue whatever income the estate may produce or (unless he has a right to look to income only) though the estate produces no income at all. The share which (according to the suggested analogy) is to be attributed to the annuity will vary from half year to half year. If the general income is exactly equal to the annuity, the corpus passing on his death will be the entirety, and the result will be presumably the same when there is no income at all. The suggested analogy, in my view, involves a confusion of right with remedy, and disregards the essential characteristics of an annuity : see, for example, *Bignold* v. *Giles* (1859) 4 Draw 343, and see also the language once more of Lord Russell of Killowen in *De Trafford* v. *A.G.* (1935 A.C. 290) :

" The present baronet's right to an annual sum of £8,000 gave him no right to the receipt of any particular items of the annual income, or to the income of any particular portion of the estates."

The basis of the contention of counsel for the Crown lay in the fact that (in the present case) the annuitant has a charge on, and, therefore, some kind of interest in, the corpus and every part of it, and can call on the trustees, in the course of their administrative duties, to give effect to such rights. But since the artificial process called the " slice " enjoyed by section 7 (7) (*b*) has no application, the logical result of counsel's emphasis on these rights of the annuitant seems to me to involve the result that, whatever the arithmetical relation at any point of time between the corpus of the estate and the first taker of a continuing annuity, the whole corpus passes on his death. It is true that in one sense he who is entitled to an aliquot share of general income is also " interested " in the whole estate and can call on the trustees of the whole for due administration of the whole estate but that right and that interest are irrelevant to the calculation of what property passes on his death. The share of the whole which passes is determined by the necessary and direct relationship between a given proportion of the whole income (whatever it may be) and the like proportion of the corpus out of which the income

arises—a relationship which is wholly absent in the case of an annuity. It is true that the distinction may seem a fine one between the two cases, and (more so) between the case of successive takers of a continuing annuity, on the one hand, and the case of takers of successive, but distinct, annuities of the same amount, on the other. But the distinction rests on the essential characteristics of an annuity and (in the case of successive takers of distinct annuities) on the circumstance that there is no passing of any property within section 1, but an artificial passing within section 2, which brings into play the statutory method of calculation provided by section 7 (7) (*b*). Nor, as it seems to me, would counsel's contention, if accepted, entirely avoid apparent anomalies. If trustees, pursuant to a testator's directions, buy an annuity for a fixed period or for the period ending with the death of the longest liver of a number of persons, counsel concedes that on the death of the first recipient duty could only be levied under section 1 on the then value of the annuity as such. The distinction rests, says he, on the existence of the charge and the administrative remedies which, in such a case as the present, the annuitant has. With this matter I have already dealt. I am not entirely clear what would, on counsel's argument, be the position where a single and continuing annuity is given to persons in succession, but such annuity is given no charge on any part of the estate. I conceive that the annuity would, in such a case, rank as a legacy, and any annuitant would have the right to have the estate so administered that due provision was made for the annuity before any distribution of residue. In my view, the existence of such an administrative remedy cannot involve the " passing " of some specified portion of the estate. Counsel further conceded that in the case of a continuing annuity for a specified period of years, the death of the first recipient did not give rise to any benefit to the general estate comparable with that derived, on the happening of the like event, in the case of a continuing annuity for the joint lives of *A* and *B* and the life of the survivor. But the distinction, if otherwise sound, is irrelevant to this head of the Crown's appeal.

In opening his case, counsel for the Crown observed that the existing practice of the Estate Duty Office might, and often did, work hardly on the second annuitant, that is, if he only survived the first by a short time. In other cases other methods of taxation have no less been said to work hardships. These are not matters with which we are concerned. In any case, the alleged hardship of the present case is one for which a testator can (and frequently does) make a provision. In truth, the object of the Crown in the present case is (if rightly entitled thereto) to obtain a larger amount of duty. At any rate, if the practice hitherto adopted works unfairly between taxpayers and inadequately for the Crown, Parliament has never thought fit to take any of the frequent opportunities offered to it to remedy those ills. In my judgment, the appeal ought to be dismissed.

Jenkins, L.J. : It is clearly not open to this court to depart from the construction placed on section 1 and section 2 over fifty years ago by the House of Lords in *Earl Cowley* v. *Inland Revenue Commrs.*, and followed by their Lordships in the comparatively recent case of *De Trafford* v. *A.G.* I need only refer to one passage from the well-known speech of Lord Macnaghten in the former case where he says (1899 A.C. 212) :

" I am, therefore, compelled to differ from the Court of Appeal at the very outset. I think the present case falls within section 1. I think it belongs to a class of cases which the authors of the Act had directly in view when they framed that section. Now, if the case falls within section 1 it cannot also come within section 2. The two sections are mutually exclusive. Section 1 might properly, I think, be headed, ' With regard to property passing on death, be

it enacted as follows.' Section 2 might with equal propriety be headed, 'And with regard to property not passing on death, be it enacted as follows.' I cannot, therefore, agree with Rigby, L.J., when he says that section 2 is a provision 'explanatory' of section 1. In my opinion the two sections are quite distinct, and section 2 throws no light on section 1. But, then, no doubt section 2 speaks of 'property in which the deceased .... had an interest ceasing on the death of the deceased.' And that, it may be said, was just the position of the second Earl with regard to the Mornington settled estates. So it was. But section 2 does not apply to an interest in property which passes on the death of the deceased. That is already dealt with in the earlier section. For property in the lifetime of the deceased subject to a charge or interest which ceased on the death must of course pass free from that charge or interest. And, so passing, it must of course be valued accordingly. That is section 1. You do not want section 2 for that. You cannot resort to section 2. For that would be giving the duty twice over. The Crown cannot have it both ways. Double duty is forbidden by the Act."

Applying these principles to the case of a continuing annuity in the form of an annual sum of varying amount given by a testator to defray the outgoings and upkeep of a leasehold house settled by his will on successive life tenants, Russell, J., in *Re Cassel*, as I think rightly, and, indeed, inevitably, held that on the death of the first life tenant there was an actual passing under section 1 of property consisting of the right to enjoy the benefit of the annual sum in question, and that section 2 (1) (*b*) had no application.

It is not disputed on the part of the Crown that in the present case there was an actual passing of the annuity under section 1, and that on the principles stated in *Earl Cowley* v. *Inland Revenue Commrs.*, this has the effect of excluding the application of section 2 (1) (*b*) so far as the annuity itself is concerned. It is, however, argued that it is, nevertheless, open to the Crown to claim in the alternative that, so far as the property charged with the annuity is concerned, the late viscount's life interest in the annuity was an interest in that property which ceased on his death within the meaning of section 2 (1) (*b*), and, accordingly, brought about a notional passing of the property on his death to the extent to which a benefit accrued or arose by the cesser of such interest and thus attracted duty on a "slice" of the capital of the property ascertained as provided in section 7 (7) (*b*).

In my judgment, this alternative contention is wholly inadmissible. As pointed out by Wynn-Parry, J., it was, in effect, considered and rejected by Russell, J., in *Re Cassel*; and it appears to me to have been rightly and necessarily so rejected for the simple reason that it involves doing the very thing which according to *Earl Cowley* v. *Inland Revenue Commrs.*, is not to be done, that is to say, treating an actual passing of property under section 1 as if it was a cesser of an interest in property under section 2 (1) (*b*), which in the words of Lord Macnaghten (*ibid.*, 213) does not refer "to the cesser of an interest in property which passes, but to the cesser of an interest in property which does not pass." Once the actual passing of the annuity under section 1 is established, the cesser of the late viscount's life interest in the annuity must be regarded merely as the event which brought about such passing, and not as the cesser of an interest within the meaning of section 2 (1) (*b*). Moreover, it seems to me that, even if the cesser of the late viscount's life interest in the annuity could properly be regarded as a cesser of an interest in the property charged with the annuity within the meaning of section 2 (1) (*b*), it would not be a cesser by reason of which any benefit accrued or arose within the meaning of section 2 (1) (*b*), read in conjunction with the formula for the valuation of such a benefit provided by section 7 (7) (*b*). Section 2 (1) (*b*),

in my judgment, contemplates a cesser of some interest in property or the income thereof which has the effect of discharging the property from the interest so ceasing for the benefit of the persons entitled to it subject to such interest. In other words, the benefit contemplated by the section is a benefit which accrues or arises to the property by reason of the cesser of the interest. This accords with the views expressed by Lush, J., in *A.G.* v. *Watson* (1917) 2 K.B. 431, and is, I think, borne out by the method of valuation prescribed by section 7 (7) (*b*), the value of the " slice " ascertained in accordance with that provision being an appropriate index of the benefit accruing or arising to property, or to persons entitled to property, when an interest such as an annuity for one life to which it was formerly subject ceases by the death of the annuitant, but, so far as I can see, wholly inappropriate to a case in which property is charged with a continuing annuity, which does not cease on the death of the person for the time being entitled, but remains on foot for the benefit of the next taker. In such a case, no benefit whatever has accrued or arisen to the property, which remains subject to precisely the same annual payment as before. It was contended for the Crown that a benefit did accrue or arise in the present case in the shape of the passing of the annuity to the present viscount. But that, in my view, is not a benefit which can be taken into account for the purposes of the Crown's alternative claim under section 2 (1) (*b*). It is a benefit produced by the actual passing of the annuity under section 1 and admittedly that is the only section which can be called in aid so far as the annuity itself is concerned. The alternative claim under section 2 (1) (*b*) necessarily involves separting the late viscount's life interest in the annuity from the present viscount's life interest in it, treating the former as a distinct and separate interest in the property charged ceasing on the death of the late viscount within the meaning of section 2 (1) (*b*), and finally demonstrating that by reason of the cesser of such interest, as distinct from the actual passing of the annuity under section 1, a benefit accrued or arose. Even if the first two steps in this process were legitimate, as in my judgment, they clearly are not, the third would, as it seems to me, present an insurmountable obstacle. The issue is, perhaps, obscured by the fact that the passing of the annuity under section 1 was here brought about by the cesser of the late viscount's life interest in it. If an annuity of like duration had been given to the late viscount absolutely, so that the right to receive it during the residue of the present viscount's life had passed on his death as part of his free estate, there could have been no question of any claim for duty otherwise than under section 1. The fact that the annuity was settled on the late and present viscounts successively for life lends colour to the claim under section 2 (1) (*b*), but, in truth, it is just as much, and just as exclusively, a section 1 case as it would have been in the hypothetical circumstances I have mentioned.

It was argued, though somewhat faintly, on the part of the Crown that the reduction in the actuarial value of the annuity by the dropping of one of the two lives on which it depended (as to which reduction there was in fact no evidence) constituted a benefit within the meaning of section 2 (1) (*b*) which fell to be valued according to the wholly irrelevant formula provided by section 7 (7) (*b*). I find myself quite unable to accept this contention. I am, accordingly, of opinion that the claim under section 2 (1) (*b*) fails, first, because it is inadmissible according to the principles laid down in *Earl Cowley* v. *Inland Revenue Commrs.*, and, secondly, because the continuing character of the annuity in any case seems to me to make section 2 (1) (*b*) and section 7 (7) (*b*) wholly inappropriate according to what appears to me to be the true construction of those provisions.

I now turn to the new contention raised on the part of the Crown in this court to the effect that, even if duty can only be claimed under section 1

as on an actual passing of the annuity on the death of the late viscount, the property which passed was not simply the right to receive the annuity during the residue of the life of the present viscount, but the proportion of the corpus of the property charged corresponding to the proportion of the income thereof required to produce the annuity. The argument in support of this contention proceeds in this way. It is pointed out (and rightly) that where the income of property is divided into shares which are settled on persons in succession, the death of any person entitled to a life interest in any one of such shares occasions a passing under section 1 of the corresponding share of capital : see *Re Northcliffe Christie* v. *Lord Advocate.* It is next alleged that the interest of an annuitant in respect of an annuity charged on property is equivalent to a life interest in the share of capital required to produce the annuity ascertained by reference to the proportion borne by the amount of the annuity to the whole income of the property charged. The conclusion is then adduced that, on the authorities to which I have just referred, it follows that the property which passes under section 1 when a continuing annuity charged on property passes on a death within the meaning of that section is not simply the annuity for the residue of its prescribed duration (which is clearly all that passes in fact), but the proportion ascertained as above of the corpus of the property charged with the annuity.

This contention seems to me contrary to all principle. An annuity charged on property is not, nor is it in any way equivalent to, an interest in a proportion of the capital of the property charged sufficient to produce its yearly amount. It is nothing more nor less than a right to receive the stipulated yearly sum out of the income of the whole of the property charged (and in many cases out of the capital in the event of a deficiency of income). It confers no interest in any particular part of the property charged, but simply a security extending over the whole. The annuitant is entitled to receive no less and no more than the stipulated sum. He neither gains by a rise nor loses by a fall in the amount of income produced by the property, except in so far as there may be a deficiency of income in a case in which recourse to capital is excluded. On the other hand, a life interest in a share of the income of property is equivalent to, and, indeed, constitutes, a life interest in the share of the capital corresponding to the share of income. The life tenant enjoys the share of income whatever it may amount to, and his interest, viewed as a life interest in capital, consists of a constant proportion of the whole property, whether the income is great or small and whether the capital value of the property rises or falls. The property which changes hands on his death (or, in other words, passes under section 1), thus clearly consists of the designated share of capital which then passes from his beneficial enjoyment to that of another. An annuity cannot be so related to any fixed proportion of capital : see *De Trafford* v. *A.G.* (1935 A.C. 290). The proportion of the total income required to produce the annuity, and with it the corresponding share of capital, varies from year to year according to the total income produced by the property charged. The Crown's contention thus involves substituting for the annuity a " slice " of capital ascertained by means of a calculation on the lines prescribed by section 7 (7) (*b*) for ascertaining the benefit accruing or arising by the cesser of an interest, with a result depending on the rate of income produced by the whole fund over whatever period might be selected for the purposes of the calculation. The " slice " so ascertained would bear no relation whatever to the legal rights of the annuitant, and its ascertainment would amount to the construction for estate duty purposes of a wholly fictitious and notional proprietary interest for which there is no warrant whatever in the relevant legislation.

It was suggested that authority for this method of charging duty on the passing of a continuing annuity under section 1 was to be found in the comments on *Re Cassel* made by Maugham, J., in *Re Northcliff* and by Lord Russell himself in *Christie* v. *Lord Advocate.* In my judgment, these comments properly understood provide no such authority. The peculiar difficulty in the Cassel case to which reference is made consisted not in deciding what property passed. Russell, J., made it abundantly plain that what passed, and what had to be valued, was simply the right to receive the benefit of the annual payment—but in valuing the property which passed, *i.e.*, the right to receive the benefit of the annual payment, owing to its fluctuating amount and other peculiar characteristics. This is, I think, made clear by the further observations of Lord Russell on the Cassel case in *Inland Revenue Commrs.* v. *Crossman* (1936) 1 All E.R. 788. Annuities charged on property which cease on death and fall within section 2 (1) (*b*) being charged to duty on the "slice" basis prescribed by section 7 (7) (*b*), the Act might consistently have prescribed a similar basis of charge with respect to continuing annuities which pass on death under section 1, but no such provision has, in fact, been made, and it is for the legislature and not this court to supply it should that be considered desirable. In the absence of any such special provision the property which attracts duty on a passing under section 1 is simply the property which passes, and the property which passed in the present case was the annuity and nothing else. The annuity must accordingly, be valued for duty purposes simply as consisting of the right to receive £2,000 per annum from the death of the late viscount for the residue of the life of the present viscount.

The following propositions of law are firmly established in England by the cases referred to above. These propositions of law are very important and they become applicable to India also under the provisions of the Estate Duty Act :—

1. Sections 1 and 2 of the Finance Act, 1894 are mutually exclusive ; where property passes under section 1, section 2 will not apply and *vice versa.*

2. The revenue cannot sustain an alternative claim to tax. If there is a passing of property under section 1 the revenue's claim that the property so passing should be charged with a tax which is more lucrative by virtue of the provisions of section 2 is inadmissible.

3. In the case of a continuing annuity for a specified period of years on the death of the first annuitant there is a passing of the annuity itself and not the proportion of the corpus of property charged corresponding to the proportionate income whereof required to produce the annuity. Estate duty should be charged on the basis of actuarial valuation of the property (annuity) passing.

4. In the case of the death of one of a number of life tenants interested in the same property what passes is a proportionate part or share of the capital.

5. An annuity charged on property is not, nor is it in any way equivalent to, an interest in a proportion of the capital of the property charged sufficient to produce its yearly amount.

According to the decision of Danckwerts, J., in *Stromdale and Ball Ltd.* v. *Burden* (1952) All E.R. 1, 59 wherever an option is given under an agreement to purchase property at less than its real value, the option given amounts to a creation of an equitable estate and it is "property." Similarly an option given to purchase or acquire shares at less than the true value is "property."

It may be stated that apart from obvious kinds of property, the following categories of " property " are liable to estate duty :—

1. Any goodwill.
2. Licence.
3. Patent.
4. Design.
5. Trade mark.
6. Copyright.
7. Or other right attaching to any trade, business, or profession.
8. Any amount withdrawable on demand or at notice or on a fixed date which was standing to the credit of the deceased at his death with any bank, building society or other institution.

Earl Cowley v. *The Commissioners of Inland Revenue* [1899 A.C. 198]

The following statement of facts is taken in substance from the judgment of Lord Watson.

The last Earl of Mornington, who died in 1863, by will devised estates, called for brevity the Mornington estates, to trustees in fee upon trust (after payment of certain charges and annuities) for the first Earl Cowley for life, after his death upon trust for his eldest son Viscount Dangan (afterwards the second Earl Cowley) for life, and after his death upon trust for his first and other sons in tail male, with remainders over, and in default upon trust for the testator's own heirs for ever. The second Earl Cowley (during the first Earl's life and also after his death in 1868) created annuities and charges upon his life estate in the property as security to the London Assurance Corporation for advances made by them. On January 14, 1887, the appellant the only son of the second Earl Cowley having come of age, he and his father executed a disentailing deed by which they granted the Mornington estates to a trustee to hold freed and discharged from the estate in tail male and all other estates in tail of the appellant and all estates, rights, interests, and powers to take effect after the determination or defeasance of such estates in tail male, or in tail, to such uses, upon such trusts, and with and subject to such powers and provisions, and in such manner as the second Earl and the appellant should at any time or times thereafter by any deed or deeds jointly direct and appoint, and in default of and until such appointment to the use of the second Earl Cowley during his life, without impeachment of waste, by way of restoration of the estate vested in him immediately before the execution of the deed of disentail.

The appellant and his father thereafter borrowed the sum of £2,10,000 from the Prudential Assurance Company, Limited, and, in security for its repayment, they, on June 8, 1888, in virtue of the powers reserved to them jointly, granted a mortgage in fee to the company for that amount over the estates subject to a proviso for redemption. Of the sum thus advanced by the Prudential Company £150,853-6-7, was paid by that company, at the request of the mortgagors, to the London Assurance Corporation, being the total amount of the liabilities which at the date the second Earl Cowley had incurred to the latter corporation upon the security of the life estate which he had before the disentail. On the same day, June 8, 1888, the London Assurance, upon receiving full payment of the debts then owing to them by the second Earl, executed, as had been agreed on, an assignment to the Prudential Company of the annuities and mortgage debts created by the second Earl, together with the full right and benefit of the assignor's powers

and securities for compelling payment of these several debts, with interest due or to become due thereon.

The second Earl and the appellant, in the further exercise of their reserved powers, executed, on June 9, 1888, with consent of the trustees in whom the estates were legally vested, a deed of resettlement of the equity of redemption. The trusts upon which the estates were to be held were declared to be, *inter alia*, (1) subject to such powers and provisions as the appellant and his father should, by any deed or deeds, revocable or irrevocable, jointly appoint; (2) that the appellant, his executors, administrators, and assigns, should receive, during the life of the second Earl in the events which happened, a sum of £3,000 a year ; and (3) subject and charged as aforesaid, the continuance of the second Earl's life estate, in restoration and by way of confirmation of the life estate limited to him by the will of the Earl of Mornington ; and, after the second Earl's death, (4) upon trust for the appellant and his assigns during his life, without impeachment of waste ; and (5) from and after the appellant's death, upon trust for the first and every other son of the appellant successively in tail male, with remainders over. By the same deed it was mutually agreed that as between the second Earl and the appellant the second Earl, his heirs, executors, and administrators, should be primarily liable for the interest accruing due during the second Earl's life upon the sum of £210,000, borrowed on mortgage from the Prudential Assurance Company ; that, in the event of the Earl's predecease, the appellant should be primarily liable for the interest accruing due during the residue of his life ; and that, after the death of the longest liver of them, the mortgaged premises should be the primary fund for payment of the said sum of £210,000, and the interest thenceforth to accrue due thereon.

The appellant and his father obtained further advances amounting to £20,000 from the Prudential Company, for which they executed a second mortgage on the Mornington estates. Of the total sum of £230,000 received by them from the company, £199,987-11-8 was paid to or on behalf of the second Earl and £30,012-8-4 to or for the appellant. The appellant, until the death of the second Earl, which occurred on February 28, 1895, was in receipt of the annuity payable as provided in the deed of resettlement.

After the death of his father, the appellant lodged a statement and valuation of the amount upon which he was liable to pay duty under the Finance Act, 1894. The Commissioners of Inland Revenue, the respondents in this appeal, accepted the gross estimate of £538,426-11-1, but disallowed two items which were claimed as deductions from it by the appellant. These were (1) the sum of £199,987-11-8, part of the sum of £230,000, with which the settled estates had been charged, as aforesaid, in favour of the Prudential Company, and (2) a sum of £65,200 being the capitalised value of the annuity payable to the appellant during the life of his father, and amounting at the death of the latter, to £3,000 per annum.

The appellant then presented a petition in accordance with the provisions of section 10 of the Finance Act, in which he craved a declaration that the whole sum of £230,000 and the sum of £65,000 ought to be allowed as deductions. The Divisional Court (Pollock B. and Bruce, J.) made a declaration that the whole of the mortgage debt of £230,000 ought to be allowed as a deduction and that the sum of £65,200 ought not to be allowed, (1897) 2 Q.B. 47. The Court of Appeal (A. L. Smith, Rigby and Collins, L. JJ.) reversed the decision of the Divisional Court upon the first item and affirmed it upon the second (1898) 1 Q.B. 355.

Per Lord Macnaghten : " My Lords, the principle on which the Finance Act, 1894 was founded is that whenever property changes hands on death

the State is entitled to step in and take toll of the property as it passes without regard to its destination or to the degree of relationship, if any, that may have subsisted between the deceased and the person or persons succeeding. Section 1 gives effect to that principle. Subject to certain exceptions or savings, it imposes a duty called estate duty upon the principal value of all property " settled or not settled " which passes on death. Section 2 is merely subsidiary and supplemental. It was intended, apparently to sweep in a few cases which were thought perhaps to be within the spirit though not within the letter of the proposed enactment, or else were supposed likely to lead to evasion if not made equally subject to estate duty. Section 2 therefore declares that the expression " property passing on the death of the deceased " shall be " deemed to include " property classified under four different heads, to no one of which rightly understood is that expression literally applicable. The rest of the Act deals with matters of detail valuation and machinery.

The 1st section contains the pith and substance of the enactment. It is comprehensive, broad and clear. The other provisions of the Act, which were dragged into the discussion rather unnecessarily as it seems to me, are strangely confused and singularly ill-drawn. But still I do not think that the Act is wholly to blame for the perplexity in which the learned judges below found themselves entangled. I think they took a wrong turn at starting. They left the broad highway for a narrow by-path, which led in a wrong direction and presented difficulties increasing at every step. Is it any wonder if they came to a wrong conclusion?

The first question as it seems to me—the question that lies at the very threshold of our inquiry—is simply this : Under which section of the Finance Act, 1894 does the present case fall ? Is it the ordinary and normal case of property passing on death, or is it one of those exceptional cases in which property is deemed to pass, though there is no passing of property in fact ? Does it come under section 1 or under section 2 ? The learned judges of the Court of Appeal, one and all, have held that the case is not within section 1. The reason is given by A. L. Smith, L.J. His Lordship quotes the words of section 1 and then goes on to say : " This section would not, I think, embrace the present case, for the life estate of the second Earl ceased at his death and passed to no one." I must say, I cannot think that reasoning is satisfactory. What the Act has in view for the purpose of taxation is property passing on death, not the interest of the deceased, which if it be a limited interest can never pass. With an interest that ceases on death the Act is not directly concerned, except in the one case where without any passing of property a benefit accrues or arises by reason of the cesser of a determinable interest such as a charge that expires. In every case in which property comprised in a settlement passes on death the life estate or other limited interest of the preceding owner must have ceased for good and all. If the criterion, proposed by the learned Lord Justice were the true criterion, settled property could not in any case come within section 1. But then that section expressly and in terms applies to settled property. You might just as well strike the word " settled " out of section 1 altogether as hold that the section does not embrace a case where a limited interest under a settlement ceases on death and passes to no one.

I am, therefore, compelled to differ from the Court of Appeal at the very outset. I think the present case falls within section 1. I think it belongs to a class of cases which the authors of the Act had directly in view when they framed that section.

Now, if the case falls within section 1 it cannot also come within section 2. The two sections are mutually exclusive. Section 1 might properly, I think,

be headed, " With regard to property passing on death, be it enacted as follows." Section 2 might with equal propriety be headed, " And with regard to property not passing on death, be it enacted as follows." I cannot, therefore, agree with Rigby, L.J., when he says that section 2 is a provision " explanatory " of section 1. In my opinion the two sections are quite distinct, and section 2 throws no light on section 1. But, then, no doubt section 2 speaks of " property in which the deceased " .... had an interest ceasing on the death of the deceased. And that, it may be said, was just the position of the second Earl with regard to the Mornington settled estates. So it was. But section 2 does not apply to an interest in property which passes on the death of the deceased. That is already dealt with in the earlier section. For property in the lifetime of the deceased subject to a charge or interest which ceased on the death must of course pass free from that charge or interest. And, so passing, it must of course be valued accordingly. That is section 1. You do not want section 2 for that. You cannot resort to section 2. For that would be giving the duty twice over. The Crown cannot have it both ways. Double duty is forbidden by the Act.

It is interesting and, I think, instructive to refer to sections 4 and 5 of the Succession Duty Act, from which the provisions of section 2, sub-section (1) (*a*) and section 2, sub-section (1) (*b*) are evidently adapted. The marginal note to section 4 is this : " General powers of appointment to confer successions." In the Succession Duty Act a power of appointment confers a succession when it is exercised, but only then. In the analogous provision of the Finance Act " property of which the deceased was competent to dispose at the time of his death " is deemed therefore declares that the expression " property passing on the death of the deceased " shall be " deemed to include " property classified under four different heads to pass though the power be not exercised. Then the marginal note to section 5 of the Succession Duty Act, runs as follows : " Extinction of determinable charges to confer successions." The section itself provides that " Where any property shall .... be subject to any charge, estate, or interest determinable by the death of any person .... the increase of benefit accruing to any person or persons upon the extinction or determination of such charge, estate, or interest shall be deemed to be a succession." It is quite plain, I think, that the provisions of section 2, sub-section (1) (*b*) of the Finance Act, 1894, have been borrowed and adapted from that section. But they do not, as I said just now, refer to the cesser of an interest in property which passes, but to the cesser of an interest in property which does not pass. On reading the Act I think this is made tolerably clear not only by the opening sentence of section 2, sub-section (1), but also by the directions for valuing " the benefit accruing or arising from the cesser of an interest ceasing on the death of the deceased " in section 7, sub-section (7). If property passes you can put a value on it by considering what it would fetch in the open market. You must resort to other means in order to estimate the value of property deemed to pass when an interest ceases. And here I would venture to say that, in my opinion, the provisions of section 7, sub-section (7) (*b*) are not open to the severe censure passed upon them in the Court of Appeal. They are quite intelligible if section 2, sub-section (1) (*b*) be confined to the case which it was really intended to meet. The difficulty, so far as there is any, comes from the drafting of section 2, sub-section (1) (*b*). There would have been none, I think, if the draftsmen had been content to follow the wording of the Succession Duty Act. But the general word "interest" without the word "charge" preceding it at first sight seems to point rather to a life interest than to a determinable charge. And thus it was, I think, that the Court of Appeal were led into the error which seems to run through their judgment.

Now, if the present case is within section 1 and not within section 2, the only remaining question is, what was the settled property that passed on the death of the second Earl ? " Settled property ", according to the definition of that expression in the Finance Act, 1894, means "property comprised in a settlement." It is difficult to see what else it could possibly mean. But at any rate it is a comfort to find something in the Act about which there can be no dispute. The settled property in this case is the property comprised in the resettlement of June 9, 1888. What was that property ? Why the equity of redemption of the Mornington estates, which were subject to certain incumbrances described as the overriding charges, and subject also to the mortgage in fee simple in favour of the Prudential Assurance Company to secure £230,000. There can be no doubt about that. What, then, was the principal value of the settled property ? That, according to section 7, subsection (5), must be estimated at the price which in the opinion of the commissioners the property comprised in the resettlement would have fetched if sold in the open market at the time of the second Earl's death. What right the commissioners can have to swell that estimate by adding to it a sum equal to the amount of the Prudential mortgage I cannot understand. The mortgage did not pass on the death of the second Earl. The mortgage debt was no part of the settled property. On the contrary, it diminished the property before resettlement. I may remark in passing that we are not concerned with section 7, sub-section (1). Whatever the meaning of that section may be, as to which I do not hazard a conjecture, it can have nothing to do with the present case, for in the present case the property which had to be brought into the aggregated estate " for determining the rate of duty " was not subject to any debt. It was only the equity of redemption that was resettled. Then we had a long argument about the doctrine of merger, and an argument, longer still, intended to persuade the House that for the purpose of this Act the transaction with the Prudential ought to be split up into two distinct mortgages, one by the second Earl and one by the present Earl, one by the father mortgaging his life estate and one by the son mortgaging his reversion. The Court of Appeal say that was the real transaction. In my opinion it was nothing of the kind. The Prudential Company bargained for a mortgage in fee simple, and a mortgage in fee simple they got. Why the commissioners should seek to reform a deed which carried out the transaction between the parties in the way everybody wished to have it carried out is beyond my comprehension. The argument seems to be founded on a fallacious analogy. Because in the case of succession duty it is necessary and proper to trace a disposition of property to its origin for the purpose of seeing out of whose interest the succession is derived and so discovering the predecessor, therefore it seems to be thought you are at liberty, in the case of the Finance Act, to dissect and pull to pieces one entire and completed transaction in order to enable the Crown to exact duty in respect of property which neither passed nor can be deemed to pass. Nor, again, can I see how the question is affected by the circumstance that mortgages, in fact paid off, were transferred and kept alive for the purpose of forming a protection against mesne incumbrances during the life of the tenant for life. That is everyday practice. Every beginner is acquainted with that device. Collins, L.J., thinks it decisive in favour of the commissioners. With deference, I think it has nothing to do with the question. If the interests arising under the resettlement come behind the incumbrance effected by the exercise of the joint power of appointment, can it make any difference that the incumbrance was protected by mortgages in a state of suspended animation and a restored life estate or any other outwork created by the skill of the conveyancer ? If, indeed, it could be shewn that by the cesser of the protective interest any

benefit arose or accrued to anybody under section 2, sub-section (1) (*b*) which has not already been taken into account, and which could be valued under section 7, sub-section (7), there might be some show of reason in the argument. But that would be a hopeless contention under the circumstances.

The result is that in my opinion the commissioners are wrong from beginning to end on the main point. Some people think the Act a harsh Act as it stands. It would be intolerable if it could be construed as the commissioners desire to construe it.

As regards the minor point urged by McHaldane, " I think the claim to deduct the value of the £3,000 annuity must fail. There is no foundation for it ; the property passed free from the annuity, and the Act makes no provision for any such allowance. There was a provision to that effect in the Succession Duty Act. At any rate, section 38 of that Act was so construed in this House : *Lord Braybrooke* v. *Attorney-General* (1861) 9 H.L.C. 150 ; *Commissioners of Inland Revenue* v. *Harrison* (1874) L.R. 7 H.L. 1. But there is no analogous provision in the Finance Act, 1894. I agree that the appeal must be allowed with costs here and below."

The Attorney General vs. *De Preville* [(1900) 1 Q.B. 223]

Where the tenant for life of settled property has released the life interest in favour of the remainderman and dies within twelve months of such release, estate duty is not payable by the remainderman on the principal value of the property under section 2, sub-section (1) (*c*) and section 7, sub-section (7), of the Finance Act, 1894.

Judgment of the Divisional Court, (1899) 2 Q.B. 238, reversed.

Per A.L. Smith L.J. who read the following judgment :

" The real point upon which the decision of this case turns is whether section 2 of the Finance Act, 1894, imposes estate duty upon a life estate which, prior to the passing of that Act, would not have had to be included in an account under section 38 of the Customs and Inland Revenue Act, 1881, upon the death of the tenant for life. The facts are short. On and prior to February 5, 1896, Georgiana Anne de Preville was tenant for life of Real property situate in the county of Leicester, of which her son, the present appellant, was tenant in tail and upon the day above-named the mother and son executed a disentailing deed, by which the estate tail was barred, and the son thereupon became owner in fee of the property. On December 11, 1896, ten months after the execution of this deed, the mother died. The question is whether the life estate of the mother, is liable to estate duty upon her death.

It has been held in this court, affirmed in the House of Lords in the *Attorney-General* v. *Beech* : 1899 A.C. 53, that where the owner of a life estate has conveyed that estate to a donee more than twelve months before the death of the donor, estate duty upon the life estate is not payable by the donee upon the death of the donor, for the reason that by the Finance Act it is only the estate which passes upon death which is liable to estate duty, and that when the donor, the tenant for life, died nothing passed upon which the estate duty could operate for the life estate had already passed to the donee before the death of the donor. It is now said by the Crown that that decision does not apply, because in the present case the tenant for life died within twelve months of the gift, and not after twelve months of the gift, as in the former case, and it is argued that upon this ground, by reason of the provisions of the remarkable section 2, sub-section (1) (*c*) of the Finance Act, 1894, this case is different from Beech's case (1) (1898) 2 Q.B. 147 ; (1899 A.C. 53) and that estate

duty is leviable upon the life estate upon the death of the tenant for life. The Crown admits that if section 2, sub-section (1) (*c*) of the Finance Act, 1894, does not impose this duty upon the life estate upon the death of the tenant for life, there is no other section which does. Section 2, sub-section (1) (*c*), is as follows : " Property passing on the death of the deceased shall be deemed to include property which would be required on the death of the deceased to be included in an account under section 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 the case of *Attorney-General* v. *Earl Grey* (1) [(1898) 2 Q.B. 534)] I expanded this composite section, and I will do so again so far as material to this case. It then reads as follows : "Property passing on the death of the deceased shall be deemed to include property which would be required on the death of the deceased to be included in an account under section 38 of the Customs and Inland Revenue Act, 1881, which, as amended, enacts that real or personal property to be included in an account shall be property of the following description—*viz.*, any real or personal property taken under a disposition made by a person dying on or after June 1, 1881, purporting to operate as an immediate gift *inter vivos*, which shall not have been *bona fide* made twelve months before the death of the deceased." This section 38 of the Act of 1881 is one of a group of sections under the heading "Stamps" which relates to the taking out of probate and letters of administration to the estate and effects of deceased persons—*i.e.*, of property which deceased persons die possessed of, or leave behind them, and it seems to me that this group of sections has nothing to do with property a deceased person has not left behind him, excepting cases in which a deceased person would have left property behind him had he not given it away before he died. It is only as regards such cases that an account is to be rendered. Section 38 being one of the sections in this group, what is its true reading ? Does it mean that a life estate—which of necessity comes to an end on the death of the tenant for life, and which never under any circumstances can come into an account upon the death of the tenant for life—is nevertheless to be brought into an account if the deceased has given it away less than twelve months before death, or is it true reading that, if there be property which would come into an account upon death if it had not been given away, that property must be brought into an account if the deceased has given it away less than twelve months before death ? Considering that the group of sections in the Act of 1881, is dealing with the property of which deceased persons in fact die possessed, or would have died possessed if they had not given it away, in my opinion, it is not the true reading of section 38 that property must be brought into an account no matter whether it would or would not have had to be brought into an account if it had not been given away within twelve months of the death. It is only to be brought into an account if it would have had to be so brought but for the gift. In my judgment this section is to prevent persons giving away property less than twelve months before death which otherwise would have to be included in an account, and thus escape the duty. It is not disputed by the Crown that the life estate in the present case could never have been included in an account, for upon the death of the owner of this life estate, even if it had not been given to the son, it *ipso facto* came into an account.

For these reasons, section 2, sub-section (1) (*c*), in my judgment, does not bring about what is contended for by the Crown, and, as before stated, there is no other section which does so. I need not discuss the case of *Cowley*

(*Earl*) v. *Inland Revenue Commissioners* (1) (1899) A.C. 198., for it has no bearing upon the point I have to decide, and I think the Crown is wrong. I cannot agree with the Divisional Court, though upon what ground that Court decided in favour of the Crown I do not know, for it has not told us. I think this appeal must be allowed.

Per Collins, L.J. :—

'I regret very much that the Divisional Court has not given any reasons for its decision in this case, for I must confess that I have had very serious misgivings as to whether the property in question does not come within the express words of section 38 of the Act of 1881 and therefore in a taxing act must be held liable. It seems to me that *prima facie* the life estate here is property, and it was taken under " a voluntary disposition made by a person, purporting to operate an immediate gift *inter vivos*, by way of transfer, delivery, declaration of trust, or otherwise." It seems to me *prima facie* to come within those words ; and if so, in construing a taxing Act, we should not be justified in applying what may be regarded as the general spirit of the Act as against the express words of the section. My misgiving is whether the Act may not have done this—have enacted that if any person chooses in the lifetime to give away that which would not have survived his death had he not given it away, he must do it at the risk of estate duty having to be paid upon it if he dies within twelve months of the gift. Had he sold his interest in his lifetime and given away the proceeds, and dies within twelve months the sum realised must have been brought into the account. Has he not in a sense realised its value if he gives it away ? My difficulty has been dealt with in the judgment which has been just delivered, and is more fully dealt with in the judgment of my brother Vaughan Williams, which I have had the advantage of seeing ; and I am content to adopt the reasoning of those judgments on the point, and to agree in the decision pronounced by the other members of the Court.

Per Vaughan Williams, L.J. : " The decision in this case depends, it seems to me upon the meaning of the word " property " in section 38, subsection (2) (*a*) of the Customs and Inland Revenue Act, 1881. Does property there mean any property, irrespective of the interest of the deceased therein ? Or is it limited to property in which the deceased has an interest which by its nature might continue after the death of the deceased, *i.e.*, property capable of devolution as estate of a deceased, or in other words, an interest not limited to determine with the life of the deceased ? Now Lord Cairns, in *Partington* v. *Attorney-General* (1), (1869 L.R. 4 H.L. 100 at p. 122) says, speaking of the construction of revenue statutes : " As I understand the principle of all fiscal legislation, it is this : If the person sought to be taxed comes within the letter of the law, he must be taxed, however great the hardship may appear to the judicial mind to be.... In other words if there be admissible, in any statute, what is called an equitable construction, certainly such a construction is not admissible in a taxing statute, where you can simply adhere to the words of the statute." On the other hand, a taxing Act is to be construed upon the same principle and by the same rules as any other Act : *Mersey Docks* v. *Lucas* (1), [1881-51 L.J. (Q.B.) 114 at p. 118] per Brett, L.J. For instance, I suppose, that, if upon the ordinary rules of construction general words would be limited on the *ejusdem generis* doctrine by preceding particular words, this construction would be applied in a taxing statute equally with any other statute. Now in the present case there is nothing to be found in the statute itself limiting the ordinary legal meaning of the word " property " but the statute refers to antecedent legislation—that is to say, to the statute beginning with 55 Geo. 3 and coming down to 43 Vict. c. 14, granting the Crown certain duties in respect of the value of the estate and effects of the

deceased persons, and provides for an inventory or account being made by the executor or administrator of such estate and effects, and section 38 deals with what shall be included and says in effect that it shall include not only property forming part of the estate and effects of the deceased at his death, but also property which he has parted with within three (now twelve) months before his death. Now, must not this mean, according to the ordinary rules of construction, property of the same kind as that dealt with in the antecedent legislation ? That is to say, property in which the deceased had such an interest that, if he had not parted with it by a gift within twelve months before his death, it would have been estate and effects of a deceased, and therefore have been included in the property on the value of which the duty was granted ? It is clear in the antecedent legislation that no duty was granted in respect of property the interest of the deceased in which terminated with his life, for the duty was in respect of property being estate and effects of a deceased ; and must not the word " property " in subsequent legislation be read in the same sense ? On the whole I think it must, and I find nothing in the Finance Act generally or in section 2, sub-section (1) (*c*) to enlarge the sense in which the word " property " is used in the probate duty legislation and the account to be rendered thereunder. The Probate Duty Acts prior to 1881, dealt with property capable of devolutions as part of the estate and effects of a deceased at death ; for it dealt with property which in fact devolved as such estate at death. Then comes the statute of 1881, which says that the tax shall apply to property which does in fact devolve at death, but, shortly before death, is transferred by what purports to be a gift *inter vivos*, but which property, the statute says, shall be taxed in the same manner as property in fact devolving at death. Surely, according to the ordinary rules of construction, the word "property " in the statute of 1881 must be limited to property in its nature capable of devolution as part of the estate and effects of a deceased. Thus to construe the word " property " in sub-section (2) of section 38 of the Customs and Inland Revenue Act, 1881, is only to apply the ordinary rule of construction, that words in the same and in cognate connected Acts must be presumed to have the same meaning.

Appeal allowed.

Section 7. *Interests ceasing on death.*—(1) Subject to the provisions of this section, property in which the deceased or any other person had an interest ceasing on the death of the deceased shall be deemed to pass on the deceased's death to the extent to which a benefit accrues or arises by the cesser of such interest, including, in particular, a coparcenary interest in the joint family property of a Hindu family governed by the Mitakshara, Marumakkattayam or Aliyasantana law.

(2) If a member of a Hindu coparcenary governed by the Mitakshara school of law dies, then the provisions of sub-section (1) shall apply with respect to the interest of the deceased in the coparcenary property only—

(*a*) if the deceased had completed his eighteenth year at the time of his death, or

(*b*) where he had not completed his eighteenth year at the time of his death, if his father or other male ascendant in the male line was not a coparcener of the same family at the time of his death.

Explanation.—Where the deceased was also a member of a sub-coparcenary (within the coparcenary) possessing separate property of its own, the provisions of this sub-section shall have effect separately in respect of the coparcenary and the sub-coparcenary.

(3) If a member of any *tarwad* or *tavazhi* governed by the Marumakkattayam rule of inheritance or a member of a *kutumba* or *kavaru* governed by the Aliyasantana rule of inheritance dies, then the provisions of sub-section (1) shall not apply with respect to the interest of the deceased in the property of the *tarwad, tavazhi, kutumba* or *kavaru,* as the case may be, unless the deceased had completed his eighteenth year.

(4) The provisions of sub-section (1) shall not apply to the property in which the deceased or any other person had an interest only as holder of an office or recipient of the benefits of a charity, or as a corporation sole.

Explanation.—For the removal of doubts, it is hereby declared that the holder of a *Sthanam* is neither the holder of an office nor a corporation sole within the meaning of this sub-section.

A coparcenary interest in the joint family property of a Hindu family governed by the Mitakshara, Marumakkattayam or Aliyasantana law is regarded as ' property ' and, on the death of a coparcener in such a family Estate Duty becomes payable.

The first para of sub-section (1) is a reproduction of section 2 (1) (*b*) of the Finance Act, 1894. This sub-section makes particular mention of coparcenary interests in the Hindu joint family property and in the Hindu families governed by Marumakkattayam or Aliyasantana law. These coparcenary interests are given as examples of interests ceasing on death. The language of sub-section (2) is recast. The language of this sub-section in the bill was confusing. The effect, however, of this sub-section is to collect estate duty even in the case of a Hindu coparcener, who dies a minor, *i.e.*, before completion of his 18th year, if he is the sole surviving coparcener in the family. The levy of estate duty under sub-section (1) cannot be made in the case of a coparcener dying a minor leaving his father or other male ascendant in the male line, who is a coparcener of the family. Suppose *A* has five sons. They all die one after another before their completion of the 18th year. On the death of each one of the five sons no estate duty is payable. Take this further illustration. *A* has only one son. *A* dies and his property devolves on his son who is about 4 years old at the time of *A*'s death. The son dies before he completes his 18th year. In spite of the fact that he is a minor at the time of his death estate duty is payable.

Mitakshara Law

Mayne on Hindu Law and Usage, 11th edition, para 264, p. 324, states: " It is evident that there can be no limit to the number of persons of whom a Hindu joint family consists, or to the remoteness of their descent from the common ancestor and consequently to the distance of their relationship from each other. But the Hindu coparcenary is a much narrower body. The terms, ' coparcenary ' and ' coparceners ' though sanctioned by long usage,

are not happily applied in the Mitakshara Law, and their use has been rightly criticised by Lord Dunedin in Baijnath Prasad's case (48 I.A. 195 at p. 211 : *Baijnath Prasad* v. *Tej Bali Prasad*). For, coparcenary in the Mitakshara Law is not identical with coparcenary as understood in English Law : when a member of a joint family dies, " his right accrues to the other members by survivorship, but if a coparcener dies, his or her right does not accrue to the other coparceners, but goes to his or her own heirs." When we speak of a Hindu joint family as constituting a coparcenary, we refer not to the entire number of persons who can trace descent from a common ancestor and amongst whom no partition has ever taken place ; we include only those persons who, by virtue of relationship have the right to enjoy and hold the joint property, to restrain the acts of each other in respect of it, to burden it with their debts, and at their pleasure to enforce its partition. Outside this body, there is a fringe of persons possessing only inferior rights such as that of maintenance, which however tend to diminish as the result of reforms in Hindu law by legislation...." " A Hindu joint family consists of males and females ; daughters born in the family are members of it till their marriage and women married into the family are equally members of the joint family. The whole body of such a family, consisting of males and females, constitutes a sort of corporation some of the members of which are coparceners, *i.e.*, persons who on partition, would be entitled to demand a share, while others are only entitled to maintenance. Each person is merely entitled to reside and be maintained in the family house ; when he dies, his claims cease, and as others are born, their claims arise. But the claims of each spring from the mere fact of his entrance into the family, not from his taking the place of any particular individual. Deaths may enlarge the beneficial interest of the survivors, by diminishing the number who have a claim upon the common fund, just as births may diminish their interests by increasing the number of claimants. But although the fact that *A* is the son of *B* introduces him into the family, it does not give him any definite share of the property, for *B* himself has none. Nor upon the death of *B* does he succeed to anything, for *B* has left nothing behind to succeed to. Each coparcener has a right to claim a partition, if he likes. But until he elects to do so, the joint family property continues to devolve upon the members of the family for the time being by survivorship and not by succession." Lord Westbury in *Appovier* v. *Ramasubbayyan* (1866) 11 M.I.A. 75, stated " According to the true notion of an undivided family in Hindu Law, no individual member of that family, whilst it remains undivided, can predicate of the joint and undivided property, that he, that particular member, has a certain definite share." He has an interest in the coparcenary and on his death this interest lapses to the coparcenary ; it passes by survivorship to the other coparceners. He, therefore, has no power to devise it by will, nor is there any question of succession to it. In no part of the coparcenary property has he left an " estate " of his own. " The interest of the member in the undivided property is not individual property but is a fluctuating interest liable to be diminished by births or increased by deaths in the family."—Mayne's Hindu Law and Usage, 11th edition (pp. 325-26).

" While fresh links are continually being added to the chain of descendants by births, so earlier links are being constantly removed from the upper end of the chain by death. As each fresh member takes a share, his descendants to the 3rd generation below him take an interest in that share by birth. So the coparcenary may go on widening and extending, as long as its members include agnates descended from a common ancestor, irrespective of their degrees of agnatic relationship to each other. But this is always subject to

the condition that no person who claims to take a share is more than 3 steps removed from a direct ascendant who has taken a share. Whenever a break of more than three degrees occurs between any holder of property and the person who claims to take next after that holder, the line ceases in that direction, and survivorship enures only to those collaterals and descendants who are within the limit of 3 degrees." (Mayne's Hindu Law, 11th edition, p. 328, paragraph 266). Mr. Justice Nanabhai Haridas said in (1873) 10 Bom.H.C. 444 at p. 463, " the rule then which I deduce from the authorities on this subject is, not that a partition cannot be demanded by one more than 4 degrees removed from the acquirer or original owner of the property sought to be divided, but that it cannot be demanded by one more than 4 degrees removed from the last owner, however remote he may be from the original owner thereof."

Definition of coparceners

The best definition is that contained in the case of *Venumula* v. *Ramandora*, (1870) 6 Madras H.C. 94. " It appears to us equally certain that the limit of the co-heirs must be held to include undivided collateral relations, who are descendants in the male line of one who was a coparcener with an ancestor of the last possessor. For, in the undivided coparcenary interest which vested in such coparcener, his near sapindas were co-heirs and when on his death the interest vested in his sons, or son, or other near sapinda in the male line, the near sapindas of such descendants or descendant became in like manner co-heirs with them or him, and so on, the co-heirship became extended through the new sapindas down to the last descendant. Obviously, therefore, as long as the status of non-division continues, the members of the family who have, in this way, succeeded to a coparcenary interest, are co-heirs with their kindred who possess the other undivided interest of the entire estate." Under Hindu Law a coparcener can dispose of his share although he cannot devise it by his will. This is the law as administered in the provinces of Madras, Bombay and Central Provinces including Berar. In all the provinces in India the undivided interest of a coparcener in joint family property may during his lifetime be seized and sold in execution of a decree against him for his own debt provided the attachment was made before his death. It is immaterial whether the sale is before or after his death ; it is now equally well settled in all the provinces that a gift or device by a coparcener in a Mitakshara family of his undivided interest is wholly invalid. However a gift by a coparcener of his entire undivided interest in favour of the other coparcener or coparceners will be valid whether it is regarded as one made with the consent of the other or others or as a renunciation of his interest in favour of all. Under the Dayabhaga Law the coparceners hold the family property in quasi severalty ; each member has a right before partition to mark out his own share and hold it to the exclusion of the others.

Marumakkattayam Law

It prevails among a considerable section of the people of the West Coast of South India, *i.e.*, the Indian States of Travancore and Cochin, the districts of Malabar and South Canara. Marumakkattayam means inheritance through nephews and nieces. In 24 Mad. 73, (*Raman Menon* v. *Raman Menon*), the Privy Council observed : " The litigation is between Nayars in South Malabar and has to be decided according to the laws and usages of those persons. Those laws and usages are very peculiar ; some of them are so well established as to be judicially noticed without proof. But others, of them are still in that stage in which proof of them is required before they can be judicially recognised and enforced." The Chief difference between Hindu

Law and Marumakkattayam Law is this : The Hindu Law is founded upon the agnatic family while the Marumakkattayam Law is founded on the Matriarchy. In a Mitakshara joint family the members claim their descent from a common ancestor ; the members of the family constituting a Marumakkattayam Tarwad are descended from a common ancestress. Thus the descent is in the female line according to the Marumakkattayam Law, " Tarwad is the name given to the joint family consisting of males and females—all descended in the female line from the common ancestress. It is an undivided family governed by the Marumakkattayam Law, the customary law of Malabar. Its outstanding feature is, for the purpose of inheritance, the descent is traced through the female line. A Tarwad may consist of two or more branches known as Thavazhies ; each Tavazhi or branch consisting of one of the female members of the Tarwad and her descendants in the female line " (page 972, para 2 of Mayne's Hindu Law and Usage, 11th edition). The Madras Marumakkattayam Act (22 of 1933), section 3, sub-section (1) defines a Tarwad a group of persons forming a joint family with community of property governed by the Marumakkattayam Law of inheritance, and a Tavazhi used in relation to a family as the group of persons consisting of that family, her children and all her decendants in the family line, and a Tavazhi used in relation to a male is the Tavazhi of the mother of that male. " The seniormost male member in the Marumakkattayam Tarwad, the Karnavan and in the absence of any adult male member the seniormost female member who is called the Karnavathi is entitled to carry on the management of the family. A Tarwad is a family corporation and every member of the Tarwad has equal rights in the property by reason of his or her birth in the Tarwad. On the death of any member his or her interest in the Tarwad property devolves on the other members of the Tarwad by survivorship " (pages 972-3 of Mayne's Hindu Law and Usage, 11th edition). The limited estate of a Hindu woman well known in Mitakshara Law is unknown to the Marumakkattayam. Before the coming into force of the Madras Marumakkattayam Act, 1932 (22 of 1933), it has been held by a long course of judicial decisions that one or more members of a Tarwad could not claim partition and separate possession of their share of the Tarwad property without the consent or concurrence of all the members thereof. Section 38 of the Madras Marumakkattayam Act confers now right to claim partition. Any Tavazhi represented by the majority of its major members, may claim to take its share of all the properties of the Tarwad over which it has power of disposal and separate from the Tarwad. Under section 40 of the Act the ascertainment of shares at partition is *per capita* and not *per stirpes*. Under the Marumakkattayam Law ' questions of inheritance can only arise as to individual property or in respect of property left by an extinct Tarwad.' The Full Bench decision in *Govindan Nair* v. *Sankaran Nair* (1909) 32 Mad. 351 F.B., affirms that the self-acquired property of a male member of a Tarwad which he had not disposed of in his lifetime lapsed to the Tarwad on his death and formed part of its property. A Full Bench of the Madras High Court in *Krishna* v. *Damodaran* (1915) 38 Mad. 48 F.B., has held with regard to the self-acquisition of a female member that it decends to her Tavazhi, in other words, to her own issue and in default of her issue it devolves on her mother and her descendants. The Madras Marumakkattayam Act, however, altered the customary and judge made law, and prescribed in sections 19 to 24 rules of intestate succession to property left by a Marumakkattayam male. Sections 25 to 28 of the Act prescribed rules for the succession to the property of a female. Testamentary disposition obtains in the Marumakkattayam law. See Malabar Wills Act (V of 1898), and the Nayar regulations of Cochin and Travancore.

The nature and incidents of ' *sthanam* ' were considered in 28 Mad. L.J. 669.

Patinharkuru Vallaban Chattan Raja v. *Rama Varma*

Before dealing with the questions arising in this case it is necessary to understand the nature of the office of a stani and its legal attributes. The late Mr. Justice Sundara Aiyar in an article on " Topics of Malabar Law Stanams " contributed to the Madras Law Journal (*vide* 13 M.L.J. 161), discusses this question at some length. He says in page 163 : " Whatever may be the origin of Stanam in any particular case, whether it was the result of public law, or owed its origin to a grant by the Ruling Chief to the holder of an office, or was merely the result of an arrangement amongst the members of a Tarwad for the maintenance of its social prestige and influence, the first essential of a Stanam is that the property vests not in the family of the holder, but in himself individually and descends to the person who succeeds to his dignity. Another essential feature is that the stani's ownership and interest in the property of his Tarwad ceases on his accession to the Stanam. His relationship and consanguinity with the family do not cease. For all purposes of religious, funeral and other ceremonies the stani continues to belong to the family." Then the learned writer points out that the accession to the staniship is not analogous to adoption under the Hindu Law. He says further that the stani and his Tarwad " will have the same rights of succession to the properties of each other as if the severance from the family had been the result, not of his accession to the stanam, but of a voluntary division between him and the rest of the family " and that " the succession to a stanam is generally determined by priority of age." As regards the nature of the estate taken by a stani he observes : " The Estate taken by a stani in the Stanam property is a limited one. It is not a mere life-estate, for the stani is not only entitled absolutely to the income accruing during his life, but he has also the power of creating a charge upon the estate or of alienating it where such charge or alienation is necessary or beneficial to the estate. His position may best be likened to that of a Hindu widow with respect to property inherited by her from her husband." The decision of the Judicial Committee of the Privy Council in *Venkateswara Iyan* v. *Shekhari Varma* (1881) 8 I.A. 149, is in full accord with the above statement of the law. Their Lordships of the Judicial Committee say in that case, " It appears that in the families of the Malabar Rajas it is customary to have a number of palaces, to each of which there is attached an establishment with lands for maintaining it, called by the name of a stanam. The Palghat family have no less than nine stanams. Each stanam has a raja at its head or Stanamdar. The Stanamdar represents the corpus of his stanam much in the same way as a Hindu widow represents the estates which have devolved upon her, and he may alienate the property for the benefit or proper expenses of the Stanam." The same view has been held by Muthusami Aiyar and Parker, JJ., in *Mahomed* v. *Krishnan* [(1888) 11 Mad. 106]. In order to be precise it must be pointed out that the Stanam is held either for the life of the Stani or of those in the grade above him. The Walluvanad Swaroopam, it is conceded, is not different in regard to the appointment of these Stanis from the Palghat Raja Stanams referred to by their Lordships of the Privy Council in *Venkateswara Iyan* v. *Shekhari Varma.*

The Madras Marumakkattayam Act does not apply to stanams. With the extinction of the Tarwad the stanam also ceases to exist. The property of the stanam passes by escheat to the State. It was Mr. Justice Bashyam Ayyangar who described the Stanams as corporations sole in 27 Mad. 435 (*Vidyapurna* v. *Vidyanidi*).

Aliyasantana Law

The following are extracts from the book, Malabar and Aliyasantana Law by P. R. Sundara Iyer.

Aliyasantana Law as the name implies is the rule of inheritance under which property descends in the line of nephews. The term, it will be noticed, is the exact Canarese equivalent of the Malayalam term Marumakkattayam. The people that follow this system are to be found in Canara and mostly speak Tulu.

It is now too late to reagitate the question and the eldest member whether male or female would be entitled to manage.

In view of the present theory that males are equally proprietors with females, joint management would in those circumstances be the proper course. This is the first point on which the Aliyasantana law differs from the Marumakkattayam law. Another point on which it differs is on the question of the succession to separate property. In *Antamma* v. *Kaveri* (I.L.R. 7 Mad. 475 : explained in *Manjappa Ajri* v. *Marudevi Hengsu*, I.L.R. 39 M. 12 : 30 M.L.J. 204), it was held on evidence of custom that the separate property of an individual member went to his nearest heirs and not to the tarwad as it was assumed to go under the Marumakkattayam system the Court observing that it was impossible to assume that on any point the two systems were identical. The view as to Marumakkattayam law assumed in *Antamma* v. *Kaveri* (I.L.R. 7 Mad. 575), was accepted to be correct by the Full Bench in *Kuttasseri Eriat Govindan Nair* v. *K. G. Sankaran Nair* (I.L.R. 32 Mad. 351 : 19 M.L.J. 350), as regards succession to the property of males ; as regards the property of females a different view has since been taken in *T. Krishnan Nair* v. *T. Damodaran Nair* (I.L.R. 38 Mad. 48 : 24 M.L.J. 240), so that to this extent the Aliyasantana and Marumakkattayam Laws agree. In the later case the view is expressed that the earlier decision was wrong. These are the main points on which the two systems differ though there are other minor points of difference in detail due in large measure to differing social and economic conditions. As an instance of the former, take the rule stated in many cases as regards the power of the Karnavan to grant othis and kanoms. The practice of granting othis and kanoms in the ordinary course of management is unknown in Canara and no suggestion has ever been made that the manager in Canara has such a power in the absence of necessity. The most marked difference observed is in marriage customs. Whereas in South Malabar the practice is for the female to reside in the Tarwad house during marriage, under the Aliyasantana law the females usually reside with the husbands in their Tarwad houses. The practice is referred to in a decision of 1852 in these terms : " In Canara where the wife follows and lives in the house of her husband she has to leave her estate to the management and integrity of the male relations who may easily deceive her of her property." This social practice along with the recognised liability to pollution and right to participate in funeral ceremonies though founded, on *apriori* considerations of orthodox theory, not sufficient to justify finding a custom of legal marriage would undoubtedly be sufficient to justify the charge of their maintenance on tarwad income. Another marked difference between the social practices of the two people, is the absence of inter-caste marital relations. Though referred to in Bhuttala Pandya's Kattu Kattalai the relationship is plainly regarded therein as illicit relationship not indeed involving degradation of caste but nevertheless one not looked upon with approbation.

No class of Brahmins follow the Aliyasantana rule of inheritance nor do all the Sudra classes. Even among the Bants who form the most influential among the followers of this system, there is a class known as Parivara Bants who follow the ordinary Hindu Law. Besides the Bants, the Billawas or Tulu speaking toddy-drawers, the Halepaikas or Canarese-speaking toddy-drawers, Mogers or fishermen, a section of Gudigars or the wood-carvers,

Medwales or Tulu washermen, Kelasis or Tulu-speaking barbers (those in the northern part of Canara speak Canarese and follow the ordinary law) Male-Kudeyas or hilltribes, Kumbaras or potters, Belleras or basket-makers, and some Mappillahs in the Kasargod taluk follow the Aliyasantana Law. Most of the Canarese-speaking people (like Bovis, Kotas, Kurumbas, Valivaligas, Kanchargaras, Devangas, Patnegars and Agasas and all the Maharatti or Konkani-speaking people like Mahrathis, Sonegars, Kharvis and Kajains (barbers) follow the ordinary Hindu Law. The Pariahs so far as one is able to judge are mostly governed by the ordinary Hindu Law. There is a large body of Jains in Canara. The Indras or priestly class and a section among others who speak Canarese follow the ordinary Hindu Law but the bulk speak Tulu and follow the Aliyasantana Law.

See further :

(1) Regulation I of 1088 (26-10-1912) passed by His Highness the Maharaja of Travancore relating to marriage, succession and family management of the Nairs.

(2) The Cochin Nair Regulation (XIII of 1905) dated 5-6-1920 passed by His Highness the Rajah of Cochin.

(3) The Malabar Marriage Act (IV of 1896).

(4) The Malabar Wills Act (V of 1898).

(5) The Madras Marumakkattayam Act, 1932 (XXII of 1933).

(6) The Mappilla Marumakkattayam Act (XVII of 1939).

(7) The Madras Aliyasantana Act, 1949 (IX of 1949).

In the case of a member of a Tarwad or Tavazhi governed by the Marumakkattayam rule of inheritance or a member of a Kutumba or Kavaru governed by the Aliyasantana rule of inheritance dying a minor no Estate Duty is payable on the interest ceasing on his death. The only requirement to obtain exemption from levy of Estate Duty in this sub-section (3) is the deceased should have died before completion of his 18th year. It has been pointed out supra that a stanam usually carried with the office besides dignity and status, properties. These properties after the death of the holder of office of stanam devolve upon another person who succeeds to the office of stanam. It is seen that some cases have compared the office of stanam as one of dignity and as akin to a corporation sole. Sub-section (4) states that the holder of a stanam is neither the holder of an office nor a corporation sole. The result is that on the death of the holder of a stanam there is a cesser of interest, and Estate Duty becomes payable.

It is important to remember that interests ceasing on death comprise two categories (1) the interest of the deceased and (2) any other person's interest which comes to an end on the death of the deceased. An illustration will make the point clear. An annuity is given to *A* charged on certain property during the life of *B*, on *B*'s death to pay an annuity to *C*. *A*'s annuity endures only for the life of *B* and it comes to an end on *B*'s death. Duty is payable on *B*'s death even though *A* is still alive because there is a cesser of *A*'s annuity on *B*'s death. This section 7 must be read with section 38 for a full comprehension of the meaning of the section. There must accrue or arise a benefit by the cesser of an interest for the duty to be levied. See the case of *A. G.* v. *Beech* (1899 A.C. 53). Section 7, sub-section (1) and section 38 of the Act correspond to section 2 (1) (*b*) and section 7 (7) (*a*) and (*b*) of the Finance Act, 1894. Section 38 (*b*) provides an artificial method of valuation of the benefit for Estate Duty purposes, where Estate Duty becomes payable under section 7 (1) and section 38 (*b*). Because Estate

Duty is payable on the principal value of an addition to the property equal to the income to which the interest extended, it is said that Estate Duty is payable on a slice of the property. The "slice" theory comes into operation only when section 7, sub-section (1) applies. The cases where section 7 applies, *i.e.*, where the property itself passes actuarial valuation of the annuity or other limited property which passes applies. It is to be remembered that Estate Duty is not collected on the interest which some person succeeds to on a death, but on the interest which ceases by reason of the death. See *A. G.* v. *Penrhyn* (1900) 83 L.T. p. 105, in *L. D. Adv.* v. *Maclachnan* (1899) 1 F. 917. It is said "it is the benefit accruing or arising through the property which is the test of the amount of duty payable." Limited interests ceasing on death also comprise property consisting of the 'Goodwill' of a deceased partner which passes to the surviving partner under the terms of the partnership deed where no payment is made for the 'goodwill.' Annuities are by far the largest number coming within the description of 'interests ceasing on death.' There should be an enforceable right to an annuity and a claim to provide security of property for payment of the annuity before holding that any benefit accrues or arises by the cesser of an annuity. If an annuity is agreed to be paid on the personal security of the promissor and even though the annuitant has received the annuity for a number of years and then died, no Estate Duty is payable, because the annuitant had no interest in any property. So also in the case where trustees under a settlement deed have power of discretion to pay annuities and, if in fact, they pay them to a number of persons for years on the death of the annuitants no estate duty is payable. In other words, where an annuity is at the discretion of a person, and is not charged on any property, estate duty is not payable. However, the rights of an annuitant are well known. If he has a legal right or claim to have the annuity provided for out of the promissor's property and it is so provided, then estate duty is payable on the cesser of interest on the annuitant's death. In all cases where annuities are bequeathed by and under a will, the annuitants have legal rights of enforcement. In cases also where the owner of a property who has been paying an annuity on his own personal bond or word, for a number of years sets aside any property out of the income of which the annuity is payable, then on the death of the annuitant, a benefit accrues or arises to the property set apart by the cesser of interests. There is an extreme case decided in *A. G.* v. *Watson* (1917) 2 K. B. 427. In this case the annuitant died 2 days after the testator died. It was under the will of the testator that the annuity had been bequeathed. Notwithstanding the brief period of survival of the annuitant it was held that there was a benefit that had accrued or arisen by reason of the cesser of interest and estate duty was held leviable. See the case of *A. G.* v. *Coole* (1921) 3 K.B. 607.

"Interest ceasing on the death."

According to section 58 (6) of the Finance Act, 1940, includes an interest subject to a limitation providing in the alternative for its cesser either on the death or on the occurrence of some event or the expiration of some period before the death. There may be a limitation that the interest shall cease in the event of the person in whose favour it is created becoming a bankrupt or attaining the age of 21 or on the occurrence of any other event. There appears to be no corresponding provision in the Indian Act.

Calculation of "slice."

An annuity of Rs. 200 per annum is granted to *A* charged on property yielding an annual income of Rs. 500. The property on which the annuity is charged is valued at Rs. 10,000, on the date of the death of the annuitant.

The annuitant's interest in this case extended to less than the whole income of the property. Section 38 (*b*) requires that the benefit arising or accruing to the property is the principal value of an addition to the property equal to the income to which the interest extended. Thus Rs. 200 $\times \frac{\text{Rs. } 10{,}000}{\text{Rs. } 500}$ = Rs. 4,000 is the benefit and estate duty is payable on Rs. 4,000.

Section 7 is so enacted because of the peculiarities of the systems of Hindu Law, Marumakkattayam Law and Aliyasantana Law. It has been explained above that a coparcenary according to Hindu Law contains many members. But coparceners for purposes of section 7 can only mean those persons who are co-heirs and who are entitled to enforce their right to a share by a suit if necessary. A coparcener within the meaning of section 7 is one who is entitled to claim in the coparcenary property a share if need be by filing a suit. In other words, he must be within four degrees of descent from the person whom he is suing. A coparcener has a share or right in the owner of the property if only he is not more than 4 degrees removed from him. In sub-section (3) it is stated with reference to the death of a member of any Tarwad or Tavazhi governed by the Marumakkattayam rule of inheritance or a member of a Kutumba or Kavaru governed by Aliyasantana rule of inheritance, sub-section (1) of section 7 will not apply only if the deceased died a minor. The words " or unless at the time of his death " his father or other male ascendant in the male line was not a coparcener of the same family occurring in sub-section (2) were omitted in sub-section (3). This is because that a coparcener within the meaning of section 7 must be a coparcener who has the right to share in the property of the joint family and that right he can have only when he is within 4 degrees of the last owner of the property. Sub-section (4) of section 7 appears to be wholly unnecessary. It and the explanation look like creating a ghost and then demolishing it. The Act applies only when any property passes or is deemed to pass. Sub-section (4) postulates a case where there is no passing of property. The explanation states that the holder of a stanam is neither the holder of an office nor a corporation sole within the meaning of this section.

Gifts : Generally

In considering the subject of gifts not only sections 8, 9, 10 but also sections 21, 25 and 26 must be considered. In addition to the above sections, sections 12, 21 and 25 have a material bearing. As the above said sections are based on provisions contained in the English Acts, it is necessary, for a full comprehension, to set out the provisions contained in the English Acts.

Section 8. *Gifts* mortis causa.—Property taken as a gift made in contemplation of death shall be deemed to pass on the donor's death.

Explanation.—In this section, the expression " gift made in contemplation of death " has the same meaning as in section 191 of the Indian Succession Act, 1925 (XXXIX of 1925).

Section 9. *Gifts within a certain period before death.*—(1) Property taken under a disposition made by the deceased purporting to operate as an immediate gift *inter vivos* whether by way of transfer, delivery, declaration of trust, settlement upon persons in succession, or otherwise, which shall not have been *bona fide*

made two years or more before the death of the deceased shall be deemed to pass on the death :

Provided that in the case of gifts made for public charitable purposes the period shall be six months.

(2) The provisions of sub-section (1) shall not apply to gifts made in consideration of marriage or which are proved to the satisfaction of the Controller to have been part of the normal expenditure of the deceased, but not exceeding rupees five thousand in the aggregate.

Section 10. *Gifts whenever made where donor not entirely excluded.*—Property taken under any gift, whenever made, shall be deemed to pass on the donor's death to the extent that *bona fide* possession and enjoyment of it was not immediately assumed by the donee and thenceforward retained to the entire exclusion of the donor or of any benefit to him by contract or otherwise :

Provided that the property shall not be deemed to pass by reason only that it was, not, as from the date of the gift, exclusively retained as aforesaid, if, by means of the surrender of the reserved benefit or otherwise, it is subsequently enjoyed to the entire exclusion of the donor or of any benefit to him for at least two years before the death.

Relevant Provisions of the U. K. Acts

Section 38 (2) of Customs and Inland Revenue Act, 1881 is as follows :

The personal or movable property to be included in an account shall be property of the following descriptions, *viz.*, (*a*) any property taken as a *donatio mortis causa* made by any person dying on or after the first day of June 1881, or taken under a voluntary disposition, made by any person so dying, purporting to operate as an immediate gift *inter vivos* whether by way of transfer, delivery, declaration of trust or otherwise, which shall not have been *bona fide* made three months before the death of the deceased. (*b*) any property which a person dying on or after such day having been absolutely entitled thereto, has voluntarily caused or may voluntarily cause to be transferred to or vested in himself and any other person jointly whether by disposition or otherwise so that the beneficial interest therein or in some part thereof passes or accrues by survivorship, on his death to such other person. (*c*) Any property passing under any past or future voluntary settlement made by any person dying on or after such day by deed or any other instrument not taking effect as a will, whereby an interest in such property for life or any other period determinable by reference to death is reserved either expressly or by implication to the settler, or whereby the settler may have reserved to himself the right, by the exercise of any power to restore to himself, or to re-claim the absolute interest in such property.

Section 11 (1) of Customs and Inland Revenue Act, 1889, is as follows :

The description of property marked (*a*) shall be read as if the word "twelve" were substituted for the word "three" therein, and the said description of property shall include property taken under any gift, whenever made, of which property *bona fide* possession and enjoyment shall not have been assumed by the donee immediately upon the gift and thenceforward retained, to the entire exclusion of the donor, or of any benefit to him by contract or otherwise :

The description of property marked (*b*) shall be construed as if the expression "to be transferred to or vested in himself and any other person" included also any purchase or investment effected by the person who was absolutely entitled to the property either by himself alone, or in concert, or by arrangement with any other person :

The description of property marked (*c*) shall be construed as if the expression "voluntary settlement" included any trust whether expressed in writing or otherwise, in favour of a volunteer, and, if contained in a deed or other instrument effecting the settlement, whether such deed or other instrument was made for valuable consideration or not as between the settler and any other person, and as if the expression "such property", wherever the same occurs, included the proceeds of sale thereof :

The charge under the said section shall extend to money received under a policy of insurance effected by any person dying on or after the first day of June one thousand eight hundred and eighty-nine, on his life, where the policy is wholly kept up by him for the benefit of a donee, whether nominee or assignee, or a part of such money in proportion to the premiums paid by him, where the policy is partially kept up by him for such benefit :

The Finance Act, 1894: the first three sections as amended by subsequent Finance Acts are as follows :

1. In the case of every person dying after the commencement of this part of the Act, there shall, save as hereinafter expressly provided, be levied, and paid, upon the principal value ascertained as hereinafter provided of all property, real or personal, settled or not settled, which passes on the death of such person a duty, called "Estate Duty" , at the graduated rates hereinafter mentioned, and the existing duties mentioned in the First Schedule to this Act shall not be levied in respect of property chargeable with such Estate Duty.

2. Property passing on the death of the deceased shall be deemed to include the property following, that is to say :—

(*a*) Property of which the deceased was at the time of his death competent to dispose ;

(*b*) Property in which the deceased or any other person had an interest ceasing on the death of the deceased, to the extent to which a benefit accrues or arises by the cesser of such interest ; but exclusive of property the interest in which of the deceased or other person was only an interest as holder of an office, or recipient of the benefits of a charity, or as a corporation sole ;

(*c*) Property which would be required on the death of the deceased to be included in an account under section 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 ; and

(*d*) Any annuity or other interest purchased or provided by the deceased, either by himself alone or in concert or by arrangement with any other person, to the extent of the beneficial interest accruing or arising by survivorship or otherwise on the death of the deceased.

Property passing on the death of the deceased shall not be deemed to include property held by the deceased as trustee for another person, under a disposition not made by the deceased, or under a disposition made by the deceased more than twelve months before his death where possession and

enjoyment of the property was *bona fide* assumed by the beneficiary immediately upon the creation of the trust and thenceforward retained to the entire exclusion of the deceased or of any benefit to him by contract or otherwise.

3. (1) Estate duty shall not be payable in respect of property passing on the death of the deceased by reason only of a *bona fide* purchase from the person under whose disposition the property passes, nor in respect of the falling into possession of the reversion on any lease for lives, nor in respect of the determination of any annuity for lives, where such purchase was made, or such lease or annuity granted, for full consideration in money or money's worth paid to the vendor or grantor for his own use or benefit, or in the case of a lease for the use of any person for whom the grantor was a trustee.

(2) Where any such purchase was made, or lease or annuity granted, for partial consideration in money or money's worth paid to the vendor or grantor for his own use or benefit, or in the case of a lease for the use or benefit of any person for whom the grantor was a trustee, the value of the consideration shall be allowed as a deduction from the value of the property for the purpose of Estate Duty.

Section 22 (1)

The expression "property" includes real property and personal property and the proceeds of sale thereof respectively and any money or investment for the time being representing the proceeds of sale :

(1) The expression "property passing on the death" includes property passing either immediately on the death or after any interval, either certainly or contingently, and either orginally or by way of substitutive limitation, and the expression "on the death" includes "at a period ascertainable only by reference to the death" :

Section 22 (2)

(*a*) A person shall be deemed competent to dispose of property if he has such an estate or interest therein or such general power as would, if he were *sui juris*, enable him to dispose of the property, including a tenant in tail whether in possession or not ; and the expression "general power" includes every power or authority enabling the donee or other holder thereof to appoint or dispose of property as he thinks fit, whether exercisable by instrument *inter vivos* or by will or both, but exclusive of any power exercisable in a fiduciary capacity under a disposition not made by himself, or exercisable as tenant for life under the Settled Land Act, 1882, or as mortgagee :

(*b*) A disposition taking effect out of the interest of the deceased person shall be deemed to have been made by him, whether the concurrence of any other person was or was not required :

(*c*) Money which a person has a general power to charge on property shall be deemed to be property of which he has power to dispose.

The charging sections in the Act are sections 5, 6, 7, 8, 9, 10, 11, 12, 14, 15, 16 and 17. With these charging sections must be read section 2, sub-sections (9), (13), (15), (16) and section 3 (except the last clause). Sections 21, 22, 23, 25 and 26 also must be read as containing exceptions. The following comparative table will be helpful.

Indian Act	*Finance Acts in England*
S. 2 sub-sec. (9)	S. 22 (2) (*a*) of the Finance Act, 1894.
S. 2 ,, (13)	S. 22 (2) (*a*) ,, ,,
S. 2 ,, (15)	S. 22 (2) (*f*) ,, ,,

Indian Act	*Finance Acts in England*
S. 2 sub-sec. Explanation 1.	S. 45 (1) of the Finance Act, 1940.
S. 2 ,, ,, 2.	S. 45 (2) ,, ,, ,,
S. 2 ,, (16)	S. 22 (1) (*l*) of the Finance Act, 1894.
S. 3	S. 22 (2) (*a*), 22 (2) (*b*) and 22 (2) (*c*) of the Finance Act, 1894.
S. 5	S. 1 of the Finance Act, 1894.
S. 6	S. 2 (1) (*a*) and S. 22 (2) (*a*) Fi. Act, 1894.
S. 7	S. 2 (1) (*b*) ,, ,, ,,
S. 8	S. 2 (1) (*c*) ,, ,, ,, read with S. 11 of the Customs and Inland Revenue Act, 1889.
S. 9	Ditto
S. 10	Ditto
S. 11 (1), (2), (3)	S. 43 of the Finance Act, 1940.
S. 11 (4)	S. 43 (2) of the Finance Act, 1950.
S. 12	S. 2 (1) (*c*) of the Finance Act, 1894 read with S. 38 (2) (*c*) and S. 11 of the Customs and Inland Revenue Acts, 1881, and 1889 respectively.
S. 14 (1)	Ditto
S. 14 Explanation	S. 76 (2) of the Finance Act, 1948
S. 14 (2)	S. 76 (1) ,, ,, ,,
S. 14 (3) (*a*)	S. 76 (4) (*a*) ,, ,, ,,
S. 14 (3) (*b*)	S. 76 (4) (*b*) ,, ,, ,,
S. 15	S. 2 (1) (*d*) of the Finance Act, 1894
S. 15 Explanation	S. 28 of the Finance Act, 1934
S. 16	S. 2 (1) (*d*) of the Finance Act, 1894.
	S. 30 of the Finance Act, 1939 amended by S. 26 of the Finance Act, 1943.
S. 16 (2)	S. 30 (3) (*a*) (*b*) and (*c*) of the Finance Act, 1939.
	S. 26 (2) (*a*), 2 (*b*) of the Finance Act, 1943.
S. 17 (1) (2) (3)	S. 46 (1), (2), 46 (3) (*a*) and (*b*) of the Finance Act, 1940.
S. 22	S. 2 (3) of the Finance Act, 1894.
	S. 59 (3) of the Finance Act, 1909-10.
S. 23	S. 5 (3) of the Finance Act, 1894.
	S. 47 (6) (*b*) of the Finance Act, 1938.
S. 24	S. 15 (1) (2) and (3) of the Finance Act, 1896.
S. 25	S. 21 (5) of the Finance Act, 1894.
S. 26	S. 3 of the Finance Act, 1894.
S. 27	S. 46 of the Finance Act, 1950.
S. 27 (2) (3) and (4)	S. 46 (1) (*a*), (1) (*b*) and (1) (*c*)
S. 27 (5)	S. 44 (4) of the Finance Act, 1940.
S. 27 (6)	S. 44 (5) of ,, ,, ,,
S. 27 (7)	S. 44 (2) of ,, ,, ,,
S. 27 (7) (*iii*)	S. 44 (3) of ,, ,, ,,
S. 27 (7) (*iv*)	S. 59 of ,, ,, ,,

Section 8

Property transferred by way of gifts made in contemplation of death—gifts *mortis causa* as section 8 puts it—is deemed to pass on the death of the

donor. This section simply enacts that property taken as a gift made in contemplation of death shall be deemed to pass on the donor's death. The result is that estate duty is payable in respect of such property on the donor's death. There is no exemption, no exception, and no deduction whatever. Gifts *mortis causa* are not declared or rendered invalid. They are perfectly valid, and the donee acquires a good title and enjoys possession of the subject-matter of the gifts on the fulfilment of the conditions laid down in section 191 of the Indian Succession Act, 1925. The subject-matter of such gifts is regarded in spite of the gifts as comprised in the free estate of the deceased donor, with the consequent of liability to payment of estate duty.

Section 129 of the Transfer of Property Act, excepts gifts made in contemplation of death from the operation of the Act. Section 191 of the Indian Succession Act, 1925 is as follows :

(1) A man may dispose, by gift made in contemplation of death, of any movable property which he could dispose of by will.

(2) A gift is said to be made in contemplation of death where a man, who is ill and expects to die shortly of his illness delivers to another the possession of any movable property to keep as a gift in case the donor shall die of that illness.

(3) Such a gift may be resumed by the giver ; and shall not take effect if he recovers from the illness during which it was made ; nor if he survives the person to whom it was made.

Illustrations

(*i*) *A*, being ill, and in expectation of death, delivers to *B*, to be retained by him in case of *A*'s death,—

a watch :
a bond granted by *C* to *A* :
a bank-note :
a promissory note of the Government of India endorsed in blank :
a bill of exchange endorsed in blank :
certain mortgage-deeds.

A, dies of the illness during which he delivered these articles. *B* is entitled to—

the watch :
the debt secured by *C*'s bond :
the bank-note :
the promissory note of the Government of India :
the bill of exchange :
the money secured by the mortgage-deeds :

(*ii*) *A*, being ill, and in expectation of death, delivers to *B* the key of a trunk or the key of a warehouse in which goods of bulk belonging to *A* are deposited, with the intention of giving him the control over the contents of the trunk, or over the deposited goods, and desires him to keep them in case of *A*'s death. *A* dies of the illness during which he delivered these articles. *B* is entitled to the trunk and its contents or to *A*'s goods of bulk in the warehouse.

(*iii*) *A*, being ill, and in expectation of death, puts aside certain articles in separate parcels and marks upon the parcels respectively the names of *B* and *C*. The parcels are not delivered during the life of *A*. *A* dies of illness during which he set aside the parcels. *B* and *C* are not entitled to the contents of the parcel.

Gifts *mortis causa* therefore form a class by themselves. The object of the charging sections of the Act is to render any property transferred by any means *i.e.* gift, sale, settlement, declaration of trust, creation of burden or release of right, transfers to companies liable to estate duty. It is for the party accountable to prove an exemption, exception and deduction and make out to the satisfaction of the controllers that the conditions of the exemption or exception or deduction claimed are fulfilled. This statement requires a slight qualification in the case of sales to strangers. In this case even though the sales are beyond the vulnerable or statutory period, the taxing authority or the Revenue must establish some bounty on the part of the transferor before it can claim estate duty. All transactions by whatever name the parties designate them will be regarded as sales and unless the purchaser can bring his case strictly within section 25 of the Act there is no escape from the payment of estate duty. A sale may be dissected and found to be only a gift. What is in name a gift can be found to be a sale? It is only property transferred by way of sale whereunder the transferor receives full consideration in money or money's worth paid to him for his own use or benefit that escapes liability to estate duty. This is, as it should be because, in place of the property transferred, there will be the money or money's worth paid to the vendor and on the death of the vendor this property will be liable to estate duty if it remains still in the estate of the deceased. Such a sale can take place at any time before the death of the deceased, even a day previous to the death or on the day of the death itself.

Section 9

In any one of the forms mentioned in this section a gift of property may be made but in order that estate duty may not be leviable the gift should have been made at least two years before the death of the deceased ; in the case of gifts made for public charitable purposes, they should have been made at least six months before the death of the deceased. The word *bona fide* in this section means real and genuine as opposed to fictitious or colourable. The transaction of gifts must be made with the real intention that the property is to be taken as a gift by the donee. There should be no secret arrangements or understandings between the donor and the donee. The property is really intended to be possessed and enjoyed by the donee for his own benefit and the donor should not have entered into any secret or private arrangement with the donee under which the donor may regard himself as entitled to some benefits. This is what is meant by the expression *bona fide*. The donor, after the gift, should have nothing to do with the property gifted away.

Section 10

There may be gifts made outside the statutory period of two years, but section 9 will not help such gifts even though made many many years ago and not less than two years before the death of the deceased unless the following conditions are satisfied: (1) *Bona fide* possession and enjoyment must be immediately assumed by the donee, (2) since and ever afterwards the donee must have retained the possession and enjoyment to the entire exclusion of the donee, (3) the donor should not have reserved to him any benefit by contract or otherwise. All the above-mentioned three conditions must be satisfied, otherwise the property gifted away shall be deemed to pass on the donor's death. The proviso to section 10 states that if any one of the three conditions or all of them remaining unsatisfied, are satisfied by the donor by giving up his joint possession or benefit at least two years before his death, then the property is not deemed to pass. The two years' period is counted as the

2nd anniversary of the gift. In England the statutory period is five years. It is to be remarked in view of the provisions of the Act there is nothing like a gift in the ordinary and popular sense of the term. Every gift is regarded by the Act as a disposition of property and estate duty is *prima facie* liable unless the person accountable is able to make out an exemption. The expression "contract or otherwise" means that a benefit need not be necessarily forthcoming by and from an arrangement between the donor and donee. If any arrangement even with a third party which has the effect of conferring a benefit on the donor is made and that arrangement is referable to the gift, it is sufficient, and the benefits stipulated need not flow from the property gifted away. Any collateral benefit will do. The word "public" is used in the section to distinguish from private. The words public and charitable are disjunctive. Two cases, *A.G.* v. *Smyth* (1905) 2 I.R. 553 and *Re Fitzwilliams (Earl Agreement, Peakcock* v. *Inland Revenue Commrs.*) (1950) 1 A.E.R. 191 shed light on the meaning of "gift". The gift must take effect outside the two years' statutory period. The donor must have done everything in his power to complete the gift before this vulnerable period. If anything remained to be done within the statutory period it must be shown that the same was beyond the control of the donor. Any formal thing done within the statutory period may not render the gift liable to duty. For example, the deceased made a deed of gift of immovable property on 1st January 1951. The testator died on January 1st, 1953. The deed of gift however was registered in March 1951. Thus the date of registration falls within the statutory period. See 1952 Ch. 499 = 1952 (1) All E.R. 1217. *Re Rose, Rose, Commissioners of Inland Revenue* ; 1949 Ch. 78 *Re Rose, Midland Bank Executor and Trustee Co., Ltd.* (1862) 4 *De GF and J.* 264 *Milroy* v. *Lord* (1946) Ch. 312 *Re Fry.* Motive for making the gift is immaterial. A gift may be in consideration of past services rendered to the donor for which there was no expressed or implied contract to pay ; gift for past consideration, gift out of a sense of moral obligation are gifts nevertheless. It will not avail that the donor is making the gift within the statutory period only because of an enforceable obligation contracted by him outside the statutory period.

Re Rose (Deceased). *Rose and others* v. *Inland Revenue Commissioners*
[(1952) 1 All E.R. 1217]

In this case one Eric Hamilton Rose who was the managing director to a private company executed two transfers of shares in the company. The first transfer was expressed to be in favour of his wife Rosamond Mary Rose and to be in consideration of his love and affection for her. The second transfer was in favour of the wife and another individual and in that case the intention was that the transferees should thereupon hold the shares on certain trusts. The transfers were on March 30, 1943. They were presented for stamping on April 12, 1943, and in due course the requisite *ad valorem* stamp was impressed on the transfers. The transfers were in fact not registered by the company until June 30, 1943. On the death of the transferor the Crown claimed estate duty as on a gift *inter vivos* on the ground that the transfers were not registered before April 10, 1943, so that having regard to the transitional provisions contained in the Finance Act, 1946, Schedule 11, Part II, all the shares would be liable to estate duty under the Finance Act, 1894, section 2 (1) (*c*) unless before April 10th, 1943, there had been *bona fide* disposition of the shares purporting to operate as immediate gifts *inter vivos.*

Per Sir Raymond Evershed, M.R., "It is pointed out, for example," by Knight Bruce, L.J. (In *Milroy* v. *Lord*, 4 De GF and J. 272) "He might, however,

have affected the legal title. It was in his power to make the transfer of the shares so as to confer the legal proprietorship on another person or other persons. But I have said, no such thing was done."

Turner, L.J. to the same effect, emphasises the point when he says (*ibid* 276) that the shares were never vested in Lord :

" ....and the only ground on which he can be held to have become a trustee of them is, that he held a power of attorney under which he might have transferred them into his own name ; but he held that power of attorney as the agent of the settler...."

Then he observes that, the settler having died, the power ceased with him.

It is, however, on certain other passages in the judgment of Turner, L.J., that counsel for the Crown has mostly founded himself. I refer to what is said at p. 274. I think I should read a substantial passage :

" I take the law of this court to be well settled, that, in order to render a voluntary settlement valid and effectual, the settler must have done everything which, according to the nature of the property comprised in the settlement, was necessary to be done in order to transfer the property and render the settlement binding upon him. He may of course do this by actually transferring the property to the persons for whom he intends to provide, and the provision will then be effectual, and it will be equally effectual if he transfers the property to a trustee for the purposes of the settlement, or declares that he himself holds it in trust for the purposes ; and if the property be personal, the trust may, as I apprehend, be declared either in writing or by parol ; but, in order to render the settlement binding, one or other of these modes must, as I understand the law of this court, be resorted to, for there is no equity in this court to perfect an imperfect gift. The cases I think go further to this extent, that if the settlement is intended to be effectuated by one of the modes to which I have referred, the court will not give effect to it by applying another of those modes. If it is intended to take effect by transfer, the court will not hold the intended transfer to operate as a declaration of trust, for then every imperfect instrument would be made effectual by being converted into a perfect trust."

Those last few sentences form the gist of the Crown's argument, and on it is founded the broad, general proposition that if a document is expressed as, and on the face of it intended to operate as, a transfer, it cannot in any respect take effect by way of trust—so far I understand the argument to go. In my judgment, that statement is too broad and involves too great simplification of the problem, and in my view, it is not warranted by authority. I agree that if a man purporting to transfer property executes documents which are not apt to effect that purpose, the court cannot then extract from those documents some quite different transaction and say that they were intended merely to operate as a declaration of trust which *ex facie* they are not, but if a document is apt and proper to transfer the property—is, in truth, the appropriate way in which the property must be transferred—it does not seem to me to follow from the earlier statement, that, as a result, either during some limited period or otherwise, there may not arise for the purpose of giving effect to the transfer, some trust. The simplest case will, perhaps, provide an illustration. If a man executes a document, operating and intended to operate, as a transfer, will give rise to and take effect as a trust, for the assignor will then be a trustee of the legal estate in the shares for the person in whose favour he has made an assignment of his beneficial interest. For my part, I do not think that *Milroy* v. *Lord* is an authority which compels the court to hold that in this case, where, in the terms of the judgment of Turner, L.J., the settler did everything which, according to the nature of the property comprised in the settlement,

was necessary to be done by him in order to transfer the property, the result necessarily negatives the conclusion that, pending registration, the settler was a trustee of the legal interest for the transferee.

The view of the limitations of *Milroy* v. *Lord* which I have tried to express was much better expressed by Jenkins, J., in the recent case which also bears the name of Re Rose (though that is a coincidence). It is true that the main point, the essential question to be determine, was whether there had been a transfer *eo nomine* of certain shares within the meaning of a will. The testator in that case, Rose, by his will had given a number of shares to one Hook, but the gift was subject to this qualification, "if such .... shares have not been transferred to him previously to my death." The question was : Had the shares been transferred to him in the circumstances ? He had executed (as had Mr. Rose in the present case) a transfer in appropriate form, and handed the transfer and the certificate to Hook, but at the time of his death, the transfer had not been registered. It was said, therefore, that there had been no transfer, and (following the argument of counsel for the Crown) there had been no passing to Hook of any interest, legal or beneficial, whatever, by the time the testator died. If that view were right, then of course, Hook would be entitled to the shares under the will. But Jenkins, J., went a little more closely into the matter because it was obvious that on one view of it, if it were held that there was a "transfer" within the terms of the will, though the transfer was inoperative in the eye of the law and not capable of being completed after the death, then Mr. Hook suffered the misfortune of getting the shares neither by gift *inter vivos* nor by testamentary benefaction. Therefore Jenkins, J. considered *Milroy* v. *Lord* and in regard to it he used this language [(1948) 2 All E.R. 978] :

"I was referred to *Milroy* v. *Lord*, and also to Re Fry. Those cases as I understand them, turn on the fact that the deceased donor had not done all in his power, according to the nature of the property given, to vest the legal interest in the property in the donee. In such circumstances it is well settled that there is no equity to complete the imperfect gift. If any act remains to be done by the donor to complete the gift at the date of the donor's death, the court will not compel his personal representatives to do that act and the gift remains incomplete and fails. In *Milroy* v. *Lord* the imperfection was due to the fact that the wrong form of transfer was used for the purpose of transferring certain bank shares. The document was not the appropriate document to pass any interest in the property at all."

Then he refers to Re Fry, which is another illustration. Jenkins, J. continued (*ibid*) :

" In this case, as I understand it, the testator had done everything in his power to divest himself of the shares in question in favour of Mr. Hook. He had executed a transfer. It is not suggested that the transfer was not in accordance with the company's regulations. He had handed that transfer together with the certificates to Mr. Hook. There was nothing else the testator could do."

I venture respectfully to adopt the whole of the passage I have read which, in my judgment, is a correct statement of the law. If that be so, then it seems to me that it cannot be asserted on the authority of *Milroy* v. *Lord*, and I venture to think it also cannot be asserted as a matter of logic and good sense or principle, that because, by the regulations of the company, there had to be a gap before Mrs. Rose could, as between herself and the company, claim the rights which the shares gave her vis-a-vis the company, Mr. Rose was not in the mean time a trustee for her of all his rights and benefits under the shares. That he intended to pass all those rights, as I have said,

seems to me too plain for argument. I think the matter might be put, perhaps, in a somewhat different fashion, though it reaches the same end. Whatever might be the position during the period between the execution of this document and the registration of the shares, the transfers were on June 30, 1943, registered. After registration, the title of Mrs. Rose was beyond doubt complete in every respect, and if Mr. Rose had received a dividend between execution and registration and Mrs. Rose had claimed to have that dividend handed to her, what would Mr. Rose's answer have been ? It could no longer be that the purported gift was imperfect ; it had been made perfect. I am not suggesting that the perfection was retroactive, but what could he say ? How could he, in the face of his own statement under his seal, deny the proposition that he had, on March 30, 1943, transferred the shares to his wife? By the phrase " transfer the shares " surely must be meant transfer to her " the shares and all my rights, title and interest thereunder." Nothing else could sensibly have been meant. Nor can he, I think, make much of the fact that this was a voluntary settlement on his part. Being a case of an unlimited company, as I have said, Mrs. Rose had herself to undertake by covenant to accept the shares subject to their burdens—in other words, to relieve her husband of his liability as a corporator. I find it unnecessary to pursue the question of consideration, but it is, I think, another feature which would make exceedingly difficult and, I think, sensibly impossible, the assertion on Mr. Rose's part of any right to retain the dividend I have mentioned. Nor is the Crown's argument made any easier by the circumstance that another emanation of the Crown has adjudicated that stamp duty *ad valorem* under section 74 of the Act of 1910 was payable on this transfer as a disposition of the subject-matter transferred.

For the reasons I have stated, I do not think that *Milroy* v. *Lord*, covers the case and I agree with Roxburgh, J., in his conclusion to that effect. I also think that on principle the statement which counsel for the Crown has made the foundation of his argument, if it covers this case, is too widely stated. If, as I have said, the phrase " transfer the shares " is taken to be and to mean a transfer of all rights and interests in them, then I can see nothing contrary to the law in a man saying that so long as pending registration, the legal estate remains in the donor, he was, by the necessary effect of his own deed, a trustee of that legal estate. Nor do I think that that is an unjustifiable addition to or gloss on the words used in the transfer. I find it, indeed, for my part, a less difficult matter in the way of interpretation than to say that this was, on its terms, merely a conditional gift, merely a transfer as a gift to Mrs. Rose of a particular right, *viz.*, the right to get herself registered and thenceforward, but not before, to enjoy the benefits which the donor previously had in these shares. That, I think, is nothing like what the deed sets out to do. I have said that I reject the proposition that the distinction between a case such as this and a case such as *Milroy* v. *Lord* is, as counsel for the Crown urged, indefensible. I think it is sensible and real, and for these reasons I would dismiss the appeals.

Section 11. *Limited interests disposed of within a certain period before death.*—(1) Subject to the provisions of this section, where an interest limited to cease on a death has been disposed of or has determined, whether by surrender, assurance, divesting, forfeiture or in any other manner (except by the expiration of a fixed period at the expiration of which the interest was limited to cease), whether wholly or partly, and whether for value or not, after becoming an interest in possession, and the disposition or determination (or any of them if there are more than one) is not excepted by sub-section (2), then—

(*a*) if, had there been no disposition or determination, as aforesaid of that interest and no disposition of any interest expectant upon or subject to that interest, the property in which the interest subsisted would have passed on the death under section 5, that property shall be deemed by virtue of this section to be included as to the whole thereof in the property passing on the death ; or

(*b*) if, had there been no disposition or determination as aforesaid of that interest and no disposition of any interest expectant upon or subject to that interest, the property in which the interest subsisted would have been deemed by virtue of section 7 to be included to a particular extent in the property passing on the death, the property in which the interest subsisted shall be deemed by virtue of this section to be included to that extent in the property passing on the death.

(2) Where a disposition or determination of an interest limited to cease on the death was *bona fide* effected or suffered not less than two years before the death (or, if it was effected or suffered for public charitable purposes, not less than six months before the death), the disposition or determination shall be expected by this sub-section—

(*a*) if *bona fide* possession and enjoyment of the property in which the interest subsisted was assumed immediately thereafter by the person becoming entitled by virtue of or upon the disposition or determination and thenceforward retained to the entire exclusion of the person who immediately before the disposition or determination had the interest and of any benefit to him by contract or otherwise ; or

(*b*) in the case of a partial determination, if the conditions specified in the preceding paragraph were not satisfied by reason only of the retention or enjoyment by the deceased of possession of some part of the property, or of some benefit, by virtue of the provisions of the instrument under which he had the interest :

Provided that where *bona fide* possession and enjoyment of the property referred to in clause (*a*) was not assumed immediately after the disposition or determination of the interest limited to cease on death, the disposition or determination shall be expected by this sub-section, if, by means of the surrender of the reserved benefit or otherwise, the property is subsequently enjoyed for at least two years before the death, to the entire exclusion of the person who immediately before the disposition or determination had the interest and of any benefit to him by contract or otherwise :

Provided further that nothing in this sub-section shall be construed as affecting any charge of estate duty arising otherwise than by virtue of the provisions of the preceding sub-section.

(3) In the application of sub-section (1) to a case in which an incumbrance on the property in which the interest in question subsisted has been created by associated operations (as hereinafter defined in section 27) which included a disposition of that interest, references to that property shall be construed as references to that property free from the incumbrance, except in a case in which the incumbrance was created for consideration in money or money's worth which was applied for purposes calculated to maintain or increase the value of that property, and, in that case, shall be construed as references to that property subject to the incumbrance to the extent to which the consideration was so applied.

(4) Where an interest limited to cease on a death has been disposed of or has determined, *bona fide* possession and enjoyment of the property shall not be deemed for the purposes of sub-section (2) to be assumed immediately thereafter and thenceforward retained to the entire exclusion of a person who had the interest and of any benefit to him by contract or otherwise, if at any time thereafter he has a benefit by virtue of any operations associated with the disposition or determination, nor while he has such a benefit shall the property be deemed to be enjoyed to the entire exclusion as aforesaid for the purposes of the first proviso to sub-section (2).

(5) In the preceding sub-section—

(*a*) the reference to any operations associated with the disposition shall be taken as referring to any associated

operations as defined in section 27, of which the disposition is one ; and

(*b*) the reference to any operations associated with the determination shall be taken as referring to any associated operations as so defined of which any disposition resulting in, or effected in contemplation of or with reference to, the determination is one.

The provisions contained in this section are based on section 43, sub-sections (1), (2), (3) of the Finance Act, 1940 and section 43 of the Finance Act, 1950.

When the Finance Act, 1894, was passed there was no provision made for levy of estate duty on limited interests disposed of within a certain period before death. The lacuna was supplied first by section 11 (1) of the Finance Act, 1900. Thereafter in England further provisions had to be made for covering up the gaps found out in the working of the Finance Acts. Two cases decided in England *Attorney-General* v. *Beech* (1899 A.C. 53) and *A. G.* v. *D. Depreville* (1900) 1 Q.B. 223 brought to the forefront the gaps. For section 11 to be applied, the dealings with limited interests must take place after they become interests in possession. Unless the transaction falls within sub-section (2), there is no protection. The language of sub-section (1) is very wide. The disposal or determination may be in whole or in part. There may be consideration or not for the disposal or determination; in other words, the disposition or determination is disregarded altogether, and the property so disposed of or has determined passes in whole if section 6 of the Act applies. If section 7 applies, the subject-matter of the disposition or determination shall be regarded as an interest ceasing on death to the extent to which a benefit accrues or arises. Therefore, estate duty will become payable in cases covered by section 11 (1) on the footing that the property was one which the deceased was at the time of his death competent to dispose. Under sub-section (2) any one can dispose of or otherwise determine an interest limited to cease on the death and the same is unassailable provided the transaction takes place within not less than 2 years before the death; in the case of disposition or determination for public charitable purposes, the transaction should be within not less than 6 months before the death. There must be *bona fides* both on the part of the deceased, and on the part of the beneficiary. The deceased must have acted *bona fide* and the beneficiary must have also acted *bona fide*. The words '*bona fide*' are in effect merely an expressed indication that the substance of the transaction must alone be considered. *Bona fide* transaction is one which is not fictitious or colorable but real and genuine to all intents and purposes. It is immaterial that the motive might have been to lessen the estate duty. There should be no retention of any benefit by the deceased. The beneficiary must assume immediate possession and enjoyment of the property, and he must also enjoy the possession of the property in which the interest subsisted to the entire exclusion of the deceased. Sub-section (2) (*b*) is more an explanatory provision. The effect of this clause (*b*) in sub-section (2) is that retention of some benefit which the deceased had or enjoyment by the deceased of some part of the property if it is referable to the original instrument of disposition under which the deceased had that interest does

not render nugatory the provisions of clause (*a*) of sub-section (2) one can keep something, i.e. not give away, but in what is given away no interest whatever, nothing can be kept back to himself.

Sub-section (3) of section 11 is based on section 43 (3) of the Finance Act, 1940, and sub-section (4) is based on section 43 (2) of the Finance Act, 1950. Both these sub-sections have been enacted to prevent evasion of duty by resort to several transactions effected by and through the machinery of a controlled company. One must remember sections 17 and 27 in connection with this sub-section. Suffice it to say that an incumbrance created through the machinery of a controlled company by means of associated operations, shall not be allowed as a deduction. It will only be allowed as a deduction where the money obtained is applied for purposes calculated to maintain or increase the value of the property. Long after the original disposition or determination of an interest limited to cease on the death through the device of associated operations, the transferor may obtain or derive a benefit. Sub-section (4) is enacted to meet such a case of evasion of estate duty. Sub-section (5) is self explanatory. A life tenant and a remainderman may join together and divide the property in accordance with the actuarial valuation of the life interest. The life tenant gets absolute ownership of a part of the property in accordance with the actuarial valuation. On his death no estate duty becomes payable on the ground that the life tenant retains benefit in a portion of the property. The remainderman may pay a capital sum of money to the holder of life interest and thereby get possession of the property in which the life interest subsisted. With the sum so received the life tenant purchases a life annuity from a "Trustee" company. In such a case there is no claim to estate duty. The annuity so got will not be regarded as a benefit received by him. If any reserved benefit is surrendered for at least 2 years before the death then estate duty is not leviable.

The relevant facts in *Attorney-General* v. *Beech* (1899 A.C. 53) are: "By a marriage settlement made in 1852 property was settled upon trust for the wife for life, and after her decease (in the events which happened) upon trust for such one or more of the children as she might by deed or will appoint. Mrs. Beech survived her husband and by a deed in 1886 appointed part of the trust property to her son the Respondent Howard Beech absolutely, subject to her own life interest. By a deed of December 18, 1894, Mrs. Beech surrendered to the respondents, the then trustees of the marriage settlement, all her life interest in the property above appointed to Howard Beech to the end and intent that such life interest might merge in his interest in remainder and that that property might be held in trust for him, his heirs, executors, administrators or assigns according to the nature thereof. The trust property consisted of real and personal estate. Mrs. Beech died in 1896." *Per* Earl of Halisbury L.C. "This is a statute which is intended on the face of it to impose a tax upon property passing on death: that is the meaning of the statute—that is what it purports to do; and in this case I do not see that any property did pass on the death. That seems to me to be the whole case. I am unable to follow any other proposition. It is said indeed that there was a life estate, and that when once a settlement has been made it is supposed to fasten and stamp upon every estate that may be comprehended within it an indelible obligation to pay estate duty at some time or another. Well, it seems to me that it is not the natural

meaning of the words. What the statute intended to make liable to pay duty is the succession by one person from another person on death; I do not say necessarily from the person who has died—there may be such a thing of course as a succession by reason of the death of a person not immediately the former owner of the property in popular language, but some death settled between the parties as the period at which the estate should vest. But that being the meaning of it, let us see what the facts are here. I assume for the purpose of what I am about to say that the 12 months' limit is out of the question.... The question here is whether upon a conveyance *inter vivos* of the interest that the mother possessed, that falls within the language of the statute, "property passing by death." When the mother had passed her life estate by a conveyance *inter vivos* to her son, would anybody in the world, untainted by technical views, have said that that estate passed from the mother to the son upon death? Death had nothing to do with it. The moment that conveyance was made the son was completely master of the situation, and he might have sold the property the very next day. Then in what sense has it passed on the death? That seems to me to dispose of the question under section 1.

But then it is said that there is certain property which is to be deemed to pass although it does not actually pass. I have already said that the Legislature had good reason to use those words "shall be deemed to pass" in a case where death is the point of time at which the estate is to pass from the one to the other.

My Lords, I think this is the whole question. I cannot argue it any further because it seems to me to speak for itself.

De Trafford v. *The Attorney-General* (1935 A.C. 280, pages 282 and 283) of the report contain the summary of facts of the case which is: "under and by virtue of the will, dated May 5, 1883, of Sir Humphrey de Trafford, the father of the late baronet and hereinafter referred to as the tester, and under and by virtue of a resettlement, dated July 30, 1886, executed in order to comply with a condition contained in the said will, the de Trafford Estates stood limited to uses to the effect that the late baronet was (subject to a jointture) tenant for life of possession of the estates with remainder to his first and other sons in tail male with diverse remainders over. The will contained a power for any person being tenant for life in possession of the estates by deed or will to charge the said estates with portions for his younger children as therein provided. The testator died on May 4, 1886, and his will was proved on July 28, 1886.

On the death of the testator the late baronet entered into possession of the de Trafford Estates and remained in possession thereof until the passing of the de Trafford Estate Act, 1904. He borrowed large sums on the security of his life estate and of certain policies of assurance payable on his death.

In these circumstances the de Trafford Estate Act, 1904, was passed, which by section 6 enabled the trustees of the testator's will to purchase the life estate of the late baronet. In 1907 the late baronet, in pursuance of his power under the testator's will of charging portions for his younger children, charged the de Trafford Estates with a capital sum of 90,000*l.* not to be raised or paid during his life-time.

Sir Humphrey Edmund de Trafford, the present baronet and eldest son of the late baronet, attained the age of 21 years on November 29, 1912. The de Trafford Estates were resettled on May 8, 1914. The present baronet assured the de Trafford Estates to the appellants in fee simple to uses for raising, for further portions for the younger children of the late baronet, in addition to the aforesaid sum of 90,000*l.*, the sum of 160,000*l.*, and subject thereto to the use of the present baronet for life with remainder to his first and other sons in tail male with remainders over in strict settlement. By clause (8) of the resettlement it was provided that the rents and profits and annual income of the de Trafford Estates should be held upon trust during the joint lives of the late baronet and the present baronet to make thereout a payment of 8,000*l.*, a year to the present baronet as from his attaining the age of 35 years until he should attain the age of 45 years. He attained the age of 35 years on November 29, 1926.

By clause (18) of the resettlement the present baronet was authorized to charge the estates with capital sums to the amount of 50,000*l.*, after the death of the late baronet.

On July 31, 1914, the de Trafford Estate Act, 1914, was passed. By section 3 thereof the resettlement of 1914 and all the limitations, trusts, powers and provisions thereof were ratified, approved, and declared to be valid and effectual, and in particular the trusts and provisions of clause (8) were validated as from February 15, 1913.

The late baronet exercised his power of appointing portions to the full extent of 160,000*l.*, to be raised and paid after his death, making the total amount charged for that purpose and payable after his death a capital sum of 250,000*l.* The present baronet at different times in the years 1917 and 1918 borrowed from the trustees sums amounting to 50,000*l.*, and charged portions of the de Trafford Estates with payment of the sums borrowed.

The question in this appeal related to the above mentioned sum of 8,000*l.*, and the two sums of 255,000*l.*, and 50,000*l.* (together 300,000*l.*) mentioned in the last paragraph hereof.

It was considered to be in the interest of all parties concerned, some of whom are infants, that the portions for younger children should be presently raised, before the death of the late baronet, and paid to them or for their benefit. Accordingly in pursuance of a scheme, approved by an order of the Chancery Division on August 15, 1928, the trustees of the Estate by a deed, dated August 15, 1928, surrendered funds in their hands to the necessary amount, and 250,000*l.*, was raised and paid, and 50,000*l.*, borrowed from the trustees was treated as repaid to them. The late baronet died on January 10, 1929.

On November 27, 1931, the Attorney-General filed an information praying that it might be declared:—

(1) That upon the death of the late baronet estate duty at the appropriate rate became payable under section 1 of the Finance Act, 1894, in respect of the principal value of the de Trafford Estates without any deduction in respect of the yearly sum of 8,000*l.*, as property passing on the death of the late baronet.

(2) That upon the death of the late baronet estate duty at the appropriate rate became payable under section 11 of the Finance Act, 1900, as amended by section 59, sub-section (1) of the Finance Act, 1910, in respect

of each of the sums of 90,000 *l.*, 160,000 *l.*, and 50,000 *l.*, as property deemed to pass on the said death.

Per Lord Russell of Killowen: "....It is in regard to the estate duty payable in consequence of his death, (the late baronet's death on January 10, 1929) that two disputed points have come before your Lordships' House for determination.

The first one is concerned with the annual sum of 8,000*l.*, of which the present baronet was in receipt and had been in receipt since he had attained the age of 35 years on November 29, 1925. That annual sum, since it was only payable out of the annual income arising during his father's life, came to an end with his father's death; but on the happening of that event he became tenant for life in possession of the estates, and as such entitled, during his life, to the whole income arising therefrom subsequently to his father's death. In these circumstances it is argued by the appellants (who are the trustees and have accepted liability for the duty payable) that a notional portion of the estates (namely, so much as was required to produce 8,000*l.*, per annum) neither passed on the death of the late baronet within the meaning of section 1 of the Finance Act, 1894, nor should be deemed to be included in property so passing by reason of section 2 of that Act. Alternatively it is contended that no benefit accrued or arose to the present baronet by reason of the cesser of his right to receive 8,000*l.*, a year.

My Lords, these are contentions which in my opinion we are precluded by authority from adopting. I am unable to distinguish this case from *Earl Cowley* v. *Inland Revenue Commissioners* (1899 A.C. 198).... For myself I see no distinction of substance on the facts; for the fact that the life estate had been divested from the tenant for life and vested in trustees during his life, can of itself cause no different answer to be given to the question what property passed on his death. The mortgage in the Cowley case was outside and anterior to the settlement, and independent of it. The annual sum of 8,000*l.*, in the present case was payable out of income arising under the settlement. The reasoning which decided the first point in the Cowley case cannot therefore apply. Nor can I see any justification for the exclusion of any portion of the estates from the property passing on the death. .The present baronet's right to an annual sum of 8,000*l.*, gave him no right to the receipt of any particular items of the annual income, or to the income of any particular portion of the estates. His right to receive an annual sum of 8,000*l.*, ceased on the death of the late baronet; his right, which then arose, to receive all the rents was a new and a different right. There was never either in fact or in law anything resembling a surrender of the life estate to the immediate remainderman, as was the case in *Attorney-General* v. *Beech* (1899 A.C. 53). In my opinion it is impossible to distinguish this case from the Cowley case. The property as a whole passed to the present baronet freed from the trust or liability to pay the annual sum, which trust or liability automatically came to an end with the death of his father. The case falls within Lord Watson's words (in the Cowley case) "The annuity....was regularly paid to the appellant during his father's life-time, and ceased to be payable on his death. No part of it formed a charge upon the equitable estate to which the appellant has succeeded, under the deed of resettlement, not in fee but in life-rent. In these circumstances I do not think it can, with any degree of plausibility, be maintained that the

estate which passed to the appellant upon his father's death has been thereby diminished or affected."

The second point in dispute concerned the capital sums amounting to 300,000*l.*, which were paid off in advance some 5 or 6 months before the late baronet's death. They formed no part of the estates at the death; they had before the death been permanently taken out of the estates and paid away elsewhere. Nevertheless the Crown claims that the portions of the estate released to provide those sums must be deemed to have passed on the late baronet's death by virtue of section 11 of the Finance Act, 1900. The appellants resist this claim on the ground that the facts of this case do not fit in with the provisions of that section. By a later Statute (section 59, sub-section (1) of the Finance Act, 1910) the section was amended by substituting the period of 3 years for the period of 12 months.

"My Lords, it seems to me that the section in terms covers this case. So far as concerns the portions of the estates which were released to provide the portions and the 50,000*l.*, during the life-time of the late baronet, they were property in which the trustees had an interest limited to cease on the death of the late baronet, and that interest was surrendered, assured, divested or otherwise disposed of to or for the benefit of the younger children and the present baronet, each of whom was a person entitled to an interest in reversion in such property, the interest being one which (but for the disposition for his or he benefit) would only have become an interest in possession after the late baronet's death. That property must accordingly be deemed to pass on his death, inasmuch as the disposition was not made or affected 3 years before his death. In the result, I am of opinion that the decision of the Court of Appeal was correct and that this appeal should be dismissed."

Two decisions, one reported in (1950) 1 All E.R. 79 [*A.G.* v. *Sir John Molesworth St. Aubyn* (No. 1)] and the other in (1951) 2 All E.R. 473 [*St. Aubyn* (*L.M.*) *and others* v. *A.G.* (No. 2)] throw a great deal of light on the obscurities and complexities contained in section 11 and its sub-sections. The first mentioned case is a decision of the Court of Appeal. The relevant facts of that case are as follows: Upto 1926 Sir Hugh was a tenant for life of P. and T. estates with remainder to his son, Sir John. On August 14, 1926, Sir Hugh assigned his life interest to a private unlimited company in consideration of an annuity of £7,000 and the issue to him of 100 shares of the company. By a further deed, dated June 20, 1929, the company covenanted with Sir Hugh to pay him for his life an additional annuity in consideration of his surrendering the 100 shares to the company. Under an agreement dated August 17, 1929 the company transferred to a new company all the assets subject to any liability affecting the same in consideration of the new company's satisfying all the liabilities of the company. The new company is a controlled company within the meaning of the Finance Act. On October 29, 1930, the new company conveyed Sir Hugh's life interest in the T. estate to Sir John. Sir John on the same day assigned his reversionary interest in the T. estate to the new company for which the assignment of Sir Hugh's life interest in the T. estate was partial consideration, the remaining consideration being the allotment to Sir John of all the unissued capital of the new company to be held by Sir John in trust for himself absolutely in the event which happened of his surviving Sir Hugh. On the

same day Sir John guaranteed the payment to Sir Hugh during his life the aggregate annuity of £9,000. The five shares in the new company to which Sir Hugh was beneficially entitled were agreed to be transferred to Sir John. On November 17, 1930, Sir Hugh released the new company from the said annuity. On January 5, 1942, Sir Hugh died and the Crown claimed estate duty in respect of the T. estate. *Per* Jenkins, L.J., "The question at issue was, therefore, whether the circumstances of the case were such as to fulfil the conditions on which that exemption depends. So far as material for the present purpose, three conditions of exemption are prescribed by sub-section (2). The first is that the relevant disposition or determination should have been *bona fide* effected or suffered three years before the death. The second is that *bona fide* possession or enjoyment of the property in which the interest subsisted should have been assumed immediately thereafter by the person becoming entitled on the disposition or determination. The third is that the person so becoming entitled should thenceforward have retained such possession or enjoyment to the entire exclusion of the person who had the interest and of any benefit to him by contract or otherwise. Of these conditions it is not in dispute that the first two were fulfilled in the present case, as, whatever is meant by "the relevant disposition", the latest in date of the three dispositions here in question, namely, the surrender of October 29, 1930, by the new company to Sir John, was effected more than three years before the death of Sir Hugh on January 5, 1942, and Sir John admittedly assumed *bona fide* possession and enjoyment of the Tetcott estate immediately on such surrender.

It is however, claimed for the Crown that the third condition was not fulfilled because Sir Hugh was "the person who had the interest" within the meaning of sub-section (2) and he received a benefit in the shape of the annuity (originally of £7,000 and later increased to £9,000) which continued to be payable to him from the date of the assignment by him of his life interest to the old company on August 14, 1926, down to the date of his death.

As to the alternative claim under section 43 (1) in conjunction with section 56 (2), the matter stands thus. The new company was admittedly a company to which section 56 applied, which makes it unnecessary for us to refer to the complicated referential definition of such companies contained in section 58. Sir Hugh was admittedly the beneficial owner of all the issued shares of the new company from its incorporation until October 25, 1930, (i.e. the date of the deed of family arrangement which must, we think, be the critical date for this purpose) and although the date of the allotment to Sir John of the unissued shares of the new company pursuant to the deed of family arrangement is not in evidence, this presumably did not take place until October 29, 1930, when the assurances by the new company to Sir John, and by him to the new company, were completed, and the five issued shares, or the beneficial interest therein, were transferred by Sir Hugh to Sir John. Finally, the new company as the actual surrenderor was clearly "concerned" within the meaning of section 56 (2) in the disposition of Sir Hugh's life interest constituted by the new company's surrender of it to Sir John. It follows that, by virtue of section 56 (2), the condition as to the entire exclusion of the person who had the interest and of any benefit to him, specified in section 43 (2), is to be treated as having

been satisfied if and only if it would have been so treated in the circumstances stated in section 56 (1). In view of the fact that Sir Hugh was the beneficial owner of all the issued shares of the new company, the assumption of those hypothetical circumstances in the present case produces the result that the new company is to be treated as having held its assets (i.e. Sir Hugh's life interest in the Pencarrow and Tetcott estates, and the other property above referred to) in trust to pay thereout the £9,000 annuity to Sir Hugh during his life, and, subject to such payment, in trust for Sir Hugh absolutely, with power to the new company as such trustee to carry on its business and employ its assets therein. In other words, the new company, is to be regarded (in effect) as having held its assets in trust for Sir Hugh absolutely as sole beneficiary, subject only to the powers just mentioned, which amount in substance to general powers of management. If these hypothetical circumstances had existed in reality, it seems to us reasonably plain that Sir Hugh, as the sole beneficiary under the hypothetical trust of the new company's assets, would, in relation to the surrender of his life interest by the new company to Sir John, have been "the person who had the interest" within the meaning of section 43 (2). It further seems to us reasonably plain that Sir Hugh as "the person who had the interest" would not have been excluded from all benefit since he received a palpable benefit in the form of Sir John's guarantee of the £9,000 annuity. We should here note that the question was raised in the course of the argument whether the new company ever assumed any direct liability to Sir Hugh for the annuity as opposed to a mere liability to the old company for its payment. This seems to us to be immaterial for the present purpose, except in the sense that, if the new company was under no direct liability to Sir Hugh for the annuity, the benefit represented by Sir John's guarantee was all the more valuable.

Counsel for Sir John contested the claim under section 43 (1) in conjunction with section 56 (2) on (in effect) three grounds. First, he said that "the person who had the interest" must be identified by reference to section 43 alone, and that section 56 (2) was only available for the purpose of ascertaining whether the person so identified was excluded from all benefit. We see no justification for placing this restricted construction on the language of section 56 (2). The identity of "the person who had the interest" must necessarily depend on the beneficial ownership of the interest, and the provisions of section 56 (2) are on the face of them directed to imputing beneficial ownership to some person or persons other than the company concerned in the disposition. If the interest in question was comprised in the company's assets so that the effect of applying section 56 (2) is to bring about a notional change in the beneficial ownership of such interest, the identity of "the person who had the interest" must necessarily suffer a corresponding notional change. Secondly, counsel argued that on the principle of *Sudeley* v. *A.G.*, Sir Hugh had no interest in the new company's assets under the hypothetical trust, but *Sudeley* v. *A. G.* (1897) A.C. 11 was a case of an unadministered residuary estate and has no bearing on a trust such as the hypothetical trust here in question relating to ascertained and specific trust property. Moreover, under the hypothetical trust in the present case, Sir Hugh as sole beneficiary could have called for the transfer to himself of the trust property at any time, subject only to the discharge of any outstanding liabilities."

In the House of Lords case, the 2nd mentioned case, the facts as culled from the head-note of the case are as follows: In certain settled estates and funds Lord St. Levan had a life estate. He sold to a company the whole of the settled property in which he had a life estate for £1,700,000 of which £950,000 was to be paid to the trustees in cash and the balance of £750,000 was to be paid in cash by 40 half yearly instalments. The date of sale was March 26, 1927. The trustees repaid £850,000 from out of £950,000 to the company in consideration of the issue to them or their nominees of 50,000 ordinary shares of the company. On March 28, 1927 Lord St. Levan and the trustee Mr. Ponsonby appointed in exercise of their over-riding power for the said sum of £100,000 and the said sum of £750,000 payable by instalments including interest should be held on trust for Lord St. Levan and that he should be entitled thereto for his own sole use and benefit instead of for his life only.

Per Lord Simonds: "My Lords, I will assume that the Court of Appeal rightly stated the effect of applying the statutory hypothesis to the facts of this case. The question whether duty is exigible still remains one of great difficulty. Whatever the words, which have appeared in a series of Acts, might have meant to your Lordships if the matter were *res integra,* it cannot in face of the decision in *A. G.* v. *Worrall* (1895) 1 Q.B. 99 be denied that it is possible for possession and enjoyment of property not to be retained by the donee to the entire exclusion of the donor or of any benefit to him by contract or otherwise, though the donor himself no longer has any sort of interest in it. But the words, and particularly the word "exclusion", are singularly inapt to cover a benefit which does not arise by way of reservation out of that which is given, and I am not disposed to travel further than I am constrained by authority along a line of interpretation which appears to me difficult to justify.

Two recent cases in the Privy Council are of great assistance on this matter. In *Munro* v. *Stamp Duties Commr.* (1934) A.C. 61 the facts were that the owner of a large area of land in New South Wales, on which he carried on the business of a grazier, in 1909, agreed with his six children that thereafter the business should be carried on by him and them as partners at will, the business to be managed by him and each partner to get a share of the profits. In 1913 he transferred by way of gift to his children or to trustees for them all his right, title and interest in the land. He remained a partner in the business until his death in 1929, and duty was then claimed in respect of the land because, as it was said, it had not been retained by the donees to the entire exclusion of him or of "any benefit to him of whatsoever kind or in any way whatsoever whether endorseable at law or in equity or not." But on this Lord Tomlin, delivering the judgment of the Board, said (1934) A.C. 67:

"....what was comprised in the gift was, in the case of each of the gifts to the children and the trustees, the property shorn of the right which belonged to the partnership; and upon this footing it is in their Lordships' opinion plain that the donee in each case assumed *bona fide* possession and enjoyment of the gift immediately upon the gift and thenceforward retained it to the exclusion of the donor. Further, the benefit which the donor had as a member of the partnership in the right to which the gift was subject was not in their Lordships' opinion a benefit referable in any way to the gift.

It was referable to the agreement of 1909 and nothing else, and was not therefore such a benefit as is contemplated by section 102 (2) (*d*)."

Here are words of great significance. The benefit, if it is to attract duty to the subject of the gift, must be a benefit referable to it. The words are not easy to construe, but they clearly import that the owner of property may in certain circumstances retain a benefit when he makes a gift and yet the subject-matter of the gift be not dutiable.

More important is *New South Wales Stamp Duties Commr.* v. *Perpetual Trustee Co. Ltd.* (1943) A.C. 425 for in that case the Judicial Committee took the opportunity of reviewing the earlier cases and in particular Worrall's case, Grey's case (1900) A.C. 124 and Re Cochrane and it is to the latter case that I must first turn, for the judgment of the Irish Court of Appeal was expressly approved by Lord Russell of Killowen delivering the opinion of the Board and its bearing on the case now under appeal will be seen to be immediate. For that reason, I venture to repeat the facts substantially as stated by him. Sir Henry Cochrane was the mortgagee of estates in Mayo in a sum of £15,000 with interest at 4½ per cent. The mortgage debt and securities having been vested in trustees, Sir Henry, by an indenture made in 1902, declared that they were to stand possessed thereof in trust out of the income to pay in each year to his daughter, Mrs. Day, the sum of £575 for her life, and after death on trust as to the principal sum for her children as therein mentioned with power to Mrs. Day to appoint an annual sum to a surviving husband during his life. If no child of Mrs. Day attained a vested interest in the trust funds, they were to be held in trust for Sir Henry absolutely and there was also a trust of the balance, if any, of the yearly income for Sir Henry absolutely. The trustees received the interest of the mortgage which amounted to £675 per annum and paid £575 to Mrs. Day and the balance to Sir Henry. In March, 1904, he directed them to pay the whole income to Mrs. Day, but, as he died within a year thereafter, this direction could not affect the claim to duty which the Crown made in respect of the entire sum of £15,000 as property passing on his death under the Finance Act, 1894, section 2 (1) (*c*). It was held by Palles, C.B., and his decision was affirmed by the Court of Appeal, which consisted of Walker, L.C., and Fitzgibbon and Holmes, L. JJ., that duty was payable, not in respect of the £15,000, but only in respect of the values of Sir Henry's interest in the balance of income and his contingent interest in the principal sum. It is important to see how Lord Russell of Killowen summarises the judgment of the Chief Baron. He says [(1943) 1 All E.R. 531]:

"Gift in the context meant beneficial gift. A person who declares trusts of property only gives the beneficial interests covered by the trusts. Everything else he retains and does not give; and there is an entire exclusion of the donor from the property taken under the disposition of the gift. Sir Henry Cochrane obtained no benefit either by way of reservation out of the gift, or collaterally in reference to the gift."

Then, after citing Holmes, L.J., he said (*ibid*) :

"If *Re Cochrane* (1905) 2 I.R. 626 was rightly decided, as their Lordships think it was, it covers the present case."

Lord Russell then proceeded to a close analysis of *Earl Grey* v. *A.G.* (1900) A.C. 124, convincingly showed that it was not inconsistent with Re Cochrane and said of it (*ibid* 533) :

"There is nothing laid down as law in that case which conflicts with the view that the entire exclusion of the donor from possession and enjoyment which is contemplated by section 11 (1) of the Act of 1889 is entire exclusion from possession and enjoyment of the beneficial interest in property which has been given by the gift, and that possession and enjoyment by the donor of some beneficial interest therein which he has not included in the gift is not inconsistent with the entire exclusion from possession and enjoyment which the sub-section requires." It followed from the approval given to the decision in Re Cochrane that the claim against the Perpetual Trustee Co., failed. In that case a settler vested certain shares in trustees, of whom he was himself one, on trusts for the benefit of an infant son but with a resulting trust for himself if the son did not attain the age of twenty-one. It was contended that as the settler (*a*) was a trustee and (*b*) had an equitable interest in reversion, there was not an entire exclusion of him and of any benefit to him of whatsoever kind and in any way whatsoever. The contention failed because the settler

> "in his capacity as donor....was entirely excluded from possession and enjoyment of what he had given to his son.... In the interval between the gift and his death, the settler received no benefit of any kind or in any way from the shares, nor did he receive any benefit whatsoever which was in any way attributable to the gift."

As Dixon, J., said in the Perpetual Trustee Co., case in the High Court of Australia (64 C.L.R. 511):

"The settlement contained nothing defeating, revoking or destroying any interest given. It contained no reservation out of the interest given and no recompense or benefit in reference to the interest given."

"It appears to me, my Lords, that this is nothing but the logical application to a more complex situation of the proposition which I venture to think was self evident, viz. that the life tenant of two separate pieces of property can surrender his life interest in one and retain it in the other without duty becoming exigible in respect of the former. The question is what he has given: it may be a life interest in part of the settled property; it may be a part of the income of settled funds and that part may be a fixed sum which is payable in priority or the residue after the prior payment of a fixed sum thereout. I venture to think that much of the argument that was addressed to the House in this case and much of the confusion that has arisen in the past on this admittedly difficult branch of the law have been due to the failure to bear in mind that that of which enjoyment is to be assumed and retained and from which there is to be exclusion of the donor and any benefit to him by contract or otherwise is that which is truly given, a proposition which is obvious enough in the case of two separate estates but more difficult to follow and apply where trusts are declared of a single property which are not completely exhaustive in favour of a donee. It should at least be clear from the judgment of Lord Russell of Killowen that by retaining something which he has never given a donor does not bring himself within the mischief of the section. I venture to repeat in other words what I have already said when dealing with section 43 alone, for its underlying principle is not altered by an alliance with section 56. In the simplest analysis, if *A* gives to *B* all his estates in Wiltshire except Blackacre, he does not except Blackacre, out of what he has given; he just does not give

but keeps Blackacre, it is a benefit which is in no relevant sense (to use the language of Lord Tomlin) "referable" or (use that of Lord Russell) "attributable" to the gift that he made of the rest of the Wiltshire estate. Applying this principle to the artificial situation created by the statutory hypothesis, I see no reason for saying that that which Lord St. Levan gave was not retained by the donee to the entire exclusion of him and of any benefit to him by contract or otherwise. To avoid misunderstanding I must add that different considerations arise where the donor obtains some benefit which is "referable" to the gift or "attributable" to it. Thus, if in the present case there had been a bargain by which in consideration of the surrender of his life interest in part of the settled property Lord St. Levan had been enabled to enlarge his life interest in another part of it, it might well be that, following Worrall's case, I should be bound to hold that he had not been excluded from the surrendered part. But, as I have already pointed out, here was no bargain of any kind. What Lord St. Levan chose to give he gave, and what to keep he kept. He made no bargain and he was entirely excluded from, and obtained no benefit referable to, that which he gave.

The first point arises on the subscription by Lord St. Levan for one hundred thousand preference shares. For these he paid cash according to the ordinary use of language. Did he then "transfer property" to the company within the meaning of section 46? My Lords, I have no hesitation in saying that the payment of cash to a company on a subscription for shares is not a transfer of property to the company. No one, lawyer, business man, or man in the street, was ever heard to use such language to describe such an Act and I decline to stretch the plain meaning of words in an Act of Parliament in order to comply with what is said to be its purpose. Lord Wenseleydale's familiar words in Re Micklethwait (11 Exch. 456), which were cited by Lord Halsbury, L.C., in *Tennant* v. *Smith* (1892) A.C. 154, may again be repeated :

"It is a well-established rule, that the subject is not to be taxed without clear words for that purpose; and also, that every Act of Parliament must be read according to the natural construction of its words."

Lord Halsbury adds that in a taxing Act it is impossible to assume any intention or governing purpose in the Acts to do more than take such tax as the statute imposes : it must be seen whether the tax is expressly imposed. This is true doctrine which I must bear in mind as I listen to the constant refrain of learned counsel for the Crown that this or that is just the transaction at which this or that section is aimed. The question is not at what transaction the section is according to some alleged general purpose aimed, but what transaction its language according to its natural meaning fairly and squarely hits. Applying this, the one and only proper test, I say that when Lord St. Levan paid for his shares he did not transfer property to the company.

The question is whether the advances so made were "benefits" within the meaning of section 46. The argument for the Crown is a simple one. Under section 47 (which I have already cited) any periodical payment out of the resources of the company is to be "treated as a benefit", the loans or advances were payments made to Lord St. Levan out of the resources of the company and they were made periodically, and they were received by Lord St. Levan for his own benefit directly or indirectly. Therefore, they were

"benefits." The company, on the other hand, appeals once more to the plain use of ordinary words and denies that a man can fairly be said to receive for his own benefit a sum which he receives by way of loan and has to repay, and further relies on the omission of loan from a definition which refers to payment by way of dividend or interest or by way of remuneration or any other payment. The latter argument may derive some force from the contention of the Crown that a transaction of loan was just what the section was aimed at. But, perhaps, that contention had only become common form by the time this stage of the case had been reached. My Lords, here again is a question on which I find it impossible to express a confident opinion. It is indeed strange that no reference is made to a transaction of loan and the result of holding such a transaction to be a benefit must, as learned counsel for the Crown was constrained to admit, have strange results. But I have come to the conclusion, nevertheless, that the contention of the Crown must be upheld. I cannot escape from the fact that as each periodical loan was made to Lord St. Levan there was a payment to and receipt by him. And I cannot think that he received it any the less for his own benefit because he had, or his estate had, at a later date to repay it. He had the beneficial use of what he received and can fairly be said to have received it for his own benefit. I may add that I do not find it possible to find in the definition of periodical payment any genus of payments created from which by the application of the *ejusdem generis* rule a loan could be excluded, nor can I get any assistance from the provisions of Schedule VII to the Act to which reference was made. I am, therefore, of opinion that the loans were "benefits" within section 46. But this is only relevant if Lord St. Levan transferred property to the company within the same section except in a fiduciary capacity, and this, in my opinion, he did not."

In considering the question whether the conditions mentioned in clause (*a*) of sub-section (2) of section 11 cases decided about (1) gifts, section 10 of the Act; (2) settlements with reservation, section 12 of the Act; (3) sales, section 26 of the Act, and (4) dispositions in favour of relatives, section 27 of the Act will be found useful. A person may dispose of in part his life interest in any immovable or movable property. In such a case attention must be directed to the question what is disposed of, in other words what is the subject-matter of the disposition. If a person has life interest in 4 items of immovable property or movable property and if he disposes of his life interest in only 3 of them, the retention of the 4th item of property will not be regarded as retention by him so as to take away the exemption from estate duty. If he has disposed of all the 4 items but reserves a benefit only in respect of one item *i e.* if he has to be paid an annual sum which does not exceed the annual income of that item, on his death estate duty is payable only in respect of the item in which there is a reservation. On the other hand, as a condition or bargain between the parties, the transferee may agree to confer a benefit upon the transferor which benefit does not arise from or out of the properties transferred. In such a case liability of estate duty attaches to all the properties disposed of. The proviso to sub-section (2) of section 11 preserves estate duty in cases where it arises otherwise than, or apart from the disposition which is protected by reason of all the conditions mentioned in clause (*a*) of sub-section (2) being fulfilled.

If a person surrenders his annuity secured on immovable property and accepts personal security, estate duty becomes payable in spite of the fulfilment of all the conditions mentioned in clause (*a*) of sub-section (2).

1939 (1) Ch. 865 Payne's Declaration, In Re. Payne, In Re. *Poplett* v. *A.G. per* Simonds J., "Payne had, before executing the declaration of trust, agreed to sell the patents and patent rights the subject of that declaration, and on the footing that the agreement was carried out, as in fact it was, he could and did settle nothing more than the sale price which the company had agreed to pay him—that is to say, the sum of 10,000*l.*, with an option to acquire ordinary shares of the company at—35*s* a share. That is clear, and this also is clear, that the only relevant date for the purpose of valuing property which passes on the death of the deceased is the date of his death: see Finance Act, 1894, section 7, sub-section (5) and *Lord Strathcona* v. *Inland Revenue* (1929) S.C. 800. The question of difficulty on which the parties are at issue is what is the property of which the value has to be ascertained at the death of the deceased. The contention of the Attorney-General has already been stated: the property which passes on the death was the trust fund as it then existed. The plaintiffs, on the other hand, say that it is essential to see what was on January 26, 1936, taken under the disposition made on that date; it was the sum of 10,000*l.*, and an option, and it is that property so taken which must be valued at the death. Each side points to the hardships and anomalies which the other view involves. A gift of little value enormously appreciates by the date of death by reason of the skill and exertion of the donee. Is he to pay duty on a value largely created by himself? A gift of great value becomes worthless by the date of death of the donor through no fault of the donee. Is he to pay duty on a value which would not in any case have existed at the death of the donor? The dull subject of duties has been agreeably illustrated by examples taken from the race-course, such as the colt optimistically regarded as a Derby winner by donor and donee which proved to be the merest "plater".... The real problem is to reconcile the two elements: (*a*) property taken under a disposition made in (say) 1936, and (*b*) a valuation to be made in (say) 1939. It is to be observed that the disposition may be by way of gift outright or by way of settlement. It is the latter class of case with which I have to deal, and I think that it is the easier class of the case. Where there is a settlement which persists to the date of death, it is not difficult to regard the trust property, in whatever state it may be at the death, as the same property as that which was taken under the disposition. The claim was thus formulated on behalf of the Attorney-General—namely, that the subject-matter of the gift is in each case the settled fund—that is, in this case the property originally made subject to the declaration of trust, subject to and with the benefit of the duties and powers invested in the trustees by the trust, including the power of investing money and varying investments, and that the settled fund as it actually existed at the death of the settler is, therefore, the property deemed to be included in the property passing on death, and the valuation as at the date of death should relate to the investments and moneys representing the corpus of the trust fund at that date. In support of this contention Mr. Stamp, referred to other provisions of the Finance Acts in which a continuing identity is attached to the property from time to time subject to a

settlement through all its changes of investment. In particular, he relied on section 5, sub-section (1) of the Finance Act, 1894, which dealt with the exemption of settled property which had borne duty from future estate duty where it passed to some person not competent to dispose of it. He pointed out that this exemption had always been interpreted as applying equally to cases where the settled property remained unchanged through the period of settlement, and to those in which it had been sold and the reinvested proceeds became subject to the settlement. It is indeed clear that, if this interpretation is not right, and the exemption is given only where the same property bears duty and then passes a second time, the obvious intention of the section would be largely defeated. Again, under the very section which I have to consider, it might well be, if the plaintiffs are right, that duty would be leviable both under head (*a*) on the actual property which was the subject of the trust disposition and under head (*c*) on the settled property actually in existence at the death, for section 7, sub-section (10) of the Finance Act, 1894, which provides that estate duty in respect of property passing on any death shall not be levied more than once on the same death, can have no operation except in respect of the same property. These are, in my judgment, cogent considerations in favour of the claim made by the Attorney-General. They reconcile, in a way which appears to be consistent with the general policy of the Act in dealing with settled property, the discordant elements to which I have referred. I am conscious that in isolating gifts by way of settlement from other forms of gift I am not solving all the difficulties which the section provides. Nor should I be justified in thus isolating them if it was clear that in the case of outright gifts that which had to be valued at the death was the actual subject-matter of the gift regarded as in a hypothetical state of preservation in the condition in which it was given. For then, it might well be said that the same principle must be applied to all kinds of disposition. But in view of the difficulties—well nigh insoluble as I humbly think—which may arise in the case of outright gifts, it is permissible, I think, to adopt in regard to gifts by way of settlement a construction which is consistent with the policy of the Act and does not appear to create any hardship to the subject or to cause any administrative inconvenience."

It was held in this case that the corpus of the settled property in respect of which duty was held payable under section 2, sub-section (1) (*c*) of the Finance Act, 1894 was agreeable with other property of the settler passing on his death so as to form one estate for the purpose of determining the rate of duty. Simonds J., expressed the opinion that the decision of the Court of Appeal in *In re Hodson's Settlement* (1939) 1 Ch. 343 was authority for his opinion on the question of aggregation.

Section 12. *Settlements with reservation.*—(1) Property passing under any settlement made by the deceased by deed or any other instrument not taking effect as a will whereby an interest in such property for life or any other period determinable by reference to death is reserved either expressly or by implication to the settlor or whereby the settlor may have reserved to himself the right by the exercise of any power, to restore to himself or to reclaim the absolute interest in such property shall be deemed to pass on the settlor's death :

Provided that the property shall not be deemed to pass on the settlor's death by reason only that any such interest or right was so reserved if by means of the surrender of such interest or right the property is subsequently enjoyed to the entire exclusion of the settlor and of any benefit to him by contract or otherwise, for at least two years before his death.

Explanation.—A settlor reserving an interest in the settled property for the maintenance of himself and any of his relatives (as defined in section 27) shall be deemed to reserve an interest for himself within the meaning of this section.

(2) Notwithstanding anything contained in sub-section (1), where property is settled by a person on one or more other persons for their respective lives and after their death, on the settlor for life and thereafter on other persons and the settlor dies before his interest in the property becomes an interest in possession, the property shall not be deemed to pass on the settlor's death within the meaning of this section.

See the comparative table given in the foregoing pages. The meaning of this section is this: property comprised in a settlement or property comprised in any trust created, will remain the property of the settler or the creator of the trust if any benefit or interest is reserved to him in such property. The reservation may be by express words or it may be by implication. Even if the deed of settlement or trust reserves the right to restore to himself or to reclaim the absolute interest in such property or the granting of interest in the settled property for the maintenance of any of his relatives (as defined in section 27) or to himself or to any of his relatives on the settler's death, the whole of the settled property becomes liable to estate duty. The liability arises under one or other or cumulatively of the aforesaid charging provisions. The settler who has made the settlement with reservation will be regarded as a person competent to dispose of the property, or as having effected a transaction within the mischief of section 10 read with section 27 of the Act.

The reference to "life" and "death" in this section is life and death of the settler. The section applies to immovable and movable property. It is difficult to distinguish sometimes between settlements with reservation and gifts with reservation. But it becomes necessary to do so as liability to Estate duty is affected according to the fact whether it is one or the other. The matter is further complicated if what is in name a gift is claimed to be a sale for full consideration in money or money's worth paid to the transferor for his own use or benefit. In the case of section 12 what happens is that the settler himself during the period of his life grants an interest for life or any other period to another in his own property or grants the whole income or part of the income to another subject to an annuity payable by the grantee or the remaining part of the income being reserved to himself. He may even if he does not reserve to himself any interest in the property reserve an interest for the maintenance of any relative of his as defined in section 27 of the Act. In this latter case he deprives himself of the whole of the property for life, there being no personal benefit to him of any kind. Notwithstanding this on his death Estate duty is payable in respect of the entire property. This is

because a person is entitled to do whatever he likes with respect to his property; he may let others enjoy the property for his life. It is his property that passes on his death, and Estate duty is leviable in respect of such passing. It is in this connection one should bear in mind the remarks of the Court made in *Cowley* v. *Commissioners of Inland Revenue* (1899) A.C. 198. "You might just as well strike the word 'settled' out of section 1 altogether as hold that the section does not embrace a case where a limited interest under a settlement ceases on death and passes to no one." In section 5 of the Act corresponding to section 1 of the Finance Act, 1894 there are the same words. Section 6 of our Act corresponds to section 2 (1) of the Finance Act, 1894 and the same language is present in both. Section 2 (1) (*b*) and section 7 do not come into operation in relation to property which does not actually pass. The charging section is primarily section 7. The words in this section "property in which *the deceased or any other person* had an interest ceasing *on the death of the deceased* are confusing in the extreme. The meaning becomes clear only when section 40 of the Act which corresponds to 7 (7) (*a*) and (*b*) of the Finance Act, 1894 is perused. There is reservation of an interest in favour of the settler within the meaning of the section in the following cases: (1) life interest in the settler coming to an end (*a*) by forfeiture on attempted transfer (*b*) exercise of a power of appointment and (2) income of the settled property being at the discretion of the trustees payable to others including the settler. See *A. G.* v. *Heywood,* (1887) 19 Q.B.D. 326; *A.G.* v. *Farrell,* (1931) 1 K.B. 81.

In view of the provisions of the Act the only way of escape from payment of Estate duty is for a person when he is in a fit of health and expects to live for at least two more years to make gifts of all his properties in favour of his own relations who normally take his properties if he died an intestate—and divest himself fully and completely of possession and enjoyment. In other words, he should become a Sanyasin, not in the true sense of the word but in the sense of renunciation utterly of his interests in his properties. He need not renounce the world; it is enough if he renounces his properties; he may without falling into the clutches of the Act do another thing; he can select a young son and make a gift of all his properties outside the statutory period; that son in his turn when the time comes should transfer all his properties to his own son and so on and the claim for Estate duty may be put off for some generations at least. But the illustration is hypothetical and imaginary. Having regard to human nature and the complexities of motives of persons such a step is chimerical and defeats its own purpose; the remedy becomes worse than the disease. It is open to the Revenue to prove reservations, secret arrangements of benefits reserved and prick the bubble of this fantastic scheme. See the case of *H.M. Adv.* v. *M'Taggart Stewart* (1906) 43 S.L.R. 465.

The following cases are noticed in these pages because they illustrate the principles that become applicable in the case of gifts, settlements with reservation and sale. (1) (1943) A.C. 425 P.C. *Commr. of Stamp Duties, New South Wales* v. *Perpetual Trustee Co. Ltd.* (2) *Commr. of Stamp Duties of New South Wales* v. *Way* (1952) A.C. 95 P.C. (3) *Crossman* v. *R.* (1886) 18 Q.B.D. 256 (4) *Re. Cochrane's Settlement Trust, Cochrane* v. *Turner* (1945) Ch. 285 (5) *A.G.* v. *Worrall* (1895) 1 Q.B. 99 (6) *Grey* v. *A.G.* (1900) A.C. 124 (7) *A.G.* v. *Seccombe* (1911) 2 K.B. 688 (8) *Re. Bateman* (1925) 2 K.B.

429 (9) *Re. Miller's Agreement Uniacke* v. *A.G.* (1947) Ch. 615 (10) *Lethbridge* v. *A.G.* (1907) A.C. 19.

A person is competent to dispose of property in the cases mentioned in section 3 of the Act. If he has only general power which can be exercised only with the consent of a third party, he is not competent to dispose of property. A power of revocation reserved in the transferor does not prevent the passing of property, and therefore all gifts where there is power of revocation reserved to the donor will be regarded as gifts with reservation. An interesting case has arisen in [(1949) 1 All E.R. 901] *Re Owen* v. *Inland Revenue Commrs.* The donor gave an amount to the donee by means of a cheque outside the statutory period. The donee cashed the cheque within the statutory period. It was held that estate duty was payable in this case.

Commissioner For Stamp Duties of New South Wales .. *Appellant.*

and

Perpetual Trustee Company Limited .. *Respondent.*

[1943 A.C. 425]

By an indenture of settlement made in 1917 between the settler and five trustees, of whom the settler himself was one, it was declared that the trustees should hold certain company shares of which the settler was the owner and registered holder, and which were transferred into and registered in the names of the trustees, in trust, briefly to apply during the minority of his son the whole or any part of the income or corpus as the trustees should think fit for the maintenance, advancement or benefit of the son, and on his attaining the age of twenty-one years to transfer to him as his absolute property all the assets and property whatsoever, including accumulations of income. From the date of the settlement the settler never exercised any voting power in respect of the shares. With the exception of premiums paid in respect of a policy of insurance on the life of the son taken out by the trustees, no part of the dividends and income was paid or applied towards the infant's maintenance, advancement or benefit, any balance which might have been so applied being accumulated and invested. The son attained the age of twenty-one years in 1931, when the assets comprised in the settlement were transferred to him. On a claim by the revenue authorities that on the death in 1921 of the settler the shares the subject of the settlement had formed part of the settler's dutiable estate by virtue of section 102, sub-section (2) (*d*) of the New South Wales Stamp Duties Act 1920, which provides that "For the purpose of the assessment and payment of death duty"....the estate of a deceased person shall be deemed to include and consist of....(2) (*d*) any property comprised in any gift "made by the deceased at any time, whether before or after the passing of this Act, of which *bona fide* possession and enjoyment has not been assumed by the donee immediately upon the gift" and thenceforth retained to the entire exclusion of the deceased," or of any benefit to him of whatsoever kind or in any way "whatsoever":—

Held, that the settlement, being a disposition of property effected by the creation of a trust without full consideration in money or money's worth was a "gift" within the meaning of section 100 of the Stamp Duties Act; that the interest of the son under the settlement in the shares and accumulations of income was not an absolute vested interest, but was contingent on his attaining the age of twenty-one years; that the property comprised in the gift was the equitable interest in the shares, and that *bona fide* possession and enjoyment

of the property comprised in the gift was assumed by the donee, the son, immediately upon the gift and thenceforth retained to the entire exclusion of the deceased or of any benefit to him of whatsoever kind or in any way whatsoever, and accordingly the shares did not form part of the settler's dutiable estate.

In *re Cochrane* (1905) 2 I.R. 626; (1906) 2 I.R. 200 approved and held to cover this case, to be distinguishable from *Grey (Earl)* v. *Attorney-General* (1900) A.C. 124, and not inconsistent with *Attorney-General* v. *Worrall* (1895) 1 Q.B. 99.

Per Lord Russell of Killowen : "....Since authorities under the Finance Act, 1894, were cited and relied on in the Courts of Australia, and also before their Lordships' Board, it will be convenient to set out the provisions in that Act which may be said to correspond with the relevant provisions of the Stamp Duties Act, 1920. It must, however, be borne in mind that the two acts differ in this respect—that while Stamp Duties Act taxes the final balance of the state of the deceased, which is deemed to consist of defined classes of property, the Finance Act taxes property which passes on the death of a deceased, and property which is to be deemed to be included in the property passes on his death. Bearing this distinction in mind, the corresponding provisions of the Finance Act, 1894, would seem to be the following:—"2-(1) Property passing on the death of the deceased shall be deemed to include the property following, "that is to say, (2) Property which would be required "on the death of the deceased to be included in an account" under section 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; (3) Property "passing on the death of the deceased shall not be deemed to "include property held by the deceased as trustee for another "person under a disposition not made by the deceased, or "under a disposition made by the deceased more than twelve "months before his death where possession and enjoyment of the property was *bona fide* assumed by the beneficiary "immediately upon the creation of the trust and thenceforward "retained to the entire exclusion of the deceased or of any "benefit to him by contract or otherwise." As is evident, it is necessary also to set out the two sections referred to in section 2, sub-section (1) (*c*) of the Finance Act, 1894. Section 38 of the Customs and Inland Revenue Act, 1881 (hereinafter referred to as the Act of 1881) so far as relevant, runs as follows:—"38-(1) Stamp Duties at the like rates as are by this Act "charged on affidavits and inventories shall be charged and "paid on accounts delivered of the personal or movable property to be included therein according to the value thereof. "(2) The personal or movable property to be included in an account shall be property of the following descriptions, namely:—(*a*) Any property taken as a *donatio mortis causa* "made by any person dying on or after the first day of June, 1881, or taken under a voluntary disposition, made by any person so dying, purporting to operate as an immediate gift *"inter vivos* whether by way of transfer, delivery, declaration "of trust or otherwise, which shall not have been *bona fide* made three months before the death of the deceased.....(*c*) Any property passing under any past or future voluntary

settlement made by any person dying on or after such day by deed or any other instrument not taking effect as a will, whereby an interest in such property for life or any other period determinable by reference to death is reserved either expressly or by implication to the settler...." Section 11 of the Customs and Inland Revenue Act, 1881, is hereby amended, as follows: The description of property marked (*a*) shall be read as if the word 'twelve' were substituted for the word 'three' therein, and the said description of property shall include property taken under any gift, whenever made, of which property *bona fide* possession and enjoyment shall not have been assumed by the donee immediately upon the gift and thenceforward retained, to the entire exclusion of the donor, or of any benefit to him by contract or otherwise....

As a result of the referential legislation, property passing on the death of a deceased is (under the Finance Act, 1894) deemed to include property falling within the words just cited. Under the Stamp Duties Act, the estate of a deceased is deemed to include property falling within the very similar words of section 102, sub-section (2) (*d*), of that Act. There is no dispute, nor could there be any, that the settlement of December 7, 1917, was a gift within the Stamp Duties Act, being, as it was a disposition of property effected by the creation of a trust without full consideration in money or money's worth. The questions to be determined are, (1) What was the property comprised in the gift, was it the shares themselves or only a particular kind of interest in the shares? (2) Had *bona fide* possession and enjoyment been assumed by the donee immediately upon the gift? (3) Had *bona fide* possession and enjoyment been thenceforth retained by the donee to the entire exclusion of the settler, and to the entire exclusion of any benefit to him of whatsoever kind or in any way whatsoever?

....In Australia, the case was apparently argued on the footing that the interest of the son under the settlement in the shares and accumulations of income was not an absolute vested interest, but was contingent on his attaining the age of twenty-one years. Before their Lordships' Board, however, it was contended by the respondent that the interest given was an absolute one, and this on the authority of certain decisions on the construction of wills, of which *In re Ussher. Foster* v. *Ussher* (1922) 2 Ch. 321 is perhaps the latest reported example.... In their Lordships' opinion, there is no ambiguity in this settlement. There is no gift of corpus to the son except in the direction to the trustees to transfer to him on his attaining twenty-one. What have then (and only then) to be transferred are described as "all the property and assets whatsoever including the accumulations of income and all investments held by the trustees," and they are then to be transferred to him "as his absolute property." Until that event had happened they were not in their Lordships' opinion, his absolute property; until that event had happened, he had only a contingent interest. He was only to be absolutely entitled to corpus if and when he attained his age of twenty-one years.... In their opinion the property comprised in the gift was the equitable interest in the eight hundred and fifty shares, which was given by the settler to his son. The disposition of that interest was effected by the creation of a trust, *i.e.* by transferring the legal ownership of the shares to trustees, and declaring such trusts in favour of the son as were co-extensive with the gift which the settler desired to

give. The donee was the recipient of the gift; whether the son alone was the donee (as their Lordships think) or whether the son and the body of trustees together constituted the donee, seems immaterial. The trustees alone were not the donee. They were in no sense the object of the settler's bounty. Did the donee assume *bona fide* possession and enjoyment immediately upon the gift? The linking of possession with enjoyment as a composite object which has to be assumed by the donee indicates that the possession and enjoyment contemplated is beneficial possession and enjoyment by the object of the donor's bounty. This question therefore must be answered in the affirmative, because the son was (through the medium of trustees) immediately put in such *bona fide* beneficial possession and enjoyment of the property comprised in the gift as the nature of the gift and circumstances permitted. Did he assume it, and thenceforward retain it to the entire exclusion of the donor? The answer, their Lordships think, must be in the affirmative and for two reasons namely, (1) the settler had no enjoyment and possession such as is contemplated by the section; and (2) such possession and enjoyment as he had from the fact that the legal ownership of the shares vested in him and his co-trustees as joint tenants, was had by him solely on behalf of the donee. In his capacity as donor he was entirely excluded from possession and enjoyment of what he had given to his son. Did the donee retain possession and enjoyment to the entire exclusion of any benefit to the settler of whatsoever kind or in any way whatsoever? Clearly, yes. In the interval between the gift and his death, the settler received no benefit of any kind or in any way from the shares, nor did he receive any benefit whatsoever which was in any way attributable to the gift. Indeed, this was ultimately conceded by the appellant.... If *In Re. Cochrane* (1906) 2 I.R. 200, 203 was rightly decided as their Lordships think it was, it covers the present case. It was, however, contended by the appellant that the decision was wrong and was inconsistent with the decision of the House of Lords in *Grey (Earl)* v. *Attorney-General* (1900) A.C. 124 which affirmed the decision of the Court of Appeal [(1898) 2 Q.B. 534] and the decision of the Court of Appeal in *Attorney-General* v. *Worrall* [(1895) 1 Q.B. 99]. To these, reference must now be made.

"The case of Earl Grey (1900 A.C. 124) was one of a gift not made by the creation of a trust, but by direct conveyance and assignment to the donee of the donor's real and personal estate.... In the House of Lords, the donee's appeal met with short shrift. Lord Halsbury L.C. in stating his opinion (which was unreserved in more sense than one) thought the case a very plain one. "My Lords, there are some cases so extremely plain that it is difficult to give any better exposition of the question than that which the statute itself provides....nothing appears to me much more plain than this, that what the Act of Parliament intended to prevent was that what has been described as a gift *inter vivos* should nevertheless reserve to the settler some benefit, or some part of that which purported to be given *inter vivos*. In this case, can anybody doubt that something has been reserved to the settler?...."

....Their Lordships do not accept this contention. In the first place, they do not think that *Grey (Earl)* v. *Attorney-General* [(1906) 2 I.R. 200] was decided on any ground other than that on which the decision of the Court of Appeal was based, namely that the case fell within sec. 38, sub-sec. (2) (*a*), as

amended, because *bona fide* possession and enjoyment of the property taken under the gift had not been assumed by the donee immediately upon the gift and thenceforward retained to the entire exclusion of the donor or of any benefit to him by contract or otherwise. The whole transaction reeked of benefits to the donor, some arising out of the entire property actually conveyed and assigned by way of gift to the donee, others arising out of covenants entered into by the donee collaterally and in reference to the gift.... The learned Judges who decided *in re. Cochrane* [(1906) 2 I.R. 200] all thought that *Grey (Earl)* v. *A.G.* was clearly distinguishable and their Lordships agree that it was. There is nothing laid down as law in that case which conflicts with the view that the entire exclusion of the donor from possession and enjoyment which is contemplated by section 11, sub-section (1) of the Act of 1889 is entire exclusion from possession and enjoyment of the beneficial interest in property which has been given by the gift and that possession and enjoyment by the donor of some beneficial interest therein which he has not included in the gift is not inconsistent with the entire exclusion from possession and enjoyment which the sub-section requires with the suggestion that *in re. Cochrane* [(1906) 2 I.R. 200] is inconsistent with the decision in *A.G.* v. *Worrall* [(1895) 1 Q.B. 99], their Lordships cannot agree. That was simply a case in which the Court of Appeal held on the facts and documents there disclosed that the donor had obtained a collateral benefit in reference to the gift which he had made. Possession and enjoyment taken under the gift had not been assumed and retained to the exclusion of any benefit to the donor by contract or otherwise.

"....It was contended that section 102, sub-section (1) (*a*) of the Stamp Duties Act, 1920,....reveal the fact that property vested in a deceased person as trustee for another person under a disposition made by the deceased, was to be deemed included in the estate of the deceased for the purposes of assessment and payment of death duty.... In any event even if the argument under consideration were sound, the only case which could possibly fit the words would be the case (which is not the present case) when the deceased was sole trustee, for by no stretch of imagination can it be said of property vested in several trustees, that on the death of one the surviving trustees became entitled to it under the will or upon the intestacy of the one who died...."

Commissioner of Stamp Duties of New South Wales v. *Way*
[(1952) 1 All E.R. 198]

The Privy Council's observations regarding what is a settlement with a reservation of benefit to the settler are important. The clause in the settlement deed is "The trustees may also apply and appropriate any property belonging to the trust in its then present condition for any trust purposes and may also use any of the moneys of the trust either corpus or income or both in purchasing any land or land and buildings or in erecting buildings or in altering or in improving buildings to be used or applied for any such purpose. The trustees may whether during the lifetime of the settler or afterwards and shall during the lifetime of the settler if he so directs apply and appropriate any property including moneys belonging to the trust for the purposes of acquiring by purchase or exchange from the settler or his executors any real or personal property valued for the purposes of such purchase or exchange at a sum at least five per cent, below the valuation of such real or

personal property so acquired as ascertained by some independent valuator appointed by the trustees other than the settler."

Lord Radcliffe observed, "The settler's power of direction is to be taken fiduciary because, in its context, it is merely a right to secure that his views would, in the event of disagreement, prevail over the views of the other trustees. It was not, of course, inevitable that he would always remain trustee during his life, but the circumstances were such that it was natural to assume that he would. Even if he did not, the question that he was given power to decide was the question how trustees should apply their trust funds, and in the absence of express provision to the contrary the presumption would be that his decision was to be given for the benefit of the settlement, not of himself. Indeed he had inserted in the clause a stipulation that, if the trust did acquire property from him, it must be on terms that would be to his own pecuniary disadvantage and to the trust's advantage. It was argued that the presence of this stipulation was regarded as non-fiduciary, since otherwise it would not need to be controlled by this limitation. But this can hardly be. The stipulation operates even if the trustees acquire property from him without a direction, so it is not aimed at his special power of direction, and it seems a curious way of establishing that a power is beneficial to show that by its terms it cannot be exercised in a way that affords a benefit.

If the power of direction is, as their Lordships think, a fiduciary one, there is no ground for regarding it as the kind of benefit or interest with which section 102 (2) (*c*) and (*d*) are concerned. Apart from that, however, the power is not one that amounts to an interest in or benefit out of or connected with the trust property. It does not extend far enough to reach the trust property. All that it could do would be to substitute the settler's decision that trust funds should be used to acquire property from himself for a resolution of the other trustees to the same effect. Given the achievement of that resolution, the settler would have no power under the clause to decide what items of the trust fund should be used for that purpose. The decision on that point would lie with the trustees generally, and, if they decided to proceed by way of exchange, not of purchase, it would be for them again to decide at what value they would be prepared to release the item or items selected in exchange for the settler's property valued as the trust deed requires. All this goes to show that, whether the settler's direction was fiduciary or not, it was not in any event such a power as gave him any hold over the trust funds. Their Lordships were pressed with the consideration that the settler could at least achieve this much—by tendering property of his own worth five per cent, more than the value of the whole trust property (assuming that to be capable of undisputed appraisement) and by exercising his power of direction he could make sure of recovering any single item of the trust funds since he would be entitled to get back the whole. But this is at best to describe an incidental consequence of the power of direction, rather than to describe the nature of the power itself, and it does nothing to establish that a right is a benefit when it can only be exercised to the detriment of its holder. Whether or not a power having such a possible consequence could properly be described as a right to restore to the holder or to reclaim the settled property within the meaning of sub-section (2) (*c*) (*iii*), it cannot amount to such a right if the settler can only act by way of effecting a change of investment in the interests of the settlement."

(1886) 18 *Q.B.D.* 256.

Crossman v. *R. relied on in* 20 *B* 210 (*a*) 214.

By deed dated 12th of July, 1883, the settler, in pursuance of a power given by articles of partnership, appointed and transferred to his sons his shares in the partnership business, as from the 1st of October, 1883, or as from the settler's death, whichever should happen first, provided that such appointments were conditional upon the execution by the sons before the 1st of October, 1883, of a deed covenanting to pay to the settler, from the 1st of October, 1883 during his life, interest at 4% per annum on the value of the shares appointed as aforesaid, and to pay out of the profits, certain annuities to other persons.

The sons executed this last mentioned deed on 12th July, 1883.

The settler died on 19th July, 1883.

Held that the transfer of the shares was a voluntary settlement within the meaning of the Customs and Inland Revenue Act, 1881, (44 and 45 Vict. C. 12), section 38, sub-section (2) and that by it an interest for life in the property transferred was reserved to the settler, and therefore duty was payable under that section on the amount of the shares so transferred.

The judgment was read by Hawkins, J., (Denman J. having concurred).

"We hold them, under all the circumstances that the transfer was a voluntary settlement within the meaning of section 38, sub-section (2) of the Customs and Inland Revenue Act, 1881, and further that by it an interest for life in the property transferred was reserved either expressly or by implication, to the settler. The case of the *Lord Advocate* v. *Mc Kersies* 19 S.L.R. 438, however, is a very strong authority in support of the view we have taken. Lord Fraser, Lord Ordinary, before whom the case was heard, gave judgment for the Crown on the ground that the transaction was not a *bona fide* sale; and he thus described the view he took of the matter :— "Now, was this a *bona fide* sale? Or was it, as the Lord Ordinary holds it to have been, simply a gratuitous transference by the father to his two sons, reserving to himself the interest of the value of the property which he conveyed? No doubt the transference was irrecoverable. But still the transaction was one whereby the transferor reserved to himself, not in express words, the life rent of the estate, but he did so in effect. Dealing with this 7th section" (i.e. of the Succession Duty) "the Master of the Rolls in the case of *Fryer* v. *Morlund* 3 Ch.D. at 687, says of it, "the object is plain enough; it was to prevent a man from conveying the fee, reserving to himself a life interest." ....Now this is as effectually done, in the mode astutely adopted in the present case, by taking a bond from the transferees for the interest at the rate of 4% on the money value of the property conveyed. The defenders paid down nothing in the shape of money or money's worth, and therefore there is absent in this case the first characteristic of a sale viz., a price paid out of the pockets of the purchasers. The agreement does not deal with the case as one of sale at all. The property is handed over to the defenders, not as purchasers for valuable consideration given by them, but as an anticipation of the share of residue of their father's estates bequeathed to them by his will. They were in the meantime to obtain the use of the money and property conveyed, the father reserving to himself a benefit from the fund, on the ceasing of which the defenders obtained a

succession within the meaning of the Act, by an "increase of beneficial interest", on which they must pay duty."

In every word of this judgment we entirely concur, and we are unable to distinguish it from the case before us."

Re Cochrane's Settlement Trusts. Cochrane v. *Turner* [1945 Ch. 285]

A marriage settlement made in 1884 provided that the trustees of a fund settled by the husband should hold the fund in trust to pay the income to the wife for life and after her death to the husband for life and after the death of the survivor in trust for children. It was also provided that the income so payable to the wife during her life "should be expended by her in current household expenses and management." The husband died in November 1941, and the wife six months later. Throughout the whole period of fifty-seven years of their married life, the wife, with her husband's acquiescence, in fact spent the settled income entirely on herself.

It was contended by the Crown that estate duty on the husband's estate in respect of the trust fund was payable on his death as passing under the settlement "whereby an interest in such property for life or any other period determinable by "reference to death, is reserved either expressly or by implication "to the settler," within the meaning of section 2, sub-section (1) (*c*) of the Finance Act, 1894, and section 38, sub-section (2) (*c*) of the Customs and Inland Revenue Act 1881, as amended by section 11 of the Customs and Inland Revenue Act 1889 :—

Held that an interest in the trust fund was reserved to the settler in that his liability to pay the current household expenses would be lightened by the said provision; secondly, that such interest was for the settler's life, and thirdly, that the settler's omission to enforce the said provision did not constitute a release or abandonment of the said interest, and consequently that estate duty was payable.

Decision of Uthwatt J. affirmed.

Per Morton L.J.:—....It is, of course, clear that an interest in the income of property can be an interest in such property within the meaning of the sub-section now under consideration, and the husband had a right to require that the wife should apply the income of the trust fund for a purpose which would wholly or partly relieve the husband of a liability, namely the liability to pay household expenses and management. In *Tennant* v. *Lord Advocate* (1939 A.C. 207, 213) Lord Russell of Killowen, dealing with section 4 of the Finance Act, 1894 said: "The word 'interest' is a word capable of wide meaning, and I see no valid reason for limiting its scope in section 4 as was suggested in the course of the argument". In *Attorney-General* v. *Farrell* [(1931) 1 K.B. 81] it was held that a re-settlement made by Major Alfred Stourton and his mother under a joint power was a settlement within the meaning of the sub-section now under consideration and that as Major Stourton was one of the objects of a discretionary trust and income under the settlement there was reserved to him an interest in the property settled. The interest of the settler in the trust fund in the present case is a substantial one; much more substantial in our view, than the interest of Major Stourton in *Attorney-General* v. *Farrell*. In the latter case, it was quite possible that Major Stourton would receive no income at all while in the present case it was expressly provided that the whole of the income should be dealt with in the manner which we have

mentioned in relief of the husband.... It is clear that the "interest" of the husband in the trust fund under the income provision came to an end on his death.... Thus, it was certain from the time the settlement was executed, that the husband would have an interest in the trust fund during the whole of his life. If he should predecease the wife, that interest would remain unchanged during his life. If he should survive the wife, that interest would be charged from an interest under the income provision to an ordinary life interest. We agree with the observation of Uthwatt, J.: "in one way or another the interest attached to the whole settlement income during the husband's life. The possible change in its character during the husband's life is, in my view, immaterial." Further, the interest which the husband was enjoying immediately prior to his death whether under the income provision or by reason of his reversionary life interest, was bound to end at his death.

The result is that estate duty must be payable on the death of the husband unless it is established, the burden of proof being on the appellants, that the interest of the husband was abandoned or released by him.... No express release or abandonment by the husband, either oral or in writing, was proved, but the appellants invited this court to draw the inference that there had been such a release or abandonment.... As the learned judge put it "His acquiescence contained no promise as to the future. The sword remained in its sheath. It was not thrown away."

Attorney-General v. *Worrall* [(1895) 1 Q.B. 99]

Per Lord Esher, M.R.:—"It has been held that in cases of this kind the court has to determine what the real nature of the transaction was, apart from legal phraseology and the forms of conveyancing. In this case, James Worrall the father, had lent to certain persons named shield a sum of money on a mortgage of real estate. The effect of that was that he became the owner of the legal estate in the land, but in equity the mortgagors remained the owners of the property he being merely entitled to the payment of the mortgage debt, and interest thereon, in accordance with the mortgage deed. If the mortgagors made default in such payment, the mortgagee could take proceedings to obtain a foreclosure, and so become legal and equitable owner of the property. The mortgagors appear to have made default; and thereupon the defendant's father took proceedings for foreclosure, and an order was made, the effect of which was that he would not become equitable owner of the property unless the mortgagors made default in payment of the amount due within six months. Till that period had elapsed, all that in equity he was entitled to was payment of the mortgage debt and such interest as might be in arrear. If this transaction between the father and son had not taken place, and the father had died within that period, there is no doubt that the right to the sum due on the mortgage would have passed to his executors as personalty. That being the position of affairs at the time when the transaction between the father and son took place, the question is, what was its real nature? It appears to me in truth to have been this. The father being entitled to the mortgage debt of 23,924*l.* so charged on the land and the son having a sum of 575*l.* of his own, it was arranged that the son should with that sum purchase the equity of redemption from the mortgagors, and the father should give him the amount of the mortgage debt, and in that way the son should become entitled to the whole of the property free from the mortgage debt. Then the

father stipulates that the son should covenant to pay to him an annuity of 735*l.* That, being in my opinion, in reality the nature of the transaction, how was it carried into effect in point of form? The parties enter into a deed the terms of which appear to me to import what I have already stated to be the truth of the matter—viz., that the father intended to make a gift to the son of the amount of the mortgage debt and the son intended to give to the mortgagors 575*l.* for the equity of redemption. The mortgagors, in consideration of that sum, convey to the son the equity of redemption, and the father releases the mortgage debt, which in plain English, means that he gives it to his son. Then, by the same deed, and obviously as part of the same transaction, the son covenants to pay to the father an annuity of 735*l.* during his lifetime. The law being that for this purpose we are to look to the truth or substance of the transaction, does this transaction so regarded come within the statutes relied on by the crown? I think that it comes within section 11, sub-section (1), of the amending statute of 1889. It was, in my opinion, a "gift" within that enactment. I have already said that what was given was the mortgage debt, which was personal property. Also, I think that possession of the property was not assumed or retained by the donee "to the entire exclusion of any benefit to the donor by contract or otherwise." It appears to me that the covenant by the son to pay an annuity to the father prevented this from being a pure and simple gift, and therefore, it comes within the statutes. For these reasons, I think the appeal should be dismissed."

Earl Grey v. *The Attorney-General* [1900 A.C. 124]

By deed in 1885 real and personal estate was given by the owner to the appellant subject to an annual rent-charge issuing out of the realty, the appellant covenanting to pay the rent-charge and all the funeral and testamentary expenses and all the donor's debts at his death to the full exhaustion of all his property. In the event of the appellant's death in the donor's lifetime or of any breach of covenant by the appellant the donor had power to revoke the deed wholly or in part; any revocation to be without prejudice to any purchase or mortgage made before the revocation. The donor released the rent-charge and power of revocation by deed in September 1894, and died in October 1894 :

Held, that benefits having been reserved to the donor, estate duty was payable upon all the property comprised in the deed of 1885 as property passing upon the death of the donor within the meaning of the Finance Act, 1894, sections 1, 2, sub-section (1) (*c*).

The decision of the Court of Appeal [(1898) 2 Q.B. 534] affirmed.

Per Earl of Halsbury L.C.:—"My Lords, there are some cases so extremely plain that it is difficult to give any better exposition of the question than that which the statute itself provides. In the present case, I did not at first quite understand the argument presented to your Lordships, and I am not absolutely certain that I have got much further now; but at all events, forming my own judgment upon the statute, nothing appears to me much more plain than this, that what the Act of Parliament intended to prevent was that what has been described as a gift *inter vivos* should nevertheless reserve to the settler some benefit, or some part of that which purported to be given *inter vivos*. In this case, can anybody doubt that something has been reserved to the settler? The settlement itself has reserved 4,000*l.* a year, and has reserved

a right also on the part of the settler that all his debts upto the period of his death should be paid, and the payment secured by the estate. It seems to me that it is burning daylight to say that is not within the express language of the statute, and I am really wholly unable to understand why these words are not as plain in the statute itself as any explanatory exposition could make them. That, my Lords, is really all I have to say upon the subject. It seems to me it is a particularly plain case, and I move your Lordships that this appeal be dismissed with costs."

The Attorney-General v. *Secombe* [(1911) 2 K.B. 688]

By section 11, sub-section (1) of the Customs and Inland Revenue Act, the description of property required to be included in an account and made subject to duty under section 38, sub-section (2) (*a*), of the Customs and Inland Revenue Act, 1881, and therefore to estate duty under section 2, sub-section (1) (*c*) of the Finance Act, 1894, "shall include property taken under any gift whenever made, of which property *bona fide* possession and enjoyment shall not have been assumed by the donee immediately upon the gift and thenceforward retained to the entire exclusion of the donor or of any benefit to him by contract or otherwise."

The owner of a farm and dwelling-house thereon by a deed of gift in 1897 in consideration of natural love and affection conveyed and assigned the farm, with the dwelling-house and other buildings, and the live and dead stock and the other chattels thereon to the defendant, his great-nephew, who resided with him, and who had in the preceding year taken over the management of the farm. The donor had no property other than that included in the deed, except an annuity of 15*l.* chargeable upon certain land belonging to the defendant. After the execution of the deed the donor continued to reside in the house until his death in 1906, and was maintained by the defendant, who retained the annuity, which was sufficient to meet the cost of his maintenance, but there was no agreement or understanding between the donor and the defendant that the former should be permitted to remain in the house or maintained by the defendant. Upon the death of the donor, the Crown claimed estate duty upon the value of the property comprised in the deed upon the ground that *bona fide* possession and enjoyment of the property were not assumed by the donee and thenceforward retained "to the entire exclusion of the donor, or of any benefit to him by contract or otherwise":—

Held that, though the donor was permitted by the donee to and did in fact reside in the house from the date of the deed until his death, there was an entire exclusion of the donor from the possession and enjoyment of the property or of any benefit to him by contract or otherwise, within the meaning of the section, and that therefore estate duty was not payable.

The words "or otherwise" in the sentence "or of any benefit to him by contract or otherwise" must be read as meaning some arrangement *ejusdem generis* with contract, that is to say, an enforceable arrangement. *Lord Advocate* v. *Stewart* (1906) 8 F. 579 followed.

Per Hamilton J.:—The Crown relies upon the latter words of the section, "of which property *bona fide* possession and enjoyment shall not have been... thenceforward retained to the entire exclusion of the donor or of any benefit to him by contract or otherwise." The property is the entire corpus passing under the deed, and therefore, though the point was taken in the answer that the duty might be leviable in respect of the house in which the donor continued

to live and not upon the entire corpus, that point was very properly not argued, because there is considerable authority for saying that where there is one corpus conveyed by the gift, if duty attaches at all, it attaches to the whole. This appears to have been recognised by Channell J. in *A.G.* v. *Earl Grey* [(1898) 1 Q.B. 318, at p. 325], and also in *Lord Advocate* v. *Stewart* (8 F. 579 at p. 595). Inasmuch therefore as the duty, if it attaches at all, attaches to the whole property, one must be careful not to construe the section so as practically to exclude every gift from its saving clause. The intention of the Legislature was to exclude from liability to estate duty a certain category of gifts, and there is a danger of entirely nullifying this provision if the section is construed so that any enjoyment, however slight, by the donor subsequently to the gift will bring the property within the charging words and attach the duty to the whole corpus of the property which passes. I think that grammatically the words must be construed thus: "Property taken under any gift, whenever made, of which property *bona fide* possession and enjoyment shall not have been assumed by the donee immediately upon the gift, and of which property *bona fide* possession and enjoyment shall not have been thenceforward retained by the donee to the entire exclusion of the donor from such possession and enjoyment, or of any benefit to him by contract or otherwise." The word "exclusion" refers, in my opinion, to the *bona fide* possession and enjoyment of the property just as the word "assumed" does. It is clear that the clause is not limited to a reservation out of the property passing under the gift. That point seems to be concluded against the defendant by the decision in *A.G.* v. *Worrall* [(1895) 1 Q.B. 99], which was recognised in *A.G.* v. *Johnson* [(1903) 1 K.B. 617].

"It is said on behalf of the Crown that, though the donor may not have reserved to himself any right to possession or enjoyment of the property or any part thereof, there is not an "entire exclusion" of him within the meaning of the clause if he has in fact access to the place, that is, if he has in fact considerable degree of presence in the place which is the subject-matter of the gift, and enjoys an advantage, whether sentimental or otherwise, by being there. That is a proposition which, in my opinion, cannot be maintained. The decision in *Lord Advocate* v. *Stewart* (8 F. 579) is against it, and although it is not binding upon me yet for the sake of preserving uniformity of decision in the United Kingdom in the case of taxing Acts, I ought to follow it unless I find myself unable to agree with the principle. Upon this point I can see no reason for differing from it. The principle there laid down, as I understand it, is that the possession and enjoyment or benefit from which the Act contemplates that the cedent or donor must be entirely excluded must be derived from some enforceable right, a benefit, as the Lord President said (8 F. at p. 595), "which was part of his property before the cession," and therefore not merely a benefit which is derived from his being present for a greater or less time in the old house by leave and licence of the donee. I think that that is what the Lord President is referring to when he says that "any other reading would, I think, drive the clause mad; because it would mean that if the cedent was after the cession even allowed again to set foot on the ceded property, the whole transaction for the purpose of duty is held as non-existent." Lord Pearson, who dissented from the rest of the Court, rested his judgment, as I understand it, upon a conclusion of fact that there was in some degree, though very small, an enjoyment by the donor of the same

kind as before. "The sections," he says (8 F. at p. 596), "have been carefully framed so as to avoid as far as possible, all questions of degree, and to bring the matter to the simple test of "entire exclusion," thus adhering to the view which he had expressed as Lord Ordinary (8 F. at p. 592).

In the present case I am satisfied that there was no contract that in consideration of the gift the donor should be permitted to reside and be maintained by the donee, in part or in whole, in the house; nor was there any understanding to that effect in the sense of an arrangement, or as it is called an honourable understanding, which is not legally enforceable.

The only remaining question is as to the meaning of the latter words of the section, "or of any benefit to him by contract or otherwise." The word "benefit" is not, in my opinion, confined to a benefit conferred by the deed of gift or to a benefit issuing out of the property thereby conveyed. A benefit issuing out of some other property or a benefit given by some separate and independent contract will come within the section. But the burden of proof is upon the Crown. It is for the Crown to bring the subject within the charge, and therefore it was rightly assumed in paragraph 4 of the information that it lay upon the Crown to establish that there was not an entire exclusion of the donor or of any benefit to him by contract or otherwise. The section does not impose an obligation to pay the duty, leaving the defendant to bring himself within the exception. The Crown must shew, in order to make out its right to the tax, that the property was taken under a gift, and *bona fide* possession and enjoyment of it had not been assumed by the donee immediately upon the gift and thenceforward retained to the entire exclusion of the donor or of any benefit to him by contract or otherwise. It is contended on behalf of the Crown that the words "by contract or otherwise" mean by a contract which is enforceable or by any other arrangement whether enforceable or not. It is said that there cannot be anything *ejusdem generis* with a contract, and therefore the words "or otherwise" must be given full effect to and the clause must be read as meaning any benefit, sentimental or pecuniary, which is in fact enjoyed, whether it be conferred by contract or not.... I cannot draw the inference. I think that the words "by contract or otherwise" were merely intended to be an improvement in drafting upon the earlier and more diffuse expression. There is no reason why the rule of *ejusdem generis* construction should not apply to these words. The enactment might have stopped at the words "or of any benefit to him," or it might have said "of any benefit to him of whatsoever kind." It has not done so. The words "by contract or otherwise" indicate a genus of which contract is a species, and all other species are intended to be swept in. I do not see the difficulty of saying that there is a genus of which contract is a species. There are two points to notice about the word "contract" as used in this connection. In the first place it points to a legal obligation; and in the next place it points to a contract between the same persons as were parties to the gift. Hence I think that the words by "contract or otherwise" are aimed at any contract between the parties to the deed of gift or any contract with third parties having the effect of conferring a benefit on the donor, and also any transaction enforceable at law or in equity which, though not in the form of a contract, may confer a benefit, such as a lien. It is therefore not necessary to give any unusual or exceptional construction to the words. In construing a taxing Act the presumption is that the Legislature

has granted precisely that tax to the Crown which it has described, and no more; and there is no presumption in favour of extending the scope of the Act. I must therefore follow the usual rule of construction, and in doing so proper operation can be given to the words. There was in this case no benefit to the donor by donee by contract or by any other enforceable arrangement.... I do not see that merely sentimental benefit is one which can be measured by money or reached by any tax or made the ground for attracting any duty."

In re Baroness Bateman [(1925) 2 K.B. 429]

In Finance Act, 1894, section 3 provides sub-section (1): "Estate duty shall not be payable in respect of property passing on the death of the deceased by reason only of a *bona fide* purchase from the person under whose disposition the property passes....where such purchase was made....for full consideration in money or money's worth paid to the vendor....for his own use or benefit"; and sub-section (2) "Where any such purchase was made.... for partial consideration in money or money's worth paid to the vendor.... for his own use or benefit,....the value of the consideration shall be allowed as a deduction from the value of the property for the purpose of estate duty."

By settlements made in 1906 and 1911, a lady, in consideration of 5100*l.*, which was paid over to her by her son, conveyed certain furniture upon trust for herself for life with remainder to her said son absolutely. At her death in 1918, the furniture was sold for 45,000*l.* and the Crown then claimed succession duty and estate duty upon the difference between the two sums from the trustee of the settlements :—

Held that the transaction was a *bona fide* sale between mother and son, and that no succession duty was payable.

Held, as to the claim for estate duty, that there had been a "purchase for partial consideration" within section 3, sub-section (2) of the Finance Act, 1894, that the consideration paid represented four-fifths of the value of the property at the date of such purchase, and that estate duty was therefore payable only upon one-fifth of the value as at the date of the death of the tenant for life.

"Partial consideration" in section 3, sub-section (2) means something less than the full and fair value as between buyer and seller.

In *re Lombard* (1904) 2 I.R. 621 not followed on this point.

Per Rowlatt J.:—"....The transaction here was induced of course by family considerations, but that does not conclude the matter. My attention has been drawn to observations in *Lethbridge* v. *Attorney-General* (1907 A.C. 24) in the House of Lords, where it is pointed out that there might be a family arrangement co-existent with a purchase. The question is whether the object of the transaction was really on the one side to get money for goods by disposing of the goods in the future, and on the other side to pay money and obtain goods. In *Brown* v. *Attorney-General* (79 L.T. 572) a father entered into a partnership deed with his son, one of the provisions being that on his death the son should take over the father's share in consideration of a payment of 10,000*l* to the estate. There the motive and intention were clearly not to turn something into money either in the present or in the future, but to provide for the disposal of the business after death, and to prevent the business going to the eldest son without his making some corresponding con-

tribution to the estate. It was held that that could not fairly be described as a sale and purchase. In the present case the mother was in want of money, and she obtained it by a simple sale of her furniture subject to her life interest. The sum paid, whether it was the full amount which would have been obtained for it or not, was certainly not so inadequate as to be an unreality. I think therefore that this was a *bona fide* sale and purchase by the son, and that no succession duty is payable.

The next question is whether the matter comes within the Finance Act, section 3, sub-section (2). In *In re Lombard* [(1904) 2 I.R. 621] it was held that "partial" consideration as used in these sub-sections does not necessarily mean "consideration in money," but applies to cases in which the consideration varies in kind and includes such considerations as marriage. It seems to me that having regard to *Brown* v. *Attorney-General* (79 L.T. 572) and other cases to which I have been referred it is difficult to follow Lombard's case. I cannot treat a marriage settlement as consideration for purchase within the meaning of the Finance Act, section 3. "Partial" consideration is opposed to "full" consideration in money or money's worth, which means that the full fair price has been paid and that nothing is left over for gift or natural love and affection or any other consideration. In other words it is the full and fair value as between buyer and seller, while partial consideration means something less than that. That brings me to the question of the figures in the present case....The only alternative is that for which the respondent contends which I may describe as the proportional method. The object of section 3, sub-section (2) is to see how much of this property is passing by way of bounty and how much by way of purchase. That can only be done by ascertaining what proportion of the property was the subject of purchase and what proportion is represented by gift. Under that interpretation the words "the value of the consideration" mean "the value which corresponds to the consideration," that is to say, the value in the article partially bought which was bought by the consideration. In other words, this proportion can be allowed as a deduction from the value of the property. It is necessary to find the piece of property which is being taxed, and if it passes partially by reason of purchase for consideration in money or money's worth, then such part of the value as corresponds to the consideration must be deducted from the value of the whole property. I think that the consideration represented four-fifths of the value at the time of purchase, and it follows that estate duty is payable in respect of one-fifth of the value of the property."

Re Miller's Agreement, *Uniacke* v. *Attorney-General* [(1947) 2 All E.R. 78] shows the way of escape from payment of estate duty in respect of annuities which become payable to the children of the deceased on his death even if he provided the means for the payment. The facts of the case are contained in the head note of the case which is as follows:—"On the sale of *N*'s interest in a partnership firm to *M* and *V* a term of the sale was that *M* and *V*, should undertake to pay certain annuities, and, by a deed dated February 4, 1942, made between *M*, *V* and *N*, *M* and *V* agreed to pay certain annuities to *N*'s three daughters from the death of *N*. The deed provided, *inter alia*, that the annuities should be paid by quarterly payments to the persons "entitled thereto," that each annuity should be paid exclusively out of income brought into charge to income-tax, and that *M* and *V* charged "all their respective interests in the profits and assets of the partnership

firm with payment" of the annuities. *N* died on May 5, 1943 and the question was whether the daughters were liable to estate duty and succession duty in respect of the annuities provided by the deed."

Per Wynn-Parry, J.:—"Counsel for the Crown has put forward certain submissions with a view to showing that, on its true construction, the document purports to grant to the annuitants beneficial interests. If he is right on that, then, as he contends, section 56 [section 56 (1) of the Law of Property Act, 1925 which says: A person may take an immediate or other interest in land or other property, or the benefit of any condition, right of entry, covenant or agreement, over or respecting land or other property, although he may not be named as a party to the conveyance or other interest] will operate, but he was constrained to admit that it is not possible to extract from the terms of the deed the conclusion that there is any purported agreement with the annuitants. He points out that the document is an especial document in the sense that its provisions were not incorporated, as they might have been, in the deed of even date which is recited in the document, providing for the sale and transfer to Mr. Miller and Mr. Vos by Mr. Noad of the goodwill of the partnership firm and for an annuity to Mr. Noad. Secondly, he points out the provision in the deed for an increase in the annuities in the event, which has happened, of Mr. Noad dying earlier, submitting that that points to a recognition by Mr. Miller and Mr. Vos that, were the annuities to the plaintiffs not raised in that circumstance, they would not have given full consideration for the benefits they received under the other deed. Thirdly, he points out that, in clause 2 of the deed, the persons to whom the payment has to be made of the annuities are described as "respective person or persons entitled thereto." Fourthly, he points out that there is the provision that each annuity is to be paid exclusively out of income brought into charge to income-tax, and lastly, he relies, and relies strongly, on the existence of the charge by Mr. Miller and Mr. Vos of "all their respective interests in the profits and assets of the partnership firm with payment" of the annuities.

It does not appear to me that these circumstances, either separately or taken together, are sufficient for his purpose. The fact that these annuities were provided for by this separate deed is, in my view, an entirely colourless circumstance. It may be correct, or not, to draw the conclusion which is sought to be drawn from the provision for the increase of the annuities, but, in my view, it is not a circumstance which can have any decisive effect on the matter. The use of the phrase "person or persons entitled thereto" in clause 2 is, I think, a loose use of the word "entitled". It is used there simply as a convenient way of describing those who are to receive the annuities and is not of itself a decisive matter. As regards the provision that each annuity is to be paid exclusively out of income brought into charge to income-tax, various things may be speculated on as to the reason for that clause, and I find nothing in it which can be used in favour of the argument of counsel for the Crown.

Lastly, there is the question of the charge. Counsel for the Crown sought to pray this in aid by pointing out that, by its language, the charge was, as he put it, at large, and that, taken in conjunction with the other circumstances which he put forward as internal evidence in the document, it showed that the intention was that the annuitants should be entitled to rely on this charge if their annuities should not be paid and that it, therefore,

followed that, on its true construction, the document did purport to grant a beneficial interest to the annuitants. I am unable to share this view. The essential function of a charge is to secure the performance of an obligation, and the charge is essentially ancillary. The obligation in this deed is the covenant of Mr. Miller and Mr. Vos, to pay the annuities in question, and I am unable to extract from the document any other result than that the charge is intended to stand as security for the performance of that obligation. On its true construction, I cannot find—and this is really admitted—that the deed confers on any of the annuitants any right to sue, or anything more than a right to retain any sums which may from time to time be paid by Mr. Miller or Mr. Vos under the deed. In my view, the annuitants are not persons to whom the deed purports to grant something or with whom some agreement or covenant is purported to be made, and, in these circumstances, the annuities are not annuities within the meaning I place on the word as appearing in the Finance Act, 1894, section 2 (1) (*d*).

Counsel for the Crown has submitted, that, on the true construction of that sub-section, relating it to the facts of this case and, particularly, praying in aid the definition of the expression "on the death" in section 22 (1) (*l*) of the Act as including "at a period ascertainable only by reference to the death," what one is dealing with, in this case, is a series of payments (i.e., those payments which will, or may, actually, be received by the annuitants), and that the likelihood of the annuitants receiving payments must be estimated, and a value placed on the interest so estimated on which estate duty will be due. In my view, that argument is not sound, because, on the view which I take of the document, the payments if and when made, will be no more than voluntary payments and, as such, appear to me to be quite outside the scope of the section. Therefore, I hold that the annuitants are not liable to estate duty in respect of the annuities.

As regards succession duty, I must refer to parts of sections 1 and 2 of the Succession Duty Act, 1853. Section 1 provides:

The term "personal property"....shall include money payable under any engagement.... The term "property" alone shall include real property and personal property.

Section 2 provides:

Every past or future disposition of property, by reason whereof any person has or shall become beneficially entitled to any property or the income thereof upon the death of any person dying after the time appointed for the commencement of this Act, either immediately or after any interval either certainly or contingently, and either originally or by way of substitutive limitation, and every devolution by law of any beneficial interest in property, or the income thereof, upon the death of any person dying after the time appointed for the commencement of this Act, to any other person, in possession or expectancy shall be deemed to have conferred or to confer on the person entitled by reason of any such disposition or devolution a "succession"....

It is clear that the annuities are "property" under section 2, since they represent money payable under the engagement, namely the deed. The material question, as it seems to me, is whether the annuitants became beneficially entitled to such property on the death of Mr. Noad. Nothing turns, to my mind, on the word "beneficially". If they became entitled to the annuities, they became entitled to them beneficially. The crucial question, therefore, is:

Did they become entitled to the annuities on Mr. Noad's death? The word "entitled", as used in this section, appears to me necessarily to carry the implication that, for a person to be entitled to property under this section, it must be capable of being postulated of her that she has a right to sue for and recover such property.

For the reasons which I have already given in discussing the question of estate duty, I am of the opinion that it cannot be said of the plaintiffs that, on the death of Mr. Noad, they became "entitled to any property" within the meaning of that phrase as used in the Succession Duty Act, 1853, section 2, and therefore, that the plaintiffs are not liable to succession duty in respect of the annuities."

Re Owen (deceased). Owen v. *Inland Revenue Commissioners* [(1949) 1 All E.R. 901]

Per Romer J.:—"The proper interpretation of the facts is that until the donees had received their cheques and paid them into their own banking accounts, no property was transferred and the money came into the donees' banking accounts, no property was transferred at all, nor was any effectual gift achieved. With regard to the observations that *Sir Ernest Pollock, M.R.,* made (1926 Ch. 42) in *Re Swinburne,* namely:

"No indication had been given by the bank, by the certification of the cheque or otherwise that they held a sum of money exclusively to answer the cheque...."

It must be observed that what he had in mind was an indication to the donee and not to the drawer of the cheque. It is plain that no indication had been given in that sense by the bank to the donee of the cheques in this case. I am satisfied that the three gifts referred to in the summons were made within three years of the testator's death on June 1, 1944, because they were made on the occasion on which each of the cheques was cleared into the donee's own account.

The Attorney-General v. *Heywood and others* [(1887) 19 Q.B.D. 326]

"By a voluntary settlement the settler assigned to trustees a sum of money with interest, upon certain trusts, and subject to certain powers, provisions, agreements and declarations, and it was declared that the trustees should apply the income for the benefit of the settler and his wife and children, or, at their discretion for the benefit of one or more of such persons to the exclusion of the others, and after the settler's death the money was to be held subject to trusts in favour of his widow and children:—

Held, that, notwithstanding the power conferred upon the trustees of depriving the settler of the benefit of the settled property at their discretion, an interest in such property for life was reserved to the settler, within the meaning of section 38, sub-section (2) (*c*) of the Customs and Inland Revenue Act, 1881, and therefore on his death, duty was payable.

Per Stephen J.:—"I am of opinion that our judgment ought to be for the Crown.

The question for decision turns on a very few words in section 38, sub-section (2) (*c*) of the Customs and Inland Revenue Act, 1881 (44 and 45 Vict. C. 12). I think the meaning of those words is to be ascertained by

looking at the other clauses in the Act. Section 27 grants certain duties in respect of probate and letters of administration, and section 38 grants similar duties on account of certain kinds of property therein described.

The scheme is to provide a remedy in cases which had been omitted by the former law, and accordingly the Act grants duties in respect of certain matters which had previously escaped. Section 38 provides that duty shall be paid on three kinds of property, viz.: (*a*) property taken as a *donatio mortis causa,* because such property had formerly escaped liability to duty; (*b*) property voluntarily transferred by the person entitled to himself and another jointly; there again the person to whom such transfer is made obtains a benefit, which ought not to be exempt from duty but which would have avoided duty under the previous law; next (*c*), which is this case, property passing under a voluntary settlement, whereby an interest for life is reserved, either expressly or by implication, to the settler. The whole question here is whether by this settlement an interest for life is reserved, either expressly or by implication, to the settler. The clause on which this question turns ought to be interpreted with reference to the scheme of the Act, and adopting that principle of construction I have come to the conclusion that the word "interest" in the statute ought to be interpreted so as to include that which was reserved to the settler in the present case. By the terms of the settlement during the lifetime of the settler the trustees were to apply the income of the settled property to his use or to that of certain other persons who were specified, but they had a discretion, which would have enabled them, if they had thought fit, to apply the whole for the benefit of such other persons to the exclusion of the settler. I am clearly of opinion that what was reserved to the settler was a life interest, for certain other persons would receive a benefit by his death. That is really enough for the decision of the present case, but much has been said in argument as to the meaning of the word "interest", and a case has been cited, *Holmes* v. *Penney* (3 K. and J. 90), to shew that the word has been defined in such a way as not to include the present case. It is impossible to rely on the use of a word in a *viva voce* judgment as affording a universal definition applicable to all states of circumstances, but if Wood, V.C., used the word "interest" in that case, he certainly did not intend to define an interest in every possible situation in which the word may occur. His judgment was not a decision upon the meaning of the word "interest" but turned on the meaning of a particular document, and on the question whether that document was void by virtue of the statute 13 Eliz. *c.* 5. That is not a judicial determination which can bind us to hold that the word "interest" in another Act of Parliament is to bear a different meaning from that which it would naturally bear in ordinary language. The same word may have different meanings in different connections, and in the present case, for the reasons which I have given, I think it includes that which was reserved to the settler by this settlement. I do not understand the meaning of construing statutes in a strict, or a broad, or an equitable manner. The only proper method of construction which I know is to read the words through and ascertain what they mean.

I am of opinion that the Crown is entitled to the duty claimed.

Per Wills, J.:—"I am of the same opinion. The question is, whether under the settlement of June 15, 1878, any interest was reserved to Edmund Peel, the settler, for if any interest was reserved to him it was clearly a life

interest, because it terminated on his death. The word "interest" is capable of different meanings, according to the context in which it is used or the subject-matter to which it is applied. If the contention for the defendants is right nobody has any interest in the property settled, and yet the whole fund was to be held for the benefit of three classes of persons—the husband, the wife, and the children; and the sum of the benefits conferred on all these three classes taken together, being the sum of three nothings amounts to nothing, whereas, on the other hand, it must necessarily comprehend the whole interest in the fund. This is simply a *reductio ad absurdum*. The application of the word "interest" is not confined to a vested or a necessarily contingent interest. The Act was meant to cast a wider net than such a construction would imply. The settler here could only be deprived of the benefit which was vested in the trustees, and unless the trustees so deprived him he would necessarily get a benefit.

In certain events, also, if a portion of the fund were unappropriated, the decisions shew that the Court might make a division among the members of the class for whose benefit the property was held, of which class the settler was one, so that in that case he would get a benefit, and this, I think, is an interest. We were pressed with the expression of Wood, V.C. in *Holmes* v. *Penney* that the settler took no interest; but the words which he there used were "actual interest", thus expressing by the use of the adjective a certain amount of qualification. It is necessary to see in what connection those words occur, and what the subject-matter is with reference to which they were used. The suit was one to set aside a deed, on the ground that it was void under 13 Eliz. *c.* 5, and a great part of the judgment is an elaborate discussion to shew that the construction of the deed was not such as to make it a voluntary conveyance to which the statute applied, and that on the facts there was no evidence to shew that it was fraudulent. Among other facts, the Vice-Chancellor says it is necessary to look at the benefit which the settler took under the deed, and expresses an opinion that it was not an actual interest, because to bring it into fruition required an act on the part of the trustee. That is a very different thing from saying that in no sense did he take any interest under the deed.

Mr. Vaughan Hawkins has pointed out that in the case of *Lord* v. *Bunn* (2 Y. and Coll. C.C. 98), under a somewhat similar deed, it was held that there was a defeasible interest, which could pass to the assignee in bankruptcy. He also cited Davidson's Precedents in Conveyancing, Vol. III., p. 98, where it is stated that in *Holmes* v. *Penney* (3 K. and J. 90), Wood, V.C., pointed out the peculiar character of the trusts giving the settler a species of interest. I am of opinion that the settlement now before us gives the settler a species of interest. The Act of Parliament was meant to meet cases in which an interest of some sort was conferred and which were not already provided for, and I think the language used is sufficiently comprehensive to include the present case."

Attorney-General v. *Farrell and Another* [(1931) 1 K.B. 81]

"By a resettlement, dated September 27, 1894, made in exercise of a joint power of appointment reserved to *A* and his mother by a disentailing deed of even date by which *A* disentailed certain property with his mother's consent and she joined to convey her life interest, they resettled the property

reserving to themselves an overriding joint power of appointment; and under the joint power of appointment they made another resettlement, dated January 17, 1896, by which they appointed the property to trustees upon trust for the mother for life and after her death upon trusts for management during the life of *A* and after payment of expenses to apply the net rents and profits for the benefit of any one or more exclusively of the other or others of *A* and his wife and children or remoter issue as the trustees should in their absolute discretion think fit and (subject to this discretionary trust) to pay or apply the surplus of the rents and profits to the person or for the purposes to or upon which the same would be payable or applicable if *A* were dead and after his death and in the events which happened the trustees were directed to hold the trust estate in trust for *A*'s brother for life with remainders over.

The mother died in 1925 and estate duty was paid on her death on the settled property. *A* died in 1926, having since his mother's death received 50*l* a month from the trustees under the discretionary trust. The surplus profits which were considerable, had been paid to *A*'s brother :—

Held (1) that property settled in exercise of a power of appointment by deed is "property" within the meaning of section 38, sub-section (2) (*c*) of the Customs and Inland Revenue Act, 1881, as enacted in an amended form by the Finance Act, 1894, section 2, sub-section (1) (*c*).

(2) that having regard to section 22, sub-section (2) (*b*) of the Finance Act, 1894, the dispositions made by the disentailing deed and resettlements to take effect after the death of the mother were dispositions made by *A* as settler for the purpose of the Finance Act, 1894.

(3) that by making himself one of the possible objects of the discretionary trust, *A* had reserved to himself an interest in the property settled within the meaning of section 38, sub-section (2) (*c*) of the Act of 1881, as re-enacted in an amended form in the Finance Act, 1894.

Attorney-General v. *Heywood* [(1887) 19 Q.B.D. 326] followed.

(4) that the stocks representing the proceeds of sale of real estate in the Irish Free State subject to the trusts of the resettlement of 1896 were therefore property which must be deemed to have passed on the death of *A* under the Finance Act, 1894, section 2, sub-section (1) (*c*) so as to be chargeable to estate duty.

Decision of Rowlatt J. [(1930) 1 K.B. 539] affirmed.

Per Lord Hansworth, M.R. :—In order to determine whether or not estate duty is payable on the whole estate as passing upon the death of the deceased, we have to look at these intricate statutes. By section 1 of the Finance Act, 1894, estate duty is made payable in the case of every person dying after the commencement of the Act "upon the principal value ascertained as hereinafter provided of all property, real or personal, settled or not settled, which passed on the death of such person." That is the primary charge which makes estate duty payable: it is payable on all property, real or personal, settled or not settled, which passes on the death. But section 2 brings into the purview of section 1 a great deal more property than would appear at first sight to be charged under section 1. Section 2, sub-section (1) says this: "Property passing on the death of the deceased shall be deemed to include the property following, that is to say." (1) Then follow four clauses, and clause (*b*) is the one which the appellants would like to say is applicable. It is: "Property in which a deceased or any other person had an interest

ceasing on the death of the deceased, to the extent to which a benefit accrues or arises by the cesser of such interest." The Crown on the other hand say that the property is embraced within section 2, sub-section (1) (*c*) and thus falls within the charge under section 1. Section 2, sub-section (1) (*c*) makes the duty payable on "property which would be required on the death of a deceased person to be included in an account under section 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."

It is quite plain that there could hardly be a worse illustration, or perhaps I ought to say, a better illustration of confused legislation. We are to take a subsidiary clause of section 2, as enlarging the application of section 1 and to ascertain the further property to which it is made applicable we have to go back to a statute of 1881, which originally applied only to personal property, treat it, as amended by a statute of 1889, as extended to cover real property, and strike out from the section the words "voluntary", "voluntarily" and "volunteer" wherever they happen to be. It is by resort to the new section so constructed with the help of the section of the Act of 1881, as amended by section 11 of a statute of 1889, that we are to determine the riddle to be solved in the present case. It is abundantly plain that a number of intricate questions must arise, and hard indeed is the task of those who have to advise the subject as to his liability in such circumstances.

....Now what is the disposition of this estate? To answer that question I think we have to take the disentailing deed and the two resettlements together. If one was considering the matter from the point of view of the two deeds executed on September 27, 1894, without taking into account the 1896 settlement, it would be abundantly plain that their purpose and effect must be taken together, because they were two deeds for the purpose of effecting or carrying into effect a purpose which had been fully specified before either of them was executed. The deed of 1894 failed of its purpose because the deceased got into greater financial difficulties, and thus it was that the resettlement of January 17, 1896, came to be executed; but it was executed in pursuance of the joint power of appointment that had been reserved and in consequence of the freedom which the disentailing deed gave to the persons in whom the joint power of appointment rested. For the purpose then of ascertaining the substance of the matter I look at the three deeds, or perhaps it may be better to say look at the disentailing deed and the deed of 1896 only. Who was the person who had something to dispose of to which there could be a succession by the present tenant for life Edward? It was not his mother the Baroness for she had an estate as tenant for life and no more. It was then the brother Alfred (the deceased) who was tenant in tail, in remainder and who had something of which he could dispose. Therefore he comes within the definition which I have read in sub-section (2) of section 22 and disposition that was made is none the less a disposition by him alone, although it was made with the concurrence of the Baroness, who as tenant for life, joined in the resettlement made. Therefore a disposition was made, and it was made by the deceased alone, because he was the only person who had property in the estate in respect of which it was possible to make a disposi-

tion beyond his own life. He could reserve a life estate to himself and dispose of the remaining interest in the property ultra. That it appears to me he did. ....Mr. Spens says, and with force, that although the purposes necessary to bring the case within the statute may so far have been fulfilled that there was a disposition by the deceased, yet there was no interest reserved, either expressly or by implication, to the deceased as settler. All that was reserved to him was a chance of receiving a sum from the trustees, if they should in their discretion think fit to give him something; and more than that, the trust was not simply a discretionary trust for the benefit of a class, but there was an express provision as regards any surplus remaining after the class had or had not been paid any part of the rents and profits, that the surplus was to be paid or applied to the persons or for the purposes to and upon which the net rents and profits of the trust estate would be payable or applicable if the deceased were dead, that is to the brother Edward. Therefore we have the case of a discretionary trust, for the benefit of a class, with a trust over, and it is not a case where an application could be made to the Court to enforce the trust in favour of the class, because though a discretionary trust, the discretion had to be exercised in favour of some or one of the persons included in that class and nobody else.

We have therefore to consider what is the meaning of the word "interest" in section 38, sub-section (2) (*c*) of the Act of 1881. Does the chance that the deceased had of receiving some money before the trustees paid over the surplus rents and profits to his brother Edward constitute an interest within the meaning of section 38, sub-section (2) (*c*)? I confess the matter is one by no means free from difficulty and doubt but in *Attorney-General* v. *Heywood* (19 Q.B D. 326) which was decided forty-three years ago by two distinguished judges, Stephen and Wills, JJ. it was held that where in a settlement a discretionary trust was given to trustees to apply income for the benefit of the settler, his wife, any future wife and any children, an interest was taken by the settler which was sufficient to bring the case within this sub-section (2) (*c*). That case, however, is not binding upon this Court. An attempt was made by Mr. Spens to distinguish it by saying that there was a much larger class indicated in the present case than in that case when the trust was for the benefit of the settler, his present wife or any future wife or children. It was said that this was a narrow trust for the family, or one or other of them, whereas in the present case there was a more numerous class indicated with the trust over. I am not prepared to accept an interpretation of the word "interest" which would vary according to the number of persons who are indicated in a discretionary trust. It cannot be merely a question of degree. One has got to put a definite interpretation on the word "interest" irrespective of whether or not the discretionary trust is given in favour of a larger or a smaller class. I therefore am unable to accept the suggested distinction which Mr. Spens has put before us with regard to Heywood's case. Again I am unwilling to indicate dissent from, still less to overrule, a case which has stood now for so long a period of time, and must have taken its place as a guide in a great number of cases, and been added upon as an integral part of the interpretation to be placed upon this system.

However, even without the support which can be gathered from *Drummon* v. *Collins* (1915 A.C. 1011) I think it is too late for us to reopen the question which was decided in *Attorney-General* v. *Heywood* and I think that for the

purposes of the interpretation of section 38, sub-section (2) (*c*), it must be held that where there is a discretionary trust, a possible object of that trust holds an interest within sub-section (2) (*c*). That being so, the 1896 resettlement, to which I have already referred did give an interest to the deceased and therefore amounted to a reservation, either express or implied, to the settler of an interest in the property of which by the disposition he was the disponer."

Per Greer, L.J. :— .... The appellant says he (Rowlatt J.) was wrong for three reasons: he says that the exercise of a power of appointment which can only be exercised by deed does not bring the property in respect of which the power is exercised within the provisions of section 38, sub-section (2) (*c*) of the Customs and Inland Revenue Act, 1881, when incorporated in section 2, sub-section (1) (*c*) of the Act of 1894. That is a formidable argument, and is supported by some observations made in the case of *Attorney-General* v. *De Preville* [(1900) 1 Q.B. 223] especially in the judgment of Vaughan Williams, L.J. But I have come to the conclusion that when the section of the Act of 1881 comes to be incorporated in an Act which deals not merely with personal property, as the Act of 1881 did, but also with real property, it enables you to give to that section when so incorporated a meaning different to that of the section as it stood alone in the earlier Act, and I cannot help thinking that the real reason for the decision in *A.G.* v. *De Preville* is to be found in the passage of Vaughan Williams' judgment where he says: "Surely, according to the ordinary rules of construction, the word 'property' in the statute of 1881 must be limited to property in its nature capable of devolution as part of the estate and effects of a deceased."

The Corbally estate was when the disentailing deed and the subsequent resettlements were executed property capable of devolution as part of the estate of a deceased, but the property dealt with in *A.G.* v. *De Preville* was a life estate which, even if it had not been released, would not have been capable of devolution as part of the tenant for life's estate. For these reasons I think that the first argument fails, though I was at one time greatly impressed by the lucid and vigorous way in which it was presented by Mr. Spens.

Section 13. *Joint investments.*—Where a person, having been absolutely entitled to any property or to the funds with which any property was purchased, has caused it to be transferred to or vested in himself and any other person jointly, whether by disposition or otherwise, either by himself alone, or in concert, or by arrangement, with any other person so that the beneficial interest in some part of that property passes or accrues by survivorship on his death to the other person, the whole of that property shall be deemed to pass on the death.

This section postulates a case where a person who is absolutely entitled to a certain property causes it to be transferred in the name of himself and another thereby giving to the latter a beneficial right in that property, by disposition or otherwise. The creation by him of the interest in the other person is not supported by any consideration. On the death of the owner of the property the beneficial interest in the property passes by survivorship to the other person. Estate duty becomes payable on the whole of the property passing on the death. Simple as the section appears, there are bound to arise innumerable cases in which conflicting claims will be put forward. In India joint tenancy such as is known to English Law does not exist. Joint ownership of property in India always is joint and several. The section does not take note of cases of two persons contributing equally to the purchase of a property or funds and their joint investment nor does it take note of a case where even though one person alone provided all the money for the purchase of property under an express trust or implied trust, the rights of the two persons in whose name the property is purchased are defined. In England there is a presumption of advancement where wife, children and persons to whom one stands in *loco parentis* are concerned. In India there is no such presumption of advancement. If there is any document evidencing the joint investment and if it defines the rights of the joint tenants, the rights of the parties must be determined according to its terms. If there is only the bare fact of two persons being joint tenants, there will be a presumption that the two persons contributed equally to the joint property in which case each from the commencement will acquire title to a moiety. On the death of either a moiety will become chargeable to estate duty. In cases where only one person provided the purchase money, it is open to him to dispose of the whole property. On the death of a joint tenant there will be a resulting trust in favour of the surviving joint tenant. All the above said considerations have not been adverted to and there is no provision made in the Act to cover such cases. In spite of the language of section 13, it is submitted that it will be open to parties to bring their cases under appropriate exemptions and to claim that their case is one which does not fall within section 13. Joint annuities also have not been considered and provided for in the Act. Where a person purchased an annuity for the joint lives of himself and another and the life of the survivor on his death estate duty is payable in respect of the annuity for the life of the survivor. If the purchase had been outside the statutory period of two years and ever since the purchase both the persons actually enjoyed half and half during their joint lives, estate duty is reduced to one half of the annuity. If two persons more or less of the same age and expectation of life contribute equally to the purchase of an annuity to be enjoyed

by them for their joint lives and the life of the survivor, and they so enjoyed equally during the joint lives, the survivor will take the whole without having to pay any estate duty. But there should have been an agreement between the parties that the survivor should take the whole. Cases of unequal contribution and cases of marked differences in the ages of the purchasers give rise to difficulties in the assessment of estate duty. The Act provides by sections 15 and 16 for annuity or other interest purchased or provided by the deceased, annuity or other interest purchased or provided out of property derived from the deceased, and then there is section 27 dealing with dispositions in favour of relatives. There is also section 17 dealing with property transferred to a controlled company, whereunder dispositions are made to or by or otherwise concerning controlled companies. These provisions operate as a check on evasion of estate duty. In the foregoing matter where it is stated that in certain cases concerning joint ownership or property or investments and joint annuities no estate duty becomes payable, the real basis or the ground rests on the fact that there was a *bona fide* purchase, in other words that the survivor provided the benefit which he got and therefore there is no claim to estate duty. Dispositions *inter vivos* consist of (1) gifts *mortis causa*, (2) gifts *inter vivos* in general, (3) payment of debts to persons having property derived from the deceased, (4) release and extinguishment of debts, (5) purchases of annuities from relatives, (6) settlements with reservations, (7) joint property, (8) policies kept up for donees, (9) interests purchased or provided, (10) annuities or other interests purchased or provided out of the property derived from the deceased, and (11) benefits from companies.

The principles of law governing the rights of joint owners will be applied in the assessment of estate duty regarding joint property. That being the practice in England, it is presumed that in India also the same practice will be followed, so that section 13 of the Act will be so construed and applied as to fit in with the general principles of law governing joint property. In the case of personal property that is movable property, the same principles which govern joint ownership of immovable property will govern, subject to slight modification because of the nature of the property. Any writing being unnecessary to create trusts in respect of personal property, it is a matter of evidence for determining in any given case, the beneficial interest of a deceased person. Evidence is admissible regarding acts or declarations of the parties which are contemporaneous with the transactions. Such evidence can be used either for or against the party who did or made them. Acts and declarations done or made after the transaction can only be admitted in evidence only against such party and not in his favour, see *Stock* v. *Mc Avoy* (1872) L.R. 15 Eq. 155, *Warren* v. *Gurney* (1944) 2 All E.R. 472. The same principles of law, as govern personal property govern also cases of joint banking accounts. It is to be noted that in assessing the liability to estate duty in the class of transactions discussed above, one should not lose sight of the time of the transaction whether it is within or outside the statutory period. For example, in the case of joint personal property where one person from the commencement enjoyed a half share in the property, on the death of the person, who had caused that property to stand in the joint names of himself and the other, estate duty is payable on a moiety of the property ; the other moiety being regarded as a gift by the deceased outside the statutory period.

Joint right of residence or user

An owner of property may give a right of residence in certain property or a right of user of his furniture or other movables to be enjoyed by some named persons till the last one among them dies. On the death of any one

of these persons except on the death of the last one, no estate duty becomes payable. Thus *A* can give the enjoyment of his palatial house, costly furniture and library to *B* for life, *C* for life and any number of persons for their lives, and on the death of any one of these persons except on the death of the last among them to die, no estate duty is payable. On the death of the person who last died, the property passes and therefore there is cesser of interest, and estate duty becomes payable as a benefit arises or accrues ; because the properties are freed from the burden of the use. But it is to be remembered that none of the persons to whom the joint right of residence or user is given should have any legal right to let or sell the property. As long as they use the property themselves, no estate duty becomes payable. This is because of the impossibility of assessing the value of enjoyment of these persons.

So it is perfectly open to any one to settle property on others on the terms mentioned above. Estate duty becomes payable in such a case either (1) on the death of the last person enjoying the use of the properties or (2) on the death of the settler. In the first event the benefit accrues or arises by cesser of interest, and in the second event the settlement will be regarded as a gift with reservation.

See for "Joint ownership", Hailsham edition of Halsbury's Laws of England, vol. 25, pages 210 to 211.

See for incidents of "Joint tenancy", Hailsham edition of Halsbury's Laws of England, vol. 27, pages 655 to 665.

See for "Property in joint names", Hailsham edition of Halsbury's Laws of England, vol. 27, pages 658 to 661.

(*a*) effect of current account in joint names, see Ditto, vol. 16, pages 664 and 665.

(*b*) effect of deposit in Bank in joint names, see Ditto, vol. 1, pages 823 to 826 and vol. 16, pages 620 to 644.

(*c*) effect of investment of money in joint names, see Ditto, vol. 15, pages 715 and 716 and vol. 16, pages 644, 666 and 667.

(*d*) effect of purchase of property in joint names, see Ditto, vol. 15, pages 715 and 716 and vol. 16, pages 663 to 666. See also vol. 33, pages 149 to 153.

(*e*) effect of transfer of stock or shares into joint names, see Ditto, vol. 15, pages 715 and 716 ; vol. 16, pages 664 to 666 ; and vol. 33, pages 150 and 151.

See sections 42 to 46 of the Indian Contract Act (IX of 1872) for devolution of joint rights, etc.

Section 14. *Policies kept up for a donee.*—(1) Money received under a policy of insurance effected by any person on his life, where the policy is wholly kept up by him for the benefit of a donee, whether nominee or assignee, or a part of such money in proportion to the premiums paid by him, where the policy is partially kept up by him for such benefit, shall be deemed to pass on the death of the assured.

Explanation.—A policy of insurance on the life of a deceased person effected by virtue or in consequence of a settlement made by the deceased shall be treated as having been effected by the deceased.

(2) For the purposes of sub-section (1), so much of the premiums paid on any policy of insurance as was, by virtue or in consequence of settlement made by the deceased, paid out of property, whether or not provided by the deceased, comprised in the settlement or out of income, whether or not provided by the deceased, arising under the settlement, shall be treated as having been paid by the deceased.

Provided that any payments which were not made either out of property provided directly or indirectly by the deceased for the purposes of the settlement, or out of property representing that property, or out of income provided directly or indirectly by the deceased whether arising from such property or otherwise, shall not be treated as having been made by the deceased if the Controller is satisfied that those payments were not made as part of any reciprocal arrangements between the deceased and any other person.

(3) For the purposes of this section,—

(*a*) the expression " settlement " includes any disposition, trust, covenant, agreement or arrangement ; and

(*b*) a person shall be deemed to have made a settlement if he has made or entered into the settlement directly or indirectly, and in particular (but without prejudice to the generality of the foregoing words of this clause) if he has provided or undertaken to provide funds directly or indirectly for the purposes of the settlement, or has made with any other person a reciprocal arrangement for that other person to make or enter into the settlement.

The claim for estate duty may arise in respect of policy moneys under sections 6, 14 and 15. One or other of these charging provisions will apply. An endowment policy effected by the deceased on his

child's life, on the death of the deceased, will pass as the property of the deceased. The comparative table set out *supra* will establish the fact that the provisions of section 14 of the Act have been based upon the law obtaining in England. Section 76 with its sub-sections and clauses of the Finance Act, 1948, had been enacted because it was felt that the existing provision in the Finance Act, 1894, viz., section 2 (1) (*c*) was inadequate to check evasion of duty by adopting a variety of devices. Section 2 (1) (*c*) of the Finance Act, 1894, applied to a case where the deceased himself effected a policy of insurance on his life and paid the premiums in respect of the policy himself. If a person made-over moneys to his son, wife, or other relative, and the wife or the relative paid the premiums due in respect of the insurance policy, as the payments were not made by the person who effected the insurance section 2 (1) (*c*) did not apply. That is why there was in England the amending legislation in the form of section 76 of the Finance Act, 1948. In view of the explanation to section 14 of the Act, even if the deceased did not directly effect a policy of insurance on his life, if he indirectly brought about the same result by effecting a settlement whereunder the trustee of the settlement or someone else to whom a benefit interest in the property settled had been given, effected the insurance on the life of the deceased and paid the premiums from out of the settled property, it is regarded as a policy of insurance effected by the deceased person. Sub-section (2) goes further and states that any premiums paid on such a policy out of the property so settled, shall be regarded as payments made by the deceased. The proviso applies only when the controller and to the extent he is satisfied that the payments towards the premiums were made by persons who had no connection whatsoever with the property of the deceased and who did not make any reciprocal arrangement with the deceased person or any other person. The expression 'settlement' has been defined in this connection in very wide terms. The result is that the provisions of section 14, leave no loop-hole for evasion of estate duty by resort to any device. As long as the payment of premiums does not take place from and out of the property comprised in the settlement or belonging to the deceased or the payment has been made by persons who have not entered into any reciprocal arrangement with the deceased, it is safe and exemption may be claimed in respect of payments of such premiums. If any connection is established between the deceased and the persons who paid the premiums whereby some reciprocal arrangement is inferred, and if the payment of premiums is traced to a source when the deceased was the owner of that property, the policy amounts are liable to estate duty. A person can effect insurance not only on his own life but on the life of another person and if he pays the premiums due in respect of a policy of insurance on the life of another person, the policy money becomes his own property, and on his death estate duty is payable in respect of the policy amount. A person can effect a policy of life insurance expressed to be for the benefit of any other person from the commencement or he may effect a policy for his own benefit. In the latter case, he can assign the policy or nominate a person as a beneficiary after paying premiums for some years. Where this is done, the policy will be regarded as a gift to the assignee or nominee, and if the assignee or nominee pays the premiums subsequent to the date of assignment liability in respect of the policy money will arise to the extent of a proportion. In arriving at the proportion no account will be taken of the premiums paid by the deceased before a donee was brought into existence by assignment of the policy or settlement of the policy. See the case of *Lord Advocate* v. *Inziever Estates*, 1938 A.C. 402.

In the case of the policy moneys having been paid to and received by the deceased (in the case of Endowment policies) where he gifts away the policy

moneys not less than 2 years before the death no estate duty becomes payable.

The meaning of the expression 'kept up' has been brought out clearly by the House of Lords in the case of 1944 A.C. 372 (*Barclay's Bank Ltd. and others* v. *A. G.*). The short facts of the case are these :—Viscount Devonport effected two policies of assurance of his own life, some time before 15-8-1922. On 15-8-1932 he executed a voluntary deed of a family fund for the benefit of his son and others. At the same time he transferred to the Trustees of the Settlement certain income yielding investments on the primary trusts to pay the premiums from time to time to become payable in respect of the policies out of the income thereof. The settler who had a special power of appointment under this settlement released this power. Additional investments were transferred by the settler to the trustees. The release and transfer of additional investments to the trustees took place on May 15th, 1930. The settler died on September 5, 1934. The revenue made a claim in respect of the policy moneys. The question for consideration by the court was whether the revenue was entitled to claim duty in respect of the whole of the policies' amount. It was admitted in the case that duty was payable to the extent of the value of the deceased's son's interests. Both the trial court as well as the court of appeal decided that estate duty was payable in respect of the whole of the policies money. In appeal, the House of Lords set aside the judgment of the two lower courts and held that estate duty was not payable in respect of the whole amount of the policies. . *Per* Lord Macmillan " policies of life assurance do not by their nature fit very logically into the scheme of estate duty which is a duty leviable on property passing on death." *Per* Lord Wright "the sole question in this appeal is whether estate duty on certain policies on the life of the settler on which sums amounting to £78,675 were paid to the appellants is exigible under section 2, sub-section (1) (*c*) of the Finance Act, 1894 or is exigible under section 2, sub-section (1) (*d*) of the same Act. The policies had been assigned to the appellants as trustees. The answer depends on whether the policies were 'kept up' by the settler within the meaning of the former provision or whether the case fell within the latter provision, which applies to an interest provided by the deceased .... I think that keeping up a policy according to the ordinary use of language connotes payment of the premiums, which is the normal method of keeping up a policy. This generally involves periodical payment, and, though a single premium policy is not unknown, that would have the effect not so much of keeping up a policy as establishing its operation once and for all. The Act did not apparently, contemplate this contingency, but however that may be, the insertion of the words " in proportion to the premiums paid by him " is necessary to keep up the policy but only did so partially. In that case the death duty is to fall on the deceased's estate in proportion to the premiums paid by him. The change in expression from keep up to "premiums paid" is necessary to give the basis of apportionment, but at the same time it identifies "paying the premiums" with keeping up the policy. It is unnecessary to speculate why this apportionment was provided for. The language of the sub-section seems sufficiently plain. It supports the view that when the Act refers to keeping up the policy it means the method of paying the premiums as they fall due."

In truth once there was an express trust to provide for payment of the premiums fully constituted in the terms in which it was, the settler had thenceforth nothing to do with keeping up the policies. That devolved on the trustees. The first Lord Devonport had divested himself of his property in the fund by his voluntary assignment of it to the trustees to hold on the trusts

declared in the deeds. These trusts included keeping up the policies by paying the premiums but the settler did not himself pay them. That was the duty of the trustees under the trusts subject to which they held the fund. They did not pay the premiums as agents for the settler, nor did they do so under any covenant or agreement with him, for there is nothing of the sort in the trust document. The following passage from the judgment in *Smith* v. *Anderson*, (1879) 15 Ch. D. 247, p. 275, was quoted—" to my mind the distinction between a Director (the same would be generally true of any Agents) and a Trustee is an essential distinction founded on the very nature of things. The trustee is a man who is the owner of the property and deals with it as principal, as owner and as master, subject only to an equitable obligation to account to some persons to whom he stands in the relation of trustee and who are his *cestui que* trust." The phrase ' keep up the policies ' is no doubt an ordinary expression, but the question is whether within the meaning of the Act it is the settler who has kept them up. *Per* Lord Simonds " to me it seems plain that according to the ordinary use of language, which in the absence of some compelling context, I must suppose parliament to have intended, a person cannot said to keep up a policy merely because he has provided a fund out of which the premiums were intended to be and were, in fact, paid. If, as each premium becomes payable, it lies with him to say whether or not it shall be paid—if, to take the simplest case, the hand that pays is the hand of the Agent acting according to his direction—I should have no difficulty in saying that he keeps up the policy, but equally, where the payment is made by the trustee whose duty and right it is to pay whether the settler wills it or not, it is not he but the trustee who pays the premiums and keeps up the policy, and this appears to me more emphatically to be the case when, as here, the settler has not even a right to intervene and require the trustee to perform his trust. With the greatest deference to those who have thought otherwise I do not think that any assistance is to be derived from the fact that the expression ' keep up ' in relation to a policy of assurance is not a term of legal art. I agree that it is not a term of legal art, but it is, I think, the most appropriate expression in our language to describe the doing of those acts which will prevent a policy lapsing. I see nothing vague or popular in the expression.

The question is : who keeps up the policy ? who does those acts which prevent the policy lapsing ? who, in fact, pays the premiums ? I see no justification for ascribing those acts to a settler who neither does them himself nor is competent to direct their performance. I do not base my opinion on the juxtaposition of the words " premiums paid by him " to the words ' kept up ' for it is by the payment of premiums that a policy is ordinarily kept up. My opinion would be the same if the sub-section ended with the word " assignee."

The conclusion to which I have come as a matter of interpretation of the relevant words of the section does not need to be justified by any consideration of the general scheme of taxation for estate duty purposes. I doubt whether in any case it would be justifiable to do so, for it is well recognised that policies of insurance are a kind of property having peculiar characteristics and requiring special provision, but it may at least be said that there is nothing incongruous in policy moneys, like any other form of property, not being liable to estate duty under section 2, sub-section (1) (*c*) of the Act, if the deceased, having parted out and out both with policies and with a fund provided by him for keeping them up and reserved to himself no interest, whatever in either property, then survives for the requisite period. I would allow the appeal."

The *Lord Advocate* v. *Inzievar Estates*, 1938 A.C. 402, is an important decision on the construction, and interpretation of section 14 of the Act :—

The facts relevant appear from the judgment of Lord Maugham, L.C., *per* Lord Maugham, L.C. " Mr. Archibald Dominic Smith Slingo, of Inziever, Fife, effected a policy of assurance on his life for £20,000 in the year 1900. In 1925, having already paid 14 premiums, he executed a gratuitous assignation of the policy in favour of the respondents. After the assignation had been granted and intimated he paid the next four premiums. The respondents paid the remainder of the premiums—7 in number—which fell due up to the date of the death of Mr. Smith Slingo in 1935. The proceeds of the policy, amounting in all to £21,800 were paid to the respondents. It is admitted that some estate duty is in these circumstances payable under section 11, sub-section (1) (*c*) of the Finance Act, 1894. The question is: what is the proportion of the policy moneys in respect of which estate duty is so payable ? .... I think the matter might be somewhat clearer if the subsection were written in the following expanded form :—

" The charge under the said section shall extend to moneys received under a policy of assurance effected by a person on his own life who shall die on or after the 1st June, 1889, notwithstanding that he shall have taken out the policy in the name of a nominee, or shall have assigned the policy gratuitously for the benefit of a donee, subject to the following provisions :

(1) Where the policy is wholly kept up by the person who effected the same for the benefit of a donee, whether nominee or assignee, the charge shall extend to the whole of the policy moneys.

(2) Where the policy is partially kept up by such person for the benefit of a donee, whether nominee or assignee, the charge shall extend to a part of the policy moneys in proportion to the premiums paid by that person."

It will be observed that in so expanding the sub-section, I have made no assumptions as to its true construction. I have only stated it in such a way as will, I think, assist in ascertaining the true meaning of that part of the section which I have put in the second paragraph. Some light is, however, thrown upon the meaning of the sub-section by the decision of this House in the case of the *Lord Advocate* v. *Fleming*, 1897 A.C. 145. This was a decision, so far as relevant, on the meaning of section 38, sub-section (2) of the Customs and Inland Revenue Act, 1881. It was held by this House, agreeing with the decision in the Court of Session, that a policy cannot be said to be kept up for the benefit of a donee until a donee has in fact been created. Accordingly, where the donee has paid all the premiums after the date of the assignment, no account duty is payable by the donee under the Act. It follows that the first provision of the section, as above expanded, can be clarified by making it run thus : " where the policy after the date of a donation is wholly kept up by the donor for the benefit of a donee, the charge, etc." By parity of reasoning, the second provision may be read as follows : " where the policy after the date of a donation is partially kept up by the donor for the benefit of the donee, the charge under the section is to extend to a part of the policy moneys in proportion to the premiums paid by the donor."

The question is : what does the word " proportion " signify ? It is not in dispute that the numerator in the fraction, which the word proportion is pointing to, must be the number of premiums paid by the deceased after the donation in 1925. The numerator in this case is, therefore, the figure 4. The question is whether the denominator is 25, since there had been 25 annual premiums in all paid on the policy, and this is the result of the decision of the Court of Session, or whether, on the other hand, the denominator is to

be the number of annual premiums paid on the policy after the date of the assignation—namely, the figure 11, as the Crown contends.

It is, I think, clear that the reference to a case where the policy is partially kept up for the benefit of the donee must include a case where the donor and the donee share in the payment of the annual premiums, though I do not think that the phrase can possibly be confined to such a case. Where, however, the donor and the donee have shared in the payment of some or all of the premiums after the date of assignation, it would seem plain that the proportion designated in the sub-section is the proportion in which they have paid such premiums after the donation. Moreover, in the latter part of the sub-section, that portion which I have expanded in the second provision as above, the Legislature is dealing, as I think, with events which happen after the assignation. There is nothing to indicate that the previous history as to the person who provided the premiums before the assignation has any bearing upon the matter. It would be strange if the fraction were to be affected by the circumstance that premiums under the policy of assurance effected by the donor had been paid during the early years by an affectionate parent, or by any third party. Moreover, the sub-section seems to me to show by its language that the proportion is to be determined by events which take place after the donation, since those events only, according to the natural construction of the words, are contemplated by the use of the present tense in the two phrases " is wholly kept up, etc." and " is partially kept up, etc." This result, indeed, would seem necessarily to follow if the expansion of the section which I have suggested is accepted. For these reasons I come to the conclusion that the proportion must be taken to be a proportion based upon the shares which the donor and donee respectively have taken in keeping up the policy after the date of the assignment . . . ."

Per Lord Macmillan: " My Lords . . . . The obvious truth that a policy cannot be said to be kept up for the benefit of a donee until after the donee has come into existence—that is to say, until after the donation has been made—was the basis of the decision of your Lordships' House in *Lord Advocate* v. *Fleming*, 1897 A.C. 145, sub nom. *Lord Advocate* v. *Robertson*, 24 R. (H.L.) 42. Now the premiums paid by the deceased in the present case to keep up the policy for the benefit of the donee—that is to say, the premiums paid by him after the transfer of the policy to the respondents—were four in number. The parties are agreed that this figure must be the numerator of the fraction. But the Crown say that the proportion should be as four is to eleven, being the number of premiums paid after the transfer, while the respondents say that the proportion should be as four is to twenty-five, being the total number of premiums paid since the policy was originally taken out.

Three situations may arise where a policy has been transferred by the assured to another party during its currency. First, the assured may pay no further premiums in respect of the policy after its transfer. In that case the sub-section has no application. The policy has ceased on transfer to be an asset of the deceased's estate. The only claim which the Crown could have to estate duty on the death of the assured would be where the transfer had been to a gratuitous donee within three years of the assured's death; that claim would not be under the present sub-section but under quite a different head. The sub-section, as Lord Adam pointed out in *Lord Advocate* v. *Robertson*, applies only " where a policy is wholly or partially kept up by the donor after the date of the assignation." In the case of *Lord Advocate* v. *Fleming*, no premiums were paid by the donor after the date of the assignation. The sub-section consequently had no application, and no duty was due, for the policy had never been kept up either wholly or partially by the deceased

for the benefit of the donee. In the second place, all the premiums after the assignation may be paid by the donor. The sub-section applies, for the policy has, after the assignation, been wholly kept up by the donor for the benefit of the donee. In such a case the whole proceeds of the policy are subject to duty. In the third place, as here, some of the premiums after the assignation may be paid by the donor and some by the donee. Here also the sub-section applies, for the policy has, after the assignation, been partially kept up by the deceased donor for the benefit of the donee.

To my mind it is clear from these considerations that the sub-section is concerned only with what happens during the period between the assignation of the policy to the donee and the death of the assured. Of the eleven premiums paid during that period in the present case the deceased paid four and the donees paid seven—that is to say, the deceased paid four elevenths and the respondents paid seven elevenths of the premiums falling due during that period. It follows, in my opinion, that the part of the proceeds of the policy which is proportionate to the premiums paid by the deceased within the meaning of the statute is four elevenths. I am fortified in this reading of the sub-section by the fact that it also commended itself to Rowlatt, J., who in the case of *Attorney-General* v. *Meech* (15 Annotated Tax Cases 619, 622), said of the sub-section : " I think it simply means that, where, after the assignment, what has kept up the policies has been provided partly by the assignor and partly by the assignee, the policy moneys are to be subject to and escape duty in the same proportion."

" Mr. M'Intyre for the respondents, in a concise and admirably reasoned argument, submitted that the appellant's reading of the sub-section offended against the principle of the *Lord Advocate* v. *Fleming*—namely, that a policy could not be said to be kept up for a donee when there was no donee in existence. For the appellant's reading involved this, that a policy kept up by the donor for the benefit of a donee after assignation was wholly kept up for the benefit of the donee within the statutory meaning and the entire proceeds were consequently liable to duty, whereas in point of fact the policy might, for many years before assignation, have been kept up by the assured, for his own benefit. It was wrong to regard a policy as wholly kept up for the benefit of a donee when it had only been kept up for the benefit of a donee during part of its currency. The sound view, therefore, was that a policy was wholly kept up for the benefit of a donee in the statutory sense only when the policy during the whole of its currency was kept up for a donee. Similarly, a policy was partially kept up for the benefit of a donee when, during part of its currency, it was so kept up by the assured. The factors, in striking the proportion, should therefore be (1) the number of premiums paid on behalf of the donee, and (2) the number of premiums paid during the whole currency of the policy. Otherwise part of the proceeds representing premiums paid when there was no donee in existence would be subjected to duty.

I appreciate the anomaly, but I fear that there is no reading of this imperfectly drafted sub-section which will avoid all illogicalities. In my view, the manner in which the respondents seek to invoke the aid of the case of the *Lord Advocate* v. *Fleming*, is not justified, for the principle of that case, as I understand it, is that you are to have regard to only the period after assignation, and ascertain by whom the premiums were paid between the assignation and the death of the assured. If during that period, no premium was paid by the donor, the proceeds of the policy escape duty ; if all the premiums were paid by the donor, the whole proceeds are subjected to duty ; if some of the premiums were paid by the donor, the proceeds are subjected to duty to the extent of the proportion which the number of premiums paid by the

donee during that period bears to the total number of premiums paid by the donor and the donee during that period. In short, when the sub-section speaks of keeping up a policy for the benefit of a donee, it refers to the period after the donee has come into existence—that is to say, the period after assignation of the policy to the donee, and any consideration of what happened before the assignation is excluded."

D'Avigdor-Goldsmid v. *Inland Revenue Commissioners*

The report of this case in the Court of Chancery Division (Vaisey, J.), is contained in (1951) 1 All E.R. 240. The decision of the Court of Appeal is reported in (1951) 2 All E.R. 543. There was an appeal to the House of Lords against the decision of the Court of Appeal and the decision of the House of Lords is reported in (1953) 1 All E.R. 403.

The head-note of this report is as follows :—

" On May 3, 1904, the deceased took out a policy of assurance on his life for £30,000 with profits in consideration of the payment of annual premiums. In 1907, on his marriage, the deceased brought into his marriage settlement the policy together with other property, and covenanted with the trustees to pay the premiums on the policy. In 1930 the trusts of the marriage settlement were terminated, and by a deed of re-settlement dated June 10, 1930, the trust property, including the policy, was settled on such trusts as the deceased and the plaintiff (the deceased's eldest son) should by deed jointly appoint, and in default of and until and subject to any appointment on trusts therein specified. The deceased covenanted in the re-settlement to pay the premiums on the policy. On November 10, 1934, the deceased and the plaintiff appointed that the policy and also certain other property (derived from the deceased) should be held in trust for the plaintiff absolutely, and the deceased was released from his covenant to pay the premiums. The deceased paid all the premiums on the policy falling due prior to Nov. 10, 1934, but thereafter until the maturity of the policy the premiums were paid by the plaintiff. On April 14, 1940, the deceased died, and the Crown claimed estate duty under the Finance Act, 1894, section 2 (1) (*d*) as extended by the Finance Act, 1939, section 30, in respect of the proceeds of the policy (or part thereof).

Per Viscount Simon : " The question at issue in this appeal is whether estate duty should be paid on a sum of money amounting to £48,765, which was received in discharge of a life policy taken out by the deceased on May 3, 1904, for £30,000 with profits, under annual premiums of £695. At the time when the deceased took out the policy he was unmarried, but on his marriage in 1907 he brought into his marriage settlement the policy, together with certain freehold estates and investments. By the settlement the policy, with all bonus additions, was assigned by the deceased to trustees on trust to receive the policy moneys at maturity and hold the same on the trusts therein declared, and the deceased covenanted with the trustees to pay the premiums on the said policy, which he did, as long as he had any interest in it. By subsequent dispositions, which it is not necessary to set out, the appellant, who was his eldest son, became absolutely entitled to the policy as from Nov. 10, 1934, more than five years before the death of his father, which occurred on April 14, 1940. The appellant paid out of his own moneys the premiums under the policy from the time he became absolute owner of it.

The Crown claimed estate duty on the £48,765, either under section 2 (1) (*c*) of the Finance Act, 1894, or under section 2 (1) (*d*). As regards the first claim, Vaisey, J., decided that no estate duty arose. The Court of Appeal came to the same conclusion and this conclusion is not now challenged by the respondents. But on the alternative claim to duty under section 2 (1) (*d*) of the Act of 1894, the Court of Appeal reversed the decision of Vaisey, J.,

that no duty was payable and held that the sum in question was property which must be deemed to pass on the death of the deceased within para (*d*).

Paragraph (*d*) brings within the charge of estate duty.

" any annuity or other interest purchased or provided by the deceased either by himself alone or in concert or by arrangement with any other person, to the extent of the beneficial interest accruing or arising by survivorship or otherwise on the death of the deceased."

Assuming, therefore, that the life policy is covered by the words " other interest " in para (*d*) it lies on the Crown to prove that it was " provided by the deceased " and also that a " beneficial interest " in the policy accrued or arose on the death of the deceased. The policy was taken out and kept up by the deceased and assigned to the appellant with other assets in circumstances which made it the absolute property of the appellant in 1934 and onwards, and it may, therefore, be regarded as an " other interest.... provided by the deceased." The crucial question in the case is whether a beneficial interest in the policy arose at the deceased's death. The appellant contends that it did not, and if he is right the Crown's claim must fail.

A life policy is a piece of property which confers on the owner of it the right, if certain conditions continue to be satisfied, to claim and be paid the policy moneys on the death of the person whose life is assured. These rights, therefore, belonged to the appellant from 1934 and were the beneficial interest in the policy which belonged to him from that moment. When the death occurred, he held these rights, and the quality of these rights was not changed by the death, which was merely the occasion when the rights were realised. There was, therefore, no new or additional beneficial interest in the policy which arose on the death of the appellant's father. For six years past, he had had absolute and unfettered ownership of the policy. As Vaisey, J., pointed out (1951) 1 All E.R. 248, he

" could have sold it, mortgaged it, given it away, destroyed it, settled it, or (being a policy on his father's life) he could have surrendered it at the moment when his father was in extremis, at the point of death."

If he had done any of these things, the Crown could not have claimed to aggregate the policy moneys with the rest of the estate for the purposes of duty. It follows that no estate duty is payable on the £48,765, for no beneficial interest in the policy accrued or arose on the death of the deceased.

I prefer to base my decision on this simple ground by taking the words of the statute and seeing whether the Crown brings the case within the section. We were referred to a large number of previous decisions which were alleged to throw light on the problem raised. It is enough to say that the Scottish decision of *Lord Advocate* v. *Hamilton's Trustees*, is in line with the conclusion at which I have arrived, and the argument in Lord Wark's opinion sets out a course of reasoning, which I accept and apply in the present case. The judgment of Palles, C.B., in *A. G.* v. *Robinson*, has received the close attention which is proper to be given to any pronouncement of that very learned judge, and the Chief Baron nine years later thought it right in *Richardson* v. *Inland Revenue Commissioners*, (1909) 2 I.R. 624, to add some observations on his decision in Robinson's case on the ground that it had been misapprehended. I confess that I do not find it easy to grasp the Chief Baron's argument and in particular do not appreciate the meaning of his statement, (1901) 2 I.R. 90, as to " an exact description of money secured by a policy of insurance." The liability of the subject under a taxing statute ought not to be arrived at by a course of subtle and sophistical argument and, even in the case of the most learned judicial pronouncements, it is well to recognise that on rare occasions *bonus dormitat Homerus*. I move that the appeal be allowed with costs.

Per Lord Morton of Hanryton : " The first case to which reference should be made is *A. G.* v. *Dobree.* In that case, the deceased settled a policy on his own life in trust for his wife for life with remainders over. He covenanted to pay the premiums and did so. The wife survived him and a Divisional Court (Darling and Channell, JJ.), held that estate duty was payable under section 2 (1) (*d*), on the sum payable under the policy. Dobree's case differs from the present case, for neither his wife nor her legal personal representatives could take anything unless she survived her husband, whereas in the present case it was certain, from 1934 onwards, that the appellant or his legal personal representatives would take the whole of the policy moneys, whether or not he survived Sir Osmond. It may be necessary to decide hereafter whether this difference was enough to justify the decision in Dobree's case. For the moment I would only observe that both Darling, J., and Channell, J., appear to have thought that the " other interest " provided by the deceased was the sum paid by the assurance company on the death of the deceased and not the contractual right conferred by the policy. With this view I cannot agree. In one respect at least Dobree's case would seem to be wrongly decided, for if any beneficial interest accrued or arose on the death of the deceased, it was the wife's beneficial interest for her life, and duty was only payable on the principal value of the interest, ascertained in accordance with the Finance Act, 1894, section 7 (5). Curiously enough this point seems to have been overlooked in certain later cases to which our attention was directed.

A. G. v. *Robinson,* must be more fully considered, as the decision of the Court of Appeal in the present case was based largely on it. In that case, the court (Palles, C.B., and Johnson and Boyd, JJ.), had to decide (*inter alia*) whether estate duty became payable under the Finance Act, 1894, section 2 (1) (*d*), on the death of John Robinson, who died on December 17, 1898, in respect of four policies of assurance. By his marriage settlement dated June 8, 1843, the deceased settled the four policies and his intended wife settled a sum of £3,500 belonging to her. The trusts, as stated in the report and in the judgment of Palles, C.B., were as follows :

" upon trust as to the moneys secured by the policies (when received) to pay the income thereof to the wife for life and after her death as to the principal moneys for the children of the marriage ; and the trusts of the intended wife's moneys were to apply, after the marriage, so much of the income thereof as might be necessary to pay the premiums upon the policies and to pay the residue thereof to the deceased, the intended husband, for life, and after his death to the intended wife for life, and after the death of the survivor in trust for the children of the marriage."

From the date of the marriage the policies were kept up out of the income of the wife's moneys. The wife predeceased the husband, and the husband by his will appointed the moneys which should become payable under the policies as to £500 to one of his two sons and the balance in equal shares to his other son and to his daughter. It will be observed that the trusts in favour of the children are very briefly stated, but it is clear that the survivor of the husband and wife had power to appoint among the children (and possibly remoter issue) of the marriage, and it may fairly be assumed that in default of appointment the children took the policy moneys in equal shares.

The case is distinguishable from the present case. Immediately before the death of their father, the children were defeasibly entitled, in equal shares, to the policy and the fruits thereof. There father's will took effect at his death. Thereupon the children became entitled absolutely and indefeasibly, but in different shares. In such a case it may be that beneficial interests accrued or arose on the father's death, within the meaning of section 2 (1) (*d*),

but the reasons given by the learned Chief Baron for his decision are open to criticism. My noble and learned friend on the Woolsack has already referred to one passage, (1901) 2 I.R. 90. I share his difficulties as to this passage, and I would add that I find it equally difficult to understand the reasoning by which, in *Richardson* v. *Inland Revenue Commissioners*, (1909) 2 I.R. 624, the learned Chief Baron sought to explain his finding that the deceased "purchased or provided" the policy moneys. I have studied the judgment of the Chief Baron (with which his brethren agreed) with the care and respect which is due to any utterance of that great judge, but I can derive no assistance from it in the present case.

A. G. v. *Hawkins* is not directly in point, but it is interesting to note that both members of the court mentioned, by way of contrast, the case of an absolute assignment of the whole beneficial interest in a policy to a beneficiary, and clearly took the view that such a case would not fall within section 2 (1) (*d*) : see per Kennedy, J., (1901) 1 K.B. 292, 293, and per Phillimore, J., (*ibid* 295, 296). In reading the latter passage, it is necessary to note the "errata" which appear at the beginning of the volume.

In *A. G.* v. *Murray*, the decision of the Court of Appeal was directed to the question whether a policy of assurance effected by a father on his son's life and settled on his son's marriage was or was not "purchased or provided" by the son in concert or by arrangement with the father, within the meaning of section 2 (1) (*d*), but in the course of the case it was argued that a policy was not an "other interest" within section 2 (1) (*d*) and also that :

"The whole beneficial interest in the contingent debt passed under the settlement on the marriage, and the wife had no greater beneficial interest in it by reason of the husband's death than she had as soon as the marriage took place" ; and reference was made to *A. G.* v. *Dobree* and *A. G.* v. *Robinson.* Cozens-Hardy, L.J., in delivering the judgment of the court said [(1904) 1 K.B. 172] :

"Secondly, it is contended that a policy of insurance is not an interest within sub-section (1) (*d*). We have not been able to appreciate this argument. A policy is plainly property within the scope of section 2 and we can see no ground for excluding it from sub-section (1) (*d*). We are content to adopt the reasoning of Palles, C.B., in *A. G.* v. *Robinson*, and we do not think any good object would be attained by attempting to further elaborate it."

The Court of Appeal in the present case read the last sentence just quoted as "express and unqualified approval accorded to *A. G.* v. *Robinson.*" It will have appeared already that I cannot share that approval.

In *Inland Revenue Commrs.* v. *Scott's Trustees*, the Inner House had to consider the terms of a settlement of policies by a father on somewhat unusual trusts for the benefit of his daughters and their issue. The facts differed widely from the facts of the present case, and need not be set out at length, but I share the doubt expressed by Lord Sands as follows (1918 S.C. 726):

"These policies belonged, after the creation of the trust, to certain trustees for behoof of certain beneficiaries. Now, no doubt when a man dies who has insured his own life the policy upon his life is part of his estate, and in respect of that part of his estate a beneficial interest accrues to his exemptors. But I confess I entertain some doubt as to whether, where one already holds as one's own property a policy of insurance on the life of another party any beneficial interest that was not in the holder before it accrues to him at the time of the death of the person whose life is insured. The policy which he had in bonds simply matures,"

I would add that even if estate duty was payable in Scott's case—as to which I express no opinion—I see no reason why it should have been payable on the whole of the policy moneys, rather than on the principal value of the daughter's life interests.

I gratefully adopt the words of the Master of the Rolls in summarising the next three cases.

In *A. G.* v. *Pearson*, liability to duty under section 2 (1) (*d*) on the policy moneys in question was not disputed, but it was claimed that the exemption from aggregation afforded by the Finance Act, 1894, section 4, to property in which the deceased never had an interest was applicable. Rowlatt, J., held that the exemption did not apply. The question with which we are now concerned was, therefore, not in issue. But Rowlatt, J., said of section 2 (1) (*d*), (1924) 2 K.B. 387 :

" That the policy moneys in a case like this are liable to duty under that sub-section is clear upon the authorities beginning with the Irish case of *A. G.* v. *Robinson.*"

Tennant v. *Lord Advocate*, was another case on the question of aggregation, liability to duty under section 2 (1) (*d*) being admitted. Lord Russell of Killowen said, (1939) 1 All E.R. 675 :

" For myself, I am not prepared to accept without some further consideration the correctness of the first step."

(He was referring here to a contention that what passed on the death was " the cash payable by the insurance company and nothing else.")

" Three authorities were cited as establishing it—namely, *A. G.* v. *Dobree*, *A. G.* v. *Robinson*, and *Inland Revenue Commrs.* v. *Scott's Trustees*. No doubt language is used in some of the judgments in those cases which might give colour to the view that what passed on the death was the cash, and not the policy, or the value of the policy, but in none of those cases was it material that any such question should be decided. Indeed, it is not easy to see how the question can ever become material. The policy must, if valued, be valued as a matured policy, and with reference to the solvency of the insurance company, with the result that the value of the policy will be the same as the value of the moneys payable thereunder. However, I would wish to keep the question open, in case it should ever hereafter be necessary to decide between the two alternatives.

With respect to these observations, it is proper to note that counsel for the Crown had not been called on to argue. His Lordship went on to decide that the policy moneys were aggregable, expressing agreement with the decision of Rowlatt, J., in *A. G.* v. *Pearson.*

In *Westminster Bank, Ltd.* v. *A. G.*, the point at issue was again aggregation, and was decided in favour of the Crown on the authority of *Tennant* v. *Lord Advocate*, which had been decided between the conclusion of the hearing and the delivery of the reserved judgment of the Court of Appeal. But Clauson, L.J., delivering the judgment of the court, said, (1939) 2 All E.R. 74 :

" The first step is to ascertain with precision what it is that is deemed to pass, on the death of Sir Frederick, in respect of the policy moneys by reason of the operation of section 2 (1) (*d*). The answer is in the words of the sub-section : ....(the) interest .... provided by the deceased .... to the extent of the beneficial interest accruing or arising .... on the death of the deceased. The interest provided by the deceased is the amount of the policy moneys, including the bonuses. It is not, however, the whole of that sum which is deemed to pass. That sum is deemed to pass only to the extent of the beneficial interest accruing or arising on the death of the deceased. In

the present case, the extent of the beneficial interest so arising is commensurate with the life interests which springs into being on the death of Sir Frederick—that is to say, the life interests, whether vested or contingent, on attaining twenty-one or marrying, of the five children of Mrs. Van der Goes living at the testator's death. It follows that that which passes in respect of the policy moneys is so much thereof as is equivalent to the value of those life interests therein."

No one of these three cases is directly in point, but if Rowlatt, J., and Clauson, L.J., took the view that the "interest provided" was the policy moneys and not the policy itself, I cannot agree with them, and I do not think Lord Russell of Killowen would have agreed with them, if it had been necessary for him to decide the point.

Lastly, I come to *Lord Advocate* v. *Hamilton's Trustees*. In that case the deceased who died in 1936, had in 1912 settled certain policies on his life on trusts for the benefit of his sons and daughter. The sons were to become absolutely entitled on attaining the age of 25 and the daughter's share was settled on her for life with remainders over. The trust deed stated that these provisions in favour of the children "shall vest in them respectively at the date hereof"; the policies became fully paid in 1914 and 1915, and the premiums payable in the meantime were borrowed by the trustees from the deceased. On the deceased's death, duty was claimed under section 2 (1) (*d*) on the amount of the policy moneys less the amount borrowed from the deceased by the trustees in order to pay the premiums, and the claim was rejected by the Inner House, affirming the Lord Ordinary (Lord Keith) on the grounds that,

(*i*) "in the circumstances the property sought to be charged had not been provided by the deceased," and that

(*ii*) "there was no beneficial interest accruing or arising on the death of the deceased, in respect that the whole interest in the policies had passed to the beneficiaries 24 years before the truster's death, their interest having fully vested."

It is unnecessary for the present purpose to consider the first of these two grounds, but, in my view, the second ground was correct. Lord Keith used language which applies very aptly to the present case. He said, [1942 S.C. 434]:

"In the present case, it is undoubted that an interest vested in the beneficiaries under the deed of trust at the date thereof, and the death of the truster made no difference to that interest. If the sons had predeceased their father, their shares of the proceeds of the policies would have been paid over to their executors. I have difficulty in seeing how a beneficial interest accrued or arose to them, by survivorship or otherwise, on the death of the deceased. What accrued to them or to the trustees was a present right to demand payment from the insurance company in respect of a previously existing beneficial interest."

I agree with the reasoning which I have just quoted. I would allow the appeal and restore the order of Vaisey, J.

In *Re Oakes* (deceased). *Public Trustee* v. *Inland Revenue Commissioners*, (1950) 2 All E.R. 851, the facts briefly are:—

In 1904 the deceased took out 3 policies of assurance on his life expressed to be for the benefit of his wife in the event of his wife surviving him, but for his own benefit if his wife did not survive him. The wife's father paid the first two premiums. Afterwards the deceased paid the premiums till 1919 when by a lump sum payment he converted them into fully paid up policies.

In 1920 the deceased and his wife settled the paid up policies for the benefit of their issue. In 1948, the deceased died, leaving his wife surviving him. The Crown claimed estate duty in respect of the proportion of the policy moneys equivalent to the proportion of the premiums paid by the deceased, under section 2 (1) (*c*). Romer, J., referred in his judgment to Lord Wright's speech in (1944) A.C. 272 at page 379 (*Barclays Bank, Ltd.* v. *A. G.*). " I think, that 'keeping up' a policy according to the ordinary use of language connotes payment of the premiums, which is the normal method of keeping up a policy. This generally involves periodical payments, and, though a single premium policy is not unknown, that would have the effect not so much of keeping up a policy as establishing its operation once and for all. The Act did not apparently, contemplate this contingency, but, however, that may be, the insertion of the words " in ' proportion to the premiums paid by him ' is necessary to deal with the case where the deceased did not wholly keep up the policy but only did so partially." .... So in the present case, I come to the conclusion without any great hesitation that the payments made in 1919, which were merely pre-payments of future premiums, are to be regarded on the same lines as the payment of annual premiums had they been paid. Therefore it seems to me that all the points on which the objection to the payment of estate duty is founded fail, and that, accordingly, liability to estate duty is attracted under the provisions of section 2 (1) (*c*) read with section 11 (1) of the Customs and Inland Revenue Act, 1889, in corporating section 38 (2) of the Act of 1881. There is no difficulty in applying the result of the conclusions which I have reached, because the position was stated by Rowlatt, J., in *A. G.* v. *Meech*, (1931) 15 Annotated Tax Cases 619, and commented upon favourably by Lord Macmillan in dealing with the case then before the House, *Lord Advocate* v. *Inzievar Estates*, (1938 A.C. 402) said :

" Of the eleven premiums paid during that period in the present case the deceased paid four and the donees paid seven—that is to say, the deceased paid 4/11ths and the respondents 7/11ths of the premiums falling due during that period. It follows, in my opinion, that the part of the proceeds of the policy which is proportionate to the premiums paid by the deceased within the meaning of the statute is 4/11ths. I am fortified in this reasoning of the sub-section by the fact that, where after the assignment what has kept up the policies has been provided partly by the assignor and partly by the assignee, the policy moneys are to be subject to and escape duty in the same proportion." That is the principle which I think should be applied in the present case."

Section 15. *Annuity or other interest purchased or provided by the deceased.*—Any annuity or other interest, purchased or provided by the deceased, either by himself alone or in concert or by arrangement with any other person shall be deemed to pass on his death to the extent of the beneficial interest accruing or arising, by survivorship or otherwise, on his death.

Explanation.—The extent of the beneficial interest must be ascertained without regard to any interest in expectancy which the beneficiary may have had therein before the death.

Section 15 is the most appropriate charging section in all cases of annuities, lump sum payments payable on the death of the deceased. It is under this charging section that estate duty is collected in respect of moneys payable to the deceased's wife, children, and dependants under various provident fund, or other benefit schemes. The words ' purchased or provided ' in this section cover a case where under the articles of partnership the deceased partners' widow or child gets an annuity or a lump sum money. The words ' in concert or by any arrangement with any other person' cover cases in which the employer of the deceased on the death of the deceased pays any annuity or lump sum money to the deceased's wife or children or dependants. It is unnecessary that the deceased should have contributed anything to the fund from which the annuity or the lump sum money is paid. The very services given by the deceased employee are regarded as consideration furnished by the employee for such payment. The explanation to this section is based on section 28 of the Finance Act, 1934. This section is as follows : For the purposes of paragraph (*d*) of sub-section (1) of section 2 of the Finance Act, 1894, where an annuity or other interest has been purchased or provided by the deceased, either by himself alone or in concert or by arrangement with any other person, the extent of any beneficial interest therein accruing or arising by survivorship or otherwise on the death of the deceased shall be ascertained, and shall be deemed always to have been ascertainable, without regard to any interest in expectancy the beneficiary may have had therein before the death. This section in England had been enacted to get rid of the effect of the decision in *Adamson* v. *A. G.* (1933 A.C. 257). This case has been briefly noticed below.

Adamson v. *Attorney-General* (1933 A.C. 257). In this case a settler had by a settlement dated March 24, 1924, settled a fund in the hands of trustees upon trust for accumulation during his life ; on his death the fund was to be held in trust for his children. The testator reserved to himself powers of disposition over the capital and income of the fund in favour of the children which were not exercised. It was held by a majority of the House of Lords that the property had passed to the children, subject to various possibilities of defeasance, on the making of the settlement : that on the death, although those possibilities of defeasance ceased, nothing more happened, and in particular the property did not pass within the meaning of section 1 of the Finance Act, 1894.

Clauson, L.J., in 1939 (1) Ch. 343 at p. 363, observed " the ratio decidendi in *Adamson* v. *Attorney-General*, is not that on the execution of the settlement the beneficial " interest in the whole fund passed out of the settler but

that it passed " out of the settler to the children whose interest was the " same both before and after the death of the settler subject " only to this, that a possibility of defeasance came to an end with the death and that the cesser of that possibility of defeasance did not constitute a passing."

Attorney-General v. *Watson and others* [(1917) 2 K.B. 427]

Head-note to the case is :

" By section 1 of the Finance Act, 1894, ' In the case of every person dying ' estate duty shall " be levied .... upon the principal value .... of all property .... which passes on the death of such person .... "

By section 2, sub-section 1, " Property passing on the death of the deceased shall be deemed to include.... (*b*) Property in which the deceased .... had an interest ceasing on the death of the deceased, to the extent to which a benefit accrues or arises by the cesser of such interest."

By section 7, sub-section (7), " The value of the benefit accruing or arising from the cesser of an interest ceasing on the death of the deceased shall.... (*b*) if the interest extended to less than the whole income of the property, be the principal value of an addition to the property equal to the income to which the interest extended."

By his will a testator bequeathed an annuity of 1000*l.* per annum to be paid out of the residuary estate and primarily out of the income thereof during the life of the annuitant or such less period as in the will mentioned.

Held, that the annuitant had an interest in the testator's residuary estate within the meaning of the above sections, and that upon the annuitant's death estate duty became payable in respect of the benefit which accrued to the residuary estate upon the death of the annuitant by the cesser of the annuity ".

Per Lush, J., " In this case the Crown by information claims a declaration that upon the death of an annuitant to whom an annuity was bequeathed by the testator estate duty became payable in respect of the benefit which accrued or arose to the testator's residuary estate on the death of the annuitant by the cesser of the annuity. (The learned judge having referred to the material sections of the Finance Act, 1894, continued.) On behalf of the Crown it was contended that when the annuitant died the corpus of the testator's residuary estate was property in which the annuitant had had an interest, her interest ceasing upon her death, and that consequently that property should for purpose of this information be treated as property passing on the death to the extent to which a benefit had accrued or arisen by reason of the cesser. The testator had directed (although I do not think it is material), that the annuity should be paid out of his residuary estate and primarily out of the income thereof. The contention on behalf of the Crown is that the annuitant, although she had no estate in the residuary estate, still had an interest in it, because it was out of these funds that the annuity was payable under the will of the testator. Even if the testator had not added the words with reference to the mode of payment of the annuity primarily out of the income it would necessarily have been payable out of the general corpus of the property which was the subject of the will of the testator. But if the direction does make a difference there was the express direction in the will.

On behalf of the defendant it has been contended that the annuitant had an interest in the corpus, and that no annuitant can be said to have an interest in the property out of which the annuity is payable unless the property has been actually appropriated and set apart to answer the annuity. If that is so of course the contention on behalf of the Crown fails because there has

here been no express appropriation or setting apart of any specific property to answer this annuity. But in my judgment that it is not the true interpretation to be placed upon section 2, sub-section (1)(*b*) of the Finance Act, 1894. The object of the section is to make estate duty payable whenever there has been a succession in fact, or that which is equivalent to a succession—whenever there has been a cesser of an annuity by reason of the death of the annuitant, which cesser causes benefit to accrue to the property. And I think one is bound to construe the words " had an interest " in the wider sense and not to restrict the words, and put upon them the narrower meaning for which Mr. Disturnal has contended on behalf of the defendants. In my judgment this annuitant had, according to the ordinary use of language an interest in the corpus of this property ; she had an annuity accruing from day to day payable out of the property, and it was to that property that the annuitant would necessarily look for the payment of her annuity. It is true she had no estate in the property, but she had an interest in it, because that was the source of the annuity bequeathed to her by the testator. It was the fund to which she could look and to which she was entitled to have recourse, and even to claim to have realized for the purpose of paying the annuity.

It is said there has been no case in which this question has been raised—It may be so—I do not know of any case in England, but, am not at all sure that it was not assumed in *Lord Advocate* v. *Henderson's Trustees*, 42 S.L.R. 720, that the annuitant had an interest in the property out of which the annuity was payable, because it appears by the very short recital of the material clause in the will contained in the report, that the direction with regard to the payment of the annuity was not different in substance from that contained in the will in the present case. On behalf of the defendants Mr. Disturnal contended that the direction in that case was different because there the testator created a rent-charge in favour of the annuitant. If so it might be true to say that the annuitant had something more than an intangible interest in the property—that the annuitant had in substance a rent-charge. But I do not think the contention is correct. I think the direction there was equivalent to that which the testator gave in his will, and if so—it is true the point was not argued, but it was assumed both by Counsel and by the Court—it was treated as apparent that the annuitant had an interest—and the only question argued and decided by the Court was as to the method of calculating the benefit that accrued. But whether that be so or not, and putting the Scotch case aside, it seems to me that the only reasonable view to take of section 2 of the Finance Act, 1894, is that it brings within the ambit and scope of the Act every case in which the annuitant has a right to have recourse to the property out of which the annuity is payable and to make estate duty payable to the Crown when the annuitant dies, provided that by reason of the annuitant's death a benefit has accrued or arisen to the property. Those conditions having been fulfilled in the present case, I think that the Crown's contention is right and that I must make the declaration asked for by the Crown."

Hodson's settlement, *In re Brooks* v. *Attorney-General*, (1939) 1 Ch. 343.

The relevant facts in this case are as follows : Mr. Hodson by a settlement of May 20, 1925, settled a fund of 20,000 shares in the names of trustees, upon trust to pay to a lady out of the income 1200*l.* per annum during the joint lives of the lady and himself, and invest and accumulate the surplus income of the fund during the same joint lives. The accumulations fund was to be held in trust to supplement any deficiency in the income of the settled fund to supply the 1200*l.* a year, and from and after Mr. Hodson's death the income of the accumulations fund was during the rest of the lady's life

to be paid to her. By virtue of this settlement and a supplementary settlement the surplus income of the settled fund during the period of the lady's survivorship of the settler was to be dealt with as is mentioned in the supplementary settlement, and on the lady's death the originally settled fund and the accumulations fund were by virtue of the settlement to be held in trust for her children. Mr. Hodson died in the lifetime of the lady on March 3, 1933. In this case no question was raised in regard to the estate duty payable in respect of the settled fund ; the question raised, was as to the duty, if any, payable on the occasion of Mr. Hodson's death, in respect of the accumulations fund. On behalf of the subject it was contended that the accumulations fund did not pass on Mr. Hodson's death and that therefore there was no passing of property under section 1 and consequently no estate duty was exigible. Reliance was placed on the decision in *Adamson* v. *Attorney-General.* The Court of Appeal considered the following House of Lords' cases: (1) *Burrell and Kinnaird* v. *Attorney-General,* (1937) A.C. 286; (2) *The Adamson* case; (3) *Attorney-General* v. *Lloyds Bank, Ltd.,* (1935) A.C. 382; (4) *Scott* v. *Inland Revenue Commissioners,* (1937) A.C. 174; (5) *Attorney-General* v. *Milne,* (1914) A.C. 765 and (6) *De Trafford* v. *Attorney-General,* (1935) A.C. 280 and held that there was passing of property (the accumulations fund) on the death of Mr. Hodson.

Clauson, L.J., at page 369, observed that it was permissible in construing the section to bear its obvious legislative genesis in mind but that did not dispense the Court from the necessity of ascertaining the fair meaning of the expressions used in the section, in its application to the facts of the particular case under consideration. " One test is to ask the question in whose favour there would be a resulting trust of the accumulations fund in case all the beneficiaries under the disposition under which the property passes were to disclaim the benefits conferred on them by the disposition ; and it was suggested that, if the answer is (as of course it must be) that the resulting trust would be in favour of the deceased, or in favour of his representatives as such representatives, the Court would be bound to hold that the property is property of which it would be untrue to say the deceased never had an interest in it. In our judgment, that test is a sound one in this particular case, and is in consonance with the intentions of the Legislature as property gathered from the language of the section. To apply that test is to treat the Legislature as fixing attention not on the items which make up the corpus which passes on the death, but on the corpus which is the subject-matter of the disposition under which the " property passed " on the death, the identity of the individual items, varying, no doubt, from time to time, as changes of investment take place, being of no consequence as compared with the identity of the corpus as that which was originally the subject of the disposition and is the object which passes. If it be right to treat the " property which passes " as the identifiable corpus, and thus to hold that the person who owned this corpus in its original form must be treated as " having had an interest " in this corpus, it having been his property before the creation of the trust, it surely must be right to treat the future produce of this corpus as something in which the original owner of the corpus cannot truly be said never to have had an interest."

" .... The truth is that the application of the test of what would occur on his claimer brings out the fact that the beneficial interests in the accumulations fund, the Local Loans and the policy moneys in the various examples taken flow from the ownership of the settler in the original settled funds and the policy respectively and have come into being by reason of his action in creating the settlement. The person who planted the tree cannot be said never to have had an interest in its future fruit, though the fruit may not

mature until long after he has, in virtue of his ownership of the tree and of all its future fruit, alienated the future fruit."

Westminster Bank, Ltd. v. *Attorney-General* [(1939) 1 Ch. 610]

The relevant facts are as follows :

By a settlement of January 27, 1926, Sir Frederick Macmillan, who died on June 1, 1936, settled certain policies on his life and certain investments upon trusts under which the income from the investments was to be accumulated for a period of 21 years from the date of the settlement or during Sir Frederick's lifetime, whichever should be shorter. In the event which has happened of Sir Frederick dying within the 21 year period, the policies, the investments, and the accumulations fund were to be held in trust to pay the income to such of the children of Mrs. van der Goes born in the lifetime of Sir Frederick as should attain 21 years of age or marry under that age for their respective lives, and each such child was given a general testamentary power of appointment over the capital of his or her share, and in default of appointment the capital was to belong to the issue of such child living at his or her death per stirpes. By a later settlement of October 23, 1930, Sir Frederick settled a further fund upon corresponding trusts, burdened however, with certain life annuities arising upon Sir Frederick's death in favour of certain named persons. There were at Sir Frederick's death several children of Mrs. van der Goes in existence, some of whom had, and some had not, attained vested life interests ; all the annuitants survived him. On his death the policies became payable together with various bonuses, some of which had been declared as reversionary bonuses before the date of the settlement, and some of which had been so declared after the date of the settlement. The Court of Appeal following its decision in *In Re* Hodson's Settlement, (1939) 1 Ch. 343, held that on the settler's death the originally settled funds and the accumulated funds passed under section 1 of the Finance Act, 1894, in regard to the policy moneys. The Court of Appeal held that duty was payable under section 2, sub-section (1) (*d*) upon the principal value of the life interest which arose upon the death of Sir Frederick in the policy moneys. It also held that the last mentioned value was to be aggregated with other property passing on the death.

The importance of the decision of the Court of Chancery *in Re* Longbourne's Marriage Settlement. *Warren and others* v. *Inland Revenue Commissioners*, [(1952) 2 All E.R. 933] lies in the fact that even if on the death of the settler the whole property passes where there is an annuity which continues on the property there must be a deduction representing the value of that burden. Wynn-Parry, J., who delivered the judgment in this case, applied the dicta of Sir Raymond Evershed, M.R. and Romer, L.J., in the recent case of Re Lambton's Marriage Settlement and of Jenkins, L.J., *in Re* Duke of Norfolk. The relevant facts of the case are these : the wife by an antenuptial settlement directed the trustees thereof to stand possessed of certain investments on trust after the intended marriage, which took place and to pay an annuity out of the income of the settled property to the husband for his life, to pay the remaining income to her for her life, and after the death of the wife and if the husband survived her subject to, provision being made by the trustees for payment of the husband's annuity, the capital and income of the settled property should be paid to children of the marriage, who attained twenty-one. It was held that the whole of the settled property passed on the death of the wife who was survived by the husband. *Per* Wynn-Parry, J., " Where a tenant for life is entitled to property subject to an annuity, the annuitant has an interest in the whole of the property and not only in a slice

thereof, and equally the tenant for life has an interest in possession in the whole property. The tenant for life dies. It must surely follow that the whole property passes on that death because the tenant for life was entitled in possession to the whole. There has been a change of title .... The Crown however, concedes that, as the annuity continues and must be treated as representing a burden on the property, there must be a deduction representing the value of that burden. Here, again, there has been a dispute between the parties as to how that burden should be calculated. An argument was developed that I should apply, by analogy, the Finance Act, section 7 (7) (*b*), but I can see no warrant on a consideration of that Act for acceding to that suggestion. The language of that sub-section is clearly confined to cases arising under section 2 and has no application to cases arising under section 1. The fact is that the legislation is silent on this point. As the Crown concedes that there should be a deduction, in my view, I can do nothing else but accept the effect of that concession and direct that the value of the deduction must be the value of the annuity at the date of the death calculated on actuarial principles...."

Section 16. *Annuity or other interest purchased or provided out of property derived from the deceased.*—(1) Section 15 shall have effect in relation to any annuity or other interest that was purchased or provided wholly or in part by any person who was at any time entitled to, or amongst whose resources there was at any time included, any property derived from the deceased, as if that annuity or other interest had been provided by the deceased, or, if it is proved to the satisfaction of the Controller that the application of all the property derived from the deceased would have been insufficient to provide the whole of that annuity or other interest, as if a similar annuity or interest of an amount reduced to an extent proportionate to the insufficiency proved had been provided by the deceased :

Provided that for the purpose of determining whether there would have been any such insufficiency as aforesaid, and the extent thereof, there shall be excluded from the property derived from the deceased any part thereof as to which it is proved to the satisfaction of the Controller that the disposition of which it, or the property which it represented, was the subject-matter, was not made with reference to, or with a view to enabling or facilitating, the purchase or provision of the annuity or other interest, or the recoupment in any manner of the cost thereof.

(2) In this section the following expressions have the meanings hereby assigned to them respectively, namely :—

(*a*) "property derived from the deceased" means any property which was the subject-matter of a disposition made by the deceased, either by himself alone or in concert or by arrangement with any other person, otherwise than for full consideration in money or money's worth paid to him for his own use or benefit, or which represented any of the subject-matter of such

a disposition, whether directly or indirectly, and whether by virtue of one or more intermediate dispositions and whether any such intermediate disposition was or was not for full or partial consideration :

Provided that where the first-mentioned disposition was for full consideration in money or money's worth paid to the deceased for his own use or benefit and it is proved to the satisfaction of the Controller that the disposition was not part of associated operations which included—

(*a*) a disposition by the deceased, either by himself alone or in concert or by arrangement with any other person, otherwise than for full consideration in money or money's worth paid to the deceased for his own use or benefit ; or

(*b*) a disposition by any other person operating to reduce the value of the property of the deceased ;

then, in considering whether estate duty should be charged the said first mentioned disposition shall be left out of account as if this provision did not apply in relation to it ;

(*b*) " disposition " includes any trust, covenant, agreement or arrangement ; and

(*c*) "subject-matter" includes, in relation to any disposition, any annual or periodical payment made or payable under or by virtue of the disposition.

(3) For the purposes of section 34 the deceased shall be deemed to have had an interest in any property included by virtue of this section in the property passing on the death of the deceased.

Section 16 is concerned with an annuity or other interest purchased or provided by the deceased ; in other words, the annuity or other interests is directly provided by the deceased. As it was found there was evasion of estate duty by resort to devices, whereby, instead of the deceased directly providing or purchasing the annuity or other interests, he transferred to others his property or settled his property on others and the other persons from out of the property so transferred or settled, purchased an annuity or other interests. It was the deceased that indirectly provided for such annuity or other interests. To meet such cases the provision in this section was enacted. There are two matters to be remembered in this section : (1) the deceased when he transferred or settled the property did not intend that any annuity or other interests should be paid from out of that property, (2) that the whole of the income from the property transferred or settled might be found insufficient to meet the annuity. Only one condition need be satisfied for the application of section 16. There must be in existence some property of the deceased from which the annuity or other interest is met. The deceased might not have intended when he transferred or settled his property that an annuity or other interest should be paid from and out of the income of the property. It is open, however, to the accountable person to urge that the income derived from the property of the deceased is insufficient for payment of the whole

of the annuity or other interest. In such a case the section says estate duty is payable only on so much amount of annuity or interest as would be sufficient to absorb the income from the property. The proviso states that in ascertaining any such insufficiency and the extent thereof, there shall be excluded from the property derived from the deceased any part thereof as to which it is proved to the satisfaction of the controller that the disposition of which it, or the property which it represented, was the subject-matter, was not made with reference to, or with a view to enabling or facilitating, the purchase or provision of the annuity or other interest, or the recoupment in any manner of the cost thereof. The expression "property derived from the deceased" is defined in very wide terms. This definition is copied from section 30 (3) (*a*) of the Finance Act, 1939. The Finance Act, 1943, has amended this definition, but it is curious that the amended definition has not been put in section 16. The words "otherwise than" were omitted and in their place "notwithstanding that the disposition was made" were substituted by the Finance Act. The proviso is word for word the same as in section 26 (2) of the Finance Act, 1943. In the definition of property derived from the deceased there is no mention of any first mentioned disposition which was for full consideration in money or money's worth. On the other hand the language is otherwise than for full consideration in money or money's worth. As the definition in the section now stands, it is difficult to give effect to the proviso. One must assume by reason of the existence of the proviso that if the first mentioned disposition was for full consideration in money or money's worth and if it is further proved to the satisfaction of the controller that the disposition was not part of associated operations, which included conditions (*a*) or (*b*), then the controller shall leave the first disposition out of account. "Associated operations" are defined in section 26 of the Act [27 (7) (*iv*)]. Both the conditions (*a*) and (*b*) in the proviso must be established in addition to establishing the fact that the first mentioned disposition was for full consideration in money or money's worth paid to the deceased for his own use or benefit. The object underlying section 16 is to catch the property of the deceased and to make the same liable for estate duty ; there might have been a transfer of property or a settlement of property by the deceased many years before his death, and not less than 2 years before his death. Even in such a case if from out of such property of his any annuity or other interest is being paid or met, estate duty has to be paid in respect of that annuity or other interest. No exemption can be claimed on the ground (1) that the deceased had not purchased or provided the annuity or other interest and (2) that he had transferred his property not less than 2 years before his death. Sub-section (3) of section 16 enacts that the deceased shall be deemed to have had an interest in the property included by virtue of that section, for purposes of section 34 of the Act, *i.e.*, aggregation. The case of *Re D'Avigdor-Goldsmid* v. *Inland Revenue Commisioners* [(1951) 2 All E.R. 543] throws light on section 16. The relevant facts of the case are as follows :—

In 1904 the deceased took out a policy of insurance on his own life and for his own benefit. He made a settlement in 1907 under which trustees were to hold his freehold estates and also the policy. The trustees of the settlement were directed to invest the policy moneys collected at maturity in freehold lands to be held on the same trusts. In 1930 the deceased and his eldest son acquired power to resettle the freehold estates which have been settled previously on trusts. Under the resettled trusts, the deceased's eldest son was the principal object of a discretionary trust, and the deceased took a determinable life interest. The deceased covenanted under the resettlement to pay the premiums on the policy. In 1934 the deceased and his eldest son appointed that the policy and also certain real property named "Wood Street Property" should be held

in trust for the deceased's son absolutely. The deceased was released from his covenants to pay the premiums. After 1934 until maturity of the policy the premiums were paid by the deceased's son. In 1940 the deceased died. The Crown claimed estate duty under the Finance Act, 1894, section 2 (1) (*c*) or section 2 (1) (*d*) in respect of the policy money. It was held having regard to the appointment of the "Wood Street Property" to the deceased's son, the deceased must by virtue of the Finance Act, 1939, section 31 be treated for duty purposes as having provided the policy to the extent that that property so far as it was derived from the deceased was sufficient so to provide it, the claim under section 2 (1) (*d*) was well founded. *Per* Sir Raymond Evershed, M.R., after quoting section 31 of the Finance Act, 1939, said—

"It will be seen that there are three conditions which must be satisfied in order to give rise to a claim for duty under section 2 (1) (*d*), *viz.*, (*i*) there must be an annuity "or other interest"; (*ii*) it must have been purchased or provided by the deceased either by himself alone or in concert or by arrangement with some other person ; and (*iii*) a beneficial interest must accrue or arise by survivorship or otherwise on the death of the deceased. If these three conditions are satisfied, then the annuity or other interest is deemed to pass on the death to the extent of the beneficial interest so accruing or arising, and accordingly to that extent attracts duty. As regards condition (*i*), counsel for the plaintiff, while formally submitting the contrary, conceded that the judgment of this Court in *A.G.* v. *Murray*, [(1904) 1. K.B. 172] precluded him from maintaining before us that the policy here in question was not an "interest" within the meaning of the words " or other interest" in section 2 (1) (*d*). As regards condition (*ii*), it was not disputed that, having regard to the Finance Act, 1939, section 30 (1), and the appointment to the plaintiff of the Wood Street Property in addition to the policy by the deed of November 10, 1934, the deceased must be treated as having provided the policy for the purposes of section 2 (1) (*d*), though it was contended by counsel that, in the event of condition (*iii*) being held to be satisfied, the policy must, under section 30 (1) of the Act of 1939, be treated for duty purposes as a policy for a reduced amount bearing the same proportion to the full sum actually paid under it as the rents of the Wood Street Property during the period from November 10, 1934, down to the death of the deceased bore to the premiums paid by the plaintiff during the same period.

With the exception of *Lord Advocate* v. *Hamilton's Trustees*, (1942 S.C. 426) these are all the cases to which we need refer. It will be seen that they include three actual decisions, *viz.*, *A.G.* v. *Dobree* (1900) 1 Q.B. 442 ; *A.G.*v. *Robinson* (1901) 2 Ir. R. 67 ; and *Inland Revenue Commissioners* v. *Scott's Trustees*, (1918) S.C. 720, a judgment of this court in *A.G.* v. *Murray*, (1904) K.B. 161, which expressed complete approval of the reasoning of Palles, C.B., in *A.G.* v. *Robinson* and a further judgment of this court in *Westminster Bank Ltd.* v. *A.G.*, (1939) 2 All E.R. 72, containing a statement of the effect of section 2 (1) (*d*) which entirely accords with that reasoning, while the other two *viz.*, *A.G.* v. *Pearson*, [(1924) 2 K.B. 375] and *Tennant* v. *Lord Advocate*, [(1939) 1 All E.R. 672] both proceeded on the footing that the question of liability under section 2 (1) (*d*) was well settled. In *Lord Advocate* v. *Hamilton's Trustees* the deceased, who died in 1936, had in 1912 settled certain policies on his life on trusts for the benefit of his sons and daughter. The sons (as we understand it) were to take absolute interests on attaining twenty-five, while the daughter's share was settled on her for life with remainders over. No other property seems to have been settled. The policies became fully paid in 1914 and 1915, and the premiums payable in the meantime were borrowed by the trustees from the deceased. On the deceased's death, duty was claimed under section 2 (1) (*d*) on the

amount of the policy moneys less the amount borrowed from the deceased by the trustees in order to pay the premiums, and the claim was rejected by the Inner House, affirming the Lord Ordinary on the grounds that in the circumstances (*i*) "the property sought to be charged had not been provided by the deceased," and (*ii*) "there was no beneficial interest accruing or arising on the death of the deceased in the respect that the whole interest in the policies had passed to the beneficiaries twenty-four years before the truster's death, their interest having fully vested." The judgment of Lord Wark is extensively cited by Vaisey, J., in his judgment in the present case. We will not repeat that process, and need only say that, in our view, so far as the second of the above-stated grounds is concerned, *Lord Advocate* v. *Hamilton's Trustees* seems to us to be in direct conflict with *A. G.* v. *Dobree* and *A. G.* v. *Robinson.*

In this state of the authorities, and, particularly, in view of the express and unqualified approval accorded to *A.G.* v. *Robinson* by this court in *A.G.* v. *Murray*, it seems to us that, notwithstanding *Lord Advocate* v. *Hamilton's Trustees*, our duty is to apply to the present case the law as laid down in *A.G.* v. *Dobree* and *A.G.* v. *Robinson.* Those cases appear to us clearly to proceed on the principle that the terms of the ordinary policy of life assurance are in themselves such as to produce for the owner of the policy on the death of the person whose life is insured a beneficial interest then accruing or arising in the shape of an immediate right to receive the policy moneys in the sense in which the expression "beneficial interest accruing or arising.... on the death of the deceased" is used in section 2 (1) (*d*). Once this principle is accepted, it seems to us to dispose of the plaintiff's argument and to lead necessarily to the conclusion that if a policy has been provided by the deceased and has been so disposed of that on his death the moneys which then became payable under it are payable to or for the benefit of some other person or persons, whether that result is achieved through the medium of a trust created in the lifetime of the deceased or by means of an assignment in his lifetime of the legal as well as the beneficial interest in the policy to such other person or persons, all the conditions of liability under section 2 (1) (*d*) are satisfied. Thus, if *A* effects a policy of assurance on his life, assigns the whole legal and beneficial interest in it to *B*, and pays or provides for the payment of all premiums down to the date of his death, while *B* retains the policy down to the date of *A*'s death and receives the moneys then becoming payable under it, the result on the principle above stated must, as it seems to us, be that a beneficial interest in the shape of the policy moneys—or the right to immediate payment of the policy moneys—will have accrued or arisen to *B* on the death of *A* within the meaning of section 2 (1) (*d*), and that it can avail *B* nothing that the contract (*i.e.*, the policy) under which this beneficial interest so accrued or arose to him became his absolute property at the date of the assignment, or that he might, had he chosen, have sold or surrendered the policy at any time after that date.

In the present case, the effect of the Finance Act, 1939, section 30 (1), appears to be that, subject to the question of insufficiency, the plaintiff can be in no better position for the purposes of the claim under section 2 (1) (*d*) than he would have been in if the deceased had himself in fact provided for the payment of all the premiums on the policy from the date of the appointment of November 10, 1934, down to the date of his death, and, if the deceased had in fact done this, the claim would, so far as we can see, have been unanswerable on the footing that *A.G.* v. *Dobree* and *A.G.* v. *Robinson* are to be taken as correctly stating the effect of section 2 (1) (*d*) in relation to policies of life insurance.

We have not overlooked the fact that in all the cases to which we have referred the policies were the subject of settlements or trusts. In our view, as appears above, the principle on which *A.G.* v. *Dobree* and *A.G.* v. *Robinson* are based in no way depended on this circumstance. On that principle the beneficial interest is to be regarded as accruing or arising under and by virtue of the contract of insurance irrespective of any settlement or trust affecting the policy moneys. The only relevance of a settlement or trust appears to be that where the policy moneys pass under it to a person taking a life interest only, the beneficial interest accruing or arising on the death of the deceased and so attracting duty under section 2 (1) (*d*) is limited to the value of that life interest."

This decision of the Court of Appeal was reversed on appeal by the House of Lords. See the report of the House of Lords' decision given under section 14.

Worked-out example illustrating the meaning of the Proviso to sub-section (1).

Where 'Insufficiency' is proved :

Green page, 115.

X derived the following 'Property' from the deceased.

1. Rs. 1,000 received which he is not able to prove for what purpose it was given.
2. Rs. 3,000/- expenses incurred by deceased on the occasion of the marriage of *X*'s daughter.

A policy for Rs. 10,000/- was effected on the deceased by *X* at a cost of, say, Rs. 5,000/-. Since out of this Rs. 5,000/- *X* has received benefits to the extent of Rs. 4,000/- it is considered that the resources of *X* included property derived from the deceased to the extent of Rs. 4,000/-. But this amount is less than the cost paid and there is an insufficiency of Rs. 1,000/-. The proportion according to the Act is,

$$\frac{4,000}{5,000} \times 10,000 = 8,000$$

estate duty is payable on this amount.

Re J. Bibby and Sons, Ltd., Pensions Trust Deed. Davis v. *Inland Revenue Commissioners* [(1952) 2 All E.R. 483]

The plaintiff's husband had been an employee of J. Bibby & Sons from 1898 until his death in 1942. In 1924 the company adopted a pension scheme. It was not a contributory scheme which called for any kind of assent by any employee or any kind of payment by any employee either new or old. The widow became the recipient of the pension from the death of the husband. The Crown claimed estate duty under section 2 (1) (*d*) of the Finance Act, 1894. Harman, J., observed: "when I read the deed (of the pension scheme of the company) without travelling outside it and looking at the fact, for instance, that everybody knows that a good employer will not see the widow of his faithful employee left in the street with nothing, I can only come to the conclusion that this is a purely discretionary trust deed. It is true it is a trust, but it is a trust under which, so far as any employee is concerned, it seems to me the trustees have an absolute discretion either to give or to withhold a pension according to their views as to the desirability of paying it. They are not bound, I think, to give any reason, nor bound to do anything but honestly consider the merits of the plaintiff's case. It is true that the plaintiff, perhaps by herself or it may be, in a representative action, might come to the court

for this much assistance, that she could prevent the trustees from embezzling the fund or paying it back to the company and thereby defeating what is called the main object of the deed.... Every person wanting a share in this fund must submit himself or herself to the judgment of the trustees, and if there was a threatened diversion of the money so that the trustees could not perform their part of that function I conceive the court of chancery might protect the fund, or might even administer it by way of scheme, but it would still remain *vis-a-vis* any one widow or any one ex-employee or child of an ex-employee completely discretionary in the trustees either to withhold or to give any moneys at all. If that is right, it does not seem to me that this is property in the sense of the Finance Act, 1894, section 2, nor is it, I think, in the sense I must look at it in this case, a beneficial interest arising. In *Re Miller's Agreement* [(1947) 2 All E.R. 78], Wynn-Parry, J., had to deal with a case of three daughters of a deceased man who were in receipt or might be in receipt of annuities for their lives under covenants made by the deceased's partners with him. There was no trust in that case, and, therefore it is not quite the same as this case. Wynn-Parry, J., deals with this point about beneficial interest and says [(1947) 2 All E.R. 80] :

"Did any beneficial interest, within the meaning of that phrase, as used in the section, accrue to the plaintiffs on the death of Mr. Noad ? In my view, the word "interest" in the sub-section means such an interest in property as would be protected in a court of law or equity." He says that the interests of the daughters was not such an interest. It was argued before me that because, it may be, the court would interfere to protect this fund against an embezzler, therefore the plaintiff has an interest which would be protected in a court of equity and must come within the section. I think that is not right. I think any one person has himself or herself as an individual no rights at all although all together they have rights in the fund which may not be diverted from one purpose to another. They have a right to be considered as an object of the trustees' bounty. That is not a species of property which in my judgment, is something which the Act can be said to deal with. Accordingly in my judgment, this is not a case which falls within the Finance Act, 1894, section 2 (1) (*d*).

I would add, if it be necessary, that, in my judgment, this annuity, if it be an annuity and if the interest of the plaintiff be a beneficial one, is not an annuity provided or purchased by the deceased. Certainly it is not purchased, because he did nothing to purchase it. He made no bargain, and he did not come into the company's employment under the promise, express or implied, of a pension. He had, as I say, satisfied all the conditions of the pension deed before the deed was ever in existence, and there is no evidence that he ever changed his position thereafter or stayed longer, or did more work or got less pay because of the existence of the deed. It is said, however, that he provided the pension because he was, as I say, the *sine qua non* of its payment. That does not seem to me to be enough. It seems to me that the person who provided it was the company. They put up all the money and through their agents, the trustees, might or might not distribute it to certain persons who were the objects of the company's bounty. Therefore, I hold also that the deceased did not provide the pension.

Re Brassey's Deed Trusts. Coutts and Co. v. *Inland Revenue Commrs.*
[(1951) 2 All E.R. 353]

The Court of Appeal in this case considered the cases of *Attorney-General* v. *Lloyds Bank Ltd.* (1935 A.C. 382), *Re Hodson's Settlement* [(1939)

1 All E.R. 196] and *Westminster Bank Ltd.* v. *Attorney-General* [(1939) 2 All E.R. 72] and applied to the facts of this case the decision given in the latter two cases.

The facts of this case briefly are :—

There were four policies of life assurance on the life of Captain Brassey issued by the Clerical Medical General Life Assurance Society. The total amount of the policies was £40,000 and the total premium payable in respect of those policies was £1,977 per annum. By an arrangement come to among Captain Brassey and his son Hugo and trustees, the latter were out of income of the investment named under the agreement to pay, as they fell due, the premiums in respect of the policies. Captain Brassey was excluded from all beneficial interest in the trust properties. The trustees were to purchase from Captain Brassey for a named sum the four policies on his life. Captain Brassey died in 1946 nearly more than 10 years since the arrangement referred to above. On the death of Captain Brassey the Crown claimed estate duty under section 2 (1) (*b*) of the Finance Act, 1894.

The case of *Attorney-General* v. *Lloyds Bank Ltd.*, was distinguished in this case on the ground that in this case there was no such identity of persons and interests as in that case.

Per Sir Raymond Evershed, M.R., "I now turn to what is the last point to which I would like to refer. As counsel for the trustees pointed out, both the Hodson case and the Westminster Bank case arose under section 1—*i.e.* in both cases the question was one of the passing of property, using that word in the sense in which Lord Parker defined it in the quotation from his speech to which I have referred. In this case it is one of notional passing. It is true that the particular language which we have to construe here appears in para (*b*) of section 2 (1) and there is no corresponding language in section 1, but, to my mind, that does not affect the result, namely that what Clauson, L.J. said in giving the judgments of the Court of Appeal in *Re Hodson's Settlement* and *Westminster Bank, Ltd.* v. *Attorney-General* is equally applicable when this para (*b*) had to be considered. It would, indeed, be curious if it were otherwise. Counsel quoted the reference in Lord Macnaghten's speech in the Cowley case to the effect that section 2 is designed, putting it broadly, to bring within the actual grasp of the Act cases which were within the spirit, though they fell outside the precise language of section 1. Consider for a moment such a case as is illustrated by the present case, but where there is not a specific sum to be laid aside each year in the way of accumulations, but the whole of the income less an annuity ; or take what is, perhaps a simpler example, the case where what is directed to be accumulated is not £X per annum out of the income, but a fraction of the total income, say, one-tenth out of a total income of, say, £1,000 per annum. In such a case as that it would appear to follow from the decision in the Westminster Bank case that a corresponding portion of the trust fund would pass. It would seem to me to be strange if, instead of providing that one-tenth of the income should be accumulated, one said that £100 a year, which is in effect the same thing, should be accumulated, the result would be that there would be neither an actual nor a notional passing under section 1 or section 2. In both types of case the effect of section 1 and section 2, I think, is to say that you must treat as "passing" the requisite portion of the fund, the income of which has been applied in that particular way of accumulation.

Reverting to the formula I have already used, a certain sum of income has been withdrawn in order to build up a fund for the benefit of those entitled in the future. It seems to me that when the general scheme of the Act is regarded there is no real basis for supposing that something which is regarded

as an interest for the purpose of determining whether there had been a passing or something which precisely corresponded to it, should not be regarded as 'an interest' within section 2 (1) (*b*) for the purposes of a notional passing. As I have already pointed out, in order that there may be a passing, quoting from Clauson, L.J., there must be a real change in the title to or the possession of the trust premises, the property passing. You achieve such a result if you say that before the relevant death there was an "interest" different from that which followed it, which former interest ceased at the death. If that is so, I find it impossible to say that rights which can be properly, and must be held in this court to be properly, described as an interest which ceases so as to give rise to a passing cannot be properly regarded as an interest within the meaning of the language of section 2 (1) (*b*). I find it impossible to say that the fact that Hodson's case and the Westminster Bank case are section 1 cases renders inapplicable and not binding on this court the conclusions which I think necessarily flow from the language which I have quoted, particularly in the Westminster Bank case, from the judgment of Clauson, L.J. ; for these reasons, I have come to the conclusion—I have felt compelled to come to the conclusion—that this appeal fails. However erratic, as has been apparent in this respect, may be the actual working of the terms of the Act, and however financially disastrous has proved to be the due performance of their duties by the trustees under the trust, I see no escape from holding that the duty claimed is properly exigible."

There was an appeal to the House of Lords against the decision of the Court of Appeal. It was pointed out by the House of Lords that on the death of Capt. Brassey, his son who was the tenant for life benefited to the extent of the premiums which ceased on the death of Capt. Brassey. It was not that benefit which the Crown sought to claim estate duty on. At Capt. Brassey's death, his son had no issue, but, Capt. Brassey had three daughters who would become entitled under the settlement if, as happened, nothing occurred to defeat their rights. The Crown claimed estate duty under the Finance Act, 1894, section 2 (1) (*d*) in respect of "slice" of the trust fund required to produce the income necessary to pay the premiums, it being contended that Brassey's three daughters had beneficial interest within section 2 (1) (*b*) in the sums paid as premiums which ceased on the cessation of the payment of the premiums on Brassey's death, and so the benefit to the sum arose by the cesser and their interest in the premiums.

The decision of the House of Lords is reported in [(1953) 1 All E.R. 418].

Per Lord Reid : "The Crown's case is based on the cesser of quite a different interest which the sisters are said to have had during Capt. Brassey's life. They are said to have had a "beneficial interest in possession" in the sums paid as premiums. The argument, as I understand it, is that on Capt. Brassey's death payment of premiums ceased, and, therefore, this interest ceased also: the benefit of Hugo Brassey arose because the premiums were no longer payable, and, therefore, arose by the cesser of the sisters' interest in the premiums. Counsel for the respondents, in his lucid argument for the Crown, made it clear that he was not concerned with the sisters' right ultimately to come into enjoyment of anything under the settlement. He was only concerned with their right during Capt. Brassey's life in relation to the money for the premiums, and he argued that this was a separate and independent right and that his case would have been just the same if Capt. Brassey had not exercised his testamentary power of appointment and the sisters had retained their rights in remainder under the settlement after Capt. Brassey's death. So the Crown's case depends on the right of tenants in remainder with regard to money for premiums being a separate and independent "interest"

within the meaning of section 2 (1) (*b*). The Act is an Act which applies to the United Kingdom, and the word "interest" is an ordinary word of the English language. So one ought not to give to the word a technical meaning peculiar to English or Scotch law unless there is some indication that such technical meaning is intended. I can find no such indication in this Act. The Act gives some assistance in determining what is meant by an "interest". Section 2 comes into operation if the property does not "pass" under section 1. So an "interest" is some right with regard to the property, *e.g.* an annuity payable out of the income from it, which can cease without the property passing. Then a benefit to someone must accrue or arise by the cesser of the interest. That would be satisfied if, by reason of the cesser of the annuity, the person who previously got the income from the property less the amount necessary to pay the annuity now gets the whole income. It was argued for the appellants that there cannot be an interest within the meaning of the sub-section unless the person who had the interest before the death was actually enjoying something which ceased to be payable to him on the death and thereafter went to benefit someone else. In the ordinary case that would be so, but I do not think that it is necessary in this case to decide whether that must be so in every case. One can imagine a case in which a sum out of the income from the property is being accumulated during the life of *A* so that the benefit of the accumulations will later go to *X*. It might not be difficult then to say that *X* had an interest ceasing on *A*'s death in the sums which were being accumulated. *X* would get the benefit of them ultimately and the longer *A* lived the more he would get. If that be so, it might be that, even if there were only a chance of *X* ever taking any benefit, *X* could still be regarded as having an interest. But the facts of this case are, to my mind, essentially different. In this case the real interest of the tenants in remainder was not in the premiums, but in the sums assured. Payment of the premiums was only a means to an end. The tenants in remainder lost nothing when the premiums ceased to be paid on the contrary they gained by the addition of £40,000 to the capital. I find it very difficult to see how a person's "interest" is in any real sense can cease unless by the cesser he loses something of actual or at least of potential value which he might have had if the deceased had lived longer. Whatever may have been the technical nature of the right of the tenants in remainder with regard to the premiums it was in substance only an ancillary right for the protection of their real interest which was to get in the £40,000. Once that interest required no further protection (because the money was paid) rights for its protection came to an end, but I cannot regard that as the cesser of an interest within the meaning of the Act. If this be right it is unnecessary to express any opinion about the decisions in *Re Hodson's Settlement* and *Westminster Bank Ltd.* v. *A.G.* In my judgment, this appeal should be allowed."

CHAPTER VIII

Special provisions relating to transfers to companies

Section 17. *Property transferred to a controlled company.*—(1) Where the deceased has made to a controlled company a transfer of any property (other than an interest limited to cease on his death or property which he transferred in a fiduciary capacity), and any benefits accruing to the deceased from the company accrued to him in the three years ending with his death, the assets of the company shall be deemed for the purposes of estate duty to be included in the property passing on his death to an extent determined in accordance with sub-section (2).

(2) The extent to which the assets of the company are to be deemed to be included as aforesaid shall be the proportion ascertained by comparing the aggregate amount of the benefits accruing to the deceased from the company in the last three accounting years with the aggregate amount of the net income of the company for the said years :

Provided that—

(*a*) where, in any of the said accounting years, the company sustained a loss, the amount of that loss shall be deducted in ascertaining the said aggregate net income of the company ;

(*b*) where the company came into existence in the last year but one, or in the last, of the said accounting years, the references in this sub-section to the said accounting years shall be construed as references to the last two, or, as the case may be, the last, of those years.

(3) The assets of the company which are deemed to be included in the property passing on the death of the deceased by virtue of this section shall include any assets thereof which have been disposed of or distributed by the company at any time between the beginning of the first of the accounting years aforesaid and the death of the deceased either—

(*a*) in or towards satisfaction of rights attaching to shares in or debentures of the company, or

(*b*) otherwise howsoever except as follows, that is to say, by way of sale for full consideration in money or money's worth received by the company for its own use and benefit, or in or towards discharge of taxes or rates or other liability imposed by or

under an enactment, or in or towards discharge of a fine or penalty or a liability for tort incurred without collusion with the injured party, including assets which have been so disposed of or distributed in a winding up, whether continuing at or completed before the death :

Provided that this sub-section shall not apply to assets disposed of or distributed by way of payments from which income-tax was deductible, or which were assessable to income-tax, of amounts not exceeding in the aggregate, as respects payments made in any accounting year or in the period between the end of the last accounting year and the death of the deceased, the amount of the income of the company for that year or period.

(4) (*i*) A controlled company is any company which at any relevant time, was or would, if these provisions had always been in force, have been deemed to be, under the control of not more than five persons and which is not a subsidiary company or a company in which the public are substantially interested.

Explanation.—For the purposes of this sub-section,—

(*a*) a company shall be deemed to be a subsidiary company if, by reason of the beneficial ownership of shares therein, the control of the company is in the hands of a company not being a company to which the provisions of this sub-section apply, or of two or more companies none of which is a company to which the aforesaid provisions apply ;

(*b*) a company shall be deemed to be a company in which the public are substantially interested if shares of the company (not being shares entitled to a fixed rate of dividend, whether with or without a further right to participate in profits) carrying not less than twenty-five per cent. of the voting power have been allotted unconditionally to, or acquired unconditionally by, and are at the end of the year or other period for which the accounts of the company have been made up beneficially held by the public (not including a company to which the provisions of this sub-section apply) and any such shares have, in the course of such year or other period, been the subject of dealings on a recognised stock exchange or are in fact freely transferable by the holders to other members of the public.

(*ii*) A company shall be deemed to be under the control of not more than five persons—

(*a*) if any five or fewer persons together exercise, or are able to exercise or are entitled to acquire, control, whether direct or indirect, over the company's affairs, and in particular, but without prejudice to the generality of the foregoing words, if any five or fewer persons together possess, or are entitled to acquire, the greater part of the share capital or voting power of the company ; or

(*b*) if any five or fewer persons together possess, or are entitled to acquire, either the greater part of the issued share capital of the company, or such part of that capital as would, if the whole of the income of the company were in fact distributed to the members, entitled them to receive the greater part of the amount so distributed ; or

(*c*) if,—

(i) on the assumption that the company is a company to which this sub-section applies ; or

(ii) on the assumption that the company and any other company or companies are companies to which the said sub-section applies,

more than one half of the income of the company (including any income which has been apportioned to it, or could on either of those assumptions be apportioned to it, for the purposes of the said sub-section) could be apportioned for those purposes among not more than five persons.

(*iii*) In determining whether a company is or is not under the control of not more than five persons, persons who are relatives of one another, persons who are nominees of any other persons together with that other person, persons in partnership, and persons interested in any shares or obligations of the company which are subject to any trust or are part of the estate of a deceased person, shall respectively be treated as a single person.

Explanation.—For the purpose of this clause,—

(*a*) the expression " relative " means a husband, wife, ancestor, lineal descendant, brother or sister ;

(*b*) a person shall be deemed to be the nominee of another person, if, whether directly or indirectly, he possesses on behalf of that other person, or may be required to exercise on the direction of or on behalf of that other person, any right or power which, by virtue of any of the provisions of this sub-section, is material in determining whether a company is

or is not to be deemed to be under the control of not more than five persons.

(*iv*) An investment company shall be deemed to be under the control of not more than five persons if any five or fewer persons would, if the company were wound up, be entitled as members or loan creditors of the company to receive more than half of the assets of the Company which would be available for distribution to members and loan creditors.

(*v*) Notwithstanding anything contained in clause (*i*), a company which is deemed for the purposes of that clause to be under the control of not more than five persons shall not be deemed to be a subsidiary company, unless it can be deemed to be under the control of not more than five persons only by including among the persons mentioned in sub-clauses (*a*), (*b*) or (*c*) of clause (*ii*) or in clause (*iv*) a company to which the provisions of the said clause (*i*) do not apply and which is not the nominee of any other person.

(*vi*) The expression "relevant time" in this sub-section means any time during the period ending with the death of the deceased and beginning at the date of the disposition, transfer or other transaction or even relevant for the purposes of this Act, or, if that disposition, transfer or other transaction or event was one of associated operations, at the date of the earliest of those operations.

(5) For the purposes of section 34 the deceased shall be deemed to have had an interest in the property deemed by virtue of this section to be included in the property passing on his death.

The most complicated provisions designed to check evasion of Estate Duty are those relating to transfer of property to companies, and enjoyment of benefits from them by the deceased. For all apparent purposes the transfer of property to a company is a transfer for money or money's worth paid to the transferor with the result that it no longer is the property of the transferor ; the company becomes the owner of the property; on the death of the transferor, there is *no passing of* this property so that Estate Duty is not leviable in respect of this property. The money or money's worth paid to the transferor may consist of shares in or debentures of the company or the company may have paid hard cash and the transferor with the cash so received may purchase shares in or debentures of the company. Even a more indirect way of purchase is conceivable.

The owner of property may transfer it to his wife or his children. The wife or children may form a company with the property received by them as capital of the company. The transferor may be allotted some shares carrying special dividend or voting rights during his life only. He may even take up debentures in the company and he may be made a governing director of the company, with excessive remuneration. He may retain power to reclaim capital or income in case of need. What passes on his death is only the shares and debentures and compared with the benefits he received during his life from the company the value of these shares and

debentures is trifling. In order to check evasion of Estate Duty through the machinery of company, in England certain provisions were enacted first by the Finance Act, 1930—sections 34 to 36 and section 38. These were found to be ineffective to stop leakage of revenue and in 1940 more stringent provisions were made. See sections 46 to 54, 56 to 59 and schedule 7 of the Finance Act, 1940.

There were further amendments by the Finance Act, 1944, sections 35 to 39 and by the Finance Act, 1946, section 47 and schedule 11, part I. Finance Act, 1950, further amended the provisions by sections 43 to 47 and schedule 7. Finance Act, 1952, still further amended these provisions by section 72. These various Acts are set out in the appendices to this book. The object of these various provisions is to collect Estate Duty from the assets of the company from which the benefits are derived. These provisions tax a proportion of the company's assets calculated by reference to the ratio of the deceased's benefits to the company's income.

According to section 17, three conditions only are necessary to be fulfilled for a claim to be made for Estate Duty.

(1) The company must be a controlled company.

(2) The deceased must at some time have made a transfer of property to company direct or indirect in other words the resources of the deceased by any disposition whatever must have passed into the assets of the company.

(3) Benefits must have accrued to the deceased in the three years ending with his death.

Two exceptions are enacted in the section itself. One is an interest limited to cease on the death of the deceased and the second is property transferred in a fiduciary capacity.

What is a controlled company is stated in sub-section (4) (*i*) of section 17. This is based on section 58 (1) of the Finance Act, 1940. Broadly speaking a subsidiary company and a public company are excluded. Company is defined in section 2 (3) of the Act. According to this definition company includes any body corporate wheresoever incorporated.

Thus foreign companies are brought within the section. It is noteworthy that two assumptions are made by the section :

(1) that the provisions of the section apply to all companies wherever incorporated, and

(2) that the definition of a controlled company given in the section may be applied to all companies wherever they have been formed as if that definition existed at all times and always. One has only to see whether any given company irrespective of the date of its coming into existence is a controlled company applying the provisions of section 17.

The expression " relevant time " means any time during the period ending with the death of the deceased and beginning at the date of the disposition, transfer of other transaction or even relevant for the purposes of this Act, or, if that disposition, transfer or other transaction or event was one of associated operations at the date of the earliest of those operations.

Clauses (*a*) and (*b*) to the Explanation of sub-section (4) are based on section 31 (3) of the Finance Act, 1927. Sub-section (4) (*ii*) is based on section 19 of the Finance Act, 1936, section 14 (1) of the Finance Act, 1937, and sections 13 (1) and 15 of the Finance Act, 1939.

Investment companies are defined by the Finance Act, 1936, section 20 (1). Section 17 (*iv*) is based on section 20 (3) of the Finance Act, 1936.

Clauses (*a*) and (*b*) to the Explanation to (*iii*) of sub-section (4) are based on section 19 (2) of the Finance Act, 1936. Loan Creditors are defined in section 20 (7) of the Finance Act, 1936. "Debenture" is defined in section 59 of the Finance Act, 1940, as follows :—

(*a*) for any money borrowed by the company, otherwise than by way of temporary loan made in the ordinary course of a banking business ;

(*b*) for any transfer of capital assets made to the company by any person, unless the obligation is one resulting from a dealing with a person who transferred such assets to the company in, and on terms consistent with, the ordinary course of a business carried on by him ;

(*c*) without consideration, or for consideration the value of which to the company at the time when the debt was incurred was substantially less than the value at that time of the debt (including any premium thereon) ; or

(*d*) where the debt was of such a nature that it would, in the ordinary course of business and apart from some special arrangement, have carried interest, if the debt did not carry interest or carried interest at a rate which was either unreasonably high or unreasonably low.

In section 17 only the three years ending with the death of the deceased are mentioned. In England the corresponding period is 5 years, the Finance Act, 1946, relevant schedule substituting '5' for '3'. According to sub-section (2) the aggregate amount of benefits accruing to the deceased from the company from the last three accounting years is to be the numerator of the fraction. The aggregate amount of the net income of the company for the said years is to be the denominator of the fraction. The 'assets' of the company is the multiplicand. Thus, is to be ascertained the portion of the assets which will be dutiable. It is further provided that any loss the company sustains in any of the said accounting years is a deductible item in the aggregate of the net income of the company. If the company came into existence only in any one of the three years preceding the death of the deceased, then the calculation is to be made on the basis of the period during which the company worked. If, at any time during the three accounting years, any assets of the company have been disposed of or distributed notwithstanding the said disposal or distribution they shall be deemed to be included in the assets of the company. The disposal or distribution is subject to two exceptions as mentioned in clause (*b*) of sub-section (3). (1) A sale for full consideration in money or money's worth received by the company for its own use or benefit ; (2) in or towards discharge of taxes or rates or other liabilities imposed by or under an enactment or in or towards discharge of a fine or penalty, or a liability for tort incurred without collusion with the injured party. Assets which have been disposed of or distributed in a winding up whether continuing at or completing before the death will be taken into account. The proviso to sub-section (3) enacts that assets disposed of or distributed by way of payments from which income-tax was deductible or which were assessable to income-tax, of amounts not exceeding in the aggregate, as respects payments made in any accounting year or in the period between the end of the last accounting year and the death of the deceased the amount of the income of the company for that year or period. To satisfy the requirements of the definition of the controlled company, there may be hundreds of shareholders but if any 5 or fewer persons (1) exercise, (2) or able to exercise, (3) or are entitled to acquire control whether direct or indirect

over the company's affairs, (4) if any 5 or fewer persons possess or entitled to acquire a greater part of the share capital or voting power of the company, (5) if any 5 or fewer persons together possess or entitled to acquire either the greater part of the issued share capital of the company or such part of that capital as would if the whole of the income of the company were in fact distributed to members entitled them to receive the greater part of the amount so distributed, (6) if any 5 or fewer persons could be apportioned more than one half of the income of the company, it is enough. Sub-section 4 (2) prescribes one side test for determining whether a company is a controlled company or not. Sub-section 4 (3) prescribes another side test, (1) persons who are relatives of one another, (2) persons who are nominees of any other persons together with those other persons, (3) persons in partnership, (4) persons interested in any shares or obligations of the company which are subject to any trust or are part of the estate of the deceased person, shall respectively be treated as a single person. The explanation to this clause says " relative " means the husband, wife, ancestor, lineal descendant, brother or sister. A person shall be deemed to be the nominee of another person if whether directly or indirectly he possesses on behalf of that other person or may be required to exercise on the direction of or on behalf of that other person any right or power. An investment company, *i.e.*, a company which receives its income only from investments made by it shall be deemed to be also a controlled company if any 5 or fewer persons would if the company were wound up be entitled as members or loan creditors of the company to receive more than half the assets of the company which would be available for distribution to members and loan creditors. Relatives, partners, *ces tui qui* trust are treated respectively as a single person. In the case of nominee holding the beneficial interest and not the nominees' interest are taken into account. Although " property " is not defined expressly, it is submitted that it will comprise any rights capable of ownership whether immovable or movable, corporeal or incorporeal inclusive of property in foreign countries. Cash payments are not regarded by judicial authority as transfer of property (see *A. G.* v. *Hon. Lionel Michael St. Aubyn*).

By the Finance Act, 1952, section 72 (1) and (2), the expressions " disposition " and " value " respectively as used in Part IV of the Finance Act, 1940, (which includes section 46 and its connected sections) are to include in relation to money, " payment " and " amount." These provisions were enacted to get rid of the House of Lords' decision in this case in this respect.

Inland Revenue Commissioners v. *L. B. (Holdings) Ltd. (in liquidation)*
[(1946) 1 All E.R. 598]

Per Lord Uthwatt, " My Lords, the point at issue is stated by the Board of Referees in a form which raises the question whether they were correct in their conclusion of law that the phrase " able to secure " as used in the Finance Act, 1939, section 15, means " able to secure by lawful means." That phrase appears many times in the section but always, either expressly or impliedly, as part of the wider phrase " able to secure that income or assets will be applied for his benefit," but wherever it appears there is by virtue of the " deeming part " of sub-section (3), included in its ambit a particular meaning. The real question that arises—and it is this question which is raised by the case in a shortened form—is not whether the words " able to secure " are subject to the qualification suggested, but whether in construing the sentence "a person shall be deemed to be able to secure that income or assets will be applied for his benefit if he is able to do so by any means whatsoever "—in which necessarily the words "to do so" mean "able to secure

that income or assets will be applied for his benefit"—there is applied the limitation that the means must be lawful. The gloss can be put only upon the phrase " by any means whatsoever " not upon the words " able to secure." But the question is the construction of the sentence as a whole, not the interpretation of a particular phrase contained in it. . . .

I turn to the question of construction. The language of the sentence is unambiguous ; the grammatical meaning is clear. Ability of itself involves means, and the emphasis is on the existence of the ability whatever the means by which it is exercised. If there is to be a departure from the grammatical meaning—and it is for this that the respondents to the appeal contend—a compelling reason must be shown. The applicable rule of construction which has been stated in many cases—see, *e.g.*, *Grey* v. *Pearson*, [(1857) 6 H.L. Cas. 61]; *Becke* v. *Smith*, [(1836) 2 M. and W. 191]; *Duke of Buccleuch*, [(1889) 15 P.D. 86]—amounts in substance to this, that a departure from grammatical construction is justifiable only when that construction would be repugnant to the intention of the Act or would lead to some manifest absurdity or to some inconsistency. Inconsistency is not here in question and the only question therefore is whether the grammatical construction is contrary to the intention of the Act or in itself absurd. Is that true in this case ? The two matters may be considered together. . . .

The general meaning of the words " secure an application for his benefit " embodied in the test is clear enough. Due regard must be paid to the words " secure " and " benefit," but no technical meaning is attached to either word. Exact directions designed to help those called on to apply the test cannot I think be stated and examples are apt to be misleading. To my mind what is required, and all that is required, is that the Special Commissioners, taking into account the whole position in which the praepositus is found embedded, should make a rational estimate of the consequences that might flow from some supposed course of conduct open to him had he embarked upon it and should form a view on the question whether in the result the praepositus could or could not have secured an application of assets or income for his benefit. Can he rationally be said to be able to secure an application of income or assets for his benefit ? This is the test. If that be so there does not appear to be any reason for excluding any unlawful means from consideration. Where resort to unlawful means is envisaged one is faced with the possibility that the praepositus may in the case supposed be able to bring about an application of assets or income to his use, without thereby " securing " an application for his " benefit." There is always the possibility—but never the certainty—of intervention by those whose rights have been infringed. Both the probability of appropriate action by them and the probable results of that action would have to be considered. After a consideration of these matters a view can be formed on the question at issue. . . .

In my view there is nothing absurd in including unlawful means among the means referred to in the section. The contrary is I think the case.

A consideration of the effect of the test reinforces this conclusion. Inclusion in the case as a result of the application by the Commissioners of the test does nothing save give rise to a discretionary power to be exercised judicially to apportion to an included person such part of the income of the company as appears to them appropriate. That being the only result of inclusion, why should not the net be widely cast ?

One other consideration may be mentioned. In the realm of tax avoidance ingenuity need not deny, and in practice does not deny, itself any extravagance. The thoughtful praepositus, if faced by the section with the

necessity of rendering any exercise of his ability unlawful, might readily secure the inclusion in the articles of association of the company a provision that no assets or income of the company shall be applied for his benefit by any means whatsoever, whatever that may mean in the Act of 1939, and set up trusts applicable to the shares in favour of a class no member of which could be ascertained in his lifetime. Surely it was not the intention of the legislature in its repeated efforts to secure the avoidance of sur-tax to leave such a door open.

For these reasons I am of the opinion that there is not implicit in the section, any such limitation as is suggested. . . .

First, in my opinion, neither precariousness nor lack of permanence of enjoyment or of substantial permanence of enjoyment necessarily excludes the inference that a benefit could be secured. Those features may have to be considered in particular cases—whether the means supposed be lawful or unlawful—but only as part of the general question whether (the other qualities of a " benefit " being present—it was possible to obtain something worth having.

Second, the directions relating to acquiescence or condonation are open to criticism. The directions require acquiescence or condonation in every case where unlawful means are envisaged, if ability to secure the application of income or assets for the benefit of the praepositus is to be established. It is a prerequisite of effective acquiescence or effective condonation that there should be knowledge of the relevant facts. In some particular cases there may well be barriers to such knowledge being acquired in due time or in time enough to exclude the securing of a benefit. I give an example. Excessive remuneration to a governing director might in the case of some such company as is present here (it holds all the shares in a subsidiary company) be voted to a governing director in general meeting and passed through the profit and loss account. The articles of association might lawfully provide that members were to be entitled only to obtain copies of the balance sheet and the auditor's report. The auditors would not be concerned to mention the matter in their report, because for the company's purposes, the matter is in order. The governing director in the supposed company is, I assume the sole trustee under a settlement of all the shares. How and when would the beneficiaries find out the supposed action ? There is no one who is likely to spread abroad the supposed facts. What would lead them to think that there was any occasion for suspicion ? Diminution in the divisible profits of the subsidiary might account for the drop in the trust income. Suspicion without due ground is not likely where a benevolent parent is concerned. But if the beneficiary does suspect, how can he find out ? The governing director has no relevant facts of the company in his possession as trustee and it is only documents he holds as trustee that the beneficiaries as *ces tuis que trustent* have a right to see. In such a case, it cannot be properly said that the tribunal is precluded from drawing an inference that the governing director is able to secure an application of income or assets for his benefit, though there is not present the probability of either acquiescence or condonation. I do not accept the argument that in such a case the " income " would not be applied for the benefit of the praepositus. " Income " in the section means in my view what it says and does not mean the balance on the profit and loss account. . . .

I desire to make two criticisms on para 31 of the case stated. First, in applying the ability test it is, as I have said, the possibilities open to a person in Brady's position that have to be envisaged and the supposed consequences of the use of one of the means open to him. Anything actually

done by Brady and the consequences of his acts are, at this stage, irrelevant except in so far as they inform the mind as to a possibility and its probable consequences. On this basis the facts stated in para 29 (*a*) and the second sentence of para 29 (*d*) are irrelevant in drawing the inference stated in para 31. I may observe that head (*a*) of the direction given by the Court of Appeal may be thought by some to be open to a similar comment. Second, the wording of para 29 (*d*) raises in my mind a doubt whether the Board of Referees had sufficiently in mind that the ability test does not contain any provision as to quantum except such as is implicit in the word " benefit."

I would therefore allow the appeal, and dismiss the cross appeal."

Inland Revenue Commissioners v. *J. Bibby and Sons, Ltd.* [(1945) 1 All E.R. 667]

The House of Lords in this case applied the decision in *British American Tobacco Co.* v. *Inland Revenue Commissioners*, (1943) A.C. 335. The special commissioners as well as Macnaghten, J., held that shares held by the Directors as trustees must be excluded in order to ascertain whether the directors of the company have a " controlling interest " therein. The Court of Appeal reversing the decision of Macnaghten, J., held that they should be taken into account. The House of Lords affirmed the decision of the Court of Appeal. *Per* Lord Russell of Killowen " when the section speaks of directors having a controlling interest in a company, what it is immediately concerned with in using the words "controlling interest" is not the extent to which the individuals are beneficially interested in the profits of the company as a going concern or in the surplus assets in a winding up, but the extent to which they have vested in them the power of controlling by votes the decisions which bind the company in the shape of resolutions passed by the shareholders in general meeting. In other words, the test which is to exclude a company's business from sub-section (9) (*a*) and include it in 9 (*b*), is the voting power of its directors, not the beneficial interest in the company. For the purpose of such a test the fact that a vote-carrying share is vested in a director as trustee is immaterial. The power is there, and though it be exercised in breach of trust, or even in breach of an injunction, the vote would be validly cast *vis-a-vis* the company, and the resolution until rescinded would be binding on it. The contention that upon the wording of section 13, the interest must be confined to beneficial interests appears to me to be but a repetition of the argument which was rejected by this House in the case of *British American Tobacco Co.* v. *C.I.R.*, (1943) A.C. 335, in relation to National Defence Contribution and the Finance Act, 1937. . . . The words " controlling interest " mean " controlling voting power " : that is the interest in view, not beneficial interest. . . . I agree with the Court of Appeal in the view that there is no halfway house between a construction which restricts the controlling interest to shares which are in the absolute beneficial ownership of the trustees and a construction which includes all shares of which the directors are registered holders. It is true that the Court of Appeal except the case of what they describe as a bare trustee, but express a view that the control would reside in the beneficial owner of the shares. The case envisaged is no doubt the case of the director who puts shares in the name of a nominee, taking probably a blank transfer executed by the nominee. I prefer to express no definite opinion in relation to this question, but to keep it as an open question to be debated when the necessity for a decision thereon in fact arises."

Per Lord Simonds : " Those who by their votes can control the company do not the less control it because they may themselves be amenable to some external control. Theirs is the control, though in the exercise of it they may be guilty of some breach of obligation whether of conscience or

of law. It is impossible (an impossibility long recognized in company law) to enter into an investigation whether the registered holder of a share is to any and what extent the beneficial owner.... That the meaning which I have given to the words "controlling interest" is their natural and proper meaning I have no doubt. But the great part of the argument on behalf of the Crown has been directed to showing that to some extent in regard to this very provision, but more particularly in regard to other provisions of the same Act relating to excess profits tax, the purpose of the Act will by defeated unless the beneficial interest alone is regarded and the fiduciare interest disregarded. This is a cogent argument, if two conditions are satisfied, first, that the words in dispute fairly admit of an alternative construction, and second, that the purpose of the Act can be so clearly seen that one construction will serve it and the other defeat it. Neither of these conditions is in my opinion satisfied. I cannot ascribe to the words "controlling interest" a meaning which would impose alike on the tax-payer and the tax-collector the duty of searching out the beneficial interest behind the veil of legal forms. For it is to be observed that, if this argument is to be effective, it is not sufficient to say that the controlling interest lies not with the legal owner, but with the beneficial owner; the next step is to determine who, amidst all the complexities of successive interests, discretionary interests, mortgage and other interests, is for this purpose to be regarded as the beneficial owner. I must decline to admit an alternative construction which, departing from the plain and simple meaning of familiar words, requires such an unravelling. Nor is it so clear to me that, at least in respect of the provision now under review, the construction that I adopt is not consonant with what appears to be the purpose of the Act."

In (1867-68) 5 Eq. 519, *Re Londo Indian Rubber Co.* certain principles regarding distribution of assets were laid down.

Upon the formation of a company for working certain patents, the *A* shareholders contributed all the capital, and the *B* shareholders received paid-up shares as a consideration for the patents and the premises on which they were worked. The *A* shareholders were to receive out of the profits the whole amount of their capital with interest at £7, 10 per cent before the *B* shareholders could participate in the profits.

Held upon the winding up of the company, no profits having been realised, that there being a provision only for preferential dividend, and no provision as to the division of capital upon breaking up, that the surplus assets must be distributed between both classes of shareholders *pro rata* without reference to their rights in respect of dividend.

Henry v. *G. N. Rly. Co.*, decided that preference shareholders were entitled to receive the full amount of their dividends due upon former half years as well as the current half year before any payment could be made in respect of dividends on the ordinary stock. In that case a sum of money was raised under an Act of Parliament in order to pay off certain fictitious stock which had been fraudulently issued, and the surplus was to be apportioned between the shareholders according to their priority. The principle of that case is equally applicable to this, and in *Corry* v. *Londonderry* and *Enniskillen Railway Co.*, (29 Beav. 263) it was held that preference shareholders were entitled to arrears of dividends out of future profits, and that such right must prevail against shareholders over whom they have been preferred. So also in *Sturge* v. *Eastern Union Railway Co.*, 7 D.M. and G. 158 preference shareholders were held to be entitled to payment out of money that had been borrowed, on the ground that they were a guaranteed class and had preferential rights beyond the mere payment of dividend.

Per Sir R. Malins, V.C. : " I wish it to be considered that I decide the case upon this principle : that where there is a provision for preferential dividend, but no provision for the division of capital, upon the breaking up of the concern any surplus must be distributed amongst the shareholders according to their capital without reference to their rights in respect of dividend."

Potts Executors v. *Inland Revenue Commissioners*, [(1949) 2 K.B. 706]. In this case

Finance Act, 1938, sections 40 and 41, sub-sections (1), (3), (5) and sub-section (4) (*e*) were construed. The phrase " paid to the settler " in sub-section (3) included payments to him both direct and indirect, that the sums in question were paid by way of loan directly or indirectly to the settler and were within the scope of section 40, sub-section (3) of the Finance Act, 1938. The facts of the case are shortly these : In March, 1939, Mr. Potts executed a settlement in favour of his infant grandchild in the sum of £150,000. The trustees of the settlement were a Company known as Carron Trust Ltd., a Company wholly owned by the settler. Shortly after the date of the settlement, namely April 25, 1939, the trustees applied the settled moneys in the purchase from Mr. Potts of the whole of the issued share capital save one share in the Company G. W. Potts Ltd. The settler was at the time the sole governing Director of the Company, and continued in that capacity at all relevant dates. After the date of the purchase, it was conceded that the Company was a body corporate, connected with the settlements within the meaning of sub-section (3) of section 40 of the Act of 1938. By clause 3 (*c*) of its memorandum of association, the Company was given power in what is now a common form to make advances to Directors and others. *Per* Evershed, M.R.: " The real question on the appeal is, of course, whether on the facts as I have stated them, the case is or is not caught by the provisions of section 40 of the Act of 1938. If it is, the financial result to Mr. Potts' estate is no doubt severe. The claim may or may not have surprised the executors of Mr. Potts, but, as Singleton, J., (as he then was) pointed out, we are not concerned with considerations of that kind. I follow the learned Judge in citing and bearing in mind the observations of Lord Cairns in *Partington* v. *A. G.*, [(1869) L.R. 4 H.L. 100, 122] : " As I understand the principle of all fiscal legislation, it is this : If the person sought to be taxed comes within the letter of the law he must be taxed, however great the hardship may appear to the judicial mind to be. On the other hand, if the Crown seeking to recover the tax, cannot bring the subject within the letter of the law, the subject is free, however, apparently within the spirit of the law the case might otherwise appear to be. In other words, if they be admissible, in any statute, what is called an equitable construction, certainly such a construction is not admissible in a taxing statute, where you can simply adhere to the words of the statute." It is also not to be forgotten, as has been said in this court before, that if the complexity and artificiality of taxing statutes are sometimes regarded as matters of comment and criticism, the blame should be laid not so much on Parliament and the Parliamentary draftsman as on those private persons who have employed their ingenuity in devising elaborate schemes for avoiding taxes which would otherwise fall on them. " I think it is true to say, that direct and indirect payments are both species of the genus " " payments to the settler." In other words, the phrase " paid to the settler " is one capable in itself of covering payments of both kinds. . . . " In my judgment, it is in the present case legitimate, in construing section 40, sub-section (3), to have regard to the whole of part 4 of the Act, including the schedule to which I have referred. So to do does not seem to me to invoke any " equitable

construction " within the meaning of Lord Cairns' words in the passage I have quoted in his speech. In my view, taking account of all the considerations to which I have alluded, the phrase " paid to the settler " in sub-section (3) must, on a fair interpretation, include payments to him both direct and indirect.... " In the ordinary case of Banker and Customer, where the former gives credit to the latter by meeting the cheques from time to time drawn by the customer on the banker, the resulting overdraft is always regarded as money lent by the banker to the customer, see, for example, the language of Lord Cozens Hardy, M.R., in the case of *Cuthbert* v. *Robarts, Lubbock and Co.*, (1909) 2 Ch. 226, 233, where he says if a customer draws a cheque for a sum in excess of the amount standing to the credit of his current account, it is really a request for a loan and if the cheque is honoured, the customer has borrowed money. In the same way, the various payments made by the Company throughout the period in question ought fairly to be regarded as money paid directly or indirectly by way of loan to Mr. Potts within the meaning of the sub-section." Evershed, M.R., expressed further in this case the opinion on the scope of para 2 of the definition of sub-section (5) (*a*) although the decision already given did not call for the expression of the opinion. He stated that the formula " full consideration for money or money's worth " is common enough and is generally used to exclude for example the marriage consideration. The view of the Master of the Rolls was that the settler's promise or obligation to repay in full the sums paid on his behalf constituted full consideration in money or money's worth within the meaning of the paragraph in question.

Examples and Illustrations. (Worked out with reference to the provisions of the section and the rules framed under section 20.)

Property Transferred to Controlled Companies :

In the case of companies which at any relevant time was under the control of not more than 5 persons and to which the deceased made a transfer of property and if certain benefits as defined in the rules accrued to him during the 3 years ending with his death the duty extends to a fraction of the company's net assets at the date of death represented by—

$$\frac{\text{Aggregate benefit to the deceased for 3 accounting years :}}{\text{Aggregate net income of the company for the above three years :}} \times \text{Nett Assets.}$$

The numerator of this fraction will consist of the following among others:

Periodical sums paid or credited to the deceased. Such payments will also include a dividend or interest remuneration (exclusive of lump sum payment). To save hardship and injustice reasonable remuneration for services rendered as the holder of an office under company are not considered ' benefits.'

Benefits also include notional benefits arising out of enjoyment of property in specie, certain payments that he could have received but did not, or the application of which he could have controlled, and sums that are applied or enure for his benefit.

Denominator of the fraction : (Net income of the company)

Net income is to be ascertained on the same basis as for Income-tax. But the following adjustments are not allowed :

1. Losses brought forward from previous years.
2. Unabsorbed Depreciation.

In addition a deduction can be made of any sum that could have been deducted for income-tax purposes if the Company's income had been computed by reference to the assessable income and not the actual income. This means that if a sum was available for the deduction in computing the profit of the preceding period, but was not available for the accounting period in question, the sum can nevertheless be deducted.

Net Assets : It is important to note that it is the gross assets that are to be valued. Debts and encumbrances affecting the assets of the company are not to be deducted. Ordinary liabilities are to be allowed. In addition liabilities which have not matured at the date of the death may also be estimated and taken into account. Liability for income-tax is not allowed because it was decided that the prospective liability in this regard has no present existence at the death.

An example of immature liability is a debt payable say under hire purchase system in instalments. The value of the outstanding instalments would have to be ascertained, as at the date of the death, by the process of discounting.

The method of valuing the assets is fundamentally the same as in section 36. The assets are to include goodwill also.

Section 17 : Slice :

The deceased transferred to a company property worth Rs. 1,00,000 and was allotted 10,000 A class shares of Re. 1 and balance of 90,000 B Class shares of Re. 1 to others.

If the dividend received during 3 years preceding his death } 75,000
Net income of the company during the same period 1,10,000
Net asset of the company at the time of death 2,20,000

$$\text{The Slice} = \frac{75,000}{1,10,000} \times 2,20,000 = 1,50,000.$$

Example : Illustrating the limitation on account of Rule 11.

In the above example the slice exceeds the value of the property which brings the operation of the rule into effect.

The first step is to arrive at the average rate which is done as under :

The total income for the 3 years is Rs. 1,10,000 and the total net asset is Rs. 2,20,000.

$$\text{The average rate is } \frac{1}{3\ (\text{year})} \times \frac{1,10,000\ (\text{Total net income})}{2,20,000\ (\text{Net asset})} = \frac{1}{6}$$

If it is supposed that the property was transferred 6 years back, the benefit at this rate on the value of the property is

$$\frac{1}{6} \times 6 \times 1,00,000 = 1,00,000.$$

Let us assume that the other benefit by way of dividend during the period is Rs. 75,000.

The excess is Rs. 1,00,000 − 75,000 =	25,000
The value of the property =	1,00,000
	1,25,000

as this is less than the " Slice " the duty is limited to this amount.

Rule 11 (3) :

The deceased had control of a company within 3 years preceding his death, with a net value of assets of Rs. 2,00,000 at the time of his death.

During this period, he was in receipt of dividend of Rs. 40,000. The total net income of the company for three years is Rs. 80,000. The proportion referred to is

$$\frac{40,000}{80,000} \times 2,00,000 = 1,00,000.$$

This has to be added to the principal of the Estate under section 17. If, in addition the deceased had 50% of the shares in this company, shares to the value of 1,00,000 would have to be brought into account under Rule 15. Here the proportion is equal to the proportion arrived at on the basis of the benefit received, duty is payable only on the value of the shares under Rule 11 (3) (*a*).

Rule 11 (3) (*b*) may be illustrated as follows :

The total dividend received during the 3 years is 50,000
Net income 80,000

Proposition : $\frac{50,000}{80,000} \times$ Net assets $2,00,000 = 1,25,000.$

Here the slice is greater than the value of shares by 25,000.

Estate duty is payable on 1,25,000 — 1,00,000 = 25,000.

Estate duty is also payable on the shares.

Distributed assets :

It is possible that the deceased having control, might arrange for a substantial distribution of the assets in expectation of death and thus reduce the " Slice." Section 17, which as already noted, bears a relation to the net assets of the company at the date of his death. It is in order to restrict avoidance of this nature, Rule 12 has been framed. The distribution might take the nature of sale of the assets at a nominal figure, the redemption of debentures or preference shares. A distribution by way of sale for full consideration in money or money's worth is not covered by this section provided the money or money's worth was used by the company for its own benefit.

In such a distribution, the net income of the company is in addition to include the proportionate income calculated at the average rate in the total distribution assets.

Let it be assumed that the deceased transferred property worth 1,00,000 and was also the owner of 21,000 worth of 4% debentures in the company and that these were arranged to be paid to the deceased at the end of 1st accounting year. This involves the question of a distribution of assets to the extent of Rs. 21,000. It becomes necessary to recalculate the total income of the company disregarding the fact of distribution of the assets ; and also the total benefit received by the deceased.

1st year's net income of the company, say, 30,000,

2nd year's net income of the company, say, 15,000,

If the assets had not been distributed, the income will be a figure obtained by multiplying the assets distributed by the average rate.

Similarly for the 3rd year, when the company's net income before adjustment for the distribution which is assumed at 15,000.

Total income is 30,000 and $[(15,000 + a\ (21,000)]$ for three years $+ 15,000 \times a\ (21,000)$

$$= 30,000 + 30,000 + 42,000a$$
$$= 60,000 - 42,000a - \text{I}$$

Average for 1 year : $1/3 \quad (60,000 + 42,000a) = 20,000 + 14,000a$. If the total net asset of the company is assumed at the time of the death to be 1,93,000.

Since this does not include the sum of Rs. 21,000 distributed at the end of 1st accounting year, the total asset for the purpose of arriving at rate is Rs. 1,93,000 + 21,000 = Rs. 2,14,000.

The average income of the company is Rs. $20,000 + 14,000a$

Total asset is Rs. 2,14,000

The average rate is $\frac{20,000 + 14,000a}{2,14,000} = \frac{1}{10}$ or 10%.

Adopting this rate, at step I the aggregate income for the three years = Rs. $60,000 + 42,000 \times 1/10 = 64,200$.

The total amount of benefits received by the deceased will be made up as under :

1. Total dividend received, say.....	21,000	
2. Debenture interest for one year at 4%.....	840	
3. Notional benefit based on the value of debenture redeemed at the average rate of 10% for 2 years $2 \times \frac{1}{10} \times 21,000$	4,200	
		26,040

Section 17 Slice is

$$\frac{\text{Total benefits}}{\text{Aggregate net income}} \times \text{Net assets.}$$

$$= \frac{26,040}{64,200} \times 1,93,000 + 21,000$$

$$= 86,800.$$

Adjustment as to additions to assets : under Rule 13.

If the company issued 30,000 shares of Re. 1 each at the end of the second accounting year, the income of the 1st, 2nd years have to be recalculated for the whole period of three years by applying the average rate

Total income of the company 75,000

Net assets at the time of death 2,10,000

The average rate is

$$a = \frac{1/3 \ (75,000 + 2 \times a \times 30,000)}{2,10,000} = 13{\cdot}2\%$$

The recalculated income for the three years is

$$\frac{75,000 \times 2 \times 13{\cdot}2 \times 30,000}{100} = 75,000 + 7,920 = 82,920.$$

If it is assumed that the whole of this issue was subscribed by the deceased, the total benefit received by him will also require re-calculation. Dividend for the 1st, 2nd years on 30,000 plus the dividend on his total holding on 3rd year will represent the total benefit.

Rule 11 (4) *and* (5) :

The deceased owned 5000 shares of Rs. 10 each. He was also the owner of another 2,500 shares of Rs. 10 each which under section 27 is exempt.

Net asset of the company at the time of death 2,00,000.

Value of property transferred 50,000 in respect of shares and another property free to the Company.

During the three years, the deceased received 10% dividend for each year.

Benefit received on transfer, *i.e.*,

on 5,000 shares of 10 each for 3 years	15,000
on exempt shares 2,500	7,500
Net income of the company	75,000

The slice on "Transfer benefit" is $\frac{15,000}{75,000} \times 2,00,000 = 40,000$

As the value of shares exceeds the "Slice", no duty is payable on the slice.

The slice on the total benefit is $\frac{22,500}{75,000} \times 2,00,000 = 60,000.$

Slice on other benefit 60,000 — 40,000 = Rs. 20,000.

The value of shares Rs. 25,000.

If in the opinion of the Controller under Rule 11 (4) (*b*) that but for the transfer of the property to the company, the shares will be worth only 15,000, the deduction for the value of the shares is not 25,000, but 15,000 from the "Slice" of 20,000, *i.e.* 5,000. This is liable under section 17.

Section 18. *Duty of company and officers of company to give information to Controller on death of transferor.*—(1) Where the deceased has made a transfer of property to a controlled company, the company shall be under obligation to inform the Controller within forty-five days from the date of the death of the deceased, of the death, of the fact that the deceased made a transfer of property to the company, and of the fact that benefits accrued to the deceased from the company, and every person who was a principal officer of the company at that date, or if the company has been wound up and dissolved before that date, who was a principal officer of the company at any time and who has been called upon to furnish any information under this section, shall be under the like obligation as respects such of the facts aforesaid as are within his knowledge, unless he knows, or has reasonable cause for believing, that the information in question has already been given to the Controller by the company or some other person.

(2) If the company or any such person as aforesaid who is under obligation by virtue of the preceding sub-section to give any information to the Controller makes default in the performance of that obligation, the Controller may impose upon the defaulter a penalty not exceeding one thousand rupees.

Explanation.—For the purposes of this section "principal officer" means a manager, managing agent or secretary, and includes any person connected with the company upon whom the Controller has served a notice under this section of treating him as the principal officer thereof.

This section is based on section 53 of the Finance Act, 1940, with slight alterations : instead of one month in the section, a period of 45 days is mentioned. The penalty under sub-section (2), is not to exceed Rs. 1,000. "Principal Officer" means a Manager, Manging Agent or Secretary and includes any person connected with the company upon whom the Controller has served a notice under this section of treating him as the "principal officer"

thereof. If the company has been wound up or dissolved, before the death of the deceased, a principal officer of such a company at any time is required under this section to furnish information. The duty is first laid on the company, then on the principal officer of the company, which means the Manager, Managing Agent, or Secretary, and in the case of winding up or dissolution, the principal officer of the company before the winding up or the dissolution. The Controller is also empowered to treat any person connected with the company as principal officer if he sends to him a notice treating him as principal officer.

While section 53, regulates the recovery of estate duty in all other cases, section 18 regulates the recovery of estate duty leviable under section 17 of the Act. The primary liability to pay the estate duty arising under this section is laid on the company. If the company pays all the estate duty that is levied under this section then no other accountable person can be proceeded against by the Controllers. The Company having paid the estate duty due, cannot recover it from any person on the ground only that he is entitled to any interest in, or to any sum charged on, the assets of which the company had at the death of the deceased [sub-section (7) of section 19].

Section 19. *Collection and incidence of duty under section* 17.—(1) The following persons shall be accountable for the duty payable on the death of the deceased by virtue of section 17, namely :—

(*a*) the company ;

(*b*) any person (other than a *bona fide* purchaser for full consideration in money or money's worth received by the company for its own use and benefit) who receives, whether directly from the company or otherwise, or disposes of, any assets which the company had, whether as capital or as income, at the death or at any time thereafter ;

(*c*) any person who received any distributed assets of the company on their distribution :

Provided that a person shall not,—

(*i*) by virtue of clause (*b*), be accountable in respect of any assets for any duty in excess of the value of those assets, or

(*ii*) by virtue of clause (*c*), be accountable in respect of any assets for more than a part of the duty bearing to the whole thereof the same proportion as the value of the distribution of those assets bears to the principal value of the assets of the company passing on the death by virtue of section 17.

Explanation.—For the purposes of this sub-section the expressions " distributed assets " and " assets of the company passing on the death " do not include any distributed assets of the company which the deceased received on their distribution ; and a

person who, having received any distributed assets of the company, has died before the deceased shall be deemed to have been a person accountable by virtue of clause (*c*).

(2) Where a company incorporated outside the territories to which this Act extends is accountable for any duty by virtue of the preceding sub-section or of this sub-section, every person who is a member of that company at the death shall also be accountable for a rateable part of that duty in proportion to the value of his interest in that company.

(3) A person accountable for any duty by virtue of this section shall, for the purpose of raising and paying the duty, have all the powers conferred on accountable parties.

(4) On a winding up of the company, sub-section (1) of section 230 of the Indian Companies Act, 1913 (VII of 1913), shall have effect as if there were included in clause (*a*) of that sub-section a reference to any duty payable in respect of assets of the company passing on a death by virtue of section 16 of this Act, and section 129 of the Indian Companies Act, 1913, shall have effect accordingly.

(5) The duty payable on the death of the deceased by virtue of section 17 shall be a first charge by way of floating security on the assets which the company had at the death or has at any time thereafter, and any part of the duty for which by virtue of clause (*c*) of sub-section (1) any person is accountable in respect of any distributed assets shall be a first charge also on those assets :

Provided that nothing in this sub-section shall operate to make any property chargeable as against a *bona fide* purchaser thereof for valuable consideration without notice.

(6) Where any duty has been—

(*a*) paid by a person accountable therefor by virtue only of clause (*c*) of sub-section (1) ; or

(*b*) raised by virtue of sub-section (5) out of any distributed assets charged therewith ;

that person or, as the case may be, the person who, was entitled to those assets subject to the charge, may (without prejudice to any right of contribution or indemnity which he may have apart from this sub-section) recover the amount of the duty so paid or raised as aforesaid from any person who is accountable therefor otherwise than by virtue of the said clause (*c*).

(7) No part of the duty paid by the company shall be recoverable by it from any person on the ground only that he is entitled to any interest in, or to any sum charged on, the assets which the company had at the death of the deceased.

(8) The provisions of sub-sections (1) and (3) of section 53 shall not have effect in relation to the duty payable by virtue of section 17.

Every member at the time of the death of the deceased of a company incorporated outside India to which the Act extends is liable for a rateable part of the duty in proportion to the value of his interest in the company [sub-section (3) of section 19]. Any person who received whether directly from the company or otherwise or disposes of any assets which the company had, whether as capital or as income, at the death or at any time thereafter is liable to the extent of the value of those assets. Any person who receives any distributed assets of the company on their distribution is liable for a part of the duty bearing to the whole thereof the same proportion as the value of the distribution of those assets bears to the principal value of the assets of the company passing on the death [section 19 (1) (*b*) (*c*) (*i*) (*ii*)].

Under clause (*c*) of section 19 (1), a person having received any distributed assets of the company dies before the deceased will also be accountable. In this case his legal representative will be called upon to pay. If the deceased himself received any distributed assets of the company on their distribution, there is no liability in respect of these distributed assets on any one. The duty in respect of these assets will be collected by virtue of other provisions in the Act. Sections 76 and 77 in the Act confer on persons accountable, certain powers and facilities for paying duty or raising amounts already paid. All these powers are also available to persons made accountable for Estate Duty leviable under section 17, sub-section (5) of section 19 creates a first charge by way of floating security on the assets which the company had at the death or has at any time thereafter for the duty leviable under section 17. Any person who is accountable by virtue of clause (*c*) of section 19 (1) is given a first charge on the assets received by him, in respect of the duty payable by him. An exception to all liability to duty under section 17 is created in favour of a *bona fide* purchaser of property chargeable to duty for valuable consideration without notice. A receiver appointed by Court to deal with assets subject to a floating charge has to conduct himself in accordance with section 230 (1) of the Indian Companies Act, 1913. The Estate Duty leviable under section 17 becomes a preferential debt because the same is charged on the assets of the company by way of floating security.

The object of sub-section (7) of section 19, is to preserve the priorities of preference shares and debentures and therefore it is that the company is disabled by this sub-section to recover from any person the duty paid by it on the ground only that he is entitled to any interest in or to any sum charged on, the assets which the company had at the death of the deceased. A person may acquire the distributed assets from the person to whom they were distributed. Although the assets which he has acquired are subject to the charge for Estate Duty, he is not personally accountable for payment of duty. The creation by way of floating security on the assets of the company, the creation of a charge on distributed assets, and making persons accountable to Estate Duty merely because they have been in possession are designed with only one purpose, *viz.*, of safeguarding the collection in full of the Estate Duty. The persons made accountable, for Estate Duty purposes may not have to pay the Duty under the transactions with the company which they have had whereunder they have become owners of parts of the assets of the company. It is therefore laid down by sub-section (6) of section 19 that in addition to the general remedies open to them for recovery of the duty paid by them, they have got a remedy to proceed against other accountable

persons and recover the amount of duty they paid. It may be stated generally that such persons can recover from the company.

Section 129 of the Indian Companies Act, 1913, is : (1) Where either a receiver is appointed on behalf of the holders of any debentures of a company secured by a floating charge, or possession is taken by on behalf of those debenture-holders of any property comprised in or subject to the charge, then, if the company is not at the time in course of being wound up, the debts which in every winding up are under the provisions of Part V relating to preferential payments to be paid in priority to all other debts, shall be paid forthwith out of any assets coming to the hands of the receiver or other person taking possession as aforesaid in priority to any claim for principal or interest in respect of the debentures.

(2) The periods of time mentioned in the said provisions of Part V shall be reckoned from the date of the appointment of the receiver or of possession being taken as aforesaid, as the case may be.

(3) Any payments made under this section shall be recouped, as far as may be, out of the assets of the company available for payment of general creditors.

Section 230, sub-section (1) is : In a winding up there shall be paid in priority to all other debts—

(*a*) all revenue, taxes, cesses, and rates, whether payable to the Crown or to a local authority, due from the company at the date hereinafter mentioned and having become due and payable within the 12 months next before that date ;

(*b*) all wages or salary of any clerk or servant in respect of service rendered to the company within the two months next before the said date, not exceeding one thousand rupees for each clerk or servant ;

(*c*) all wages of any labourer or workman, not exceeding five hundred rupees for each, whether payable for time or piecework, in respect of services rendered to the company within the two months next before the said date ;

(*d*) compensation payable under the Workmen's Compensation Act, 1923, in respect of the death or disablement of any officer or employee of the company ;

(*e*) all sums due to any employee from a provident fund, a pension fund, a gratuity fund or any other fund for the welfare of the employees maintained by the company ; and

(*f*) the expenses of any investigation held in pursuance of clause (*iv*) of section 138 of this Act.

" Floating charge or security "

Per Lord Macnaghten: " A floating security is an equitable charge on the assets for the time being of a going concern. It attaches to the subject charged in the varying condition in which it happens to be from time to time. It is of the essence of such a charge that it remains dormant until the undertaking charged ceases to be a going concern, or until the person in whose favour the charge is created intervenes. His right to intervene may of course be suspended by agreement. But if there is no agreement for suspension, he may exercise his right whenever he pleases after default," in (1897) A.C. 81, *Government Stock and other Securities Investment Company* v. *Manila Railway Co., Limited,* in (1904) A.C. 355, *Illingworth* v. *Houldsworth.*

Lord Macnaghten again said as follows : " With regard to the criticism which Vaughan Williams, L.J., passed, not I think unkindly, on some words of mine in the Manila case, (1897) A.C. 81. I only wish to observe that what I said was intended as a description, not as a definition, of a floating security. I should have thought that there was not much difficulty in defining what a floating charge is in contrast to what is called a specific charge. A specific charge, I think, is one that without more fastens on ascertained and definite property, or property capable of being ascertained and defined ; a floating charge, on the other hand, is ambulatory and shifting in its nature, hovering over, and so to speak floating with, the property which it is intended to effect until some event occurs or some act is done which causes it to settle and fasten on the subject of the charge within its grasp and reach."

Lord Halsbury, L.C., in the same case at pp. 357 and 358 said " I do not think it necessary to give an abstract definition of what a floating security is ; it is enough to say that this instrument is one, and I think it is one for many reasons. In the first place you have that which in a sense I suppose must be an element in the definition of a floating security, that it is something which is to float, not to be put into immediate operation, but such that the company is to be allowed to carry on its business. It contemplates not only that it should carry with it the book debts which were then existing, but it contemplates also the possibility of those book debts being extinguished by payment to the company, and that other book debts should come in and take the place of those that had disappeared. That, my Lords, seems to me to be an essential characteristic of what is properly called a floating security. The recitals, I agree with Cozens-Hardy, L.J., are not without their importance. They show an intention on the part of both parties that the business of the company shall continue to be carried on in the ordinary way : that the book debts shall be at the command of, and for the purpose of being used by the company. Of course, if there was an absolute assignment of them, which fixed the property in them, the company would have no right to touch them at all. The minute after the execution of such an assignment they would have no more interest in them ; and would not be allowed to touch them, whereas as a matter of fact it seems to me that the whole purport of this instrument is to enable the company to carry on its business in the ordinary way ; to receive the book debts that were due to them, to incur new debts ; and to carry on their business exactly as if this deed had not been executed at all. That is what we mean by a floating security.

It appears to me, notwithstanding the argument we have heard, that it is impossible to doubt that the bargain between the parties which is evidenced by this instrument is one which could only be carried out at all by its being a floating security such as I have indicated, and which must comprehend those incidents."

In *Evans* v. *Rival Granite Quarries Limited*, (1910) 2 K.B. 979, it was held that a debenture constituting a floating security over the undertaking and assets of a company did not specifically affect any particular assets until some event happened or some act on the part of the mortgagee was done which caused the security to crystallize into a fixed security. Fletcher Moulton, L.J., after citing the judgments of Lord Halsbury and Lord Macnaghten extracted above said at p. 994 of (1910) 2 K.B. 979 :

"I think that Lord Macnaghten was here keeping in view the two characteristic features of floating charges : (1) the non-permanence of the property which is the subject of the charge, and its constant change from time to time ; and (2) that a floating charge does not of itself fasten and settle

even on the property existing at the moment. This explanation removes all difficulties arising from decisions which speak of a floating charge as an existing charge. It is an existing charge, and is rightly termed so ; but care must be taken to remember that it has not settled down and fastened on the property which is the subject of the charge. I find no difficulty in grasping such a concept."

Lord Buckley, L.J., said at p. 999 of the same case : " The outcome of the decisions may be thus summarized. A floating security is not a future security ; it is a present security, which presently affects all the assets of the company expressed to be included in it. On the other hand, it is not a specific security ; the holder cannot affirm that the assets are specifically mortgaged to him. The assets are mortgaged in such a way that the mortgagor can deal with them without the concurrence of the mortgagee. A floating security is not a specific mortgage of the assets, plus a licence to the mortgagor to dispose of them in the course of the business ; but is a floating mortgage applying to every item comprised in the security, but not specifically affecting any item until some event occurs or some act on the part of the mortgagee is done which causes it to crystallize into a fixed security."

See further the observations of Rankin, C.J., in 58 Calcutta 136 = 1931 (A.I.R.) Calcutta 223, *Imperial Bank of India* v. *Bengal National Bank, Ltd.*

Section 20. *Power to make rules respecting controlled companies generally.*—(1) The Board may make rules—

(*a*) prescribing the class of dispositions or operations which shall be deemed to be transfers to controlled companies within the meaning of section 17 ;

(*b*) prescribing the matters to be treated as benefits accruing to the deceased from any such controlled company, the manner in which their amount is to be determined, and the time at which they are to be treated as accruing ;

(*c*) prescribing the manner in which the net income and the value of the assets of any such company are to be determined ;

(*d*) prescribing the manner in which the accounting year of any such company is to be reckoned ;

(*e*) prescribing the manner in which the shares and debentures of any such company passing upon the death of the deceased are to be valued for estate duty ;

(*f*) providing an upper limit by reference to the value of the property transferred by the deceased to any such company and preventing duplication of charge where duty would otherwise be payable in respect of both the assets of any such company (or a proportion of them) and the deceased's holding of shares and debentures in any such company ;

(*g*) prescribing the conditions upon which and the extent to which transactions in the name of any such company shall be deemed to be *bona fide* transactions for full consideration ; and

(*h*) generally for the purpose of checking the avoidance of estate duty through the machinery of any such company.

(2) All rules made under this section shall be laid before the House of the People for not less than fifteen days before the date of their final publication.

In the Bill the matter dealt with by this section appeared as sub-section (5) to section 17. This section empowers the Board to make rules (1) prescribing .... the class of dispositions or operations which shall be deemed to be transfers ; (2) prescribing the matters to be treated as benefits accruing to the deceased from such a company, the manner in which their amount is to be determined, and the time at which they are to be treated as accruing ; (3) prescribing the manner in which the net income and the value of the assets of such a company are to be determined ; (4) prescribing the manner in which the accounting year is to be reckoned ; (5) prescribing the manner in which the shares and debentures of such a company passing upon the death of the deceased are to be valued for estate duty ; (6) providing an upper limit by reference to the value of the property transferred by the deceased to any such company etc ; (7) prescribing the conditions upon which and the extent to which transactions in the name of such a company shall be deemed to be *bona fide* transactions for full consideration; and (8) prescribing generally for the purpose of checking the avoidance of estate duty through the machinery of such a company. In Great Britain, the Finance Act of 1940, sections 46 to 59 both inclusive contain provisions on all the matters regarding which the Board has been empowered to make rules. The provisions of the Finance Act, 1940, have been further amended by the Finance Act, 1944 (sections 36 to 39) Finance Act, 1946 (section 47 and 11th schedule), Finance Act, 1950 (sections 43 to 48 and 7th schedule), the Finance Act, 1952 (section 72). It is useful to refer to these provisions in the various Finance Acts mentioned above. See the Rules made by the Board printed in the Appendices.

Sub-section (5) of section 17, enacts that the property of the deceased in the assets of the company is aggregable with his other property passing on his death (see section 52 of the Finance Act, 1940).

The rules are called the Estate Duty (Controlled Companies) Rules, 1953.

RULE 2. Definitions.—Copies section 59 of the Finance Act, 1940 as amended further by the Finance Act, 1944.

" Accounting year " " Company " " Officer " " Periodical payment " and " Tort " defined in the Finance Act are omitted from the definitions. " Accounting year " is defined in Rule 14.

RULE 3.—Interpretation.—Copies section 58, sub-section (3) of the Finance Act, 1940.

RULE 5.—Benefits accruing to deceased from company.—Copies section 47 (1) and (2) of the Finance Act, 1940. " Periodical payment " is defined in sub-section (2).

RULE 6.—Surrender of title to or of power to obtain benefits.—is based on section 48 of the Finance Act, 1940.

RULE 7.—Determination of the amount of benefits.—See section 46 of the Finance Act, 1940 and 7th Schedule to that Act.

RULE 8.—Time of accrual of benefits.—Copies 2 (1), 2 (2), 2 (3), 2 (4), 2 (5) and 2 (6) of the 7th Schedule to the Finance Act, 1940.

RULE 9.—Determination of net income or loss of company.

RULE 10.—Determination of value of assets of company.—See sections 49 and 50 of the Finance Act, 1940.

RULE 11.—Limitation on and prevention of duplication of charge.—See section 51 of the Finance Act, 1940.

RULE 12.—Adjustments as to distributed assets.—See section 50 (3) of the Finance Act, 1940.

RULE 13.—Adjustments as to addition to assets.

RULE 14.—" Accounting year " is defined.

RULE 15.—Valuation for estate duty of shares and debentures of certain companies.

RULE 16.—Limitation of exceptions for consideration, and for exclusion of deceased, where company is concerned.

RULE 17.—What is Investment Company—

A company is an investment company if its income is derived mainly from investments in stocks, shares, bonds and debentures, that is to say, the income is of a nature which, if the company were an individual, would not be earned income as defined in clause 6 (AA) of section 2 of Indian Income-tax Act, 1922, provided that any income apportioned to the company under section 23-A of the Indian Income-tax Act, 1922, shall be deemed to be income of the company and to be its income from investment.

As regards these rules see further the 7th Schedule to the Finance Act, 1940.

CHAPTER IX

EXCEPTIONS FROM THE CHARGE OF DUTY

Section 21. *Foreign property.*—(1) There shall not be included in the property passing on the death of the deceased—

(*a*) immovable property situated outside the territories to which this Act extends ;

(*b*) movable property situated outside the territories to which this Act extends at the time of the death unless—

(*i*) in the case of any property, whether settled or not, the deceased was domiciled in the said territories at the time of his death ; or

(*ii*) in the case of settled property of which the deceased was a life tenant, the settler was domiciled in the said territories at the date the settlement took effect.

(2) The Board may make rules regulating the manner in which the nature and locality of different classes of assets shall be determined for the purposes of this section.

This section excepts property, immovable or movable, settled or not settled, situated outside India, this Act extending only to India. The state of Jammu and Kashmir is excepted from the operation of this Act. See section 1 (2). However certain conditions are laid down for the exception of foreign property to operate. They are : (1) the deceased must have died domiciled out of India in the case of any property, immovable, movable, settled or not settled, (2) in the case of settled property in which the deceased had only a life interest, the settler must have been domiciled outside India at the date when the settlement took effect. By sub-section (2) the Board is empowered to make rules regulating the manner in which the nature and locality of different classes of assets shall be determined.

The corresponding provisions are contained in section 28 (2) of the Finance Act, 1949 which is as follows :

"... but that property shall be deemed for the purposes of estate duty not to include any property passing on the death which is situate out of Great Britain if it is shown that the proper law regulating the devolution of the property so situate, or the disposition under or by reason of which it passes, is the law neither of England nor of Scotland and that one at least of the following conditions is satisfied, namely,—

(*a*) that the deceased did not die domiciled in any part of Great Britain;

(*b*) that the property so situate passes under or by reason of a disposition—

(*i*) made by a person who, at the date at which the disposition took effect, was domiciled elsewhere than in some part of Great Britain ;

(*c*) that the property so situate is, by the law of the country in which it is situate, immovable property ; or

if the property so situated passes only by virtue of paragraph (*c*) of sub-section (1) of section 2 of the Finance Act, 1894, as having been the subject of a gift *inter vivos* and it is shown that one at least of the said conditions is satisfied.

On the subject of domicile refer to the foregoing pages. In applying this section most difficult questions will arise. There are many foreigners in India who own property here. There are likewise many Foreign Companies incorporated here which carry on business. There are a number of foreigners attached to Embassies of their respective countries in India. Many Indians may have properties situated abroad. Some of them may have even interests in foreign concerns as partners. In applying the section and the rules framed by the Board under this section, the question of domicile and the question of locality of assets are first to be ascertained in each case as it arises.

See the Appendices for the Rules :

Rule 9 deals with ' Determination of nature of property.'

Rule 10 deals with ' Location of movable property.'

Rule 11 deals with ' Location of immovable property.'

Midleton (Earl) v. *Cottesloe and others* [(1949) 1 All E.R. 841]

The facts of the case sufficiently appear in the judgment of Lord Simonds.

Per Lord Simonds : " My Lords, this appeal raises a question which is said to be of general importance and to affect other cases than that which your Lordships have to consider. It concerns the right of the Crown to levy estate duty on English investments which represent the proceeds of sale of Irish land settled by an admittedly Irish settlement. The right which has been established by the decision of Roxburgh, J., and the Court of Appeal is challenged on this appeal.

The relevant facts are simple and not in dispute. By an indenture dated May 15, 1909, and made between the late Earl of Midleton, of the first part, the appellant, the present Earl of Midleton, of the second part, the Rt. Hon. Madeleine Cecilia Carlyle Viscountess Midleton, of the third part, and the Hon. Arthur Grenville Brodrick and the Hon. Thomas Francis Fremantle (now Lord Cottesloe), of the fourth part, certain mansion houses and lands at Midleton in the county of Cork and other lands and hereditaments in that part of Ireland which is now known as Eire over which the late Earl of Midleton and the appellant had a general power of appointment were appointed and settled to the use of the trustees thereof for a term of 1,500 years on trust to raise a certain capital sum (which does not affect the investments now in question) and subject thereto on trust that the said trustees might, during the joint lives of the late earl and the appellant, receive a rent charge of the amount (in an event which happened before the death of the late earl) of £700 per annum on trusts thereby declared during his life, with remainder (subject to certain family charges) to uses under which the appellant is now tenant for life in possession (such life estate being determinable in the events therein mentioned) with remainders over. The respondents, the Rt. Hon. Thomas Francis Baron Cottesloe and Sir Henry Charles Lloyd, are the present trustees of the settlement for the purposes of the Settled Land Act, 1882-1890, having been appointed by a deed dated November 1, 1935. Since the date of the settlement and in the lifetime of the late earl, various sales of lands comprised in the settlement were effected,

both under the Settled Land Acts, 1882-1890, and under the Irish Land Purchase Acts. Parts of the proceeds of such sales were invested by the trustees of the settlement in the purchase, in their names, of inscribed or registered stocks or shares transferable in the books of the Bank of England or on registers kept in England. They were of an approximate value of £90,000. The late earl died on February 13, 1942, domiciled in England. The appellant was also then, and still is, domiciled in England. On the death of the late earl a conflict of opinion arose between the revenue authorities of England and Eire respectively. The English authorities claimed estate duty under the dispositions of the settlement on the death. The Eire authorities contended, on the other hand, that, having regard to the origin of the investments and the provisions of section 22 (5) of the Settled Land Act, 1882, the investments were for fiscal purposes to be treated as if they were lands situate in Eire, and, consequently, they were not subject to English estate duty, and they refused relief under the Double Taxation (Relief) Order, 1926 (Irish) (S.R. and O., 1926, No. 42), unless the claim of the English revenue authorities should have been affirmed by the English Court. Accordingly, the respondent trustees issued an originating summons in the Chancery Division to which the Attorney-General and the appellant, the present earl, were defendants, to have determined the question which is now before the House....

To succeed in his claim the appellant must, as it appears to me, establish two propositions :—(*a*) that the provisions of section 22 (5) of the Settled Land Act, 1882, are still operative as an Act of the Imperial Parliament in regard to English investments representing the proceeds of sale of Irish land, and (*b*) that, being so operative, they have the effect for fiscal purposes of converting such proceeds from securities situate within the United Kingdom to land situate in Ireland. In my opinion, the appellant fails to establish the second of these propositions, and it becomes unnecessary to determine the first of them.

On the second point, on which I concur in, and can really add nothing to, the judgment of the Master of the Rolls, I see no reason why the words "including fiscal purposes" should be read into the section after the "word devolution." I refer to the necessity of reading such words into the section, for it seems to me clear that by themselves the words "for all purposes of disposition, transmission and devolution" do not naturally include a purpose which only arises under a taxing Act. Moreover, it appears to me that the context in which these words are to be found, *viz.*, the following sentence, in which the beneficial interests of successors are dealt with, lends support to the view that it is only with the right of beneficiaries in regard to disposition, transmission and devolution that the sub-section is dealing. It would, further, be an anomalous result, if, in a statute which does not profess to bind, and clearly does not bind, the Crown, the words "for fiscal purposes," which vitally affect the Crown, were by some implication to be read into the section. Learned counsel for the appellant, whose argument lacked nothing in clarity and cogency, urged on your Lordships that the fiscal burden which is imposed on the "passing" of property by the Finance Act, 1894, is an incident of transmission, and, further that the provision that capital money is to be enjoyed "in the same manner" as "the land wherefrom the money arises" indicates that it is to be subject to the same fiscal burden, but I hope I do not dismiss the argument too lightly if I say that the relevant words mean just what they say and no more, and that there is no justification for implying other words which, more than most words, demand explicit expression.

Reliance was placed on certain cases, but (with one exception) they do not appear to me to support the appellant's contention. Neither in *Re Cart-*

wright [(1938) 4 All E.R. 209] nor in *Re Cutliffe's Will Trusts* [(1940) 2 All E.R. 297], nor in *Re Mackenzie* [(1940) 4 All E.R. 310], was the question under consideration relevant, and I do not think it necessary to consider whether they were rightly decided. The exception to which I refer is the Irish case of *Re Stoughton* (1941) I.R. 166. Like the learned Master of the Rolls, I must regret that I cannot accept the view of the learned judges who decided that case, but it would seem from the report that they did not have the advantage of a full argument on the point. The appellant failing to establish the second of his propositions, that is an end of the matter and I do not think it necessary to discuss the first proposition. On this, too, the decision of both Roxburgh, J., and the Court of Appeal was adverse to him. It was conceded that unless the Settled Land Act, 1882, is still in force, not only in Eire as an Act deriving its validity from article 73 of the Constituent Act which is scheduled to the Irish Free State Constitution Act, 1922 (Session 2), but also in England as an Act of the Imperial Parliament, it cannot have any operation in regard to English investments. I will say no more than that grave, if not overwhelming, difficulties appear to me to lie in the way of that contention that at any time since the Irish Free State Constitution Act, 1922 (Session 2), came into force any Act which by article 73 of the Constituent Act thereafter remained in force in Eire could have any extra territorial operation so as to affect English investments, but I do not think it necessary finally to decide a question which, no doubt, raises a nice constitutional problem. I move the appeal be dismissed with costs."

It was held that the investments in the United Kingdom representing the proceeds of land situate in Eire, and subject to the trusts of an Irish settlement were not property situate out of the United Kingdom, and were liable to estate duty.

Section 22. *Property held by the deceased as trustee.*—Property passing on the death of the deceased shall not be deemed to include property held by the deceased as trustee for another person under a disposition not made by the deceased or under a disposition made by the deceased where (whether by virtue of the original disposition or of a subsequent surrender of any benefit originally reserved to the deceased or otherwise) possession and enjoyment of the property was *bona fide* assumed by the beneficiary at least two years before the death and thenceforward retained by him to the entire exclusion of the deceased or of any benefit to the deceased by contract or otherwise :

Provided that in the case of property held by the deceased as sole trustee for another person under a disposition made by himself, the period shall be five years.

Property held by the deceased as a trustee for another person is not liable to payment of estate duty, on the death of the deceased. The section is based on section 2 (3) of the Finance Act, 1894, section 59 (1), (3), of the Finance (1909-10) Act, 1910, and section 47 of the Finance Act, 1946. Analysing the section, three distinct cases arise.

1. Property which the deceased held as a trustee for another person under a disposition made by another person. If *A* made a disposition of his property for the benefit of another person *C*, and constituted *B*, (the deceased) as a trustee.
2. Where the disposition is the same as in the first case, but along with *B*, *D* and *E*, also were constituted as trustees.
3. Where the deceased himself made a disposition of his property and constituted himself the sole trustee, for another person.

In the first case, on the death of the deceased, the trust property shall not be deemed to pass so as to attract liability to estate duty.

In the second case also on the death of the deceased the property is not liable to payment of estate duty.

In the third case, unless the following conditions are fulfilled estate duty becomes payable. The conditions are :—

1. The disposition must have been made by the deceased not less than five years before the death in the case of any person and not less than six months in the case of a public charitable purpose. It is not clear, where the deceased is the sole trustee, the requirement of a disposition being made not less than six months before the death of the deceased in the case of a public charitable purpose, will be sufficient, as the proviso refers to a period of five years in the case of a disposition in favour of another person, and left the matter there, without stating the period in the case of a disposition for a public charitable purpose. Therefore, it is submitted that if the disposition is made not less than six months before the death no estate duty becomes payable on the death of the deceased where the disposition is for a public charitable purpose.

2. Possession and enjoyment of the property was *bona fide* assumed by the beneficiary immediately upon the creation of the trust, and thenceforward

retained to the entire exclusion of the deceased, or of any benefit to him, by contract or otherwise. The second condition will also be fulfilled, if the beneficiary, who had not assumed immediate possession and enjoyment, nevertheless assumed possession and enjoyment of the trust property to the entire exclusion of the deceased or to any benefit to him by contract or otherwise, subsequently before not less than five years before the death of the deceased. The deceased trustee even if he reserved to him any benefit in the trust property on the creation of the trust is permitted to surrender the benefit so reserved and any benefit reserved by contract or otherwise not less than five years before his death. It is difficult to find out the intention of the legislature what case it has in contemplation when it speaks of "at least two years before the death...." When the proviso to the section states that the period shall be five years what is the meaning to be ascribed to the words in the section "at least two years before the death....?" The fourth case will arise by reason of the ambiguity pointed out above.

3. Where the deceased himself made a disposition of his property and constituted himself and *B*, *C*, *D*, as trustees. In this fourth case, it is enough if *bona fide* possession and enjoyment of the property is assumed by the beneficiaries at least two years before the death and thenceforward retained by them to the entire exclusion of the deceased or of any benefit to the deceased by contract or otherwise. Even in this fourth case, if, there is a subsequent surrender of any benefit originally reserved to the deceased not less than two years before the death of the deceased and thenceforward the beneficiary assumed *bona fide* possession and enjoyment of the property retained same to the entire exclusion of the deceased or of any benefit to the deceased by contract or otherwise no estate duty becomes payable.

There are innumerable public charitable purposes in India and charity properties are not within the purview of the Act. This section applies to trusts of property created under dispositions made by individuals. There are in existence many trust properties and funds which are being administered under trust deeds. Whenever doubts arise on the death of any person whether he was a trustee for another person or whether he was himself a beneficial owner an enquiry has got to be made. See *H. M. Adv.* v. *Gunnings Trustees*, [(1902) 39 Sc. L.R. 534.], *Gould* v. *Stamp Duties Commr.* [(1934) A.C. 69 P.C.].

(Privy Council)

Gould and others v. *Commissioners of Stamp Duties* [1934 A.C. 69]

In 1918, a resident in New Zealand held mortgages and debentures securing 57,200*l.*, the deeds and certificates being in the custody of his agents, who managed his private affairs under a general power of attorney, and kept accounts relating thereto. He wrote to them giving particulars of a settlement of 30,000*l.*, which he proposed to make on his children, and instructing them to take that sum from his capital for the trusts. Thereupon they debited his capital account with 30,000*l.*, and credited it to a special trust account. By the deed of settlement, which was executed by all the necessary parties, the trustees acknowledged the receipt of the 30,000*l.*, and the trusts were declared. No money, however, was paid, nor any securities transferred to the trustees. Further sums were settled in 1919, 1920 and 1924, similar entries being made in the agents' books. Interest at a flat rate was paid to the beneficiaries on the sums settled on them respectively, the payments being made out of the income received by the settler from the securities in his agents' custody. Those securities varied from time to time, but the amount always exceeded that settled. Upon the settler's death in 1928, his estate was assessed

to duty under the Death Duties Act, 1921 (N.Z.) as including the settled sums, less capital which were more than three years before the settler's death had been paid out to two of the beneficiaries under power in the settlements, and subject to an allowance for gift duty paid when the sums were settled :—

Held, having regard to section 5, sub-section (1) of the Act the assessment had been rightly made, as the settlements could not be treated as gifts perfected either by transfer of property or declaration of trust ; though a charge probably was created upon the settler's capital it was not a debt for which, by the terms of section 9, sub-section (2) an allowance could be made.

Per Lord Tomlin : . . . . The question is whether the gifts which the settlements were intended to effect were perfected gifts either by an effective transfer of the property to the trustees or by the settler or other person in whom the property was vested effectively declaring himself a trustee of such property for the purpose of the settlements.

" It cannot be contended that there was any effective transfer to the trustees. The credits entered in the special trust account kept by the company could not have that result, and it is not suggested that any money or investment was paid or transferred to the trustees.

" It is however contended that the settler made himself a trustee. He did not do so expressly. If he was a trustee he must have become so by necessary implication from his conduct.

" . . . . Their Lordships have little doubt, however, that by the conduct of the parties there was created a charge upon the funds managed by the company in favour of the trustees of the settlements for the sums which the settler had affected to settle, but such a charge is a debt within the meaning of the definition of debt contained in section 2 of the Act, and being a debt made otherwise than for full consideration in money or money's worth wholly for the settler's own use or benefit, no allowance can be made for it having regard to section 9, sub-section (2) of the Act . . . . "

Section 23. *Interest failing before becoming an interest in possession.*—In the case of settled property where the interest of any person under the settlement fails or determines by reason of his death before it becomes an interest in possession, and one or more subsequent limitations under the settlement continue to subsist, the property shall not be deemed to pass on his death by reason only of the failure or determination of that interest.

Explanation 1.—Where property is settled by a person on himself for life and after his death on any other person, with an ultimate reversion of an absolute interest or absolute power of disposition to the settler, the property shall not be deemed to pass to the settler on the death of such other person by reason only that the settler being then in possession of the property as tenant for life becomes, in consequence of such death, entitled to the immediate reversion or acquires an absolute power to dispose of the whole property.

Explanation 2.—Where the interest of a person is settled property consists of an interest in the residue or part of the residue of an estate of a testator or intestate and the said estate continues to be under administration until the death of the person,

the said interest of the person in the residue or part of the residue shall be deemed to have become an interest, in possession on the date as from which the income from the residue or part of the residue would have been attributable to that interest if the residue had been ascertained immediately after the death of the testator or intestate.

The corresponding provisions in the Finance Acts are the following :— 1. Section 5 (3) of the Finance Act, 1894: "In the case of settled property, where the interest of any person under the settlement fails or determines by reason of his death before it becomes an interest in possession, and subsequent limitations under the settlement continue to subsist, the property shall not be deemed to pass on his death." 2. Section 48 of the Finance Act, 1938 added the words "by reason only of the failure or determination of that interest" to the above section 5 (3). Explanation (1) is based on section 14 of the Finance Act, 1896. Section 14 of the Finance Act, 1896 is: "Where property is settled by a person on himself for life and after his death on any other persons with an ultimate reversion of an absolute interest or absolute power of disposition to the settler, the property shall not be deemed for the purpose of the principal Act to pass to the settler on the death of any such other person after the commencement of this Part of the Act by reason only that the settler, being then in possession of the property as tenant for life, becomes, in consequence of such death, entitled to the immediate reversion or acquires an absolute power to dispose of the whole property." Explanation (2) is based on section 47 (4) of the Finance Act, 1938. Section 47 (4) is: "Where such an interest is an interest in a part only of a residue of an estate, the references in the foregoing provisions of this section to the own administered estate, to residue and to charges of residue shall be construed as references to a corresponding part thereof. Sub-sections (1), (2) and (3) to section 47 are as follows :—

" 1. The following provisions of this section shall have effect for the purpose of the operation of Part I of the Finance Act, 1894 (in this Part of this Act referred to as " the Principal Act " in relation to the death of a person on whose death an interest in the residue of the estate of a testator or intestate, or in a part thereof, is limited to cease, and who dies before the completion of the administration of the estate.

2. Such an interest shall, until the completion of the administration, be deemed to be an interest in the own administered estate of the testator or intestate, as for the time being held by his personal representatives subject to outstanding charges on residue and to any adjustments between capital and income remaining to be made in due course of administration, and in the property (if any) representing ascertained residue.

3. Such an interest shall be deemed to have become an interest in possession on the date as from which the income of the residue would have been attributable to that interest if the residue had been ascertained immediately after the death of the testator or intestate."

To appreciate fully the meaning of this section it is necessary to remember that property settled within two years of the settler's death on another for life is liable to estate duty as a gift *inter vivos*, see section 9. So also any property settled at any time with a power of revocation reserved to the settler is liable to estate duty, see section 12. Similarly life policies on the settler's life disposed of by means of a settlement on *A* for life and then to the settler for life are liable to estate duty notwithstanding the fact that his reversionary life interest has failed. In the last example, if for instance, *A* before the

maturity of the policies dies, but the settler is alive at the time of the death of *A* on his own death, there is no escape from payment of estate duty on the ground that his reversionary life interest has failed. In other words, the exemption granted by section 23 is available if only there is no other heading of liability under section 5 or section 6. This section although mostly applies to reversionary interests applies to interests in possession. Take for example—a testator wills to *A* by means of a legacy all the income of a fund belonging to the testator. *A* is entitled to the income as from the date of the death of the testator, but before receiving the income he dies. Such a case will not be regarded as within section 23.

The point of fact is that in fact *A* did not receive any income under the bequest to him, nevertheless, it is a case where his interest did not fail before becoming an interest in possession. The Explanation (2) covers this case. This explanation also impresses all other limited interests in the residue which are deemed to have become interests in possession from the date of the death of the testator or intestate. The simplest illustration of the section is this :— *A* by deed or will settled property on *B* for life with remainder to *C* for life, further remainder to *D*. *C* dies in *B*'s lifetime. No estate duty is payable on *C*'s death for his reversionary interest has not become an interest in possession by reason of his death during the life of *B*. A more complicated case can be conceived of. *X* settles property on *A* for life, *B* for life and *C* for life and remainder to *X* absolutely. Here *C* may settle his reversionary interest on himself for life with remainder over, and if he dies in the lifetime of *A* or *B*, on his death estate duty is not payable in respect of the settled property. To gain exemption the interests of the deceased must fail or determine. If the deceased's personal enjoyment of the interest for any cause fails, there is no exemption. This happens in cases where his interest has become an interest in possession but he has not received any income or personal enjoyment of his interest for any cause, such as the residuary estate not being ascertained or his early death after his interest has become an interest in possession. In cases of settlement under which trustees are to make certain payments by way of maintenance to persons during their minority, and then to hand over the settled properties to them on their attaining majority, if the persons die before attaining majority, there is only a failure of the contingent interest and not a failure or determination of interests in possession, and therefore in such cases estate duty is payable. The section applies to the following cases also : (1) *A* by deed or will settled property on *B* for life with remainder to *C* and *D* as joint tenants. *C* dies during *A*'s life without severing the joint tenancy. On his death no estate duty is payable. (2) *A* settled by his deep or will property on *B* for life with remainder to *C* for life, with remainder to such person as *C* should appoint and in default of appointment by *C*, to *D*. If *C* dies without exercising the power of appointment no estate duty is payable. (3) Under a settlement property is held by *A* for life, *B* for life, and *C* for life. The successive life interests of *A*, *B* and *C* being endurable for the life of *X*. Here if *C* acquires the life interest of *B* and dies during the life of *A*, no estate duty is payable on his death as his interest fails before becoming an interest in possession. (4) Where property is settled on *A*'s wife for life, remainder to the survivor of husband and wife, and if the husband dies survived by the wife, his interest has failed or determined before becoming an interest in possession. His death put an end to his contingent interest to get the property if he survived the wife.

A perusal of the following cases will lead to a better understanding of the section. *Skinner* v. *A.G.* [(1940) A.C. 350 = (1939) 3 All E.R. 787.; *A.G.* v. *Watson* (1917) 2 K.B. 427; *Re Earl of Chesterfield's Trusts* (1883) 24 Ch. D.

643 ; *Re Harrison Johnston* v. *Blackburn and East Lancashire Royal Infirmary* (1918) 2 Ch. 374 ; *A.G.* v. *Wood* (1897) 2 Q.B. 102].

Attorney-General v. *Wood* [(1897) 2 Q.B. 102]

The Headnote to this case is "By a marriage settlement personal property belonging to the wife was settled upon trusts to pay the income to her during the joint lives of her husband and herself, and after the death of such one of them as should first die, to pay the income to the survivor during his or her life, and if the wife should survive her husband, and there should be no children of the marriage, then in trust for her absolutely. There were no children of the marriage. The wife survived her husband who died after the commencement of the Act."

Per Vaughan Williams, J. : "So in popular language and in the events which have happened—failure of issue and death of Mr. Vaughan in his wife's lifetime, and the death of all other persons entitled to any interest under the will of Mrs. Vaughan's father—Mrs. Vaughan has now become the absolute owner of the trust fund in possession. The Crown contends that in this state of circumstances estate duty has become payable under the provisions of the Finance Act, 1894, upon the capital value of the trust fund comprised in the said settlement, less the value at the time of Mr. Vaughan's death of the life interest of Mrs. Vaughan in the trust fund. The estate duty, if leviable at all, must be so leviable under the provisions of sections 1 and 2 of the Finance Act, 1894.

Now the first question is whether any property passed to Mrs. Goschen on the death of her husband. It is clear that no property passed within the meaning of section 2, sub-section (1) (*a*)—that is to say, no property passed of which the deceased at the time of his death was competent to dispose. If property passed at all it must be by virtue of the definition in section 2, sub-section (1) (*b*)—that is to say, property in which the deceased (Mr. Vaughan) had an interest ceasing on his death to the extent to which a benefit accrues or arises by cesser of such interest. Now, if the words at the beginning of section 2, sub-section (1) (*b*), are taken alone, they seem clearly wide enough to include the present case, because the £85,000 fund was property in which the deceased (Mr. Vaughan) had an interest (it is true not an interest in possession) which ceased on his death, and that a benefit (it is true not a benefit in income) accrued by the cesser of such interest—that is to say, a benefit accrued by the cesser of her husband's contingent interest to Mrs. Vaughan; for upon the cesser of her husband's interest, she would have been able to get a larger price if she had sold her own interest, and from a pecuniary point of view her husband's interest would during his lifetime have been worth something to her if she had desired to purchase it. Now, this being so, it remains to be seen whether there is anything either in the residue of the section or in the other sections of the Act to cut down "the interest of the deceased" to mean "an interest of the deceased in possession," or to cut down the meaning of "benefit accruing" to "benefit accruing in income." Now it is said that the words at the end of section 2, sub-section (1) (*b*), "as holder of an office or recipient of the benefits of a charity or a corporation sole," indicate that clause (*b*) only applies to interests in possession because the words "holder," "recipient," and "corporation sole" are inapplicable except to an interest in possession. It is very difficult to conceive of a concrete case in which there should be a contingent right to receive the benefits of a charity, but it would certainly seem as if the death of such a person, and the consequent cesser of the contingent interest, might cause a benefit to someone taking an absolute interest in

remainder, and that such a case would be outside the words of this exception, and that consequently estate duty would be payable unless "interest" in this section is construed to mean "interest in possession," and it is of course inconceivable that the Legislature intended estate duty to be paid in a case where the deceased was not a recipient through the interest not having fallen into possession, and not to be payable in the case where the deceased was a recipient and had an interest in possession.

But I do not think that these considerations are sufficient by themselves to cut down the natural meaning of the words in the earlier part of the section. I think the more proper view is to regard these words as a piece of imperfect drafting. Now the next ground upon which it is said that the words of section 2, sub-section (1) (*b*), ought to be limited in the way suggested is that section 7, sub-section (7) (1), which prescribes the measure of the value of the benefit accruing from the cesser of an interest ceasing on the death of the deceased, prescribes a measure based upon the assumption that the interest ceasing is an interest in possession, because it speaks of the interest extending to the whole income of the property, or to less than the whole income of the property, and deals only with those two cases, and it is said that "income" is a term applicable only to estates in possession, and that the deceased, who was not in possession, had no interest in the income, and that, even if it is said that he had a contingent interest in the prospective income, the prospective income is not necessarily the same as the income at the time of his death, but might, if the interest fell into possession, be greater or less than the income produced by the property at the time of his death. It is to be observed on this argument that, although estate duty under section 2, sub-section (1) (*b*), is only leviable in respect of property in which the deceased had an interest ceasing on death to the extent to which benefit accrues by the cesser, and although section 7, sub-section (7) purports to prescribe a measure of the value of that benefit, the measure actually prescribed seems to be the value of the property out of which the income flows, and not the value of the benefit. I wish to say here that nothing which follows in my judgment with regard to section 7 must be taken as a judgment on the construction of that section. It is not necessary for my judgment that I should construe it. I am only dealing with the construction suggested by the Crown in the course of argument. The suggested departure of section 7, sub-section (7), from section 2, sub-section (1) (*b*), by the substitution as the subject of taxation of the property in which the deceased had an interest for the interest which he had to the extent to which benefit accrues by the cesser of that interest, and the apparent injustice and inconsistency of this substitution, properly lead to such a construction of the Act as might minimize its operation ; but I cannot bring myself to the conclusion that it was intended by the Legislature to limit section 2, sub-section (1) (*b*), to interests in possession, and exclude from taxation benefits arising from cesser of a contingent life estate which has not fallen into possession. It is obvious that the benefit arising from such cesser might be of most substantial pecuniary value, and it seems to me that the scheme of the Act is intended to include not only every case of property passing by death, but that section 2, sub-section (1) (*b*), shews that the scheme also includes every benefit accruing by death even though the property from which the benefit is derived does not itself pass. No one, I think, would hesitate to come to this conclusion if the Legislature had limited the duty by the value of the benefit accruing, and I do not think that we are entitled to refrain from coming to this conclusion because the Legislature has adopted what seems to be an irrational measure of that benefit. I am quite aware that those who argued on behalf of the Crown attempted to avoid the inconsistency

between section 7, sub-section (7), and section 2, sub-section (1) (*b*), by saying that the words " extent of the benefit " mean " extent in proportion of the income or profit of the property receivable by the deceased in respect of his interest." I do not agree in this view ; but, even supposing that the apparent inconsistency between section 2, sub-section (1) (*b*), and section 7, sub-section (7), can be avoided by this construction, another difficulty remains, which the Crown itself has recognised in the information, and that is, that if the construction of the Crown is right and the inconsistency between the two sections is thus got rid of, it is difficult to understand why the Crown has deducted in their claim the value of the life interest of Mrs. Vaughan ; for so to do is clearly to recognise that the quantum of estate of the deceased must be taken into consideration. Holding therefore, as I do, that there was, within the meaning of section 2, sub-section (1) (*b*), a cesser of interest on Mr. Vaughan's death, and a benefit accruing therefrom, it remains to consider what is the value of that benefit, and lastly, whether there is anything in the facts of this case to exempt the defendants from paying duty. Now first, what is the measure ? Can you apply section 7, sub-section (7)? To apply the measure given by this section according to the contention of the Crown would seem to be the application of an obviously unjust measure. It is this no doubt which accounts for the modulation of the claim of the Crown. The Attorney-General seemed disposed to get out of the application of the section by accepting the suggestion that it could not apply, and saying that the section was not exhaustive—*i.e.*, that the measure was not of universal application. I dissent from this, and I think that in cases where the measure cannot be applied no duty can be levied, and it seems clear that the only ground upon which the section can be held not to apply would be that the words it contains relative to income limit its application to estates not in possession. In my opinion, therefore, section 7, sub-section (7), does supply the measure. If, however, section 7, sub-section (7), does not supply the measure, and interests passing other than those in possession are properly taxable with estate duty, I think that the measure would be, not that suggested by the Crown, but the increase in value of the absolute property in the reversion having regard to the outstanding life estate of Mrs. Vaughan by the cesser by death of Mr. Vaughan's contingent interest. This is the result which one would expect from the general scheme of the Act, but unfortunately the Legislature has not said so. The mistake seems to have arisen from the desire of the draftsman for uniformity, leading him, in the case of cesser by death of an interest, to make the property and not the benefit the measure of value for the purposes of taxation, because it happens to be so in the Act generally. I desire to repeat that I have not been construing section 7. The section is very difficult to construe, and I should not feel justified in construing it unless it were necessary to my judgment to do so, which it is not. It remains only to consider the exemptions. Two are suggested—namely, those contained in section 5, sub-section (3), and section 21, sub-section (5) (1). The property in question seems to be settled property within the meaning of section 22, sub-section (1) (*h*). It will be observed that in the case of settled property a further estate duty called settlement estate duty on the principal value of the settled property is payable as soon as the property passes, unless the passing be to the wife or husband of the deceased, but the settlement estate duty is only once payable during the continuance of the settlement. Those are the exemptions regarding settlement estate duty. Sub-sections (2) and (3) of section 5 provide exemptions also in the case of estate duty. Sub-section (2) provides that if estate duty has been paid in respect of settled property, estate duty shall not be payable in respect thereof until the death of some person

competent to dispose of the property, and then sub-section (3) provides that in the case of settled property, where an interest of a person fails before it becomes an interest in possession, property shall not be deemed to pass on his death if subsequent limitations (which, I take it, means one or more) under the settlement continue to subsist. Now, did subsequent limitations under the settlement continue to subsist at the death of Mr. Vaughan? I think they did, notwithstanding the fact that Mrs. Vaughan thereupon became absolutely entitled to this property and could have demanded a transfer of it from the trustees. I think that "subsist" properly describes any estate created by the settlement which has not come to an end. I do not think that such an estate is the less a limitation because there is no estate limited beyond it—in other words, I think that limitations under the settlement continue until the death of a person who was, at the time of his death during the continuance of the settlement, competent to dispose of such property. If it is said that these sub-sections assume that estate duty and settlement estate duty have each of them been paid in respect of this property, I can only say that, although no doubt the sub-sections were passed in contemplation of that state of things, the Legislature has not seen fit so to limit them, and no injustice seems to be done, because the death of Mrs. Vaughan will be the first occasion on which the property settled by the marriage settlement will pass by reason of death, except in the case of the death of Mr. Vaughan, on the happening of which section 5, sub-section (1) (*a*), expressly prevents settlement estate duty becoming payable, and so far as regards interests passing under the will of Mrs. Vaughan's father the existing duties seem to have been paid. In my judgment section 5, sub-section (3), prevents either settlement estate duty or estate duty becoming payable. I wish to add that I do not think that the fact that section 14 of the Finance Act, 1896 (59 and 60 Vict. C. 28), contains an enactment in the sense of the construction which I am now putting on section 5, sub-section (3), of the Act of 1894 shews that that construction is wrong because, if it were right, the amending Act might be said to be useless. The amending Act may be merely declaratory to clear up doubts, and, even if not so intended, the presence of the section in the later Act cannot determine the construction of the earlier.

The other exemption suggested is under section 21, sub-section (5). I do not think this exemption has any operation. Mrs. Vaughan did not on Mr. Vaughan's death become entitled to the income of the property settled by herself: that income was already hers in possession at the time of the death; and, moreover, Mrs. Vaughan did not, as survivor, become entitled to income of any property settled by her on her husband either solely or jointly."

In *In re Earl of Chesterfield's Trusts*, (1883) 24 Ch.D. 643, the headnote itself sets out the facts and the decision. "Where a testator had bequeathed his residuary personal estate to trustees upon trust for conversion, with power to postpone such conversion at their discretion, and to hold the proceeds upon trust for a person for life with remainders over, and such residue includes outstanding personal estate, the conversion of which the trustees, in the exercise of their discretion, postpone for the benefit of the estate, and which eventually falls in some years after the testator's death—as for instance a mortgage debt with arrears of interest, or arrears of an annuity with interest, or moneys payable on a life policy—such outstanding personal estate should, on falling in, be apportioned as between capital and income by ascertaining the sum which, put out at interest at 4 per cent. per annum on the day of the testator's death, and accumulating at compound interest calculated at that rate with yearly rests and deducting income tax, would, with the

accumulations of interest, have produced, at the day of receipt, the amount actually received ; and the sum so ascertained should be treated as capital, and the residue as income.

Chitty, J., followed *Beavan* v. *Beavan*, the report of which is contained in this very case. His judgment was : " The said Tynte moneys are apportionable between principal and income by ascertaining the respective sums, put out at 4 per cent. per annum on the 1st of December, 1871, the day of the death of the seventh Earl of Chesterfield, and accumulating at compound interest calculated at that rate with yearly rests, and deducting income-tax, would, with the accumulations of interest, have produced, at the respective dates of receipt, the amounts actually received ; and that the aggregate of the sums so ascertained ought to be treated as principal, and be applied accordingly, and the residue should be treated as income : And that the amount apportioned in respect of income is payable to the Earl of Carnarvon in his own right, and as representing his late wife, Evelyn, Countess of Carnarvon, deceased : And that the policy moneys, including bonuses, after deducting and repaying the sums advanced for premiums with simple interest at 4 per cent., are apportionable and distributable in the same way . . . . "

Harrison In Re *Johnstone* v. *Blackburn and East Lancashire Royal Infirmary*, [(1918) 2 Ch. 374]. The facts of the case are given in the judgment itself. Sargant, J., said " The question is whether the £30,000, legacy is chargeable with estate duty on the death of the first beneficiary, the plaintiff's brother Reginald. The relevant facts are that Reginald died within much less than a year of the testator's death, namely, within some seven months thereof ; that no payment or appropriation was made in respect of the legacy during Reginald's life ; and accordingly that neither Reginald nor his estate ever became entitled to any income whatever from the legacy. Under these circumstances it is said by the plaintiff that, whether the legacy would, under the other provisions of the Finance Act, 1894, have passed or been deemed to pass from Reginald to the plaintiff, it is at any rate saved from estate duty by the express words of section 5, sub-section (3), which appear to be sufficient if they apply at all, to counteract either a passing under section 1, or a being deemed to pass under section 2, sub-section (1). Did, then, the " interest " of Reginald in his settled legacy of £30,000 " fail or determine by reason of his death before it became an interest in possession " within the meaning of section 5, sub-section (3) ? Now, that " interest " was, according to the settled rule in these matters, merely the right to receive the income of the settled legacy as accruing from and after the expiration of one year from the testator's death or from and after any earlier time when the legacy should have been set aside and appropriated. And as matters have turned out neither Reginald nor his estate has ever become entitled to a penny piece in respect of the income of the legacy. In my judgment this amounts to a failure of the interest by reason of death before it became an interest in possession. It may no doubt be true that the section was primarily aimed at reversionary interests in the ordinary sense, which fail or determine during the existence of some prior interest. But I see no reason for restricting the ordinary meaning of the language of the section so as to limit its operation to such reversionary interests only. Counsel was constrained to admit on behalf of the Commissioners of Inland Revenue that if the testator had expressly fixed a period for the setting apart of the legacy, such as a year or two years, and had provided that no income was to accrue thereon in the meantime, the case would have fallen within the sub-section. And I think that the sub-section must equally apply where the failure of the first intended beneficiary to enter into the enjoyment of any income was due not to any express provision of the

testator, but to the ordinary legal consequences of his gift. Regard must be had to the substantial results of the interests given without too close insistence on legal technicalities, as was pointed out by Palles, C.B., in *Attorney-General* v. *Power*, [(1906) 2 I.R. 272, 280]. I hold, therefore, that estate duty did not become payable on the £30,000 legacy on the death of Reginald."

Skinner v. *Attorney-General* [1940 A.C. 350]

In 1940 A.C. 350 the testator's widow had bequeathed to her an annuity of £7,500. It was held that an annuitant whose annuity is charged on the estate of a testator "had an interest" in the different items of which that estate from time to time consisted. It was decided that on the widow's death, under section 2, sub-section (1) (*b*) of the Finance Act, 1894, in respect of the testator's death in so far as it was represented by English securities, upon the ground that it was property in which the widow had an interest ceasing on her death, and was therefore property which must be deemed included in property passing on her death. *Per* Lord Russell of Killowen "It appears to me beyond question that an annuitant, whose annuity is payable out of a testator's estate and who is therefore interested in the whole estate, is necessarily also interested in all the parts which comprise the whole ; and that her right to take proceedings (if necessary) to have the estate administered for the purpose of providing her annuity, is merely the right of enforcing or realizing that interest which she has in the whole and its parts." The case of *Lord Sudley* v. *Attorney-General*, (1897 A.C. 11), was distinguished as a case relating to probate duty in which the executors of the testator's widow claimed that the widow had a proprietory interest in, and was the owner of, a share of the mortgages, *i.e.*, of property situate in New Zealand in respect of which no probate duty would be payable in England.

Section 24. *Property reverting to disponer.*—(1) Where by a disposition of any property an interest is conferred on any person, other than the disponer for the life of such person or determinable on his death, the remainder being conferred upon the disponer absolutely, and such person enters into possession of the interest, and thenceforward retains possession of it, then, on the death of such person, the property shall not be deemed to pass by reason only of its reverter to the disponer in his lifetime.

(2) Where by a disposition of any property any such interest as is mentioned in sub-section (1) is conferred on two or more persons either severally or jointly or in succession, sub-section (1) shall apply in like manner as where the interest is conferred on one person :

Provided that sub-section (1) shall not apply where such person or persons taking the said life or determinable interest had at any time prior to the disposition been himself or themselves competent to dispose of the said property.

The meaning of this section is, that a person who is absolute owner of a property can confer on another person, a life interest, or an annuity to be enjoyed by him for the limited period of his life or the duration of the interest granted to him and on the death of the grantee, no estate duty is payable because the property shall not be deemed to pass under section 6 by reason only of its reverter to the disponer ; nor there is any benefit accruing or arising

to the owner by the cesser of the interest on the death of the grantee within the meaning of section 7. The property which belonged to the disponer absolutely before the disposition comes back to him. An owner of property instead of enjoying the income from the property himself can permit others to enjoy a limited interest in that property. Only three conditions are necessary to be fulfilled.

1. The disponer must be living at the time of the death of the grantee (disponee) ;
2. The disponee had an interest for his life ;
3. The same was enjoyed by him in possession.

Sub-section (2) extends the exemption granted by sub-section (1) to the case " where any such interest is conferred on two or more persons either severally or jointly or in succession." Two or more persons may be granted, in the same property severally, the same interest in severalty each person enjoying a specific particle of the interest or they may enjoy together jointly the same interest without division. The interest may be granted to a number of persons in succession, for example, to *A* for life then to *B* for life and then to *C* for life and so on. The proviso enacts that the exemption cannot be claimed if the disponee, or the disponee as the case may be, had prior to the disposition, competency to dispose of the said property. For " competency to dispose of " reference may be made to section 3, sub-section (1), clauses (*a*), (*b*) and (*c*). If, any one of the disponees had power conferred on him, before the disposition, whereby he could appoint or dispose of property as he thinks fit, then the exemption is destroyed. " Competency to dispose " included the general authority which a person has by a direction in his will to dispose of property to his executors or his administrators "—*Per* Rowlatt, J., in 98 L.J.K.B. 317. A power of revocation or appointment in a disposition when it is sole and unlimited in object creates competency to dispose [see *Inland Revenue Commissioners* v. *Gunning's Trustees*, (1907 S.C. 800)]. This exemption also will not be available if the disponer himself gives to the disponee a general power of appointment, for the words in sub-section (1), are " the property shall not be deemed to pass by reason *only* of its reverter to the disponee."

This section is based on section 15 (1), (2) and (3) of the Finance Act, 1896. From sub-section (1) of section 23, however the words occurring in the section 15 (1) in the Finance Act, " thereof to the entire exclusion of the disponer or of any benefit to him by contract or otherwise, and the only benefit which the disponer retains in the said property is subject to such life or determinable contracts and no other interest is created by the said disposition " are omitted. It is the Select Committee that dropped the above said words. The Select Committee observed as follows : " It is difficult to differentiate between a case where *A* settles property on trust for *B* for life and then for himself absolutely and a case where *A* settles property on trust to pay an annuity to himself and subject thereto to *B* for life with remainder to *A*. As the clause originally stood, in the first case no estate duty was payable on *B*'s death while in the latter case, it was payable." Section 15 of the Finance Act, 1896, was criticised adversely in *Attorney-General* v. *Penrhyn* (83 L.T. 103). If the property reverts to the disponer on the cesser of the life interest created by him, the exemption under this clause should, in the opinion of the Select Committee, apply even where the settler might have carved out for himself some interest out of the life interests created by him, for, after all, estate duty is payable on the death of the settler on his entire property, including the remainder." Even though the section speaks of an interest for the life

it is also possible for the disponer to grant the interest alternatively on the occurrence of events like bankruptcy or remarriage, of the disponee, without the exemption being lost. The interest granted must be less than the whole property.

The case of *Re Lambton's Marriage Settlement* [(1952) 2 All E.R. 201], is important because (1) the Court of Appeal held that its own decision in *A.G.* v. *Glossop* [(1907) 1 K.B. 163], was no longer good law and (2) the decisions of the House of Lords in *Earl Cowley* v. *Inland Revenue Commissioners* [1899 A.C. 198] and *De Trafford* v. *A. G.* (1935 A.C. 280), were fully analysed and their significance was stated. The general scope of the Finance Act, 1894, was described in the very known passage in Lord Macnaghten's speech in the Cowley's case as follows : " My Lords, the principle on which the Finance Act, 1894, was founded is that whenever property changes hand on death, the state is entitled to step in and take toll of property as it passes without regard to its destination or to the degree of relationship, if any, that may have subsisted between the deceased and the person or persons succeeding." Evershed, M.R., held that in the Cowley case the property as a whole passed to the present Baronet freed from the Trust or liability to pay the annual sum, which Trust or liability automatically came to an end with the death of his father. As regards De Trafford's case, Evershed, M.R., stated as follows : " I am unable ' to read ' that case as doing other than deciding and establishing that *Earl Cowley* v. *Inland Revenue Commrs.*, covers as a matter of principle all cases where income under a settlement is held on trust to pay an annuity or other fixed sum and subject thereto to pay the balance to *A B* and then *A B* dies—in all those cases there is a passing of the whole property and it is irrelevant that the persons who succeed to the whole income is the same person who enjoyed the annuity or fixed annual sum." The facts of the case in *Re Lambton's Marriage Settlement* are these : By an ante-nuptial settlement deed (20-7-1912), the husband settled certain funds of his on trust during the joint lives of himself and his wife to pay out of the income an annuity of £400 to the wife and to pay the rest of the income to himself subject to the above trust the income of the settled fund was payable to the survivor during his or her life with remainder after the death of the survivor to the children of the marriage absolutely with an ultimate limitation in default of the issue to the husband. In 1949 the husband died survived by his wife and two children. Estate duty was claimed on the entire fund without any allowance in respect of the wife's annuity.

Section 25. *Income of settled property acquired on death of spouse.*—Where a husband or wife is entitled, either solely or jointly with the other, to the income of any property settled by the other under a disposition which took effect before the commencement of this Act and on his or her death the survivor becomes entitled to the income of the property (as distinguished from the property itself) settled by such survivor, estate duty shall not be payable in respect of that property until the death of that survivor.

This section is based on section 21 (5) of the Finance Act, 1894. The latter provision is identical with the section except for the words " as distinguished from the property itself " in brackets. When the section itself speaks of " income " it means the income alone as distinguished from the property itself.

The corresponding provision in the Finance Act, 1894, which came into force on 2-8-1894 stated that the section applied only to settlements made before coming into force of the Act.

The provision became obsolete even in the United Kingdom. There appears no reason for enacting this provision in the Indian Act and to grant exemption to the income of settled property acquired on the death of spouse in the case of settlements made before 15-10-1953, when this Act came into force.

Either a husband or wife could have made the settlement. Under the settlement one only might be entitled to the sole income of the property settled or both husband and wife might be jointly entitled to the income. On the death of husband or wife estate duty will not be levied. On the death of the survivor of the two only estate duty will be levied on the property (subject-matter of the settlement).

Thus the income alone from the settled property is exempted from payment of estate duty until the death of the survivor of the two. Thus the section is concerned with limited interests or life interests only. It is to be noted that there is no exemption if the survivor becomes entitled to the corpus of the property under the terms of the settlement. See *Attorney-General v. Strange* [(1898) 2 Q.B. 39].

See further the commentaries on sections 23, 24 and 29.

Section 26. *Property passing by reason of a* bona fide *purchase for full or partial consideration in money.*—(1) Subject to the provisions of section 27 and section 46 estate duty shall not be payable in respect of property passing on the death of the deceased by reason only of a *bona fide* purchase from the person under whose disposition the property passes, nor in respect of the falling into possession of the reversion on any lease for lives, nor in respect of the determination of any annuity for lives, where such purchase was made, or such lease or annuity granted, for full consideration in money or money's worth paid to the vendor or grantor for his own use or benefit, or in the case of a lease for the use or benefit of any person for whom the grantor was a trustee.

(2) Where any such purchase was made, or lease or annuity granted, for partial consideration in money or money's worth paid to the vendor or grantor for his own use or benefit, or in the case of a lease for the use or benefit of any person for whom the grantor was a trustee, the value of the consideration shall be allowed as a deduction from the value of the property for the purpose of estate duty.

This section has been held to be a general section. It is subject to section 27 which deals with dispositions in favour of relatives, and section 44 which deals with further limitations. No Estate Duty is payable in 3 cases : (1) Property passing by reason of a *bona fide* purchase for full consideration in money or money's worth paid to the vendor; (2) Reversion on any lease for lives where it is granted for full consideration in money or money's worth paid to the grantor; and (3) An annuity for lives granted for full consideration in money or money's worth paid to the grantor. Sub-section (2) states that if only the purchase is for partial consideration then a deduction of the consideration paid will be allowed from the value of the property.

A discussion of a few of the most important cases will give the full meaning of the section.

The *A. G.* v. *Dobree and another* [(1900) 1 Q.B. 442]. The relevant facts taken from the headnote are as follows : "F. J. Atlee shortly before his marriage, effected a policy of insurance on his own life for a sum payable on his own death to his intended wife Mary Dobree Atlee, and assigned the policy to the trustees of a settlement made in consideration of the marriage. By that settlement the principal moneys received under the policy were to be held by the trustees in trust for the wife for life and upon other trusts, and F. J. Atlee, covenanted to keep up the policy and pay the premiums thereon during his life. He duly performed his covenant, and died leaving his wife surviving. A claim of exemption as purchase was made under section 3 of the Finance Act, 1894. Darling, J., said : " Estate Duty shall not be payable in respect of property passing on the death of the deceased by reason only of a *bona fide* purchase from the person under whose disposition the property passes. I do not think that provision applies. It seems to me to be aimed at something entirely different from what has happened here, I

think it is aimed at the kind of case where a person has bought something and paid for it a price—'a consideration in money or money's worth'—but, is not to get the benefit of his purchase until the death of his vendor. It is clear, then, that he gets no immediate benefit at all ; he has bought and paid for something the delivery of which to him is postponed. In such a case the legislature has recognised that it would be unjust to make him pay duty upon the death of his vendor when he has paid the full value of the interest to the vendor, it may be years and years ago. I do not think that section 3 was intended to include such a transaction as the one before us. I think the property here is not 'property passing on the death of the deceased by reason only of a *bona fide* purchase from the person under whose disposition the property passes.' It seems to me that the argument for the defendants—that section 3 applies to this case—involves reading the word 'from' in that section as though it were 'by'. I cannot think that section 3 was ever intended to have such an operation." Channell, J., said : "Applying section 3 to this policy, undoubtedly the policy, or the right to it, did not pass on the death of the deceased ; it passed on the making of the settlement many years before. If, however, you read the word 'property' as referring to the £1,500 payable under it, then that did pass on the death of the deceased, partly, at any rate, by reason of the contract with the insurance company. Of course, if no contract had been made with the insurance company to insure the life of the deceased, and if the transaction had merely been a purchase, by the payment of the premiums, of £1,500 to be paid on the deceased's death, that transaction would have been one to which section 3 applied. It is possible, I think, that there might be some policies of insurance and policy moneys which might be brought within the section. If a person having an insurable interest in the life of another insured that life and paid the premiums, and if the moneys payable under the policy on the death of the other could be brought within some of the other sections of the Act, then I think that section 3 would operate to prevent the duty being payable. There, one would have to read the words 'the person under whose disposition the property passes' as covering the insurance company ; the property would pass only by reason of the policy. But in the case before us, it is I think quite impossible to say that the property passed only by reason of the contract with the insurance company. It passed by reason of a considerable number of other circumstances. Section 3, in my view, is a general section which cannot be read so as to alter the effect of the specific sections which precede it, and deal with the policies of insurance and policy moneys."

It has been held in *Ld. Adv.* v. *Sidgwick*, (1877) 4 R. 815, that marriage is not consideration in money or money's worth.

Attorney-General v. *Montagu* (*Lord*), [1904 A.C. 316]. In this case the life estate holder joined with the remainder man in mortgaging the estate. The whole of the mortgage money was taken by the remainderman alone, who alone agreed to repay. The life tenant received not a pie of the mortgage amount. The life tenant died and it was held that on his death in estimating the principal value of the estate for Estate Duty payable by the remainderman, no deduction could be made on account of the mortgage debt. *Per* Earl of Halsbury, L.C.: "It may be that the same deed may have a legal operation as between one set of persons, and yet, as between other parties to it, the real substance of the transaction may be such that it cannot be treated as if it had its full legal operation." The majority opinion in this case was against the opinion of the Lord Chancellor. *Per* Lord Davey : "If this were a simple case of a mortgage by a tenant for life and a remainderman, or by successive tenants for life and the ultimate remainderman, I think that

the property would *protanto* be taken out of the settlement as, from the date of the mortgage and on the death of the first tenant for life, the Estate Duty could be claimed only on the equity of redemption.... If I am right in the views which I have expressed as to the effect of the arrangements between the parties, the Duchess (life tenant) had a beneficial interest, notwithstanding the mortgage, in the whole of the income, including the £1,080 a year which was equivalent to the interest on the mortgage. She had as between her and Lord Montagu an undoubted beneficial interest to receive and to retain without incumbrance or charge upon it that portion of the income.

Section 2, sub-section (1) (*b*), is this : " Property in which the deceased or any other person had an interest ceasing on the death of the deceased." Now I think that portion of the rents which was equal to £1,080 a year was property in which the Duchess had an undoubted beneficial interest ceasing on her death. Then the sub-section says that property is to be deemed to pass—to what extent?.... " to the extent to which a benefit accrues or arises by the cesser of such interest." Lord Montagu thereupon acquired the benefit of receiving that sum of £1,080 a year for the purpose of discharging his mortgage interest. He was under liability for the interest on the mortgage during the Duchess' lifetime, but he now receives a fund out of which he will be enabled to discharge the interest. In my opinion that is " a benefit which accrues or arises " to him. The property represented by that £1,080 a year, if it did not pass under section 1, is to be deemed to pass under section 2." *Per* Lord James : " it seems to me that the contractual obligation did affect the estate, because it relieved the tenant for life from bearing any of the burden of the mortgage. The result is that in substance there was, as between the tenant for life and the remainderman, no mortgage, and that by the death of the Duchess, the tenant for life, Lord Montagu obtained the estate without the mortgage affecting him, or at all events obtained the benefit of it to a greater degree than during her life. He had then to bear the burden of the mortgage. By the death of the tenant for life he has become seized of the estate and receives the benefit of it which he did not receive before."

Lethbridge v. *A. G.* [1907 A.C. 19]. By a family arrangement between father and son (the tenant in tail) the estates were disentailed and resettled. The fee was mortgaged by father and son for an amount to pay off the father's debts. The father assigned to the son insurance policies on his life. The rents and profits of the estates were held in trust to pay the interest on the mortgage, the premiums on the policies, an annuity to the son, and the residue to the father for life, with remainder to the son in fee. On the father's death, the policy moneys were paid to the son, and the Crown claimed the Estate Duty, thereon under the Finance Act, 1894, section 2, sub-section (1) (*d*). It was held by the House of Lords that the son had made an absolute purchase of the policies for valuable consideration, that this was not a case of an interest provided by the deceased, either alone or in concert with any other person within the meaning of section 2, sub-section (1) (*d*), and that Estate Duty was not payable on the policy moneys. *Per* Lord Loreburn, L.C.: " The father originally effected these fifteen policies on his own life, and after maintaining them for some time assigned them to his son under a family arrangement, or series of arrangements, necessitated by his (the father's) pecuniary difficulties. In substance it came to this, that the son mortgaged his inheritance in the family estates to save his father, and the father in return assigned these policies, together with an annual sum out of his life interest in the same estate sufficient to pay the premiums, and also to pay an annuity during their joint lives. In my opinion we have nothing to do with these transactions beyond what suffices to answer this question : Did the son give in money

or money's worth full consideration for the policies and the other advantages he acquired under the arrangement ? It is indisputable that he gave full value and more. He made sacrifices as a son for his father's sake.

Having taken over these policies the son might have allowed them to lapse. He preferred to keep them alive, and paid the premiums, in substance, out of the moneys he received annually from the life interest of his father's pursuant to the family arrangements. He might have spent that money otherwise had he pleased, but, even if he had not been free to spend it as he liked, that circumstance would have made no difference in my opinion. The son had given full value for the annual payments which were to be made to him out of the life estate. Therefore it could not be said that the father was keeping up the premiums on these policies, though the money which kept them up came out of his life estate.... The general purpose of this sub-section is to prevent a man escaping estate duty by subtracting from his means, during life, money or money's worth, which, when he dies, are to reappear in the form of a beneficial interest accruing or arising on his death. Now it is not subtracting from his means if the deceased has received a full equivalent in return for whatever he has laid out. In this case, from the date when the policies were assigned, and the obligation to find out of the life estate enough to pay the premiums was created (for all of which full value was given), no further liability was incurred, nor sacrifice made by the father in connection with these policies. He purchased nothing and he provided nothing. What he originally expended in acquiring and maintaining the policies till their assignment was compensated, what he stipulated by the family arrangement to do in future years was also compensated, by the consideration proceeding from the son ; and thenceforward he had no title to, nor concern with, the policies.... No doubt Courts of Equity will sustain such arrangements, if they can, to save the family honour, and apart from the adequacy of the consideration on either side. But if, in any proceeding, it be relevant to inquire whether the consideration for assigning property was adequate or not, that can be ascertained as well in a case of family arrangement as in any other, and in the same way. The fact that the transaction was a family arrangement is not inconsistent with its being also a purchase for full consideration in money or money's worth. If I thought that the case fell within section 2, sub-section (1) (*d*) (as I do not), I should still think that these policies were exempted from estate duty by virtue of section 3, sub-section (1) of the same Act, upon the ground that there had been a purchase for full value within the meaning of that section. But in the view I take, this point does not arise."

Per Lord Atkinson : " It has many times been decided that in dealing with questions arising on the Finance Act of 1894, and the succession duty acts regard should be had to the substance of the transactions on which these questions turn rather than to the forms of conveyancing which the parties to them may have adopted to carry out their objects....

If Sir Wroth Acland Lethbridge and the appellant had been strangers to each other, or merely friends instead of father and son, it could not, I think, be contended that these policies were not purchased for " money or money's worth " within the meaning of the 3rd section of the Finance Act ; but because filial affection or family pride, or a desire to relieve a father from embarrassment may have induced the appellant to make this bargain and to pay an extravagant price for the benefits he received under it, the transaction, it is urged, is to be treated as a family arrangement and not a purchase at all....

I think that it is to confound the motive which induces a transaction with a transaction itself; and I utterly fail to see how a transaction which would be regarded as a purchase if it took place between strangers, and therefore would be outside the Act, is to be brought within the Act because the parties to it are members of the same family and the interests of honour of the family induced to or were promoted or protected by it.

It is clear from the 2nd sub-section of section 3 that a transaction may amount to a purchase though the consideration given comprises something in addition to "money or money's worth." This case is also authority for the proposition that there may be a family arrangement co-existent with a purchase.

In *Re Baroness Bateman* [(1925) 2 K.B. 429], the facts are: A lady (Baroness Bateman) in consideration of £1,500 which was paid over to her by her son, conveyed certain furniture upon trust for herself for life, the remainder to her said son absolutely. At her death the furniture was sold for £48,000 and the Crown claimed succession duty and estate duty upon the difference between the two sums from the trustee. It was held by the Court that the transaction was a *bona fide* sale between the mother and the son and no succession duty was payable. As to the claim for estate duty, it was held that there had been a purchase for partial consideration within the meaning of section 3, sub-section (2) of the Finance Act, 1894, that the consideration paid represented 4/5ths of the value of property at the date of such purchase, and that estate duty was therefore payable only upon 1/5th of the value as at the date of the death. Partial consideration in section 3, sub-section (2) means something less than the full and fair value as between buyer and seller. *Per* Rowlatt, J.: "The question is whether the object of the transaction was really on the one side to get money for goods by disposing of the goods in the future, and on the other side to pay money and obtain goods. In *Brown* v. *A.G.* (79 L.T. 572), a father entered into a partnership deed with his son, one of the provisions being that on his death the son should take over the father's share in consideration of a payment of £10,000 to the estate. There the motive and intention were clearly not to turn something into money, either in the present, or in the future, but to provide for the disposal of the business after death, and to prevent the business going to the eldest son without his making some corresponding contribution to the estate. It was held that that could not fairly be described as a sale and purchase. In the present case the mother was in want of money and she obtained it by a simple sale of her furniture subject to her life interest. The sum paid, whether it was the full amount which would have been obtained for it or not, was certainly not so inadequate as to be an unreality. I think therefore that this was a *bona fide* sale and purchase by the son and that no succession duty is payable. . . .

'Partial' consideration is opposed to 'full' consideration in money or money's worth, which means that the full fair price has been paid, and that nothing is left over for gift or natural love and affection or any other consideration. In other words, it is the full and fair value as between the buyer and seller, while partial consideration means something less than that. The object of section 3, sub-section (2) is to see how much of this property is passing by way of bounty and how much by way of purchase. That can only be done by ascertaining what proportion of the property was the subject of purchase and what proportion is represented by gift. Under that interpretation the words 'the value of the consideration' mean 'the value which corresponds to the consideration,' that is to say, the value in the article partially bought which was bought by the consideration. In other words, this proportion can be allowed as a deduction from the value of the property. It is necessary to find the piece of property which is being taxed, and if it

passes partially by reason of purchase for consideration in money or money's worth, then such part of the value as corresponds to the consideration must be deducted from the value of the whole property.

Munroe v. *Commr. of Stamp Duties* (1934 A.C. 61). The facts are : The deceased had been carrying on the business of grazier on three pastoral holdings in New South Wales belonging to him. He had four sons and two daughters. He entered into a verbal agreement with his six children by which it was agreed that the business of graziers should thenceforward be carried on by the deceased and his six children as partners under a partnership at will. The deceased transferred by way of gift all his right, title and interest in portion of his land to each of his four sons and to trustees for each of his two daughters and their children. Nineteen years afterwards the deceased and his children entered into a formal partnership agreement which provided that during the lifetime of the deceased no partner should withdraw from the partnership. On the death of the deceased, death duties were claimed in respect of the lands transferred to his children on the ground that they were gifts dutiable.

It was held by the Privy Council that the property comprised in the transfers was the land separated from the rights therein belonging to the partnership, and was excluded by the terms of section 102, sub-section (2) (*a*) of Stamp Duties Act, 1920-1931, New South Wales, because the donees had assumed and retained possession thereof, and any benefit remaining in the donor was referable to the partnership agreement and not to the gifts.

Per Tomlin, L.J. : " It is unnecessary to determine the precise nature of the right of the partnership at the time of the transfers. It was either a tenancy during the term of the partnership or a licence coupled with an interest. In either view what was comprised in the gift was, in the case of each of the gifts to the children and the trustees, the property shorn of the right which belonged to the partnership, and upon this footing it is in their Lordships' opinion plain that the donee in each case assumed *bona fide* possession and enjoyment of the gift immediately upon the gift and thenceforward retained it to the exclusion of the donor. Further, the benefit which the donor had as a member of the partnership in the right to which the gift was subject was not in their Lordships' opinion a benefit referable in any way to the gift. It was referable to the agreement of 1909 and nothing else, and was not therefore such a benefit as is contemplated by section 102, sub-section (2) (*d*). Upon this view of the matter the effect of the words added by the Stamp Duties (Amendment) Act, 1931, becomes unimportant and need not be considered. In their Lordships' opinion it is the substance of the transactions which must be ascertained and if when so ascertained the substance does not fall within the words of the statute it cannot be brought within them merely because the forms employed did not give true effect to the substance. It is not always sufficiently appreciated that it is for the taxing authority to bring each case within the taxing Act, and that the subject ought not to be taxed upon refinements or otherwise than by clear words."

Attorney-General v. *Gretton and Shrimpton* (House of Lords)
[(1945) 1 All E.R. 628]

In this case an annuity for £6,000 was given to Lady Houston under a Will. After the death of the testator the will was disputed, and there was a compromise between the next-of-kin of the testator, and Lady Houston, and under the terms of the copromise Lady Houston agreed to receive £5,000 annuity. On the death of Lady Houston estate duty was claimed on the ground of " cesser of annuity to the extent to which a benefit arose or accrued."

The claim was resisted on the ground of purchase by reason of the provisions of section 3 (1) which are to the following effect : " Estate Duty shall not be payable .... in respect of the determination of any annuity for lives, where such .... annuity (was granted), for full consideration in money or money's worth paid to the grantor for his own use or benefit." Viscount Simon, L.C., accepted the conclusion of Goddard, L.J., in his dissenting judgment in the Court of Appeal and allowed the appeal. Goddard, L.J., said : " The annuity which the lady was entitled was, I think, the annuity granted by the will, payable out of the testator's estate, but limited by the terms of the deed. No new annuity was granted or purchased by her ; the annuity was created by the bounty of the testator, though the annuitant agreed to accept a reduced amount and gave up the option, which she might otherwise have exercised, to demand its capital value."

The meaning of the expression " paid to him for his own use or benefit " is that something must come out of the pocket of the person, who is paying the consideration, and must get into the pocket of the transferor. If *A* owes a sum of money to *B*, and transfers his property, say, a house in discharge thereby the debt due to *B*, there is no consideration in money or money's worth paid by *B* to *A* for his own use or benefit. See *H. M. Adv.* v. *Heywood-Lonsdale's Trustees* [(1906) 8 F 724]. It was held in *Re Bateman* (Baroness), *A. G.* v. *Wreford Brown* [(1925) 2 K.B. 429], that " the value of the consideration " means " the value which corresponds to the consideration." The measure of deduction is the amount by which the value of the subject-matter of the gift at the date of disposition falls short of.

According to sub-section (3) of section 27, the legal entity of the company disappears, and all the interests therein will be regarded as equitable interests. The company will be regarded as a trustee of its assets not only for the members but to other persons to whom it is liable for other than a purely business debt. From this notional standpoint the disposition will be considered in accordance with their respective rights. If judging the disposition in this light it is found that there is a purchase, no estate duty becomes payable. The principle of section 27, sub-section (1) is extended to the case of a gift made by a company in favour of a relative of the deceased provided that the deceased at the time of the gift had control of the company within the meaning of section 17 of the Act [*vide* sub-section (4)].

A gift in favour of a controlled company by the deceased is also hit at, if two conditions are satisfied : (1) the gift should fall within the terms of sub-section (3), a relative of the deceased must have been a member of the company at the date of the gift or a relative should have become a member of the company at any time subsequent to the date of the gift, but before the death of the deceased. According to the explanation to this sub-section, if another controlled company is a member of one controlled company it is enough that the relative of the deceased is a member of one controlled company. For example, a gift is made by the deceased to a controlled company called *B*. *B* is a member of a controlled company called *A*. If a relative of the deceased is a member in any company *A* or *B* the gift is hit at. If the deceased received any payment in respect of any annuity or other interest limited to cease on the death of the deceased or of any other person through or by means of a chain of associated operations the same will not be regarded as purchase price for the gift made by him [sub-section (6)].

For purposes of this section, sub-section (7) defines "relative","annuity" and " associated operations." The stringent provisions of section 27 are designed for the express purpose of covering up all loopholes, and prevent

evasion of estate duty by transfers of property seemingly supported by consideration, whole or partial, in money or money's worth paid to the transferor. It is difficult for any one to disentangle a *bona fide* purchase from a gift through the machinery of company and by means of a chain of associated operations. The tax payers are at the mercy of the commissioners on whom vast powers not merely of valuation but of judgment and decision as to whether a transaction amounts to a *bona fide* purchase or gift are conferred. It is expected that the commissioners will put a benevolent construction on these complex provisions, and avoid both hardship and harassment to the tax payers. *Reg* v. *County of London Justices* [(1893) 2 Q.B. 476] : In this case, Bowen, L.J., expressed a strong view about the necessity for preserving the right of appeal against administrative action.

" Here is a broad scheme of metropolitan taxation and rating by which the parochial ministerial officers are empowered in the first instance to place values on hereditaments for the purpose of taxation in the broad sense. In a free country the very essence of such a system must be that there should be an appeal to some body who can say whether those officers are doing what is just. If no appeal were possible, I have no great hesitation in saying that this would not be a desirable country to live in where every parochial officer might do as he liked in this matter."

Before leaving the consideration of this section two important matters have to be mentioned. Section 27 is subject to sections 9 and 10 and also section 22. All out and out gifts made by the deceased not less than 2 years before his death in the case of any persons and not less than 6 months before his death in the case of public charitable purposes are not dutiable on the death of the deceased provided the conditions of *bona fide* possession and enjoyment, and retention of no benefit by the deceased are satisfied. The surrender of the reserved benefit not less than 2 years or 6 months according to the character of the donee will render the gift immune from liability to estate duty. A gift made in the capacity of a trustee only must be made not less than 5 years before the death of the deceased. Any gift made by a trustee before the statutory period of 5 years is not liable to estate duty. The 2nd matter is the Act does not give relief in cases where the annuity payments received by the deceased in consideration for the gift made by him exceeded the income of the property gifted away by him. The position of the donee in these cases is made worse than if a gift had not been made. Sub-section (2) of section 27 enacts that the annuity or other interest limited to cease on the death of the deceased or of any other person shall not be treated as consideration for the gift made by the deceased. The result is that estate duty has to be paid in respect of the property disposed of as gift, and also on the property which is represented by the payments he has received which accrue to his estate. The Finance Act, 1944, by section 40 and the Finance Act, 1950, by section 46 (*a*) (*ii*), have provided relief by way of mitigating the hardship.

Section 40 of the Finance Act, 1944, as amended by the Finance Act 1950, is as follows :—

" 1. Subject to the provisions of this section, the relief specified therein shall be granted where, on the death of a person who has made a disposition of property in favour of a relative of his or a company (hereinafter in this section referred to as ' the disposition '), any estate duty becomes, or would but for this section become, payable by virtue of sub-section (1) (*a*) of section 44 of the Finance Act, 1940 (which relates to purchases of annuities or other interests from relatives).

"2. The sum on which estate duty would be payable apart from this section on the death in respect of the property which was the subject-matter of the disposition or in respect of the property liable to a debt or incumbrance created by the deceased which was the subject-matter of the disposition, as the case may be, shall first be computed and, subject to the limitations provided for by sub-section (3) of this section, there then shall be allowed as a deduction from that sum—

(*a*) the amount, if any, by which the aggregate of the payments which have been made on account of the annuity or other interest for the period from the date when the annuity or other interest began to accrue in favour of the deceased until his death, exceeds the aggregate of the income derived from the deceased by virtue of the disposition for the period from the date of the disposition until his death ; and

(*b*) simple interest on so much, if any, of the amount aforesaid, and for such period, as, in the opinion of the commissioners, is in all the circumstances just, at the rates from time to time payable during that period on death duties in arrear."

In this sub-section, the expression " the aggregate of the income derived from the deceased by virtue of the disposition means—

(1) in relation to so much of the property which was the subject-matter of the disposition as did not consist of a debt or incumbrance created by the deceased, such amount as in the opinion of the Commissioners, is in all the circumstances equal to a reasonable return from the property ; and

(2) in relation to so much of the property which was the subject-matter of the disposition as did consist of a debt or incumbrance created by the deceased, the aggregate amount of the interest paid or payable by the deceased in respect of that debt or incumbrance ;

(3) the amount to be allowed as a deduction under sub-section (2) of this section shall, in the circumstances specified in the provisions of the Third Schedule to this Act, be limited to the extent specified in those provisions respectively.

In the said Schedule, the expression " the disposition " has the same meaning as in this section, the expression " the annuity payments " means the payments specified in paragraph (*a*) of sub-section (2) of this section, and the expression " the amount allowed " means the amount to be allowed as a deduction under this section.

(4) In this section, the expressions " relative " and " annuity " have the meanings assigned to them by section 44 of the Finance Act, 1940, and sections 58 and 59 of that Act shall apply for the interpretation of this section and the said Third Schedule as they apply for the interpretation of Part IV of that Act.

Third Schedule

Limitations on Relief from Estate Duty chargeable under Finance Act, 1940, section 44.

1. (1) The provisions of sub-section (1) of section 31 of the Finance Act, 1939 (which provides, amongst other things, for the disallowance of debts the consideration for which was property derived from the deceased)

shall, in the manner specified in this paragraph, have effect in relation to the computation of the amount allowed.

(2) Where, if—

(*a*) the annuity payments had formed the consideration for a debt created by the deceased equal to the total amount of those payments ; and

(*b*) sub-section (1) of section 7 of the Finance Act, 1894, (which provides for an allowance for debts in computing the amount on which estate duty is payable), were applied to that debt, the full amount of that debt would not, having regard to the operation of sub-section (1) of the said section 31, have been allowable under sub-section (1) of the said section 7, the annuity payments shall, for the purpose of ascertaining the amount allowed, be reduced so as not to exceed the amount, if any, which would have been allowable in the circumstances aforesaid under sub-section (1) of the said section 7:

Provided that, in applying the said section 31 for the purpose of this paragraph, property which is the subject-matter of the disposition shall not be treated as property derived from the deceased.

2. Where under section 44 of the Finance Act, 1940, a deduction for partial consideration would have been allowable in respect of the annuity or other interest if sub-section (1) (*a*) of that section had not applied to the disposition and if any other consideration for the disposition had not been given, the amount allowed shall not exceed the amount of that deduction.

3. Where the amount allowed is allowed as a deduction from the value of the property liable to a debt or incumbrance created by the deceased, it shall not exceed the amount, if any, which would be allowed under sub-section (1) of section 7 of the Finance Act, 1894, if section 44 of the Finance Act, 1940, had not been passed.

See Rule 16 of the Estate Duty (Controlled Companies) Rules, 1953.

Section 27. *Dispositions in favour of relatives.*—(1) Any disposition made by the deceased in favour of a relative of his shall be treated for the purposes of section 9 as a gift unless—

(*a*) the disposition was made on the part of the deceased for full consideration in money or money's worth paid to him for his own use or benefit ; or

(*b*) the deceased was concerned in a fiduciary capacity imposed on him otherwise than by a disposition made by him and in such a capacity only ; and references to a gift in this Act shall be construed accordingly :

Provided that where the disposition was made on the part of the deceased for partial consideration in money or money's worth paid to him for his own use or benefit, the value of the consideration shall be allowed as a deduction from the value of the property for the purpose of estate duty.

(2) Where the deceased has made a disposition of property in favour of a relative of his, the creation or disposition in favour of the deceased of an annuity or other interest limited to cease on the death of the deceased or of any other person shall not be treated for the purposes of this section as consideration for the disposition made by the deceased.

(3) If a controlled company was concerned in a transaction in relation to which it is claimed that the provisions of clause (*a*) of or the proviso to sub-section (1) have effect, those provisions shall have effect in relation thereto if and only if, and to the extent only to which, the Controller is satisfied that those provisions would have had effect in the following circumstances, namely, if the assets of the company had been held by it on trust for the members thereof and any other person to whom it is under any liability incurred otherwise than for the purposes of the business of the company wholly and exclusively, in accordance with the rights attaching to the shares in and debentures of the company and the terms on which any such liability was incurred, and if the company had acted in the capacity of a trustee only with power to carry on the business of the company and to employ the assets of the company therein.

(4) Any gift made in favour of a relative of the deceased by a controlled company of which the deceased at the time of the gift had control within the meaning of section 17 shall be

treated for the purposes of section 9 as a gift made by the deceased, and the property taken under the gift shall be treated as included by virtue of that section in the property passing on the death of the deceased, if and to the extent to which the Controller is satisfied that they would fall to be so treated in the circumstances mentioned in the last foregoing sub-section.

(5) If the deceased has made in favour of a controlled company a disposition which, if it had been made in favour of a relative of his, would have fallen within sub-section (2), this section shall have effect in like manner as if the disposition had been made in favour of a relative of his, unless it is shown to the satisfaction of the Controller that no relative of the deceased was, at the time of the disposition or subsequently during the life of the deceased, a member of the company.

Explanation.—For the purposes of this sub-section a person who is, or is deemed by virtue of this provision to be, a member of a controlled company which is a member of another such company shall be deemed to be a member of that other company.

(6) Where there have been associated operations effected with reference to the receiving by the deceased of any payment in respect of such an annuity or other interest as is mentioned in sub-section (2), or effected with a view to enabling him to receive or to facilitating the receipt by him of any such payment, this section shall have effect in relation to each of those associated operations as it has effect in relation to the creation or disposition in favour of the deceased of such an annuity or other interest.

(7) In this section—

(*i*) " relative " means, in relation to the deceased,—

(*a*) the wife or husband of the deceased,

(*b*) the father, mother, children, uncles and aunts of the deceased, and

(*c*) any issue of any person falling within either of the preceding sub-clauses and the other party to a marriage with any such person or issue ;

(*ii*) reference to " children " and " issue " include reference to illegitimate children and to adopted children ;

(*iii*) " annuity " includes any series of payments, whether interconnected or not, whether of the same or of varying amounts, and whether payable at regular intervals or otherwise, and payments of dividends or interests on shares in or debentures of a company shall be treated for the purposes of this section as a series of payments constituting an annuity limited to cease on a death if the payments are liable to cease on the death, or the amounts thereof are liable to be reduced on the death, by reason

directly or indirectly of the extinguishment or any alteration of rights attaching to, or of the issue of any shares in or debentures of a company ;

(*iv*) " associated operations " means any two or more operations of any kind being—

(*a*) operations which affect the same property, or one of which affects some property and the other or others of which affect property which represents, whether directly or indirectly, that property, or income arising from that property, or any property representing accumulations of any such income ; or

(*b*) any two operations of which one is effected with reference to the other, or with a view to enabling it to be effected or to facilitating its being effected, and any third operation having a like relation to either of those two, and any fourth operation having a like relation to any of those three, and so on ;

whether those operations are effected by the same person or by different persons, whether they are connected otherwise than as aforesaid or not, and whether they are contemporaneous or any of them precedes or follows any other.

In England even earlier to the passing of the Finance Act, 1894, gifts were subject to Account Duty and also Succession Duty under the provisions of Customs and Inland Revenue Act, 1881 and 1889. The Finance Act, 1894, inaugurated a new scheme of taxation and to this Act were added from time to time new sections to deal with methods of evasion of duty which were discovered and the burden of Death Duties was made heavier. In *A. G.* v. *Smyth* [(1905) 2 I.R. 553], Palles, C.B., considered the provisions of section 2 of the Finance Act, 1894. The judgment which he delivered in that case was described by Lord Blanesburgh as the leading authority on the subject. What that case decided was that every gift was regarded as a disposition because of the omission of the words " voluntary, voluntarily or volunteer " in section 2 of the Finance Act, 1894. The case of *H. M. Adv.* v. *Heywood Lonsdale's Trustees* [(1906) 43 S.C.L.R. 529], also contains dicta to the above effect. These two cases held the field until the decision in the case of *Re Earl Fitzwilliam's Agreement.* The short facts of this case are : By a settlement dated 1933 made on the occasion of *M*'s marriage, certain property was settled on discretionary and other trusts under which the whole income could be accumulated for 21 years if *M* or his father *F* should so long live for the ultimate benefit of a class of beneficiaries consisting of the persons other than *F*, but including *M* capable of succeeding to the property subject to a re-settlement of the same date. In 1934 *F* purchased from the trustees of the settlement an annuity of £50,000 a year for his life for £3,75,000. The purchase price was paid by *F* in the form of certain shares in and debentures of limited companies and 11 policies of assurance on *F*'s life. The amount of the purchase price, 7½ years' purchase was that recommended as appropriate by two actuaries. *F* was at that time 62 years old. The trustees paid the annuities to *F* upto the date of his death and also paid premiums on the policies of assurances. On the death of *F* in 1943, Estate Duty was claimed under the Finance Act, 1894, section 2 (1) (*c*), in respect of the property

transferred to the trustees, on the ground that the Finance Act, 1940, section 44 (1) which deals with the purchase of annuities from relatives prevented the transaction from being treated as a sale within section 3 (1) of the Act of 1894. It was held by Danckwerts, J., that section 2 (1) (*c*) did not charge to duty property which was the subject of a transaction for full value in money or money's worth. Danckwerts, J., said with regard to the case of *A. G.* v. *Smyth* : " The question for determination as stated by Palles, C.B., was whether estate duty was payable on the death of a settler of property included in an ante-nuptial settlement by him within 12 months before his death, on the marriage of his son, which settlement did not reserve to him an estate for life or have any period determinable by reference to his death, but for which there was no consideration in money or money's worth. The Court held that estate duty was payable. Palles, C.B., delivered a judgment in which he discussed the effect of the changes made by the Finance Act, 1894, at some length and supplied a number of the arguments which were used on behalf of the Commissioners in the present case. The decision, of course only deals directly with a case where a settlement is effected in consideration of marriage, and has no direct bearing on a sale for full monetary consideration, but a wider field was covered by Palles, C.B., in his judgment. With all due respect to the learned Chief Baron, the reasons, which he gives for rejecting the arguments of the defendant as to the effect of the removal of the word ' voluntary ' do not seem to me convincing. It may well be that the result which he reached on the facts of the case was perfectly correct, but if the word ' gift ' in the re-enacted provision be still regarded as something different from ' sale,' it does not follow that after the exclusion of the word ' voluntary ' the provision has the same meaning as before the Act of 1894 so that the change is nugatory. It seems to me that the effect of the change might be to bring in dispositions made in consideration of marriage (as in *A. G.* v. *Holden*), until such dispositions were removed from taxation under the Finance Act, 1894, section 2 (1) (*c*), by the Finance (1909-1910) Act, 1910, section 59 (2), which section, in fact, refers to ' gifts ' which are made in consideration of marriage or are proved to be part of the normal expenditure of the deceased. Secondly, it seems to me that the argument that regard must be had to the history of the statutory provisions may well operate in exactly the opposite way from that suggested by Palles, C.B. If the history of the statutes shows that the word ' gift ' had a clear and sensible meaning in the statute as originally passed, why should one assume that a violent change has been caused to that word by the omission of the word ' voluntary ' alone ? It also seems to me that there is no real basis for the subtle and scientific analysis on which Palles, C.B., bases much of his explanation of the provisions in question. These provisions seem to me to have no more scientific basis than a desire to prevent evasion by a tax-payer of the duties which would otherwise be leviable on property devolving on his death by means of a few obvious devices, and lastly, the theory propounded by Palles, C.B., seems to me to be at variance with the view of the English Court of Appeal in *A. G.* v. *Johnson*." Section 44 of the Finance Act, 1940, states " (1) where a person dying after the commencement of this Act has made a disposition of property in favour of a relative of his, the creation or disposition in favour of the deceased of an annuity or other interest limited to cease on the death of the deceased or of any other person shall not be treated for the purposes of section 3 or of sub-section (1) of section 7, of the Finance Act, 1894, as consideration for the disposition made by the deceased." With regard to the applicability of this section Danckwerts, J., said " It seems to me, however, that section 3 could have been intended, and on its face

clearly was intended, to meet other cases than those that might fall within section 2 (1) (*c*). It is to be observed, moreover, that the words of the section are that estate duty shall not be payable in respect of property passing on the death of the deceased " by reason only of a *bona fide* purchase." The reason advanced on behalf of the commissioners for the insertion of these words did seem to me to be clear. It is evident that the words must contemplate some additional factor, and the section cannot apply unless the case would otherwise be within the charging provisions of the Act. It was contended on behalf of the commissioners that, if the provisions of an earlier statute are doubtful, that is to say, the provisions are " fairly and equally open to diverse meanings " it is permissible to look at a later statute in order to ascertain the meaning of the earlier statute, and especially so if the later statute declares the meaning of the earlier. As authority for this proposition I was referred to *Ormond Investment Co.* v. *Betts* [(1928) A.C. 154-156 and 164-166]. It was argued that certain statutory provisions subsequent to the Finance Act, 1894, and in one instance subsequent to the date of the 7th Earl Fitzwilliam's death, indicate that the Finance Act, 1894, section 2 (1) (*c*), must have the meaning attributed to it by the commissioners, that is to say, that transactions for full monetary consideration are subject to estate duty. These statutory provisions are the Finance Act, 1940, section 44 (to which reference has already been made), the Finance Act, 1939, section 31 (1) and the Finance Act, 1944, section 38. Of course none of these sections deals expressly with the interpretation of the Finance Act, 1894, section 2 (1) (*c*), or the Customs and Inland Revenue Act, 1881, section 38. Of course none of these sections expressly deals with the interpretation of the Finance Act, 1894, section 2 (1) (*c*), or the Customs and Inland Revenue Acts, 1881 and 1889, but it is argued that the inevitable deduction from their provisions is that the earlier provisions include sales for full value. Such a deduction does not seem to me to be by any means inevitable, and the sections appear to be equally capable of reference to other matters. Stress was laid on the wide ambit of the Finance Act, 1894, which sought to bring into the area of taxation on death all property, real and personal, wherever situate so that property must be said to be subject to duty unless an exemption can be found in the Act. By the latter section a number of cases are brought artificially within the ambit of the Act so that property is deemed to pass. For the purposes of cases falling or claimed to fall within section 2, therefore, it seems to me that a charge for duty must not be assumed *prima facie* to exist, but must be found to be created by the terms of the Act. Finally it must not be forgotten that the provisions I have to construe are contained in a taxing statute. The rules to be applied under such a statute are well known, but it is worthwhile to refer to the statement by Viscount Simon, L.C., [(1945) 2 All E.R. 508] in *Canadian Eagle Oil Co.* v. *R.*, where he said : " The late Rowlatt, J., whose outstanding knowledge of this subject was coupled with a happy conciseness of phrase, said in *Cape Brandy Syndicate* v. *Inland Rev. Commrs.* (1921) 1 K.B. 71 : " In a Taxing Act one has to look merely at what is clearly said. There is no room for any intendment. There is no equity about a tax. There is no presumption as to a tax. Nothing is to be read in, nothing is to be implied. One can only look fairly at the language used."

This decision necessitated the interference of legislature in England. In the Finance Act, 1950, section 46, provided as follows :—

" (1) Any disposition made by the deceased in favour of a relative of his shall be treated for the purpose of paragraph (*c*) of sub-section (1) of section 2 of the Finance Act, 1894, as a gift unless—

(*a*) the disposition was made on the part of the deceased for full consideration in money or money's worth paid to him for his own use or benefit ; or

(*b*) the deceased was concerned in a fiduciary capacity imposed on him otherwise than by a disposition made by him and in such a capacity only ; and references to a gift in the other enactments relating to estate duty (including this part of this Act) shall be construed accordingly :

Provided that where the disposition was made on the part of the deceased for partial consideration in money or money's worth paid to him for his own use or benefit, the value of the consideration shall be allowed as a deduction from the value of the property for the purpose of estate duty."

Condition (*a*) in this sub-section (1) in effect reproduces substantially the terms of section 3 (1) of the Finance Act, 1894. The general effect of section 27 is that all the dispositions in favour of relatives will be treated as gifts within section 9. An exemption can only be obtained by proving that there was no bounty, and that the disposition was in effect a *bona fide* purchase for full consideration in money or money's worth. It is no longer necessary to rely on the general section 26 in the case of dispositions in favour of relatives. Clause (*a*) of section 27 impliedly excludes application of section 26 and the proviso to sub-section (1) of section 27 in effect corresponds to sub-section (2) of section 26. Clause (*b*) of sub-section (1) corresponds to section 59 (2) of the Finance Act 1909-10 and also section 33 of the Finance Act, 1949. The object of this clause is to preserve the benefit of exemption granted by section 33, sub-section (1) (*b*) and (*j*). Sub-section (2) is based on section 46 (1) (*a*) of the Finance Act, 1950. According to this sub-section, if the deceased who had made a gift of his property received an annuity or other interest limited to cease on his death or on the death of any other person, that annuity or other interest would not be regarded as consideration for the gift that had been made by the deceased. In other words, no deduction from the value of the property gifted can be made. Sub-section (3) corresponds to section (1) (*b*) of section 46 of the Finance Act, 1950. Where the gift was made by a controlled company and a claim for exemption on the ground of *bona fide* purchase was put forward, then, the exemption will not be granted unless the controller is satisfied after applying the statutory hypothesis [based in England on section 56 (1) of the Finance Act, 1940] that there was a *bona fide* purchase. Sub-section (3) itself sets out the statutory hypothesis. Under this hypothesis (1) the assets of the company will be regarded as held by it on trust for the members thereof and any other person to whom it is under any liability incurred otherwise than for the purposes of the business of the company wholly and exclusively, in accordance with the rights attaching to the shares in and debentures of the company ; (2) companies concerned in the transaction will be judged on the basis that they are acting as trustees throughout and down to the date of death of the deceased. The Act left to the Board the power to frame rules regarding matters mentioned in clauses (*a*) to (*g*) of section 20. Read rule 16 of the Estate Duty (Controlled Companies) Rules, 1953, printed in the Appendices.

Section 28. *Effect of new or increased rates of duty on certain prior sales and mortgages.*—Where an interest in expectancy in any property has, whether before or after the commencement of this Act, been *bona fide* sold or mortgaged for full consideration in money or money's worth, and the rates of estate duty in force in the case of a person dying when the interest falls into possession are

higher than the rates in force, if any, in the case of a person dying at the time of the sale or mortgage, then—

(*a*) no other duty on that property shall be payable by the purchaser or mortgagee when the interest falls into possession than the duty, if any, which would have been payable if the rates of estate duty applicable had been the rates in force, if any, in the case of a person dying at the time of the sale, or mortgage, and

(*b*) in the case of a mortgage, any higher duty payable by the mortgagor shall rank as a charge subsequent to that of the mortgagee.

Along with this section, section 2 (11), section 34 and section 38 must be read in order to comprehend the full meaning of the section. It is doubtful whether this property, *i.e.*, "interest in expectancy" passes on death under section 5 of the Act. Liability to Estate Duty of this kind of property arises under section 6 of the Act. A policy of insurance on the life of a living person, amount of a debt payable at a future fixed date, an absolute interest in a trust fund subject to a subsisting annuity are not within the definition.

Reversioner's interest under Hindu Law is just a *spes successionis* ; a Hindu reversioner has no right or interest *in praesenti* in the property, which the female owner holds for life. Only it vests in him should he survive her; he has nothing to assign or relinquish, or even to transmit to his heirs. Therefore such a right is not an "interest in expectancy." Transfer of such a right is void under section 6 (*a*) of The Transfer of Property Act. See [46 I.A. 72 : *Rangasami Gounden* v. *Nachiappa Gounden* ; 67 I.A. 386 : *Harnaraini* v. *Sajjanpal*; 45 I.A. 35 : *Amrit Narayan* v. *Gayasingh* and 29 I.A. 1 : *Bahadur Singh* v. *Mohar Singh*].

The expressions "purchaser" and "mortgagee" include persons deriving title from the original purchaser or mortgagee.

Estate duty is payable by the purchaser or mortgagee according to the rates in force at the time of the sale or mortgage.

Under section 34 of the Act the interest in expectancy is property aggregable with the rest of the property passing on the death of the deceased. Under section 38 an option is given either to pay the estate duty on the interest in expectancy at the time of death along with the estate duty payable in respect of the rest of the estate of the deceased or at the time when the interest falls into possession. In either case, it is necessary to arrive at a valuation of the interest of expectancy on the date of the death. The value is required for aggregation purposes. Section 38 (*a*) states that the value of the interest shall be its value at the date of the death of the deceased where estate duty is not paid along with the rest of the estate passing on the death of the deceased and 38 (*b*) states that the value of the interest as at the date of the death plus the value of the interest at the date when it falls into possession shall be the measure for levying estate duty where it is deferred to be paid on the date when the interest falls into possession. The statute simply speaks of "value"; here it refers to market value. To ascertain the market value regard must be had to several circumstances such as the contingencies affecting the duration and extent of the interest, the possibilities of appreciation and depreciation of the property, the age and state of health of the life tenant and if the property (interest) consists of assets in the form of securities, the nature and character of the securities,

and the possibilities of violent fluctuations in value. Tables of mortality given in the Succession Duty Act, 1853 and Carlisle 3½ per cent. Tables have to be consulted, and an actuary's services in most cases will be required to comutep the value.

The mortgagor may have to pay a higher estate duty, in which case the higher duty payable shall rank as a charge subsequent to that of the mortgagee. The language of this section which is copied from section 21 (3) of the Finance Act, 1894, fell to be considered by Bray, J., in the case of Eyre In re (1907) K.B. 331. Bray, J.'s construction of the section so fully brought out the intention of Parliament in enacting the provision that Parliament in England must be deemed to have adopted that construction as it has not amended the section since the date of the construction by Bray, J.

Bray, J., in that case said "The difficulty of construing this sub-section of the Finance Act, 1894, is undoubtedly a serious difficulty, because the statute has not done what one would have expected it to do, namely, state in clear terms what was to be the amount on which the duty was to be payable at each of the times given by the option, namely, the time of the death and the time when the reversionary interest falls into possession." The sub-section says : "Where an estate includes an interest in expectancy, estate duty in respect of that interest shall be paid, at the option of the person accountable for the duty either with the duty in respect of the rest of the estate," (it does not say on what amount) ; but I think it may be fairly taken to mean on the value of that interest, *viz.*, an interest in expectancy) "or when the interest falls into possession" on the value of that interest, *viz.*, an interest in possession. I think that words may be considered as implied in each of those cases to this effect, "on its then value." I think the rest of the section bears out this, because it says in (*b*) that "the rate of estate duty in respect of the interest when it falls into possession shall be calculated according to its value when it falls into possession." That is, no doubt, dealing merely with the *rate* of the duty and not with the *amount* on which that duty is to be paid ; but still, I think it shows what was intended before, namely, that the duty that was to be paid when the interest fell into possession was to be paid on the value of that interest when it fell into possession.

The underlying and recognized principle of the Finance Acts in England is that Estate Duty shall not be imposed or increased to the detriment of purchasers or the mortgagees of reversionary interests. The Finance (No. 2) Act, 1940, section 17 is as follows :—

(1) Subject to the provisions of sub-section (2) of this section, where an interest in expectancy in any property has, whether before or after the passing of this Act, been *bona fide* sold or mortgaged for full consideration in money or money's worth, and the rates of estate duty in force in the case of a person dying when the interest falls into possession are higher than the rates in force in the case of a person dying at the time of the sale or mortgage, then—

(*a*) no other duty on that property shall be payable by the purchaser or mortgagee when the interest falls into possession than would have been payable if the rates of estate duty applicable had been the rates in force in the case of a person dying at the time of the sale or mortgage and

(*b*) in the case of a mortgage, any higher duty payable by the mortgagor shall rank as a charge subsequent to that of the mortgagee.

(2) Sub-section (1) of section 56 of the Finance Act, 1940 (which restricts the operation of the provisions of section 3 of the Finance Act, 1894, relating to transactions for full consideration, in the case of such transactions

with companies to which the said section 56 applies) shall apply for the purposes of the foregoing sub-section as it applies for the purposes of the said section 3.

(3) This section shall apply in the case of interests in expectancy falling into possession after the twenty-third day of July, nineteen hundred and forty.

This section is thus seen to be based on the corresponding provision of the Finance (No. 2) Act, 1940, section 17 quoted above.

" Purchaser and mortgagee " mean and include persons deriving title under the original purchaser or mortgagee. In the case of a purchaser or a mortgagee duty is chargeable only according to the rates in force at the time of sale or mortgage. The mortgagor is not entitled to any relief under the provisions of this section except that any higher duty payable by him will rank as a charge subsequent to that of the mortgagee.

Section 29. *Settled property in respect of which since the date of the settlement estate duty has been paid on the death of the deceased's spouse.*— If estate duty has already been paid in respect of any settled property since the date of the settlement, on the death of one of the parties to a marriage, the estate duty shall not be payable in respect thereof on the death of the other party to the marriage, unless the latter was at the time of his death or had been at any time during the continuance of the settlement, competent to dispose of such property, and, if on his death subsequent limitations under the settlement take effect in respect of such property, was *sui juris* at the time of his death, or had been *sui juris* at any time while so competent to dispose of the property.

This section appears to be hardly necessary in India. Even in Great Britain when the corresponding provision had been enacted in section 5 (2) of the Finance Act, 1894, further amended by section 13 of the Finance Act, 1898 and the Finance Act (1909-10), 1910, the provision has become almost obsolete. Finally, the exemption granted was abolished by the Finance Act, 1914, section 14. The scheme of taxing under the Finance Act, 1894, was that estate duty should be levied on the first occasion when any property passed on death, whether the deceased was competent to dispose of it or not, but that settled property should not be taxed again until the death of a person competent to dispose. If it is the design of this Act to tax settled property only once, and that on the death of a person competent to dispose, then there is purpose in this section. If a testator settled his property on his wife for life with remainder to any one to whom she should appoint and in default of appointment by her to *X*, and on his death estate duty was paid in respect of the settled property, on the death of the wife without exercing the power of appointment, estate duty is not payable, because, the settled property already bore the payment of estate duty on the death of the testator. If the wife, being competent to dispose of on account of her power of appointment appoints the remainder to *B*, on her death, estate duty is payable. In other words exemption will not then be available. In the example given above, the wife is competent to dispose during the continuance of the settlement and if she does not exercise the power of appointment and dies, there is a subsequent limitation under the settlement which takes effect in respect of the settled property, *viz.*, the existence of an absolute estate given to *X*. For the exemption granted by the section to be gained two conditions are necessary: (1) Competency to dispose ; and (2) *sui juris*. Thus if in the example given above, the wife although is competent to dispose is insane, she is not *sui juris* and therefore the exemption is not lost.

(House of Lords)

Attorney-General v. *Milne and Another* [1914 A.C. 765]

Per Viscount Haldane, L.C.: " . . . . The question is whether settlement estate duty became payable under section 5 of the Finance Act, 1894, on the death of Henry Ernest Milne, which took place on December 8, 1911, within three years of a voluntary settlement of property made by him on May 20, 1909 . . . . That estate duty became payable on the death of the deceased is not disputed ; but as the first taker under the disposition succeeded for life only, and was alive when he died, whereby no further estate duty could become payable until the death of a person taking under the settlement and competent to dispose, the question is raised whether settlement estate duty is not payable.

" The answer to this question depends mainly on the interpretation to be placed on four sections of the Finance Act, 1894. By section 1 estate duty is to be levied upon the principal value of property, settled or unsettled, which passes on death. By section 2 "property passing on the death of the deceased shall be deemed to include" certain specified cases of property which does not actually pass on death, like the property to which section 1 relates. The meaning of section 2 was discussed in this House in *Earl Cowley* v. *Commrs. of Inland Revenue* (1899 A.C. 198) and was explained to be that the section was not a definition of the field of section 1, but was framed for the purpose of rendering liable to taxation certain kinds of property that do not actually pass on death, but are sufficiently analogous to property so passing as to make it proper to tax them. Section 2 is thus not a definition section, but an independent section operating outside the field of section 1.

" My Lords, I think that this view of section 2 as not being a definition section is the correct one. It is confirmed by the presence in section 22 of what is a real definition of property passing on death, as including property passing at a period ascertainable only by reference to death. I now come to section 5. It is in these terms : 'Where property in respect of which estate duty is leviable is settled by the will of the deceased, or having been settled by some other disposition passes under that disposition on the death of the deceased to some person not competent to dispose of the property—(*a*) A further estate duty (called settlement estate duty) on the principal value of the settled property shall be levied at the rate hereinafter specified, except where the only life interest in the property after the death of the deceased is that of a wife or a husband of the deceased."

" The section, therefore, applied only to a case in which certain conditions are fulfilled. The property must be property on which estate duty is leviable. It must then be either settled by the will of the deceased, and so be property falling within section 1 or it must be settled by some other disposition, and pass under that disposition on the death of the deceased to a person not competent to dispose. If the disponer is some one other than the deceased, a case of the kind in question is outside section 2 altogether. What happens is the event of passing in point of fact on death according to the natural meaning of the words. The only case to which a notional passing under that section can possibly extend is one where the disposition which creates the settlement is that of the deceased himself.

" My Lords, for reasons already indicated, I have, after consideration, come to the conclusion that section 2 cannot properly be read as extending the category of a notional passing on death beyond what is requisite for the special purpose of bringing certain cases within section 1 in order to impose the particular tax which section 1 levies. Section 2 does not purport to contain

a general definition made applicable to every reference to passing on death in the subsequent sections of the Act. Such a definition occurs only in section 22, a real definition section, which is general in its application, but which does not affect the question before us. If this be so, then section 5 ought to be read literally, as referring only to an actual passing under his disposition on the death of the settler, and as excluding the notional passing, which section 2 recognizes for a special purpose. The duty imposed by section 5 is a new and quite different duty.

" It may be that what Parliament thought it was doing in inserting after 'passing' the words 'under that disposition' was, as the Attorney-General suggested, merely to provide against the event of passing to a person not competent to dispose taking place under some disposition made independently of the deceased. It may be that, if probabilities, apart from the words used, are to be looked at, there is, on the construction which the Court of Appeal have put on the statute, a *casus omissus* which the Legislature was unlikely to have contemplated. But, My Lords, all we are permitted to look at is the language used. If it has a natural meaning we cannot depart from that meaning unless, reading the statute as a whole, the context directs us to do so. Speculation as to a different construction having been contemplated by those who framed the Act is inadmissible, above all in a statute which imposes taxation. It is not only possible but natural to give to the words of section 5 the meaning contended for by the respondents, a meaning which restricts them to what has taken place in fact.

" The only legitimate consideration that could justify a different interpretation would be one which resulted from section 2 being read as defining what was meant by 'passing on death' throughout the Act. A close examination of the structure of the Act has satisfied me that this section lays down no such general canon of construction but is confined in its operation to the limited function of adding to the cases in which the duty enacted by section 1 is imposed. In other words, section 2 has no reference to the settlement estate duty which section 5 imposes as a new and separate duty. Having come to this conclusion, I see no answer to the reasoning of Buckley, L.J. in the Court of Appeal.

" I am, therefore, of opinion that the appeal fails and ought to be dismissed with costs. I move accordingly."

Per Lord Atkinson : " .... The question turns upon the construction of the 5th section of the Finance Act of 1894. To succeed the Crown must bring the case within the letter of the enactment. It is not enough to bring the case within the spirit of it, or to shew that if the section be not construed as the Crown contends it should be construed property which ought to be taxed will escape taxation, or will enjoy, under section 5, sub-section (2), an immunity from successive levies of estate duty. These evils, if such they be, must, if they exist, be cured by legislation. Judicial tribunals must in interpreting these taxing Acts stick to the letter of the statute : *Partington* v. *Attorney-General* (L.R. 4 H.L. 100, at page 122) ; *Attorney-General* v. *Lord Selborne* (1902) 1 K.B. 388.

" .... I do not think the provisions of the settlement can be put aside in part and retained in part in this way, put aside where they fix the event on which the property is to pass, actual death, and retained when they designate the individual to whom it is to pass. Neither do I think words can be interpolated into the section to fix a burden on the subject not imposed by the letter of the statute. If there be a *casus omissus* in the Act it must be provided for by legislation .... "

Lord Dunedin (dissenting judgment):—"My Lords, put in a single sentence, the question in this case may be stated thus: Does the word 'passes' in section 5, sub-section (1) of the Finance Act of 1894 mean 'passes in the sense of this Act,' or dies it not? Unfortunately, to answer that question, as to which there has been a difference of judicial opinion, it is necessary to speak more at length.

"....The paramount enacting section of the Act is undoubtedly to be found in section 1. I need not quote it. The duty which is the object of the Act to levy is imposed on property real and personal, settled or not settled, which 'passes' on the death of any person dying after the commencement of the Act. Now, although the word 'passes' is what I may call a neutral or vague word, it is so naturally associated with the idea of 'from' and 'to', and 'on the death,' so directs attention to the death of a person who leaves property behind him, that had that section stood alone it is reasonably clear that much property would have escaped which the framers of the Act wish to tax. Accordingly we have section 2. That section was authoritatively discussed in your Lordships' House in the case of Earl Cowley, (1899 A. C. 198). Whether Lord Macnaghten was strictly correct or not in saying that the two sections were mutually exclusive seems to me to matter little. At any rate—and that is all what is material—section 2 sweeps into the net various things which section 1 would have failed to secure, or as Lord Watson put it in the case of *Attorney-General* v. *Beech* (1899 A.C. 53 at page 59), "it extends it to all cases where a survivor of the deceased takes a succession, or I should say rather, derives a benefit by reason of the death of the deceased dependent upon and emerging upon the death of the deceased."

"How does section 2 do this?....It does it by saying that property passing on the death of the deceased—which is already taxed by virtue of section 1—shall be deemed to include property following, that is to say—and then follow the various sub-sections....The net result is that the expression, 'property which passes,' in the 1st section, must include property which is deemed to pass by virtue of the 2nd section—for section 1 is the only taxing section.

"....I now take the words of section 5, sub-section (1) (*a*). Now I think there we have three conditions expressed:

1. The property must be property in respect of which estate duty is leviable. That obviously includes property brought in by section 1, and also that brought in by section 2.

2. It must be settled either (*a*) by the will of the deceased, or (*b*) by some other disposition.

3. If it falls within the case (2) (*b*), *i.e.*, is settled by some disposition other than the will of the deceased, it must pass under that disposition on the death of the deceased to a person not competent to dispose.

"It is common ground that as regards the property here in question, conditions 1 and 2 (*b*) are fulfilled. It is property in respect of which estate duty is leviable. It is settled by a disposition other than the will of the deceased. The whole controversy arises as to whether it fits the words of condition No. 3. Now let me suppose for a moment that the words 'on the death of the deceased' had been omitted. I imagine there could have been little controversy. Why, then, are these words inserted? The opponents of the Crown say in order to make sure that the passing is a natural passing which synchronizes with the death, and here there was no such passing, for the property passed when the disposition was made two years before the death.

"My Lords, I think the words were introduced for quite another purpose. We must notice that here we are making an inquiry which is unnecessary as regards the duty imposed by section 1. That duty, the regular estate duty,

is imposed quite irrespective of who is the taker of the passing of the property, or of what his interest therein is. But here we wish to know whether, the property being settled the taker is a person who is not competent to dispose. Now, that necessitates a time element as applied to the different and successive interests possible to be taken by some one under the settlement. That time element is given by these words. If they were not there consider what might be the result. A settlement might be made two years ago. A succession of limited interests is created with an eventual remainder in full fee. By the time the death occurred all the possible takers of the limited interests might have died, and the actual taker would be a person competent to dispose. It would be very unfair that he should have to pay a settlement duty for a settlement which had, so to speak, evaporated as a settlement before the time for paying the tax arrived.

" I therefore come to the conclusion that the word 'passes' in this section is used in the same sense as it is used in every other section, as equivalent to passes within the meaning of the Act—inclusive, that is to say, of such passing as is described in section 2.... I quite bow to the rule as to taxing statutes. But after all, the question is what the words mean, and the expressions used must be given fair play. If, as here, where the word ' passes ' is used in any section except the 5th you are bound to give it the extended meaning in order to make sense, I think it is not giving the words used fair play suddenly to revert to another meaning in section 5, a section which is inextricably intertwined with the other sections, and which, if construed as that argument would construe it, leaves a perfectly obvious *casus improvisus* ; for why should a will bring liability for the duty—other dispositions bring none?

" I am therefore of opinion that the appeal should be allowed and the judgment of Horridge, J., restored."

Per Lord Parker of Waddington : " .... The Finance Act is a taxing statute, and if the Crown claims a duty thereunder it must show that such duty is imposed by clear and unambiguous words. All the words of section 5 can be satisfied without having recourse to any notional passing of property, and in my opinion considerable violence would be done to these words if the idea of a notional passing of property were introduced into the section.

"In my opinion the appeal fails."

Inland Revenue Commrs. v. *Priestley and Another* [1901 A.C. 208]

The facts of the case appear sufficiently from the judgment of Lord Macnaghten.

Per Lord Macnaghten : " To my mind this is a very plain case. I think the question before the House is best answered in the fewest possible words, and as far as may be in the language of the Act itself.

On the marriage of Mr. and Mrs. Studdert a deed was executed for the purpose of regulating the enjoyment and disposition of certain funds which formed part of the lady's fortune. The deed was a ' settlement ' ; the funds became 'settled property' within the definition of those expressions in the Act. The settled property was limited to the husband for life with remainder to the wife for life, and subject thereto, in the events which happened, the property was at the absolute disposal of the wife.

The wife died in the lifetime of her husband. On her death, as it seems to me, there was no ' passing ' of property within the meaning of section 1 taken by itself. No property changed hands. And therefore, in my opinion, if it had not been for section 2, no duty would have been payable on Mrs. Studdert's death. But under section 2 (*a*) taken in conjunction with section 1, estate duty became leviable in respect of the settled property as

being property of which, at the time of her death Mrs. Studdert was competent to dispose. And so the Commissioners claimed estate duty in respect of the settled property of Mrs. Studdert's death, as they were entitled and bound to do. It was then in the option of the persons accountable for the duty either to defer payment until the interest in expectancy at the time of Mrs. Studdert's death fell into possession, or to pay at once under discount. The latter alternative was the one adopted. The principal value of the settled property was estimated (as the Act directs) at the price which, in the opinion of the Commissioners, the property would have fetched if sold in the open market at the time of the death of Mrs. Studdert. The Commissioners seem to have arrived at their estimate in the ordinary way in which buyers of such property in the market make their calculations, by taking the market value of the securities forming the settled property as at the time of Mrs. Studdert's death, and then making an abatement or allowance in respect of Mr. Studdert's life interest, reckoning the probability of life according to the accepted tables of mortality. But the persons accountable for the duty have nothing to do with the mode in which the Commissioners form their opinion so long as they comply with the directions of the Act. Whatever process the Commissioners may go through in their own minds—however they may split up the property for the purpose of coming at their estimate—the duty is leviable in respect of the settled property, not in respect of any particular part or parts of the settled property, or in respect of anything short of the full amount of the property. I entirely agree with the views expressed by Rigby, L.J., in Dodington's case (1897) 2 Q.B. 373, which have the approval of the Chief Baron and Holmes, L.J., and I am compelled to dissent from the construction placed upon the Act by Fitz Gibbon, L.J., and Walker, L.J.—a construction which seems to me calculated to reproduce the difficulties which I had thought were cleared away by the decisions of this House in *Attorney-General* v. *Beech* (1899 A.C. 53), and *Earl Cowley* v. *Inland Revenue Commrs.* (1899 A.C. 198).

Shortly after his wife's death Mr. Studdert died. And the Commissioners now claim estate duty once more in respect of the principal value of the settled property. Are they entitled to payment of duty over again ? In my opinion, most clearly and certainly not. Since the date of the settlement, estate duty has been paid in respect of the settled property, and therefore, under the express provisions of section 5, sub-section (2), estate duty is not payable again on Mr. Studdert's death. He was not at the time of his death, nor had he been at any time during the continuance of the settlement competent to dispose of the settled property. So the one and only event which could have entitled the Commissioners to estate duty on Mr. Studdert's death has not occurred.

Per Earl of Halsbury, L.C.: "The whole question turns upon section 5, sub-section (2). As Rigby, L.J., has said, the manifest difficulty that was in the mind of the framers of the statute was that it would be unreasonable and improper in respect of settled property that the same whole estate should pay over and over again. Here it is only one life estate that is interposed, but it might be a dozen; and no doubt the framers of the statute thought that it would be extremely improper and unjust that there should be as many new duties enforced as there were persons comprehended in the settlement. The meaning and object of the statute appears to me to be both sensible and intelligible. When the death occurs of a person who is entirely able to dispose of the whole estate—the whole estate, be it observed—then either the thing does pass or shall be deemed to pass. Accordingly on Mrs. Studdert's death, she being the complete owner at that time and entirely able to do what she pleased with it, undoubtedly duty was payable.

What the death of the husband, who had only a life estate, has to do with it I confess I am wholly unable to understand, according to the true construction of the statute. What is to happen is that the duty is to be paid upon the whole of the property on the death of the person whom the statute treats as the person who is able to do what he or she will with the property ; that is to be the guiding line. The husband was not at his death and never had been able to do what he chose with the property. Therefore under the words of section 5, subsection (2), estate duty was not payable again at his death.

Per Lord Vaughan Hawkins: My Lords, the Attorney-General has desired me to say that, although there is no cross appeal, the Commissioners will, after what your Lordships have said, return the duty on the £413, 17*s*.

Lord Macnaghten (the Earl of Halsbury, L.C. having left the House) I think the House will be of opinion that the Attorney-General has taken a very proper course.

Even though there was no cross appeal by the accountable persons objecting to the levy of estate duty on £413, 17*s*, the Revenue authorities, *i.e.*, the Commissioners of Estate Duty through the Attorney-General offered to refund the duty collected after the House of Lords expressed the opinion that no estate duty had to be paid at all in this case. It is hoped that the Controllers of Estate Duty in India will emulate this healthy precedent without standing on technicalities.

Section 30. *Agreement for avoidance or relief of double taxation with respect to estate duty.*—The Central Government may enter into an agreement with the Government of any reciprocating country for the avoidance or relief of double taxation with respect to estate duty leviable under this Act and under the corresponding law in force in the reciprocating country and may, by notification in the Official Gazette, make such provision as may be necessary for implementing the agreement.

Explanation.—The expression " reciprocating country " for the purposes of this Act means any country which the Central Government may, by notification in the Official Gazette, declare to be a reciprocating country.

This provision is on lines similar to the authority given by section 54 of the Finance (2) Act, 1945, to the British Government by Orders in Council to enter into arrangements with Governments of any territory outside the United Kingdom which levy duties of a similar character to estate duty for the avoidance of double taxation. On account of the inter-dependence of the Governments in the world and of the inter-communication of the different countries of the world it is very necessary, and also profitable for any Government to enter into such agreements for avoidance of double taxation. Assets of Diplomats residing in India, and assets of foreigners residing in India and carrying on business, will escape estate duty under the existing provisions of the Act except to a very negligible extent. Pakistan and Ceylon, India's neighbours, have Death Duties in their countries. The world is becoming a close-knit organisation day by day. Already so many public utility services have been organised under international agreements. The United Kingdom has a Double Taxation Convention with the United States of America, the Double Taxation Agreement with Canada, the Double Taxation Agreement with the Union of South Africa, and the Double Taxation Convention with the Netherlands.

Section 31. *Allowance for quick succession to property.*—Where the Board is satisfied that estate duty has become payable on any property passing upon the death of any person, and that subsequently within five years estate duty has again become payable on the same property or any part thereof passing on the death of the person to whom the property passed on the first death, the amount of estate duty payable on the second death in respect of the property so passing shall be reduced as follows :—

Where the second death occurs within one year of the first death, by fifty per cent ;

Where the second death occurs within two years of the first death, by forty per cent ;

Where the second death occurs within three years of the first death, by thirty per cent ;

Where the second death occurs within four years of the first death, by twenty per cent ;

Where the second death occurs within five years of the first death, by ten per cent ;

Provided that where the value on which the duty is payable of the property on the second death exceeds the value on which the duty was payable of the property on the first death, the latter value shall be substituted for the former for the purpose of calculating the amount of duty on which the reduction under this section is to be calculated.

Explanation 1.—For the purposes of this section every death shall be deemed to be a second death in relation to the death immediately preceding.

Explanation 2.—In computing any period for the purposes of this section, deaths occurring within a period of three months after the death of any person in respect of whose property estate duty has become payable, shall be treated as one death, and no estate duty shall again be payable on the same property by reason of the subsequent deaths occurring within the said period of three months.

This section is based upon section 15 of the Finance Act, 1914. It is however to be noted that the section in the Indian Act, omitted the following words in the English Act : " Consisting of land or a business (not being a business carried on by a company), or any interest in land or such a business." The Select Committee with regard to this said as follows :—

" The Select Committee feel that the allowance for quick succession should not be confined to lands and business only, as this will mean that a large number of persons who own, say, only buildings do not obtain the benefit

of this provision. This clause has, therefore, been amended to cover all property. Incidentally, an explanation has been inserted defining 'second death' for the purpose of this provision. It has also been provided that in the case of quick deaths occurring within a period of three months, no estate duty shall be leviable on any property more than once by r ason of the subsequent deaths occurring within that period."

It is to be noted that the same percentage of reduction is enacted in the Act as in the Finance Act, 1914, section 15. Words "on the same property or any part thereof" in the section admit of the allowance being claimed by several persons who on the first death took portions of the property of the deceased. It is, however, a condition of the allowance that the 2nd death should be of the identical person or persons who took the property of the deceased on his death. If the person who took the property of the deceased sold the property to another person within 5 years of the death of the deceased from whom he had taken the property, the allowance cannot be granted to the purchaser. The person or persons who become entitled to the property of the deceased may take the property absolutely or for life or any lesser interest, or what is taken may be only an interest in expectancy. If any one of these persons died within 5 years of the death of the deceased from whom he took the property or the interest, the allowance given by the section can be claimed. Any number of deaths may occur within 5 years of the first death. The last one of the deaths in each case will be regarded as the first death. *A* dies in 1953. On his death *B* takes *A*'s property. *B* dies in 1954. On his death *C* takes *B*'s property. *C* dies in 1955. *D* takes *C*'s property. *D* dies in 1956. *E* takes *D*'s property. *E* dies in 1957. *F* takes *E*'s property in 1958. *F* dies in 1958 and *G* takes *F*'s property in 1958. *G* dies in 1959 and *H* takes *G*'s property in 1959. *H* cannot claim the allowance under this section because *G*'s death occurred beyond the period of 5 years and *G*'s death is regarded as the second death but *G* is entitled to the allowance because of the Explanation 1 of the section. So far as *G* is concerned the death of *F* must be regarded as the 2nd death. Likewise the deaths of *E*, *D*, *C* and *B* will be regarded only as the 2nd death in relation to the death immediately preceding. Explanation 2 further liberalises the allowance because it says that any number of deaths occurring within a period of 3 months after the death of any person in respect of whose property estate duty has been paid shall be treated as one death. In applying this section, difficult questions will arise. If, for example, in the interval of deaths within the period of 5 years from the first death if any part of the property that was taken on the first death was sold, the purchaser not being entitled to the allowance, an apportionment would have to be made. The proviso to the section requires that the value of the property on which the estate duty is payable on each death has to be ascertained first because the percentage of allowance will have to be fixed on the basis of the value of the property as it stands after each death. This proviso is word for word the same as the proviso in section 15 of the Finance Act, 1914.

Three things have got to be seen before applying section 31: (1) that the same property passed on both deaths, (2) the identical person who took on the first death died on the 2nd death (Explanation 1 being always borne in mind), (3) whether the value of the property on the 2nd death increases, in which case the increased value will be substituted for the value of the property on the first death.

The section applies to all property passing on a death, *i.e.*, not merely land, but any business carried on by the deceased and in this connection the definition of property will have to be remembered.

Section 32. *Exemption of interest of a Hindu widow devolving upon reversioners in certain cases.*—Where on the death of any person governed by any school of Hindu Law, his interest in any property has devolved on his widow, then, if the widow dies within seven years of her husband's death and the interest aforesaid devolves upon the reversioners or any of them, no estate duty shall be leviable in respect of the passing of the interest aforesaid on the death of the widow, if and in so far as estate duty had been paid in respect of the passing of such interest on the death of her husband.

Where on the death of a person governed by any school of Hindu Law, his interest has devolved on his widow, and if the widow dies within seven years of her husband's death no Estate Duty becomes payable, on her death. On the death of her husband Estate Duty would have been paid in respect of the deceased's property. This section applies to any widow whose husband died having been governed by the Mitakshara Law, Marumakkattayam Law, Aliyasantana Law or Dayabagha Law. The exemption granted hardly comes into play as widows are proverbially long lived. If at least the Legislature provided an allowance as in the case of section 31, in respect of quick succession to property it would amount to some substantial exemption.

Section 33. *Exemptions.*—(1) To the extent specified against each of the clauses in this sub-section, no estate duty shall be payable in respect of property of any of the following kinds belonging to the deceased which passes on his death—

(*a*) property taken under a gift made by the deceased for a public charitable purpose within a period of six months before his death, to the extent of rupees two thousand and five hundred in value ;

(*b*) property taken under a gift made by the deceased for any other purpose within a period of two years before his death, to the extent of rupees one thousand and five hundred in value ;

(*c*) household goods, including tools of artisans, agricultural implements or any other tools or implements as were necessary to the deceased to enable him to earn his livelihood, to the extent of rupees two thousand and five hundred in value ;

(*d*) books not intended for sale ;

(*e*) wearing apparel, but not including any precious or semi-precious stones or ornaments worked or sewn into the wearing apparel ;

(*f*) moneys payable under one or more policies of insurance effected by the deceased on his life for the purpose of paying estate duty or assigned to the Government for the said purpose, to the extent of the amount of duty payable but not exceeding rupees fifty thousand ;

(*g*) moneys deposited with the Government in such manner as may be prescribed for the purpose of paying estate duty, together with the interest which has accrued due thereon at such rate as may be prescribed, to the extent of the amount of duty payable but not exceeding rupees fifty thousand ;

(*h*) moneys payable under one or more policies of insurance effected by the deceased on his life, to the extent of rupees five thousand ;

(*i*) drawings, paintings, prints, manuscripts, works of art or archaeological or scientific collections which are of national, scientific or historical interest and which are retained in the family of the deceased

and dealt with or disposed of in accordance with such conditions as the Board may prescribe, or which are given absolutely or bequeathed to Government or to any University or other public institution ;

(*j*) drawings, paintings, photographs, prints, manuscripts and any other heir-loom, not falling within clause (*i*), which are retained in the family of the deceased and are dealt with or disposed of in accordance with such conditions as the Board may prescribe and are not intended for sale ;

(*k*) moneys earmarked under policies of insurance or declarations of trust or settlements effected or made by a deceased parent or natural guardian for the marriage of any of his female relatives dependent upon him for the necessaries of life, to the extent of rupees five thousand in respect of the marriage of each of such relatives.

(2) If the Central Government is of opinion that in respect of any class of property or class of persons the circumstances are such that some relief in addition to the reliefs provided in sub-section (1) should be given, it may, by notification in the Official Gazette, make any exemption, reduction in rate or other modification in respect of estate duty in favour of any such class of property or the whole or any part of the property of any class of persons, and any notification so issued shall be laid before both Houses of Parliament as soon as may be after it is issued.

Section 59 (2) of the Finance Act (1909-10), 1910, is " so much of paragraph (*c*) of sub-section (1) of section 2 of the principal Act (The Finance Act, 1894), 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, or which are proved to the satisfaction of the Commissioners to have been part of the normal expenditure of the deceased, and to have been reasonable, having regard to the amount of his income, or to the circumstances, or which, in the case of any donee, do not exceed in the aggregate one hundred pounds in value or amount."

Section 33 of the Finance Act, 1949, lays down " (1) So much of paragraph (*c*) of sub-section (1) of section 2 of the Finance Act, 1894, as makes gifts *inter vivos* property which is deemed to pass on the death of the deceased shall not apply to gifts which, in the case of any donee, do not exceed in the aggregate 500 pounds in value or amount, if it is shown to the satisfaction of the commissioners—

(*a*) that the property taken by the donee did not include any interest in settled property ; and

(*b*) that *bona fide* possession or enjoyment of the property so taken was assumed by the donee immediately upon the gift and thenceforward retained to the entire exclusion of the deceased or of any benefit to him by contract or otherwise.

(2) Where the foregoing sub-section would apply in the case of any donee except that the Commissioners are satisfied of the facts mentioned in paragraphs (*a*) and (*b*) thereof as respects some only of the gifts to him, it shall apply to any of the gifts as respects which they are so satisfied.

(3) This section shall not be taken as affecting the relief given by sub-section (2) of section 59 of the Finance (1909-10) Act, 1910, where in the case of any donee the gifts do not exceed 100 pounds in value or amount."

This section is an exemption section. The following properties are exempted to the extent of the amount specified.

(1) Gift of property made within 6 months of the death of the deceased for a public charitable purpose to the extent of Rs. 2,500 in value. A number of gifts may be made ; but the total value of the gifts should not exceed Rs. 2,500. If a gift of money is made no question of valuation arises. In case of gifts of property the value of the gift either at the date of the gift or at the death of the deceased is to be ascertained. If a number of gifts are made to different institutions whose total value exceeds Rs. 2,500 which gift will be exempted is not clear from the section. If the deceased had gifted away property of the value of one lakh, Rs. 2,500 only will be exempted from payment of estate duty. Gifts outside the statutory period complying with the conditions mentioned in sections 9 to 10 do not come within the taxing provisions so that there is no question of any exemption.

(2) Gift of property made for any purpose other than for a public charitable purpose within 2 years of the death of the deceased to the extent of Rs. 1,500 in value ; whatever has been said under (1) will apply here also.

(3) Household goods etc., to the extent of Rs. 2,500 value. The expression " Household goods " embraces many more things than those specified—tools of artisans, agricultural implements, etc. The equipment of a photographer, machinery producing hand made paper, tools and machines in an oil press ; equipment for ink manufacture, tools and articles for pounding and preparing Ayurvedic or indigenous medicines, book binding machinery and tools, envelopes, paper bags, stationery and such other goods employed by any person for purposes of his livelihood in his own home, appear to get this exemption. Cooking vessels, and hot water boilers appear to fall within the exemption.

(4) Books not intended for sale ; a professor's library, a doctor's library, a lawyer's library, a literary man's collection of books, as long as they are kept without any intention to sell come under this exemption. No limit of value is set as regards this property.

(5) Wearing apparel of any value or any amount in value ; clothes and sarees made of costliest fabrics of any amount of value are exempted. They should be personally used ; they may be consumed in use but they should not be sold. An exception is made in the case of precious or semi-precious stones or ornaments worked or sewn into the wearing apparel. The exemption should not be abused. It will be open to the controllers to apply the test of " part of normal expenditure of the deceased and reasonable having regard to the income of the deceased " as in the case of gifts to persons of 500 pounds under the Finance Acts in England. It is open to the Controllers to say in any given case

that clothes' value is an unreasonable amount judged also from the fact of the income of the deceased, and that they are intended as articles of trade.

(6) Policy moneys under one or more policies of insurance effected by the deceased on his own life to the extent of the estate duty payable but not exceeding Rs. 50,000. If estate duty payable is more than Rs. 50,000 only Rs. 50,000 is exempted ; if the estate duty payable is less than the policy moneys exemption will apply to the extent of the duty payable ; the balance of the policy moneys is dutiable.

(7) Moneys deposited with the Government to the extent of the duty payable but not exceeding Rs. 50,000. No rules are yet made under this clause although rules have been made regarding 9 and 10 herein [*i.e.*, clauses (*i*) and (*j*) of section 33 (1)].

(8) Policy moneys due in respect of one's own life to the extent of Rs. 5,000.

(9) (*i*) Drawings, (*ii*) paintings, (*iii*) prints, (*iv*) manuscripts, (*v*) works of art, (*vi*) scientific collections, which are maintained in the family of the deceased and dealt with or disposed of in accordance with the conditions as the Board may prescribe, or which are given absolutely or bequeathed to Government or to any University or other public institution.

(10) Drawings, paintings, photographs, prints, manuscripts and any other heirloom not falling under (8) which are retained in the family of the deceased and are not intended for sale.

9 and 10 : The following provisions in the Finance Acts in the United Kingdom may be perused.

Section 15 (2) of the Finance Act, 1894 : " It shall be lawful for the Treasury to remit the Estate Duty or any other duty leviable on or with reference to death, in respect of any such pictures, prints, books, manuscripts, works of art or scientific collections, as appear to the Treasury to be of national scientific, or historic interest, and to be given or bequeathed for national purposes, or to any University, or to any county council, or municipal corporation, and no property the duty in respect of which is so remitted shall be aggregated with any other property for the purpose of fixing the rate of Estate Duty."

Section 40 of the Finance Act, 1930 : " (1) Where there pass on the death of a person dying after the commencement of this Act any objects to which this section applies, the value of those objects shall not be taken into account for the purpose of estimating the principal value of the estate passing on the death or the rate at which Estate duty is chargeable thereon, and those objects shall, while enjoyed in kind, be exempt from death duties.

(2) In the event of the sale of any objects to which this section applies, death duties shall, subject as hereinafter provided, become chargeable on the proceeds of sale in respect of the last death on which the objects passed, and, as respects estate duty, at the rate appropriate to the principal value of the estate passing on that death upon which Estate duty is leviable, and with which the objects would have been aggregated if they had not been objects to which this section applies, and the person by whom or for whose benefit the objects were sold shall be accountable for the duties and shall deliver an account for the purposes thereof within one month after the sale. Provided that death duties shall not be chargeable as aforesaid, if the sale is to the National Gallery, British Museum, or any other similar National Institution, any University, County Council, or Municipal Corporation in Great Britain, or the National Art Collections Fund.

(3) The objects to which this section applies are such pictures, prints, books, manuscripts, works of art, scientific collections, or other things not yielding income as on a claim being made to the Treasury under this section appear to them to be of national, scientific, historic or artistic interest.

(4) Nothing in this section shall affect the power of the Treasury under sub-section (2) of section 15 of the principal Act to remit death duties chargeable in respect of any objects to which that section applies. The Finance Act, 1950, section 48 is : " (1) Subject to the next following sub-section, section 40 of the Finance Act, 1930 (which exempts from Estate duty objects of national, scientific, historic or artistic interest), shall apply to objects which pass on a death occurring after the date of the passing of this Act only if an undertaking is given, by such person as the Treasury think appropriate in the circumstances of the case, that, until the objects again pass on a death or are sold,—

(*a*) the objects will be kept permanently in the United Kingdom, and will not leave it temporarily except for a purpose and a period approved by the Treasury ; and

(*b*) reasonable steps will be taken for the preservation of the objects ; and

(*c*) reasonable facilities for examining the objects for the purpose of seeing the steps taken for their preservation, or for purposes of research, will be allowed to any person authorised by the Treasury so to examine them.

(2) If on a claim for exemption under the said section 40 it is made to appear to the Treasury that any documents for which the exemption is claimed contain information which for personal or other reasons ought to be treated as confidential, the Treasury may exclude those documents either altogether or to such extent as they think fit from any undertaking under the foregoing sub-section so far as the undertaking relates to the examination of the documents for purposes of research.

(3) Where any objects are exempted from estate duty in pursuance of an undertaking under sub-section (1) of this section, and the Treasury are satisfied that at any time during the period for which the undertaking was given it has not been observed in a material respect, then estate duty shall become chargeable on the value at that time of those objects, in respect of the death on which the exemption was given and at the rate appropriate to the principal value of the estate passing on that death upon which estate duty is leviable, and with which the objects would have been aggregated if they had not been objects to which the said section 40 applies ; and any person who, if the objects were sold when the duty becomes chargeable, would be entitled to receive (whether for his own benefit or not) the proceeds of sale or any income arising therefrom shall be accountable for the duty.

(4) Where any objects are sold after becoming chargeable with estate duty under this section in respect of any death, the proceeds of sale shall not be chargeable with estate duty in respect of the same death under sub-section (2) of the said section 40.

In the Finance Acts in the United Kingdom " books " are also included in the description of chattels of national etc., interest. In (8) and (9) " books " are omitted perhaps because in (4) they are mentioned. In (8) the articles referred to therein must be retained in the family of the deceased. The mere retention may not earn the exemption. Any condition that the Board may prescribe must also be carried out. If they are given absolutely or bequeathed to Government or to any University or other Public Institution, the exemption is earned. But while it seems necessary that as regards retention in the

family of the deceased, the conditions prescribed by the Board should be complied with, in the case of outright gift or bequest to Government or to University or public institution there need be no intervention of the Board. The practice in the United Kingdom, however, is for the accountable person to give information to the Treasury within one month of the death of the deceased accompanied by an inventory of the chattels. The purpose of this provision is to preserve and make available to the public these chattels which are of national, scientific, artistic or historic interest. It is only on that ground the exemption of estate duty is granted in respect of these chattels. (9) The chattels described herein are not of national, scientific or historic interest. They are only valuable to the family, and as long as they are retained in the family of the deceased and enjoyed in kind the exemption applies. A sale of any of these chattels even to another member of the family is a violation of the condition of exemption. However, a member of the family who is a beneficiary may be allotted any of the chattels in satisfaction of his share of the estate. Such a transaction is not regarded as a sale. But if a person who in lieu of his share gets any of the chattels sells them to any other beneficiary, the exemption is lost. The exemption lasts as long as the chattels are enjoyed in kind and there is no sale. It is permissible for a beneficiary who gets as and for his share the chattels to dispose of them by means of a gift or a settlement. Since the transaction is not for money or money's worth, the donee in each case is entitled to the exemption provided he enjoys them in kind. A transaction of exchange also stands on the same footing as a gift or settlement provided enjoyment in kind and retention of the articles are satisfied. If any of the chattels are lost or destroyed, and there is an insurance policy covering such loss or destruction, the moneys payable under the insurance policy are also exempt from duty. This seems to provide an escape from duty for dishonest assessees.

Heir-loom. Stroud's Judicial Dictionary, 2nd Edition, p. 866.

" In some places chattels as Heire-loomes (as the best bed, table, pot, pan, cart and other dead chattels movable) may go to the heire " (Co. Litt. 18b). " 'Heire-loome', is any peece of household stuffe which, by the custome of some countries, having belonged to a house for certaine descents, goes with the house, after the death of the owner, unto the Heire, and not to the Executors " (Termes de la Ley).

" Heir-looms, are such goods and personal chattels as shall go, by special Custom, to the heir along with the inheritance, and not to the executor or administrator of the last proprietor. The termination ' loom ' is of Saxon origin, in which language it signifies a limb or member ; so that Heir-loom is nothing else but a limb or member of the inheritance " (Wms. Exs. 633 et seq) ; but as to this derivation, v. per *Ld. Cranworth, Byng* v. *Byng*, inf: Vh, 6 Encyc. 169.

There is another class of legal Heir-looms,—things which " savour of the inheritance," *e.g.*, " Title Deeds, and the Chest where they are usually kept ; the Patent creating a Dignity ; the Garter and Collar of a Knight ; an Ancient Horn ; and the Ancient Jewels of the Crown " [*per* Chitty, L.J., *Hill* v. *Hill*, (1897) 1 Q.B. 483 ; 66 L.J. Q.B. 336].

The popular and familiar sense of the word " Heir-looms " is " things directed to descend by way of inheritance " (*per* Westbury, C., *Byng* v. *Byng*, [31 L.J. Ch. 472 ; 10 H.L. Ca. 183] : Va, *per* Ld. Cranworth, S.C.). But " if *A* gives a chattel to *B* and merely says that *B* is to have it as an Heir-loom, no force (in the absence of any contract or special circumstances) can be attributed to the word 'Heir-loom' " (*per* Chitty, L.J., *Hill* v. *Hill*, Sup: citing *Shelley* v. *Shelley*, [37 L.J. Ch. 357 ; L.R. 6 Eq. 540 ; *Re Johnson*, 53 L.J.

Ch. 645 ; 26 Ch. D. 538). Vh, Watson Eq. 255: Wms. P. 12 : Art. 8 S.J. 282 : *Scarsdale* v. *Curzon*, (29 L.J. Ch. 249 ; 1 J. and H. 40).

For remarks on this word and as to its use in aiding the construction, and also for Forms of devising and settling Heir-looms ; *V. Hill* v. *Hill*, Sup : *Re Angerstein*, [(1895) 2 Ch. 883 ; 65 L.J. Ch. 57 ; 73 L.T. 500 ; 44 W.R. 152] : Actual : Actual Freehold.

As to Land purchased by proceeds of Sale of Heir-looms ; *V. Marlborough* v. *Majoribanks*, (55 L.J. Ch. 339 ; 32 Ch. D. 1) : *Marlborough* v. *Queen Anne's Bounty*, [(1897) 1 Ch. 712 ; 66 L.J. Ch. 323 ; 76 L.T. 388 ; 45 W.R. 426].

As to Sale of Heir-looms by Tenant for Life ; Vide section 37, S.L. Act, 1882, on whv., *Re Radnor*, (59 L.J. Ch. 782 ; 45 Ch. D. 402) ; *Re Hope*, [(1899) 2 Ch. 679 ; 68 L.J. Ch. 625]).

Page 407. Wharton's Law Lexicon. *Heir-loom* (Fr. hoe res, Lat. heir and geloma Sax, goods), personal chattels such as charters, deeds, and evidences of title, coat armour set up in a church, or a tombstone erected there, which go to the heir, together with inheritance. The ancient jewels of the Crown are heirlooms. Heirlooms strictly so called are now rarely met with [*See* Williams on Personal property. Co. Litt. 18 (*b*) (*i*)].

The term heir-loom is often applied in practice to the case where certain chattels—for *e.g.*, pictures, plate, or furniture—are directed by will or settlement to follow the limitations thereby made of some family mansion or estate. But the word is not then employed in its strict and proper sense, nor is the disposition itself beyond a certain point effectual ; for the articles will, in such case, being absolutely to the first person who, under the limitations of the settlement, becomes entitled to the real estate for a vested estate of inheritance : See *Re Parker* [(1910) 1 Ch. 581], and the cases there referred to.

The 37th section of the Settled Land Act, 1882, 45 and 46 Vict. C. 38, provides that, ' where personal chattels are settled on trust so as to devolve with land until a tenant in tail by purchase is born or attains the age of 21 years, or so as otherwise to vest in some person becoming entitled to an estate of freehold inheritance in the land ' a tenant for life may, by order of the Chancery division of the High Court sell the chattels or any of them, the proceeds of the sale to be dealt with as ' capital money ' under the Act.

Page 161. *Chattels* or Catals (Fr. Catalla, Lat. Chatel) goods movable and immovable, except such as are in the nature of freehold or parcel of it. They are either (1) personal, as horses or other beasts, household stuff and such like, which belong immediately to the person of the owner, and for which if they are injuriously withheld from him, he has no other remedy than by personal action; or (2) real, which concern the realty, as terms for years of Lands or tenements, wardships, the interest of tenant by statute staple, by Statute merchant by elegit and such like.

Page 141. *Catalla, Chattels.* The word among the Normans primarily signified only beasts of husbandry or as they are still called 'cattle'; but in a secondary sense the term was applied to all movables in general and not only to these, but to whatever was not a fief or feud.

Household.—This word is frequently used in bequests as a qualifying adjective: *e.g.*, " household,"—furniture ; goods ; stuff ; effects ; property.

Of these Household Furniture, and Household Goods (1 Jarm. 757, n), and Household Stuff (Touch. 447) are synonyms. Either phrase will include all personal chattels that may contribute to the use or convenience of the householder or the ornament of the house, such as Plate [*Nicholls* v. *Osborne*, (2 P. Wms. 419): *Sv. Jesson* v. *Essington*, (Pre. Ch. 207)], Linen, China (both useful and ornamental) and Pictures, also Prize Medals, Coins, or Trinkets,

if framed and hung or otherwise disposed for household ornament [Wms. Exs. 1048-1049 : 1 Jarm. 757, n : Touch. 447 : *Cremorne* v. *Antrobus* (5 Russ. 312 ; 7 L.J., O.S. Ch. 88) : *Field* v. *Peckett*, (30 L.J. Ch. 813; 29 Bea. 573) : *Re Londesborough*, (50 L.J. Ch. 9)] ; or the Clock of the house, if not a fixture [*Slanning* v. *Style*, (3 P. Wms. 336)] ; but by as to a Bust [*Willis* v. *Curtois* (1 Bea. 195)].

But the Touch-Stone lays it down (p. 447) that a bequest of Household Stuff will not comprise " Apparel, Books, Weapons, Tools for Artificers, Cattle, Victuals, Corn, Plow-geere, and the like " ; a restriction equally applicable to Household " Goods " or " Furniture " [*Slanning* v. *Style* (3 P. Wms. 334) : *Bridgman* v. *Dove*, (3 Atk. 202) : *Kelly* v. *Powlet*, (Ambl. 611) : *Porter* v. *Tourney*, inf.]. But in *Ouseley* v. *Anstruther*, (10 Bea. 462), and *Hutchinson* v. *Smith*, (11 W.R. 417) : Svthc., *Porter* v. *Tournay*, cited LIVE AND DEAD STOCK], Books, and (in *Hutchinson* v. *Smith*) consumable stores (wines) passed by force of the general intention of the Will although there was no more appropriate word to carry them than " Furniture ". On the other hand, in *Manton* v. *Tabois*, (54 L.J. Ch. 1008; 30 Ch.D. 92), a bequest of " Furniture, Goods and Chattels " was held not to include Jewellery, Guns, Pistols, Tricycles, or Scientific Instruments. Vide Goods and Chattels.

In *Peto* v. *Grissell*, [(5 L.J. Ch. 286) and *Paton* v. *Sheppard*, (10 Sim. 186), Shadwell, V.C., held that Tenant's Fixtures in a leasehold house passed as " Household Furniture " : but Jessel, M.R., refused to follow that ruling *Finney* v. *Grice*, (48 L.J. Ch. 247 ; 10 Ch. D. 13) ; followed in *Re Seton-Smith* (71 L.J. Ch. 386)].

" Household Effects " (Vide Effects) will comprise all that Household " Furniture ", " Goods ", or " Stuff ", would carry ; and it will also comprise Books and Consumable Stores, *e.g.*, Wine (*Re Bourne*, 58 L.T. 537), and also Weapons if kept for domestic defence [*Cole* v. *Fitzgerald* [(1 Sim. and St. 189; 3 Russ. 301)] ; in other words, " articles adapted for the use or ornament of the house " (*Tempest* v. *Tempest*, inf.). By *Cole* v. *Fitzgerald*, it was also determined that the term " Household Effects " included a pair of pistols lathese and apparatus for turning, with a quantity of ivory, mahogany etc., a sawing machine, a vice and anvil, a copying machine, an organ, wines and liquors, about 100 volumes of general books, and a hay-stack if retained exclusively for home consumption (Va, *Re Labron*, inf.) ; but that it did not include a pony or a cow, or some fowling-pieces that apparently were not used for domestic defence. Whether the V.C. decided that a parrot was included, is a matter of dispute between the reporters (Vide note, 3 Russ. 301). In *Re Labron*, Kay, J., decided that a bequest of " Household Effects " would carry hay-ricks, chicken and sheep-troughs, store pigs, poultry, and carriages that were on the grounds (40 acres in extent) appertaining to the dwelling-house of the testator (29 S.J. 147) ; but not a horse, cows, or sheep (*ibid* on a second application, 1 Times Rep. 248). In *Watson* v. *Arundel* (cited Effects), a horse, carriage, car, and a quantity of hay and farm produce, passed under a gift of " plate, house linen, furniture, and all other effects, in my house at the time of my death." But in *Re Hammersley* (81 L.T. 150) Stirling, J., held that jewellery did not pass under a gift of " household furniture books, pictures, paintings, engravings, plate, linen, china, and other effects."

Articles of a " household " nature will pass under that description although they may never have been used by the testator, nor even kept in his house [*Pellow* v. *Horsford* (25 L.J. Ch. 352)].

Neither of the terms referred to in the first part of this definition will include Articles of Trade [*Pratt* v. *Jackson* (2 P. Wms. 302) : *Le Farrant* v.

Spencer (1 Ves. sen. 97) : Vide note, (24 L.J. Ch. 526) : Wms. Exs. 1049 : Sv, *Manning* v. *Purcell* (24 L.J. Ch. 522) :

2 Sm. & G. 284 (as to which three cases, Vide *Re. Seton-Smit,* sup.) : *Fitzgerald* v. *Field* (1 Russ. 427) ; nor Farming Stock [*Stone* v. *Parker*: 29 L.J. Ch. 874 ; 1 Dr. & Sm. 222], nor Articles exclusively of Personal Ornament [*Tempest* v. *Tempest* (2 K. & J. 635)]. Vide In or about.

Having regard to the facts and circumstances of the case, Romer, J., held that neither a Consecrated Altar Stone, nor Sacred Relics in a glass case, in a Roman Catholic Chapel in a Mansion, passed under a bequest of " furniture and articles of Household Use or Ornament " [*Petre* v. *Ferrers*: 61 L.J. 426 ; 65 L.T. 568 : Cp, Fixtures]. A collection of Orchids (espy if in a house outside the curtilage of testator's dwelling-house) is not, per se, " articles of Household or Domestic Use or Ornament " ; but such of the plants as have been used for the ornamentation of the dwelling-house will pass as " articles of Household or Domestic Ornament " (*Re Owen,* 78 L.T. 643).

Household Bread ; Vide French Bread.

" Household Property ", held to include Leaseholds [*Harris* v. *Darley,* W.N. (73) 137].

" Household Qualification " ; Stat. Def., Rep People Act, 1884, section 7 (1), (4).

Household Servant, is synonymous with Domestic Servant ; therefore, a bequest to " household servants " will not include a coachman or grooms who are not indoor servants and do not board in the testator's house [*Re Drax,* (57 L.T. 475), following *Ogle* v. *Morgan,* cited Servant].

From *Stroude's Judicial Dictionary* :

The Law Lexicon published by the Madras Law Journal Office, sets out the following :—

' Household ' is the definition of the Latin ' familia '. The approved definition of ' household ' is a ' number of persons dwelling under the same roof and composing a family ; and by extension all who are under one domestic head.'

' Household ' means persons who dwell together as a family. The term includes all the dwellers in a house under the common control of one person. Inmates of a house ; domestic establishment ;

' Household ' is frequently used as a qualifying adjective before words like furniture ; goods ; effects ; etc.

Household Effects : A will bequeathing testator's furniture and other household effects to his wife does not include coffee in a bag, wine in bottles, and brandy in a cask, laid in by the testator for the current use and consumption of himself and his family.

Household Furniture. " Household Furniture " embraces everything in the house which has usually been enjoyed therewith.

An exemption of household furniture from attachment in execution is not strictly limited to such furniture as may be absolutely necessary ; but where the value is not so great as to be evidence of extravagance, it does not cease to be household furniture because it may be greater in amount than is required for the immediate need of the family.

A Will of ' Household Furniture and other Household Effects ' comprise all the property in the house and on the premises intended for use, for consumption therein, or for the ornamentation thereof, so that pistols, a melodion,

paintings, an organ, a parrot, books, wine and liquors will pass, but not a pony cow, or fowling pieces.

Household Goods. Household goods mean " every article of a permanent nature which is not consumed in its enjoyment."

Household Goods embrace articles of permanent nature that is, articles fo household use which are not consumed in their enjoyment that are used or purchased or otherwise acquired by a person for his house, but not goods in way of trade.

" *Household Goods* will only include things in domestic use, and not what a testator has in way of trade."

From *Stroude's Judicial Dictionary* :

Public Charity. An institution for the charitable benefit of a large and important body of poor persons, is a " Public Charity," as well for the purposes of construing that phrase in a Will as for obtaining a statutory exemption from rating [*A. G.* v. *Pearce*, 2 Atk. 87 : *St. Thomas's Hosp.* v. *Lambeth*, 45 L.J.M.C. 23 ; L.R. 7 H.L. 477 ; *Hall* v. *Derby*, 55 L.J.M.C. 21 ; 16 Q.B.D. 163 ; 54 L.T. 175 ; 50 J.P. 278 ; 2 Times Rep. 81) *V. R.* v. *Stapleton*, 33 L.J.M.C. 17 ; 4 B. & S. 629].

As a general rule, a Friendly Society, even if it has honorary members, is not a Public Charity [*Re Clark* 45 L.J. Ch. 194 ; 1 Ch.D. 497 : *Re Dutton*, 48 L.J. Ex. 350 ; 4 Ex. D. 54 : *Cunnack* v. *Edwards* [(1896) 2 Ch. 679 ; 65 L.J. Ch. 801 ; 75 L.T. 122 ; 45 W.R. 99 : *Sv. Spiller* v. *Mande*, 32 Ch. 158 n), on whlcv, *Re Lucy*, cited A : *Pease* v. *Pattinson*, 55 L.J. Ch. 617 ; 32 Ch.D. 154 ; 54 L.T. 209 ; 34 W.R. 361] ; secus, if it receives voluntary donations and be founded for members in Distressed Circumstances, or otherwise in poverty [*Re Buck* (1896) 2 Ch. 727 ; 65 L.J. Ch. 881 ; 75 L.T. 312 ; 45 W.R. 106 ; 60 J.P. 775].

The Dilworth Ulster Institute is not only a " Public School " but is also a " Public Charitable Institution .... carried on for " a " Public Charitable Purpose, and not for any gain or profit," within section 3 (4), Land and Income Assessment (New Zealand) Act, Amendment Act, 1892, (*Dilworth* v. *Commr. of Stamps*, cited Public School).

" Public Charitable Purposes " ; Stat. Def., 35 and 36 V. C. 24, section 14.

Vide Charitable Purpose : Charity : Public Hospital : Public Purpose.

Section 14 of the Statute 35 and 36 Victoria Chapter 24 contains the definition of Public Charitable Purposes.

Chattels

From *Stroude's Judicial Dictionary* :

" ' Chattels ' is a French word and signifies Goods, which by a Word of Art we call Catalla. Now Goods, or Chattels, are either personall or reall. Personall, as horse and other beasts, household stuffe, bowes, weapons, and such like ; called personall, because for the most part they belong to the person of a man, or else for that they are to be recovered by personall actions. Reall, because they concerne the reality, as tearmes for yeares of lands or tenements, wardships, the interest of tenant by statute staple, by statute merchant, by elegit and such like " (Co. Litt. 118 b).

Chattels Real, as to what are; Vide Wms. Exs. 592 et seq., Pt. 2, Bk. 2, Ch. 1 : Estate.

Chattels Personal are (1) Chattels Animate, (2) Chattels Vegetable, (3) Chattels Inanimate (Wms. Exs. 617) ; and V at length Wms. Exs. 632 et seq., Pt. 2, Bk. 2, Ch. 2. Vide Personal Chattels.

" If one devise to J.S. all his ' Goods,' or all his ' Chattels,' by either of these is devised as much as by both of them " (Touch. 447 : Vide Wms. Exs. 1040).

" Chattels ", in a Bequest includes Debts [Ford's case (12 Rep. 1) : *Ryall* v. *Rowles* (1 Ves. sen. 362, 363, 367, 369)] ; Secus, in an Indictment [Calye's case (8 Rep. 33 a) : *Chanel* v. *Robotham* (Yelv. 68) : *R.* v. *Powell* (2 Den 403 ; 21 L.J.M.C. 78 ; 16 Jur. 177)]. Kitchen (tit. Chattels) says, " Money, is not Goods and Chattels," and he is cited for that proposition in Termes de la Ley, Catals, and by Cowel, Catalls ; but, semble, the proposition must be accepted, if at all, with much qualification ; Vide Goods and Chattels.

A bequest of " All other Chattels " may pass the residue [*Re Sharman*, 38 L.J.P. & M. 47 ; L.R. 1 P. & D. 661]. Vide *M'Cormick* v. *Patten* (Ir. Rep. 5 Eq. 295) : Other.

Vide Estate : Cf, Chose in Action.

A Bill of Exchange, is a " Chattel," qua a fraudulent Transfer by a bankrupt [*Cumming* v. *Baily* (6 Bing. 363)].

A Dog is not a " Chattel," within section 88, Larceny Act, 1861, because, at Common Law, it is not the subject of Larceny [*R.* v. *Robinson*, 28 L.J. M.C. 58 ; *Bell*, c.c. 34 : Vh, *Ireland* v. *Higgings*, cro. Eliz. 125] : but a dog is " Goods," within section 40 (2) and (3), V. C. 71 [*R.* v. *Slade* : 21 Q.B.D. 433]. Vide section 18, Larceny Act, 1861.

" Chattel or Valuable Security," section 75, Larceny Act, 1861 ; Vide Valuable.

Waste of Metal Ore, piled on the land with the intention that it should again form part of the land, remains part of the land, and is not a Chattel (*Boileau* v. *Heath*, cited Iron).

On the other hand, Machinery, *e.g.*, a Switchback Ry. erected on land and removable without causing injury to the soil, is a " Chattel," and is within a covenant prohibiting the erection of any " Hut, Tent, Shed, Caravan, House on Wheels, or Other Chattel " [*Chamberlayne* v. *Collins* (70 L.T. 217)]. Cf. Fixtures.

11. (1) Gifts made by a deceased parent or natural guardian in consideration of the marriage of any of his female relatives dependent upon him for the necessaries of life or (2) moneys ear-marked for such purposes under policies of insurance etc., to the extent of Rs. 5,000 in respect of the marriage of each of such relatives. A parent or natural guardian can make a gift of or set apart property of the value of Rs. 5,000 in respect of the marriage of his female relatives. It may be the father or the mother who makes the gift or sets apart property of the value of Rs. 5,000. ' Natural guardian ' only the father or the mother or the husband in the case of minor wife. First the father and next to him the mother is the natural guardian. Any other relations must derive authority to act as guardian only from the courts. The Indian Majority Act (IX of 1875), provides for appointment of guardian to minors. A mother under Hindu Law cannot appoint under her Will a guardian to her minor child, whereas a Hindu father can by Will appoint a guardian in respect of the person and property of his child even to the exclusion of the mother. The condition of the exemption is :—a female relative must be dependent upon him for the necessaries of life. This condition will be satisfied in almost every case. If when the father or the mother is alive a relation of the female relative gives to the female relative a large gift of property, the gift may make the female relative independent. She cannot be said to be dependent upon the parent for the necessaries of life. Exemption

cannot be claimed in such an exceptional case. It is not clear from the provision whether it is in the contemplation of the Legislature any others except the father and mother can be a natural guardian. It seems that any person who has dependent wards under his guardianship fills the position of natural guardian provided he has ties of blood relationship. Courts will have to construe the expression 'Natural Guardian' and find out the intention of the Legislature. Instead of enacting 'daughters' in place of female relatives, it is not clear why the Legislature advisedly used the expression female relatives. The expression natural guardian must refer to a person who is neither the father nor the mother of the female relative. If a deceased parent had 10 daughters he could provide 50 thousand rupees, 5 thousand to each one of the daughters, and duty will not be leviable on this 50 thousand rupees. But a gift of Rs. 5,000 and setting apart moneys from the marriage of a female relative to the extent of Rs. 5,000 are not to be taken together.

Sub-section (2). Power is taken under this sub-section by the Central Government to grant some more relief in addition to the reliefs provided in sub-section (1). The Central Government by notification in the official Gazette may make any exemption, reduction in rate or other modification in respect of Estate Duty in favour of any such class of property or the whole or any part of the property of any class of persons.

Rules 13, 14 and 15 have been framed covering matters referred to in clauses (*i*) and (*j*) of this section.

Items 3 [clause (*c*)], 4 [clause (*d*)], 5 [clause (*i*)], 9 [clause (*c*)] and 10 [clause (*j*)] above are not to be aggregated with the other property of the deceased passing on his death. See the next section. All the remaining items even though exempted to the extent specified are aggregable with the property passing on the death of the deceased.

Wolverton (*Baron*) v. *Attorney-General* [1898 A.C. 535]

The facts of the case appear sufficiently from the judgment of Lord Halsbury.

Per Lord Halsbury, L.C. : "My Lords, George Grenfell, 2nd Baron Wolverton, died on November 6, 1887. Under the provisions of his will, and in the events which happened, five nieces became entitled to his residuary estate upon the death of Lady Wolverton. That lady died on January 4, 1894, and upon her death legacy duty at the rate of 3 per cent. per annum was paid upon the whole residue of the testator's estate.

On December 31, 1888, a deed was executed by among others the five nieces, the late Lady Wolverton, and the present Lord Wolverton. By that deed the present Lord Wolverton, the appellant here, became entitled to an annuity of £ 15,000, and the question is whether he is liable to pay succession duty upon this annuity.

The claim of the Crown is based upon the annuity being liable as upon a succession coming to the appellant from the late Lady Wolverton, or the five nieces, or from both, and the sum of money in question is said to come within the express language of section 2 of the Succession Duty Act, 1853. (His Lordship read the section.)

Before dealing with the particular question now before your Lordships, it will not be inappropriate to say a word or two upon the apparent scope and object of the section I have quoted. What it points to is the disposition of property by reason whereof a person becomes beneficially entitled upon the death of any person. The disposition may be past or future : it may take effect immediately or after an interval, it may be either certainly or

contingently, it may be either originally or by way of substitutive limitation, but with all these safeguards against evasion it must be a disposition by reason whereof a person has become beneficially entitled upon the death of some person. If a person were to confer by a deed of gift *inter vivos* his own existing property it would seem impossible to contend that this is a new succession. It is simply a transfer *inter vivos* of one person's property to another, and is not within the scope of the Act at all. Whether the succession be operated by disposition or devolution, it must be a succession upon death. Now, my Lords, I am unable to understand how the annuity created under the deed to which I have referred is a succession at all. If it is a gift *inter vivos* deriving no force from the death of any one, I do not find any words in the section which make it chargeable with duty. If it were chargeable, a voluntary gift by any one, or any part of it during his own life, would equally make such gift chargeable with duty, and the whole nature of the legislation aimed at—succession upon death—would be altered into taxation upon transfer of any property by gifts *inter vivos*, and this to any extent of remoteness, so that each donee though *inter vivos* would become in turn the predecessor within the meaning of the section to each subsequent donee of the same property, although no new death had intervened at all, but simply a change of proprietorship.

It is obvious to ask in this case whence it is that Lord Wolverton's interest in the annuity is derived. The Crown contends that it is derived from the nieces, or from Lady Wolverton, or from both. Let us take them separately. Suppose these ladies had waited to make the deed in question till the death of Lady Wolverton, and had thus become entitled in possession to the whole of the late Wolverton's residuary estate, would they then have been entitled to hand over all or part of what had become absolutely their own ? The element of succession upon death would be entirely wanting, and though the word " succession " has a technical meaning in the Act, the whole scope and meaning of the Act points to a distinction between alienation between living persons and a succession which death has opened to a successor.

It seems to me that if this case can be maintained then, if *A*, inherits and pays his succession duty, every donee from *A* down to Z must pay it also. Such a tax would be both unreasonable in itself and impossible of collection. The succession to property upon a death is one thing, the free gift *inter vivos* is a totally different thing.

I am aware that the Crown repudiated this view, but it is not permissible to repudiate the logical conclusion of a contention by saying that the Crown would not insist upon such a right. It will not do to throw over consequences which may reduce the argument to an absurdity. The question here is the true construction of the Act. I am unable to deal with it, because I am afraid I do not understand the suggestion of one succession being substituted for another, or how in this case it would arise.

The present Lord Wolverton got nothing upon the death either of the second Wolverton or by the death of Lady Wolverton. The utmost that can be said is that upon the occurrence of the death of Lady Wolverton the present Lord Wolverton's donors obtained the power to render effectual a gift which they had *inter vivos* agreed to give him before the death took place. " Succession " in the Act means not the act of succeeding but property chargeable with duty under the Act, and, as Bramwell, B., pointed out in *Re Peyton* [(1861) 7 H & N. 296], property may escape the tax for all time by always passing *inter vivos*.

I am of opinion that the annuity given by the deed of December 31, 1888, is not within section 2 of the Act at all. Lord Wolverton certainly ob-

tained nothing by Lady Wolverton's death. She dealt with her own life interest in the property during her life.

I am not, of course, suggesting that the transfer *inter vivos* of property the right to which arises upon the death can escape the duty by its being transferred to a person other than the original successor. The succession once created the duty must be paid for it ; but I can find no warrant in the statute for a new succession duty being leviable upon the same property or money where no new death has created the right to such succession.

My Lords, I have hitherto dealt, and only dealt, with the 2nd section itself. It is that section which imposes the tax. But the 15th section, which is supplementary to it, to my mind places the matter beyond all possibility of doubt. The framers of the Act contemplated the case of the original person intended to succeed under the disposition or devolution spoken of in section 2 transferring the interest to some other person, and I think the whole effect of that part of section 15 with which we are dealing is that the person to whom such an interest has been transferred shall stand in the shoes of the person originally entitled, and shall be chargeable with duty at the same time and at the same rate as the person originally entitled would have been chargeable if the interest had not been so transferred.

The succession to the sum of money which created the annuity of £ 15,000 was a succession rendering the successor liable to the tax, but the " successor " were the five nieces, and undoubtedly they would be liable to the tax if they had not already paid it in a different form. But they had paid it in the form of legacy duty ; and the Succession Duty Act enacts that any one who is charged with the duties on legacies shall not also be charged in respect of the same acquisition of property under the Succession Duty Act.

I do not think it would be proper to rely upon the fact that the legacy duty was charged, if it were charged erroneously—that could not estop the Crown in arguing what was the true construction of the Act. But I think it was charged, properly, rightly.

Looking at the scheme of the Act and the application of the 2nd, 15th and 18th sections as applied to the facts in the present case, I confess I am unable to appreciate the difficulties which have been supposed to surround it.

It is not very intelligible to me what is intended by the argument relied on, apparently, so much in the Court below, as to whether the annuity granted to Lord Wolverton was one annuity or two annuities. If (what is the only intelligible meaning that I can attribute to these phrases) it is meant that the sources from which the annuity given to Lord Wolverton are two different sources, that is quite true, but what relevancy has it to the question under debate ? Lady Wolverton could and did only affect her own life estate. On her death nothing was left to succeed to. The co-heiresses by the annuity to Lord Wolverton gave nothing to which a title accrued by any one's death, and I am unable to see, therefore, what the other source from which the annuity is derived has to do with this question. Nor do I see what relation the mode in which people dispose *inter vivos* of what is only payable upon a succession, which by the hypothesis is not a new succession, but a disposition of property obtained under an old succession upon which duty has been paid already.

It seems to be assumed without explanation, at least so far as I can understand, that there is a new succession, and if there were a new succession, no doubt the consequence would follow. But the only point being whether there is a new succession or not, that appears in the argument to be assumed ; and then an elaborate explanation is given of the consequences that must follow from that succession. For the reasons, however, I have given, I think there is

no new succession, and, if there is not, it is to my mind perfectly immaterial what in fact is done with the property to which a donee had already succeeded.

My Lords, as to the point upon the 17th section, I quite concur with the Court of Appeal that the argument founded upon that section is untenable.

For these reasons, I am of opinion that the judgment of the Court of Appeal ought to be reversed with the usual result as to costs ; and I move your Lordships accordingly."

Per Lord Herschell :—

" My Lords, the Attorney-General, by the information upon which this appeal arises, sought to have it declared that upon the death of the late Lady Wolverton succession duty at the rate of 6½ per cent. became payable in respect of the value of an annuity of £ 15,000 per annum to which the defendant became entitled under a deed to which I will call attention immediately. The Divisional Court by its order made the declaration prayed, and this order was affirmed by the Court of Appeal.

The second Lord Wolverton by his will vested his property in trustees upon trust to pay, assign, and make over the whole residue of his estate to Henry Richard Glyn if he should be living at the time of the decease of the testator's wife, and, if he should be then dead to stand possessed thereof upon trust for the person who should be the testator's right heir at common law for his absolute use and benefit.

Henry Richard Glyn died in the lifetime of Lady Wolverton, and at her death the five daughters of a brother of the testator, being his right heirs, became entitled to his residuary estate. These ladies were called in the argument his co-heiresses, and it will be convenient to adopt this designation.

After the death of the testator and H. R. Glyn a deed of arrangement was entered into, to which Lady Wolverton, the co-heiresses, and the present Lord Wolverton were parties. The arrangement was founded, as the deed expressed, on the circumstance that it was contrary to the supposed intention of the testator that no part of his residuary estate should devolve on the person for the time being holding the title of Baron Wolverton. It is not necessary to refer to the provisions of the deed so far as they relate to what was to be done during the lifetime of Lady Wolverton, inasmuch as in my opinion they have no bearing whatever upon the point which has to be determined. Their introduction into the argument in the Courts below tended, I think, to obscure the real point, and thus perhaps assisted to bring about what I think was an erroneous conclusion. The whole residuary estate of the testator expectant on the death of Lady Wolverton became by the arrangement vested in trustees who were, as soon as Lady Wolverton died, to pay out of the annual income thereof an annuity of £ 15,000 a year, " in like manner as therein before provided with regard to " the appellant, " to the person for the time being holding the title of Baron Wolverton." This is the annuity in question. I pause here to call attention to the legal position of the parties. But for the deed of arrangement the co-heiresses would on the death of Lady Wolverton have become entitled in possession to the whole of the residuary property left by the testator. The only title which the appellant had to any part of it was derived from the assignment contained in the deed under which they had vested the property in trustees in part for his benefit. It is only by virtue of this assignment that he is entitled to the annuity. Legacy duty at the rate of 3 per cent. (the rate applicable to the case of nieces taking a benefit from an uncle) has been paid to the Crown in respect of the whole of the residuary estate.

There can be no doubt, as was admitted by the Crown, that the disposition by the testator by reason whereof the co-heiresses became entitled to his residuary estate upon the death of Lady Wolverton conferred a succession, and that they became "successors" and the testator their "predecessor" within the meaning of the 2nd section of the Succession Duty Act. I take it to be equally clear that the succession came into existence as soon as the testator died, and that its creation was not postponed until the death of the tenant for life. Indeed, this was admitted by the Solicitor-General as soon as his attention was called to the terms of the section making it applicable to past dispositions.

It was contended for the Crown that the disposition contained in the deed of arrangement also created a succession to a part of the same property, namely, the annuity on the death of Lady Wolverton, that the successor under this disposition was the appellant the predecessor being his cousins, the co-heiresses. The disposition contained in the deed of arrangement came, it was said, within the very terms of section 2, and not the less so even if it were the mere transfer from one person to another of a part of the succession already created.

It was not, however, argued that in such a case there were two successors who came into possession at the death of the tenant for life, but that disposition by way of assignment by the original successor created a new succession which was substituted for that conferred by the prior disposition. I do not wonder that the contention was thus limited, for it would otherwise inevitably have followed that if property to which a person was entitled expectant on a death had passed by deed *inter vivos* a dozen times by way of gratuitous assignment during the lifetime of the tenant for life, a dozen duties would have been payable although the last assignee only would have acquired the property in possession.

My Lords, I will assume for the purpose of argument that the disposition contained in the deed of arrangement was such as to satisfy the terms of section 2. In my opinion it was because the Legislature thought that an alienation by a successor of his succession might be thought to be within those terms that the 15th section was framed as it is. But before referring to the provisions of that section I will deal with the argument presented on behalf of the Crown.

My Lords, I am unable to find in the Act any warrant for the view that a succession once created can, by the act of the successor, cease to exist and another succession be substituted for it. The words of section 10 are precise : "There shall be levied and paid to Her Majesty in respect of every succession as aforesaid" the following duties ; and these are made dependent on the relationship of the predecessor and successor. This provision operates, in my opinion, as soon as the disposition is made by which a "succession" is conferred. Moreover, "succession" denotes, by clause (1), any property chargeable with duty under the Act. No doubt the time of payment is fixed by section 20 ; but this is quite a different thing from the obligation to pay. The time of payment is to be when the successor "or any person in his right or on his behalf" shall become entitled in possession to his succession. This contemplates that at the time the succession falls in some person in right of the successor, and not the successor himself, may be entitled to the possession. The original successor is none the less called the successor.

I have not forgotten the argument of the Solicitor-General that an alienee for value does not become a new successor although a gratuitous alienee does, and that the language I have alluded to is thus sufficiently satisfied. I shall deal with this argument when I come to consider the 15th section of the Act. It does not touch the point I am now concerned with, that section 20, to say the least, affords no support to the argument that one on

whom a succession has been conferred can destroy it and the obligation to pay the duty which was attached to it by alienating it.

And when we come to section 44, which provides who are to be " personally accountable " to Her Majesty " besides the successor," among those named are " every person in whom " any property subject to such duty " shall be vested by alienation or other derivative title at the time of the succession becoming an interest in possession." Here again there is nothing to suggest that a person who has once been a successor has ceased to be so if, prior to the time of the succession becoming an interest in possession, he has alienated it.

It was argued that the provisions of section 21, relating to the mode of assessment of the duty, in the case of real estate, would hardly be workable if in those provisions the words " successor " were held to refer to the original successor and not to his alienee. I think the application of this section may give rise to difficulty in certain cases. But it is to be observed that it does not determine either who is to be charged with the duty when it attaches or becomes payable, or what is to be its rate. It is merely a rule for ascertaining the amount. And the difficulty is not got rid of by adopting the argument of the Crown, for it is just as great in the case of an alienation for a money consideration, which it is admitted does not make the alienee a new successor, as in the case of a gratuitous alienation. It is not necessary to express any opinion on the operation of that section [which was discussed in *Solicitor-General* v. *Law Reversionary Society* (L.R. 8 Ex. 233)] ; it is enough to say that it affords no sufficient reason for departing from what appears to me to be the unambiguous meaning of the leading provisions of the Act to which I have called attention and which it must be remembered apply to realty and personalty alike.

I am not surprised that the notion that the gratuitous alienation of a succession before the time for payment of the duty arrives creates a new succession, ousting the original one and become substituted for it, finds no countenance in the provisions of the Act. In the present case the contention of the Crown operates in favour of the revenue and increases the amount of tax, but in many, and perhaps the majority of cases, it would have precisely the contrary effect. It would be strange if a person in whom a succession had been created by a stranger in blood, and in respect of which therefore a duty of 10 per cent. would be payable, should be able by a gratuitous alienation to his son before the death occurred to reduce the duty payable to 1 per cent. It seems to me inconsistent with the entire scheme of the Act that when once a succession has been created and the liability to duty has attached, a mere voluntary assignment of the right vested in the successor by the disposition, or any part of it, should alter the succession duty and make another, and it may be a lower, duty payable at the time when the succession falls into possession.

Before proceeding to consider the 15th section, I may refer to the only authorities I am aware of bearing upon the question whether the alienation of a succession, or the creation of a new succession by alienation, can so extinguish the original succession as to get rid of the duty which has become leviable and chargeable in respect of it.

In *Solicitor-General* v. *Law Reversionary Society*, the Court of Exchequer laid down certain conclusions as established on a consideration of the various sections of the Act. They held that, though the duty is not payable until the time of the actual enjoyment of the property, " the title to the succession dates from the disposition, and there is never any title to the property free from the duty " and that a person who has had a succession conferred upon him cannot by parting with it prevent it from being a succession.

The only case which affords any support to the idea that a new succession can take the place of an old one is *Cooper* v. *Allen* (4 Ch. D. 802), decided by the late Sir George Jessel. In the case, *A* and *B*, the tenant for life and remainderman, conveyed their estate for money to *C* in fee. *C* died, having devised to *D* in fee. *D* paid duty on his succession from *C*. It was held that no more duty would be payable on the death of *A*, the tenant for life. It must be borne in mind that the case related to real estate, and that it was a special one, inasmuch as *C*, having taken a conveyance from the tenant for life, came at once into possession of the land, and the income and profits thereof, in respect of which a succession had been created. Sir George Jessel was of opinion that the conveyance to *C* did not create a new succession, and that if he had remained owner until the death of the tenant for life, the duty payable on the death of the tenant for life by the remainderman would have been payable by *C*, but that inasmuch as a new succession was created by the devise to *D* and the death of *C*, the only duty payable was on that new succession. That new succession arose from a new disposition making the succession to property dependent on a new death, and it related to real estate; the case is therefore quite distinguishable from the present.

But there are observations of Sir George Jessel which have a bearing on the present case. I confess I find a difficulty in following some of the reasoning of the learned judge. He considered that because *D* succeeded on the death of *C*, and that was a new succession, duty could only be payable on that succession, and the duty which attached by reason of the original disposition was no longer payable. Why, he asks, should a successor who is in possession of property pay two duties? The Crown has, he says, by the merger got the benefit of reducing the estate once more the fee simple on which there is a succession, and a successor coming in pays the duty. Further on there occurs the following passage: "I think it is very difficult to give any meaning to the exception from the 15th section of alienations conferring new successions, unless it has the meaning which I attribute to it, because if the alienation does not confer a new succession, duty is to be paid at the same rate and time as on the original succession, that is you are to wait for the payment. If it confers a new succession, then of course you will get payment on whichever succession comes first." Again, in discussing the effect of the 14th section, which applies only to personalty, the learned judge says that it would be singular if in the case of realty more than one duty was payable in case of devolution on death during the lifetime of the tenant for life, "because the Act was intended to assimilate the duty upon personalty and realty." And he adds further on: "In the case of succession to real estate, the object of the Act is to let the last succession prevail; but as regards personal estate it is enacted that the highest duty shall be paid."

I cannot see how the reasoning of the learned judge establishes that in the case before him there could be only one succession duty payable, and that in respect of the new succession. The merger of which the learned judge speaks did not arise by virtue of *C*'s disposition, for the fee simple was vested in *C* during his lifetime, just as much as in *D* after his death. It arose from the fact of his taking a conveyance from the tenant for life as well as from the person entitled to the succession. He was thereupon entitled to the estate in immediate possession. But the possession to which he then became entitled, and his right to the income and profits of the land, was not derived from the conveyance to him of *B*'s succession, but solely from the fact that he was the owner of *A*'s life estate. If he had purchased this only, he would have been equally entitled to possession of the land and to the income and profits thereof. If he had only purchased the succession, he would at

that time and down to his death have been entitled to neither. The devise by *C* to *D* created a succession in respect of property which was not at that time the subject of any succession, namely, the estate during the life of *A* I think, with all respect, that Sir George Jessel overlooked these facts. When *D* came into possession of the land by reason of *C*'s device he undoubtedly became entitled in possession to a succession, and duty became then payable in respect of it, though the original succession had not then become, in the language of section 44, "an interest in possession." Duty would equally have been payable if *C* had never acquired any title to the remainder in respect of which a succession had previously been conferred, and no title thereto had passed to *D*.

It is not necessary to determine what duty or duties became payable by *D*. Nor is it necessary to decide whether in the case of real estate the object of the Act is to let the last succession prevail. Such a conclusion cannot, however, in my opinion, be deduced from section 15, which only prescribes what duty is to be paid where a new succession has not been conferred. The argument derived by the learned judge from a consideration of the provisions of section in connection with section 15 is in my opinion not a sound one. It is not correct to say that the Succession Duty Act was intended to assimilate the duty upon personalty and realty. Even in the view adopted by the learned judge the assimilation was not complete, for whilst in the case of personal estate, if there were several successors by death to the interest of the original successor before it fell into possession, the highest rate of duty is imposed which if every successor had been subject to duty would have been payable by any one of them, in the case of realty the rate was said to be determined by the last succession, and might therefore be the lowest instead of the highest.

But in truth, so far from assimilating realty and personalty for purposes of the duty, the Act created a fundamental distinction between them, and that to the advantage of realty. For whereas in the case of personalty the duty was charged at the prescribed rate upon the capital value of the property succeeded to, in the case of realty the charge was to be assessed only on the basis of succession to a life interest. The provision for assessment contained in section 21 affords a reason for the restriction of section 14 to succession to personalty.

I proceed now to examine somewhat more closely the language of section 15. The latter part of that section provides that where any succession shall, before the successor shall have become entitled thereto (*i.e.*, to the succession already conferred) in possession, have become vested by alienation or by any title not conferring a new succession in any other person, then the duty payable in respect thereof shall be paid at the same rate and time as the same would have been payable if no such alienation had been made or derivative title created.

"My Lords, as I have already stated, a part of the succession to which the co-heiresses were entitled became vested by alienation in the appellant. The case, therefore, seems to come within the very words of section 15. For I can see no ground for a distinction between the transfer by alienation of the right to receive the whole of the personalty which is the subject of the succession or a part of it. It was argued on behalf of the Crown that the word 'alienation' must be confined to alienation for valuable consideration ; that the word "alienation" as well as the words which immediately follow it ; and that every gratuitous alienation must create a new succession substituted for the one from which it was derived.

I have already given reasons for thinking the last of these propositions ill-founded. If the word "alienation" was only intended to apply to cases

in which it was in respect of a money consideration, why were no words to that effect inserted ? I think there is no warrant for putting any limitation upon the word which is not found in the terms of the section.

As in my opinion no new succession was created in the money to which the appellant has become entitled, it is immaterial whether the words "not conferring a new succession" do or do not qualify the word "alienation." But I think it right to state that, in my opinion, they do not ; and the fact that they do not strengthen the arguments which I have adduced as to the scheme of the legislation.

It is certainly not construing the words "by alienation or by any title not conferring a new succession" according to their grammatical meaning to refer the words "not conferring a new succession" to "alienation" as well as to "by any title." And if I am right in thinking that mere alienation of an existing succession does not of itself create a new succession, then the section may be construed according to its grammar, and is drawn in the manner one would have expected.

It is true that Sir George Jessel, in the case already referred to, expressed the opinion that the words "not conferring a new succession" apply to the word "alienation" as well as to the words "any title", though he confessed that in the view the grammar was not perfect or beyond criticism. The reason he gave was that it would be very difficult to say what title there could be conferring a new succession if not an alienation. I do not think the reason a sound one. A succession might, for example, before it fell into possession have devolved by death upon another person or persons so as to create a new succession. Such person or persons are termed in section 14 "other successor or successors." It was necessary to insert after the words "by any title" the words "not conferring a new succession," otherwise there would have been a conflict as regards personalty between the 14th and 15th sections. On the other hand, a succession might by operation of law become vested in some other person, as, for example, an assignee in bankruptcy, which would be a title not creating a new succession. But I can see nothing either in the terms of the section or in the reason of the thing to suggest that an alienation by instrument *inter vivos*, which merely transferred the interest of the successor or some part of it to some other person, would create a new succession. In such a case the same property passes into possession on the same death, and though by a transaction *inter vivos* another person is substituted for the original successor, I do not think it can reasonably be said that "a new succession" was thereby conferred.

For the reason I have given I am of opinion that the 15th section applies, and that the duty payable in respect of the property into the possession of which the appellant came is to be paid at the same rate and time as the same would have been payable if no alienation had been made by the co-heiresses and they had themselves become entitled in possession.

I have so far mainly dealt with the case on a consideration of the terms of the statute as if the matter were *res integra* unaffected by previous decisions. It was, however, argued for the Crown that the case of *Attorney-General* v. *Cecil* [L.R. 5 Ex. 263 ; 39 L.J. (Ex.) 201, 204] was an authority in favour of their contention that the 15th section was inapplicable. I do not think so. In that case, a father and son being tenant for life and tenant in tail under a settlement, the entail was barred and the estate settled to their joint appointment, and subject thereto to the uses of the earlier settlement. They afterwards appointed a term to a trustee on trust to raise £20,000 for a younger son. On the money becoming payable to him upon the death of the original tenant for life, the question arose whether duty was payble at 3 per cent as upon a

succession derived from his brother, or at 1 per cent. only. The Court held the former duty payable.

It was contended that section 15 applied, and that the same duty only was payable as the tenant in tail would have paid on succession to the entailed estates. That case seems to me far removed from the present one. It was impossible to say with any reason that Lord Eustace Cecil succeeded to the £20,000 by reason of the vesting in him by alienation of a portion of the settlement. If the entire interest of the tenant in tail under that settlement had been conveyed to Lord Eustace Cecil he would have taken nothing at all, in the event which happened, inasmuch as the tenant in tail died without issue in the lifetime of the tenant for life.

By the disentailing deed the estate of the tenant in tail became enlarged to an estate in fee. If he had survived his father he would have taken within the meaning of the 12th section under a disposition made by himself, and not under the original settlement. How, therefore, could it be said that the charge created in favour of Lord Eustace Cecil vested in him by alienation the succession to which the tenant in tail was entitled under the original settlement, or any part thereof ? The decision in no way conflicts with the conclusion at which I have arrived.

There may have been some divergence in the reasons given by the learned judges in the case which I have been considering for the conclusion at which they arrived, but there is nothing really inconsistent with the construction which I have put upon the 15th section. On the contrary, according to the report of the case in the Law Journal, which is fuller than that in the Law Reports, Kelly, C.B. said: "If the charge had been made or the term had been created out of the original succession, it would have come strictly within the words of this section of the Act (*i.e.*, the 15th section), and would have created no new succession at all."

In *Braybrooke* v. *Attorney-General* (9 H.L.C. 178) Lord Wensleydale said that the 15th section was meant to meet the simple case of a person having a right to a succession within the meaning of the Act totally alienating that right to another person before the succession opens, or carving out a derivative interest from it—in which case the section provides that the assignee or the person having the derivative title shall stand on the same footing as the assignor. But if there is something different from a mere transfer of the interest or a part of it, if there is a title conferring a new succession in any other person, then the 15th section does not apply.

In *Attorney-General* v. *Yelverton* (7 H. and N. 329) Martin B., in delivering the judgment of the majority of the Court, said of the 15th section : "It seems to us to refer to a species of property different from that on which the duty is claimed in the present case, that is to say, a reversionary property in respect of which the assignor would have been liable to duty but which he has assigned."

There is thus a considerable weight of judicial opinion in support of the views I have expressed. The scheme of the Act, as I have presented it to your Lordships, appears to me to be clear, consistent, and equitable, and it arrived at by giving to the provisions which impose the duty and which determine its rate and time of payment, and the persons who are to be accountable for it, their natural grammatical meaning.

Having arrived then at the conclusion that duty was payable at the same rate and time as if the co-heiresses had made no alienation, the only question which remains is whether the payment of legacy duty at 3 per cent. On the the entire residuary estate of the testator renders the duty of 3 per cent, which would otherwise have been payable on the succession in question, no longer

payable. This depends on the concluding provision of section 18. It enacts that "no person charged with the duties on legacies and shares of personal estate under the Legacy Duty Acts shall be charged also with the duty granted by this Act in respect of the same acquisition of the same property." It is clear that the co-heiresses could not have been called on to pay any further duty on the property which they assigned to the appellant. Having paid the legacy duty, no succession duty would have been payable by them at the time of Lady Wolverton's death or any other time. If I am right in the view which I have expressed that the alienation did not create a new succession, it seems to me to follow that the Crown cannot be entitled both to legacy and succession duty in respect of the acquisition of the same property, on the same death, whether by the successor or his assignee. I think any other conclusion would be reasonable, and contrary to the manifest intention of the enactment.

For the reasons I have given I think the judgment ought to be reversed and judgment entered for the defendant, with costs.

Per Lord Macnaghten :

"My Lords, 'The Act', it has been observed, 'is a difficult Act, and the dicta are not less difficult to consider than the Act itself." (4 Ch. D. 802, 823). So said a distinguished judge speaking of the Succession Duty Act, 1853. I cannot help thinking there is a good deal of truth in that saying, and just a touch of warning, which the author of the observation himself might sometimes perhaps (if I may venture to say so) have kept in view without impropriety. Happily the provisions of the Act bearing upon the question now before the House do not present any very great difficulty, and even the dicta are less embarrassing than usual.

The disposition which your Lordships have to consider in connection with the Act relates to the residuary estate bequeathed by the will of the second Lord Wolverton, who died in November 1887. He left a widow, but no issue. He was succeeded in the title by his nephew. The third Baron died unmarried in July 1888. His successor was his brother, the present appellant.

Under the limitations contained in the testator's will the third Baron would have become entitled to the testator's residuary estate, which was of very great value, if he had survived the testator's widow. But by reason of his death in her lifetime the whole residuary estate, subject to the widow's life interest, came to be held in trust for the person who might at the time of the widow's death answer the description of the testator's " right heir at common law."

Now, the co-heiresses of the testator at the time of his death, and at the time of the death of the third Baron, were the five daughters of the testator's next brother, who had died in the testator's lifetime without male issue. If they had never existed, the third Baron, and after him the appellant, would have been the testator's heir-at-law.

In this state of things, in order to carry out what was supposed to have been the testator's intention and to prevent the property passing away from the title, and in order at the same time to make suitable provision for the co-heiresses, a family arrangement was come to between the co-heiresses, the appellant, and the testator's widow. The co-heiresses and the appellant brought in their contingent interests, and the widow gave up her life interest in certain bank shares producing an income of over £50,000 which had fallen into the residue on the death of the third Baron. The scheme of the arrangement was this : The income of the bank shares was to be used to pay an annuity of £15,000 to the appellant and annuities to the co-heiresses during the widow's

life ; the surplus income during her lifetime was to be accumulated. On the death of the widow certain capital sums were to be paid to the co-heiresses out of the accumulated fund, supplemented, if necessary, by the accumulation of the surplus income of the entire estate after payment thereout of an annuity of £15,000 to the holder of the title for the time being during the period of accumulation ; subject to these provisions the property was to be settled so as to go along with the title. The arrangement was embodied in a deed dated December 31, 1888, by which the widow assigned to trustees her interest in the bank shares, and the co-heiresses and the appellant assigned to the same trustees all their interest in the testator's residuary estate.

The testator's widow died on January 4, 1894. The five co-heiresses survived her. The accumulated fund was then insufficient to answer the claims of the co-heiresses ; and so a further period of accumulation commenced, during which the appellant as the holder of the barony became entitled under the trusts of the deed of arrangement to the annuity of £15,000 payable out of the testator's residuary estate.

On the death of the widow the Commissioners of Inland Revenue claimed and received legacy duty at the rate of 3 per centum on the whole of the testator's residuary estate. In addition to the legacy duty so claimed and paid, the Commissioners claimed succession duty upon the annuity of £15,000 as upon a succession coming to the appellant from the testator's widow, or from the co-heiresses, or from both the widow and the co-heiresses. The claim was held good in the Queen's Bench Division and in the Court of Appeal. The matter now remains for your Lordships' determination.

The question depends simply on the effect of two sections of the Succession Duty Act, the 15th and the 18th.

Section 15 enacts that "where .... any succession shall before the successor shall have become entitled thereto or to the income thereof in possession, have become vested by alienation or by any title not conferring a new succession in any other person, then the duty payable in respect thereof shall be paid at the same rate and time as the same would have been payable if no such alienation had been made or derivative title created."

I may observe in passing, with all deference to Sir George Jessel, M.R., that I cannot see any reason why the expression "not conferring a new succession should be read as qualifying the word "alienation" as well as the words "any title." Not that that construction would make any practical difference. But it is not wanted : it rather confuses the meaning, and it is forbidden by the structure of the sentence according to the ordinary rules of grammar. A mere alienation—a mere transfer of a subsisting succession—cannot confer a new succession. But a new succession may, of course, be conferred by a title in which alienation is followed by a transmission of interest before the succession vests in possession.

My Lords, it seems to me that the case which your Lordships have before you is precisely the case contemplated in the 15th section of the Act. I do not think that the transaction in respect of which the commissioners are now claiming succession duty could be described more accurately than in the very words of that section. The succession of the co-heiresses, that is to say, the residuary estate of the testator to which, at the date of the deed of arrangement, the co-heiresses were contingently entitled, and which was chargeable with duty on the death of the widow, became to the extent of £15,000 per annum vested by alienation in the appellant as the holder of the barony before the co-heiresses became entitled thereto in possession ; and, therefore, if the 15th section had stood alone, the duty payable in respect thereof to the extent

of the annuity would have had to be paid at the same rate and time as the same would have been payable if the deed of arrangement had not been executed and no such alienation had been made. But then the provision at the end of the 18th section comes in, which enacts that no person charged with the duties on legacies and shares of personal estate under the Legacy Duty Acts, in respect of any property subject to such duties, shall be charged also with the Duty granted by the Succession Duty Act in respect of the same acquisition of the same property. Now, if the alienation in question had not been made, and if the whole of the testator's residuary estate had come to the co-heiresses, they could not have been charged with succession duty on part of their succession. The charge for succession duty would have been cleared by the payment of legacy duty. It follows, therefore, from the combined operation of the 15th and 18th sections, that no succession duty can now be claimed in respect of the annuity of £15,000 payable to the appellant as from the widow's death out of the income of the testator's residuary estate.

Speaking for myself, I hardly think it necessary to say anything more. And, indeed, I should not have supposed the question open to argument if it had not been argued so strenuously on the part of the Crown. However, as the claim for duty has been made, and made with success in both the Courts below, it would scarcely be respectful to omit all reference to the judgments under review.

In the Queen's Bench the ground of decision, which I believe commends itself to your Lordships, though argued, was not even noticed in the judgment of the Court. It was supposed by the Court—I do not know why—that the defence rested on two grounds, and two grounds only. One was that the annuity which became payable after the widow's death out of the succession of the co-heiresses was the same annuity which was payable during her life-time out of the income of the bank shares, and that in fact there was only one annuity. The other was that the annuity payable after the widow's death was payable under a contract for valuable consideration in money or money's worth within the meaning of section 17. Both those grounds were plainly untenable, and both were properly rejected by the Court of Queen's Bench.

In the Court of Appeal the same arguments were repeated. They met with much the same fate. And the real ground of defence fared little better there than it did in the Queen's Bench. It is suffered, I think, from being found in bad company. All the learned judges of the Court of Appeal say that Lord Wolverton's annuity was " a new succession," because it was not a continuation of the old annuity, but came into existence for the first time at the widow's death. That, however, was not the point. The point was that the annuity to which Lord Wolverton became entitled after the widow's death was carved out of the succession of the co-heiresses, and was merely an alienation of part of their succession.

Besides holding that the annuity was a "new succession," both Lord Esher and Rigby L.J., relied on a proposition— a "larger proposition" Lord Esher calls it—which they attribute, erroneously I think, to Martin, B. They both seem to think that Martin B., differed from Lord Wensleydale as to the true meaning of section 15. Now, Lord Wensleydale's opinion is to be found in his judgment in *Braybrooke* v. *Attorney-General* (9 H.L.C. 150). In that case he dissented from the majority of the House ; but the decision did not turn on the 15th section at all. What he said about section 15 was *obiter dictum*, but it was not at variance with anything said by the other noble and learned Lords who took part in the case. The opinion of Martin B., in the view of Lord Esher and Rigby L.J., is to be extracted from one sentence in the report of the case of *Attorney-General* v. *Cecil* (L.R. 5 Ex. 263, 272) as given in the Law

Reports. From that sentence, divorced from the context, they conclude that Martin B.'s opinion was that an alienation in a family settlement was not an alienation within the meaning of section 15. With all deference to the Court of Appeal, I must say that I can find no foundation for such a singular notion either in the Act itself or in anything that fell from Martin B.

There was, no doubt, one point which came under discussion in connection with the Succession Duty Act on which Martin B., did differ from Lord Wensleydale, but that point had no reference to section 15. The point of difference, as explained very fully by Lord Selborne in *Charlton* v. *Attorney-General* (4 App. Cas. 444), was a point upon the general principles of law applicable to the execution of powers. On that Lord Wensleydale differed, not only from Martin B., but also from Lord Cranworth and the House of Lords.

The report of *Attorney-General* v. *Cecil* in the Law Journal (39 L.J. Ex. 201, 205) seems to be more accurate than that in the Law Reports. The expression attributed to Martin B., in the Law Reports, in which Lord Esher and Rigby L.J., discover a difference of opinion between that learned judge and Lord Wensleydale, and on which to some extent their judgment is based, is not to be found in the report in the Law Journal. In the corresponding passage in the Law Journal, Martin B., actually expresses his concurrence with Lord Wensleydale, referring obviously to the passage in *Braybrooke* v. *Attorney-General* where the noble and learned Lord deals with section 15. That section, he says, was meant to meet the simple case of a person having a right to a succession within the meaning of the Act totally alienating that right to another person before the succession falls into possession, or carving out a derivative interest from it : in which case, his Lordship observes, "the section provides that the assignee or the person having the derivative title shall stand on the same footing as the assignor. But if there is something different from a mere transfer of the interest or a part of it, if there is a title conferring a new succession on any other person, then the 15th section does not apply."

I think the appeal should be allowed, with costs both here and below."

Hancock v. *Watson* [1902 A.C. 14]

The facts of the case sufficiently appear from the judgment of Lord Davey.

Per Lord Davey : "My Lords, in this case Richard Hancock, by his will dated June 17, 1850, gave the residue of his property to trustees upon trust to permit his wife (who died in November, 1876) to receive the income during her life for her separate use, and after her death upon trust to be divided into five equal portions,which he allotted in the manner following : To Susan Drake he gave two of such portions, to his brother William one such portion, to his brother Charles one such portion, and to the sons of his late brother Sampson the remaining one such portion. The will then proceeds as follows: "But it is my will and mind that the two-fifth portions allotted to the said Susan Drake shall remain in trust, and that she be entitled to take only the interest and annual proceeds of the shares so bequeathed to her during her natural life, and for her sole and separate use independent of her present or any future husband, but without power of anticipation, and from and after her decease in trust for the benefit of any child or children born unto her the said Susan Drake by her present or any future husband upon his or their attaining the age of twenty-five years, if a son or sons, or if a daughter or daughters upon her or their attaining the age of twenty-one years, or upon her or their marriage, whichever of these events may first happen ; but in default of any such issue, then and in that case the said two-fifths of my residuary estate and any accumulation of interests thereon shall go and be divided subject to the appointment of my wife among the children of my brother Charles ; but if there be no such

appointment, then to be equally divided among such children, payable if a son or sons upon their attaining the age of twenty-five years, and if a daughter or daughters upon her or their attaining the age of twenty-one years, or upon her or their marriage, whichever event may first happen."

The testator's widow made no appointment of the two-fifths allotted to Susan Drake. Susan Drake died on June 26, 1899, without ever having had any issue. The two-fifths of the testator's residuary estate allotted to her are now represented by a sum of £12,399-10-0. Reduced 3 per cent. Annuities.

The appellants are the children of the testator's brother Charles, and in the events which have happened they claim to be entitled to Susan Drake's two-fifths of the residuary estate under the gift over stated above. They are also next of kin of the testator ; and if they fail on their first point they contend that the share in question is undisposed of.

Your Lordships will observe that the disposition under which the appellant claim is an executory limitation, to take effect in default of such issue as mentioned of Susan Drake, *i.e.*, her children, whether born before or after the testator's death, who shall attain the age of twenty-five years in the case of sons, and twenty-one years or be married in the case of daughters. This event may, of course, happen beyond the limits allowed by law.

An executory devise is an infringement on the rules of the common law, and the conditions for its validity are well settled. So far back as the year 1787, Lord Kenyon, then Master of the Rolls, thus expresses himself in *Jee* v. *Audley* [(1787) 1 Cox. 324 ; 1 R.R. 46] : " The general principles which apply to this case are not disputed ; the limitations of personal estate are void unless they necessarily vest, if at all, within a life or lives in being, and twenty-one years or nine or ten months afterwards. This has been sanctioned by the opinion of judges of all times, from the time of the Duke of Norfolk's case to the present ; it is grown reverend by age, and is not now to be broken in upon." And in advising this House in *Dungannon* v. *Smith* [(1846) 12 Cl. and F. 546, at p. 563], a case to which I shall refer again, Cresswell, J., stated the rule thus : " It is a general rule, too firmly established to be controverted, that an executory devise to be valid must vest, if at all, within a life or lives in being and twenty-one years after ; it is not sufficient that it may vest within that period ; it must be good in its creation, and unless it is created in such terms that it cannot vest after the expiration of a life or lives in being, and twenty-one years and the period allowed for gestation, it not valid, and subsequent events cannot make it so."

All this is not disputed by the appellants ; and it would therefore seem that the gift over to the children of Charles in the will before your Lordships must *prima facie* be held void. But the appellants contend that they are entitled to look at the events which happened, and to construe the event on which the gift over is to take effect as if it were two events. They say that the meaning of the testator's words rightly construed is : " if Susan Drake shall have no issue, or if her children die without having fulfilled the prescribed conditions for the vesting of the property in them." In the first case they say the gift is good, and in the second only it is void.

My Lords, the first observation that occurs to one is that this is not the language of the will. I again quote Lord Kenyon. " Another thing pressed upon me," he says, " is to decide on the events which have happened ; but I cannot do this without overturning very many cases. The single question before me is, not whether the limitation is good in the events which have happened, but whether it was good in its creation ; and if it were not I cannot make it so."

But my Lords, the same argument which has been pressed upon your Lordships was addressed to the Court of Common Pleas more than a hundred years ago and overruled ....

Again, in *Dungannon* v. *Smith*, a testator bequeathed leaseholds for years to trustees on trust for *B* for life, and after his death to permit such person, who for the time being would take by descent as heir male of the body of *B*, to take the profits thereof until some such person should attain the age of twenty-one years, and then to convey the same to such person so attaining that age. Your Lordships will observe that there was no gift of the corpus of the estate except in the direction to convey, and the event upon which that was to take place might exceed the limits allowed by law. At the death of *B*, his son and heir had attained twenty-one. It was argued on his behalf that you might split the gift into two parts, and construe it as a direction to convey to the first heir male on his attaining twenty-one, which would be good, and in default of his doing so to the successive heirs male. This argument was in principle and substance precisely that put forward by the appellants in the present case. I will quote only the opinion of Maule, J., one of the learned judges who advised the House. He says : " With respect to this argument it may be observed that the words of the testator are clear and unambiguous. There is no difficulty in dealing with them as they stand in the will unless it be sought to evade the rule against perpetuity. There is no such rule of construction as that any words which point out the same course of devolution " (I pause to add " or describe the same events ") " as those used by the testator may in construing a will be substituted for those which he has used, a proposition which seems to be assumed in the argument in question. Such a rule would be manifestly inconsistent with the established law that a gift to take effect on an event which may happen or may not happen within the legal limit is too remote, such a gift being always capable (consistently with the same order of devolution) of being divided into two gifts, one necessarily to take effect, if it all, within the legal time, and the other afterwards."

The appellants, however, rely on another case in this House of *Evers* v. *Challis* (7 H.L.C. 531). On a superficial view of this case it appears to lend some support to their argument ; but on a careful examination it will be found to have been decided on a totally different point, which has no application to the present case. The will in *Evers* v. *Challis* (7 H.L.C. 531), contained a very complicated series of devises of a freehold estate. It is sufficient for the present purpose to say that there was a devise to the testator's daughter Ann for life with remainder to her children, if sons, living to attain twenty-three, and if daughters, living to attain twenty-one, with a gift over under which the appellant claimed, Ann having died childless. As an executory devise the gift over was admittedly too remote, but it was argued that it took effect immediately on Ann's death as a contingent remainder. It is a familiar principle of English real property law that if a devise can take effect as a remainder it shall do so, and it was accordingly held in this House that the gift over, in the event which had happened, operated and took effect as a contingent remainder, and the question of remoteness, therefore, did not affect it. That this was the point decided is clear from the opinion of the judges who were called in to assist this House, delivered by Wightman, J., as well as from the judgments delivered by the noble and learned Lords who heard the case. Wightman, J., said : " No case or authority has been cited to shew that where a devise over includes two contingencies which are in their nature divisible, and one of which can operate as a remainder, they may not be divided though included in one expression, and our opinion

does not at all conflict with the authority of the cases of *Proctor* v. *Bishop of Bath and Wells* (2 H.Bl. 358 ; 3 R.R. 417), and *Jee* v. *Audley* (1 Cox. 324 , 1 R.R. 46), in neither of which cases was it possible for the limitation over to operate as a remainder."

Lord Cranworth said : " I think that the gift to the children of John and Sarah on the death of Ann without issue in 1847 took effect as a contingent remainder and not as an executory devise, and so was good because when the particular estate determined the contingency on which the remainder was to take effect had happened." And he supports his opinion by reference to a case of *Gulliver* v. *Wickett* [(1745) 1 Wils. 105], which he discusses at some length.

Lord Brougham said : " As to the cases, of which there are several, I need not go into them. One of them is *Proctor* v. *Bishop of Bath and Wells*. In that case there was no particular estate to support the contingent remainder, and it was clearly an executory devise."

On these grounds this House reversed the decision of the Exchequer Chamber and restored that of the Queen's Bench. It is apparent that the authority of *Proctor* v. *Bishop of Bath and Wells* is untouched by anything decided or said in *Evers* v. *Challis*.

I am, therefore, of opinion that the appellants fail on their first point. Some minds may be disposed to sympathise with Sir William Grant when he says *Leake* v. *Robinson* [(1817) 2 Mer. 362, 389 ; 16 R.R. 168] : " Perhaps it might have been as well if the Courts had originally held an executory devise transgressing the allowed limits to be void only for the excess where that excess could, as in this case it can, be clearly ascertained." But the law is what it is.

The appellants' second point is that the two-fifths allotted to Susan Drake on failure of the gift over goes to the next of kin of the testator, and not to Susan's representatives as declared by the Court of Appeal. I confess to some surprise at hearing this point treated as arguable. For, in my opinion, it is settled law that if you find an absolute gift to a legatee in the first instance, and trusts are engrafted or imposed on that absolute interest which fail, either from lapse or invalidity or any other reason, then the absolute gift takes effect so far as the trusts have failed to the exclusion of the residuary legatee or next of kin as the case may be. Of course, as Lord Cottenham pointed out in *Lassence* v. *Tierney* [(1849) 1 Mac. and G. 551), if the terms of the gift are ambiguous, you may seek assistance in construing it—in saying whether it is expressed as an absolute gift or not—from the other parts of the will, including the language of the engrafted trusts. But when the Court has once determined that the first gift is in terms absolute, then if it is a share of residue (as in the present case) the next of kin are excluded in any event. In the present case I cannot feel any doubt that the original gift of two-fifths of the residuary estate to Susan Drake as in terms an absolute gift to her. The testator uses the words " I give ", and speaks of the shares subsequently as " allotted " to her. Mr. Levett contended that there are words in the will which confine her interest in the allotted portions to her life. But that is not what the testator has said : he has directed that during her life she shall have only the income of her share for her separate use without power of anticipation. But that is quite consistent with a power to dispose of the capital after her death so far as it should not be exhausted by the trusts declared of it and with the right of her representatives to claim it. In other words, as between herself and the estate there is a complete severance and disposition of her share so as to exclude an intestacy, though as between her and the parties taking under the engrafted trusts she takes for life only.

I am of opinion the appeal should be dismissed with costs, and I move your Lordships accordingly."

Wheeler v. *Humphreys* [1898 A.C. 506]

The facts of the case appear sufficiently from the judgment of Lord Macnaghten.

Per Lord Macnaghten : " My Lords, I listened respectfully to the learned counsel for the appellants. I have since had the opportunity of reconsidering arguments which at the time I was unable to follow. But I must confess that I am still unable to understand what the difficulty is. The case appears to me to be so very simple, though it is perhaps a little obscured by the line of argument adopted in the Court of Appeal.

The clear residue of the testator's estate without providing for the sum of £10,000 amounted, roughly speaking, to £52,000. Taking it at that sum, how ought the amount to have been dealt with ?

The first question seems to be, what was the effect of the father's covenant ? What did it give to the son ? It gave him a life interest in the investments representing the £10,000. Then it gave a life interest to the son's wife, and further, it gave the capital to the issue of the marriage in the event of there being any issue to take. For the purposes of the will it seems to me that it would be only reasonable to hold that whatever was coming to the son's wife and the children of the marriage under the covenant was a marriage gift to the son. What was given was in substance given to the son to be enjoyed by him by means of a settlement on himself, his wife, and children. But there the gift to the son ends. The interest which the father retained or reserved was not given to the son in any sense. It would therefore have been wrong to require the son to bring the whole £10,000 into hotchpot in every event. And the testator has not done so. The learned counsel for the appellants did not contend that the £10,000 was to be brought into hotchpot as a gift to the son. They argued that the whole fund was to be brought into hotchpot as a gift with the son. That, if I may venture to say so, is the mistake which the learned judge of first instance makes. " The trust is," he observes, " that the testator has not referred in this hotchpot clause to the trusts of the £10,000, but what he has directed to be brought into account is the £10,000, which he gave with his son." Now I cannot agree with that observation. The reference in the will is, I think, a reference to the trusts of the £10,000 as far as they enured for the benefit of the son. Surely the testator must have been referring to the beneficial interest in the gift, not to the legal ownership of the fund which was designed to protect that interest. A gift is a gift whether it be given directly or given through the medium of a trust. What the donor keeps back is no gift. Then I do not understand the expression " given with any child of mine " as applied to a provision on behalf of a son. It obviously applies to a provision on behalf of a daughter. You give your daughter in marriage, and you give a portion with your daughter. That is a common expression, and correct enough, because the portion is given to or for the benefit of the person to whom the daughter is given. In the marriage service the question is asked, " who giveth this woman to be married to this man ? " A corresponding question applied to the other contracting party, even nowadays, I presume, would be thought inappropriate. It appears to me that it would be equally inappropriate to refer to money settled on behalf of the intended husband as given with him. The contention on the part of the appellants involves a contradiction. It requires a legatee to give credit for something which never was his, and then it treats that very thing as belonging absolutely and for all purposes to the

testator himself. This contention seems to have had its origin in a misapplication of the testator's words. Not that that misapplication can really make any difference. The contingent interest reserved by the settler is no more given with the son (if anybody prefers that way of looking at it) than given to the son. It was not given at all. The settler kept it.

The Courts below agree in thinking that the sum of £10,000 which the testator covenanted to pay to the trustees of his son's marriage settlement must be brought into account under the hotchpot clause en bloc and without reserve. There, however, they part company. In the first Court it was held that the hotchpot clause could have no further operation. The contingent interest under the ultimate trust in the settlement remained the father's property ; as such it would have to be divided equally between the son and the daughter when it fell into possession ; the result was unexpected but inevitable. The Court of Appeal are more fortunate in finding a way of escape. By inverting the hotchpot clause they arrive at a correct result. The whole fund, they say, must be brought into hotchpot by the son. It has therefore to be taken towards satisfaction of his share ; the direction that it is to be so taken implies a gift, and therefore whatever interest the father retained in the fund is given to the son by the hotchpot clause, as Rigby, J., thinks, or, as the other members of the Court held, by the conjoint operation of that clause, and the gift in the earlier part of the will.

Now I must say I cannot follow this reasoning. It seems to me plain that the testator's reversionary interest in the fund cannot come under the operation of the hotchpot clause. Nothing was to be brought into hotchpot but what the testator had covenanted or agreed to give. The hotchpot clause is in the common form. The clause must have its ordinary effect.

The simplest way of looking at the matter is to put oneself in the position of the executors when they came to divide the estate. They had £52,000 in hand and no liability to meet but the claim of the settlement trustees. The first thing to be done was to pay the trustees. The trustees got their £10,000. Against that a like sum was set apart for the daughter's share. I pause there, for the division of the rest of the estate cannot give rise to any difficulty. The surplus, whatever it is, may be disregarded for the purpose of considering the present question. I ask what is the result of what the executors have done so far ? Equality if the testator's interest under the ultimate trust has been appropriated to the son—inequality if that interest is to be regarded as still the father's property. If that mistake is made the daughter has certainly received too much. As no one suggests, or has ever suggested, that the beneficial interests under the prior trusts are not to be brought into hotchpot, it is obvious that the daughter has received too much by the exact amount or value of the testator's reversionary interest. How is the mistake to be set right ? Simply by doing now what ought to have been done before anything was set apart for the daughter. You must specifically appropriate and allot to the son's share the testator's contingent reversionary interest under the ultimate trust. But that is to be done, not under the hotchpot clause, but under the plain directions in the earlier part of the will. It is the only way to effect an equal division between the son and the daughter. Whenever the interest of a legatee, together with the interest, if any, of the testator in a particular fund or a particular property, exhausts the whole beneficial interest therein and the legatee has to bring his interest into hotchpot, the appropriation of the fund or property in or towards satisfaction of the legatee's share or legacy under the will (if such appropriation be in accordance with the will) necessarily involves bringing the legatee's interest into hotchpot, and at the same time deals with the testator's interest, if any, in conformity with his directions in regard to his own property.

The son is now dead, without issue, and the whole of the £10,000 belongs to the son's estate absolutely, subject only to the life estate of his widow.

The result of the view put forward on behalf of the appellants is certainly startling. Whereas the testator directed that his residuary estate should be divided in equal shares between his two children, the son gets £10,000 less than the daughter. The result might have been more startling still. The residuary estate, without providing for the £10,000, might have been only £20,000. That is an event which the testator seems to have contemplated as at least possible, because he directs that what he had covenanted to give to his son should be taken either towards satisfaction or in satisfaction of his son's share under the will. The son's wife might have died without issue in her husband's lifetime, and then, according to the view of the appellants' counsel, the testator's endeavour to produce equality would result in this—the son living and in a position to marry again would get £5,000, and the daughter would carry off £15,000. Suppose, further, that the bequest to the son had been a definite sum of £10,000 instead of being a share of residue, and suppose the ultimate residue had been given to someone else, an eldest son for instance, the son who was advanced in the testator's lifetime living and in a position to marry again would have taken nothing but a life estate.

I agree with Sir Nathaniel Lindley, M.R., that such a result does suggest that there must be some error somewhere. But I desire to rest my judgment on the plain language of the will without putting any strained construction on any words in the hotchpot clause or giving it a peculiar or unsual effect.

I think that the appeal must be dismissed with costs."

Lord Advocate v. *Fleming* [1897 A.C. 145].

The head-note to the case is as follows :—

By gratuitous assignation dated 1883, a father assigned to his daughter policies of insurance on his own life on which for many years he had paid the premiums. From 1883 the premiums on the policies were paid solely by the daughter. The father died in 1890, and the daughter thereupon received the money due under the policies :—

Held, affirming the decision of the First Division of the Court of Session, that neither succession duty nor account duty was payable by the daughter.

Per Lord Halsbury, L.C. : " It appears to me that in this case there is a plain interpretation to be put upon plain words. I am only reiterating what has been said over and over again in dealing with taxing Acts, when I say that we have no governing principle of the Act to look at ; we have simply to go on the Act itself to see whether the duty claimed under it is that which the Legislature has enacted.

The claim has been put in two ways. It appears to me to be susceptible of a very simple answer in respect of either of them.

The first question is whether it comes under the 2nd section of the Succession Duty Act, 1853. [His Lordship read the section as given above, p. 146, note (2).]

This policy of insurance has been in existence a considerable number of years. The person entitled ultimately to this money, herself in one sense created the property—that is, she continued the contract under which, if she continued to pay premiums, certain money would be payable upon the death. She continued that for a period of seven years, and therefore, reading simply the words as they stand, I do not think she has " become beneficially entitled " " upon the death of any person " : because she has become entitled

by reason, among other things, of her own payments during the period of seven years ; and it appears to me, under that section, in order to make this a " succession " we must introduce some words of this kind : " disposition of property by reason whereof either partly or wholly a person has become entitled." If those words were introduced in a certain sense it is true that she did partly become entitled by reason of premiums previously paid, the policy effected and the assignment then made, supposing she continued to pay the premiums. But I find no such words in the statute, and I decline to do anything else than construe the words which I find there. I therefore am of opinion that under that part of the statute it is impossible to maintain the claim of the Crown on this first ground.

I then turn to the alternative claim, which is for account duty ; and it appears to me that it is susceptible of an equally plain answer. I do not know that I can state it more plainly than Lord Adam has done. He says : " I confess I have never been able to understand in this case how a policy of insurance could be kept up for the benefit of a donee when no donee was in existence." Here again, in order to apply the tax to the particular case in dispute, one must introduce words into the statute, such as, "for the benefit of any existing or future donee or person who may become a donee." I find no such words. Unless you introduce by construction those words into the statute it is impossible, as Lord Adam says, to understand how it could be kept up for the benefit of a donee when no donee was in existence ; I agree with him. The Lord Ordinary's view seems to have been that the moment a policy of insurance is taken out, the person who takes out the policy keeps it up not only for his own benefit, but for the benefit of some possible donee at a future time. That really is an essential condition of the construction contended for by the Crown, and I am unable to agree with that construction.

My Lords, under these circumstances I think that this appeal should be dismissed with costs and the interlocutors affirmed, and I move your Lordships accordingly."

Per Lord Herschell : " I am entirely of the same opinion.

The first question is whether the money payable under the policies was property to which the lady became entitled on the death of her father by reason of the disposition which he made when he assigned the policies to her. I do not intend to lay down any principle or to say anything applicable to any case but the one with which we are dealing. I shall solely consider whether that comes within the words of the enactment or not. In my opinion it does not. I do not think it is accurate to say that the sum payable by the insurance company became hers by reason of the disposition which her father made. It is admitted that the entire sum cannot be said to have become hers by reason of that disposition ; she would never have got it but for the fact that the premiums continued to be paid upon the policy. Therefore the suggestion is that it must be split up into two portions, the one to be attributed to the payment of premiums by her father before the donation, the other to be attributed to the payment of premiums by her afterwards ; and that, being so divided, upon the former of those sums the duty would be payable. I can find nothing in the words of the Act to warrant and give support to such a contention. For these reasons I think that the appeal entirely fails so far as the Succession Duty Act is concerned.

Then it is said that account duty is payable by virtue of the Act of 1881, and the 11th section of the Act of 1889. In order to bring the case within those statutes it is necessary to shew that the policy, the duty on the proceeds of which is in question, has been either " wholly kept up " " for the benefit of the donee "—which of course is not the case here—or has been partially

kept up for the benefit of the donee. In my opinion it would be really an abuse of words to say that the policy was " kept up for the benefit of the donee " at the time when payments were being made by the father of the lady, not for her benefit as far as appears or for anybody's benefit but his own. The contention is that, because he afterwards creates a donee, the payment of premiums which he made, when for aught that appears he had no donee at all in his mind—I do not mean merely any individual donee, but no notion of creating a donee—must be regarded, if he creates a donee, as having been made for her benefit. I do not think it is reasonable to treat the language of the Act of Parliament in that way. I think that it would really be not using the words of the statute but abusing them if we put such a construction upon them."

Tennant v. *Smith* [1892 A.C. 150]

The facts of this case are these—

The appellant is agent for the Bank of Scotland at Montrose. He is bound as part of his duty as such agent to live in the Bank house as custodier of the whole premises and to transact business there after bank hours. He cannot temporarily vacate the house without special consent of the Director and cannot sublet or use the premises for other than bank business. By the Customs and Inland Revenue Act, 1876, section 8, it is provided that any person assessed to income-tax who proves that his " total income from all sources " is less than £400 shall be entitled to be relieved from the duty on £120 of such income. The appellant claimed relief under the above section on the ground that his income was less than £400.

The question in the appeal was " is such an occupation as this to be regarded as a part of the appellant's income."

Per Lord Halsbury, L.C. :

" My Lords, to put this case very simply, the question depends upon what is Mr. Tennant's income. This is an Income-tax Act, and what is intended to be taxed is income. And when I say " what is intended to be taxed," I mean what is the intention of the Act as expressed in its provisions, because in a taxing Act it is impossible, I believe, to assume any intention, any governing purpose in the Act, to do more than take such tax as the statute imposes. In various cases the principle of construction of a taxing Act has been referred to in various forms, but I believe they may be all reduced to this, that inasmuch as you have no right to assume that there is any governing object which a taxing Act is intended to attain other than that which it has expressed by making such and such objects the intended subject for taxation, you must see whether a tax is expressly imposed.

Cases, therefore, under the Taxing Acts always resolve themselves into a question whether or not the words of the Act have reached the alleged subject of taxation. Lord Wensleydale said, in *In re Micklethwait* (11 Ex. at p. 456), " It is a well-established rule, that the subject is not to be taxed without clear words for that purpose ; and also, that every Act of Parliament must be read according to the natural construction of its words."

Now, it is certainly true that the occupation of a house rent free is not income. Of course the possession of a house which may be used for purposes of profit, is property and taxable as such. But the bald, dry proposition that the mere fact of occupying a house, which house as property is already taxed, is not income in any sense, could, I think, hardly be disputed. For my own part, I doubt very much whether a house could ever properly be described as part of a man's income, though, doubtless, the rent for it when received would be income in the hands of the person receiving it.

Another observation that occurs to me is, that in dealing with real property the whole framework of the statute seems to point to a peculiar kind of assessment while treating the things themselves as the subjects of assessment; and the provisions which give effect to that peculiarity of assessment are entirely distinct from the provisions as to income.

Now, Mr. Tennant occupies this house without paying any rent for it. It may be conceded that if he did not occupy it under his contract with the bank rent free, he would be obliged to hire a house elsewhere, pay rent for it, and *pro tanto* diminish his income. And if any words could be found in the statute which provided that besides paying income-tax on income, people should pay for advantages or emoluments in its widest sense (such as I think the word "emoluments" here has not, for reasons to be presently given), there is no doubt of Mr. Tennant's possession of a material advantage, which makes his salary of higher value to him than if he did not possess it, and upon the hypothesis which I have just indicated would be taxable accordingly.

But, upon the principles to which I at first referred, your Lordships are to ascertain not whether Mr. Tennant has got advantages which enable him to spend more of his income than if he did not possess them, but whether he has got that which any words in the statute point out as the subject on which it imposes taxation.

Now, I agree with Lord Adam in his very lucid judgment, that what Mr. Tennant is to be assessed upon must be assessed under Schedule E, and I agree with the criticisms which he applies to the words within which, if at all, this advantage of occupying a house rent free must be brought, and none of the words, either "perquisites," "profits", or "emoluments," are properly applicable, inasmuch as by the rule in which those words are used or explained the word "payable" as applied to them renders it to my mind quite impossible to suppose that the mere occupation of a house is reconcilable with the just application of that word.

I come to the conclusion that the Act refers to money payments made to the person who receives them, though, of course, I do not deny that if substantial things of money value were capable of being turned into money they might for that purpose represent money's worth and be therefore taxable.

The illustration given in the argument of the mode of arriving at a trader's profits, and the mode of treating his stock-in-trade, suggests that money's worth may be treated as money for the purposes of the Act in cases where the thing is capable of being turned into money from its own nature.

I have designedly avoided considering the question whether in any sense the occupation of this house is a benefit or a burden to the recipient of the advantage or disadvantage, whatever it may be, though I doubt very much whether such considerations on the one side or the other are relevant to the question which your Lordships have to determine. I am aware that it has the high authority of the late Lord President, and his Lordship undoubtedly treated the question as, if it were established to be a clear pecuniary benefit it would be taxable, whereas, if it were a heavy burden it would not. Nor did his Lordship shrink from suggesting that this occupation of a house rent free would be taxable or not, according as it was unsuitable for the occupant's domestic arrangements or the reverse. It followed, therefore, that in every case where such a question arose it would be necessary to examine the particular circumstances of each man's family. If he had a large family that could not be accommodated in the house, and he must hire a house elsewhere, one result would follow. If he was a bachelor, and the house was appropriate to his wants, then another result would follow.

I cannot think that the legislature ever contemplated such an examination or discrimination of persons subject to taxation as such a system of assessment would imply. Nor do I understand upon what principle the inquiry could properly be directed. The money a man has been compelled to spend for the maintenance of his wife and family, if he has them, has not the less formed part of his income. The fact that he is compelled to spend on this or that subject of expenditure does not make the money that he has had to spend the less his income because he has had to spend it. The example given by Lord Young, on the other hand, of a man who is saved by the form of his occupation as a sea captain from the necessity of hiring a house, is a very cogent and striking illustration to what extreme views such an interpretation of the Act would lead.

I observe both the Lord President and the Lord Justice Clerk used the phrase "gains" as applicable to the advantage which Mr. Tennant derives from the occupation of the house. That seems to be a reference to Schedule D, whereas, as I have already said, I concur with Lord Young and Lord Adam that Mr. Tennant's income must be assessed under Schedule E. And further, it appears to me impossible to contend that it can be assessed under both D and E, each being in terms exclusive of the other. Nor do I think that a different class of emolument can be intended to be reached under Schedule D, though the words "emoluments or gains" in Schedule D do not receive exposition from the words that occur in Schedule E.

For these reasons, I am of opinion, in the words of Lord Young, that the thing sought to be taxed is not income unless it can be turned into money. Accordingly, I think that the determination of the commissioners was right, and that the order appealed from ought to be reversed, and I so move your Lordships."

Per Lord Macnaghten: "The appellant, who is the agent at Montrose for the Bank of Scotland, being assessed for income-tax, claims an abatement. The question is whether his "total income from all sources" is or is not less than £400. That depends upon whether he has to bring into account the value of a free residence provided for him by the bank in the bank premises.

Notwithstanding the opinion of one of the learned judges of the Court of Session, I think it is perfectly clear that nothing is to be brought into account on a claim to relief except what is chargeable for the purpose of assessment.

The first point for consideration is what is the meaning of the expression "total income from all sources." It certainly means more than income properly so described—it includes more than "profits and gains" chargeable under the last three schedules of charge. It includes the annual value of property chargeable under Schedule A, and the annual value of the occupation chargeable under Schedule B. The Income Tax Code (5 and 6 Vict. C. 35, section 167, and 16 and 17 Vict. C. 34, section 28) contains express directions for estimating and calculating these values for the purpose of ascertaining the title to abatement when relief by way of abatement is claimed. But it contains no directions for estimating or bringing into account any benefit, or advantage, or enjoyment derived from lands, tenements, hereditaments, or heritages, which does not come under Schedule A or Schedule B.

The next point to be considered is what is the nature of the appellant's occupation of the residence provided for him in the bank premises. From the case stated for the opinion of the Court of Exchequer in Scotland it appears that "the appellant is bound, as part of his duty, to occupy the bank house as custodier of the whole premises belonging to the bank, and also for the transaction of any special bank business after bank hours." He is not entitled

to sublet the bank house or to use it for other than bank business, and in the event of his ceasing to hold his office he is under obligation to quit the premises forthwith. Property, therefore, in the house he has none, of any sort or kind. He has the privilege of residing there. But his occupation is that of a servant, and not the less so because the bank thinks proper to provide for gentlemen in his position in their service accommodation on a liberal scale. It is clear therefore, that the appellant is not chargeable under Schedule A in respect of the bank house, or liable to pay the duty as occupying tenant. The bank and the bank alone is chargeable and liable to pay.

Then this question suggests itself. Has not the Crown got all that it is entitled to in respect of this house when it has received the duty on its full annual value ? Is not the notion of finding some subject for taxation in lands, tenements, hereditaments, or heritages, over and above the full annual value chargeable under Schedules A and B, a fanciful notion and foreign altogether to the scope and intent of the Income Tax Code ? The learned counsel for the Crown say no. Their case is that the benefit derived by the appellant from his occupation of the bank house is chargeable under Schedule E, or at any rate, under Schedule D.

I do not doubt that the occupation of the bank house rent free, though not unattended with some inconveniences, is, on the whole, a considerable advantage to the appellant. It is a gain to him in the popular sense of the word. Whether such a benefit or gain comes under the head of " profits and gains " chargeable for income-tax purposes is the question submitted to your Lordships. I use the expression " profits and gains " because that is the term which the legislature uses as applicable to both the schedules of charge under which it is said the appellant is chargeable.

In the course of the argument the learned counsel for the Crown admitted that there was a difficulty in maintaining their claim under Schedule E. On examining that schedule it became obvious that it extends only to money payment or payments convertible into money. And so they took their stand on Schedule D.

For the purposes of this case I am willing to assume that, in assessing a person holding an office chargeable under Schedule E, the Crown may resort to Schedule D in order to reach gains or profits arising or accruing from his office which, for some reason or another, do not come within the letter of Schedule E. The third paragraph of Schedule D imposes the duty in respect of all profits and gains not charged by virtue of any of the other schedules. It seems to me, therefore, that if the privilege of occupying the bank house rent free is really a profit or gain within the meaning of the Income-Tax Code, and if it is not chargeable under Schedule E, it might be caught by Schedule D—not, I think, under case 2, rule 2, on which the Crown mainly relied, but under case 6. Case 2, rule 2, is, I think, inapplicable because it only extends to the duty to be charged in respect of employments not contained in any other schedule. Case 6 goes much further. It gives effect to the third paragraph of Schedule D, and extends to the duty to be charged in respect of any annual profits or gains not falling under any of the foregoing rules and not charged by virtue of any of the other schedules.

In my opinion the answer to the claim of the Crown does not depend on any minute criticism of the language of the different schedules. The real answer is, that the thing which the Crown now seeks to charge is not income, nor is it required to be taken into account as income for the purpose of ascertaining title to relief by way of abatement. It falls neither under Schedule A nor under D or E. I have already dealt with Schedule A. Under that schedule the duty is payable on the " annual value." The duty under

Schedules D and E is payable on the "annual amount." It is a tax on income in the proper sense of the word. It is a tax on what "comes in"—on actual receipts. Take, for example, the 6th case of Schedule D, which sweeps in all profits or gains not otherwise chargeable. What the person liable to be assessed is required to do under Schedule G is to return "the full amount" of annual profits "received" (5 and 6 Vict. C. 35, section 190, Schedule G, XII). No doubt if the appellant had to find lodgings for himself he might have to pay for them. His income goes further because he is relieved from that expense. But a person is chargeable for income-tax under Schedule D, as well as under Schedule E, not on what saves his pocket, but on what goes into his pocket. And the benefit which the appellant derives from having a rent-free house provided for him by the bank, brings in nothing which can be reckoned up as a receipt or properly described as income.

For these reasons I am of opinion that the appeal must be allowed."

Per Lord Hannen : "My Lords, the question for consideration is whether the appellant is entitled under the Customs and Inland Revenue Act, 1876, section 8, to an abatement on the amount of income on which he has been assessed, on the ground that his total income from all sources is under £400. His undisputed income is £374 ; if to this should be added the annual value of the house he resides in rent free, his assessable income exceeds £400, otherwise not.

The appellant is agent for the Bank of Scotland at Montrose. He is bound as part of his duty as such agent to live in the bank house as custodier of the whole premises, and to transact business there after bank hours. He cannot temporarily vacate the house without special consent of the directors, and he cannot sublet or use the premises for other than bank business. Is such an occupation as this to be regarded as a part of the appellant's income ? It certainly does not come within the natural meaning of the word "income." It saves the appellant from the expenditure of income on house rent, but it is not in itself income. That it is a suitable residence for the appellant is an accident which ought not to affect the determination of a question of principle as to the incidence of taxation. The income-tax is imposed, not on the personal suitableness of a man's surroundings, which must vary with each man, and with the same man in different circumstances, but on his income capable of being calculated. The appellant occupies the bank house as a part of his duty, and I do not see how the case can be distinguished from that, so aptly put by Lord Young, of the master of a ship who is spared the cost of house rent while afloat. His cabin does not on that account become a part of his income.

Different considerations would apply to the case of an agent who as part of his remuneration has a residence provided for him which he might let. That which could be converted into money might reasonably be regarded as money—but that is not the case before us.

Although the question raised on this occasion is on a claim for abatement, I think it would equally arise on an assessment under either of the Schedules D and E. For the reasons given by Lord Adam, I am of opinion that the occupation of this house does not fall within the description of "salaries, fees, wages, perquisites, profits, or emoluments" in the sense in which those words are used in the Act.

I think, therefore, that the judgment appealed from should be reversed, and that of the commissioners affirmed."

CHAPTER XV

AGGREGATION OF PROPERTY AND RATES OF DUTY

Section 34. *Aggregation.*—(1) For determining the rate of estate duty to be paid on any property passing on the death of the deceased, all property so passing, excluding—

property exempted from duty under clauses (*c*), (*d*), (*e*), (*i*) and (*j*) of sub-section (1) of section 33,

but including—

(*i*) property on which no estate duty is leviable under section 35,

(*ii*) property exempted from duty under clauses (*a*), (*b*), (*f*), (*g*), (*h*) and (*k*) of section 33, and

(*iii*) agricultural land situate in any State not specified in the First Schedule,

shall be aggregated so as to form one estate and the duty shall be levied at the rate or rates applicable in respect of the principal value thereof:

Provided that any property so passing, in which the deceased never had an interest, not being a debt or right or benefit that is treated as property by virtue of the *Explanations* to clause (15) of section 2, shall not be aggregated with any other property, but shall be an estate by itself and the estate duty shall be leviable at the rate or rates applicable in respect of the principal value thereof.

(2) Every estate shall include all income accrued upon the property included therein down to and outstanding at the date of the death of the deceased.

(3) Property passing on any death shall not be aggregated more than once nor shall estate duty in respect thereof be levied more than once on the same death.

(4) Where an estate includes any property which is exempt from estate duty, the estate duty leviable on the property which is not so exempt shall be an amount bearing to the total amount of duty which would have been payable on the whole estate had no part of it been exempted the same proportion as the unexempted value of the property bears to the value of the whole estate.

Explanation.—For the purposes of this sub-section property which is exempt from estate duty means any property which is exempt from estate duty under section 33 and also any agricultural land situate in any State not specified in the First Schedule.

This section is made simple, unlike the provisions in the Finance Acts in the United Kingdom. In the United Kingdom the principles of aggre-

gation are very complex. Section 16 (3) of the Finance Act, 1894, as further amended by later Acts creates what has become known as, " small estate " ; under this provision, this estate shall not be aggregated with any other property but shall form an estate by itself. Secondly, a distinction is drawn between properties, " settled by the will of the deceased " and properties which are " settled otherwise than by the will of the deceased." Thirdly, there is, " unsettled property " of the deceased. Fourthly, option is given to accountable parties to treat four categories of property as settled or not settled. These properties are (1) interest in expectancy ; (2) property held in joint tenancy, howsoever arising ; (3) entailed property ; (4) policies on the life of the deceased by his marriage settlement where the moneys pass on his death to his children directly. Section 15 (2) of the Finance Act, 1894, states : " It shall be lawful for the Treasury to remit the estate duty leviable on or with reference to death, in respect of any such pictures, prints, books, manuscripts, works of art or scientific collections, as appear to the Treasury to be of national, scientific, or historic interest, and to be given or bequeathed for national purposes, or to any university, or to any county council or municipal corporation, and no property the duty in respect of which is so remitted shall be aggregated with any other property for the purpose of fixing the rate of Estate duty." Agricultural property is aggregable property in the United Kingdom.

Under this section the whole (the total of separate items) property of the deceased passing under different titles or to different beneficiaries will form an estate by itself. The only property which forms a separate estate by itself and which is not aggregable is property passing in which the deceased never had an interest.

The following kinds of property form an estate by itself: (1) Free estate of the deceased. (2) Settled property of the deceased. (3) Gifts of property made within the statutory period. (4) Policies effected by the deceased on his own life kept up by him for the benefit of donees. (5) Property coming within the explanations to clause (15) of section 2. (6) Interest in expectancy in case the option to pay the duty on the death is exercised. (7) Property over which the deceased had, but did not exercise a general power of appointment. (8) Property in which the deceased had merely a life interest. (9) Property in which the deceased had an interest for life for the duration of the life of another person. (10) Items of property exempted under section 33 of the Act, *i.e.*, covered by clauses (*a*), (*b*), (*f*), (*g*), (*h*) and (*k*). (11) Gifts *mortis causa*. (12) Property in which the deceased had an interest the cesser of which on his death gives rise to a benefit. (13) All agricultural land of the deceased situated in any state not specified in the schedule annexed to the Act. (14) Property transferred to a controlled company. (15) Gifts by a company controlled by the deceased to the extent that they are treated as gifts by the deceased. (16) Property on which no estate duty is leviable under section 35.

All the items of property in which the deceased never had an interest are declared by the section to form an estate by itself, and this estate is not aggregable.

Properties in which the deceased never had an interest, consist of the following kinds: (1) Insurance policies effected and kept up by the deceased on his own life from the very commencement for the benefit of a donee. It is a condition however that the deceased should not have any interest, not even a contingent interest, even if the contingent interest fails to take effect. The following cases may be perused : *A. G.* v. *Pearson* [(1924) 2 K.B. 375], *Tennant* v. *Ld. Adv.* [1939 A.C. 207], *A. G.* v. *Dickinson and Baron* [(1937)

2 K.B. 574], *Re Hodson's Settlement, Brookes* v. *A. G.* [(1939) Ch. 343], *Westminster Bank, Ltd.* v. *A. G.* [(1939) Ch. 610], *Re Payton, Payton* v. *Inland Revenue Commissioners* [(1951) Ch. 1081 : (1951) 2 All E.R. 425], *Cousins* v. *Sun Life Assurance Society* [(1933) Ch. 126], *Re Smiths Estate, Bilham* v. *Smith* [(1937) Ch. 636 : (1937) 3 All E.R. 472] and *Nevell* v. *Inland Revenue Commissioners* [(1924) A.C. 385]. The word " never " implies that it is not sufficient for a property to come within the description if the deceased had no interest in it at his death. Any interest at some former time during his life is sufficient to remove the property from this description. It is not enough that the deceased had no enjoyment of the property from the beginning and up to his death if he was entitled to future income from his own capital. (2) Annuities and other interests purchased or provided by the deceased coming into existence at his death. Even here these interests ought not to have been charged on property which belonged to the deceased at any time. (3) Moneys payable to the deceased's widow, children or other dependents under insurances effected by the deceased ; it is necessary that the deceased should not have had the power of nomination. Insurance policies effected by the deceased on his life and afterwards assigned in favour of another person cannot be described as property in which the deceased never had an interest. In the case of the estate consisting of property in which the deceased never had an interest, the several items of property are charged with estate duty at the rate applicable in respect of the principal value of each item. If, for example, the deceased had effected several insurance policies on his own life, each policy amount being payable on his death to each one of his children and if the total policy amount comes to Rs. 25,000 the rate of estate duty will be calculated only in respect of each policy amount (which will be the principal value of it). In other words, there is no aggregation *inter se* among the various items of property. Sub-section (3) lays down that property passing on any death shall not be aggregated more than once.

There is no definition given in the Act of " Agricultural property." There have been laws in several States in India levying tax on Agricultural property. In these laws there is definition of Agricultural property. Agricultural property is defined by section 22 (1) (*g*) of the Finance Act, 1894. The expression " Agricultural property " means agricultural land, pasture and wood-land, and also includes such cottages, farm buildings, farm houses, and mansion houses (together with the lands occupied therewith) as are of a character appropriate to the property. The Select Committee report as regards this section says : " This clause has been modified to provide that agricultural properties situate in States which have not passed the requisite resolutions shall also be included in the properties passing on death for the purpose of determining the rate of duty although no duty will be actually levied upon agricultural lands. At the same time it is made clear that property exempted under section 35 is not taken into account at all for the purposes of estate duty." Tulsidas Kilachand in his dissenting minute observed as follows : " A new clause has been substituted by the Select Committee under which for determining the rate of estate duty to be paid on the property of the deceased the property exempted from duty under section 33 will be aggregated with all property passing on death. It has been pointed out under section 33 how there is scope for further adding to the specific exemptions provided in that section and how the exemptions have been restricted to very small amounts in particular cases. Having provided such restrictions further to aggregate the exempted amounts of property for the purpose of determining the rate of duty is like taking away by the left hand what has been given by the right. The whole purpose of the exemption under sec-

tion 33 would be lost if the exempted items are aggregated for rate purposes. Government have taken the United Kingdom law as its model and the Select Committee have adopted many clauses of the United Kingdom Act. But here is a case in which the U.K. provision does not aggregate such exempted properties for rate purposes and yet it is not being adopted in India, obviously on extraneous considerations of revenue. Otherwise it is not understandable why a perfectly legitimate and reasonable provision found in other statutes and absolutely necessary to alleviate hardship that would otherwise be caused to estates, is not being adopted. The section certainly requires to be so modified that exempted items under section 33 are not aggregated with other property to determine the rate of duty on that other property."

Sub-section (2) of the section is based on section 6 (5) of the Finance Act, 1894, which is word for word the same.

Sub-section (3) is word for word same as section 7 (10) of the Finance Act, 1894. Section 4 of the Finance Act, 1894, may be set out here. For determining the rate of estate duty to be paid on any property passing on the death of the deceased, all property so passing in respect of which estate duty is leviable, shall be aggregated so as to form one estate, and the duty shall be levied at the proper graduated rate on the principal value thereof.

Provided that any property so passing in which the deceased never had an interest shall not be aggregated with any other property but shall be an estate by itself, and the estate duty shall be levied at the proper graduated rate on the principal value thereof."

Under section 34 a point of constitutionality is involved. The inclusion of agricultural land situate in a state not specified in the Schedule for the purpose of ascertaining the rate of estate duty on property passing on the death of the deceased is said to offend the provisions of the Constitution of India. It is contended by some that the inclusion will have the effect of levying an indirect tax on agricultural land ; the Central Legislature has no authority to tax agricultural land situated in any State of the Union. This question has to be decided by a Court of Law.

It is not easy to comprehend the meaning of sub-section (4), on a first reading. The language of this sub-section could have been made clearer.

Reading this sub-section along with the explanation, it may be stated that the intention of the Legislature is not to levy estate duty on the property on which no estate duty is leviable (section 35), and on the property which is exempted from liability to estate duty under section 33. But both these properties are required by sub-section (1) of this section to be aggregated for purposes of determining the rate of estate duty on the whole of the property passing on the death. The meaning, therefore, of the sub-section can be illustrated by the following example or formula.

Amount of estate duty leviable on the property which is not exempt X.

Total amount of estate duty which would have been payable on the whole estate had no part of it been exempted Y.

Value of estate on which estate duty is leviable Z.

Value of the whole estate is W.

Therefore by ratio and proportion $X : Y : : Z : W$.

Therefore $XW = YZ$

Therefore, $X = \frac{YZ}{W}$.

Example :—

	Rs.
Value of the whole estate is	2,60,000
Value of the estate on which estate duty is leviable	2,00,000

Total amount of estate duty which would have been payable on the whole estate had no part of it been exempted. [According to the 2nd Schedule (rates of estate duty)].

On the first 50,000 of the principal value of the estate	Nil
On the next 50,000 ,, ,, at 5%	2,500
On the next 50,000 ,, ,, at 7½%	3,750
On the next 50,000 ,, ,, at 10%	5,000
On the remaining 60,000, the next slab rate being 12½% on 1 lakh	7,500
Total amount of estate duty is	18,750

Value of the whole estate is Rs. 2,60,000.
Value of the estate on which estate duty is leviable Rs. 2,00,000.
Total amount of estate duty is Rs. 18,750.
Amount of estate duty leviable on the property which is not exempt Rs. X.

Y Z W

Therefore X : 18,750 : : 2,00,000 : 2,60,000.
Therefore X (amount of estate duty leviable on the estate which is not exempt) is

$$\frac{18,750 \times 2,00,000}{2,60,000} = \text{Rs. } 14,423\text{-}1/13.$$

Attorney-General v. *Pearson and others* [(1924) 2 K.B. 375]

Per Rowlatt, J. : " In this case the question is whether the Crown for the purpose of determining the rate of estate duty to be paid on the property passing on the death of the deceased is entitled to aggregate along with other property under the familiar principle of the Finance Act, 1894, certain moneys the proceeds of two policies of assurance upon the life of the deceased. The policies were included respectively in two settlements made upon two marriages. Each of them was taken out by the deceased a short time before the date of the settlement in which it was included. They were both duly kept up by the deceased. They were settled upon the terms that the moneys payable upon the death of the deceased should go, speaking generally for the benefit of the wife for life, with remainder to children, and in default of issue to the settler, the deceased.

" Though it may not be strictly necessary to decide the point for the purposes of the present case, I may say that it seems to me that in a case like this in which the policy is settled there is no property which passes on the death of the deceased under section 1 alone, however it would be if the policy were unsettled. Whatever the property in the policy may be, it has gone from the deceased before his death. If he has no living interest in the policy, there is nothing to pass on his death. The property, however, is brought within that section by reason of its coming under section 2, sub-section (1) (*d*).... That the policy moneys in a case like this are liable to duty under that sub-section is clear upon the authorities beginning with the Irish case of *Attorney-General* v. *Robinson* [(1901) W.N. 192 ; (1901) 2 I.R. 67].

".... I therefore think that it may be taken that what passed here was in strictness of language the beneficial interest in respect of the policies accruing or arising on the death of the deceased, that is to say, the interest in the policy moneys. In so far as the policies are property passing on the death of the

deceased the defendants agree that estate duty must be paid in respect of them, so that as to that there is no dispute.

" The question here is what property is to be aggregated under section 4 for determining the rate of the estate duty, and for that purpose it does not matter how one understands the effect of the decision in *Attorney-General* v. *Robinson* [(1901) 2 I.R. 67]. . . . Looking at the general scope of the Act, one cannot but think that the intention was that, in order that property deemed to pass on the death should be aggregated under section 4 with other property passing at the death, it must be property in which the deceased enjoyed some interest during his life. . . . Had the deceased ever an " interest " within the meaning of the Act in the moneys which were to become payable under the policies ? That term is a precise expression having a well understood legal meaning. I cannot see that the deceased never had an interest in this property. On the contrary I think he had an interest in it. He had an interest in the policies before he settled them. Moreover after he settled them he had an interest in the benefit which was going to accrue or arise from them on his death, though it may have been a remote interest which he never could enjoy in possession. He had an interest during all his married life contingently upon the failure of the trusts in favour of his wife and children. If his wife and his children had predeceased him the legal position would have altered, but his interest would then have become a very proximate and extremely valuable interest, and he would have died worth the capital value of the insurance money.

" That being so, my judgment must be for the Crown with costs."

Tennant v. *Lord Advocate* [1939 A.C. 207]

Per Lord Russel of Killowen : " The relevant facts of this case may be stated shortly. Mr. Tennant, whose trustees are the present appellants, died on November 8, 1935. He had on his own behalf effected with the Star Life Assurance Society a policy on his own life, dated July 26, 1911, for the sum of £100,000. The policy provided that, in the event of the assured's death after July 22, 1936, the sum of £100,000 should be paid to his executors, administrators or assigns. By assignation and deed of trust dated June 1, 1931, the deceased assigned the policy to trustees for (*i*) payment of the expenses of the trust, (*ii*) payment to his executors or testamentary trustees of all the proceeds of the policy in satisfaction of all death duties payable on or by reason of his death upon and in respect of all and any property whatsoever passing on his death, and (*iii*) payment of any residue to his surviving children equally among them, with a destination over to the issue of predeceasing children. Mr. Tennant paid the premiums due up to the time of the assignment. No separate fund was provided by him for the payment of subsequent premiums. These were raised upon the security of the policy. At the date of the death, the gross amount receivable under the policy was about £88,533. The amount due in respect of premiums and interest (less tax) was about £13,224. The net amount payable was the sum of about £75,328. The Inland Revenue Commissioners assessed the estate duty at the rate applicable upon the basis that the £75,328 should be aggregated with the general estate. . . .

Before your Lordship's House, the argument of counsel for the appellants involved two steps. The first step, which was essential to the taking of the second, was that the property which was subject to the duty consisted of the policy moneys—that is, of the cash payable and paid by the insurance company—and nothing else. If that were true, as he contended it was, then, he argued (and this was the second step), it must inevitably follow that

the deceased never had and never could have, an interest in the property which passed on his death, because that property never was in existence in his lifetime. For myself, I am not prepared to accept without some further consideration the correctness of the first step. Three authorities were cited as establishing it—namely, *A. G.* v. *Dobree* [(1900) 1 Q.B. 442], *A. G.* v. *Robinson* [(1901) 2 I.R. 67], and *Lord Advocate* v. *Scott* [1918 S.C. 720]. No doubt language is used in some of the judgments in those cases which might give colour to the view that what passed on the death was the cash, and not the policy, or the value of the policy, but in none of those cases was it material that any such question should be decided. Indeed, it is not easy to see how the question can ever become material. The policy must, if valued, be valued as a matured policy, and with reference to the solvency of the insurance company, with the result that the value of the policy will be the same as the value of the moneys payable thereunder. However I would wish to keep the question open, in case it should ever hereafter be necessary to decide between the two alternatives.

Proceeding, then, upon the assumption, in favour of the appellants, that the duty is leviable upon the proceeds of the policy, do those proceeds fall within the proviso to section 4 ? In my opinion, they do not. I feel no doubt that the deceased had, from the commencement of the policy's existence, an interest, and for many years the sole interest, in the proceeds thereof. He could, before the assignation, have assigned or charged the entirety of these proceeds, and even after the assignation he had a contingent interest therein by way of resulting trust, of which (for what it was worth) he could have disposed *inter vivos* or by will. The word interest is a word capable of wide meaning, and I see no valid reasoning for limiting its scope in section 4 as was suggested in the course of the argument. The case is really covered by the decision of Rowlatt, J., in *A. G.* v. *Pearson* [(1924) 2 K.B. 375], and agreeing, as I do, with that decision, I am of opinion that this appeal fails, and should be dismissed."

Nevill v. *Inland Revenue Commissioners* [1924 A.C. 385]

The facts of the case appear in the body of the report :

" The appellant was the surviving trustee of the marriage settlement of the late Marquess of Abergavenny, who died on December 12, 1915, and by that settlement certain property was settled upon trust for the late Marquess for life with remainders over.

The specific question raised by the appeal was whether, for the purpose of determining the rate of estate duty to be paid on the property passing on the death of the late Marquess, the property comprised in the settlement ought to be aggregated with certain property of which he was tenant in tail male in possession in accordance with a settlement made by a private Act of Parliament of 1555, but which he was incapable of alienating by the terms of that Act.

It was conceded that in regard to this question of aggregation certain free property which passed by the will of the late Marquess stood on the same footing as the property comprised in the marriage settlement, and a second appeal to the House relating to the former property was adjourned to await the result of the present appeal and was subsequently allowed. If all these properties were aggregated the rate of estate duty was 18 per cent., but if the parliamentary estates were excluded from aggregation the rate was 12 per cent. only. The Inland Revenue Commissioners claimed upon the construction of sections 1, 4 and 5 of the Finance Act, 1894, that they were entitled

to aggregate the interest of the present Marquess in the inalienable estates with the other before mentioned properties of the late Marquess.

Viscount Haldane, L.C., dissented from the majority opinion in this case :

Per Viscount Cave : "My Lords, this appeal raises a question as to the amount of estate duty payable on the death of the late Marquess of Abergavenny, who died on December 12, 1915. The property which changed hands on the death of the late Marquess was of three kinds—namely, (*a*) free property which passed under his will, (*b*) property included in a marriage settlement of which the appellant is the sole surviving trustee and under which the Marquess was tenant for life and (*c*) lands and other property settled (as is now admitted) by a statute upon Edward Nevill and his heirs male and of which the Marquess was tenant in tail male. This statute contained a provision preventing any of the persons entitled in succession in tail from alienating the settled property. The Commissioners of Inland Revenue in assessing the property to estate duty determined that under the provisions of section 4 of the Finance Act, 1894, the above property marked (*a*) and (*b*) ought to be aggregated with the interest of the successor of the late Marquess in the property marked (*c*) ; but this contention was disputed by the appellant and the other persons interested on two grounds. First, they contended that the property marked (*c*), sometimes referred to as the Fridge Estate, had been settled not by the statute of 1555 but by an earlier disposition—namely, the will of the 32nd Baron Abergavenny dated June 4, 1535, and on that ground was exempt from aggregation under the provisions of section 12 of the Finance Act, 1900, and section 16 of the Finance Act, 1907. And secondly, they claimed that, if the Fridge Estate had been settled by the statute of 1555, it was by that statute made inalienable and was, therefore, exempt from aggregation under section 5, sub-section (5) of the Finance Act, 1894, and the proviso to section 4 of the same Act. Both contentions were overruled by the commissioners ; and on appeal their decision was affirmed by Sankey J., and afterwards by the Court of Appeal, Warrington L.J. dissenting. Thereupon the present appeal was brought. On the appeal to this House the appellant abandoned the first of his two contentions abovementioned, and accordingly it is the second contention alone which has to be considered. . . .

In this case the appellant contended that, having regard to section 5, sub-section (5) of the Act, the property passing on the death of the late Marquess was as regards the estates settled by the Act of 1555 not the estates themselves but the interest in those estates taken by the successor of the late Marquess, and that as the late Marquess never had an interest in that succession, the value of the succession is under the proviso to section 4 not to be aggregated with any other property, but to be treated as an estate by itself. On the other hand, the commissioners determined and the Court of Appeal has held that section 5, sub-section (5), must be read as a provision as to valuation only and has no effect upon the operation of section 4 as regards these estates.

My Lords, I am unable to share the view of the majority of the Court of Appeal that section 5, sub-section (5), deals with valuation and valuation only ; and it appears to me that such a restricted interpretation of the sub-section is inconsistent both with its purpose and with its language.

The purpose of the sub-section is reasonably plain. The provisions of the first four sub-sections of section 4 did not fit the case of property settled and made inalienable by Act of Parliament or by Royal Grant; for in the case of such property the effect of those sub-sections would have been that estate duty and settlement estate duty would have been paid once only upon its full value, and that at all times thereafter it would have been immune

from the charge of further estate duty. Accordingly, it is provided by the first part of sub-section (5) that as to lands or chattels so rendered inalienable "the provisions of this Act with respect to settled property shall not apply." I read these words as meaning, not that the provisions of the Act relating to all property whether settled or unsettled (such as section 1 of the Act) shall not apply to the property in question, but that the provisions relating to settled property only or to settled property as such shall not so apply ; and if the Act is examined, it will be found that the substantial effect of such a provision is to exclude sub-sections (1) to (4) of section 5. In any case it is clear that this part of the sub-section deals with something more than valuation. The inalienable property having thus been excluded from the operation of sub-sections (1) to (4), it was necessary to make some different provision for charging it with duty ; for it would not have been just to subject it on every devolution to estate duty on the full principal value of the property. Accordingly by the second part of sub-section (5) it is provided that in the case of such property "the property passing on the death of any person in possession of the lands and chattels shall be the interest of his successor in the lands and chattels." I cannot read this as a provision relating to valuation only. No such limitation is to be found in the words of the enactment ; and to read such a limitation into the sub-section appears to me to be not only unnecessary but destructive of its purpose. The inalienable property having been excluded by the first part of the sub-section from the provisions of sub-sections (1) to (4)—under which other settled property, while it was subjected to an additional estate duty, was freed from the recurrence of the charge of estate duty so long as the settlement lasted—it was obviously necessary to modify in some other way the operation of the charging sections so as to protect property of this character from an overwhelming burden ; and the course adopted was, while leaving the property subject to estate duty on every devolution, to reduce the amount of the charge by levying it not on the value of the property itself (the lands or chattels settled), but on the value of the interest taken by the successor in such property. Thus it is enacted that the property passing on the death of any person in possession of the lands and chattels "shall be," the interest of the successor. This is not a provision as to valuation, but a substitution for the property itself of a new taxable subject —namely, the successor's interest in the property ; and the manner in which this new taxable subject is to be valued is determined, not by the words now under consideration, but by the third branch of the sub-section which provides that "such interest shall be valued, for the purposes of estate duty, in like manner as for the purposes of succession duty."

An argument against this reading of section 5, sub-section (5), was founded upon section 44 of the Finance Act, 1922, where property settled by Act of Parliament or Royal Grant is referred to as "passing" on the death of a person in possession of it ; but I agree with Warrington, L.J., in thinking that the word "passing" is there used in its ordinary or dictionary sense, and not as indicating a "passing" for the purposes of the Finance Act, 1894. In any case, an expression in an Act of 1922 cannot be relied upon as affecting the construction of the Act of 1894.

I conclude then that the effect of section 5, sub-section (5) of the Act of 1894, is to substitute for all the purposes of that Act the interest of the successor in the property in question for the property itself. If so, then the substitution should be made, not only for the purposes of section 1 of the Act, but also for the purposes of section 4. But for the proviso to that section, the interest of the successor in the inalienable property would, under the earlier part of the section, be aggregable as "property passing on the death of the deceased"

with the other property so passing. But by the proviso any "property so passing in which the deceased never had any interest" is exempted from aggregation; and as the deceased, although he undoubtedly had an interest in the inalienable property itself, never had or could have had an interest in his successor's estate, the inference appears to be irresistible that the property escapes from aggregation under the provisions of section 4, and is to be treated as an estate by itself. It may well be that this result was not foreseen by the framers of sections 4 and 5 of the Act, but in construing a taxing Act regard must be had not to what one might expect to find in the Act but to the words of the Act themselves; and if in this case due regard is had to the words of the statute, I see no escape from the conclusion for which the appellant contends—namely, that as regards the estates settled by the Act of Parliament estate duty is to be levied only on the value of the interest of the successor to those estates, and that such interest is not to be aggregated with the other property passing on death but is to be treated as an estate by itself."

Attorney-General v. *Dickinson and Baron* [(1937) 2 K.B. 574]

"The deceased transferred certain stocks and shares to trustees on trust to accumulate the income thereof at compound interest during a certain period by way of accretion to the settled fund, and after that period to deal with that fund on certain trusts for the benefit of others. The income was so accumulated for several years. On the death of the deceased the Commissioners contended that for determining the rate of estate duty the said accumulations should, under section 4 of the Finance Act, 1894, be aggregated with the rest of the settled property passing on the death, and that they were not property in which the deceased "never had an interest" within the meaning of the proviso to that section :—

Held, that the contention of the Commissioners was correct.

Lawrence, J. read the following judgment : ". . . . It was contended on behalf of the Crown that every owner of property has an interest within the meaning of section 4 in the fruits of his property, because it is inherent in ownership that the owner can dispose of both the property and its fruits, and can therefore realize the benefit of the fruits before they come into existence ; and reliance was placed upon *Attorney-General* v. *Pearson* [(1924) 2 K.B. 375], *Attorney-General* v. *Quixley* (98 L.J. K.B. 652) and *In re Thorley* [(1891) 2 Ch. 613].

"On behalf of the defendants it was contended that these cases were not decided upon section 4 and are in any event distinguishable from the present case, Pearson's case because the settler there reserved an ultimate trust to himself ; . . . ."

"In my judgment, however, the contention of the Crown is right in principle and is supported by the reasoning in *Thorley' case* (1891) 2 Ch. 613. Thorley's case is an authority for the proposition that the bequest of an annual sum out of the future profits of a business bequeathed by the testator is liable to legacy duty under section 4 of the Stamp Duties Act, 1845 (8 and 9 Vict. C. 76) because, though only to arise in the future, it was part of the testator's estate ; and in my opinion it is impossible to say that a man has no interest within section 4 of the Finance Act, 1894, in what is part of his estate. I agree with the reasoning of that decision and on principle I am of opinion that the fruits of property are so far inherent in the property that the owner of the property has by virtue of his ownership a beneficial interest in the fruits of the property. In realizing or disposing of the property he is realizing or disposing of its capacity to produce fruits. It follows that the testator in the present case had a beneficial interest in the accumulations of the income of the stock and

shares in question when he settled them, and they must be aggregated with his other property, since it is clear that an interest within the meaning of section 4 includes a beneficial interest . . . ."

Re Smith, Bilham v. *Smith* [1937 All E.R. 472]

The facts of this case appear sufficiently from the judgment of Luxmoore, J.

Per Luxmoore, J. : "The question involved in this case is whether the estate of a gentleman who took out a policy of insurance on his own life for the benefit of his wife, under the Married Women's Property Act, 1882, is entitled to a lien for premiums paid by him in respect of that policy after the death of his wife, for whose benefit the policy was taken out. The material dates are these. The policy was taken out on November 28, 1924, by Percy Joseph Smith with the Pearl Assurance Co., Ltd., and the contract is between that company and Mr. Smith. The policy contains this statement :

To whom payable. The proposer and his executors, administrators, and assigns for the benefit of Winifred Lily Smith under the Married Women's Property Act, 1882.

The policy was for a term of 10 years, and the policy money was payable on November 28, 1934, or on the earlier death of the assured, Mr. Smith. The Married Women's Property Act, 1882, section 11 provides :

A policy of assurance effected by any man on his own life, and expressed to be for the benefit of his wife....shall create a trust in favour of the objects therein named (in this case the wife) and the moneys payable under any such policy shall not, so long as any object of the trust remains unperformed, form part of the estate of the insured or be subject to his or her debts.

The Act provides for the appointment of trustees, and states that, in default of appointment of a trustee, the policy shall vest in the insured or his or her legal personal representative in trust for the parties stated.

Mrs. Smith died on March 10, 1926. At that time the policy had no surrender value. It was not included as part of her estate, and the husband continued to pay the premiums down to the time the policy matured, on November 28, 1934. The money was paid to the administrators of the wife's estate, one of whom was Mr. Percy Joseph Smith, and it was placed on deposit in the joint names of the administrators, pending an application which they proposed to make to the court to determine whether Mr. Percy Joseph Smith was entitled to a lien on the moneys paid in respect of the policy for the premiums which he had paid since the death of his wife on March 10, 1926. There is no question to consider such as was considered in *Cousins* v. *Sun Life Assurance Society* (1933) Ch. 126, where it was held that the policy was still held in trust for the benefit of the wife's estate. Mr. Smith died before the summons was taken out, and this summons has been taken out to determine the question between the administrator of the wife's estate and the legal personal representative of the husband. The point is really quite a short one. After the death of his wife, the husband was under no liability to pay the premiums, though he was in fact a trustee for the policy in question. He paid the premiums while he was a trustee. It is well settled that, where a person who is not a beneficial owner of a policy pays the premiums to keep up the policy, he is entitled to a lien in certain cases : see *Re Leslie, Leslie* v. *French* (1883) 23 Ch. D. 552, *per* Fry, J., at page 560 :

"In my opinion a lien may be created upon the moneys secured by a policy by payment of premiums in the following cases : First, by contract with a beneficial owner of the policy. Secondly, by reason of the right of trustees to an indemnity out of their trust property for money expended by them in its

preservation. Thirdly, by subrogation to this right of trustees of some person who may at their request have advanced money for the preservation of the property. Fourthly, by reason of the right vested in mortgagees, or other persons having a charge upon the policy, to add to their charge any moneys which have been paid by them to preserve the property.

But in no other case can there be a lien on the policy money for premiums. In the present case, the payments made by Mr. Percy Joseph Smith seem to me to fall clearly within the second head. They were payments made by him as a trustee, and he is, therefore, entitled to an indemnity out of the trust property for money expended by him in its preservation, unless there is some other consideration which prevents that principle from applying. It is quite true that there was the relationship of husband and wife at the time the policy was taken out and until the wife's death, but, after the death of the wife, any considerations which might arise from that relationship do not appear to me to have any further application, and I can see no answer to the claim made by Mr. Smith's personal representative in respect of a lien for the premiums paid by him. Whatever the amount is, I declare that the personal representative of Mr. Percy Joseph Smith is entitled to be repaid that sum out of the proceeds of the policy of insurance. Costs will be allowed out of the policy money."

Section 35. *Rates of estate duty on property including agricultural land.*—(1) The rates of estate duty shall be as mentioned in the Second Schedule :

Provided that no such duty shall be levied upon—

(*a*) property which consists of an interest in the joint family property of a Hindu family governed by the Mitakshara, Marumakkattayam or Aliyasantana law, to the extent to which the principal value of the estate does not exceed rupees fifty thousand ;

(*b*) property of any other kind, to the extent to which the principal value of the estate does not exceed rupees one lakh.

(2) Where an estate passing on the death of a person consists partly of property of the nature described in clause (*a*) of the proviso to sub-section (1) and partly of the nature described in clause (*b*) of the said proviso, the estate duty payable thereon shall be—

(*i*) the amount which bears to the total amount of estate duty which would have been payable on the estate had it wholly consisted of property of the nature described in clause (*a*) the same proportion as the value of such property bears to the value of the estate, *plus*

(*ii*) the amount which bears to the total amount of estate duty which would have been payable on the estate had it wholly consisted of property of the nature described in clause (*b*) the same proportion as the value of such property bears to the value of the estate.

(3) Notwithstanding anything contained in sub-section (1) and the Second Schedule, where any property passing on the death of any person consists wholly or in part of agricultural land and the principal value of the estate does not exceed rupees two lakhs, there shall be allowed by way of rebate—

(*a*) in the case of an estate which consists wholly of agricultural land, a sum representing one-fourth of the estate duty payable ; and

(*b*) in the case of an estate which consists in part only of agricultural land, a sum representing one-fourth of the estate duty payable on that part of the estate which consists of agricultural land, the duty on such part being a sum which bears to the total amount of estate duty the same proportion as the value of the agricultural land bears to the value of the estate.

Property which consists of an interest in the joint family property of a Hindu family governed by the Mitakshara, Marumakkattayam or Aliyasantana law to the extent of Rs. 50,000 (principal value) is exempted from estate duty. In other words, the rate of estate duty on the principal value of such interest Rs. 50,000 referred to above is nil. Likewise, the rate is nil on property of any other kind where its principal value is Rs. 1,00,000. Subsection (2) prescribes rules as to valuation of property which partakes of both kinds of property referred to above. The Act introduces a slab system of taxation as distinguished from a step system of taxation. In the United Kingdom, estate duty is levied on a step system. The rates range from 5 to 40% on a sliding scale.

The scale is : (in the case of property which consists of an interest in the joint family property of a Hindu family governed by the Mitakshara, Marumakkattayam or Aliyasantana law)

On the first Rs. 50,000 of the principal value of the estate nil ;
On the next Rs. 50,000 5 per cent ;
On the next Rs. 50,000 10 per cent ;
On the next Rs. 1,00,000 12½ per cent ;
On the next Rs. 2,00,000 15 per cent ;
On the next Rs. 5,00,000 20 per cent ;
On the next Rs. 10,00,000 25 per cent ;
On the next Rs. 10,00,000 30 per cent ;
On the next Rs. 20,00,000 35 per cent ; and
On the balance of the principal value of the estate 40 per cent.

See Part I of the Second Schedule.

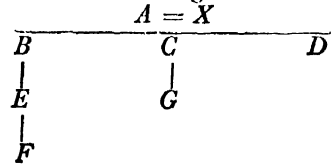
Under section 35 also, a point of constitutionality arises. It is said that the provisions of the Act are discriminatory ; so far as certain classes of people, are concerned the minimum exemption limit is fixed at Rs. 50,000, and in the case of others at Rs. 1,00,000. This point of constitutionality also will have to be decided by a court of law.

The main features of a Hindu joint family are these : There can be no limit to the number of persons of whom a Hindu joint family consists, or to the remoteness of their descent from the common ancestor and consequently to the distance of their relationship from each other. The Hindu coparcenary, however, is a much narrower body. 'Coparcenary' in Mitakshara law is not identical with the coparcenary as understood in English law. There is in the Mitakshara law no such thing as succession, properly so called in an undivided Hindu family. The following passage taken from the case of *M.T. Draupadi* v. *Vikram* (I.L.R. 1938 Nagpur 88) will explain the meaning of 'coparcenary' and 'coparcener' as used in this connection.

"In 43 All 228 at page 243 (*Baijnath Prasad Singh* v. *Tej Bali Singh*) their Lordships of the Privy Council observed that it would be better if the word 'coparcenary' and 'coparceners' had not been used and conveyed a caution against fastening the attention too much on the word 'coparcenary.' 'Coparcenary,' as popularly understood, only expresses the rights and obligations growing out of the status of an undivided family which is the creature of Hindu Law : see 9 M.I.A. 195 at page 237 (*Charlotte Abraham* v. *Francis Abraham*). Joint family, as pointed out by Mayne at page 344, Edn. 9, consists of males and females who constitute a sort of corporation some of the members of which are coparceners, that is persons who on partition would be entitled to demand a share, while others are only entitled to maintenance. The male members of a joint family are entitled to claim partition and the female members are only entitled to maintenance, although an exception ought to be made in favour of the mother who is entitled to a share on partition between her sons or her husband and her sons. Their rights spring from their being Gotraja-

sapindas tracing their descent from a common ancestor or connected by lawful wedlock with the male members of the family. It is apparent that joint family may consist of surviving female members only.

Now, attention may be directed to the law of property which may be elucidated with reference to the following illustrative pedigree :



A is the propositus who acquires property. On his death his property devolves on his sons *B*, *C* and *D*, as ancestral joint (or coparcenary) property to the exclusion of *A*'s widow. When *B* begets a son *E* and *C* adopts one *G*, both *E* and *G* will acquire interest in that property by their birth. It will be apparent that there is a difference between the rights of *A*'s widow and those of *B*, *C*, *D* and others (male members). The law expounded in Mitakshara uses the word "Daya" as signifying the wealth which becomes the property of another, solely by reason of relation to the other. It is of two sorts : unobstructed (apratibandha), *i.e.*, not liable to obstruction, or liable to obstruction (saprati-bandha). The wealth of the father or the grandfather becomes the property of his sons or his grandsons ; in right of their being sons or grandsons—and that is inheritance not liable to obstruction. But property devolves on parents (or uncle) brothers and the rest upon the demise of the owner if there be no male issue : and thus the actual existence of a son and the survival of the owner are impediments to succession ; and on their ceasing, the property devolves (on the successor) in right of being uncle or mother. This is inheritance subject to obstruction (Colebrooke's Mitakshara, Chap. I, sections 1, 3). It is now to be seen what is the nature of the rights of the male members of the family designated as coparceners. As Mayne points out at page 344, Edn. 9, they have the right to enjoy and hold the joint property, to restrain the acts of each other in respect of it, to burden it with their debts and at their pleasure to enforce its partition. Even the father has no independent power in the disposal of this (coparcenary) property because—they who are born, and they who are yet unbegotten, and they who are still in the womb require the means of support, no gift or sale should be made : Colebrooke's Mitakshara, Chap. I, section III-27."

In the course of the discussion in the House of the People on the estate duty bill it was pointed out that the exemption limit should be the same in the case of a coparcener of a joint Hindu family and in the case of any other person including a member of a Dayabhaga family. The Finance Minister justified a limit of Rs. 50,000 in the case of a coparcener in a Hindu family governed by a Mitakshara law on the ground that duty is levied as on the cesser of an interest and the limit should be lower in this case because if the value of the estate of the entire joint family is taken into account, the duty levied will not work any hardship. If there are four coparceners in a Hindu family, and the estate they own is worth 2 lakhs, on the death of one of the coparceners his interest *viz.*, Rs. 40,000 ceases ; by cesser of his interest a benefit accrues to the remaining coparceners. It is really an estate of two lakhs that bears the estate duty on the death of the coparcener. In the case of a family governed by Dayabhaga law there is no right by birth or survivorship though a joint family and coparcenary property are recognised. The son, the grandson whose father is dead and the great grandson whose father and grandfather are both dead succeed as heirs ; it will be seen that under the Mitakshara law, the son, grandson and great grandson will take together as a single heir for

the grandson and the great grandson have a right by birth in the ancestral property which comes to the son. Subject to the provisions of the Hindu Women's Rights to Property Act, 1937, the widow will only take in default of male issue. Where a man leaves more than one widow they take jointly with rights of survivorship and their rights are the same as under the Mitakshara law. In default of the widow, the daughter succeeds as an heir. Where there are several daughters they take jointly with rights of survivorship and their rights are exactly the same as in the Mitakshara law. Thus having regard to the difference between the two systems of law the Mitakshara and Dayabhaga, the legislature fixed the exemption limit in the case of all persons at Rs. 1,00,000 and at Rs. 50,000 in the case of a person who is a member of a Hindu joint family governed by the Mitakshara law.

Whatever has been said with regard to the interest of a coparcener in a joint Hindu family governed by Mitakshara law will apply to an interest of a member of a Hindu family governed by the Marumakkattayam or Aliyasantana law. Sub-section (3) grants a rebate of 25 per cent of the estate duty payable in respect of agricultural land. It is to be noted, however, that this rebate is allowed only where the principal value of the estate does not exceed two lakhs rupees.

See Part II of the second Schedule for Rates of estate duty in the case of property of any other kind.

It can be seen from the Ready Reckoner Tables in the Appendices that the rate of duty on Hindu family property is higher than in the case of property of any other kind.

Illustration

Section 35 (2)

Property consisting of an interest in

(*a*) Hindu joint family governed by Mitakshara	Rs. 2,00,000
(*b*) Other estates	Rs. 5,00,000
	Rs. 7,00,000
Duty if the whole estate was of the nature (*a*)	Rs. 93,750
The proportion of (*a*) to the total (*a* + *b*) is 2/7	
Proportionate duty $\frac{2}{7} \times$ Rs. 93,750	Rs. 26,792-13-9
Duty if the whole estate was of the nature (*b*) Rs. 91,250	
The proportion of (*b*) to the whole is 5/7 $= \frac{5}{7} \times$ Rs. 91,250	Rs. 65,178- 9-1
	Rs. 91,971- 6-10

Section 35 (3) (*b*)

Agricultural land	Rs. 75,000
Other estate	Rs. 1,25,000
	Rs. 2,00,000
Total duty	Rs. 11,250/-

The proportion of agricultural land to the total amount is $\frac{\text{Rs. } 75,000}{\text{Rs. } 2,00,000}$

Duty payable on Agricultural land $\frac{\text{Rs. } 75,000}{\text{Rs. } 2,00,000} \times 11,250 = \text{Rs. } 4,218\text{-}12\text{-}0$

Total duty	Rs. 11,250 0 0
Rebate at 1/4 on 4,218-12-0	Rs. 1,054 11 0
Estate duty leviable	Rs. 10,195 5 0

CHAPTER XVII

VALUE CHARGEABLE

Section 36. *Principal value how to be estimated.*—(1) The principal value of any property shall be estimated to be the price which, in the opinion of the Controller it would fetch if sold in the open market at the time of the deceased's death.

(2) In estimating the principal value under this section the Controller shall fix the price of the property according to the market price at the time of the deceased's death and shall not make any reduction in the estimate on account of the estimate being made on the assumption that the whole property is to be placed on the market at one and the same time :

Provided that where it is proved to the satisfaction of the Controller that the value of the property has depreciated by reason of the death of the deceased, the depreciation shall be taken into account in fixing the price.

Section 5 enacts that in the case of every person there shall be levied and paid upon the principal value of all property which passes on the death of such person a duty called an estate duty. So the duty is to be paid on the principal value of the property passing on death. This section, *i.e.*, 36 states " the principal value of any property shall be estimated to be the price which in the opinion of the controller it would fetch if sold in the open market at the time of the deceased's death." Sub-section 2 states that the Controller shall fix the price of the property according to the market price at the time of the deceased's death without making any reduction in the estimate even if the whole property actually is sold in several lots and at different times. The proviso to the sub-section permits the Controller to allow for depreciation of the value of the property only in case he is satisfied that by reason of the death of the deceased, the property depreciated in value.

Sub-section (1) is based on section 7 (5) of the Finance Act, 1894. Sub-section (2) with the proviso is based on section 60 (2) of the Finance Act, (1909-10) 1910. This section has to be read with section 41 and section 42. Section 41 is based upon section 7 (8) of the Finance Act, 1894, and section 42 is based upon section 7 (9) of the Finance Act, 1894. In actual practice, the ascertainment of principal value of property in accordance with the principles laid down by the Act in section 36 presents the most outstanding difficulty arising under the provisions of this Act. It is in this connection that grave differences of judgment and opinion will arise between the Controller on the one hand, and the assessees assisted by their counsel, on the other hand. The assistance of experienced businessmen, accountants, actuaries and experts will be required in the process of ascertainment of principal value of property consisting of shares and debentures in a public limited company, shares and debentures in a controlled company. With regard to other kinds of property, namely, land, houses, policy amounts, securities and chattels, the ascertainment of the principal value will no doubt occasion difference of judgment and opinion between the Controller on the one hand and the assessee on the other hand ; but subject to this difference of opinion and judgment there are well-known methods by which the principal

value can be ascertained. Section 36 postulates a hypothetical open market. It is this fact that presents most difficult problems. There is also an assumption made in the section, namely, that what is sold is the whole property of the deceased passing on his death at one time. The principal value of the property is the gross sale price which it fetches if sold in the open market and at one time. The costs of sale are not to be deducted. The sale of property is itself a notional one. It will be seen that the principal value has to be ascertained of the property passing on the death at the time of the deceased's death. In fact the property is never sold at that time. The sale of the whole property in different lots and at different opportune moments by the persons accountable actuated only by a motive to ensure the best price will not be binding on the Controller and the figures submitted to the Controller quite honestly by them, the Controller is entitled to disregard. In a commentary on this section it is only possible to mention certain legal principles established by judicial decisions. In the case of *Inland Revenue* v. *Marr's Trustees* [(1906) 44 S.L.R. 647], it is laid down that if money had been spent on the property after the death of the deceased to ensure a better price an allowance may be made for the money so spent. Where the property is of special value to a person as in the case where it will be on acquisition by him an extension of his own property which he is in bad need of, this fact will have to be taken into account in ascertaining the principal value of the property, likewise, where the property sooner or later will be required for a public purpose, the fact of likely enhancement of the value of the property will also have to be taken into account. See *Robinson Bros (Brewers) Ltd.* v. *Houghton and Chesten-Le-Street Assessment Committee* [1938 A.C. 321] and *Raja Vyricherla Narayana Gajapathy Raju* v. *Revenue Divisional Officer, Vizagapatam* [1939 A.C. 302].

The statements of values of property made by the deceased are of no avail. The following cases will throw a good deal of light on the meaning of " open market," the " hypothetical sale " and the " assumptions " to be made by the Controller involved in the section :—(1) *A. G. Ireland* v. *Jameson* [(1905) 2 I.R. 218]; (2) *Ellesmere* v. *Commissioners of Inland Revenue* [(1918) 2 K.B. 735]; (3) *Commissioners of Inland Revenue* v. *Clay* ; *The same* v. *Buchanan* [(1914) 3 K.B. 466] ; (4) *Glass* v. *Commissioners of Inland Revenue* [(1915) S.C. 449].

The proviso to the section applies mostly to a case where by the death of an outstanding governing director of a company, the shares in the company depreciate. The articles of a company may contain restrictions on the transfer of shares or they may provide an option for the other members of the company to purchase shares at par before they are sold to outsiders. How to value such shares in limited companies has been the subject of judicial pronouncement. The following cases may usefully be considered in this connection : (1) *Salvesen's Trustees* v. *Commrs. of Inland Revenue* [1930 S.L.T. 387] ; (2) *Inland Revenue Commrs.* v. *Crossman* (*Re Crossman*) and *Inland Revenue Commrs.* v. *Mann* (*Re Paulin*) [1937 A.C. 26] ; (3) *Re Cassell, Public Trustee* v. *Mountbatten* (*No.* 2) [(1927) 2 Ch. 275] ; (4) *Findlay's Trustees* v. *Commrs. of Inland Revenue* [(1938) 22 A.T.C. 437] ; (5) *Re London India Rubber Co.* [(1867-68) 5 Eq. 519] ; (6) *Re Isle of Thanet Electric Supply Co.* [(1949) 2 All E.R. 1060].

With regard to the valuation of shares ordinary and preference and debentures of a controlled company, the special provision enacted in section 17 of the Act will govern.

It is useful, however, to refer to the following cases decided in the United Kingdom. The principles laid down in these cases will be found applicable to India also because the provisions relating to controlled companies in the

Indian Act are based upon the corresponding provisions obtaining in the U.K. (1) *British American Tobacco Co., Ltd.* v. *Inland Revenue Commissioners* [1943 A.C. 335]; (2) *Inland Revenue Commrs.* v. *Silverts Ltd.* [(1950) 2 All E.R. 271] ; (3) *Inland Revenue Commrs.* v. *Clarke (F. A.* and *Son Ltd.)* [(1941) 2 K.B. 270] ; (4) *J. Bibby* and *Sons Ltd.* v. *Commrs. of Inland Revenue* [(1945) 1 All E.R. 667].

Findlay's Trustees v. *Commissioners of Inland Revenue* [(1938) 22 A.T.C. 437]

The head-note of the decision is : " The deceased held a 16/20th share in a partnership which owned the Scotsman, the Evening Dispatch and the Weekly Scotsman. The deceased died on 13th April, 1930. For Estate duty purposes, it was agreed that the value of the tangible assets of the firm at that date was £707,680. The appellants valued the goodwill at £334,185 and the Inland Revenue valued it at £426,780. The firm had issued a debenture for £300,000 and the interest was at the rate of 3½% at the date of the deceased's death. It was agreed, however, that the existence of this debenture had no influence upon the value of the goodwill ; but the £300,000 was deducted from the £707,680, thus leaving £407,680 as the value of the partners' interest in the tangible assets.

The question in the case was as to the method which should be adopted in valuing the goodwill of the firm's business. Two leading men in the newspaper world gave evidence to the effect that as a rule, the goodwill of a newspaper business was worth three years' purchase of the average net profits made during the three years preceding the date of the valuation. They were of the opinion, however, that in 1930 there were a number of factors adversely affecting newspaper businesses and that on that account the average profits should be multiplied by 2½ instead of by 3. The parties' accountants agreed that the figure of net profits should include income-tax and the debenture interest ; and that, when the amount of the profit which a purchaser would expect to earn from the business was fixed, it should be multiplied by 8 in order to obtain the value of the business as a whole. The accountants differed, however, as to the amount of the profits which a purchaser would expect to earn. One fixed this figure at the average profit for preceding three years, and the other took the profit for the last year.

No. 14 of Process showed an adjusted net profit for the year to 31st March 1930, of £108,221. To this, there had to be added £16,500 for debenture interest, thus making the relevant figure £124,721. It was evident that there was a considerable fall in the profit in the period to 31st March, 1930. The statement also showed that sales of the newspapers were falling as was also advertising revenue, and that there was an increase in expenses apart from the cost of newsprint. The year 1930, was in a period of general depression. No. 15 of Process gave the average profits over three years of certain newspaper businesses, and showed the number of years' purchase thereof which was required to make up the goodwills. No. 16, of Process showed the number of years' purchase of the average profits, which was necessary to arrive at the market value of the share and loan capitals of the businesses.

Held, that, as the tendency of the profits was to fall, the three years' average profits was inapplicable ; that it was unreasonable to suppose that a purchaser would expect to earn the same amount of profit as had been made in the year to 31st March, 1930 ; and that, taking all factors into account, the figure of expected profit should be £135,000. This figure should be multiplied by 8 so as to arrive at the value of the whole business ; the value of the tangible assets, £707,680, should be deducted ; and the value of the goodwill would be £372,320.

Per Lord Fleming : " (After stating the facts of the case). The method by which the Commissioners are directed to estimate the value of property for estate duty purposes is prescribed by section 7 (5) of the Finance Act, 1894, as follows :—

" The principal value of any property shall be estimated to be the price which in the opinion of the Commissioners such property would fetch if sold in the open market at the time of the death of the deceased."

Now it may be that under the contract of co-partnery, it would not have been possible to sell the deceased's interest in the open market, but I understood the parties to be agreed that the case was ruled by the *Commrs. of Inland Revenue* v. *Crossman* [1937 A.C. 26], in which the cases of *A. G.* v. *Jameson* [(1905) 2 I.R. 218], and *Salvesan's Trustees* v. *Commrs. of Inland Revenue* [1930 S.L.R. 387 ; 9 A.T.C. 43] were approved. It must, therefore, be assumed that, while the estimate of the value of the deceased's interest is to be made on the footing that it is sold in the open market, the hypothetical purchaser will take the interest subject to all its rights and liabilities, and all its advantages and disadvantages. The deceased's interest in the partnership of John Ritchie and Co. is obviously an asset of a quite exceptional character. It is, I should think, rather unusual for an undertaking of this magnitude to be carried on by a private partnership. Shares in such a partnership are subject to disadvantages and liabilities, as contrasted with shares in a public company with limited liability .... In estimating the price which might be fetched in the open market for the goodwill of the business it must be assumed that the transaction takes place between a willing seller and a willing buyer; and that the purchaser is a person of reasonable prudence, who has informed himself with regard to all the relevant facts such as the history of the business, its present position, its future prospects and the general conditions of the industry ; and also that he has access to the accounts of the business for a number of years.... It is to be presumed that the hypothetical purchaser having obtained all the relevant information, would consider in the first place the risks involved in carrying on the business, and would fix the return which he considered he ought to receive on the purchase price at a rate per cent. The only other factor which he would then require to determine would be the annual profits which he would derive from the carrying on of the business. The determination of these two factors would enable him to fix the capital value of the business. A seller looking at it from the opposite point of view would deal with it on similar lines.... The decision of this must accordingly depend upon the figure which is to be adopted for expected profits. I do not doubt that, when one is seeking to ascertain the profits which will probably be earned by a business in the future, it is quite usual to do so by taking an average of the profits actually earned for the three preceding years. This probably operates equitably when one is dealing with a well established business, which has normal ups and downs, but has no violent fluctuations in either direction. But if there is a definite trend upwards or downwards, it may be different. If, for example, profits are increasing year by year by large figures, an average of three years may be unfair to the seller. If there is a similar movement downwards, it may be unfair to the purchaser....

Prima facie, the drop in the profits of 1930 is of such a large amount as to suggest that it cannot properly be dealt with by the application of what is at best merely a rule of thumb. This *prima facie* view is, I think, confirmed by a consideration of the position of the newspaper industry in the year 1930.

(The rest of the judgment deals with the general depression, competition of national newspapers with headquarters in London with morning papers).

Re Isle of Thanet Electric Supply Co., Ltd. [(1949) 2 All E.R. 1060].

In 1929 a company which had been incorporated in 1896, adopted new articles of association which, by article 3, defined the rights of shareholders as follows : " The issued preference shares shall confer on the holders the right to a fixed cumulative preferential dividend at the rate of £6 per cent., per annum upon the amounts for the time being paid up or credited as paid up thereon respectively in priority to the ordinary shares, and the right to participate *pari passu* with the ordinary shares in the surplus profits which in respect of any year it shall be determined to distribute remaining after paying or providing for the said preferential dividend and a dividend for such year at the rate of six per cent. per annum on the amounts for the time being paid up or credited as paid up on the ordinary shares, and the preference shares shall confer the right in a winding-up of the company to repayment of capital, together with arrears (if any), and whether earned or not of the preferential dividend to the date of the commencement of the winding up in priority to the ordinary shares." The two classes of shares therein referred to were subsequently converted into stock. In July, 1946, the company went into voluntary liquidation, and at that date its issued capital consisted of £282,000 preference stock and £150,000 ordinary stock. Certain arrears of dividend on the preference stock were paid, and the capital on both the preference and the ordinary stock was repaid. As regards the surplus assets,

Held : the onus lay on the preference stockholders to show that they were entitled to participate therein ; article 3 must be taken as being exhaustive in defining their rights ; and, therefore, the onus had not been discharged.

Per Sir Raymond Evershed, M.R. : " I also agree. At the end of his judgment the learned judge stated his conclusion thus :

" It is quite clear that if, on a fair construction of the article, I cannot find that the preference shareholders are excluded from participation in the surplus assets, then they are entitled to participate."

That conclusion was based on the decision of this court in *Re Metcalfe and Sons, Ltd.* [1933 Ch. 142], which governed this case when it was before Roxburgh, J., since then the law has been substantially affected by the decision of the House of Lords in *Scottish Insurance Corpn., Ltd.* v. *Wilsons and Clyde Coal Co., Ltd.* [(1949) 1 All E.R. 1068]. In those circumstances, I shall not be thought disrespectful to the learned judge if I do not state at length the reasons for taking a view different from that which he reached. I agree with Wynn-Parry, J., that, as a result of the Wilsons and Clyde case the two propositions for which counsel for the ordinary stockholder contended should be now taken as established.

Out of respect, however, for the careful and forceful argument of counsel for the preference stockholder before us, I will state in a few sentences why I reach that conclusion. At the end of his speech dealing with this point in the Wilsons and Clyde case *Lord Normand* said [(1949) 1 All E.R. 1084] :

" It is, I think, not possible to distinguish Metcalfe's case from the present case, and I have, therefore, come to the conclusion that it should be overruled and that the ratio of *Will* v. *United Lankat Plantations Co., Ltd.* [1914 A.C. 11], was correctly applied in *Collaroy Co., Ltd.* v. *Giffard* [1928 Ch. 144 and *Re National Telephone Co.* [(1914) 1 Ch. 755].

It is true, as counsel has pointed out, that the language of Lord Normand in this respect is, perhaps, somewhat less qualified than the language which fell from Viscount Maugham and Lord Simonds on the same matter. But the disapprobation which both Viscount Maugham and Lord Simonds

expressed for *Re Metcalfe and Sons, Ltd.*, is found in a context in which reference was made to the fact that Lord Keith, in the Court of Session, had found it impossible to reconcile *Will* v. *United Lankat Plantations Co., Ltd.* and *Metcalfe's* case. It seems to me, therefore, that the result of the majority speeches is to treat as established, and as good law, the statement of Sargant, J., in *Re National Telephone Co.* [(1914) 1 Ch. 755], which Wynn-Parry, J., has read and to do so notwithstanding any observations of Lord Macnaghten in *Birch* v. *Cropper* [(1889) 14 A.C. 525], which must be construed as applicable only to the case where the articles are wholly silent as regards particular or specific rights.

I think that, during the sixty years which have passed since *Birch* v. *Cropper* was before the House of Lords, the view of the courts may have undergone some change in regard to the relative rights of preference and ordinary shareholders—and to the disadvantage of the preference shareholders, whose position has, in that interval of time, become somewhat more approximated to the role which Sir Horace Davey attempted to assign to them, but which Lord Macnaghten rejected in *Birch* v. *Cropper*, namely, that of debenture holders. In his dissenting opinion in the *Wilsons and Clyde case* [(1949) 1 All E.R. 1068], Lord Morton of Henryton, after citing a passage from Lord Macnaghten's speech in *Birch* v. *Cropper*, based this conclusion on it (*ibid*, 1086):

"Thus, in the present case the preference stockholders are entitled to share in the surplus assets with the ordinary stockholders in proportion to their respective holdings unless the articles of the company otherwise provide."

But that view, and that interpretation of Lord Macnaghten's speech, were rejected by the majority of the House of Lords. It is the duty of the court to follow loyally the result, and not to seek by minute analysis to perceive fine distinctions between the opinions of the concurring Lords, more especially when the effect might be to produce a condition of perhaps inconvenient uncertainty.

I, therefore, on the point of law conclude that, after the *Wilsons and Clyde case*, the onus is, so to speak, on the preference stockholders. It is, of course, quite true that the matter in the last resort is one of the construction of the articles. For reasons which Wynn-Parry, J., has already stated, and with which I agree, I think the onus has not been discharged. It is true that this case possesses, in some respects notable features. For example, the preference shareholders have a majority of the voting powers, and they have, under the terms employed at the end of article 3, a position in regard to reduction of capital which is (I agree with Wynn-Parry, J.), unique in my experience, nor do I forget that they are given earlier in the article a right to participate with the ordinary shareholders in surplus profits. I cannot, however, come, on any of those matters, or on all of them together, to a conclusion which would discharge the onus placed on the preference stockholders, even if (without saying that it is right to do so) regard is had to the state of the law as it was thought to be when the article was first adopted. I think that there may be this difficulty too. Counsel for the preference stockholder before us said that one would expect to find some kind of parallelism between the rights *inter se* of the preference shareholders and the ordinary shareholders as to dividend and their rights *inter se* in a winding-up. Having regard to the nature of the right of participation, it would, I think, be difficult to reproduce a true parallel between the two classes in a winding-up and still more difficult to read into the provisions of the article appropriate language to produce such a result. Even if one did, one would still be left with some anomaly having regard to the rights on a reduction of capital. I think for these reasons, as well as those that have already been stated, that this appeal

should be allowed, and that the appropriate declarations should be to the effect that the surplus assets are now distributable exclusively among the ordinary stockholders."

Inland Revenue Commissioners v. *Silverts, Ltd.* [(1950) 2 All E.R. 271].

The facts are contained in the headnote which is as follows :—

" In June, 1940, the shares of a company consisted of *A*, *B* and *C* shares of which the *C* shares carried no voting rights and the *A* and *B* shares each carried one vote. The whole of the six thousand *B* shares were held by S the managing director. Of the six thousand *A* shares, some were registered in the name of *P* and the remainder in the name of *Q*, both of whom held the shares on trust for *R*. The directors of the company at all material times, besides *S*, were *P*, *Q* and *R*. On June 27, 1940, R, by a deed which recited the intention that *P* and *Q* should transfer the A shares into the name of a banking company as custodian trustee under the Public Trustee Act, 1906, section 4 (3), settled the *A* shares for the benefit of his son. On December 16, 1940, the A shares were transferred into the name of the bank as custodian trustee, *P* and *Q* thereafter acting as managing trustees. In assessing the company to profits tax in respect of the chargeable accounting period January 1, 1947, to December 31, 1947, the revenue authorities claimed to restrict the deduction of directors' remuneration under the Finance Act, 1937, schedule IV, para 11, on the ground that directors had a controlling interest in the company.

Held : the bank as a custodian trustee was a " bare trustee " of the shares vested in it in the sense that it had no independent will of its own in relation to the control of the company afforded by the trust holding of shares, but was bound to operate it in accordance with the directions of *P*, and *Q*, and therefore, the company was one the directors whereof had a controlling interest therein within the meaning of para 11.

Per Romer, J., " The question what consitutes a controlling interest in a company for the purposes of paras 4, 7 and 11 of schedule IV to the Finance Act, 1937, was considered in two cases which were heard and determined together, first, by Lawrence, J., and, subsequently, by the Court of Appeal, and one of which went to the House of Lords. These cases are *Inland Revenue Commrs.* v. *Clark (F.A.)* and *Sons, Ltd.* [(1941) 2 All E.R. 86, 651], and *British-American Tobacco Co., Ltd.* v. *Inland Revenue Commrs.* [(1941) 2 All E.R. 86, 651].

The company contends, first, that the essential basis of all the speeches in the House of Lords is that, for the purpose of inquiring whether the directors of a company have a controlling interest therein, one must look to the company's share register and to that alone ; secondly, that the speeches (especially, perhaps, that of Lord Macmillan) do not fairly permit of the exception to the general rule, namely, that of a bare trustee, which was recognised in the judgment of the Court of Appeal ; and, thirdly, that, although Lord Russell of Killowen, Lord Wright, Lord Porter and Lord Simonds refrained from expressing any concluded view as to this possible exception, they at least entertained some doubt as to its legitimacy. Counsel for the company submitted, in the first place, that the bank, as custodian trustee, is not " a bare trustee " at all, and, therefore, I am only concerned with the general rule and not with the question whether such a trustee does or does not constitute an exception to it. He pointed out that a custodian trustee, whose functions are prescribed and delimited by the Public Trustees Act, is in a different position in many respects from that of a mere nominee such as Lord Russell of Killowen referred to in his speech. A nominee such as this, it is said, is bound to obey any directions with regard to the shares that

are registered in his name as his principal may from time to time think proper to give him, provided only that the directions are not in conflict with the criminal law. A custodian trustee on the other hand, says counsel, is in a fiduciary position towards the beneficiaries and is under an obligation concurrent with that of the managing trustees towards them. If the custodian trustee is told by the managing trustees to act in breach of trust, it is its duty to disobey, or, at the least, to obtain the directions of the court. I respectfully share the doubt expressed by Lord Simonds as to what precisely is meant by the phrase " bare trustee," and, indeed, it may well convey different meanings to different minds. I think there is force in the distinction contended for by counsel for the company between a custodian trustee, on the one hand, and a mere nominee, on the other. Nevertheless, I feel that the bank, as custodian trustee, is within the phrase as used by Lord Greene, M.R., in the Bibby case [(1945) 1 All E.R. 667], in that it has no independent will of its own in relation to the trust control, but is bound to operate it in accordance with its principals' directions. The fact that it can, and, indeed, must, refuse to commit a breach of trust adds substantially nothing to its independent control over the company's affairs. It merely diminishes, in a manner more theoretical than practical, the directive rights of the managing trustees over the custodian. It appears to me, then that the bank is a " bare trustee " for the managing trustees within the contemplation of that phrase by the Court of Appeal in Bibby's case. If so, it is *a fortiori* the mere vehicle of the Trustees' wishes for the purposes envisaged in the Clarke and British-American Tobacco cases ; and it is, after all, as it seems to me, the ratio *decidendi* of those cases rather than that of Bibby's case, which, in this court, governs the present appeal.

I have dealt with Bibby's case at length, not only because it was relied on by the Special Commissioners, but because it was relied on so strongly in argument before me. And, apart altogether from the dicta regarding bare trustees, there is, indeed, much in the speeches in the House of Lords which, if detached from the subject-matter of the case and regarded as being of general application, undoubtedly supports the company's case. But as I have already indicated, Bibby's case arose under the statute of 1939 and involved a totally different question from that which arises in the present appeal. The two previous cases, on the other hand, necessitated a consideration of and decisions on the same schedule of the same Act as is in question on this appeal. Counsel for the company argued that these cases were concerned, not with who controlled a particular company, but with the indirect control of one company by another, and that, accordingly, different considerations arise. This comment is true with regard to the British-American Tobacco case, but is not justified as to Clarke's case ; and each of the cases was regarded both by Lawrence, J., and by the Court of Appeal as involving the same principles. It seems to me that I cannot, without violating those principles, support the conclusion at which the Special Commissioners arrived. Whether or not the bank is strictly a " bare trustee," its relation to the managing trustees is, in my judgment, such that it is the latter, and not the former, who can make " the ultimate decision " to which Lord Simonds referred in his speech in the British-American Tobacco appeal. If so, it follows that the trust control is vested in the managing trustees for the purposes of para 11 of schedule IV to the Act of 1937, and that the company is, for those purposes, a company the directors whereof have a controlling interest therein, and I propose, accordingly, so to hold.

I would add in conclusion that a decision in this case adverse to the Crown would have rather startling results. The object of para 11 of the

schedule is to prevent avoidance of profits tax by the expedient of directors, in director controlled companies, voting themselves excessive remuneration. If it were possible for directors to evade this restrictive provision by merely transferring their shares into the hands of nominees the provision would be rendered utterly ineffective. It is for this reason that, in my judgment, the court is both entitled and bound to look behind the register of the company concerned and see in whom the real control is vested. Wholly different considerations were before the House of Lords in Bibby's case, and it is in relation to those considerations alone, as I respectfully think, that the reasoning and the dicta of the law Lords who determined that case fall to be regarded and applied. I will, accordingly, remit the case to the Special Commissioners with a direction that the profits tax of the company for the chargeable accounting period in question, viz., January 1, 1947, to December 31, 1947, should be assessed on the basis that the company is a company the directors whereof have a controlling interest therein within the meaning of the Finance Act, 1937, Schedule IV, para 11."

In *British-American Tobacco Co.* v. *Inland Revenue Commissioners, Clarke, (F.A.) and Son, Ltd.* v. *Same*, [(1941) 2 K.B. 270], the question was "What is the proper meaning of the phrase " controlling interest " in its context in para 7 of Schedule IV to the Finance Act, 1937." Scott, L.J., said " The Oxford Dictionary contains the following definitions which appear to me to convey the natural meanings of the verb " control " and the noun " interest " as used in the present context.

Control : To exercise restraint or direction upon the free action of; to hold sway over, exercise power or authority over; to dominate, command.

Interest : The relation of being concerned or affected in respect of advantage or detriment ; especially an advantageous relation of this kind. The commercial device of exercising control over a company through one or more intermediate corporations, British or Foreign, was already notorious and therefore well-known to Parliament in 1937, as was the financial economy in investment open to a company *A* which desired control over a foreign operative corporation *B*, if it interposed a holding corporation *C*, between itself and corporation *B*, causing corporation *C* to acquire a share control in corporation *B*. Assuming the sufficiency of a 51 per cent. majority in each stage to give " control," company *A* could thus achieve control of corporation *B* at half the investment cost to itself of acquiring the direct share control of *B*, for by the indirect method 49 per cent. of the shares of both *C* and *B* would be paid for by others while *A*'s investment would be limited to 51 per cent. of the holding company *C*. The commercial practice was and is really addressed to results rather than means. Ownership by the controlling company of the controlling shares in the controlled company was irrelevant, and it was appropriate to choose a word for expressing the relationship between controller and controlled which had a wide meaning, not limited to that of a proprietory relationship. Had Parliament intended to limit the provisions to direct shareholding by the British Controlling Company in the controlled corporation, that intention could have been easily expressed by adding the word " proprietory." In the circumstances I have no doubt that the Chancellor of the Exchequer, if I may personify Parliament in him, had no such intention, for he was concerned to bring within his net such part of the profits of controlled corporations carrying on business abroad as was brought to this country by controlling companies. An obvious fiscal gap had been discovered in the escape, actual or potential, of such profits from the tax-gatherer's net. If the appellants' arguments were accepted, the introduction of any inter-

mediate holding company not carrying on business within the United Kingdom would at once re-open avenues of escape for controlling companies.

In dealing with the usual method of so-called " indirect " control, I have only taken for the purpose of illustration the case of one intermediate company, but the principle is the same if there are more links in the chain, as there are in several of the eleven foreign corporations affected by this appeal. The arithmetical economy is multiplied by each link, as the power of levers can be multiplied by repetition, but in law a point may be reached where the legal limit of remoteness arrives through repetition of intermediate stages, or other elaboration.... The Attorney-General relied on the decision of Rowlatt, J., in *Noble* v. *Inland Revenue Commrs.* [(1925) 12 Tax-Cases 911], that the degree of control afforded by a 51 per cent. holding is control within the statute. Lawrence, J., took the same view and so do I." See [1943 A.C. 335], the same case on appeal to the House of Lords.

British-American Tobacco Company, Ltd. v. *Inland Revenue Commrs.*
[1943 A.C. 335]

This is the decision of the House of Lords in appeal from the decision of the Court of Appeal, [(1941) 2 K.B. 270].

Per Viscount Simon, L.C., " Mr. Tucker, for the appellants, has put forward two contentions in support of the view that the appellants had no controlling interest in the foreign companies referred to in the case. First, he argued that " interest " in this connexion means interest of a proprietary nature, and that the condition that there should be " a controlling interest " would only be satisfied if the appellants themselves owned sufficient share-holding in the other company to control the latter. Secondly, he contended that, in any event, a controlling interest is not constituted by the control of the bare majority of shares (whether directly or through other companies) but that the control must be of such proportion of shares as would secure the passing of a special resolution or other resolution for which a special majority is required by the terms of the constitution of the foreign company. These two contentions have been rejected as unsound by each tribunal which has dealt with the appellants' claim, and at each stage the decision arrived at has been in favour of the Crown. Notwithstanding the full and careful argument addressed to the House, I take the view that the decision arrived at below was correct, and I understand that your Lordships are in agreement with me that the appeal should be dismissed.

The case turns on the meaning of the words " controlling interest " in the context in which they are used. The appellants argue that, in order that one company should have " a controlling interest " in another, it must be the beneficial owner of a requisite number of shares in that other company either registered in its own name or in the name of its nominees, and that, if company No. 1 owns all shares in the company No. 2 which in turn owns all the shares in company No. 3 company No. 1 has no interest, controlling or otherwise, in company No. 3. It is true that in such circumstances company No. 1 owns none of the assets of company No. 2, and *a fortiori* owns none of the assets of company No. 3, and in that sense neither owns, nor has an interest in, company No. 3, but that is to treat the phrase " controlling interest " as capable of connoting only a proprietary right, that is, an interest in the nature of ownership. The word " interest ", however, as pointed out by Lawrence, J., is a word of wide connotation, and I think the conception of " controlling interest " may well cover the relationship of one company towards another, the requisite majority of whose shares are, as regards their voting power, subject, whether directly or indirectly, to the will and ordering

of the first mentioned company. If, for example, the appellants own one-third of the shares in company *X*, and the remaining two-thirds are owned by company *Y*, the appellants will none the less have a controlling interest in company *X* if they own enough shares in company *Y* to control the latter. In my opinion, this is the meaning of the word " interest " in the enactment under consideration, and, where one company stands in such a relationship to another, the former can properly be said to have a controlling interest, in the latter. This view appears on the face of the Act. I find it impossible to adopt the view that a person who (by having the requisite voting power in a company subject to his will and ordering) can make the ultimate decision as to where and how the business of the company shall be carried on, and who thus has in fact control of the company's affairs, is a person of whom it can be said that he has not in this connexion a controlling interest in the company.

As to what may be the requisite proportion of voting power, I think a bare majority is sufficient. The appellants have, in respect of each of the foreign companies referred to in the case, the control of the majority vote. I agree with the interpretation of " controlling interest " adopted by Rowlatt, J., in *B. W. Noble* v. *Inland Revenue Commrs.*, when construing that phrase in section 53, sub-section (2) (*c*) of the Finance Act, 1920. He said that the phrase had a well known meaning, and referred to the situation of a man " whose shareholding in the company is such that he is the shareholder who is more powerful than all the other shareholders put together in general meeting." So here. The owners of the majority of the voting power in a company are the persons who are in effective control of its affairs and fortunes. It is true that for some purpose a 75 per cent. majority vote may be required, as, for instance (under some company regulations), for the removal of directors who oppose the wishes of the majority, but the bare majority can always refuse to re-elect and so in the long run get rid of a recalcitrant board. Nor can the articles of association be altered in order to defeat the wishes of the majority, for a bare majority can always prevent the passing of the necessary resolution. We are proceeding, in the absence of evidence as to foreign law on the basis that the law governing these foreign companies does not differ materially from our own. I move that the appeal be dismissed with costs."

Raja Vyricharla Narayana Gajapati Raju v. *The Revenue Divisional Officer, Vizagapatam* [1937 A.C. 302]

The relevant facts are these. The Appellant's land contained a spring, which yielded a constant and abundant supply of good drinking water which could easily be made available for the oil companies and people engaged in the harbour works. A harbour was then being constructed at Vizagapatam. The Appellant's land was compulsorily acquired under the provisions of the Land Acquisition Act. As the Appellant was not satisfied with the award of compensation granted by the Land Acquisition Officer the matter was referred to the Subordinate Judge, Vizagapatam. Before him, the Appellant obtained compensation on the footing of potentialities of his land as a source of water supply. The Sub-Judge allowed this claim. On appeal the High Court reversed the decision of the Sub-Court. On Appeal to the Privy Council, Lord Romer, who delivered the judgment stated :

" The general principles for determining compensation that are specified in these sections differ in no material respect from those upon which compensation was awarded in this country under the Lands Clauses Act of 1845, before the coming into operation of the Acquisition of Land (Assessment of

Compensation) Act of 1919. As was said by Wadsworth, J., when giving judgment in the High Court in the present case, " It is well settled that English decisions under the Lands Clauses Act of 1845, lay down principles which are equally " applicable to proceedings under the Indian Act." The compensation must be determined, therefore, by reference to the price which a willing vendor might reasonably expect to obtain from a willing purchaser. The disinclination of the vendor to part with his land and the urgent necessity of the purchaser to buy must alike be disregarded. Neither must be considered as acting under compulsion. This is implied in the common saying that the value of the land is not to be estimated at its value to the purchaser. But this does not mean that the fact that some particular purchaser might desire the land more than others is to be disregarded. The wish of a particular purchaser, though not his compulsion, may always be taken into consideration for what it is worth. But the question of what it may be worth, that is to say, to what extent it should affect the compensation to be awarded, is one that will be dealt with later in this judgment. It may also be observed in passing that it is often said that it is the value of the land to the vendor that has to be estimated. This, however, is not in strictness accurate. The land, for instance, may have for the vendor a sentimental value far in excess of its " marked value." But the compensation must not be increased by reason of any such consideration. The vendor is to be treated as a vendor willing to sell at " the market price," to use the words of section 23 of the Indian Act. It is perhaps desirable in this connection to say something about this expression " the market price." There is not in general any market for land in the sense in which one speaks of a market for shares or a market for sugar or any like commodity. The value of any such article at any particular time can be readily ascertained by the prices being obtained for similar articles in the market. In the case of land, its value in general can also be measured by a consideration of the prices that have been obtained in the past for land of similar quality and in similar positions, and this is what must be meant in general by " the market value " in section 23. But sometimes it happens that the land to be valued possesses some unusual, and it may be, unique features, as regards its position or its potentialities. In such a case the arbitrator in determining its value will have no market value to guide him, and he will have to ascertain as best he may from the materials before him, what a willing vendor might reasonably expect to obtain from a willing purchaser, for the land in that particular position and with some particular potentialities. For it has been established by numerous authorities that the land is not to be valued merely by reference to the use to which it is being put at the time at which its value has to be determined [that time under the Indian Act being the date of the notification under section 4, sub-section (1)], but also by reference to the uses to which it is reasonably capable of being put in the future. No authority indeed is required for this proposition. It is a self-evident one. . . .

But how is the increase accruing to the value of the land by reason of its potentialities or possibilities to be measured ? In the case instanced above of land possessing the possibility of being used for building purposes, the arbitrator (which expression in this judgment includes any person who has to determine the value) would probably have before him evidence of the prices paid, in the neighbourhood, for land immediately required for such purposes. He would then have to deduct from the value so ascertained such a sum as he would think proper by reason of the degree of possibility that the land might never be so required or might not be so required for a considerable time. In the case, however, of land possessing potentialities of such an unusual nature that the arbitrator has not similar cases to guide

him, the value of the land must be ascertained in some other way. In such a case, moreover, there will, in all probability, be only a very limited number of persons capable of turning the potentialities of the land to account.

If the owner of the land is the only person who can do so, the value to him must be ascertained by reference to what profit he might thereby have been able to derive from the land in the future. Take as an example the case of an owner of vacant land that adjoins his factory. The land possesses the potentiality of being profitably used for an extension of the factory. But the owner is the only person who can turn that potentiality to account. In valuing the land, however, as between him and a willing purchaser, the value to him of the potentiality would necessarily have to be included.

The same consideration will apply to cases where the owner is not the only person but merely one of the persons able to turn the potentiality to account. The value to him of the potentiality will not be less than the profit that would accrue to him by making use of it had he retained it in his own possession. But now take the case where the owner is himself unable to turn the potentiality to account whether by promotion of a company or otherwise. In such a case there may be several other persons who would be able to do so, or there may be only one. If there are more than one, it is recognized by all the authorities that have been cited to their Lordships, and seems to be consistent with common sense, that the owner is entitled to be paid the value to him of the potentiality, though the ascertainment of its value may in many cases be a matter of considerable difficulty. . . .

The truth of the matter is that the value of the potentiality must be ascertained by the arbitrator on such materials as are available to him and without indulging in feats of the imagination. . . .

For these reasons, their Lordships have come to the conclusion that, even where the only possible purchaser of the land's potentiality is the authority that has obtained the compulsory powers, the arbitrator in awarding compensation must ascertain to the best of his ability the price that would be paid by a willing purchaser to a willing vendor of the land with its potentiality in the same way that he would ascertain it in a case where there are several possible purchasers and that he is no more confined to awarding the land's " poramboke " value in the former case than he is in the latter. . . .

There is a full discussion of the following cases in the judgment. Dictum of Fletcher Moulton, L.J., " When the special value exists only for the particular purchaser who has obtained powers of compulsory purchase, it cannot be taken into consideration in fixing the price, because to do otherwise would be to allow the existence of the scheme to enhance the value of the Land to be purchased under it " in *Lucas and Chesterfield Gas and Water Board* [(1909) 1 K.B. 16], disapproved.

The following cases were discussed in the above case.

Glass v. *Inland Revenue*, [1915 S.C. 449].

Inland Revenue Commissioners v. *Clay* [(1914) 1 K.B. 339, 348].

In Re Gough and the Aspatria, Silloth and Dt. Joint Water Board (1904 K.B. 417).

Cedars Rapids Manufacturing and Power Co. v. *Lacosta* (1914 A.C. 569, 576).

Fraser v. *Fraserville (City of)* (1917 A.C. 187, 194).

Sidney v. *North Eastern Rly. Co.* [(1914) 3 K.B. 629].

Earl of Ellesmere v. *Commissioners of Inland Revenue* [(1918) 2 K.B. 735]

Per Sankey, J. : " This is a petition by way of appeal by the Earl of Ellesmere against the decision of a referee appointed under the Finance

(1909-10) Act, 1910, upon an appeal against the decision of the Commissioners of Inland Revenue determining the principal value of an estate in Northants called the Brackley estate for the purpose of estate duty upon the death of the late Earl. By section 7, sub-section (5) of the Finance Act, 1894, " The principal value of any property shall be estimated to be the price which in the opinion of the Commissioners, such property would fetch if sold in the open market at the time of the death of the deceased " ; and by section 60, sub-section (2) of the Finance (1909-10) Act, 1910, " In estimating the principal value of any property under section 7, sub-section (5) of the principal Act, ... the Commissioners shall fix the price of the property according to the market price at the time of the death of the deceased and shall not make any reduction in the estimate on account of the estimate being made on the assumption that the whole property is placed on the market at one and the same time." Upon the death of the late Earl his successor resolved to sell the estate and for that purpose consulted an eminent firm of auctioneers, with the result that he determined to sell it in one lot. It was well advertised, and various offers for its purchase were received. Eventually an offer was made to buy the whole estate for 68,000*l.*, which offer, on the advice of the auctioneers, was accepted. Subsequently the purchaser resold the farms to the tenants, and put up the other portions of the estate for sale by auction in lots. The bulk of the lots was resold for about 65,000*l.*, the residue being still in the purchaser's hands at the time of the appeal to the referee. The Commissioners of Inland Revenue fixed the market price of the estate at 77,000*l.*, and the Earl appealed to a referee, contending that the market price was the sum for which it had actually been sold. The Commissioners on the other hand contended that, having regard to the varied character of the property and the fact that it did not all lie together the price realised by a sale in one lot could not represent the true value. The referee upheld the contention of the Commissioners, though he reduced their figure to 75,618*l.*, and he ordered the appellant to pay the Commissioners' costs of the Appeal. From that decision the present appeal is brought. It is said that the referee misdirected himself upon the question of the value, and also that he had no jurisdiction to make a successful appellant pay costs.

" Now the Act of 1894 says that the value of the property shall be estimated to be the price which it would fetch if sold in the open market. That, in my opinion, does not necessarily mean the price which it would fetch if sold to a single purchaser. There may be many cases where a sale to a single purchaser cannot realise " the price which it would fetch if sold in the open market." Take the case of an owner having property including a colliery and a draper's shop. It is conceivable that if the colliery and the draper's shop were sold separately the best possible price might be obtained for each. On the other hand a purchaser who was anxious to buy the draper's shop might not wish to be encumbered with a colliery, and *vice versa*, and consequently if the owner insisted upon selling the whole property to one purchaser he would not obtain the market price which the Act contemplates. So, too, with regard to property of the same character situate in different areas. It may well be that if in such a case the vendor insists upon the different parts being all sold to the same person he will not get as good a price as if he allowed different persons to buy the portions situate in the different districts. No doubt a sale in one lot of a varied property such as that in the present case may be highly convenient to the vendor. He may want to get the money quickly ; he may not care to risk an auction. He may be going abroad, or may be called up to serve in the Army, and it may be of great importance to him to sell at once. But it does not at all follow that the price

which he obtained under such circumstances is " the price which it would fetch if sold in the open market." " What is meant by those words is the best possible price that is obtainable, and what that is largely, if not entirely, a question of fact. I can readily conceive cases in which a sale of the whole property in one lot would realize the true market price, but I can equally imagine cases in which it would not. Here the referee held that because the property was of a miscellaneous character and not lying in a ring fence the price paid by the single purchaser was not the true value. I think he was entitled so to hold, and that the contention as to misdirection fails...."

The judgment of Lord Macmillan in the House of Lords' case of *Robinson Brothers (Brewers) Ltd.* v. *County of Durham Assessment Committee* [1938 A.C. 321], contains valuable remarks on the subject of " valuation " which will be of immense use as regards questions of " valuation " arising under the Act. Hence portions from the judgment of Lord Macmillan are given below.

"I understand the principle.... to be that in the letting market for public-houses you are to assume the presence of brewers as bidders but to exclude consideration of the rents which they would offer. In short, the competition of brewers is to be taken into account quantitatively but not qualitatively. By their presence in the market they add to the number of competitors and so tend to increase the rent which will be offered on the principle that the more numerous the competitors, the keener the market; but the rent which the brewers would be prepared to offer must be disregarded and all the competitors (whether brewers or others) must be regarded as competitors for the tenancy of a public—house which is to be occupied and conducted as a free house. This, your Lordships were given to understand, is how the judgment has been interpreted and applied in practice; and this is how it has been interpreted and applied by the court of quarter sessions in the present case.

I find myself quite unable to accept such a method of valuation. The Rating and Valuation Act, 1925, section 68, sub-section (1), defines " gross value " to mean the rent at which a hereditament might reasonably be expected to let from " year to year ", on certain assumptions immaterial for the present purpose. It is not the rent at which the hereditament is actually let, unless that happens to be the rent at which it might reasonably be expected to let. It is the rent which a hypothetical tenant might reasonably be expected to pay. The hypothetical tenant may reasonably be expected to pay the rent which in the letting market for such premises would be offered as the result of the competition existing in that market. The valuing authority must gauge both the extent of the competition in the market and the rent likely to be offered and accepted in that market. In the case of a public-house I can see no justification for including brewers among the competitors but excluding the rent which they would offer. The motives which actuate buyers in a market may be of all kinds, but it is not their motives but their bids that matter. In the case of trade premises the competitors for the tenancy are presumably always actuated by a consideration of the profit which they think they can make by utilising the premises, and they will have this in view when they make their bids. The brewer who wishes the premises because he thinks he can make money by sub-letting them to a tied tenant is influenced by perfectly legitimate business considerations; he offers the rent which he thinks it worth his while to pay to obtain the tenancy. Why should the rent which he is prepared to pay be excluded from consideration in fixing the market value of the tenancy? He is one of the competitors in the market, and the figure which he is prepared to pay is an element which ought clearly to be taken into account in arriving at the market price.

The reasoning in the judgments in the Bradford case [(1898) 2 Q.B. 630], appears to me to confuse two quite different things. Where, as between, landlord and tenant, personal elements extraneous to the ordinary relation of lessor and lessee are introduced into the contract of tenancy then the so-called rent paid is not the rent in the economic any more than in the legal sense. As the phrase goes, there is present a consideration other than the rent. Of this there is no better instance than the so-called rent paid by a tied tenant, for the rent is artificially reduced by reason of the personal restrictions imposed on him. Consequently the tied rent is properly disregarded in determining what rent the hypothetical tenant might reasonably be expected to pay on ordinary terms. But the rent which a brewer is prepared to pay for the tenancy of a public-house because he sees his way to make a profit for himself by sub-letting it to a tied tenant is not vitiated by any such consideration as applies between the brewer and his tied tenant. The brewer thinks that he can make a profitable use of the premises by sub-letting them to a tied tenant and so is disposed to offer a high price for the tenancy. The object of making a profitable use of the premises is just the ordinary motive which actuates competitors in a letting market. One of the attractions which a public-house offers in the market is the facility of letting it to a tied tenant. As between the brewer and the landlord to whom the brewer makes his offer of tenancy there is no question of any " personal or temporary contract under which the business is to be carried on " upon the premises such as the learned judges in the Bradford case, rightly say ought to be excluded from consideration. Nor in taking into account the rent which a brewer would pay is there any violation of the principle that the valuation must be *rebus sic stantibus* ; it is precisely because the hereditament is a public-house and is to continue to be used as such that it attracts brewers' competition.

The unsoundness of the view taken in the Bradford case becomes even more manifest when it is sought to apply it to the circumstances of the present case. In the Bradford case, the brewers were desirous of becoming tenants in order that they might in turn sub-let to a tied publican ; in the present case it appears that a large number of the public-houses in the area, including the White Lion Hotel itself, are occupied by brewers and managed for them by managers in their employment. The growing practice apparently among brewers is to occupy public-houses themselves and sell their own beer in them through a manager whom they employ in the premises. Here there can be no question of any personal contract or restriction entering into and vitiating the rent which the brewer is prepared to offer for the tenancy. The case is just the same as that of any manufacturer who rents shops for the retail sale of his goods. Why should the rent which the manufacturers are willing to pay not be taken into account assuming them to be proved to be in the market for shops ?

I may notice, in order to dispose of it, a suggestion that the rent which a brewer would pay ought not to be taken into account for the reason that he is in a position to pay that rent only because he is the owner of another hereditament—namely, his brewery, and that the profit which he has in view is not the profit to arise from occupancy of the public-house, but the enhanced profits of his brewery. It is, however, well settled that in valuing a hereditament it is legitimate to have in view its importance as an adjunct of another hereditament : *Reg* v. *London and North-Western Ry. Co.* (L.R. 9 Q.B. 134). In the case where the brewer sells his own beer in the public-house which he rents he no doubt benefits his brewery by having an assured channel for the disposal of his beer, but the profit is actually made where the sales are effected, that is, in the public-house.

While therefore evidence as to the rents which brewers would be prepared to pay for the tenancy of a public-house, whether they propose to sub-let it to a tied tenant or to occupy it themselves through a manager, is in my opinion both competent and relevant in estimating the rent which a hypothetical tenant of the public-house might reasonably be expected to pay, it by no means follows that the rent which would be obtained from a brewer is necessarily to be taken as the gross annual value. There may not be many brewers in the district looking out for public-houses to let and the chance which a public-house in the particular locality has of being let to a brewer willing to pay a high rent may be small. It is for the valuing authority to arrive at their valuation on the whole evidence, including evidence as to the extent of the demand for public-houses in the district, the parties likely to compete for them, whether brewers or others, the rents which these competitors of all classes would be likely to offer and all other relevant considerations. In the present stated case it will be noted that the figure of 122*l.*, is not said to be the rent which a brewer would be willing to pay for the White Lion Hotel ; but that the rent at which the hereditament might reasonably be expected to let from year to year would be sufficiently high to support a gross value of 112*l.*, if regard be had to the competition between brewers and to the rent which a competing brewer who desired the premises in order to secure the use of them for the sale of beer from his own brewery might be willing to give. As, on the facts found in this case, it was in my opinion proper to have regard to the competition of brewers and to the rents which they might offer, it follows that the figure of 112*l.*, ought to be taken as the gross value of the premises.

I do not think it would serve any useful purpose to examine the numerous cases that were cited in the course of the debate, especially in view of the very exhaustive survey of the authorities undertaken by Scott, L.J., in the Court of Appeal. The result of that survey amply supports the conclusion at which the Court arrived, and which also commends itself to me.

It is right, however, that I should notice an argument which was strenuously advanced by the appellants, namely, that even if your Lordships should be dissatisfied with the soundness of the decision in the Bradford case this House should not disturb it in view of the fact that it has stood for 40 years without being overruled and has regulated practice during that long period. The case is not a favourable one for the application of *stare decisis*. The decision on behalf of which it is invoked is both embarrassing and unjust—embarrassing, because even the experienced counsel who appeared at your Lordships' bar had considerable difficulty in explaining precisely what it decided and what evidence it ruled out, and to valuation authorities it is not likely to be more easy of comprehension ; unjust, because the unduly low valuation of public-houses to which it has given rise places an unjustifiable burden on the occupiers of other hereditaments. In the recent case of the *Westminster Council* v. *Southern Railway and W. H. Smith and Son* (1936 A.C. 511), your Lordships overruled a much more venerable rating decision and I see no reason why more indulgence should be extended to the Bradford case. It was also sought to found an argument on the principle recently considered by this House in the case of *Barras* v. *Aberdeen Steam Trawling and Fishing Co.* (1933 A.C. 402), to the effect that where Parliament in re-enacting legislation uses language which has been the subject of judicial interpretation it must be presumed to have used that language in the sense in which it has been judicially interpreted. I ventured in the case I have just cited to suggest some obvious limitations of the scope of this doctrine. I recognize that where a term or expression which has an established judicial connotation of course occurs in a

statute Parliament may well be taken to have employed it in conformity with this usage. But it would be reducing the doctrine to an absurdity to hold that Parliament in repeating in the Act of 1925 the general terms used in the Act of 1836 to define annual value thereby gave Parliamentary sanction to every-one of the innumerable and not always consistent decisions on the subject of the hypothetical tenant and the rent which he may be reasonably expected to pay.

I am accordingly of opinion on all grounds that the present appeal should be dismissed with costs."

(In the Court of Appeal)

Inland Revenue Commissioners v. *Clay* and *Inland Revenue Commissioners* v. *Buchanan*
[(1914) 3 K.B. 466]

Per Cozens-Hardy, M.R. : " This appeal—for I take the two as really one appeal—raises an important question under section 25 of the Finance Act of 1910. That section provides that the " gross value " of land means the amount which the fee simple of the land if sold at the time in the " open market " by a " willing " seller in its then condition (subject to certain deductions) might be expected to realize. The facts are not in dispute. Mrs. Buchanan was owner and occupier of No. 83, Durnford Street, East Stonehouse, having purchased it in 1902 for 700*l.* In September, 1910, she sold it to Clay and others for 1000*l.* The purchasers were the trustees of a nurses' home, No. 84, who wanted the house for the purpose of extending their home. In 1908, they had offered Mrs. Buchanan 850*l.*, which she declined. Negotiations were resumed in 1910, and after some bargaining she agreed to sell for 1000*l.* The trustees would have been prepared to give 1100*l.* Regarding No. 83 solely as a residence for private occupation its value was not more than 750*l.* The referee found the gross value as on April 30, 1909 to be 1000*l.*, and Scrutton, J., has upheld that view. The contention on the part of the Crown is that the gross value is 750*l.* only.

" The contest before us has turned mainly upon the words " open market " and " willing seller." I think the view ultimately taken by counsel for the appellants, and also for the respondents, as to the meaning of " open market " is correct. " Open market " includes a sale by auction, but it is not confined to that. It would include property publicly announced in the usual way by insertion in the lists of house agents. But it does not necessarily involve the idea of a sale without reserve. I can see no ground for excluding from consideration the fact that the property is so situate that to one or more persons it presents greater attractions than to anybody else. The house or the land may immediately adjoin one or more landowners likely to offer more than the property would be worth to anybody else. This is a fact which cannot be disregarded. The Solicitor-General ultimately admitted that some regard must be had to the fact. But he urged that we ought only to consider first what an outside purchaser would give, say 750*l.*, and then allow the adjoining owner one more bid—in other words, something very small beyond the 750*l.* We had our attention called to the valuable judgments of Lords Johnston and Salvesen in the recent Scotch case of *Glass* v. *Commissioners of Inland Revenue* (Valuation Appeal Court, Scotland, March 20, 1914), and I accept their view of the meaning of the words " open market." The price at which the property was sold in 1910 is not the test of the gross value in April, 1909, but it cannot be disregarded.

" I adopt the language of Scrutton, J. : ' He (the referee) was right in this, not because of the sale for 1000*l.*, but because of the reasonable

expectation that a willing seller could get 1000*l.* or more from the nurses' home [(1914) 1 K.B. at p. 350].'

An "open market" sale of property "in its then condition" presupposes a knowledge of its situation with all surrounding circumstances. To say that a small farm in the middle of a wealthy landowner's estate is to be valued without reference to the fact that he will probably be willing to pay a large price, but solely with reference to its ordinary agricultural value, seems to me absurd. If the landowner does not at the moment buy, land brokers or speculators will give more than its purely agricultural value with a view to reselling it at a profit to the landowner. It is for the referee, whose competence is not challenged, to arrive at a figure. The court ought not, as a rule, to review his decision on what is in truth a question of fact. I see no ground for supposing that there has been any misdirection in point of law.

"The other point is as to the meaning of "willing seller." It is urged that Mrs. Buchanan never was a willing seller; that she never wished to vacate the house in which she was living, and that it was only after pressure from the trustees that she agreed to sell for 1000*l.* I am disposed to think that a willing seller is a person who is a free agent and cannot be required by virtue of compulsory powers to sell, and that Mrs. Buchanan was a willing seller when, in 1910, she voluntarily agreed to accept 1000*l.* If, however, contrary to my view, she was not a willing seller, the problem still remains for the existence of a willing seller whether Mrs. Buchanan or not, must be assumed for the purpose of the section.

"In my opinion, the judgment of Scrutton, J., affirming the decision of the referee, was correct and this appeal must be dismissed with costs."

Per Swinfen Eddy, L.J.: "... A value, ascertained by reference to the amount obtainable in an open market, shews an intention to include every possible purchaser. The market is to be the open market, as distinguished from an offer to a limited class only, such as the members of the family.... The section means such amount as the land might be expected to realize if offered under conditions enabling every person desirous of purchasing to come in and make an offer, and if proper steps were taken to advertise the property and let all likely purchases to know that the land is in the market for sale...."

Per Pickford, L.J.: "... I think that 'sold in the open market' means sold in such a way that any one wishing to purchase was able to do so, *e.g.*, by auction or by putting the house into the hands of an agent to sell, and I think a willing seller means one who is prepared to sell, provided a fair price is obtained under all the circumstances of the case. I do not think it means only a seller who is prepared to sell at any price and on any terms, and who is actually at the time wishing to sell. In other words, I do not think it means an anxious seller...."

Dyson v. *Forster.*

Dyson v. *Seed, Quinn, Morgan, & Company*

[1909 A.C. 98]

The facts of this case appear sufficiently from the judgment of Lord Macnaghten.

Per Lord Macnaghten: "My Lords, in 1871 the predecessors in title of the Ecclesiastical Commissioners for England conveyed to one Forster in fee simple certain lands in the county of Durham, reserving all mines with power to work the minerals from below, making reasonable compensation for such damage as might be occasioned to the surface.

In 1887 the Ecclesiastical Commissioners demised to one Crawford seams of coal and other minerals under the lands conveyed to Forster, and under adjoining lands. The lease contained a covenant on the part of the lessee expressed to be made with the "owner or owners, occupier or occupiers for the time being," of the surface to pay compensation for all damage occasioned by the lessee in working the mines or seams of coal thereby demised.

In 1896 Crawford's lease was assigned to a company called the Elvet Colliery Company, Limited, which is now in liquidation.

It is admitted that the mines have been worked so as to occasion damage to the surface of the lands conveyed to Forster. This action has been brought to recover compensation.

The plaintiffs are devisees of Forster and his successors in title. The substantial defendants are the legal personal representatives of Crawford who died in November, 1900.

The defence is twofold. In the first place the defendants say that Forster's assigns cannot take advantage of the covenant because the surface owners were not parties to the indenture in which the covenant is contained. Secondly they say that the covenant does not run with the land, and that therefore Forster's assigns could not have had the benefit of the covenant even if Forster himself had been named a party to the indenture.

The Court of Appeal rejected both defences. In my opinion they were right. The first objection, is, I think, answered by section 5 of 8 and 9 Vict. C. 106. That section enacts that a stranger may take the benefit of a covenant respecting any tenements and hereditaments although the taker be not named a party to the indenture. The Court of Appeal held that that provision only applied to covenants running with the land. They held, however, that this covenant did run with the land, and so was within the section. Whether the section must be confined to covenants running with the land may perhaps be doubted. The point, however, is not, I think, material in the present case, because I agree with the Court of Appeal in thinking that the covenant in question is one which runs with the land.

The question is, Does this covenant affect the nature, quality, or value of the land, or is it a covenant simply collateral ? It is not, I think, simply collateral, for one reason which is sometimes proposed as a test for the purpose of determining whether a covenant runs with the land or not. It is beneficial to the surface owner and beneficial to no one else : see *Vyvyan* v. *Arthur* (1 B and C 417), *per* Best J. I think it affects the nature and also the value of the land. I think it affects the nature of the land because it tends to prevent disturbance of the surface, and so it tends to preserve the natural state and condition of the land. A person who has agreed to pay compensation to his neighbour for injurioulsy affecting his land is more likely to be careful to avoid mischief than one who is not answerable for the consequences of his act. I also think that the covenant affects the value of the land in respect of which it was given. Suppose the land, being properly drained, were to be let for agricultural purposes, a tenant, I should suppose, would be more likely to take it and would probably give more for it if he were assured that compensation would be payable in the event of the drainage system being dislocated by subsidence. Similar considerations would apply if the land were to be let for building purposes.

I am therefore of opinion that the decision of the Court of Appeal should be upheld and the appeal dismissed with costs. The same question is involved in the other cases which were set down with the case of *Dyson* v. *Forster*, and the same result must follow.

Smith and Snipes Hall Farm Ltd. v. *River Douglas Catchment Board*

The facts of the case appear sufficiently from the judgment of Denning, L.J.

Per Denning L.J.:

"There is in Lancashire a river called Eller Brook, which is liable to overflow its banks and flood the adjoining land. In 1938, in order to prevent the flooding, eleven owners of land through which the river ran made an agreement with the local catchment board, whereby the board undertook to widen, deepen and make good the banks of the river, and thereafter to maintain them, and the landowners paid a contribution towards the cost. The board did the work and practically completed it by 1940, but they did it so unskilfully that, in the opinion of experts, it was from the first doomed to failure. The landowners, of course, did not know this and set about cultivating the land. The low meadows, which had been rough marshland, were broken up and brought under the plough. Crops were sown and harvested. But the banks of the river were not strong enough to stand serious floods. In 1944 they burst. The breach on that occasion was soon closed, but the board's engineer was aware of the danger. He reported to the Board that "the bank is a bad one under any conditions." In 1945 there was another burst nearby, and he reported that "this bank is largely composed of sand. I propose to put a machine on to strengthen it as soon as one is available." But apparently he did nothing, or at any rate nothing effective. The landowners and their tenants went on cultivating the land. They did not know that the banks were doomed to failure. Then in 1946 the worst happened. Serious floods arose, the banks burst, the fields were flooded, and the crops ruined. This action is brought by a tenant of the fields against the board to recover the value of the crops he had lost. The present owner joins in the action, claiming his loss of rent, but the substantial claim is by the tenant company.

On those facts it is my opinion that the board broke their contract. It was an implied term that they should do the work with reasonable care and skill, so as to make the banks reasonably fit for the purpose of preventing flooding. The proper way of doing this, according to the experts, was to put a clay core in the banks, or to make them very much wider, but they did not do either. It may be that the board had not sufficient funds available to carry out such works; but that seems to me to be an irrelevant consideration, or, at any rate, just as irrelevant in the case of a public board as in the case of a private contractor. No private contractor who was engaged to make works for a specific purpose could excuse himself for bad results by saying that he had not sufficient money to erect proper works. It follows, therefore, that if the original landowner with whom the agreement was made had himself cultivated the fields, and suffered damage by the breach, he could recover from the board. But he sold the land and he has suffered no damage. The damage has been suffered partly by the man who purchased the land, but principally by the tenants, and the question is whether they can sue on the contract.

Mr. Nield says that the plaintiffs cannot sue. He says that there is no privity of contract between them and the board, and that it is a fundamental principle that no one can sue upon a contract to which he is not a party. That argument can be met either by admitting the principle and saying that it does not apply, to this case, or by disputing the principle itself. I make so bold as to dispute it. The principle is not nearly so fundamental as it is sometimes supposed to be. It did not become rooted in our law until the year 1861 [*Tweddle* v. *Atkinson* (1861) 1 B and S 393], and reached its full growth in 1915 [*Dunlop* v. *Selfridge* (1915) A.C. 847]. It has never been able entirely to supplant another principle whose roots go much deeper. I mean the principle

that a man who makes a deliberate promise which is intended to be binding, that is to say, under seal or for good consideration, must keep his promise ; and the court will hold him to it, not only at the suit of the party who gave the consideration, but also at the suit of one who was not a party to the contract, provided that it was made for his benefit and that he has a sufficient interest to entitle him to enforce it, subject always, of course, to any defences that may be open on the merits. It is upon this principle, implicit if not expressed (*i*) that the courts, ever since 1368, have held that a covenant made with the owner of land for its benefit can be enforced against the covenantor, not only by the original party, but also by his successors in title [See The Prior's case, which is set out by Lord Coke in his work on Littleton, at page 384*a*, and in his report of Spencer's case (1 Sm. L.C. 10th ed. 55, 13th ed. 51, 65, 73)] ; (*ii*) that the Courts of Common Law in the seventeenth and eighteenth centuries repeatedly enforced promises expressly made in favour of an interested person [See *Dutton* v. *Poole* (1677) 2 Lev. 210 approved by Lord Mansfield in *Martyn* v. *Hind* (1776) 2 Cowp. 443]; (*iii*) that Lord Mansfield held that an undisclosed principal is entitled to sue on a contract made by his agent for his benefit, even though nothing was said about agency in the contract [See *Rabone* v. *Williams* cited in *George* v. *Claggett* (1797) 7 Term R. 359] and (*iv*) that Lord Hardwicke decided that a third person is entitled to sue if there can be spelt out of the contract an intention by one of the parties to contract as trustee for him, even though nothing was said about any trust in the contract, and there was no trust fund to be administered [See *Tomlinson* v. *Gill* (1756) Ambler 330].

Throughout the history of the principle the difficulty has been, of course, to say what is sufficient interest to entitle the third person to recover. It has sometimes been supposed that there must always be something in the nature of a "trust" for his benefit [See Vandepitte's case (1933) A.C. 70, 79]. But this is an elusive test which does not explain all the cases, and it involves the trustee being made a nominal party to the action either as plaintiff or defendant, unless that formality is dispensed with, as it was in *Les Affreteures Reunis Societe Anonyme* v. *Leopold Walford Ltd.* [1919 A.C. 801]. The truth is that the principle is not so limited. It may be difficult to define what is a sufficient interest. Whilst it does not include the maintenance of prices to the public disadvantage, it does cover the protection of the legitimate property, rights and interests of the third person, although no agency or trust for him can be inferred. It covers, therefore, rights such as these which cannot justly be denied ; the right of a seller to enforce a commercial credit issued in his favour by a bank, under contract with the buyer ; the right of a widow to sue for a pension which her husband's employers promised to pay her under contract with him [See *Dutton* v. *Poole* and cf. *In re Schebsman* (1944) Ch. 83, 103, 104] ; or the right of a man's servants and guests to claim on an insurance policy, taken out by him against loss by burglary which is expressed to cover them ; cf. *Prudential Staff Union* v. *Hall* [(1947) K.B. 685, 689, 690]. In some cases the Legislature itself has intervened, as for instance, to give the driver of a motor car the right to sue on an insurance policy taken out by the owner which is expressed to cover the driver. But this does not mean that the common law would not have reached the same result by itself.

The particular application of the principle with which we are concerned here is the case of covenants made with the owner of the land to which they relate. The law on the subject was fully expounded by Mr. Smith in his note to Spencer's case which has always been regarded as authoritative. Such covenants are clearly intended, and usually expressed, to be for the benefit of whomsoever should be the owner of the land for the time being ; and at

common law each successive owner has a sufficient interest to sue because he holds the same estate as the original owner. The reason which Lord Coke gave for this rule is the reason which underlies the whole of the principle now under consideration. He said in his work upon Littleton that it was "to give damages to the party grieved." If a successor in title were not allowed to sue it would mean that the covenantor could break his contract with impunity, for it is clear that the original owner, after he has parted with the land, could recover no more than nominal damages for any breach that occurred thereafter. It was always held, however, at common law that, in order that a successor in title should be entitled to sue, he must be of the same estate as the original owner. That alone was a sufficient interest to entitle him to enforce the contract. The covenant was supposed to be made for the benefit of the owner and his successors in title, and not for the benefit of anyone else. This limitation, however, was, as is pointed out in Smith's Leading Cases, capable of being "productive of very serious and disagreeable consequences," and it has been removed by section 78 of the Law of Property Act, 1925, which provides that a covenant relating to any land of the covenantee shall be deemed to be made with the covenantee and his successors in title, "and the persons deriving title under him or them" and shall have effect as if such successors "and other persons" were expressed.

The covenant of the catchment board in this case clearly relates to the land of the covenantees. It was a covenant to do work on the land for the benefit of the land. By the statute, therefore, it is to be deemed to be made, not only with the original owner, but also with the purchasers of the land and their tenants as if they were expressed. Now if they were expressed, it would be clear that the covenant was made for their benefit ; and they clearly have sufficient interest to entitle them to enforce it because they have suffered the damage. The result is that the plaintiffs come within the principle whereby a person interested can sue on a contract expressly made for his benefit.

I would not wish to leave this subject without referring also to section 56 of the Law of Property Act, 1925, which says that a person may take the benefit of any covenant or agreement respecting land or other property, although he may not be named as a party to the instrument. That section is no doubt, as Lord Greene has said, confined to cases when the person seeking to take advantage of it is a person "within the benefit" of the covenant or agreement [See *White* v. *Bijou Mansions* (1938) Ch. 351, 365] ; but subject to that limitation, there is no reason why the section should not be given its full scope, just as Lord Dunedin was prepared to give full scope to its narrower predecessor, section 5 of the Real Property Act, 1845 [See *Dyson* v. *Forster* (1909) A.C. 98]. Section 56 means, therefore, that a person may enforce an agreement respecting property made for his benefit although he was not a party to it. So constructed it is a clear statutory recognition of the principle to which I have referred and it is applicable to this case. If the principle had been canvassed in *In re Miller's Agreement* [(1947) Ch. 615], it should I think have been held there that the daughters had a right at common law to sue for their pension, a right which was reinforced by section 56. I cannot believe that the covenantors there could break their contract with impunity. So much for the question of principle.

Mr. Nield did urge that the benefit of the covenant should not run with the land here because there was no clearly defined piece of land to which it was attached. It is true that the agreement did not describe the lands by *metes and bounds*, but it did give a description of them which was capable of being rendered certain by extrinsic evidence ; and that is sufficient. *Id certum est quod certum reddi potest.* Mr. Nield also argued that there was no

servient tenement. But that is only material when there is a question whether the burden of a covenant runs with the land. This is a question of the benefit running, and ever since The Prior's case it has been held that the covenantor is liable because of his covenant given to the owner of the dominant tenement and not because of his relationship to any servient tenement. In my opinion, therefore, the board are liable to the plaintiffs in damages for breach of covenant. It is thus unnecessary to consider whether they are liable in tort, but I will add a word about it. The decision of the House of Lords, in the East Suffolk case (1941) A.C. 74, shows that in the absence of a contract, a catchment board is under no duty to excercise its powers with efficiency or dispatch or at all; but it also shows that if it does exercise its powers it must use reasonable care not to injure persons likely to be affected by its operations. The present case is very different from that one, because here the landowners, in consequence of the works done by the board, ploughed up the land and cultivated the fields ; and in the result suffered damage which they would not have done if the board had done nothing, for in that case they would have had no crops there. The decision of the House of Lords does show, however that, in considering whether the board broke its duty in tort, it is material to inquire into the expense of the works which it is said they ought to have constructed. An adjacent landowner must not be too critical if the board prefers thrift to efficiency, I suppose on the principle that he should not look a gift horse in the mouth and must be prepared to take it with some faults. But the duty in contract is a very different thing. There is no question of a gift horse there. The landowner paid his contribution in return for the board's promise, and they are in duty bound to fulfil it. I agree, therefore, that the appeal should be allowed."

Per Somervell, L.J. :

" .... In *Rogers* v. *Hosegood* [(1900) 2 Ch. 388, 395, 2 M 2], Farwell, J., said "Covenants which run with the land must have the following characteristics : (1) they must be made with a covenantee who has an interest in the land to which they refer ; (2) they must concern or touch the land...."

Section 37. *Valuation of shares in a private company where alienation is restricted.*—Where the articles of association of a private company contain restrictive provisions as to the alienation of shares, the value of the shares, if not ascertainable by reference to the value of the total assets of the company, shall be estimated to be what they would fetch if they could be sold in the open market on the terms of the purchaser being entitled to be registered as holder subject to the articles, but the fact that a special buyer would for his own special reasons give a higher price than the price in the open market shall be disregarded.

With regard to valuation of shares where alienation is restricted, the controller can ascertain the principal value of the shares by reference to the value of the total assets of the company or in such other manner and by such means as may be prescribed. If he is unable to arrive at a satisfactory valuation by reference to the record, history, and accounts of the company he is entitled to estimate the value on the basis of a sale in the open market at the time of the deceased's death on the terms of the purchaser being entitled to be registerd as holder subject to the articles of the company. Here it is stated that the controller shall disregard any higher price which will be given for the shares by a special buyer, who has his own special reasons for offering the higher price. In other words, the principal value of the shares shall be the price which a hypothetical purchaser in the open market at the hypothetical sale would pay for being registered as holder of the shares enjoying all the advantages which the deceased enjoyed in respect of the shares and subject to the same restriction which the deceased was under with regard to alienation of the shares. The cases of *Salvesen's Trustees* v. *Commissioners of Inland Revenue* and *Inland Revenue Commissioners* v. *Crossman* lay down certain guiding principles. It is to be remembered that under sections 18, 19 and 41 of the Act the Controller is invested with great powers to enable him to make the valuation.

What is "Open Market" is explained in [(1905) 2 Ir. R. 218] *Attorney-General* v. *Jameson.* The question in this case is what is the estate duty payable by the executors of Henry Jameson in respect of 750 shares in the company of John Jameson & Son held by him at the time of his death on the 15th September, 1901.

The Crown claimed estate duty from the executors in respect of 750 shares. The executors contended that they were only liable to pay duty at the fair value rate, *viz.*, £100 per share. The contention of the Crown on the other hand is stated in the first paragraph of the prayer of the information, *viz.*, " that it may be declared that upon the death of the said Henry Jameson estate duty became payable under the provisions of the Finance Act, 1894, upon the principal value of the said 750 shares in the said John Jameson & Son Ltd. Co. being the price which the same would fetch if sold in the open market at the time of the death of the deceased testator, and that such value is not limited to the par or fair value of £100 a share notwithstanding the special provisions as to the 'fair value' and as to the alienation of the shares of the said company contained in the said article of association of the said company, or that it may be determined in what manner such value is to be ascertained and what

is the principal value of such shares for the purpose of the said Act," and the information asks for an account of the amount due and payable by the defendant's executors.

Per Walker, L.J.: "I think the test of value under section 7, is what the shares would fetch if sold in "open market"—an hypothetical "open market" upon the terms that the purchaser would be entitled to be registered in respect of the shares, but would himself thereafter hold them subject to the provisions of the articles of association, including those relating to the alienation and transfer of them and this price is not limted to the "fair value."

The Trustees of Johan Thomas Salvesan v. *Commissioners of Inland Revenue*
[(1930) IX A.T.C. 43]

"The petitioners were the executors and trustees of the trust disposition and settlement of Johan Thomas Salvesan who died on 24th October, 1926. At the date of his death the deceased owned 33,333 fully-paid shares of £1 each in the South Georgia Co., Ltd. The petitioners on 20th January, 1928 paid estate duty in respect of these shares at the rate of 29 per cent. (which was the rate assessed on the whole estate), the shares being valued at £2 each. The petitioners subsequently claimed that the value of the shares should be fixed at £1 each. By note of assessment dated 2nd October, 1928, the petitioners were assessed for estate duty in respect of the shares on a value of £183,331 being £5, 10 shillings per share. The company was incorporated under the Companies (Consolidation) Act, 1908, on 24th June, 1909 with a capital of £20,000 divided into 20,000 shares of £1 each. The capital was subsequently increased to £100,000 divided into 100,000 shares of £1 each. The company's business consisted chiefly of whaling in the South Atlantic and Antarctic Oceans. The company from time to time received financial advances from the firm of Christian Salvesan & Co.; the members of which were also shareholders of the company. The company was highly successful, especially during the war period, but suffered heavy losses in the years 1918 to 1921 ; with the assistance of the firm, however, the company was enabled to continue its business. In the years 1922 to 1926, the profits were £78,775 (which was applied in wiping off the previous losses), £173,365, £156,775, £329,832 and £280,189 respectively.

The directors throughout the course of the company's history had adopted a very conservative policy with regard to the distribution of dividends and in the last balance sheet preceding the death of the deceased the sum standing to the credit of profit and loss was upwards of £900,000. The assets of the company included a sum of £479,654 due to it from the firm of Christian Salvesan & Co.; and in all amounted to upwards of £1,000,000. Prior to deceased's death the company had expended or committed itself to an amount of £300,000 for the ensuing season's trade.

(Then came the articles of association of the company which impose restrictions on the transfer and sale of shares.)

The petitioners contended that having regard to the restrictions contained in the articles and the highly speculative nature of the company's undertaking, the value of the shares must be taken to be their nominal value, or, alternatively, that the value of £5, 10*s*. per share was excessive.

Held, that the value of the shares ought to be taken at £3 per share on the footing that a purchaser would obtain registration and thereafter hold his shares in the company as a going concern subject to the articles of association."

Per Lord Fleming : "I refer to my previous opinion issued with reference to the interlocutor of 2nd April, 1929. Following the case of the *A.G.* v.

Jameson [(1904) 2 I.R. 644] and [1905) 2 I.R. 218] I held that the principal value of the shares belonging to the late Mr. J.T. Salvesan fell to be estimated at the price which, in the opinion of the Commissioners, they would fetch if sold in the open market on the terms that the purchaser should be entitled to be registered as holder of the shares and should take and hold them subject to the provisions of the articles of association, including the articles relating to the alienation of transfer of shares....There are, however, two points upon which it is necessary to make some addition to what I then said. The hypothetical buyer in the open market is presumed to be able to obtain registration of the transfer in his favour, but thereafter he is deemed to hold his shares subject to the provisions of the articles of association. I think that this means that he is deemed to hold them subject not only to the disabilities imposed by the articles but also the privileges conferred by the articles, and that he has accordingly the same rights as the orignal shareho ders had to transfer his shares to his relatives or to his executors in terms of the articles of the association. Similarly, in the event of any other member desiring to sell his shares, he would have the same rights as the original shareholders to acquire a proportion of them in terms of the articles. The fact that the hypothetical buyer is deemed to have the right not only to hold the shares himself but to transfer them in terms of the articles to relatives and other persons, is a circumstance which has got to be taken into account in considering the effect of the restrictive conditions on the value of the shares....The estimation of the value of a share in a company, whose shares cannot be bought and sold in the open market, and with regard to which there have not been any sales on ordinary terms, is obviously one of difficulty....Counsel for both the petitioners and respondents accordingly assumed that the prospective buyer would inform himself of all the relevant facts and in particular would have made available to him, the accounts of the company. The relevant facts may, I think, be classified under the following heads: 1. The History of the Whaling Industry. 2. The History of the Company from its inception to the date of the testator's death. 3. The prospects of the industry and the company. 4. To what extent the restriction in the articles might be expected to depreciate the value of the shares.

(Then he deals with the history of the Whaling industry of the company, the different matters which the hypothetical buyer would investigate, and he proceeds.)

"Having dealt with the different matters, which I think the hypothetical buyer would investigate, I must now direct my attention to the views of the experts for the petitioners and for the Crown. Mr. Roberston-Durham and Mr. Macfarlan, who gave evidence on behalf of the petitioners, took the view that the prospective purchaser would look for a return of 15 per cent on his investment and on this basis they valued the shares at £1, 6*s*, 8*d*.... Sir William M'hintock and Professor Annan, who gave evidence for the Crown, were prepared to concede to the prospective investor a return of 40 per cent. The difference between Mr. Robertson Durham and Sir William M'hintock is, however, this. Mr. Robertson-Durham's figure of 15 per cent is based upon the dividened actually paid to the shareholders and does not take account directly at all events, of profits actually earned, but not distributed as dividened. As I have already pointed, there was, I think, little risk of the dividend, which the company had been paying, not being maintained in the intermediate future. But I cannot think it is right to ignore the very large sums which this company had actually earned but had not distributed as dividend . . . . I accept the evidence which was given by Sir William M'hintock as regards this matter with the exception, that I do not subscribe

to his view that the shareholders acted irrationally in not distributing the profits which they had earned....If a company retains reserves beyond what can be utilised in the business, the only other thing that can be done with the money is to invest it outside the business in which case the shareholders get the benefit of the interest and diviends therefrom.

"The last matter which I have to consider is the effect which the restrictive conditions in the articles would have on the value of the shares ; I may say at once that I regard these restrictions as depreciating their value considerably ....The estimation of the value of shares by a highly artificial standard which is never applied in the ordinary share-market must be a matter of opinion and does not admit of precise scientific or mathematical calculation....Giving the best consideration I can to all the different matters to which I have referred to I estimate the value of a £1 share in this on 24th October, 1926, at £3."

Attorney-General of Ceylon v. *Mackie and another* [1952 All England Reporter 775]

In this case the Privy Council observed :—

" The value of these shares at the date of the deceased's death is a question of fact which must be decided on the evidence which was led. That evidence has been very fully considered by the learned judges of the Supreme Court, and their Lordships cannot find that these learned judges have in any way misdirected themselves. It was argued for the appellant that the Supreme Court erred in law in accepting the balance sheet method of valuation because that can only give break-up value and in this case it is necessary to find the value of the business as a going concern. It is true that a purchaser of the shares held by the deceased could have obtained a controlling interest in the company as a going concern, and in their Lordships' judgment it is right to value these shares by reference to the value of the company's business as a going concern. No doubt, the value of an established business as a going concern generally exceeds and often greatly exceeds the total value of its tangible assets. But that cannot be assumed to be universally true. If it is proved in a particular case that at the relevant date the business could not have been sold for more than the value of its tangible assets, then that must be taken to be its value as a going concern. In their Lordships' judgment it has been proved in this case that the deceased's holding could not have been sold in September, 1940, at a price based on any higher figure than the value of the tangible assets of the company."

Chamberlain v. *Commissioners of Inland Revenue* [XXV Tax Cases 317]

Per Lord Thankerton : " .... The Appellant and his brother carry on a successful business in the building trade, through a company formed by them, called Commercial Structures, Ltd. They desired to make some provision for their children, and, while they adopted similar measures to secure this end, I need only deal with the steps taken by the Appellant.

" 1. In December, 1935, the Appellant caused Staffa Investment Trust, to which I will refer as " Staffa ", an unlimited company with a share capital, to be incorporated under the Companies' Act, 1929. The initial capital of Staffa was £100,000 divided into 50,000 preference shares of 10*s.* each and 7,500 ordinary shares of £10 each. Three days later, by an agreement dated 23rd December, 1935, the Appellant sold to Staffa for £100,000, 470 shares of £1 each in Commercial Structures Ltd., the price being satisfied as follows : as to £17,500 thereof, by the issue to the Appellant of 35,000 preference shares of Staffa ; as to £82,500, this sum was left on loan to Staffa free of interest.

"2. The next step was the execution of a deed of settlement dated 10th March, 1936, under which the Appellant paid to trustees £3,500, which was forthwith invested by the trustees in 350 ordinary shares of £10 each of Staffa, and was to be held on the trusts set out in the deed in favour of the Appellant's wife and four children. It is agreed that the terms of this settlement are such that under section 38 (2) of the Finance Act, 1938, any income arising under the said settlement from property comprised therein must be treated as the income of the Appellant.

"3. The enactment of section 21 of the Finance Act, 1936, admittedly caused a reconsideration of the position by the Appellant and the consequent measures taken in this step and the next one. The Appellant was in voting control of Staffa, and possessed wide powers as governing director under article 40 of Staffa's articles of association. At an extraordinary general meeting of Staffa on 3rd December, 1936, article 3 of the articles of association was altered so as to divide the 7,500 ordinary shares into 350 *A* ordinary shares of £10 each (being those held by the trustees of the settlement of March, 1936), 1,750 *B* ordinary shares of £10 each, 1,750 *C* ordinary shares of £10 each, 1,750 *D* ordinary shares of £10 each, and 1,900 *E* ordinary shares of £10 each. The voting rights were not altered, and each class was entitled only to such dividend (if any) as the company should in general meeting determine.

"4. On 7th December, 1936, the Appellant executed four deeds of settlement, under which he paid four sums of £100 each to the trustees under each deed, respectively, to be invested as the Appellant should direct and to be held by them on trust for each of the Appellant's four children, all of whom were then infants. These settlements are irrevocable. The four sums of £100 were invested, respectively, by the trustees in the purchase, respectively, of ten *B*, *C*, *D* and *E* £10 ordinary shares of Staffa. In March 1937, the trustees of each of the four settlements invested the amount of dividends received by them in the acquisition of 1,025 £10 shares of the same class, respectively, as the ten shares already held by them.

"The assessment under challenge was based upon the view "that the said "settlements of 10th March, 1936, and 7th December, 1936, together with the incorporation and structure of Staffa, constitute an arrangement amounting to a "settlement" within section 41 (4) (*b*) of the Finance Act, 1938, "and that the Appellant is the settlor."

"The assessment was arrived at as follows. In the year ending 5th April, 1938, Staffa paid to each of the trustees of the four settlements of 7th December, 1936, dividends in respect of their holdings, amounting in each case to £2,932 10*s*., gross which absorbed £11,730 of the income of Staffa for that year. No dividends have ever been paid in respect of the *A* ordinary shares, held by the trustees of the settlement of 10th March, 1936. Staffa had also paid to the Appellant dividends on his preference shares amounting to £875. The actual income of Staffa for that year was £12,773, and the balance of £11,898 remaining after deduction of the preference dividends paid to the Appellant, has been treated as the income of the Appellant under section 38 (2) of the Finance Act, 1938, and the additional assessment under appeal has been made on the Appellant in respect thereof.

"The learned Attorney-General maintained—as, indeed, had been held by the Commissioners and both Courts below—that, in this case, the "income "arising under the settlement" within the meaning of section 38, was the income of the company, and that "the property comprised in the settlement" was the property held by the company, and he agreed that if his contention was wrong, the assessment could not stand, and it follows

that it would be unnecessary, in that view, to deal with any of the other contentions in the case. In my opinion this contention is wrong, for reasons which can be stated very shortly.

" I may premise that, in seeking the due application of section 38 of the Finance Act of 1938, each case is apt to depend on its own facts and other cases are not likely to be of material assistance. Further, it seems to me that, while the word " settlement " is defined in the widest terms, the more crucial point is likely to be the determination of what the " property comprised " in the settlement " consists of in the particular case. The present case affords, in my opinion, a good illustration of this point, and the question may be thus stated. Did the property comprised in the settlement consist of the whole assets of Staffa, or is the property comprised in the settlement to be found separately comprised in each of the five deeds of settlement, the formation of Staffa being part of the arrangement conceived by the Appellant, whereby a convenient and profitable investment was made available for the moneys respectively settled under the five deeds of settlement ?

" My Lords, I am of opinion that the latter alternative provides the correct view of the arrangement made by the Appellant, with a view to making provision for his children. While the formation of Staffa provided an available investment for the sums settled under the five deeds of settlement, under which the children's provisions were actually constituted, the continuance of such investment was not essential to the continuance of the trusts under the deeds of settlement. In other words, the sums settled under these deeds were the funds provided for the purpose of the settlement within the meaning of section 41 (4) (*c*). Staffa, though controlled by the Appellant, did not, in my opinion, hold its assets as part of the provisions settled on the children. I am of opinion that the whole assets of Staffa did not constitute the property comprised in the settlement, and that the assessment cannot stand."

Per Lord Macmillan : " .... I am accordingly of opinion that these appeals should succeed. The Legislature must try again, unless by legislation since 1938 it has already defeated such ingenuity as the Appellants have displayed."

Attorney-General v. *Lloyds Bank, Ltd.* [1935 A.C. 382]

The facts of the case appear sufficiently from the judgment.

Per Lord Tomlin : " My Lords, the questions raised by this appeal are concerned with the estate duty which became payable on the death of Mrs. Josephine Lawrence Butler, whom I will call the settlor, in respect of a fund settled by her in her lifetime. The settlement in question was dated November 20, 1925. The respondents were made the trustees of it and the property settled consisted of 20,000 fully paid deferred shares of £10 each in a company called Butler Estates Company, Ltd.

The trusts declared of the shares and of the investments for the time being representing the same were (subject to a special power of appointment by the settlor) to divide the trust fund into three equal shares and to appropriate one such share to each of the settlor's three children—namely, Vera Lawrence Butler, Patience Mourilyan Butler and Francis Charles Joseph Butler, but so that the respondents should retain the shares so appropriated and should hold the share of each such child upon trust until such child should attain the age of twenty-one years, or being a daughter marry, to apply the income at the respondents' discretion for his or her maintenance, education or benefit, and to accumulate the surplus, and after such child should have attained the age of twenty-one years or being a daughter have married to

pay the income to such child during his or her life (with a discretionary trust in the event of alienation) and at the death of such child in trust for the children or remoter issue of such child as such child should appoint with a provision in default of appointment and a provision for the accruer of any share in respect of which the above mentioned trusts should fail.

No dividend was declared in respect of the shares between the date of the settlement and the date of the deed of appointment which I shall next mention, and consequently no income was during that period paid or applied in accordance with the above mentioned provisions in default of appointment contained in the settlement.

By a deed of appointment dated September 26, 1928, the settlor in exercise of the power for that purpose given to her by the settlement appointed that the respondents should stand possessed of the trust fund upon the trusts declared in the first five clauses of the appointment. . . .

The appointment contained a power of revocation exercisable by the settlor by deed or will. This power was never in fact exercised and the settlor died on October 15, 1930, leaving the appointment in operation, and survived by her three children named in the settlement and appointment. The three children are all living and none of them has ever been married.

The Crown by information claimed that upon the death of the settlor estate duty at the appropriate rate became payable under section 1 of the Finance Act, 1894, in respect of the principal value of the trust fund including the accumulations or alternatively under section 2, sub-section (1) (*d*), of the same Act in respect of the life interests therein of the three children of the settlor. . . .

The Crown now appeals to your Lordships' House against both orders of the Court of Appeal, contending that estate duty at the appropriate rate became payable under section 1 of the Finance Act, 1894, in respect of the principal value of the trust funds (including the accumulations) or alternatively that, if this was not so, duty became payable under section 2, sub-section (1) (*d*), and that the second declaration of Finlay, J.'s, order was in the right form. . . .

As was made clear by Lord Macnaghten in *Earl Cowley* v. *Inland Revenue Commissioners* [(1899) A.C. 198], section 1 of the Finance Act, 1894, gives effect to the principle that whenever property changes hands on death the State is entitled to step in and take toll of the property as it passes without regard to its destination or to the degree of relationship, if any, that may have subsisted between the deceased and the person or persons succeeding, while section 2 is subsidiary declaring that the expression "property passing on the death of the deceased" shall be "deemed to include" certain things classified under four different heads to no one of which rightly understood is that expression literally applicable. The property which is envisaged as passing is the beneficial interest in property.

The first question to consider, therefore, is: Did any property in fact pass by reason of the settlor's death? Now upon this part of the case the question seems to me to depend upon the proper construction to be put upon the appointment. On behalf of the Crown it is urged that the effect of the appointment is, first, during the life of the settlor to create a trust for the accumulation of the income of the fund by adding the same to the corpus for the benefit of those who take under the settlement which springs into existence at the settlor's death according to their respective interests under that settlement; and secondly, to create as from the settlor's death a settlement of the original trust fund and the accumulations under which there then arise for the first time life interests in favour of the three children in the original

trust funds and the accumulations, followed by trusts for their issue with accruer clauses between the several stocks. Upon that view of the appointment it is contended that by reason of the death of the settlor property actually passed because the trust for accumulation ceased and the life interests of the children sprang into being for the first time.

On the other hand the respondents contend, first, that the rule commonly known as the rule in *Lassence* v. *Tierney* (1 Mac. and G. 551), approved and applied by your Lordships' House in *Hancock* v. *Watson* [(1902) A.C. 14], operates in the present case, with the result that upon the true construction of the appointment there is an absolute initial gift to the three children of the settlor in equal shares, and that the absolute initial gift of each share is only cut down if and when and while there is in existence some person qualified to take under the trusts of such share declared in derogation of the absolute gift and to the extent necessary to give effect to the rights of such person; and, secondly, that upon this view of the construction nothing passed by reason of the settlor's death.

My Lords, I am satisfied that the frame of the appointment is such as to attract the application of the rule in *Lassence* v. *Tierney*, which admittedly is to be regarded in construing non-testamentary instruments as well as in construing testamentary documents; the nature and effect of the rule is stated by Lord Davey in *Hancock* v. *Watson*, in these terms: "It is settled law that if you find an absolute gift to a legatee in the first instance, and trusts are engrafted or imposed on that absolute interest which fail, either from lapse or invalidity or any other reason, then the absolute gift takes effect so far as the trusts have failed to the exclusion of the residuary legatee or next of kin as the case may be."

In the present case it is to be observed that the gift is in the first instance absolute in form "in trust for the three children. . . . in equal shares" and that, in the engrafted trusts introduced by the words "but so that" there is a direction for dealing with the thing described as "the share which after the death of the said Josephine Butler" (the settlor) "shall be so held in trust for each of the said three children," and throughout the clauses containing the engrafted trusts there are phrases indicating ownership such as the "share of each child" or "the shares in the trust fund of the others of the settlor's three children." Further I cannot find in the language of the engrafted trusts anything appropriate to have effect if there be a failure of the stocks of all three children. Having regard to the language and circumstances to which I have called attention I am of opinion that the case is one to which the rule in *Lassence* v. *Tierney* falls to be applied. Further, the result applying the rule is I think, that the absolute gift stands, or, to employ Lord Davey's language, "takes effect," except to the extent to which it is cut down by the events which actually happen. At the death of the settlor nothing had happened to cut down the absolute gifts beyond the fact that all three children were living.

No doubt in respect of each share the absolute gift was defeasible because it might be defeated to a limited extent by the other children surviving so as to enjoy a life interest in it, or by the birth of issue becoming entitled under the trust, but the defeasibility was not ended by reason of the death of the settlor and even it if had been that would not have constituted a passing under section 1 of the Act; See *Adamson* v. *A. G* [(1933) A.C. 257]. But for the possibility of the birth of issue the three children together could in the settlor's lifetime have stopped the trust for accumulation and demanded a transfer to themselves of the whole fund and the accumulations. To-day, after the settlor's death, the position is the same. But for the possibility of

the birth of issue the three children together could require that the whole fund and the accumulations should be transferred to them on their joint receipt. Their interests to-day are the same as they were before the settlor's death, *i.e.*, they together own the whole fund and the accumulations subject to the same defeasance. Their position in this regard has not been altered by the settlor's death.

If there has been a passing of property on the death there must have been a passing or shifting of the beneficial interest in the fund from one to another. But if the only persons beneficially interested in the fund immediately after the death (subject though their title is to the same possibility of defeasance) where is any passing or shifting to be found ? In my opinion there is none.

It is admitted by the respondent that if there is no passing under section 1 of the Act, section 2, sub-section (1) (*d*) will come into operation.

The question is how duty under the provision is to be assessed. It is I think clear that it is exigible only upon the amount of the excess (if any) by which the value of the interest accruing by reason of the death exceeds the value of the interest (if any), before the death, and the order of Finlay, J., in this regard was wrong in form.

The respondent, though he has not appealed against the order of the Court of Appeal which dealt with this, has criticised its form as possibly precluding him from saying that the excess in the present case is nil.

I do not think that in the circumstances, your Lordships would desire to modify the form of that order, but as it has evidently been based upon the declaration proposed by Lord Warrington of Clyffe in *Adamson* v. *Attorney-General*, I may perhaps be permitted to say that in my opinion Lord Warrington of Clyffe did not intend to hold that in every case within the ambit of section 2, sub-section (1) (*d*), the value of the interest after the death must necessarily exceed the value of the interest before the death.

Further, having regard to some of the observations in the Courts below, I may perhaps also venture to observe that the *ratio decidendi* in *Adamson* v. *A. G.*, is not that on the execution of the settlement the beneficial interest in the whole fund passed out of the settlor but that it passed out of the settlor to the children whose interest was the same both before and after the death of the settlor subject only to this, that a possibility of defeasance came to an end with the death and that the cesser of that possibility of defeasance did not constitute a passing.

In the result, therefore, I am of opinion that this appeal fails on both points, and should be dismissed with costs."

Commissioners of Inland Revenue v. *Ethel Maclean Crossman and others*
Commissioners of Inland Revenue v. *Sir Edward, Bt. and others*

[(1937) A.C. 26]

Shares in Company—Restrictions on alienation and transfer-sale—value of property—"in open market", section 7, sub-section (5) of the Finance Act, 1894. An authoritative decision is given by the House of Lords in this case. In spite of restrictions on transfer and alienation of shares under the articles of the association of the Companies, it has been held in this case (1) that the value of the shares should be on the basis of sale in the open market as on the date of death of the deceased. Such a sale is no doubt an hypothetical sale, (2) that in arriving at the open market valuation the value of the shares should not be appreciated by reason of the special value of the shares to certain companies and individuals who are prepared to purchase them at fancy value. The short facts of the case are these : Sir William Thomas

Paulin was the holder of 1,600 ordinary shares of £100 in a Companynamed Mann, Crossman and Paulin Ltd. By his will he specifically bequeathed 500 of his ordinary shares to each of his two daughters. The remaining 600 ordinary shares formed part of the testators residuary estate. The testator died on 26th February, 1931. The Company registered the 1000 shares in the names of the daughters. It also found purchasing members for the 600 shares and these were duly transferred to these purchasing members. The Company's valuation of the 1000 shares is at the rate of £221-4-5 a share. As regards the 600 shares the valuation was made at the rate of £209-13-8. The Inland Revenue Commrs. declined to accept the valuation made by the Company and insisted that the valuation of the shares should be in open market as on the date of the death of the deceased and if such a valuation is adopted the value of each share would be far higher. It is worthwhile at this stage to set out the contention of counsel on behalf of the Revenue. " At the death of Sir William Paulin he was in full possession and enjoyment of shares in the Company. That was the property which passed on his death. That unrestricted interest in possession is the property, the price of which in the open market is to be estimated as the principle value of the property passing on his death. While he lived he was in unrestricted possession of it. If he had attemped to dispose of it, no doubt his power of disposition would have been fettered by restrictions ; but he never attempted to dispose of it and property in his hands was free from any restriction. That unrestricted property passed on his death, and the principal value of that property in unrestricted possession "shall be estimated to be the price which.... such property "—*i.e.*, property in unrestricted possession—" would fetch if sold in the open market ". The purchaser in the open market must be put in the shoes of the deceased shareholder. The respondents would substitute for this measure of value the price which a purchaser subject to all the restrictions of article 34 would give. That is not the value which is defined by the Finance Act. Restrictions on transfers, options of purchase, and rights of pre-emptions over shares in a Company given by the articles of its association are not an essential part of the property represented by its shares, but are matters of collateral contract affecting only the title to the property. They are analogus to the covenants in a lease which are no part or parcel of the property demised ".

Says Viscount Hailsham, L.C., in dealing with the argument, at p. 40 : " It seems to me essential to determine what is the property which has to be valued.... His Lordship Macnaghten pointed out in *Cowley* v. *Commissioners of Inland Revenue* [(1899) A.C. 198], what the Act has in view for the purpose of taxation is property passing on death, not the interest of the deceased, which, if it be a limited interest, can never pass. In my view, the property which passed at the death of the deceased consisted of the shares in the Company, and this is not the less true because the terms of the articles limited the rights of the deceased shareholder or of his executors to deal with the shares, and gave certain privileges and rights of pre-emption on his death. If I am right so far, it follows that the Commissioners have to estimate the price which the shares would fetch if sold in the open market at the time of the death of the deceased."

The Court of Appeal have cited the well known passage in the judgment of Farwell, J., as he then was, in *Borland's Trustee* v. *Steel Brothers & Co.* [(1901) 1 Ch. 279, 288], as to the nature of a share. It is, as the learned judge there states " the interest of a shareholder in the company measured by a sum of money, for the purpose of liability in the first place, and of interest in the second, but also consisting of a series of mutual covenants entered into by all

the shareholders *inter se* in accordance with section 16 of the Companies Act, 1862. The contract contained in the articles of association is one of the original incidents of the share." "This definition seems to me to show, with all respect to the opinion of a very learned judge, that the view entertained by Palles, C.B., cannot be supported. And indeed the Crown did not seek to support it in the present case. To value the shares on the basis that the restrictions contained in the articles were to be ignored would be to value a property which the deceased never owned and which did not pass on his death. But it seems to me that the same reasoning is fatal to the conclusion reached by the majority in the Court of Appeal. Under the articles it is not possible to sell the shares in the open market until they have been offered to and refused by the existing shareholders. In order, therefore, to comply with the provisions of section 7, sub-section (5) of the Finance Act, it is necessary either to assume a sale in the open market of the shares, or else to limit the property to be valued to that which could be sold in the open market. The latter is the alternative which the Court of Appeal have preferred. Since the articles forbid a sale in the open market until the rights of pre-emption have been exhausted, all that the executors could sell in the open market at the time of the death was the right to receive the restricted price fixed by article 34, sub-clause (14) (*a*), from any shareholder exercising his right of pre-emption. Obviously the value of this could not exceed the sum which such a shareholder would have to pay and accordingly the Court of Appeal have held that that sum, *i.e.*, the restricted price, is the value in the open market."

"My Lords, it seems to me that this construction involves treating the provisions of section 7, sub-section (5), as if their true effect were to make the existence of an open market a condition of liability instead of merely to prescribe the open market price as the measure of value. The right to receive the price fixed by the articles in the event of a sale to existing shareholders under sub-clause (14) (*a*) is only one of the elements which went to make up the value of the shares. In addition to that right, the ownership of the share gave a number of other valuable rights to the holder, including the right to receive the dividends which the Company was declaring, the right to transmit the share in accordance with article 34, sub-clauses (1), (2) and (3), and the right to have the shares of other holders who wished to realize offered on the terms of article 34, sub-clause (14) (*a*). All these various rights and privileges go to make up a share and form ingredients in its value. They are just as much part of the share as the restriction upon the sale. The construction placed upon the statute by the Court of Appeal seems to me to ignore all these elements in the value of the share and to treat as its value what, in truth, is only the value of one of the factors which go to make up that share. But the purpose of section 7, sub-section (5), is not to define the property in respect of which estate duty is to be levied, but merely to afford a method of ascertaining its value. If the view entertained by the Court of Appeal were correct, it would follow that any property which could not be sold in the open market would escape estate duty altogether. That seems to me quite an unnecessary and unnatural construction to place upon the language of the statute. In the words of Lord Buckmaster in *Poplar Assessment Committee* v. *Roberts* [(1922) A.C. 93, 100], "so to interpret the statute would be to deal with something which was nothing but a measure of value in such a manner as completely to destroy the very object for which that measure was set up." On the other hand, I can see no difficulty in treating the sub-section as meaning that the Commissioners of Inland Revenue are to assume that the property which is to be valued is being sold in the open market and to fix its value for estate duty purposes upon that hypothesis. A somewhat similar problem is familiar in rating cases. There the Legislature has fixed

the rateable value as the rack-rent on a yearly tenancy. It has long since been established that the fact that the premises cannot actually be let on a yearly tenancy does not exempt them from liability for rates. Indeed in those cases, in order to arrive at the rateable value the Courts have had to embark upon speculations far more difficult and artificial than any involved in the present case. I think that full justice is done to the meaning of the sub-section if the property to be valued is determined by the earlier sections and section 7 is treated as being merely a statutory direction as to the method by which the value is to be ascertained. In order to comply with that statutory direction, it is necessary to make the assumptions which the statute directs. This is not to ignore the limitations attached to the share. In the present case a share in such a Company as this, with an unrestricted right of transfer, would probably be worth at least twice as much as the 355*l.*, which is fixed by Finlay, J. On the other hand, the effect of the construction which I am putting upon the section seems to me to be the only one which does enable the provisions of sections 1 and 2 of the statute to be carried into effect and which ensures that the property in respect of which estate duty is levied shall include all that property which passes on the death of the deceased and not merely such part of that property as could be disposed of in open market. For these reasons, I think the decision of the majority of the Court of Appeal was wrong, and that the cases of Jameson in (1905) 2 I.R. 218 and Salvesan in 1930 S.L.T. 387, were rightly decided. This is sufficient to dispose of the principal point in the case.

There is, however, a subsidiary point upon which I must now say a few words. Before the learned judge at the hearing of the petitions, evidence was given on each side as to the value which ought to be placed upon the shares upon various hypotheses. The evidence which the learned judge seems to have accepted was that of Lord Plender, who was called on behalf of the petitioners ; upon the basis of his figures, the learned judge fixed the value, on the hypothesis which I have held to be the correct one, at 351*l.* in the Crossman case and 355*l.* in the other. In fixing those figures, it appears from the judgment that Lord Plender " did not exclude anybody or include anybody in particular ; he considered the matter generally." In my opinion that is the right way in which to arrive at the value in the open market. But the learned judge goes on to say that evidence was called for the Crown which indicated that a particular Trust Company would be willing to give a good deal more than the ordinary market price, because of certain particular attractions which the prospect of getting upon the share register would hold out for such a company. The learned judge says that he excluded Trust Companies from the possible buyers because he had evidence to satisfy him that the directors would not have consented to put them upon the register. I cannot think that this is a proper reason in the view which I have taken as to the construction to be put upon the sub-section of the Act. On the other hand, I think it is a fair construction to put upon the learned judge's judgment that the extra sum which could be obtained from Trust Companies was not an element of the value in the open market, but rather a particular price beyond the ordinary market price, which a Trust Company would give for special reasons of its own. I do not think that it would be right to appreciate the value of the shares because of this special demand for a special purpose from a particular buyer."

Lord Blanesborough at p. 49, observes : " But may I by way of introduction and preface, say one or two things, general in character ? The question at issue between the Crown and the respondents should be recalled. It has been happily stated by Romer, L.J., in (1935) 1 K.B. 26, 55 as follows:—

" Are the shares to be valued " ' under section 7, sub-section (5), of the Act ' " on the footing that a purchaser would, in spite of the articles of association, be forthwith entitled to be put upon the Company's register in respect of them, or are they to be valued upon the footing that the purchaser would only obtain such right in respect of the shares as Sir William Paulin could at the time of his death have conferred upon him consistently with these articles."

The first of the Lord Justice's alternatives embodies the Jameson principle, applied by Finlay, J. The second is that finally adopted by Slesser, L.J., and himself, and I would at once emphasize with regard to it the fact that the value so arrived at was in the Lord Justice's view the " principal value " of the only property in the shares which passed on the death of the deceased—the duty, as he exlpained at the commencement of his judgment, being chargeable only under section 1 of the Act. The seriousness for this reason in the difference between the two alternatives will emerge as we proceed.

I would next generally observe that the working of section 7, sub-section (5), of the Finance Act in some respects at least is now well ascertained. Some principles governing its application are either accepted or easily justified. If these are borne in mind in this case the issue of the appeal, otherwise confused and involved, becomes, as I venture to think, relatively clear if not indeed inevitable.

Here are some of the fundamentals on which the working of section 7, sub-section (5), must now, in my judgment, be taken to proceed :—

(1) The " property " the " principal value " of which is thereunder to be estimated by the Commissioners is the whole property brought into charge by the Act, and not a part of it only.

(2) Such " property " may include many items over which the deceased had no power of disposition while he lived and over which his executor has none after his death.

(3) If the duty of the Commissioners is, as I think, to estimate the price which the " property " as at the time of the deceased's death would fetch in the open market, were it there to be offered for sale, it is unnecessary to inquire by whom the property would hypothetically have to be offered. It must not, however, be assumed that property passing under section 1 whose price in the market is to be estimated by the Commissioners, is necessarily or even relevantly confined to property at the disposition there either of the deceased or his legal personal representative. A consideration of the circumstances surrounding the notional sale under the section of the corpus of settled property which in terms passes on death under section 1, displaces of itself any such assumption. In such a case the deceased normally never has had in the corpus of the settled property any interest at all, while his interest in the income has ceased with his death. In other words any decision which would confine property passing under section 1 of the Act, to property of which the deceased or his representative could dispose in the open market must be justified, if it is to be accepted. Is that limitation attached by the Court of Appeal in the present case tenable ? That is the question the respondents have to face.

(4) Except in cases with section 3 of the Finance Act it is quite immaterial to whom the property has actually passed, whether to purchasers, legatees, or, in the case of pre-empted shares, to other members of the Company issuing them. The question for the Commissioners is not to whom has the property passed. The question is whether it has passed at all. If it has passed, then subject only to a case covered by section 3, no existing contract with reference to the property, although it be binding on the deceased's estate, has any influence upon the Commissioners' estimate of the price which in the open

market the property would fetch. In this connection section 3 of the Act, quite neglected by the Court of Appeal, and with its importance emphasized so far only by Palles, C.B., will be found to be illuminating. For the moment, however, I pass the section by ; observing, as I conclude this general survey, the indication thereby supplied, that the solution of the difficulty between the Crown and the respondents in the present case will ultimately turn upon the answer to two questions :—

(1) What was the property in his ordinary shares which passed or, it may be, was deemed to pass upon the death of the deceased ; and

(2) What influence, if any, does the pre-emption clause in article 34 exercise over the parcels to be included in the notional sale of that property as envisaged by section 7, sub-section (5) of the Act.

Proceeding now to deal with the case presented by the Crown my answer to the first question is that it was the deceased's entire legal and equitable interest in his ordinary shares which so passed ; each share a separate entity—a " property " within the meaning of the Act charged to duty as it passed " in the ordinary sense of the term from the deceased into the possession and property of another person after his death " : see *Per* Lord Watson in *Attorney-General* v. *Beech* (1899 A.C. 53, 58). And, my Lords, I desire to emphasize the fact that the property which so passed was " one indivisible piece of property " as FitzGibbon, L.J., described it to be in Jameson's case [(1905) 2 I.R. 218, 228]. *Borland's Trustee* v. *Steel Brothers and Co.* [(1901) 1 Ch. 279], outstanding decision as in its proper sphere it is, had as its purpose an analysis of the nature and effect of the different rights and incidents attached to a share, so as to enable a decision to be taken as to their legality in instances in which legality was questioned. But the judgment does not suggest that a share in a joint stock company may not properly be described in Fitz-Gibbon, L.J.'s, words or by others to the like effect. A tribunal would be rash indeed to deny that description to things which pass as such by transfer in myriads, I suppose, every month if not every week, and pass only less frequently by transmission, surrender, or on forfeiture. As such a piece of property a share may be the subject of lien, and in the case of the *Bradford Banking Co.* v. *Briggs* [(1886) 12 App. Cases 29], the shares over which the lien there extended were, not once only, referred to by Lord Blackburn as " property ". Again the *Colonial Bank* v. *Whimney* [(1886) 11 App. Cas. 426, 434], where shares in a railway company were held to be included in the expression " choses in action " in the proviso to the order and disposition section of the Bankruptcy Act, 1883, Lord Blackburn in his judgment, speaking of the shares in question in that very case, said that they were also " personal chattels " the property in which did not pass by mere delivery but did pass by a deed of transfer duly stamped. I cannot bring myself to doubt that it is in this sense and in this sense only that shares in joint stock companies are " property " within the meaning of the Finance Act charged to duty under section 1 as therein stated. To all the shares here in question I would *mutatis mutandis* apply the words already referred to used by FitzGibbon, L.J., in Jameson's case [(1905) 2 I.R. 218, 228] :

" Each of " the 750 shares there in question, he said, " with all rights and liabilities, and all advantages and disadvantages, incident to its ownership, passed on Henry Jameson's death to his executors as one indivisible piece of property. In conveyancing phraseology, the executors took each share ' to hold in as full and ample a manner as the same was held by Henry Jameson at his death.' " And later the Lord Justice adds at p. 230 : " The basis of my construction of the Act is the unity and indivisibility of Henry Jameson's

property in the shares. I cannot adopt any procedure, or accept any solution of the question in dispute, which splits up that interest for any purpose."

And at this point, my Lords, I venture to insist upon the importance no less than the soundness of the above views of the Lord Justice as applied to the shares in the present case. First, it is, I think, of quite major importance to the whole commercial community that these views, if they are sound, should be upheld. The troubles which would follow any departure from them were well illustrated by Mr. Radcliffe's argument on behalf of the respondents. Applied to the ordinary shares of this Company, with the discrimination in the articles against female holders, the analytical method advocated by counsel would attribute one quality and character to the shares held by women, and another to the shares held by men. And, in varying degrees, no one share of an issue would be like another. The truth indeed is that *Borland's* case [(1901) 1 Ch. 279]—most apposite in *Jameson's* case when in the Divisional Court [(1904) 2 I.R. 644], where the legality of the restrictions on the shares there in debate was the main question at issue—ceases to be important (I had almost said that it ceases to be relevant) in this case, where the complete legality of article 34 is in every particular fully recognized. And secondly I venture to insist upon the view of the Lord Justice in order that with its support I may meet in advance a view presented by Palles, C.B., in his judgment in *Jameson's case* [(1905) 1 I.R. 218], one which although not accepted by the Irish Court of Appeal then, nor alluded to by either Slesser, L.J., or Romer, L.J., now, was, at least partially, revived at your Lordships' Bar by learned counsel for the respondents. That view, as expressed by the Chief Baron, was that while the whole legal and beneficial interest in each of the shares then in question passed on the death of the deceased, it so passed in what may be called two parts : (1) the share subject to the right of pre-emption—"property" with section 1 of the Act ; and (2) the right of pre-emption itself—"property", that is, under section 2 (*b*), in which the deceased had an interest ceasing on his death "in respect of which a benefit accrued or arose by the cesser of such interest," and which was therefore "deemed to pass under that sub-section." It was, on this point alone, that FitzGibbon, L.J., differed from the Chief Baron, and upon it for the reasons I have given I find myself at one with the Lord Justice. Later I must refer to this matter again. But if, passing it by for the moment I may now assume that the entire property of the deceased in his ordinary shares did pass on his death under section 1 of the Act, then the ascertainment of the "principal value" of these shares becomes, on the Jameson principle [(1905) 2 I.R. 218], simple and entirely consistent with the scheme of the Act in this regard.

First, as it would indubitably be in the case of the quoted preference shares of the Company, it is the price in the open market obtainable for the shares as at the date of the death which has to be estimated, the price for the shares, each as an entire thing, which have passed to their present registered holders in succession to the deceased.

And, next, if the Commissioners' notional sale is to be a sale of the entire share just as it belonged to the deceased immediately before his death, then registration of the share in the name of the notional purchaser must also be offered. Romer, L.J., concedes this fully. With reference to the property to be valued "it is obvious," he says, "that the Commissioners must assume that the property can be transferred to the hypothetical purchaser."

This same conclusion is thus put by the Chief Baron in *Jameson's* case [(1904) 2 I.R. 644, 683]. The hypothetical sale and purchase, he says, "must be a sale of the property which the deceased had in the shares at the time of his death—that is, of the entire legal and beneficial interest therein,

of that interest by virtue of which the deceased had been, and has been entitled to be, 'a member' of the Company in respect of such shares; a sale by virtue of which the purchaser thereat would have been entitled to have had that which he had bought vested in him in the same manner as it had been vested in the deceased, and consequently under which he would be entitled to be registered as a member in respect of those shares" and later (4), after saying that the supposed sale is being made in the open market on the assumption that the open market is available, the Chief Baron proceeds: "And upon this assumption, which is the supposition the statute directs us to make, we must exclude the consideration of such provisions in the articles of association as would prevent a purchaser at the sale from becoming a member of the Company, registered as such in respect of the shares purchased by him at such supposed sale. If we do not, we do not give effect to the assumption the statute coerces us to make." That is to say, the preventive provisions of the article are to be ignored in relation to the notional sale, whether they provide for the other shareholders' rights of pre-emption or for the approval by the directors of every transfer. Had this principle been remembered or accepted at the hearing of this case, the difficulty created by the directors' proved objection to a trust company as shareholder could never have arisen. It would have been seen at once to be quite irrelevant to the question before the Court.

But the pre-emption rights definitely withdrawn from interference by that general principle, are—and this is a most important aspect of the case—separately ruled out by section 3 of the statute, to which now attention must again be directed. Once more I return to the judgment of Palles, C.B., in *Jameson's case* for a lucid statement of the position, so regarded: "The substance of the argument for the defendant was," he says (1) "that the executors were, on the death of the deceased, under an enforceable obligation to sell the shares at 100*l.* each," (the pre-emption price of the Jameson shares) "and that this obligation ascertained and fixed their maximum value for the purposes of the Finance Act. During the argument I asked Mr. Ronan whether he contended that the provisions in the articles amount to, or contained, 'a *bona fide* contract of purchase of the shares from the deceased for full consideration in money or money's worth paid to him for his own use or benefit' within section 3 of the Finance Act; or that the case was otherwise within that section. He replied that he did not; and, consequently I leave this third section out of consideration altogether."

Now, it is plain that, with reference to the pre-emption rights here—at 209*l.* 13*s.* 8*d.* for each share—no other answer could be given. No one could suggest that that sum was a "full consideration" for any ordinary share at the death of the deceased. It is stated, indeed by Romer, L.J., in his judgment that each of these shares in the name of either of Sir William Paulin's daughters was worth 355*l.* The result therefore is that, it not being possibly to rely on section 3, the existence of the pre-emption right here must be ignored so far as the parcels of the Commissioners' notional sale are concerned.

May I elucidate this position by an illustration, so drawn as to have regard to the regulations in this respect governing the ordinary and preference shares respectively of the Company. Let it be supposed that a deceased person had in his lifetime purchased two jewels from a dealer in Hatton Garden; one a diamond brooch; the other, shall we say, a string of pearls—the pearls an out and out purchase, but the brooch purchased on the terms that if the deceased retained the jewel at his death and died without making it a subject of a specific bequest, the dealer was to have the right to purchase

it from his legal personal representative for, shall we say, 1000*l*. The deceased died intestate, retaining both jewels. At his death the price obtainable for the brooch in the open market was £3000. And this, too, was the value of the pearls. The dealer claimed the brooch from the administrator, as he was entitled to do, at £1000, and it was handed over to him on payment of that sum. In these circumstances what was the "principal value" of the brooch ? Like the value of the pearls, it was, I suggest, undoubtedly £3000 and for the reason that the dealer's pre-emption price was not a "full consideration" protected by section 3 of the Act. So far, the analogy between the brooch and the ordinary shares here is complete, just as is that between the pearls and preference shares in the Company. But there, so far as concerns the ordinary shares and the brooch, the analogy ends. The pre-emption right over the brooch never comes within the purview of the Commissioners at all for the reason that the right does not burden the brooch in the hands of its notional purchaser. But to the ordinary shares in the purchaser's hands the pre-emption rights continue to attach and, affecting the value of the shares, as they do, must be duly discounted by the Commissioners in their estimate of the price a purchaser would give for them.

And, my Lords, it is at this point, more perhaps than at any other, that I find myself in accord with the Jameson principle [(1905) 2 I.R. 218], and in fundamental difference with the view of the majority of the Court of Appeal. The Lords Justices here have, it would seem, taken no account of section 3 of the Act, the application of which to the pre-emption clause, in itself a mere agreement in respect of his ordinary shares binding upon the deceased, is I hope, made clearer by the illustration just offered.

The resulting misapprehension appears most clearly in the judgment of Kenny, J., in *Jameson's* case [(1904) 2 I.R. 664], which is approved by Romer, L.J. The learned judge actually assumes that a right of pre-emption with the price payable thereunder will of itself prevail against a valuation under section 7, sub-section (5). "There is nothing," he says, "to prevent a man from agreeing for a purchase of property, and giving a right of pre-emption as part of his contract." Quite true ; and nothing in the Finance Act interferes with the due fulfilment of any such contract. The Act has not in the present case interfered with the exercise by the other ordinary shareholders of their pre-emption rights over 600 of Sir William Paulin's ordinary shares. But unless the pre-emption price is a "full consideration" under section 3 the right of pre-emption will not be effective to withdraw the property from the operation of section 7, sub-section (5), of the Act.

And, my Lords, it was by the application to the facts of this case of the Jameson principle [(1905) 2 I.R. 218], as just traced that Finlay, J.'s. price of £355 for each ordinary share of the deceased was reached. And that principle and its application here I have in this judgment sought to justify. I have done so, largely by quotations, too copious perhaps, from the judgment of the Chief Baron in Jameson's case. I have made these quotations *verbatim* in order that they might appeal to your Lordships by their own inherent strength. The whole judgment of the Chief Baron I have found to be a masterly presentment of the problem before the House, a judgment which must always have been regarded as the most vital of any delivered then, had it not been consistently discounted by what I cannot help thinking has been a serious misapprehension as to the conclusions actually reached by him. The Chief Baron's real conclusion in Jameson's case is expressed in the terms of the declaration with which he prefaces his judgment. That declaration, it will be found, is followed almost textually by the Court of Appeal in Ireland, who to the concluding words of their declaration, "and should take and hold them

subject to the provisions of the articles of association, " add the words " including the articles relating to alienation and transfer of the shares of the Company not because of any difference with the Chief Baron but because the Attorney General, abandoning his previous contention to the contrary in the Divisional Court, without reserve admitted in the Court of Appeal (see *Per* Holmes, L.J. [(1905) 2 I.R. 237], the legality of these articles and their binding effect upon the Company and all its members.

In the Court below, the Chief Baron so far from ignoring altogether, as has been imputed to him, the restrictive regulations, attributed to them full force as an agreement which, as above shown, they were, refusing only to recognise them as fundamental provisions like those required by statute, which they were not. As to Borland [(1901) 1 Ch. 279], in deference doubtless to the argument of the Attorney-General he did not then accept the decision of Farwell, J., as to the legality of the regulations. Upon that question he reserved his final opinion—but for the purposes of his then judgment he could and did assume the regulations to be valid. The suggestion which appears in the judgment of Slesser, L.J., that the Chief Baron treated the shares in the hands of the notional purchaser as being in the matter of conditions different in some way from the other ordinary shares of the Company, I believe to have been made inadvertently. If this judgment has no other result, it will at least, I hope, direct the attention of the profession to a pronouncement which, albeit on one point, as I venture to think open to criticism, ought justly to have its proper place amongst the notable deliverances of a very great judge."

Lord Russell of Killowen (read by Lord Macmillan) at p. 62, observes : " A share in a limited company is a property the nature of which has been accurately expounded by Farwell, J., in *Borland's Trustee* v. *Steel* [(1901) 1 Ch. 279]. It is the interest of a person in the Company, that interest being composed of rights and obligations which are defined by the Companies Act and by the memorandum and articles of association of the company. A sale of a share is a sale of the interest so defined, and the subject matter of the sale is effectively vested in the purchaser by the entry of his name in the register of members. It may be that owing to provisions in the articles of association the subject matter of the sale cannot be effectively vested in the purchaser because the directors refuse to and cannot be compelled to register the purchaser as shareholder. The purchaser could then secure the benefit of the sale by the registered shareholder becoming a trustee for him of the rights with an indemnity in respect of the obligations. In the case of the sale of such a share the risk of a refusal to register might well be reflected in a smaller price being obtainable than would have been obtained had there been no such risk. The share was property with that risk as one of its incidents.

". . . If the property in question is that bundle of rights and obligations known as a share in a limited company, the entirety of the bundle must surely be the subject-matter of the sale and not part only. The requirement that property be sold in the open market cannot alter the nature or character of the property which is there offered for sale. The words ' open market ' postulate freedom of access to the market, not freedom from restrictions attaching to the subject-matter of the sale."

Says Lord Macmillan at p. 69 : " My Lords, a share in a joint stock company is an entirely conventional creation ; the congeries of rights and liabilities of which it consists is the creature of the Companies Acts and the memorandum and articles of the particular company. Within the law the rights and liabilities appurtenant to a share may vary widely. But it cannot exist independently of the inherent attributes with which it has been created.

When therefore the Legislature directs that these shares are to be conceived as being exposed for sale in the open market, in order to see what price they would fetch I must conceive them as being offered to purchasers with all their attributes. If they are subject to conditions which restrict either the rights of enjoyment or the rights of alienation of the holder, then the sale must be of the shares as so restricted. The Finance Act confers no power to strip the shares of any of their inherent attributes. The sale, no doubt, is a hypothetical sale, but the hypothesis is that the thing itself is being sold as it stands with all its qualities and all its disabilities. If the analogy of the hypothetical tenant is invoked, I may pray in aid the words of Lord Buckmaster in the case of the *Port of London Authority* v. *Assessment Committee of Orsett Union* (1920 A.C. 273, 305), where he says : " The actual hereditament of which the hypothetical tenant is to be determined must be the particular hereditament as it stands, with all its privileges, opportunities and disabilities created or imposed either by its natural position or by the artificial conditions of an Act of Parliament."

Says Lord Roche at p. 71 : " In this respect I agree with the Court of Appeal in Ireland that the language of the Act requires in a case where no actual sale is either possible or contemplated that a sale in the open market of a notional character is to be assumed. By a sale I mean and understand a transaction which passes the property in the thing sold. It must always be borne in mind that the Finance Act of 1894 is dealing with all descriptions of property and not expressly with shares, and I regard the word ' sold ' in section 7, sub-section (5), of this Act as having the same meaning as the word ' sale ' in the Sale of Goods Act, 1893 : see section 1, sub-section (3), of that Act. Shares with many other kinds of property are, of course, not within the ambit of the Sale of Goods Act ; but I am of opinion that for the purposes of the Finance Act, 1894, for shares to be sold the property in them, by which I mean the legal property, must pass. Upon an actual sale there must be an actual passing of property in them. Upon a notional sale there must be a notional or assumed passing of property. In so far as the passing or transfer of property is thus notional or hypothetical, no restriction upon actual passing or transfer comes into question, and the article as to the prescribed price which is to rule under certain circumstances, though it is no doubt a constituent part of the bundle of rights which constitutes a share, does not, as I think, govern such a notional transfer so as to make the notional purchaser no more than a person who acquires an obligation to offer the shares to others at the prescribed price."

" It seems to me to be important to remind oneself that section 7, subsection (5), of the Act is simply a provision for estimating by means of an hypothesis the value of property which has passed otherwise than by an actual sale and transfer and may be incapable of so passing. But the section has to be applied and can be applied to all such cases. As to property which by its inherent or essential nature cannot be actually sold or transferred the application of the section was explained as I should like to explain it by my noble and learned friend, then Russell, J., in the case of *In re Cassel* [(1927) 2 Ch. 275, 281]. The learned judge says : " Next, how is the principal value of that property to be ascertained ? The machinery provided by the Act is section 7, sub-section (5), supplemented to some extent by section 7, subsection (8). That machinery does not exactly fit the present case, because from the personal nature of the provision, the benefit of it could not be sold at all ; an outside purchaser would not obtain delivery of the goods. Nevertheless the machinery must be made to fit, and I think it can be made to fit. It was made to fit in the Irish case of *Attorney-General for Ireland* v. *Jameson*

[(1905) 2 I.R. 218]. The value cannot be ascertained by reference to market price, because there can be no market." The learned judge then proceeded to suggest or direct how a hypothetical market price should be arrived at. In substance the process suggested seems to have amount to an estimation or assessment on general business lines of the value of the thing or property in question to a person who could enjoy it. The judgment of Finlay, J., in the present case indicates that by similar processes often adopted and quite business-like the witnesses on both sides were able to provide him with proper material to arrive at a notional or hypothetical market price. Indeed, the fact that the decision of the Court of Appeal of Ireland in *Jameson's* case [(1905) 2 I.R. 218], had been acted upon for some thirty years until challenged in the present case is of itself evidence that the method of valuation then formulated was well capable of practical application. I have already given my reasons for holding that it was also the method required by the statute.

Section 38. *Valuation of interests in expectancy.*—Where an estate includes an interest in expectancy, estate duty in respect of that interest shall be paid, at the option of the person accountable for the duty, either with the duty in respect of the rest of the estate or when the interest falls into possession, and if the duty is not paid with the estate duty in respect of the rest of the estate, then—

(*a*) for the purpose of determining the rate of estate duty in respect of the rest of the estate, the value of the interest shall be its value at the date of the death of the deceased ; and

(*b*) the rate of estate duty in respect of the interest when it falls into possession shall be calculated according to its value when it falls into possession, together with the value of the rest of the estate as previously ascertained.

This section is based on section 7 (6), clauses (*a*) and (*b*) of the Finance Act, 1894. Option is given under this section to pay the estate duty in the case of an interest in expectancy either at the time of the payment of the estate duty in respect of the rest of the estate of the deceased or at the time of the interest falling into possession. This section although styled valuation of interests in expectancy does not give any rules for ascertaining the value of interest in expectancy. It only states that when it is proposed to pay the estate duty in respect of the interest in expectancy, which the deceased had, the value of the interest shall be its value at the date of the death of the deceased. If it is proposed to pay the estate duty in respect of the interest in expectancy which the deceased had only when it falls into possession, the section states that not only estate duty has to be paid on its value at the time of the interest falling into possession but also on the value of the rest of the estate as previously ascertained, *i.e.*, the reversionary value of the interest.

It is the market value of the interest in expectancy that has got to be ascertained either (1) at the time of the deceased's death or (2) at the time when the interest in expectancy falls into possession. If estate duty is paid at the time of the death of the deceased, the value of the reversionary interest will be added to the value of the rest of the estate of the deceased and the rate appropriate to that total value will have to be paid. In estimating the value of the reversionary interest, value of the life interest or life interests upon which the property is expectant, including the value of any duties and costs which will have to be paid on the deaths of the life tenants will be deducted. When estate duty is paid at the time of the interest falling into possession, the value of the property in possession will have to be ascertained. This value is arrived at without making any deduction in respect of the interest of the life tenants. Then the value of the interest in possession plus the value of the rest of the estate as previously ascertained will determine the rate of estate duty. Usually it happens that in this case a higher rate of duty becomes payable. It may be noted in passing that estate duty is payable on the death of each one of the life tenants under the title creating a reversion. Such a

levy does not offend the provision in section 34, sub-section (3), as the life tenant's death is not the same thing as the death of the holder of the reversionary interest. It has been discussed in the foregoing pages how to ascertain the market value of an interest in expectancy. (See also the case of *Lord Advocate* v. *Pringle* [(1878) 5 Rett. 912].

Illustration

Valuation of interest in expectancy :	
Value of outstanding reversionary interest	75,000
Value of rest of the estate	1,25,000
	2,00,000

If duty on reversionary interest is opted to be paid now, the total duty will be 11,250.

The average rate is 5·625.

If the duty is not commuted, the duty payable at the deceased's death is at 5·625% on the rest of the estate, *i.e.*, 1,25,000 = 7,031-4-0.

The value of the interest when it fell into possession (say)	95,000
Rest of the estate as before	1,25,000
	2,20,000

The duty on this amount is 13,750 and the rate now is 6·25.—Duty on interest is at 6·25 on 95,000 = 5,937-8-0.

Duty when commuted	11,250-0-0	
Duty when not commuted	7,031-4-0	Duty on the rest of the estate
	5,937-8-0	Duty on interest when it fell into possession
	12,968-12-0	

It will be observed that a higher amount of duty is leviable when the payment is postponed to the date when the interest falls into possession.

Rule 16, sub-rule (7) states :—

In arriving at the market value of interests in expectancy, the following conditions shall be taken into account :—

(*a*) The age and state of health of the life tenant, the contingency effecting the duration and effect of his interests and the possible cost of covering an interest by insurance.

(*b*) The estate duty and costs of realization and distribution payable when the interests fall into possession.

(*c*) The character of the assets and the possibilities of their appreciation or depreciation in value.

(*d*) The rate of interest and officially recognized tables of mortality.

Section 39. *Valuation of interest in coparcenary property ceasing on death.*—(1) The value of the benefit accruing or arising from the cesser of a coparcenary interest in any joint family property governed by the Mitakshara school of Hindu law which ceases on the death of a member thereof shall be the principal value of the share in the joint family property which would have been allotted to the deceased had there been a partition immediately before his death.

(2) The value of the benefit accruing or arising from the cesser of an interest in the property of a *tarwad* or *tavazhi* governed by the Marumakkattayam rule of inheritance or of a *kutumba* or *kavaru* governed by the Aliyasantana rule of inheritance which ceases on the death of a member thereof shall be the principal value of the share in the property of the *tarwad* or *tavazhi* or, as the case may be, the *kutumba* or *kavaru* which would have been allotted to the deceased had a partition taken place immediately before his death.

(3) For the purpose of estimating the principal value of the joint family property of a Hindu family governed by the Mitakshara, Marumakkattayam or Aliyasantana law in order to arrive at the share which would have been allotted to the deceased had a partition taken place immediately before his death, the provisions of this Act, so far as may be, shall apply as they would have applied if the whole of the joint family property had belonged to the deceased.

The principal value of the share to which a coparcener will be entitled if a partition takes place of the joint family, immediately before his death is the measure of the value of the benefit accruing or arising from the cesser of his interest by his death. Similarly the principal value of the share in the property of the Tarwad or Tavazhi or Kutumba or Kavaru to which the deceased who is governed by Marumakkattayam rule of inheritance or the Aliyasantana rule of inheritance will be entitled on a partition if one has taken place immediately before his death is the measure of the value of the benefit accruing, etc. In both sub-section (1) and sub-section (2), there is only a notional partition. The ascertainment of the value of the benefit, *i.e.*, the principal value of the share of the deceased will necessarily involve a consideration of all the matters that will arise if the deceased had, as plaintiff, had filed a suit for partition and delivery to him of his share in the family property. The controller in case of dispute as to the principal value of the share will be called upon to perform the functions of a Civil Court and in fact to try the matter as if the proceedings before him were proceedings in a civil suit for partition. It is open to the other members of the family to deny the right of the deceased to a share and to take all other objections by which the principal value of the share may be reduced.

Sub-section (3), gives an indication that the Legislature was alive to all the aforesaid considerations. It is, therefore, provided that the provisions of

this Act so far as may be shall apply for purposes of estimating the principal value of the joint family property of a Hindu family, governed by the Mitakshara, Marumakkattayam or Aliyasantana Law. Without first arriving at the principal value of the Hindu family property, it is not possible to determine or arrive at the share of the deceased. This is the first and necessary step as the deceased will be bound by all transactions which had been carried on by the manager of the family before his death. Debts binding on the deceased even though not contracted or incurred by him, but only by the manager, will be binding upon his share of the property also. This Act has not interfered with the Hindu Law or with the Marumakkattayam or Aliyasantana Law.

But the provisions of this Act as regards (1) what is property within the meaning of this Act, (2) gifts, (3) joint investments, (4) settlements with reservation, (5) annuities dealt with under sections 15 and 16 of the Act and (6) controlled companies etc., will equally apply as if the Hindu family is a person, represented by its manager, an individual to whom all the provisions of this Act will apply.

Gifts, *mortis causa* made by the Manager of a joint Hindu family, and gifts within the statutory period made by him although remaining perfectly valid between him as donor and the donee, will not be recognized in estimating the principal value of the joint family property so as to reduce the extent of the joint family property. It is also quite conceivable that a Manager after entering into certain transactions dies and is succeeded by another Manager, during whose management period, a member of the family dies and the share of the deceased member has to be ascertained for purposes of estate duty. The principal value of the family property will be estimated without subtracting the amount of property which had been disposed of by the deceased Manager if the dispositions are hit at by the provisions of this Act. In spite of these dispositions, the property covered by the same will be deemed to have existed and to pass on the death of the deceased only.

Section 40. *Valuation of benefits from interests ceasing on death.*—The value of the benefit accruing or arising from the cesser of an interest ceasing on the death of the deceased shall—

(*a*) if the interest extended to the whole income of the property, be the principal value of that property ; and

(*b*) if the interest extended to less than the whole income of the property, be the principal value of an addition to the property equal to the income to which the interest extended.

This section provides the method of valuation of benefits from interests ceasing on death referred to in the charging section 7 ; it was already pointed out that in the Act no provision is made in respect of interests ceasing on bankruptcy or re-marriage. Section 58 (6) of the Finance Act, 1940, makes provision for such cases. It was also pointed out that section 7 will be better understood only when it is read along with section 40. Section 7 does not describe what are all the interests ceasing on death. It mentions in particular the interest of a coparcener of a joint Hindu family governed by the Mitakshara, Marumakkattayam or Aliyasantana Law. Under this section the estate duty is levied on the corpus of the property or on a slice thereof. In the United Kingdom the charging section corresponding to section 7 here is section 2 (1) (*b*) of the

Finance Act, 1894; "equal to" means "equivalent or corresponding to." It was observed by Palles, C.B., in *A.G.* v. *Power* [(1906) 2 I.R. 272, page 277]: Did Hubert.... take a beneficial interest in possession in the lands, which ceased on his death, within the meaning of section 2 (*b*), and section 5, sub-section (3)? If he did, then estate duty is payable, "to the extent to which a benefit" accrued or arose by the cesser of such interest; and the value of that benefit, *i.e.*, the taxable amount, is fixed by section 7, sub-section (7), as the principal value of the entire third; if his interest extended to the whole income; and if the interest extended to less than the whole income of the third, the same sub-section fixes the value of the benefit as the principal value of an addition to the property "equal to the income to which the interest extended," which, I suppose, is an inaccurate expression for "property the income of which is equal to the income to which the interest extended." Besides the interest of a coparcener which is specifically mentioned in section 7 interests ceasing will embrace mostly annuities, life interest in a share of estate, life interest in an estate which is charged with payment of an annuity already, and joint right of residence or user in a property or of certain chattels where the deceased had the right of letting or selling the property. It is unnecessary to recall that in the last class of cases if the deceased was the original settlor, the estate duty will be payable on his death in respect of the property settled on the ground of settlement with reservation. At the risk of repetition, it is useful to state here that no estate duty will be levied in the case of a recipient of income or of maintenance under a discretionary trust which continues even after his death. This is because the property which is supposed to pass is not susceptible of measurement or valuation. Sub-section (4) of section 7 states that sub-section (1) shall not apply to the property in which the deceased or any other person had an interest only as holder of an office or recipient of the benefits of a charity or as a corporation sole. Whoever receives any benefit from a charity or whoever receives any remuneration for his services for the office which he is holding has not got to pay any estate duty on his death in respect of that benefit or remuneration. Research or other fellowships or scholarships granted by any institutions or foundations are exempt from estate duty. The real ground of liability is the benefit arising to the property from the cesser on account of the death. In other words the property which is hitherto burdened with the payment is freed from the liability of the burden on the death. If under (*a*) the interest that ceased, extended to the whole income of the property, then estate duty is to be on the principal value of that property. Under (*b*) if the interest that ceased extended to less than the whole income of the property, estate duty is to be paid on the principal value of an addition to the property the income of which is equal to the income to which the interest extended. This in popular language is called calculation of "slice" of the property.

Re Beit's Will Trusts. Beit and others v. *Inland Revenue Commissioners*
[(1951) 2 All E.R. 1002]

In this case under a will an annuity was given to Mrs. Carter for her life. The annuity was to be secured by setting aside an annuity fund out of residue. The estate proved insufficient to provide the annuity fund. The annuitant entered into an agreement with the executors whereby the executor should purchase from the residuary legatees an annuity, secured by their personal covenant, equal to the annuitant's annuity and should hold an annuity so purchased as sole security for the payment of the annuitant's annuity and should distribute the remainder of the estate free from any claims by the annuitant. The annuitant died on November 18, 1947. The claim for estate duty

was founded on the following contention: Mrs. Carter's annuity was an interest limited to cease on her death which had been disposed of or had determined within the meaning of section 43 (1) of the Finance Act, 1940, with the result that, as Mrs. Carter failed to survive the date of such disposition or determination by the minimum period prescribed as a condition of exemption from the operation of that section, estate duty became payable by the joint effect of section 2 (1) (*b*) of the Finance Act, 1894, and section 43 (1) of the Finance Act, 1940, on the "slice" of the testatrix' residuary estate required to produce the annuity ascertained in accordance with the provisions of section 7 (7), of the former Act.

Per Sir Raymond Evershed, M.R.: "We were properly reminded of the principle applicable in such cases and enunciated in *Inland Revenue Commrs.* v. *Duke of Westminster*, namely, that the court is not entitled to turn aside from the legal result in fact achieved because it seems complex and peculiar, or because, in its practical effect, it is in substance similar to some other and simpler arrangement which might equally have been made. On the other hand, it is no less true that the court, in arriving at its conclusion on the effect in law of what was in fact done, is not to be misled by, or to place undue emphasis on, the particular words used in the transaction, for words which are inappropriate may obscure or even disguise the true nature of that which is, in truth, achieved. . . .

Vaisey, J., in the Lower Court dismissing the claim for estate duty said, "Indeed it may well be, and I think it is, the case that the situation is irresolvably ambiguous in character. These are some of the questions which were suggested, or have occurred to me. Was Mrs. Carter, immediately prior to her death, receiving from the trustees of the will, or was she in receipt from the executors, parties to the deed of 1947, of a substituted annuity of the same amount held by them for her not as trustees of the will, but as bare trustees under the terms of the arrangements? Ought the purchase by the executors of the annuities from the children to be considered as an investment (unauthorised but agreed to) of a portion of the testatrix' estate, to be held by them thereafter as trustees of the will? Or ought the arrangement to be regarded as the setting up of a new series of trusts superseding the original trusts of the will? It is to be observed that the deed of 1947 makes no mention at all of the trusts of the will or of the continuing obligations of the parties of the former part (defined as 'the executors') in their capacity of trustees of the will, which raises this further question, whether the appointment of new trustees of the will with a vesting declaration in common form would give to the appointees the right to sue the children under the deed of 1947? Or would it be necessary, and not merely a wise precaution, to extend the appointment and declaration so as to cover expressly the deed of 1947?"

I have found the point in the case difficult and narrow, as did the learned judge. On the other hand, there is no ambiguity in the language of the statute. The ambiguity, that is, the doubt and difficulty, arises from the nature of the transaction in question and the language used in the material letters. That being so, it seems to me that the court is bound, to the best of its ability, to resolve the difficulty and to reach a decision on what was in truth the effect of the arrangement made, and then to say whether the Crown is entitled to bring the case within the terms of section 43 of the Act of 1940. And this task I have attempted to perform. In the two first alternative questions posed by the learned judge in the passage I have quoted lies the kernel of the matter. Those are the questions which I think the court is bound to answer, and my answer is in accordance with the first of the two alternatives. Similarly, I would answer the judge's third question affirmatively and his fourth negatively.

As regards the antinomy contained in the last two questions posed by the judge, I am not for myself entirely satisfied that the premise on which the questions are based is well founded, nor am I satisfied that for the purposes in hand it is necessary to answer the two questions posed one way or the other. And since the particular questions may arise in fact hereafter in reference to other annuities, I prefer not to attempt any answers to either question now, but to allow them to await the time when they may actually arise for decision. In my judgment, the appeal should be dismissed."

Sir S. E. Scott, Bt. and Coutts & Co. v. *Inland Revenue Commrs.*
[1937 A.C. 174]

The short facts of the case are as follows : The 5th Earl of Cadogan and his eldest son settled certain estates to the use of the eldest son as tenant for life with remainder to the use of his sons successively in tail male and in default of such issue to the use of the 2nd son of the 5th Earl for life with remainder to the use of his sons successively in tail male with remainders over. In 1893 the 5th Earl bought the life estate of his said 2nd son and this interest was conveyed to trustees, for the life of the 2nd son upon discretionary trust in favour of the 2nd son, his wife and his children and subject to this trust, upon trust to accumulate the surplus of the rents and profits and invest it. In 1908 the eldest son of the Fifth Earl died. In 1915 the Fifth Earl died and was succeeded by his 2nd son as Sixth Earl. In 1933 the Sixth Earl died and was succeeded by his only son as Seventh Earl. *Per* Lord Russell of Killowen : "It will be seen that the result of this disposition by the Fifth Earl of the life estate of the Sixth Earl was that immediately before the death of the Sixth Earl the income of the property had to be applied in payment to or for the benefit of all or any of the objects of the discretionary trust, or (in so far as not so applied) in accumulation and the payment off of incumbrances. The persons beneficially interested in the income of the property at that moment were therefore the various persons who were objects of the discretionary trust and the persons who might ultimately benefit by the accumulations and discharge of incumbrances.

Immediately after the death of the Sixth Earl the only person interested in the income was the Seventh Earl as tenant in tail male in possession.

"Did the property pass to him, within the meaning of section 1 of the Finance Act, 1894, on the death of the Sixth Earl ? If there had been no purchase of the Sixth Earl's life estate the property would clearly have so passed. If there had been no settlement of the purchased life estate by the Fifth Earl, and some one (not the Seventh Earl) had enjoyed the estate *pur autre vie* as a devisee from the Fifth Earl or as a purchaser from his executors, again no question could have arisen. On the death of the Sixth Earl the property would have so passed from that tenant *pur autre vie* to the Seventh Earl.

In the Court of Appeal, Romer, L.J., pointed out in detail the contrast between the beneficial enjoyment of the property before and after the death of the Sixth Earl, and I agree with him when he says that on that death the beneficial enjoyment passed to the Seventh Earl from the class of objects of the discretionary trust, and none the less because the Seventh Earl was himself a member of the class. As Maugham, L.J., expresses it, the Seventh Earl had himself during the Sixth Earl's life no interest in any defined slice or portion of the property (his only interest being the possibility of benefit under the discretionary trust) ; but on the death of the Sixth Earl the discretionary trust ended and the Seventh Earl became entitled in possession to the property as a whole."

Burrell and another v. *A.G.* [(1936) 3 All E.R. 758]

The relevant facts of the case are as follows : (Taken from head-note) A testator devised all his real property to trustees in fee simple upon trust in their absolute discretion to pay a yearly allowance of such amount as the the trustees should think fit to his son *H* for life or to pay or apply the same for the benefit of *H* or his wife or children or other specified persons and after the death of *H* in trust for the first and other sons of *H* successively in tail male ; and in default of such issue to pay to his son *R* during his life a similar yearly allowance and after the death of *R* in trust for the first and other sons of *R* successively in tail male ; and in default of such issue as therein directed. The will contained a proviso that if any equitable tenant in tail should be born in the testator's lifetime the interest of such person should be excised from the will, and the trustees should hold the property in trust to pay him a yearly allowance of such amount from time to time as they should in their uncontrollable discretion think fit, and after his death in trust for his first and other sons in tail male. After certain other dispositions the will devised the property in ultimate remainder to the testator's right heirs. Each beneficiary who should be entitled to an allowance was given power to appoint a jointure to his wife and to charge the property with portions for his children.

During the life of *H* the persons who were beneficially interested in the discretionary trusts were *H* himself, his wife, his sons *W* and *M* and his daughter *G*. After the death of *H* the persons beneficially interested in the trust were *W*, his wife and his brother *M*.

Per Lord Russell of Killowen : "My Lords, in order to arrive at a just conclusion on these contentions it is in my opinion essential to determine in the first place what is the true construction and effect of these peculiar testamentary provisions. The primary trust during Harry's life is to pay him 'a yearly allowance' out of the net rents and profits, the quantum from time to time depending upon the discretion of the trustees. All the income which accrues during Harry's life is available for this purpose, and is so available during the whole of his life. There is nothing to confine the allowance for one year to the rents and profits of that year ; the unapplied balance of any year could be applied in any subsequent year. Consequently during Harry's life the primary trust is to pay him a yearly allowance and carry forward the balance for future application if the trustees think fit. The balances so carried forward or any part of them might be applied in reduction of capital charges had any existed. Throughout Harry's life there was a power to withhold payment to him of his allowance, and to apply it for the benefit of Harry and the other persons described, or for the benefit of any one, two or more of such persons ; but what is applied under this power is still Harry's allowance. On Harry's death, leaving William surviving him a new trust comes into operation during the life of William. Then the primary trust is to pay to William a yearly allowance out of the net rents and profits which accrue during his life and any balance remaining unapplied at Harry's death. The same remarks apply to this allowance. There is a power to apply it for the benefit of any one, two, or more of a group of persons, namely, William, his wife, children or remoter issue and the person who if William were dead would be entitled to receive the rents and profits or an allowance thereout. But so long as the £10,000 portions remain unpaid the trustees would, I think, be bound to apply any balance not appropriated to providing William's allowance in paying off the portions. If those portions were paid off during William's life, they would be entitled to carry over unapplied balances so as to be available in subsequent years for William ; and unless the entail had been barred (an event which would destroy the possibility of any one else

ever becoming entitled to an allowance under the trusts of the will) they would be entitled to carry over the unapplied balance (if any) remaining at William's death so as to be available for the benefit of the future allowancer.

It will thus be seen that the interest of the testator's heir-at-law and next of kin in the property extends only to the balance (if any) of the net rents and profits accruing during the periods in which allowances are payable, which are not applied by the trustees in providing the allowances and which remain after the £10,000 portions and any other portions which might be charged by other allowancers and all other capital charges, if any, have been paid off. Even this balance they could not claim to have paid to them until either all the people who might be entitled to receive an allowance were dead, or (the entail having been barred) some one had become entitled to the property for an estate in fee simple in possession. The heir-at-law and next of kin had no interest in corpus. Such interest as they had was no doubt vested in them at the testator's death, but the value and importance of it could be effectively gauged at the death of Harry. At that date all the net rents and profits which had accrued since the death of the testator (nearly £115,000) had been applied in providing Harry's allowance save and except a sum of £1,500 which then became available for William's allowance, and for reduction of the portions charge. In my opinion the state of affairs which prevailed at Harry's death is sufficient to show that the beneficial interest of the heir at law and next of kin in the property was microscopic. So far from their being the only persons beneficially interested in the property before and after Harry's death, their interest is so minute and so remote that it may for our present purpose be ignored. But the actual facts mentioned above only show that the trustees in fact carried out the intention of the testator as evidenced by his will in which he speaks of the allowancers as persons " entitled " to receive an allowance, and from which all reference to his eldest son is carefully excluded.

What then happened at Harry's death ? In order to test whether it can be said that the property passed on his death, one must compare the position as regards the person beneficially interested in the property immediately before the death with the position immediately afterwards. Immediately before Harry's death the persons beneficially interested in the property were primarily Harry, as the person entitled to an allowance, and secondly, by way of substitution in respect of that allowance, a group consisting of Harry, his wife, his three children, William, Michael and Gillian, and Gillian's child.

If there is a trust during *A*'s life of the income of a property for a group of persons fulfilling certain qualifications the persons who are to share from time to time and the amounts which they respectively take being in the discretion of the trustees, followed on *A*'s death by a similar discretionary trust during *B*'s life of the income of the property for a group of persons fulfilling different qualifications, I would say that the title to the beneficial interest in the property as a whole changed hands on the death of *A* and passed on his death under section 1 and that notwithstanding that one or more persons fulfil both sets of qualifications."

Christie v. *The Lord Advocate* [1936 A.C. 569]

The relevant facts of the case are taken from the headnote :

A testator by a trust disposition and settlement and codicils thereto, after providing for his debts and other expenses and making other dispositions, directed his trustees to divide the balance of the annual income of the trust into ten equal shares and to pay five of these to his wife and one to

each of his four daughters and his sister-in-law during their respective lives. Should any of his daughters die leaving issue, the share of income which would have been payable to her was to be applied for the maintenance and education of her issue until the youngest of them should have attained the age of twenty years and thereafter should be paid in equal portions during their lives to such of them only as were daughters. After certain other declarations he further provided that after the death of his wife no beneficiary should receive more than £600 per annum from the income of the trust and that the balance should be otherwise disposed of as directed.

The testator was survived by his wife, his four daughters and his sister-in-law, and for a time the income of the trust fund belonged, and was paid, as to one moiety to the widow, as to one-tenth to the sister-in-law, and as to one-tenth to each of the four daughters. One-tenth of the income of the fund amounted annually to £2,800.

Mrs. N., one of the four daughters, died leaving three children surviving her. At the date of her death her mother was still living.

Lord Russell of Killowen said: "Lord Carmont held (following *Cowley* v. *Commissioners of Inland Revenue*), (1) that there is a passing of property when one life renter follows another in the enjoyment of the income of settled property, for—as he phrased it—the Finance Act, 1894, "has neither in view the interest of the deceased nor the succession of the new taker of the subject, but the mere fact of the subject of a settlement moving along the intended line." He was accordingly of opinion that there was a true passing of settled property under section 1 of the Act."

"My Lords, I am of opinion (1) that the case is one in which property passed within the meaning of section 1, and that for the reasons given by Lord Carmont, the Lord President, and Lord Fleming; and (2) that the property which passed on the death of Mrs. Norman was the property which produced the one-tenth of the income to which she was entitled immediately before her death, and which immediately thereafter became applicable for the maintenance and education of her issue. As Lord Macnaghten stated in the Cowley case, the Finance Act, 1894, has no regard to the destination of the property which passes or to the interest of the deceased, which, if it be a limited interest, can never pass. It was held in that case that on the death of the first equitable tenant for life under a settlement of real estate the property which passed on his death was neither the interest of the first tenant for life nor the interest of the second tenant for life who succeeded him, but the settled property. That case, in my opinion, is conclusive, and establishes that on the death of Mrs. Norman, the life renter of one-tenth, the settled property (which for this purpose is the capital fund which produced the income to which she was entitled) passed on her death within the meaning of section 1 of the Act."

"The case is certainly no authority justifying a departure from the principles laid down in the Cowley case, where, as here, a tenant for life of an aliquot share of settled property dies and is succeeded by others who immediately enter into the enjoyment of the income of the same share. In this connection I would refer to the remarks of Maugham, J., in the case of *In re* Northcliffe, *Arnholz* v. *Hudson*, which deal with the death of a tenant for life of an aliquot share of residue, and which appear to me relevant to a consideration of the present case."

Section 41. *Valuation to be made by the Controller.*—Subject to the provisions of this Act, the value of any property for the purpose of estate duty shall be ascertained by the Controller in such manner and by such means as may be prescribed and if he authorises

a person to inspect any property and to report the value thereof for the purposes of this Act, that person may enter upon the property and inspect it at such reasonable times as may be prescribed.

Under this section valuation of property is to be made by the Controller in such manner, and by such means as may be prescribed.

For the purpose of performing his duty he can authorise any person to inspect any property and to report the value thereof to him. Such a person authorised to inspect may enter upon the property and inspect it at such reasonable times as may be prescribed. In the U.K. there are provisions in the Finance Acts in case of dispute as to valuation between the Controller and the accountable person enabling the accountable person to prefer an appeal against the valuation arrived at by the Commissioner. Section 10 (1) of the Finance Act, 1894, is " Any person aggrieved by the decision of the Commissioners with respect to the repayment of any excess of duty paid or by the amount of duty claimed by the Commissioners whether on the ground of the value of any property or the rate charged or otherwise may.... appeal to the High Court...." Section 33 (1) of the Finance (1909-10) Act, 1910, is "....any person aggrieved may appeal....against the first or any subsequent determination by the Commissioners of the total value or site value of any land ; or against the amount of any assessment of duty under this part of this Act....or against any apportionment of the value of land or of duty....or any assessment or apportionment of the consideration on any transfer or lease made by the Commissioners under this Part of this Act ; or against the determination of any other matter which the Commissioners are to determine or may determine under this Part of this Act : Provided that (*a*) an appeal shall not lie against a provisional valuation made by the commissioners of the total or site value of any land except on the part of a person who has made an objection to the provisional valuation....and (*b*) the original total value and the original site value and the site value as ascertained under any subsequent valuation shall be questioned only by means of an appeal against the determination by the Commissioners of that value where there is an appeal under this Act and shall not be questioned in any case on an appeal against an assessment of duty. Sub-section (2). An appeal under this section shall be referred to such one of the panel of referees appointed under this part of this Act as may be selected in manner provided by rules under this section." Section 60, sub-section (3), of the said Act states an appeal shall not lie under section 10 of the Finance Act, 1894....where the question in dispute is a question of the value of any real (including lease hold) property but if any person is aggrieved by the decision of the Commissioners as to the value of any such property he may appeal against the decision in manner prescribed by Part 1 of this Act. "....The Lands Tribunal Act, 1949, set up a Tribunal for Scotland to be called the Lands Tribunal for Scotland and a tribunal for the remainder of the U.K. to be called the Lands Tribunal. Sub-section (3) of section 1 of the said Act, is : " There shall be referred to and determined by the Lands Tribunal (*a*) any question which is by any Act including (a local or private Act) directed in whatever terms to be determined by a person or one or more persons selected from either of the following panels, that is to say, :—(1)....(ii) the panel of referees appointed under Part I of the Finance (1909-10) Act, 1910, or which is so directed to be determined in the absence of agreement to the contrary. Section 10 (4) and second schedule of Lands Tribunal Act, 1950, states : " Any person aggrieved by the decision of the referee may appeal against the decision to the High Court....and sub-sections (2), (3) and (4) of section 10

of the Finance Act, 1894, shall apply with reference to any such appeal." Under the Act an appeal is provided for any person objecting to the valuation made by the Controller to the Board which is the highest executive authority under the Act (see section 61). Under this section the following rule is made re : Valuation by Controller.

Rule 16. *Valuation.*—(1) Controller may accept the valuation as shown in the account delivered by the accountable person or may, if he is not satisfied with the valuation shown therein, either himself place a valuation thereon on his own estimate or appoint a person to appraise such properties and to set the valuation thereon. The cost of any such professional assistants shall be defrayed by the Government.

(2) The price or value at which a testator may have given by his will to a particular person the option to acquire a property will not be considered as a test of its market value.

(3) When a property has actually been sold within a short time after the death of the deceased under open market conditions, the gross sum realised shall be taken as the principal value and no deduction shall be made, for the expenses of the sale.

(4) If the property is part of an unadministered estate or a share of property subject to a trust already in operation which involves conversion or if the property consists of certified chattels of national, historic or scientific interest a reasonable deduction for cost of sale may be allowed by the Controller in determining the value thereof.

(5) If the property consists of land containing minerals a separate value should be placed on the latter on the basis of a certificate by a qualified Mining Engineer.

(6) In the case of any agricultural land the principal value shall not ordinarily exceed twenty times of the annual value as assessed for the purpose of land revenue.

Rule 16 (8). Value of the dutiable property abroad should be calculated at the rate of interest on the date of death.

Rule 17. *Inspection.*—(1) Controller may by written order signed by him authorise any person to enter upon or inspect any property for the purpose of the Act.

(2) The person or persons having the custody or possession of the property shall permit the person so authorised to enter upon and inspect it on any day excluding Sundays and holidays under the Negotiable Instruments Act, 1881, at any time between 6 A.M. and 6 P.M.

Section 25 Explanation of the Negotiable Instruments Act, 1881, is : The expression " public holiday " includes Sundays, New Year's Day, Christmas Day : if either of such days falls on a Sunday, the next following Monday : Good Friday ; and any other day declared by the Central Government, by notification in the Official Gazette, to be a public holiday.

Section 42. *Costs of valuation.*—Where the Controller requires any person to report on the value of any property for the purposes of this Act, the reasonable costs of such valuation shall be defrayed by the Controller.

Section 42 embraces valuations of all kinds of property passing on the death. The duty is laid on the Controller to fix the valuation of all kinds of property.

Section 42 states that the reasonable costs of valuation where the Controller requires any person to report on the value of any property shall be defrayed by the Controller.

Section 43. *Controller may accept and certify valuation when convenient.*—The Controller on application from a person accountable for the duty on any property forming part of an estate shall, where he considers that it can conveniently be done, certify the amount of the valuation accepted by him for any class or description of property forming part of such estate.

Section 43 gives authority to the Controller to give a certificate of the amount of the valuation accepted by him for any class or description of property forming part of an estate passing on death. No one can obtain this certificate as of right. The Controller is enabled to give the certificate where he considers that it can conveniently be done. There must be an application for the grant of such a certificate from a person accountable for duty on any property forming part of the estate.

Sections 41 and 42 are based on the provisions of section 7 (8) and 7 (9) of the Finance Act, 1894. In the first place the accountable parties themselves or they with the assistance of professional people, should make an estimate of the value of property. Full particulars of valuation should be given as well as the basis of valuation.

Section 44. *Reasonable funeral expenses and, with some exceptions, debts and incumbrances to be allowed for in determining chargeable value of estate.*—In determining the value of an estate for the purpose of estate duty, allowance shall be made for funeral expenses (not exceeding rupees one thousand) and for debts and incumbrances : but an allowance shall not be made—

(*a*) for debts incurred by the deceased, or incumbrances created by a disposition made by the deceased, unless, subject to the provisions of section 27, such debts or incumbrances were incurred or created *bona fide* for full consideration in money or money's worth wholly for the deceased's own use and benefit and take effect out of his interest, or

(*b*) for any debt in respect whereof there is right to reimbursement from any other estate or person, unless such reimbursement cannot be obtained, or

(*c*) more than once for the same debt or incumbrance charged upon different portions of the estate, or

(*d*) for debts incurred by or on behalf of the deceased by way of dower, to the extent to which such debts are in excess of rupees five thousand,

and any debt or incumbrance for which an allowance is made shall be deducted from the value of the property liable thereto.

Explanation.—For the purposes of this section, " funeral expenses " include all expenses which may have to be incurred in connection with the *sraddha* or *barsi* ceremonies of the deceased for a period of one year from his death.

From the gross value of any property as ascertained by the Controller under Part V of the Act, certain deductions are allowed. The first is deduction for funeral expenses not exceeding Rs. 1,000. The explanation to the section states that " funeral expenses include all expenses which may have to be incurred in connection with the Sraddha or barsi ; ceremonies of the deceased for a period of one year from his death." In the United Kingdom the deduction for funeral expenses is not limited to any fixed amount. Section 7 (1) of the Finance Act, 1894, mentions reasonable funeral expenses. The 2nd deduction is for debts and encumbrances. These are hedged in by many restrictions and limitations. Encumbrances are defined in the Act under section 2 (10) as including mortgages and terminable charges. Besides the limitations imposed by section 44, one must bear in mind explanation (1) of section 2 (15), section 16, section 27, section 45 and section 46 of the Act. The object underlying the various restrictions and limitations imposed on debts and encumbrances is to prevent evasion of estate duty by creating annuities, charges, debts and encumbrances while parting with the property by way of an absolute gift. A person may make an absolute gift

of his property to another person not less than two years before his death. After the transaction of gift he may receive money from the donee and for the money he thus receives he may charge his other property for the repayment of the loan. There is a double loss of revenue to the State. The property gifted away before the statutory period passes to the donee free from liability to estate duty on the death of the donor. On the death of the donor again if deduction is to be made for the charges on the property of the deceased, the State sustains loss again. Again, where the donor during his life paid interest on the loan which he received from the donee and with the interest so paid by the donor, the donee pays the premiums due under a policy on the deceased's life, the policy amount also escapes estate duty on the ground that it was a policy not provided by the deceased but provided by the donee. These restrictions and limitations hit every fragment of the property of the deceased as it passed through different channels. This section is based on section 7 (1), (*a*), (*b*) and (*c*) of the Finance Act, 1894. It has been held in *Lord DeFreyne* v. *Commrs. of Inland Revenue* [(1916) 2 Irish Reports 456], that section 7 (1) applies to unsettled or free property passing on death by will or intestacy. It is said as follows in this case " the only way in which the decision in Cowley's case (1899 A.C. 198), can be reconciled with sub-section (1) of section 7, is by holding that the operation of this sub-section is confined to unsettled property. There is a good deal to be said in favour of this view though there is no definite statement to that effect in any of the judgments in the House of Lords . . . . This view is supported by the opening words of the sub-section which provides for an allowance for funeral expenses and debts generally. Such allowances cannot of course apply in the case of settled property. The remainderman has nothing to do with funeral expenses, or debts unless the latter are encumbranced upon the settled property."

The following observations of general importance were made in the same case by Palles, C.B. :

" As conveyancing forms must, to a certain extent, be disregarded in questions upon this Act, so that a person cannot be permitted to evade estate duty by clothing a transaction, which was in its reality and essence one which would subject the property to estate duty in a particular event, in such a conveyancing form that it would escape it, so I think it can be well contended that a transaction cannot be made liable to duty merely by its conveyancing form, when the beneficial estate actually taken is substantially the same as would have been taken under a conveyance in the ordinary form, and when, if taken in the latter form, it would not be within the Act. For this reason I think well worthy of consideration Mr. Ronan's argument that the beneficial estates which the children took under the settlement are identical with those they would have had, had the estates been limited to the use of the trustees and their heirs in trust, in the specified event, for such children of the marriage as being sons should attain twenty-one, or being daughters should attain that age or marry, or who, whether sons or daughters, should die under twenty-one, leaving issue at his or her death, with such a provision for maintenance as is here, or without it, in which event a substantially similar provision would have been implied by the Conveyancing Act. In such a case, would estate duty be payable on the death of a child who died without having attained a vested interest in the estate ? I understood the Attorney-General to admit—and I think he was right—that it would not. What is the difference in substance between that case and the present ? I confess that I cannot see any. Further, I hold that this is not only the result of the actual words of the Act, but, were it material, could be shown to be fully in accord with its spirit.

In cases such as the present, the intention, as it exists in fact, the spirit of the settlement as recognized by Courts of Equity, is to provide not for all the children who may actually come into esse, but for such only of them as in event shall require provision. The birth and death of a child who does not live to require provision may be said, just as might the birth and death of a child who died immediately after birth, to be accidents, in relation to the title and disposition of the property. Such accidents do not really affect the disposition, and ought not, according to the scheme of the Act, to subject the property to increased taxation. The increased benefit in the property, which the children who ultimately take would not be acquired but for the death, is acquired, not by reason of the " cesser of " an interest in the child who died, but by an accident, by reason of which the class who, amongst them, were to take, in any event, the entire of a property (which remained unaffected in extent or interest by the death) is less numerous than it otherwise would have been, but which still contains the entire of those who required to be provided for and all those who were intended to be benefited. Upon the death of such a child there is not any property which can be said to pass, or to be deemed to pass, within the words of sections 1 and 2 of the Finance, Act, or, in my opinion, within the true intent and spirit of the earlier Act."

This case is authority for the proposition that where before coming into existence of settled property, annuities and sums in gross were charged upon the settled property, the value of the annuities and sums in gross should be deducted from the value of the settled property. It will be seen that these annuities and sums although created without money consideration can be allowed to be deducted. Perhaps it is not permissible to speak of deduction in this case, because, in cases of settled property passing on a death the question always is what is the property that passed, in other words, the property that passed is only the property comprised in the settlement diminished by the value of the annuities and sums in gross. This case is also authority for the proposition that the value of the annuities and sums in gross should be ascertained as on the date of the death of the deceased by actuarial calculation, in the way in which the value of life annuities is usually calculated. As to the construction of this section the following judgment of the House of Lords in *Attorney-General* v. *Duke of Richmond and Gordon* (1909 A.C. 466), should be perused. The short facts of this case are : 3 years after the passing of the Finance Act, 1894, the Duke of Richmond, who was in possession of Scotch entailed estates wanted to acquire in fee simple these estates. Under the Scotch law the heirs of entail in possession are entitled to break the fetters of the entail on compensating interest in expectancy. The Duke's son and grandson are his next heirs in tail. He purchased from them their respective interests in remainder at a price fixed by court. He, however, executed a mortgage of the fee simple thus purchased in favour of his son for the full amount of the purchase money with interest till paid at a certain rate. The object of the transaction was undoubtedly to escape payment of estate duty on his death. On behalf of the Revenue it was strenuously contended that the object being to defeat the provisions of the Finance Act, the transaction was *mala fide*, and therefore should not be given effect to. The Lord Chancellor pointed out as follows : *Per* Lord Loreburn, L.C. : " It is not my province either to censure or to commend the transaction itself. It was within the law and without dishonesty. If this case has disclosed a way by which settled property may largely escape the estate duty, that is an affair for the legislature to consider, in which courts of law have no concern." *Per* Lord Macnaghten : " The question depends on the meaning and effect of the language used in section 7, sub-section (1) (*a*) of the Finance Act, 1894. I cannot help approaching the question with some diffidence, because, as your Lordships may

remember on a former occasion, when this sub-section was much discussed, a noble and learned lord, who was a much greater authority on questions of this sort than I can pretend to be, observed in this House that the sub-section was " not an easy one to construe ", and that he was not satisfied that he had " quite mastered the meaning of it." (Referring to Earl Cowley's case.) The puzzle lies in an expression contained in only eight words. No allowance, says the enactment, is to be made " for debts incurred by the deceased or incumbrances created by a disposition made by the deceased " unless four conditions have been complied with. It must appear that (1) " such debts or incumbrances were incurred or created *bona fide* " ; (2) " for full consideration in money or money's worth " ; (3) " wholly for the deceased's own use and benefit " ; and (4) that they " take effect out of his interest." .... Then comes the pinch of the case. Were these debts and incumbrances incurred and created " wholly for the deceased's own use and benefit " ? The learned counsel for the Crown say ' No '. They were mainly, if not wholly, for the benefit of the deceased's successors. And that is perfectly true in the result. If you give the expression its strict meaning, adhering slavishly to the letter, no allowance can be made for any debt incurred by the deceased or any incumbrance created by him which in the slightest degree operates for the benefit of any other human being. The argument must go this length. The word ' wholly ' forbids anything short of it. The condition that a debt or incumbrance or the consideration for such debt or incumbrance (if that be the true reading) must be wholly for the benefit of a particular individual excludes every case where any body else participates in the benefit. If the construction for which the appellant contends be right, a man who burdens his property to portion his daughter, to educate or advance his son, to save a friend from ruin, to effect some lasting improvements on his estate which cannot give an immediate return, or to promote some benevolent object or some object of real or supposed public utility, to endow a hospital, for instance, or save a famous picture for his country, cannot hope for an allowance from the Commissioners of Inland Revenue. That concession is reserved for the man who spends on himself alone, for the prodigal, the gambler, and such like. I cannot bring myself to think that the Legislature deliberately intended to put a premium on extravagance purely selfish and to penalize expenditure on objects generally considered more worthy.

What, then, is the meaning of the expression of which so much was made in the argument ? It seems to me that the words of the enactment are satisfied if the direct and immediate purpose of the person incurring the debt, or creating the incumbrance, is to make himself master of a sum of money over which he, and he alone, has power of disposition ; and that it was not intended that there should be any inquiry into the ulterior and more remote purposes of the transaction or any investigation into motives. The motive in this case is transparent, and it was openly avowed. But motives for the most part are complex and often extremely obscure. And if the appellant's contention were to prevail the door would be open to harassing inquisition and constant litigation. . . . " Here ", they said, " is a tremendous hole in the Finance Act discovered by the ingenuity of a Scotch solicitor. The great fishes which the Commissioners look upon as their own will swim through the gap one by one. The duller-witted Southron will follow the lead."

Per Lord Atkinson: " The question for decision, therefore, simply resolves itself into this : Were the incumbrances which were in fact created in October, 1897, to use the words of section 7, sub-section (1) (*a*), of the statute,

" created *bona fide* for full consideration in money or money's worth, wholly for the deceased (Duke's) own use and benefit, and " did they " take effect out of his interest " ? .... They cannot, for the reasons already given, be held, I think, to have been created *mala fide*, simply because they constituted one step in proceedings designed to provide a means of escape from the payment of estate duties.

And I do not think that the provisions of the 7th or any other section of the Finance Act of 1894, require that the financial transactions of deceased owners of property should, for the purposes of that statute, be dealt with by Courts of law on any different assumption. It never could have been intended, for instance, that it was competent for a Court of law, in the case of a loan secured by mortgage, to hold that the incumbrance was created wholly for the benefit of the mortgagor, and wholly to the detriment of the mortgagee, if the security was in fact worthless or on the other hand to hold that it was created wholly to the detriment of the mortgagor, and wholly for the benefit of the mortgagee, if the rate of interest was excessive or the other provisions of the mortgage harsh, and it was proved that the mortgagor could have borrowed elsewhere on easier terms. I do not think that section 7, sub-section (1) (*a*), imposes a condition so impossible to satisfy as that contended for. I concur, therefore, with the Court of Appeal in thinking that the words " wholly for the deceased's own use and benefit " apply to the consideration given for the incumbrance, not to the incumbrance itself, and simply mean that the deceased, the person who creates the incumbrances, must receive the full consideration in money or money's worth as his own, to be disposed of by him in any way he pleases, free from the control or interference of others. If this sub-section, or rather that portion of it which deals with the creation of incumbrances by the deceased owners, be considered in connection with section 3, I think it will appear that this is its true construction.

Section 3 deals with the alienation of property by its owner or with the carving by him of interest out of it in favour of others. This portion of section 7, sub-section (1) (*a*), deals with the creation by an owner of property of incumbrances upon it. They are kindred operations. In section 3 it is provided that in order that the property alienated or the interest created by an owner may escape taxation when it passes on his death full consideration in money or money's worth must have been paid to him " for his own use or benefit " ; that is, I take it, must have been paid to him as his own to be disposed of as he wills. Section 7, sub-section (1), provides that, in order that the amount of an incumbrance created by the deceased owner may be deducted from the amount on which duty is to be paid, full consideration in money or money's worth must have been given to him " wholly for his own use and benefit." Nothing turns on the use of the word ' and ' in the latter case instead of ' or '.

The aim and object of both provisions is apparently the same—first, to prevent evasion by fictitious sales or the creation of fictitious interests or incumbrances, or the acknowledgments of fictitious debts, and, second, to prevent the tax being in effect levied twice over on the same property. When the owner of property alienates it, he diminishes by the value of that property the amount of property which remains with him and which will presumably pass upon his death and consequently be taxable ; but if he receives the full money value of that which he has parted with, the taxable fund is brought back to its old level. It would be unjust to tax first the property alienated and secondly the money paid for it. That would be taxing the same property twice, and consequently the property alienated is in such cases treated as if it did not pass on the death of the vendor, and the tax is presumably levied

on the purchase-money which represents it. In furtherance of this object it is provided that where partial, not full, consideration is received the alienated property is taxed, but, to avoid injustice, a deduction is made in respect of the partial consideration so received.

Similarly in the case of debts and incumbrances, these are to be allowed for under section 7, sub-section (1), if not incurred or created by the deceased, because the amount of the net assets left by him, on which duty is rightly payable, is only what remains after they have been deducted ; but, as in the other case, to prevent evasion and at the same time to avoid taking the same thing twice over, it is provided that debts and incumbrances incurred or created by the deceased may be deducted and the taxable fund thereby diminished to the amount of the debt or incumbrance only where he has received in respect of them full consideration in money or money's worth—that is, has received an equivalent addition to the taxable fund, bringing it up to its original level. It is obvious, however, that the consideration received could not pass into the taxable fund if persons other than the deceased had any interest in or control over it ; and consequently it must be received by him " wholly for his own use and benefit " just as the purchase-money of lands sold must be paid to the vendor " for his own use and benefit."

If in such a case no allowance were made, the taxable fund would presumably be artificially swelled by the amount of the consideration received, and the duties in effect levied twice over. In my opinion, therefore, the decision of the Court of Appeal was right and this appeal should be dismissed with costs."

Four conditions have to be complied with for obtaining the deductions : (1) the debts or incumbrances were incurred or created *bona fide* ; (2) for full consideration in money or money's worth ; (3) wholly for the deceased's own use and benefit and (4) they take effect out of his interest. *Bona fide* means real and genuine to all intents and purposes in contra distinction to fictitious or colourable. As regards condition (2) the requirements which have to be fulfilled in the case of a *bona fide* purchase for full consideration in money or money's worth under section 26 must be fulfilled. As regards condition (3) the consideration must be paid wholly for the deceased's own use and benefit. It (the consideration) does not refer to the debt or incumbrance. If it is not so, no allowance can be made for debt incurred by the deceased or any incumbrance created by him which in the slightest degree operates for the benefit of any other human being. This condition is completely fulfilled if the direct and main purpose of the person incurring the debt or creating the incumbrances is to make himself master of a sum of money over which he and he alone has power of disposition. It was not intended that there should be any inquiry into the ulterior and more remote purposes of the transaction or any investigation into motives. The 4th condition is in every case satisfied. The other sections which, as has been mentioned *supra*, have to be read along with this section have already been commented upon. So it is not necessary here to set out or discuss those provisions. A summary may, however, be found useful. Section 2 (15) states that the creation by a person or with his consent of a debt or other right enforceable against him personally or against property . . . . shall be deemed to have been a disposition made by that person. Section 16, which refers to section 15 also states that an annuity or other interest that was purchased or provided wholly or in part by any person who was at any time entitled to or amongst whose resources there was at any time included any property derived from the deceased shall be regarded as provided by the deceased. Section 27 states that any disposition made by the deceased in favour of his relative shall

be treated for the purpose of section 9 as a gift subject to the conditions mentioned in that section. Clause (*b*) of the section states that debts with right to re-imbursement shall not be deducted unless reimbursement cannot be obtained. In the case of surety-debts of the deceased, the requirements of full consideration are wanting. The debts which come under clause (*b*) (1) are mortgage debts, where the deceased sold the equity of redemption, the vendee agreeing to indemnify the vendor against his liability under bond in respect of the personal covenant contained in it for payment of the debt. (2) The debts due from a lessee to lessor where the lessee assigned the lease to another obtaining from the assignee indemnity. (3) Liabilities arising under statutes in respect of the deceased having been a past member of a company or society. In these cases in order to obtain deductions, either the debt or liability should have been paid off from and out of the estate of the deceased because of the impossibility of obtaining reimbursement. The Controllers must be satisfied that reimbursement cannot be obtained. It is to be noted that the deduction in respect of the debts covered by clause (*b*) would be allowed in so far as the deceased's own proportion of the debt was concerned. This means that where the deceased was liable for a partnership debt in a partnership in which he was a partner or for any other joint or joint and several debt, the deduction can only be claimed to the extent of the proportion of the debt. Clause (*c*) also lays down an important rule. Deduction can only be had from the property subject to the liability or where there is no charge on the property from the deceased's free estate. If a debt of Rs. 5,000 is charged upon five items of property there will be an apportionment of Rs. 1,000 on each one of the items. The Rs. 5,000 cannot be deducted from each one of the five items 5 times. Although it is not mentioned in the section, time-barred debts can be allowed to be deducted provided they are actually paid.

Clause (*b*) is not to be found in the Finance Act in the U.K. The Select Committee report observes as follows with regard to this section. " This clause has been amended to provide that funeral expenses should include expenses in connection with the Sraddha ceremoney of the deceased and in the opinion of the Select Committee the maximum amount permissible should be fixed at Rs. 1,000. Consistently with the provisions contained in section 33 (*k*), it has also been provided that Dower debts in excess of Rs. 5,000 should be removed from the category of deductible expenses. Moreover if any such provision has not been made a large scale evasion of estate duty may result therefrom. There being no question of receipt of consideration by the deceased in respect of guarantee debts, the only two conditions for obtaining deduction are (1) there being no possibility of recoupment from the principal debtor, (2) the debt has actually been paid or that the liability of the deceased had actually been discharged as recoupment could not be had from the person primarily liable. The provision in clause (*c*) is for the benefit of the beneficiaries. Estate duty on free personal estate of the deceased bears interest from the date of death, whereas free real estate does not bear interest on estate duty until one year after the death of the deceased. All taxes due from the deceased will be regarded as debts in respect of which deduction can be had.

The following words " any debt or incumbrance for which an allowance is made shall be deducted from the value of the property liable thereto " occurring after clause (*d*) of section 44, prevent deduction of debts or incumbrances where the same cannot be paid from the property liable to estate duty by reason of the property being found insufficient to pay. A gift of even all the property of the deceased made within the statutory period is a good gift

between the deceased donor and the donee. Such a gift however will have to bear estate duty because the provisions of the Act state that notwithstanding the gift it is the property of the deceased passing on his death. A debt unsecured by any property cannot be deducted in a case where the deceased had made a gift of all his property. The meaning of the words quoted above is brought out in the case of Barnes, in re ; *Barnes* v. *Inland Revenue Commissioners* [(1939) 1 K.B. 316]. In this case, the Court of Appeal affirmed the decision of Lawrence, J. Lawrence, J. in the case of Barnes (deceased) in re (1938 Law Journal Reports, page 620), stated " I think that the words of the section contemplate liabilities of the estate which are met out of the estate and I think that the last three lines of section 7 (1) in their natural meaning are inconsistent with the appellant's case. I do not see how, in determining the value of the estate, allowance can be made for debts beyond the value of the assets out of which the debts are to be met. It is an unnatural use of words in my view to speak of making an allowance for a minus quantity in determining value." In *Hirschorn* v. *Evans* ; *Barclay's Bank Ltd.* (1938 L.J. Reports 756), it was held that if there was a joint account a judgment creditor of one only of the persons having the joint account could not garnishee the joint account. *Per* MacKinnon, L.J. : " If authority be needed it can be supplied by part of a single sentence in the judgment of Pollock, B., in the case of *Beasely* v. *Roney* (60 L.J. Q.B. at p. 410), in these words " the debt owing by a garnishee to a judgment debtor which can be attached to answer the judgment debt must be a debt due to the judgment debtor alone, and that when it is only due to him, jointly with another it cannot be attached ".... the learned judge's judgment ends with the words " so far as the question of principle is concerned, I see no more difficulty in this case than in a case when they have got the account in one name and it turns out that the money is the property of somebody else." That seems to be couched in popular language ; there is of course never any question of property in the credit balance of a Bank account. The relation of banker and customer is simply that of debtor and creditor. But if the popular language used by the County Court Judge means, as it appears to do, that when a garnishee order in regard to some named judgment debtor is served on a bank, the bank must at its peril hold up any account in any other name in which the judgment creditors can subsequently prove that the judgment debtor had an interest as principal, *ces tui que* trust or in any other way. I think that that proposition is utterly wrong, and that its enforcement would impose quite an unjustified and intolerable burden on the bank."

" Dower " in the section clause (*d*) refers to Dower as understood in Indian Law. It is a term in Mahomedan Law which means money paid or agreed to be paid by intended husband to wife at the time of marriage and in consideration of marriage. It is either prompt dower or deferred dower (see further Mulla's Mahomedan Law).

From Wilson's *Anglo-Muhammadan Law* (Second Edition), pp. 77-80.

Dower

" The above-mentioned payment on the part of the husband is called in Arabic *mahr*, and by English writers *dower*. The latter term is somewhat misleading to those who are familiar with its narrow signification in modern English law, but, taken in its older and wider sense, is perhaps the least unapt equivalent that our legal vocabulary can supply. Dower, the French donaire, the low Latin *doarium*, which again is a corruption of *dotarium* is evidently a derivative of *dos*, with which indeed it is sometimes used interchangeably ; but a more general and more convenient usage employs it to denote a widely

different institution, namely, the Teutonic as contrasted with the Graeco-Roman type of marriage settlement. Already, near the beginning of the second century A.D., this contrast had begun to attract attention, so that Tacitus noted as a peculiarity of German usage that " the husband brings a *dos* to the wife, instead of the wife bringing it to the husband." And we still find the prevailing sentiments of Englishmen and Frenchmen on the subject of matrimony perceptibly coloured by a corresponding difference, maintained down to quite recent times, in their laws respecting the property of married women.

The sentiment presupposed and encouraged by the dotal system is that matrimony is on the husband's side a burdensome duty, which the wife's family must bribe him to undertake by placing at his disposal, so long as the conjugal union subsists, the income of land or other property which is itself jealously withheld from his control, and which reverts on the termination of the marriage to the wife or to her family.

The sentiment underlying the dower system is that the bride is a prize to be won, if not by the primitive methods of force or purchase from the parents, then by gifts to the maiden herself ; which again implies that in the married state the wife is expected to minister to the gratification of the husband, rather than the husband to that of the wife, and that she will have no further opportunity for making acquisitions on her own account. Thus the English dower, representing the old German Bride—Price and Morning Gift, and consisting originally of whatever the husband chose to declare " at the church door," then limited by law to a certain proportion of his assets, and secured by law up to a certain minimum, was a natural complement and reasonable mitigation of the common-law rule of so-called " unity of person," *i.e.*, of the merging of the wife's legal personality in that of the husband. Ultimately a movement in the reverse direction set in, commencing with the protection of marriage settlements by the Court of Chancery, and culminating in the Married Women's Property Act of 1882, the effect of which has been to make the wife an absolutely distinct person from her husband, able to hold and dispose of property exactly as if she were single, except what may have been placed by means of a marriage settlement under what is practically the dotal system ; while side by side with this advance there has been a gradual whittling away of her once considerable and indefeasible rights of inheritance, until the point has been reached that the husband can destroy even her dower-right in a third of his lands and will away from her the whole of his property, real and person.

The Muhammadan dower resembles the English in being a provision made for the wife out of the property of the husband. It resembles the old, not the modern, English dower in being primarily determined by pre-nuptial contract, but assessable by a Court of Justice in default of contract, and also in being the consideration for a bargain, of which the chief advantage would otherwise be on the side of the husband. Like the old, but unlike the modern English dower, it has no necessary connection with land, and does, in fact, most often consist of a sum of money. Unlike the English dower of any period, the greater part usually is, and the whole may be, entirely and immediately at the disposal of the wife ; and even as regards the portion (if any) of which payment has been deferred till the termination of the marriage, though she cannot squander it by anticipation, there is nothing to prevent her releasing it in favour of the husband himself. And, as with the dower, so with all other acquisitions of a married woman, whether made before or after marriage, her power is as absolute and independent as that of an English wife under the Married Women's Property Act, 1882. The doctrine of " unity of person " has no place in Muhammadan matri-

monial law. It would, indeed, be intolerable that a woman should lose her proprietory rights, and her freedom of contract, in consequence of a connection which the husband can terminate at his mere caprice at three months' notice.

From the same book :—

41. "The fact of a marriage having been contracted involves as a necessary consequence that the wife can claim from the husband, by way of consideration for the surrender of her person, a sum of money or other property of not less value than one rupee [or perhaps five rupees].

Things not yet in existence, such as next year's crop ; things of which a Moslem is forbidden to make use, such as wine or pork ; and personal services to be rendered by the husband to the wife, do not count as property for this purpose.

The technical Anglo-Muhammadan term for this consideration is "dower."

42. If the amount of dower is specified in the marriage contract, not being less than the legal minimum, the wife is entitled to that amount. If no dower which the law recognizes as such is specified in the contract, or even if it has been expressly stipulated that there shall be no dower, the wife is entitled to "proper dower", *i.e.*, to an amount to be fixed at the discretion of the Court.

43. For its guidance in exercising this discretion the Court should take evidence as to what has been usually settled on other female members of the wife's father's family, and then allow for any advantages or disadvantages attaching to this particular woman. It is doubtful whether any account at all should be taken of the means and social position of the husband, and certain that these must not be the primary consideration.

43. If a dower has been specified which is less than the legal minimum, the wife can only claim to have it made up to that minimum.

44. The following enactment respecting the amount of dower is in force in the province of Oudh.

Where the amount of dower stipulated for in any contract of marriage by a Muhammadan is excessive with reference to the means of the husband, the entire sum provided in the contract shall not be awarded in any suit by decree in favour of the plaintiff, or by allowing it by way of set-off, lien, or otherwise to the defendant ; but the amount of dower to be allowed by the Court shall be reasonable with reference to the means of the husband and the status of the wife. This rule shall be applicable whether the suit to enforce the contract be brought in the husband's lifetime or after his death.

45. An agreement for dower is none the less binding on the husband because made after the solemnisation of the marriage.

46. It being usual to stipulate that one portion of the dower shall be "prompt," *i.e.*, payable on demand, and the remainder "deferred", *i.e.*, payable only on termination of the marriage by death or divorce, it is the duty of a Civil Court when applied to in a case in which no such stipulation has been either expressly made or expressly negatived, to presume that some portion at least, if not the whole, was intended to be prompt, and to fix that portion with reference to the position of the wife, and the arrangements usually made on marriages of female members of her family.

47. The period of limitation for suits to enforce payment of dower is 3 years, which is reckoned—

(*a*) In the case of prompt dower, from the time when the dower is demanded and refused, or (where during the continuance of the marriage no such demand has been made) from the time when the marriage is dissolved by death or divorce ;

(*b*) In the case of deferred dower, from the time last mentioned.

48. In addition to her right to recover the prompt dower by regular suit, the wife may refuse to admit her husband to sexual intercourse, to obey his orders, or even to live in the same house with him, so long as it is unpaid ; and this without forfeiting her right to be maintained at his expense, or her right of inheritance as his wife.

[Whether she can still exercise this right of refusal after sexual intercourse has once taken place with her free consent is unsettled.]

Section 45. *Limitations on debts deductible.*—Where a debt or incumbrance has been incurred or created in whole or in part for the purpose of or in consideration for the purchase or acquisition or extinction, whether by operation of law or otherwise of any interest in expectancy in any property passing or deemed to pass on the death of the deceased and any person whose interest in expectancy is so purchased, acquired, or extinguished becomes (under any disposition made by or through devolution of law from, or under the intestacy of, the deceased) entitled to any interest in that property, then in determining the value of the estate of the deceased for the purpose of estate duty no allowance shall be made in respect of such debt or incumbrance, and any property charged with any such debt or incumbrance shall be deemed to pass freed from that debt or incumbrance :

Provided that—

(*a*) if part only of such debt or incumbrance was incurred or created for such purpose or as such consideration as aforesaid, this provision shall apply to that part of such debt or incumbrance only ; and

(*b*) if a person whose interest in expectancy in the property so purchased, acquired or extinguished becomes entitled to an interest in part only of that property, this provision shall apply only to such part of the debt or incumbrance as bears the same proportion to the whole debt or incumbrance as the value of the part of the property to an interest in which he becomes entitled bears to the value of the whole of that property.

This section is based on section 57 of the Finance Act (1909-10), 1910. The decision in (1909) A.C. 466, referred to and discussed above revealed a big hole in the net of estate duty and it was to cover this hole that section 57 was passed in the U.K. This section provides for disallowance of the debt or incumbrance where the same has been incurred or created for purpose of or in consideration for the purchase or acquisition or extinction of any interest in expectancy. It is a necessary condition for the non-deduction of the debt or incumbrance that the person whose interest in expectancy is so purchased, acquired or extinguished should become entitled to that property under any disposition made by or through devolution of law from, or under the intestacy of the deceased. The proviso to the section states (*a*) if part only of the debt or incumbrance was incurred or created, then that part of the debt or incumbrance only will be non-deductible ; (*b*) if the original reversioner whose interest had been acquired, became entitled only to an interest in part only of the property, a proportion of the debt or incumbrance is disallowed.

Section 46. *Further limitations.*—(1) Any allowance which, but for this provision, would be made under section 44 for a debt incurred by the deceased as mentioned in clause (*a*) of that section, or for an incumbrance created by a disposition made by the deceased as therein mentioned, shall be subject to abatement to an extent proportionate to the value of any of the consideration given therefor which consisted of—

(*a*) property derived from the deceased ; or

(*b*) consideration not being such property as aforesaid, but given by any person who was at any time entitled to, or amongst whose resources there was at any time included, any property derived from the deceased :

Provided that if, where the whole or a part of the consideration given consisted of such consideration as is mentioned in clause (*b*) of this sub-section, it is proved to the satisfaction of the Controller that the value of the consideration given, or of that part thereof, as the case may be, exceeded that which could have been rendered available by application of all the property derived from the deceased, other than such (if any) of that property as is included in the consideration given or as to which the like facts are proved in relation to the giving of the consideration as are mentioned in the proviso to sub-section (1) of section 16 in relation to the purchase or provision of an annuity or other interest, no abatement shall be made in respect of the excess.

(2) Money or money's worth paid or applied by the deceased in or towards satisfaction or discharge of a debt or incumbrance in the case of which sub-section (1) would have had effect on his death if the debt or incumbrance had not been satisfied or discharged, or in reduction of a debt or incumbrance in the case of which that sub-section has effect on his death, shall, unless so paid or applied two years before the death, be treated as property deemed to be included in the property passing on the death and estate duty shall, notwithstanding anything in section 25, be payable in respect thereof accordingly.

(3) The provisions of sub-section (2) of section 16 shall have effect for the purpose of this section as they have effect for the purpose of that section.

This section is based on section 31 of the Finance Act, 1939. For understanding this section one must also refer to the other provisions in the Act referred to in the course of discussion of section 44. It is to be remembered that section 16 of the Act with the definitions of " property derived from the deceased ", " disposition " and " subject-matter " is a reproduction of section 30 of the Finance Act, 1939, as further amended by section 26 of the Finance Act, 1943. Section 27 of the Act reproduces the provisions of sec-

tion 44 of the Finance Act, 1940, as further amended by section 46 of the Finance Act, 1950. The relief granted by section 44 is subjected to further limitations. There will be an abatement of the deduction to an extent proportionate to the value of any of the consideration given therefor which consisted of property derived from the deceased [clause (*a*)]. In other words, the value of the property derived from the deceased will be deducted from the value of the consideration given. The balance of the consideration only will be deducted. Clause (*b*) says that if the consideration is given by any person who was at any time entitled to or amongst whose resources there was at any time included, any property derived from the deceased, the value of that property will be deducted from the value of the consideration and the balance only will be deducted. The proviso in effect states that if the controller is satisfied that the property derived from the deceased is less in value than the value of the consideration given, excess value will be deducted. The Controller will judge the case in the light of the provisions of sub-section (1) of section 16. Under sub-section (2), the deceased must pay or apply the money or money's worth towards satisfaction or discharge of a debt or incumbrance two years before the death. If this is not done, the property will be deemed to be included in the property passing on the death and estate duty will have to be paid in respect thereof. These complex and intricate provisions have been enacted only to prevent a make believe consideration from operating as real consideration.

Section 40 of the Finance Act, 1944, is :—

(1) Subject to the provisions of this section, the relief specified therein shall be granted where, on the death of a person who has made a disposition of property in favour of a relative of his or a company (hereafter in this section referred to as " the disposition "), any estate duty becomes, or would but for this section become, payable by virtue of [sub-section (1) (*a*) of] section forty-four of the Finance Act, 1940 (which relates to purchases of annuities or other interests from relatives).

(2) The sum on which estate duty would be payable apart from this section on the death in respect of the property which was the subject-matter of the disposition or in respect of the property liable to a debt or incumbrance created by the deceased which was the subject-matter of the disposition, as the case may be, shall first be computed and, subject to the limitations provided for by sub-section (3) of this section, there shall then be allowed as a deduction from that sum—

(*a*) the amount, if any, by which the aggregate of the payments which have been made on account of the annuity or other interest for the period from the date when the annuity or other interest began to accrue in favour of the deceased until his death, exceeds the aggregate of the income derived from the deceased by virtue of the disposition for the period from the date of the disposition until his death ; and

(*b*) simple interest on so much, if any, of the amount aforesaid, and for such period, as, in the opinion of the Commissioners, is in all the circumstances just, at the rates from time to time payable during that period on death duties in arrear.

In this sub-section, the expression " the aggregate of the income derived from the deceased by virtue of the disposition " means—

(i) in relation to so much of the property which was the subject-matter of the disposition as did not consist of a debt or incumbrance created by the deceased, such amount as, in the opinion of

the Commissioners, is in all the circumstances equal to a reasonable return from the property ; and

(ii) in relation to so much of the property which was the subject-matter of the disposition as did consist of a debt or incumbrance created by the deceased, the aggregate amount of the interest paid or payable by the deceased in respect of that debt or incumbrance.

(3) The amount to be allowed as a deduction under sub-section (2) of this section shall, in the circumstances specified in the provisions of the Third Schedule to this Act, be limited to the extent specified in those provisions respectively.

In the said Schedule, the expression " the disposition " has the same meaning as in this section, the expression " the annuity payments " means the payments specified in paragraph (*a*) of sub-section (2) of this section, and the expression " the amount allowed " means the amount to be allowed as a deduction under this section.

(4) In this section, the expressions " relative " and " annuity " have the meanings assigned to them by section forty-four of the Finance Act, 1940, and sections fifty-eight and fifty-nine of that Act, shall apply for the interpretation of this section and the said Third Schedule as they apply for the interpretation of Part IV of that Act.

Third Schedule

Limitations on Relief from Estate Duty chargeable under Finance Act, 1940, section 44.

1. (1) The provisions of sub-section (1) of section thirty-one of the Finance Act, 1939 (which provides, amongst other things, for the disallowance of debts the consideration for which was property derived from the deceased), shall, in the manner specified in this paragraph, have effect in relation to the computation of the amount allowed.

(2) Where, if—

(*a*) the annuity payments had formed the consideration for a debt created by the deceased equal to the total amount of those payments ; and

(*b*) sub-section (1) of section seven of the Finance Act, 1894, (which provides for an allowance for debts in computing the amount on which estate duty is payable), were applied to that debt,

the full amount of that debt would not, having regard to the operation of sub-section (1) of the said section thirty-one, have been allowable under sub-section (1) of the said section seven, the annuity payments shall, for the purpose of ascertaining the amount allowed, be reduced so as not to exceed the amount, if any, which would have been allowable in the circumstances aforesaid under sub-section (1) of the said section seven :

Provided that, in applying the said section thirty-one for the purposes of this paragraph, property which is the subject-matter of the disposition shall not be treated as property derived from the deceased.

2. (Where under section forty-four of the Finance Act, 1940, a deduction for partial consideration would have been allowable in respect of the annuity or other interest if sub-section (1) (*a*) of that section had not applied to the disposition and if any other consideration for the disposition had not been given, the amount allowed shall not exceed the amount of that deduction.)

3. Where the amount allowed is allowed as a deduction from the value of property liable to a debt or incumbrance created by the deceased, it shall not exceed the amount, if any, which would be allowed under sub-section (1) of section seven of the Finance Act, 1894, if section 44 of the Finance Act, 1940, had not been passed.

Rule 12 made under section 27 of the Act grants further relief on the lines on which such relief is granted by the provisions of section 40 of the Finance Act, 1944, and the Third Schedule thereto. The provisions contained in this rule should have been enacted and found a place in the Estate Duty Act itself. Why this has not been done is difficult to explain. It is, however, just to surmise that there was an accidental omission. Realising this, provision has now been made for the relief by means of this rule. As this rule goes beyond the relief granted by the provisions of the Act strictly speaking the rule is *ultra vires*, but no one will be interested in challenging this rule on the ground of its being *ultra vires*, and as further concessions are granted to assessees by means of this rule, it may be justified on the ground that the Revenue can concede concessions and can also give up its claims to Duty.

Rule 12 is as follows :

Purchase of annuities from relatives :—(1) Subject to the provisions of this rule, the relief specified hereunder shall be granted where any estate duty becomes, or would but for this rule become, payable by virtue of section 27 of the Act.

(2) The sum on which estate duty would be payable apart from this rule on the death in respect of the property which was the subject-matter of the disposition or in respect of the property liable to a debt or encumbrance created by the deceased which was the subject-matter of the disposition, as the case may be shall first be computed and, subject to such limitations provided for by sub-rule (3) of this rule, there shall then be allowed as a deduction from that sum—

(*a*) the amount, if any, by which the aggregate of the payments which have been made on account of the annuity or other interest for the period from the date when the annuity or other interest began to accrue in favour of the deceased until his death, exceeds the aggregate of the income derived from the deceased by virtue of the disposition for the period from the date of the disposition until his death ; and

(*b*) simple interest on so much, if any, of the amount aforesaid and for such period, as, in the opinion of the Controller, is in all the circumstances just, at the rates from time to time payable during that period on estate duty in arrear.

The expression " aggregate of the income derived from the deceased by virtue of the disposition " means—

(i) in relation to so much of the property which was the subject-matter of the disposition as did not consist of a debt or encumbrance created by the deceased, such amount as, in the opinion of the Controller, is in all the circumstances equal to a reasonable return from the property ; and

(ii) in relation to so much of the property which was the subject-matter of the disposition as did consist of a debt or encumbrance created by the deceased, the aggregate amount of the interest paid or payable by the deceased in respect of that debt or encumbrance.

(3) The amount to be allowed as a deduction under sub-rule (2) of this rule shall in the circumstances mentioned hereunder be limited to the extent specified in this sub-rule. Further, the provisions of sub-section (1) of section 46 of the Act shall in the manner specified in this sub-rule have effect in relation to the computation of the amount allowed—

(*a*) Where, if

(i) the annuity payments had formed the consideration for a debt created by the deceased equal to the total amount of those payments ; and

(ii) section 44 of the Act (which provides for an allowance for debts in computing the amount on which the estate duty is payable) were applied to that debt,

the full amount of that debt would not, having regard to the operation of sub-section (1) of section 46 of the Act, have been allowable under section 44, the annuity payments shall, for the purpose of ascertaining the amount allowed, be reduced, so as not to exceed the amount, if any, which would have been allowable in the circumstances aforesaid under section 44 of the Act.

Provided that in applying the said section 46 for the purpose of this rule, property which is the subject-matter of the disposition shall not be treated as property derived from the deceased.

(*b*) Where, if section 27 had not been enacted and section 26 had been applied to the property which was the subject-matter of the disposition, a deduction would have been allowable under sub-section (2) of section 26 for partial consideration, the amount allowed shall not exceed the amount of that deduction.

(*c*) Where the amount allowed is allowed as a deduction from the value of property liable to a debt or encumbrance created by the deceased, it shall not exceed the amount, if any, which would be allowed under section 44 if section 27 had not been enacted.

(*d*) In this rule the expression " the annuity payments " means the payments specified in clause (*a*) of sub-rule (2) of this rule and the expression " the amount allowed " means the amount to be allowed as a deduction under this rule.

Section 47. *Debts to persons resident in foreign country not to be deducted in first instance except from duty-paid property in that country.*—An allowance shall not be made in the first instance for debts due from the deceased to persons resident out of the territories to which this Act extends (unless contracted to be paid in the said territories or charged on properties situate within the said territories), except out of the value of any property of the deceased situate out of the said territories in respect of which estate duty is paid ; and there shall be no repayment of estate duty in respect of any such debts, except to the extent to which it is shown to the satisfaction of the Controller that the property of the deceased situate in the foreign country in which the person to whom such debts are due resides is insufficient for their payment.

This section is based on section 7 (2) of the Finance Act, 1894. Debts due by the deceased to persons resident in foreign countries must be paid from out of the property of the deceased situated in those countries along with the estate duty payable under laws of those countries. In other words, in paying the estate duty in respect of the estate of the deceased no deductions can be made on account of debts due from the deceased to persons resident in the territories outside India.

If the Controller is satisfied that the properties of the deceased in the foreign countries are insufficient to pay the debts due to persons resident in the foreign countries, he may allow so much repayment of estate duty paid in this country as will cover the amount of the insufficiency. This is the normal rule under this section. This rule is subject to two exceptions: (1) where the deceased contracted to pay the debts due to his foreign creditors in India, under the terms of the contracts under which the debts are borrowed; (2) the deceased charged the properties in India belonging to him for payment of the debts due by him to his foreign creditors.

The foreign creditors of the deceased must look to the personal property of the deceased situated in the foreign country for satisfaction of their debts. If their debts are charged on immovable property of the deceased situated in the foreign country they can proceed against that property and realize their debts.

This section assumes that the deceased died domiciled in India.

The practice, which rests on concession only by the Revenue, in Great Britain is to allow a deduction in the first instance itself to save expense and trouble of adjustment later if the deceased had left no property whatsoever abroad.

Section 48. *Cost of realising or administering foreign property may be allowed for within certain limits.*—Where the Controller is satisfied that any additional expense in administering or in realising property has been incurred by reason of the property being situate out of the territories to which this Act extends, he may make an allowance from the value of the property on account of such expense not exceeding in any case five per cent. on the value of the property.

This section is based on section 7 (3) of the Finance Act, 1894. Under this section if the Controller is satisfied that additional expense in administering or in realising property has been incurred by reason of the property being situated in foreign countries he may make an allowance from the value of the property situated in India not exceeding 5% on the value of the property. The 5% or such other percentage allowed by the Controller is calculated on the value of the property is the value of the properties situated in foreign countries. Upto 5% of this value the Controller can grant an allowance on account of the expense in administering or in realising foreign property. No allowance is made on account of expenses in realising or administering the property of the deceased. The maximum of 5% allowance in respect of foreign property belonging to the deceased covers the extra expenses in realising foreign property.

Section 49. *Allowance for duty paid in a non-reciprocating country.*—Where any property passing on the death of the deceased is situate in a non-reciprocating country and the Controller is satisfied that by reason of such death any duty is payable in that country in respect of that property, he may, subject to such rules as may be made by the Board in this behalf, make an allowance of the whole or any part of the amount of that duty from the value of the property.

Explanation.—In this section, the expression " non-reciprocating country " means any country other than India which has not been declared to be a reciprocating country for the purposes of this Act.

This section is based on section 7 (4) of the Finance Act, 1894, as further amended by section 54 (2) of the Finance Act (No. 2) 1945. Under this section the Controller is given discretion which is to be exercised by him subject to such rules as are made by the Board to make an allowance of the whole or any part of the amount of estate duty paid in respect of property of the deceased situated in a non-reciprocating country. As regards the explanation to this section, reference may be made to section 30 of this Act.

The Board framed under this section the following Rule 18 :

Amount of allowance.—Where any property liable to estate duty in India under the Act has been subjected to estate duty in any other country with which no arrangement has been made for avoidance or relief of double taxation in respect of estate duty, the amount to be allowed by the Controller under section 49 of the Act as a deduction from the value of the property shall be—

(*a*) the full amount of duty paid in the other country if the law in the other country relating to the determination of the *situs* of the property concerned for the purpose of imposition of the duty is the same as in India ;

(*b*) such amount as the Board may direct, in other cases.

Section 50. *Relief from estate duty where court-fees have been paid for obtaining representation to estate of deceased.*—Where any fees have been paid under any law relating to court-fees in force in any State other than the State of Jammu and Kashmir for obtaining probate, letters of administration or a succession certifi-

cate in respect of any property on which estate duty is leviable under this Act, the amount of the estate duty payable shall be reduced by an amount which is equal to the court-fees so paid.

The Select Committee made this provision. It said "in practically all countries with a federal structure of Government where inheritance or succession duties are paid in the component states, side by side with estate duty, the principle of granting relief in respect of such duties when estate duty comes to be paid is well recognised. The Select Committee feel that a similar relief should be provided in the Bill also within a specified limit."

The following States are in the Union. First Schedule : The Constitution of India :

Part A States—

1. Assam.
2. Bihar.
3. Bombay.
4. Madhya Pradesh.
5. Madras.
6. Orissa.
7. Punjab (East Punjab).
8. Utter Pradesh.
9. West Bengal.
10. Andhra.

Part B States—

11. Hyderabad.
12. Jammu and Kashmir. (The Estate Duty Act, 1953, does not apply to this State.)
13. Madhya Bharat.
14. Mysore.
15. Patiala and East Punjab States Union.
16. Rajasthan.
17. Sourashtra.
18. Travancore and Cochin.

Part C States—

19. Ajmer.
20. Bhopal.
21. Bilaspur.
22. Coorg.
23. Delhi.
24. Himachal Pradesh.
25. Kutch.
26. Manipur.
27. Tripura.
28. Vindhya Pradesh.

Part D State—

29. The Andaman and Nicobar Islands.

Where in any of the States mentioned above, court-fees have been paid for obtaining probate, letters of administration or succession certificate in respect of any property on which estate duty is leviable there will be a deduction of the amount of the court-fees paid from the amount of estate duty payable.

CHAPTER XXIV

COLLECTION OF THE DUTY

Section 51. *Method of collection of duty.*—Estate duty may be collected by such means and in such manner as the Board may prescribe.

In the United Kingdom "estate duty shall be a stamp duty" (see section 6 (1) of the Finance Act, 1894). There are provisions in the Finance Acts themselves as to the manner and method of collection and recovery of estate duty. In the Indian Act these are left to be prescribed by rules made by the Board.

Section 52. *Payment of duty may be accepted in prescribed Government securities.*—The Board may prescribe that Government securities shall be accepted in payment of estate duty on such terms as it thinks fit.

The Act itself by this section directs that the Board shall accept Government securities in payment of estate duty on such terms as it thinks fit.

"Government Security", means promissory notes (including treasury bills), stock-certificates, bearer bonds and all other securities issued by the Governor-in-Council or by any Local Government in respect of any loan contracted either before or after the passing of the Indian Securities Act, but does not include a currency note : Act X of 1920.

Public Securities Act, 13 of 1886, section 3 (1).

Rules 20 and 21 framed by the Board are as follows:—

20. Method of paying duty.—(1) Duty may be paid—

(*a*) by delivery of a cheque on a scheduled bank at the office of the Controller;

(*b*) by delivery of a bank draft issued by a scheduled bank at the office of the Controller;

(*c*) by depositing the amount of the duty to the credit of the Central Government at any Government treasury or sub-treasury, or at any branch of the Reserve Bank of India, or at any branch of the Imperial Bank of India or at any of its agency conducting Government treasury business or at any other bank authorised by the Central Government in this behalf.

(*Note.*—Where an amount is deposited under clause (*c*) above it should be accompanied by the appropriate treasury chalan of which the receipted portion will be returned to the tenderer.)

(2) The cheques and bank overdrafts shall be drawn in favour of the Reserve Bank of India and shall be crossed.

(3) Where a cheque has been delivered to the Controller the duty shall not, notwithstanding any receipt given therefor, be deemed to have been paid until the amount for which the cheque is drawn has been collected.

(4) Receipts for payment of duty shall be issued only by such persons as the Controller may authorise.

21. Payment on account in respect of duty.—A sum may be paid on account of duty at any time in the manner provided in the preceding rule, the cheque or the bank draft being accompanied by a letter stating the name and date of death of the deceased person and if known, the official reference No. of his estate. Similar letter shall be sent where the sum is deposited to the credit of the Central Government.

Section 53. *Persons accountable, and their duties and liabilities.*—(1) Where any property passes on the death of the deceased—

(*a*) every legal representative to whom such property so passes for any beneficial interest in possession or in whom any interest in the property so passing is at any time vested,

(*b*) every trustee, guardian, committee or other person in whom any interest in the property so passing or the management thereof is at any time vested, and

(*c*) every person in whom any interest in the property so passing is vested in possession by alienation or other derivative title,

shall be accountable for the whole of the estate duty on the property passing on the death but shall not be liable for any duty in excess of the assets of the deceased which he actually received or which, but for his own neglect or default, he might have received :

Provided that nothing in this section shall render a person accountable for duty who acts merely as agent or bailiff for another person in the management of property.

(2) Notwithstanding anything contained in sub-section (1), where an heir-at-law proves to the satisfaction of the Controller that some other person is in adverse possession of any assets of the deceased, the heir-at-law shall not be accountable for the portion of the estate duty payable in respect of such assets :

Provided that he shall become so accountable if, and to the extent that, he subsequently recovers possession of such assets.

(3) Every person accountable for estate duty under the provisions of this section shall, within six months of the death of the deceased or such later time as the Controller may allow, deliver to the Controller and verify to the best of his knowledge and belief, an account of all the property in respect of which estate duty is payable.

(4) Where the person accountable knows of any property which he has not included in his account because he does not know its amount or value, he may state that such property exists, but he does not know the amount or value thereof and that he undertakes, as soon as the amount and value are ascertained to

bring a supplementary account thereof and to pay both the duty for which he may be liable in respect of such property and any further duty payable by reason thereof for which he may be liable in respect of the property mentioned in the original account.

(5) Where two or more persons are accountable, whether in the same capacity or in different capacities, for estate duty in respect of any property passing on the death of the deceased, they shall be liable jointly and severally for the whole of the estate duty on the property so passing.

"Legal representative" is defined by section 2 (12) of the Act. The accountable persons for payment of estate duty according to this section are:—

1. A person who in law represents the estate of a deceased person,
2. An executor,
3. Any intermeddler with the estate of the deceased,
4. The Manager for the time being of a Hindu family where the deceased was a co-parcener of the family,
5. Every trustee,
6. Guardian,
7. Committee or other person in whom any interest in the property passing on a death or the management thereof is at any time vested,
8. Every person in whom any interest in the property passing on a death is vested in possession by alienation or other derivative title.

"Heir-at-law" does not mean merely children of the deceased. The expression is used also in cases where there are no children, as including parents, brothers and sisters. It means one to whom the law gives the inheritance on account of his proximity of blood. (See Stroud's Judicial Dictionary and Wharton's Law Lexicon). In addition to the above list, section 55 makes a person and a company accountable for estate duty where the controller believes that the person has taken possession of or administered any part of the estate of the deceased and the company is transferee of any property of the deceased. The list of accountable persons is further added to by section 54. Where an interest limited to cease on a death within the meaning of section 11 is disposed of or determined wholly or partly after becoming an interest in possession then the trustees for the time being of the settlement under which the interest subsisted is in existence at the death, if it is not in existence then the persons who were the last trustees of the settlement are also declared to be accountable persons. The provisions of this section are based on section 6 (2), (3), (4) and section 8 (3), (4) and (5) of the Finance Act, 1894.

It may be pointed out that in the Indian Act (section 58 of the Act) it is merely mentioned that estate duty shall be due from the date of the death of the deceased and shall be collected upon the account delivered in section 53 or clause (*a*) of section 57 or the account prepared under sub-section (2) of section 61. Section 6 (7) of the Finance Act, 1894, is "the duty which is to be collected upon an Inland Revenue affidavit or account shall be due on the delivery thereof or on the expiration of six months from the death, whichever first happens. Section 60 of the Act merely states that upon delivery of the account....the person delivering it shall pay to the

Controller.... Section 53 (3) imposes a duty on every accountable person to deliver to the Controller an account of all the property within six months of the death of the deceased, or such later time as the Controller may allow. Section 6 (6) of the Finance Act, 1894, states (interest at the rate of 2% prevails in the United Kingdom under the Finance Act, 1943, section 27) that interest....on the estate duty shall be paid from the date of the death up to the date of the delivery of the Inland Revenue Affidavit or account or the expiration of six months after the death, whichever first happens. There is no provision in the Indian Act providing for payment of interest on estate duty from the date of the death of the deceased. It is therefore submitted that interest is not payable on the estate duty between the period of death and the date of payment of estate duty within six months after the death, or, such later time as the Controller may allow. The mention of 'interest' in sub-section (2) of section 58 does not alter this statement of fact because there is no express provision charging interest on estate duty from the date of death of the deceased. Under section 70 estate duty in respect of immovable property may be paid in eight equal yearly instalments....with interest at the rate of 4% per annum....from the date on which the first instalment is payable. The words "from the date on which the first instalment is payable" convey the meaning that in the case of immovable property interest on estate duty has to be paid after 12 months or one year. In the Indian Act no distinction is made as regards payment of estate duty between personal property or movable property and real or immovable property, or for the matter of that between any other kind of property. While each of the persons in the above list of accountable persons is made liable under the section for the whole of estate duty on the property passing on the death, a limit is set to the liability for the whole duty; the accountable person is not liable for any duty in excess of the assets of the deceased which he actually received or which but for his own neglect or default he might have received. This does not mean that the accountable person is to pay a proportionate share of estate duty corresponding to the assets of the deceased which he actually received. If the whole of the assets so received by him are insufficient to pay the whole of the estate duty, then, he will not be liable any more. A mere agent or bailiff for another person in the management of property is declared to be not an accountable person according to the proviso to sub-section (1). Sub-section (2) also excepts an heir-at-law from accountability in case it is proved to the satisfaction of the Controller that some other person is in adverse possession of the estate of the deceased. If, however, the heir-at-law at any subsequent time recovers possession of the estate he becomes accountable for payment of estate duty. Sub-section (3) corresponds to section 6 (4) and section 8 (5) of the Finance Act, 1894 and under this sub-section a duty is laid on all accountable persons to deliver to the Controller an account of all the property duly verified in respect of which estate duty is payable. The time fixed for such delivery is six months from the date of the death of the deceased. This period of six months may be extended by the Controller on cause being shown. It is to be noted that a beneficiary or a legatee who comes within the description of 'accountable person' must not merely deliver to the Controller an account duly verified by him of the property in which he obtains an interest on the death of the deceased but an account of all the property of the deceased in respect of

which estate duty is payable. This provision works great hardship. There is a wholesome provision in section 18 of the Act whereunder all the persons on whom the duty to give information to the Controller is laid need not supply the information on peril of being visited with penalty, if any one of them has already given the information to the Controller to their knowledge or they have reasonable cause for believing that the information has already been supplied. It is desirable that a provision to like effect should be made. Sub-section (4) requires the accountable person to include in the account which he is to deliver to the Controller, the property of the deceased that exists, irrespective of the fact that he does not know its amount or value. He should state that such property exists but that he does not know the amount or value thereof. He must also give an undertaking to the Controller that he will bring a supplementary account as soon as the amount and value are ascertained. The undertaking should also be to pay both the duty for which he may be liable in respect of such property and any further duty payable by reason thereof for which he may be liable in respect of the property mentioned in the original account. The addition of property whose value was not known at the time of the delivery of the account may alter the rate of estate duty payable. Hence the undertaking must be given both as regards payment of estate duty in respect of the property whose value is subsequently ascertained, but also of higher duty that becomes payable on account of alteration in the rate of estate duty by reason of addition to the original value of the estate. Sub-section (5) enables the Revenue to proceed against any or all of a number of persons concurrently who are accountable to estate duty at their choice.

Re Howell (deceased). *Drury* v. *Fletcher and others* (1952) 1 All E.R. 363 is important on the subject of incidence of the estate duty payable on the death of the deceased. In this case a testatrix gave by her will a freehold dwelling-house to trustees to pay the income arising therefrom to her niece *A*, and after her death in trust for *A*'s son, *B* absolutely. She directed "that all legacies and bequests both pecuniary and specific and all devises given under her will (except the gift of residue) shall be enjoyed free of death duties." The residue was conveyed to her trustees "in trust (after paying my debts funeral and testamentary expenses and death duties) for my nieces in equal shares absolutely." Vaisey. J., discussed the following cases (1) Re Stodart (1916) 2 Ch. 444 (2) Re Palmer (1916) 2 Ch. 391 (3) Re Parker (1917) 86 L.J. Ch. 766 (4) Re D'Oyly (1917) 1 Ch. 556 (5) Re Wedgwood (1921) 1 Ch. 601 (6) Re Laidlaw (1930) 2 Ch. 392 and (7) Re Shepherd (1948) 2 All E.R. 932 and observed "It was held by Harman, J., (in Re Shepherd) that there was a presumption that a testator only intended to provide for the payment of the duties arising on his own death, and to rebut it a clear intention to provide for the payment of future duties must be found. In support of that the judgment of Eve, J., in Re Laidlaw is cited. I am not quite sure that I should have put it as strongly as Harman, J., did as to the existence of a presumption, but I think it would be accurate to say that there is a strong tendency against coming to such a conclusion based partly on the argument of *ab inconveniente*. It is awkward to have to hold up the distribution of the residue, perhaps, for a number of years. Normally, when the thought of death duties crosses the mind of a testator, he thinks of the imposition which will fall on his estate at the

time of his death. So that, while I should not have put it as a matter of presumption, but as a matter of strong inclination and tendency, still, I think, in this case there is not enough to justify me departing from the conclusion which Harman J., reached in Re Shepherd. In that case the testator intended the exoneration from duties to be confined to those arising on his own death. Harman J., treats it as a matter of construction and he finds that on the death of the life tenant the duty was to be paid out of the capital of the legacy and not out of the residuary estate of the testator. No question of legacy duty, I understand, arises in this case, but, however that may be, as to the future estate duty, I think that this is a case where I am bound to follow Re Laidlaw and Re Shepherd. This is pre-eminently the type of case in which there is a strong lead in the direction of the conclusion reached in Re Laidlaw as against the conclusion reached in Re Stodart. I think it must be now understood that if testators desire to provide that the distribution of their estates shall be held up to meet these future duty claims, they ought to say so in unmistakable terms. I do not find any such expression in unmistakable terms in the present will. The will provides that all the devises given thereby (except the gift of residue) "shall be enjoyed free of death duties." I agree that up to that point either view is possible, but it seems to me that the matter is governed by the words the testator uses in the disposition of his residuary estate. He first directs the duties to be paid as provided for and then says what remains is to be held in trust for his nieces in equal shares. There is no suggestion that anything remains to be done or to be provided for by the executors or the trustee after the devises have taken effect and the first trust has come into operation. There is no suggestion in the will that any provision for future claims for duties has to be made."

Re Landar (deceased). *Lander and others* v. *Lander*
[(1951) 1 All E.R. 622.]

This case relates to the incidence of Estate Duty and important principles are laid down. Roxburgh, J., observed: "In *Berry* v. *Gankroger* (1903) 2 Ch. 131, Vaughan Williams, L.J., said: "it seems to me the whole scheme of the Finance Act, 1894 so far as it relates to property passing on the death of the deceased in respect of which his executor is not responsible for estate duty, is to tax the property itself so passing, and to make the estate duty a first charge. The decision of North, J., in Re Orford (1896) 1 Ch. 257 seems to me to be a distinct authority on the construction of the Finance Act, 1894, that in all cases where duty becomes payable for which the executor is not made accountable by section 6 (1), the duty must be paid ultimately by the persons beneficially entitled in proportion to their shares, and it follows that the duty cannot be thrown wholly on the residue." Of course, free hold land is not within the Finance Act, section 6 (1), and, so far as that Act was concerned, the executors were not accountable for estate duty on free hold land. Cozens-Hardy, L.J., says (*ibid.*, 134):

"It is true that the Crown having the right to demand the duty from other persons—namely, the trustees—has not proceeded against the legatees; but that, I think, can make no difference. It is an old and well-established principle of equity that, when several persons are liable in respect of one and the same obligation, the rights of the parties *inter se* are not affected

by the circumstance that one of these persons has been called upon to discharge and has discharged the obligation. This right of contribution must, I think, prevail here...."

So, the position under the Finance Act, 1894, was that the executors were not responsible for the estate duty, that the duty had to be paid ultimately by the person beneficially entitled in proportion to their shares, and that, if the executors did pay the duty, the rights of the parties *inter se* would not be affected by that circumstance by reason of rights of contribution.

The Law of Property Act, 1925, section 16, made an important change. Section 16 provides:

"(1) A personal representative shall be accountable for all death duties which may become leviable or payable on the death of the deceased in respect of land (including settled land) which devolves upon him by virtue of any statute or otherwise.... (2) Notwithstanding that any duties are by this section made payable by the personal representative or other person aforesaid, nothing in this Part of this Act shall affect the liability of the person beneficially interested or their respective interests in respect of any duty and they shall accordingly account for or repay the same and any interest and costs attributable thereto to the said commissioners or to the personal representative or other person accountable as aforesaid, as the case may require."

Accordingly, the important change was that from thenceforth personal representatives became accountable for the duty, but the Act made no change in the incidence of the duty or in the rights of contribution between the parties liable for the duty.

I must now endeavour to apply these general principles to the case before me, which, strangely enough, is free from satisfactory direct authority. What the defendant had under the will of the testator was an option. It was a valuable option because it enabled him to acquire for £14,000 something worth £21,645. What is the equitable nature of such an option? *London* and *South Western Ry. Co.* v. *Gomm* supplies the answer. In that case Sir George Jessel, M.R., in the Court of Appeal, said (20 Ch. D. 581):

"The right to call for a conveyance of the land is an equitable interest or equitable estate. In the ordinary case of a contract for purchase there is no doubt about this, and an option for re-purchase is not different in its nature. A person exercising the option has to do two things, he has to give notice of his intention to purchase, and to pay the purchase money; but as far as the man who is liable to convey is concerned, his estate or interest is taken away from him without his consent, and the right to take it away being vested in another, the covenant giving the option must give that other an interest in the land."

Rules 22, 23, 24, 25, 26 and 27 framed by the Board govern delivery and preparation of accounts by accountable persons.

The following accounts are required to be in Form ED. 1.

(1) Account required to be delivered under sub-section (3) of section 53 of the Act.

(2) Supplementary account mentioned in sub-section (4) of section 53, with such adaptations as are suitable to the requirements of the items included therein.

(3) Account to be annexed to the affidavit of valuation mentioned in clause (*a*) of section 57.

(4) Account mentioned in sub-section (2) of section 61.

Sub-rule (5) of rule 22 states that the Controller may at his discretion accept the Form of the account substantially similar to the prescribed Form.

Rule 19 is as follows :—

19. Calculation and adjustment of duty.—Duty shall, in the first instance, be calculated at the proper rate according to the principal value of the estate as set forth in the account delivered under section 53 or clause (*a*) of section 57 or prepared under sub-section (2) of section 61 of the Act but if, afterwards it is found that for any reason too little duty has been paid, the additional duty shall be payable and be treated as duty in arrear subject to the conditions specified in sub-section (2) of section 62.

Section 54. *Persons accountable may include trustees in certain cases.*—(1) Where an interest limited to cease on a death within the meaning of section 11 after becoming an interest in possession is disposed of or determines wholly or partly, then, whatever the nature of the property in which the interest subsisted, the following persons shall be accountable for any estate duty payable on the death by virtue of that section (in addition to any persons accountable therefor apart from this section), that is to say—

(*a*) if the settlement under which the interest subsisted is in existence at the death, the trustees for the time being of that settlement ; and

(*b*) if it is not, the persons who were the last trustees of that settlement.

(2) Where—

(*a*) the trustees of a settlement may become accountable for estate duty payable by virtue of section 11 in respect of any property ; and

(*b*) it is intended that the property or any part thereof shall cease to be comprised in the settlement ;

then if the trustees obtain from the Controller a certificate of the amount which in the opinion of the Controller may properly be treated as the prospective amount of the duty, and give the Controller all the information and evidence required by the Controller in connection with the application for the certificate, no person shall be accountable as trustee of the settlement for the duty to which the certificate relates to an amount in excess of the amount certified.

(3) It is hereby declared that a person who may become accountable as trustee of a settlement for estate duty payable by virtue of section 11 on property which is or has been comprised in the settlement has a lien for the prospective amount of the duty and the costs in respect thereof on any property in his hands which is so comprised.

Explanation.—References in this section to the prospective amount of any duty are to be taken as referring to the prospective amount of the duty on the assumption that it will become chargeable.

"Settled property" is defined by section 2, sub-section (19) of the Act. No estate duty is payable unless death occurs of the person on whom the property is settled for life. If the life estate holder desires to sell his life estate in order to give protection to the purchaser he should like to provide for payment of estate duty in the event of his death. There may be other reasons for a sale of settled property even before the settlement comes to an end. If all the beneficiaries under the settlement agree to divide the property then also no question of payment of estate duty arises The section enables the trustees of a settlement to negotiate an agreement with the Controller for payment of prospective estate duty on settled property. Full information

concerning the property must be given by the trustees to the Controller and they must be prepared to substantiate the information by production of evidence. If a person has life interest in only a part of the estate and his life interest is sought to be sold then the prospective amount of estate duty will have to be ascertained by taking into account all the property subject to the settlement which will pass on the death of the person who holds an interest in the property for life. Then only the proper rate of estate duty can be determined. If the Controller is satisfied then he can issue a certificate stating what the amount of the prospective duty is. The certificate frees the trustee from all liability to estate duty in excess of the amount mentioned in the certificate. Sub-section (3) declares that a person who may become accountable as trustee of a settlement for estate duty payable by virtue of section 11 on property which is or has been comprised in the settlement has a lien for the prospective amount of the duty and the costs in respect thereof on any property in his hands comprised in the settlement. The explanation to the section is self-evident. It is to be noted that the Act expressly authorises commutation of estate duty in respect of an interest in expectancy. (Vide section 68). Even here there is discretion in the Controller to permit commutation or refuse commutation, but the refusal is not to be arbitrary. Section 54 authorises the Controller to issue a certificate of the prospective amount of estate duty in respect of settled property under the conditions enumerated in the section. The section gives statutory recognition to the practice obtaining in the United Kingdom. In the United Kingdom itself the practice obtaining received statutory recognition in section 44 (3) of the Finance Act, 1950. Section 54 of the Act is based on section 44 (1), (3), (4) and (7) of the Finance Act, 1950.

Section 55. *Every person believed to be in possession to deliver statement of particulars of property as required by Controller.*—Every person accountable for estate duty, every company to which, in the opinion of the Controller, a transfer of property has been made by the deceased as mentioned in section 17, every person who is or was at any time an officer or auditor of such a company, and every person whom the Controller believes to have taken possession of or administered any part of the estate in respect of which duty is leviable on the death of the deceased, or of the income of any part of such estate shall, if required by the Controller, deliver to him and verify, to the best of his knowledge and belief, a statement of such particulars together with such accounts, documents, evidence or information as the Controller may require relating to any property which he has reason to believe to form part of an estate in respect of which estate duty is leviable on the death of the deceased.

This section is based on section 8 (5) of the Finance Act, 1894. Section 8 (5) is as follows: "Every person accountable for estate duty, and every person whom the Commissioners believe to have taken possession of or administered any part of the estate in respect of which duty is leviable on the death of the deceased, or of the income of any part of such estate, shall, to the best of his knowledge and belief, if required by the commissioners,

deliver to them and verify a statement of such particulars together with such evidence as they require relating to any property which they have reason to believe to form part of an estate in respect of which estate duty is leviable on the death of the deceased." This provision has been modified in relation to the controlled companies by sections 54 (8) and 57 (1), (2) and (3) of the Finance Act 1940.

Section 57 of the Finance Act 1940 is :—

(1) The provisions of sub-section (5) of section 8 of the Finance Act, 1894, (which relate to the delivery of particulars relating to property forming part of an estate in respect of which estate duty is leviable on a death) shall, on a death on which it appears to the commissioners that section 46 or 55 of this Act has effect, apply to the company, and to any other company to which the said section 46 or 55 as the case may be, applies and to every person who is or was at any time an officer or auditor of that company or of any such other company, as those provisions apply to a person who has administered any part of the estate.

(2) Sub-section (6) of section 8 of the Finance Act, 1894 (which relates to the penalty for a failure to comply with any of the provisions of sub-section (5) of that section shall have effect as respects a failure to comply with any of the said provisions as applied by the preceding sub-section with the substitution of five hundred pounds for one hundred pounds.

(3) An order may be made against any person who fails to comply with any of the provisions of sub-section (5) of section 8 of the Finance Act, 1894, as applied by sub-section (1) of this section requiring him to comply with those provisions, in like manner as an order to deliver an account may be made against any person who is accountable for succession duty or legacy duty, and the provisions of section 55 of the Crown Suits etc. Act, 1865, and in Scotland the provisions of section 47 of the Succession Duty Act, 1853, shall apply accordingly subject to the necessary modifications. (See sections 18 and 19 of the Act). Sub-section (8) of section 19 states that the provisions of sub-sections (1) and (3) of section 53 shall not have effect in relation to duty payable by virtue of section 17.

Section 56. *Penalty for default.*—Any person who without reasonable cause has failed to comply with the provisions of section 53 or section 55 or has failed to comply with the said provisions within the time allowed, shall be liable to pay a penalty of one thousand rupees or a sum equal to double the amount of estate duty, if any, remaining unpaid for which he is accountable, according as the Controller may direct:

Provided that the Controller may reduce the penalty in any particular case.

This section corresponds to section 8 (6) of the Finance Act, 1894. In the latter provision, there are the words "wilfully fails to comply with" instead of the words "without reasonable cause." The penalty is a maximum

amount of Rs. 1,000 or a sum equal to double the amount of estate duty if any remaining unpaid. Penalty is alternative and not cumulative. The Controller is given discretion to levy such penalties as he thinks fit. He is also authorised to reduce the penalty in any particular case.

Section 57. *Executor to specify all chargeable property with affidavit of valuation.*—In all cases in which a grant of representation is applied for within six months of the death of the deceased—

(*a*) the executor of the deceased shall, to the best of his knowledge and belief, specify in an appropriate account annexed to the affidavit of valuation filed in court under section 19-I of the Court-fees Act, 1870 (VII of 1870), all the property in respect of which estate duty is payable upon the death of the deceased and shall deliver a copy of the affidavit with the account to the Controller, and

(*b*) no order entitling the applicant to the grant of representation shall be made upon his application until he has delivered the account prescribed in clause (*a*) and has produced a certificate from the Controller under section 60 or section 67 that the estate duty payable in respect of the property included in the account has been or will be paid, or that none is due, as the case may be.

This section is based on section 8 (3) of the Finance Act, 1894. Section 8 (3) is as follows:—The executor of the deceased shall, to the best of his knowledge and belief, specify in appropriate accounts annexed to the Inland Revenue Affidavit all the property in respect of which estate duty is payable upon the death of the deceased, and shall be accountable for the estate duty in respect of all personal property wheresoever situate of which the deceased was competent to dispose at his death, but shall not be liable for any duty in excess of the assets which he has received as executor, or might but for his own neglect or default have received. See also section 53 where it is stated an accountable person shall not be liable for any duty in excess of the assets of the deceased which he actually received or which but for his own neglect or default he might have received. The executor of the deceased is bound to apply and obtain a grant of representation. Without obtaining a grant if he administers the estate of the deceased he will be treated as an executor *de son tort* and subjected to all liabilities and penalties as such. This section requires him to specify in an appropriate account annexed to the affidavit of valuation which is to be filed by him in court under section 19 (1) of the Court Fees Act, all the property in respect of which estate duty is payable upon the death of the deceased and further to deliver a copy of the affidavit with the account to the Controller. Clause (*b*) states that the order of the grant of representation will not be given to him until he has complied with the provisions of clause (*a*) and produces a certificate from the Controller under section 60 or section 67 that the estate duty payable in respect of the property included in the account has been or will be paid or that none is due as the case may be.

Section 58. *Estate duty when due and how and when to be collected.*—(1) Estate duty shall be due from the date of the death of the deceased and shall be collected upon the account delivered under section 53 or clause (*a*) of section 57 or the account prepared under sub-section (2) of section 61.

(2) When any estate duty, penalty, interest or any other sum chargeable under this Act has been determined in consequence of any order passed under or in pursuance of this Act, the Controller shall serve on the person accountable a notice of demand in the prescribed form specifying the sum so payable and the time within which and the place at which it is payable.

Under this section it is declared that estate duty shall be due from the date of the death of the deceased; under section 34 (2) the estate duty due from the deceased will be calculated on the value of the property passing on the death of the deceased including all income accrued upon the property down to and outstanding at the date of the death of the deceased. This duty is collected (1) upon delivery to the Controller of an account duly verified by a person accountable under section 53. (2) Upon delivery by the executor of the deceased of a copy of affidavit with the account to the Controller as required by section 57, clause (*a*). (3) Upon the account prepared by the Controller under sub-section (2) of section 61 and calling upon the accountable person to pay the amount of estate duty determined by him. This subsection lays a duty on the Controller to serve a notice of demand on an accountable person in cases when the estate duty penalty, interest, or any other sum chargeable under the Act has been determined in consequence of any order passed under or in pursuance of this Act.

Section 59. *Limitation for commencing proceedings for levy of estate duty.*—No proceeding for the levy of any estate duty under this Act shall be commenced after the expiration of twelve years from the date of death of the deceased in respect of whose property estate duty became leviable.

This section bars commencement of proceedings for levy of estate duty after expiration of 12 years from the date of the death of the deceased. In spite of the provisions of the Act, if persons accountable failed to carry out the duties laid on them and the Revenue is unable to initiate proceedings for levy of estate duty on the death of a person whose estate according to the provisions of the Act is liable to payment of estate duty owing to lack of information the estate of the deceased escapes all payment of estate duty after 12 years of the death. Having regard to the stringent provisions made in the Act such cases rarely occur. It is worth noting that in the United Kingdom the enforcement of claim by or against the Crown is regulated by the provisions of the Crown Proceedings Act, 1947. In the United Kingdom section 8 (1), (2) of the Finance Act, 1894, while preserving the existing law in practice relating to any of the duties leviable on or with reference to the death, in effect, state that no person shall be liable for estate duty after

the expiration of six years from the date of the settlement of the account in respect of which the duty is payable.

Section 14 of the Customs and Inland Revenue Act, 1889, is impliedly incorporated in section 8 (2) of the Finance Act, 1894. "Settlement of the account" means not necessarily payment of the duty. Under the law the payment may be made by instalments or within the time allowed by law. The time limit for recovery of estate duty is six years from the date when the last instalment is due, or when the whole estate duty settled is to be paid within a time fixed by the Commissioner. In the United Kingdom it is a condition precedent for pleading limitation that there should have been delivered an account and time fixed for payment and expiration of six years after the estate duty becomes due in whole or when the last instalment of the estate duty falls due.

Section 60. *Duty to be paid or security for payment furnished on delivery of account and certificate to be granted thereupon.*—Upon delivery of the account under section 53 or clause (*a*) of section 57, the person delivering it shall pay to the Controller, or furnish security to the satisfaction of the Controller for the payment of, the estate duty, if any, payable in respect of the property included in the account, and the Controller shall thereupon grant him a certificate that such duty has been or will be paid, or that none is due, as the case may be.

The person accountable under this section is to pay the estate duty to the Controller on delivery of the account under section 53 or clause (*a*) of section 58. If he does not pay, he may furnish security to the satisfaction of the Controller for the payment of estate duty. If no duty is payable, he is entitled to get a certificate from the Controller stating that no estate duty is due. He can also obtain a certificate in the case where he has paid to the Controller the amount of estate duty that estate duty has been paid. He can also obtain a certificate from the Controller that he has furnished security to the satisfaction of the Controller for the payment of estate duty. In the United Kingdom all the certificates which a person is entitled to get from the Commissioners under the provisions of the Finance Acts are granted free. Section 8 (15) states no charge shall be made for any certificate given by the Commissioners under this Act. A certificate under this section shall be in Form ED 3.

Section 61. *Controller's powers in respect of valuations.*—(1) If the Controller is of opinion that the person delivering the account has under-estimated the value of the property in respect of which estate duty is payable (whether by placing too low a value on the property included in the account or by omitting to include therein property that ought to have been included), the Controller may inquire into the matter in such manner and by such means as he thinks fit and, if still of opinion that the value of the property has been under-estimated, may require him to amend the valuation, and if that person does not amend the valuation to the satisfaction of the Controller, the Controller may determine

the valuation on the basis of which estate duty is payable after giving the person accountable an opportunity of being heard.

(2) In any case where no account has been delivered as required by section 53 or clause (*a*) of section 57, the Controller may cause an account of the property passing on the death of the deceased to be prepared in such manner and by such means as he thinks fit and may call upon any person who in his opinion is accountable for the payment of estate duty in respect of the property to accept such account, and if that person does not accept the account or his liability, the Controller may determine the estate duty payable by that person.

In the Finance Act, 1894, the following provision is contained in section 8 (7). "Estate duty shall, in the first instance, be calculated at the appropriate rate according to the value of the estate as set forth in the Inland Revenue Affidavit or account delivered, but if afterwards it appears that for any reason too little duty has been paid, the additional duty shall, unless a certificate of discharge has been delivered under this Act, be payable, and be treated as duty in arrear."

This section is to be read with the next section, section 62. Sometimes it happens that the accounting party may have omitted honestly an item which ought to have been included in the account. It may happen also that he may have estimated the value of the property included in the account at too low a value. Subsequent events and circumstances such as a sale of a property may reveal the real value of the property. In such cases the Controller is enabled by means of this section to make an inquiry into the matter in such manner and by such means as he thinks fit, and if he comes to the conclusion that the value of the property has been under-estimated he may call upon the accounting party to amend the valuation. An opportunity is afforded by this section to the accounting party to bring in a corrective affidavit without his being straightway subjected to any penalty by reason of his under-estimate of the property. If the accounting party does not choose to amend the valuation even though called upon to do so by the Controller, the Controller is given liberty to determine the valuation after giving an opportunity to the accounting party of being heard.

Against the valuation made by the Controller, the aggrieved party has a right of appeal under section 63 of the Act. Sub-section (2) provides for a case where the persons accountable under sections 53 and 57 fail to deliver the account. The Controller in such a case can cause an account of the property passing on the death of the deceased to be prepared in such manner and by such means as he thinks fit. This includes the power on the part of the Controller after determining the property passing on the death of the deceased to value the same and also to determine on such valuation the amount of estate duty payable. The Controller may serve a notice on any person who in his opinion is accountable calling upon him to accept the account so prepared by him. If the person upon whom such a notice is served does not accept the account or his liability then the Controller may determine the estate duty payable by that person. Such a person upon whom the notice is served by the Controller is entitled to prefer an appeal under section 63.

Section 62. *Rectification of mistakes relating to valuation for estate duty.*—(1) If, after the determination of the estate duty payable in respect of any estate, it appears to the Controller that, by reason of any mistake apparent from the record or of any mistake in the valuation of any property in any case other than a case in which the valuation has been the subject-matter of an appeal under this Act or of the omission of any property, the estate duty paid thereon is either in excess of or less than the actual duty payable, he may, either on his own motion or on the application of the person accountable and after obtaining the previous approval of the Board, at any time within three years from the date on which the estate duty was first determined—

(*a*) refund the excess duty paid, or, as the case may be,

(*b*) determine the additional duty payable on the property :

Provided that where the person accountable had fraudulently under-estimated the value of any property or omitted any property, the period shall be six years :

Provided further that no order shall be made under this sub-section unless the person accountable has been given an opportunity of being heard.

(2) Nothing contained in sub-section (1) shall render any person accountable to whom a certificate that the estate duty has been paid is granted liable for any additional duty in excess of the assets of the deceased which are still in his possession, unless the person accountable had fraudulently attempted to evade any part of the estate duty in the first instance.

This section ought to be split up into two sections as two distinct matters are covered by the section. One matter relates to refund of the excess duty paid; the 2nd matter relates to the determination of additional duty payable on the property. Refund of the excess duty paid can be obtained where the following conditions are satisfied:—

(1) There is a mistake apparent on the face of the record ;

(2) There is any mistake in the valuation of any property.

Where the accounting parties have over-estimated the value of the property it cannot be said that the Controller over-valued the property, and by the mistake committed by the parties of over-estimating the value they have to suffer as no refund can be obtained in such a case. So also if the parties pay estate duty under an interpretation of law then governing, without taking the matter in appeal by way of challenging that interpretation of law they equally suffer as in such a case they will be considered to have paid the duty under mistake of law. Money paid under mistake of law is not recoverable under general law. See sections 20 and 21 of the Indian Contract Act. There is no express provision relating to the effect of payment made under a mistake of law. The law as regards this is same both in India and England. Money paid under a mistake of law cannot be recovered in an action for money had and received and neither can moneys so paid be set off against money due

from the person who made the payments unless there is a special equity. (See 22 Patna 220 = A.I.R. 1943 Patna 327, *Shiva Prasad* v. *Srischandra*). Mistake apparent from the record "amounts to mistake or error apparent on the face of the record" which is the phrase used in Order 47, Rule 1 of the Civil Procedure Code. The provision in section 62 is in the nature of a review of the proceedings for purposes of rectification of mistakes relating to valuation for purposes of estate duty. The Controller can act under this section *suo moto*. The parties can move the Controller for relief by an application. The section, however, requires that the Controller should obtain the previous approval of the Board before he can refund the excess duty paid or determine the additional duty payable. As the action of the Controller involves the re-opening of a settled account, the action of the Controller is controlled by the necessity of obtaining the previous approval of the Board. The expression "mistake apparent from the record" includes errors of fact as well as of law. The error of law must amount to a definite departure from the law which is clear, definite, and capable of ascertainment. It must be a matter on which there is no possibility of entertaining two opinions. "An erroneous feature of a law on a debatable point or a wrong exposition of the law or a wrong application of the law or a failure to apply the appropriate law cannot be considered a mistake or error apparent on the face of the record." From Chitaley's C.P.C., 4th Edition, Vol. III, p. 3235. (2) "mistake in the valuation of property" can refer to such matters as (1) the value of assets being over-estimated or under-estimated; (2) assets being wrongly included or excluded; (3) deductions and allowances being wrongly made; (4) Arithmetical errors. A time limit is fixed for rectification of mistakes and it is three years from the date on which the estate duty was first determined. In the United Kingdom there is no time limit for repayments. The *proviso* to the section states that where a fraud has been committed by, the persons accountable and the fraud consists of under-estimating the value of the property or omission of property, the time limit is extended to six years. A successful fraud in the sense of the same escaping discovery for not less than six years from the date on which the estate duty was first determined avoids the application of the section. The definition of "fraud" by section 17 of the Indian Contract Act will apply here for determining whether there has been fraud. The general law must be applied.

"Fraud" means and includes any of the following acts committed by a party to a contract, or with his connivance or by his agent, with intent to deceive another party thereto or his agent, or to induce him to enter into the contract :

(1) the suggestion as a fact, of that which is not true by one who does not believe it to be true ;

(2) the active concealment of a fact by one having knowledge or belief of the fact ;

(3) a promise made without any intention of performing it ;

(4) any other act fitted to deceive ;

(5) any such act or omission as the law specially declares to be fraudulent.

Explanation.—Mere silence as to facts likely to affect the willingness of a person to enter into a contract is not fraud, unless the circumstances of the case are such that, regard being had to them, it is the duty of the person keeping silence to speak, or unless his silence is, in itself, equivalent to speech.

Illustrations

(*a*) *A* sells, by auction, to *B*, a horse which *A* knows to be unsound. *A* says nothing to *B* about the horse's unsoundness. This is not fraud in *A*.

(*b*) *B* is *A*'s daughter and has just come of age. Here, the relation between the parties would make it *A*'s duty to tell *B* if the horse is unsound.

(*c*) *B* says to *A*—"If you do not deny it, I shall assume that the horse is sound." *A* says nothing. Here, *A*'s silence is equivalent to speech.

(*d*) *A* and *B*, being traders, enter upon a contract. *A* has private information of a change in prices which would affect *B*'s willingness to proceed with the contract. *A* is not bound to inform *A*.

In *Murari Rao* v. *Balavanth Dikshit* (I.L.R. 46 Madras 955) Phillips and Venkata Subba Rao, JJ., stated : "In the present case the District Judge was guilty of an error of law, but an error so patent that we think it can be said to be apparent on the face of the record. It has undoubtedly been held in many cases such as *Hazra Sardar* v. *Kunja Bchari Nag Choudhury* (44 I.C. 161) and *Ellem* v. *Basheer* (I.L.R. 1 Cal. 184) that a mistake in law is not sufficient ground for granting a review but there are other cases in which a different view is taken. We are of opinion that each case must be judged by itself and that where the error of law is such that it is clearly apparent on a perusal of the record, there is ground for granting a review. To hold otherwise would be to multiply litigation, for naturally the aggrieved party would appeal then the error would have to be corrected by the Appellate Court rather than in the court of first instance. Here the question of law involved is the question of priority of heirs under the Mitakshara law applicable to this presidency and it is a question which can admit of no doubt, when it has been definitely laid down by this court as the law of the land." In this case the error committed by the District Judge consisted in his holding that the sister's sons of the last male owner were preferential heirs to the plaintiffs who were the nearest agnates of the last male owner. In *Kamala* v. *Bhagirathi* (I.L.R. 38 Madras 45) it had already been held that the agnates were to be preferred to the sister's sons, of the last male owner. In A.I.R. 1941 Madras 918, Wadsworth J., observed as follows:—"It was held in 46 Madras 955 that an error apparent on the face of the record under O. 47, Rule 1, Civil Procedure Code, might be an error of law and in that particular case the error of law which was the ground for review was the failure to take note of an established authority reported in the Indian Law Reports finally discussing a matter of succession. That is to say, the Bench recognized the power of the court in an appropriate case to review its order because it had overlooked a leading authority on a clear matter of law. So far as I am aware, this decision is still good law. I have followed it myself in the case, A.I.R. 1939 Madras 292 and though it had been criticized by a single judge of this Court in a case, A.I.R. 1927 Madras 998, it has not, so far as I am aware, been dissented from by any subsequent Bench. Certainly the decision in 46 Madras 955 should not be taken any further than it goes. It is not authority for the view that whenever a judge has overlooked a ruling he has a power to review his decision ; nor is it authority for the view that whenever after a

judgment has been pronounced, a subsequent ruling changes the accepted view of the law, that a subsequent ruling can be a ground for review. But when there is a legal position clearly established by a well-known authority and by some unfortunate oversight the judge has gone palpably wrong by the omission of those concerned to draw his attention to the authority, it may in a proper case, in the light of 46 Madras 955, be a ground coming within the category of an error apparent on the face of the record. That seems to me to be the position so far as this court is concerned, in the light of 46 Madras 955."

In the case of *Ld. Adv.* v. *Taylor* (Miller's Trustees) (1884) 11 Rett. 1046, it was stated by Lord Fraser. "It is the privilege of the Crown not to be bound by the omissions, neglects and blunders of their officers." See also *Ld. Adv.* v. *Pringle* (1878) 5 R. (Court of Sessions) 912. In the limited sense in which a "mistake apparent from the record" as including a mistake of law as explained above, it will entitle both the revenue and the accountable party to a reopening of the assessment. The view that the section should be interpreted in this way, is, reinforced by reason of the fact that in the Indian Act there is no section incorporated corresponding to section 35 of the Finance Act, 1951. Section 35 (1) and (2) of the Finance Act, 1951 is as follows:—

(1) For the purpose—

(*a*) of any claim by the Commissioners under sub-section (7) of section 8 of the Finance Act, 1894, for payment of additional duty; or

(*b*) of any claim against the Commissioners under sub-section (12) of that section for repayment of excess of duty;

the question whether the duty paid was too little or too much, and (if so) what was the right amount, shall, in so far as it appears that the payment and its acceptance were regarded as satisfying the claim for duty, and were so regarded on a view of the law which at the time was generally received or adopted in practice, be determined on the same view of the law (subject to any express enactment to the contrary), notwithstanding that it appears from a subsequent legal decision or otherwise that view was or may have been wrong.

(2) This section shall have effect as from the 11th day of April 1951, but not so as to affect any appeal to a court of law which was brought before that day under section 10 of the Finance Act, 1894. This section does not speak of refund of the excess duty paid with interest. The Finance Minister's speech disclosed that the Estate duty collected under the provisions of the Act would be spent upon community projects, and other plans under the Five-Year-Plan. It is, therefore, not supposed to earn interest in the hands of the Government. It was decided as early as 1881 in England that money in the hands of the Crown is not considered to earn interest. See *Re Gosman* (1881), 17 Ch. D. 771, C.A. But where the accounting party paid estate duty and also interest under the provisions of the Act it is just and fair that interest paid also should be refunded. Section 10, sub-section (3) of the Finance Act, 1894, is "the costs of the appeal shall be in the discretion of the court and the court where it appears to the court just may order the Commissioners to pay on any excess of duty repaid by them interest at the rate of 3% per annum for such period as appears to the court just. Section 8 (12) of the Finance Act, 1894, on which

section 62 is based is as follows:—"Where it is proved to the satisfaction of the Commissioners that too much estate duty has been paid, the excess shall be repaid by them, and in cases where the over-payment was due to over-valuation by the Commissioners, with interest at 3% per annum. It may happen that the over-payment of estate duty is due to a mistake common to the Revenue and the accountable person. In such a case it is submitted interest should be also paid at least from the date of demand for repayment. The case of *Sprots Trustee* v. *Ld. Adv.* [(1903) 10 S.L.T. 452] supports this submission.

The meaning of the second proviso to the section is not clear. Where the Controller acts *suo moto* and grants a refund of the excess duty paid, there is no need to give an opportunity to the accountable person to be heard. Only in the case where the Controller decides to take action on the ground that less duty is paid than is actually payable that notice need be given. Sub-section (2) does not give absolute protection to the person to whom a certificate of discharge has been given by the Controller. That person, in spite of the certificate, will be liable for any additional duty payable to the extent of the assets of the deceased which are still in his possession. Where the accountable person had fraudulently attempted to evade any part of the estate duty in the first instance then he would be fully liable for any additional duty, irrespective of the fact whether he had in his possession still any assets of the deceased or not. Income-tax may be deducted from the interest repaid.

Section 63. *Appeal against determination by Controller.*—(1) Any person—

(*a*) objecting—

(*i*) to any valuation made by the Controller, or

(*ii*) to any order made by the Controller determining the estate duty payable, or

(*iii*) to any penalty levied by the Controller under section 56, or

(*iv*) to any final order or adjudication having the effect of imposing a liability or an obligation to pay estate duty in respect of any property, or

(*b*) denying his liability to account for the estate duty payable in respect of any property, or

(*c*) objecting to any order made by the Controller refusing to grant a certificate of discharge or any other certificate under this Act,

may, within ninety days of the date of the receipt of the notice of demand under section 58 in the cases specified in clauses (*a*) and (*b*), and within ninety days of the date of the order in the cases specified in clause (*c*), appeal to the Board in the prescribed form which shall be verified in the prescribed manner.

(2) The Board may admit an appeal after the expiry of ninety days referred to in sub-section (1) if it is satisfied that there was sufficient cause for not presenting it within that period.

(3) The Board may, in disposing of any appeal, hold or cause to be held such further inquiry as it thinks fit, and after giving the appellant an opportunity of being heard, pass, subject to the provisions of sub-section (4) such orders thereon as it thinks fit and shall send a copy of such orders to the appellant and the Controller.

(4) Where the dispute pertains to any valuation of property, the Board may, and if the appellant so requires, it shall, refer the question of disputed value to the arbitration of two valuers, one of whom shall be nominated by the Board and the other by the appellant, and the costs of any such arbitration shall be borne by the Board or the appellant, as the case may be, at whose instance the matter was referred to the valuers :

Provided that where the appellant has been wholly or partially successful in any reference made at his instance, the extent to which costs should be borne by the appellant shall be at the discretion of the Board ;

Provided further that if there is a difference of opinion between the two valuers, the matter shall be referred to a third valuer nominated by agreement, or failing agreement by the Central Government, and his decision on the question of valuation shall be final.

(5) The valuers may, in disposing of any matter referred to them for arbitration under sub-section (4), hold or cause to be held such inquiry as they think fit, and, after giving the appellant and the Controller an opportunity of being heard, pass such orders thereon as they think fit and shall send a copy of such order to the appellant and to the Board.

(6) Notwithstanding that an appeal has been filed before the Board, so much of the estate duty as is not in dispute shall be payable by the appellant.

An appeal is provided by this section against the following orders passed by the Controller at the instance of a party aggrieved. The appeal is to be to the Board. Board is defined in section 2, sub-section (2) as the Central Board of Revenue constituted under the Central Board of Revenue Act, 1924 (4 of 1924). Section 2 of the said Act is as follows:—As soon as may be after the commencement of this Act, the Central Government shall constitute a Central Board of Revenue consisting of one or more persons appointed by it, which shall be subject to the control of the Central Government in the exercise of such powers and the performance of such duties as may be entrusted to it by the Central Government or by or under any law. Section 3; the Central Government may make rules for the purpose of regulating the transaction of business by the Central Board of Revenue, and every order made or act done, in accordance with such rules shall be deemed to be order or act, as the case may be, of the Central Board of Revenue. For rules, see General Rules and Orders, Vol. V, p. 612 of the Civil Court Manual, 8th Edition, Imperial Acts, the M.L.J. Office, Madras. Appealable Orders, (1) Order of the Controller as to valuation of any property which is objected to by the accountable person; (2) Order of the Controller determining the estate duty payable; (3) Final order or adjudication of the Controller having the effect of imposing a liability or an obligation to pay estate duty in respect of any property on a person, who in his opinion is accountable, to accept account prepared by him where such a person denies his liability to account; (4) Order of the Controller levying any penalty under section 56 of the Act; (5) Order of the Controller overruling the objection to the levy of estate duty on the ground that the person is not liable to account; (6) Order of the Controller refusing to grant a certificate of discharge; (7) Order of the Controller refusing to grant any other certificate under the Act. The time fixed for preferring the appeal is 90 days from the receipt of the notice of demand under section 58 in the cases specified in clauses (*a*) and (*b*) and 90 days from the date of the order in the cases specified in clause (*c*) of the section. The appeal should be preferred in the prescribed form and verified in the prescribed manner. Sub-section (2) empowers the Board to extend the time and to admit an appeal after the expiration of 90 days if the Board is satisfied that there is sufficient cause for not presenting it within that period. Under this sub-section full discretion is given to the Board to decide as to what is a

sufficient cause. The Board under this sub-section is not restricted to extend time by condoning delay in the filing of the appeal to only such causes which have been decided by courts to amount to sufficient cause within the meaning of section 5 of the Indian Limitation Act. This section considerably limits the discretion of the court. Under the sub-section the Board is given a wider latitude and a more liberal discretion to admit an appeal which is time barred. Under sub-section (3), the Board is authorised to hold a further inquiry itself by admitting additional evidence both documentary and oral. It can also direct such further inquiry to be made by the Controller and submit to itself the result of the further inquiry. The wording of the sub-section is so wide that it is open to the Board to cause the further inquiry to be held by any other body also. An opportunity should be given to the appellant to be heard. Sub-section (4) deals particularly with the powers of the Board in the hearing of an appeal in which any question of valuation of property is involved. The Board *suo moto* can refer the question of disputed value to the arbitration of two valuers, one of whom shall be nominated by the Board and the other by the appellant. Where the question of valuation is referred to valuers at the instance of the Board, the costs of such arbitration are to be borne by the Board. The appellant also is given the right to insist on the Board referring the dispute as to valuation to arbitration in which case the appellant is to bear the costs of the arbitration. The proviso states that in the latter case if the appellant has been wholly or partially successful the costs of the arbitration are left to be dealt with by the Board; the Board will decide in what proportion they should be borne by the appellant and the Board.

The 2nd proviso states that where there is a difference of opinion between the two valuers, the matter shall be referred to a 3rd valuer, and his decision on the question of valuation shall be final. The 3rd valuer is nominated by agreement between the appellant and the Board. If there is no agreement then, power is given for appointment of the 3rd valuer by the Central Government. Sub-section (5) states that filing of an appeal to the Board does not operate as a stay of payment of the estate duty as a whole. Where the subject-matter of appeal before the Board relates only to a part of the estate duty then the remaining part of the estate duty has to be paid notwithstanding the appeal to the Board. This is a wholesome provision as it will prevent appeals being filed only with the object and for the purpose of obtaining stay of payment of estate duty.

Section 64. *Statement of case by the Board to High Court.*— (1) Within ninety days of the date upon which he is served with an order under sub-section (3) of section 63, the person accountable may present an application to the Board in the prescribed form, accompanied by a fee of one hundred rupees, requiring the Board to refer to the High Court any question of law arising out of such order, and the Board shall, if in its opinion a question of law arises out of such order, state the case for the opinion of the High Court :

Provided that the Board may admit such an application after the expiry of ninety days if it is satisfied that there was sufficient cause for not presenting it within the said period.

(2) If, on an application made under sub-section (1), the Board—

(*a*) refuses to state a case on the ground that no question of law arises, or

(*b*) rejects it on the ground that it is time-barred, the person accountable may, within three months from the date on which he is served with a notice of refusal or rejection, as the case may be, apply to the High Court, and the High Court may, if it is not satisfied with the correctness of the decision of the Board, require the Board to state the case to the High Court and on receipt of such requisition the Board shall state the case :

Provided that if, in any case where it has been required by a person accountable to state a case, the Board refuses to do so on the ground that no question of law arises, such person may within thirty days from the date on which he receives notice of the refusal to state the case, withdraw his application and if he does so the fee paid by him under sub-section (1) shall be refunded.

(3) Section 5 of the Indian Limitation Act, 1908 (IX of 1908) shall apply to an application to the High Court under sub-section (2).

(4) If, on an application made under sub-section (1), the Board is of opinion that either on account of the importance of any question of law involved in the case or on account of a conflict in the decisions of different High Courts in respect of any particular question of law arising therefrom, it is expedient that a case should be stated direct to the Supreme Court, the Board may state the case direct to the Supreme Court.

(5) The case shall set forth the facts, the determination of the Board and the questions of law which arise out of the case.

(6) If the High Court or the Supreme Court is not satisfied that the case as stated is sufficient to enable it to determine the questions of law raised thereby, the Court may require the Board to make such additions thereto, or alterations therein, as it may direct in this behalf.

(7) The High Court or the Supreme Court upon hearing any such case shall decide the question of law raised therein and in doing so may, if it thinks fit, alter the form of the question of law and shall deliver its judgment thereon containing the ground on which such decision is founded and shall send a copy of such judgment, under the seal of the Court and the signature of the Registrar, to the Board which shall pass such orders as are necessary to dispose of the case conformably to such judgment.

(8) The costs of any reference to the High Court or to the Supreme Court shall be in the discretion of the Court :

Provided that in case the case is referred to the Supreme Court under sub-section (4) of this section the party shall pay, if required to do so, the cost only as if reference has been made to a High Court and not the Supreme Court.

(9) Notwithstanding that a reference has been made under this section to the High Court or to the Supreme Court, estate duty shall be payable in accordance with the determination made by the Board.

(10) For the purposes of this section "High Court" means the High Court to which, or to a court subordinate to which, an application for grant of representation has been made, or where no such application has been made, the High Court which would have jurisdiction to entertain such an application :

Provided that in the case of Part C States, " High Court " means—

(*a*) in relation to Ajmer and Vindhya Pradesh, the High Court at Allahabad,

(*b*) in relation to Bhopal, the High Court at Nagpur,

(*c*) in relation to Bilaspur, Delhi and Himachal Pradesh, the High Court of Punjab,

(*d*) in relation to Coorg, the High Court of Mysore,

(*e*) in relation to Kutch, the High Court at Bombay,

(*f*) in relation to Manipur and Tripura, the High Court of Assam, and

(*g*) in relation to the Andaman and Nicobar Islands, the High Court at Calcutta.

This section is modelled on section 66 of the Indian Income-tax Act. Within 90 days of the service of the order passed by the Board under sub-section (3) of section 63, the person accountable may file an application to the Board in the prescribed form accompanied by a fee of Rs. 100 requiring the Board to refer to the High Court any question of law arising out of such order. The Board is given discretion to entertain an application even after the expiry of 90 days, and condone the delay in the filing of the application for any sufficient cause. What will constitute a sufficient cause is entirely left to the discretion of the Board to decide [see sub-section (2) of section 63]. Sub-section (2) points out the remedy in a case where the Board refuses to state a case on the ground that no question of law arises, and where the Board rejects the application holding that the same is time-barred; the aggrieved person has the remedy in such cases of applying to the High Court for relief within three months from the date on which he has been served with a notice of refusal or rejection. There is no apparent reason why the time here is fixed as three months. "Three months" must be calculated as three calendar months. A party may have according to this calculation a day or two more or less than 90 days. It is to

be noted that power is given to the High Court to set aside the order of the Board refusing to entertain the application on the ground that it is time-barred. It is submitted that it is perfectly open to the aggrieved party to apply to the High Court under this sub-section where the Board refuses to state a case on the ground that no question of law arises and also on the further ground that the application is time-barred. Although legally a Tribunal or Court must first pass an order condoning delay in the filing of an application or an appeal before considering the application or the appeal on the merits, often in practice where the order of the Tribunal or Court is subject to a right of appeal, the latter will pass orders regarding both the questions, viz., no question of law arises and in any event there is no sufficient cause for excusing the delay in filing the application. The fee paid by the applicant along with his application will be repaid to him if he withdraws his application within 30 days from the date on which he receives notice of refusal by the Board to state the case. Sub-section (3) of this section applies the provision of section 5 of the Indian Limitation Act 1908, (9 of 1908) to an application to the High Court under sub-section (2). Under sub-section (2) the High Court may if it is not satisfied with the correctness of the decision of the Board require the Board to state the case to the High Court. On receipt of such requisition from the High Court by the Board it shall state the case. Sub-section (4) of the section has no parallel in section 66 of the Indian Income-tax Act. The Estate Duty Act is a new Act. It is to be expected that different High Courts will take different views of the sections of the Act which necessarily results in decisions being contradictory. In order to attain uniformity of law and to attain this good object as soon as possible, it is necessary to have the decisions of the Supreme Court on matters of law arising under the Estate Duty Act. The Supreme Court being the highest court in the land when any decision is rendered by it all the High Courts will be governed by such a decision. There can be no better provision of law for attaining uniformity in the shortest time possible than this provision. Under this sub-section, the Board instead of stating a case for the decision of the High Court can state the case for the decision of the Supreme Court straightaway. The conditions for stating the case direct to the Supreme Court are: (1) importance of any question of law involved and (2) a conflict of decisions of different High Courts.

Sub-section (5) directs what the case shall consist of. This is a new provision in this Act. There is no such provision in the Indian Income-tax Act. Under sub-section (6) the High Court or the Supreme Court, as the case may be, may require the Board to make such additions or alterations, in the case submitted to it if it is of opinion that the case as submitted is insufficient to enable it to determine the question of law raised thereby. Sub-section (7) declares the right and power of the High Court or the Supreme Court to alter the form of the question of law. After the High Court or Supreme Court delivers judgment in the case, a copy of the judgment is sent to the Board under the seal of the court and the signature of the Registrar. The Board is to finally dispose of the case in accordance with the judgment of the High Court or the Supreme Court in which will be embodied the grounds on which the decision of the High Court or the Supreme Court is arrived at. The costs of the reference are in the discretion of the court.

Sub-section (9) states that Estate Duty shall be payable in accordance with the determination made by the Board notwithstanding that a case has been

stated for the decision of the High Court or the Supreme Court, and is pending. There is no power in the High Court or in the Supreme Court under the Act for stay of payment of Estate Duty, even on terms and conditions. Where revenue is concerned granting of stay is not desirable as otherwise government of the day cannot be carried on without revenue flowing into the coffers of the State.

Sub-section (10) is on the same lines as sub-section (8) of section 66 of the Indian Income-tax Act. In effect "High Court" within the meaning of the section 64 is the High Court of—

Part A States:

1. Assam.
2. Bihar (Patna).
3. Bombay.
4. Madhya Pradesh.
5. Madras.
6. Orissa.
7. Punjab.
8. Uttar Pradesh.
9. West Bengal.
10. Andhra.

Part B States:

11. Hyderabad.
12. Madhya Bharat.
13. Mysore.
14. Patiala and East Punjab States Union.
15. Rajasthan.
16. Sourashtra.
17. Travancore and Cochin.

It is to be noted that the Act does not apply to the State of Jammu and Kashmir. [*See* sub-section (2) of section 1 of the Act.]

With regard to Part C States, High Court means, the High Court at Allahabad in relation to Ajmer (No. 1 of the C States) and Vindya Pradesh (No. 10 of the Part C States), High Court at Nagpur in relation to "Bhopal" (No. 2 of Part C States), High Court of Punjab in relation to Bilaspur, Delhi and Himachal Pradesh (Nos. 3, 5, 6 of Part C States), the High Court of Mysore in relation to Coorg (No. 4 of the Part C States), High Court of Bombay in relation to Cutch (No. 7 of Part C States), High Court of Assam in relation to Manipur and Tripura (8 and 9 of Part C States), High Court of Calcutta in relation to the Andaman and Nicobar islands (Part D State).

It is conceived that for some years at least the Board rarely dismisses an application to state a case to the High Court as the sections of the Act have all to be construed for the first time in India. Generally in the construction of taxing statutes it is most difficult to disentangle questions of fact and questions of law. Even the question whether a particular judgment of the High Court applies or not to the facts of a particular case involves a question of law.

Although the requirement of the section is that a case will only be stated where a question of law arises and only a question of law, the correctness

of the inference which the Board draws from facts will be a question of law. What is the proper construction of a statute or a section of the statute or of any written document will be a question of law. If there is no evidence to support a finding of fact, a question of law is involved (See the following judgments of the House of Lords).

1. *Farmer* v. *William Cottors Trustees*, 6 T.C. 590.
2. *American Thread Co.* v. *Joyce*, 6 T.C. 1.
3. *Bomford* v. *Osborne* (1942, I.T.R. Supplement 27).
4. *Thomas Fattorini Ltd.* v. *I.R.* in (1943, I.T.R. Supplement 50).
5. *Clark & Langrong Trust & Investment Co., Ltd.* v. *I.R.*, 28 T.C. 55.
6. *Lysaght* v. *I.R.*, 30 T.C. 511.

It is to be pointed out that the Board is given greater latitude to condone the delay than the High Court. So far as the High Court is concerned it should exercise its discretion in the matter of condonation of delay with reference to the terms of section 5 of the Indian Limitation Act.

Section 5 of the Indian Limitation Act.

Any appeal or application for a review of judgment or for leave to appeal or any other application to which this section may be made applicable (by or under any enactment) for the time being in force may be admitted after the period of limitation prescribed therefor, when the appellant or applicant satisfies the Court that he had sufficient cause for not preferring the appeal or making the application within such period.

Explanation.—The fact that the appellant or applicant was misled by any order, practice, or judgment of the High Court in ascertaining or computing the prescribed period of limitation may be sufficient cause within the meaning of this section.

Section 65. *Case to be heard by Benches of High Courts and appeal to lie in certain cases to the Supreme Court.*—(1) When a case has been stated to the High Court under section 64, it shall be heard by a Bench of not less than two Judges of the High Court, and shall be decided in accordance with the opinion of such Judges or of the majority (if any) of such Judges :

Provided that where there is no such majority, the Judges shall state the point of law upon which they differ, and the case shall then be heard upon that point only by one or more of the other Judges of the High Court, and such point shall be decided according to the opinion of the majority of the Judges who have heard the case, including those who first heard it.

(2) An appeal shall lie to the Supreme Court from any judgment of the High Court delivered on a case stated under section 64 in any case which the High Court certifies to be a fit one for appeal to the Supreme Court.

(3) The provisions of the Code of Civil Procedure, 1908 (Act V of 1908), relating to appeals to the Supreme Court shall, so far as may be, apply in the case of appeals under this section

in like manner as they apply in the case of appeals from decrees of a High Court :

Provided that nothing in this sub-section shall be deemed to affect the provisions of sub-section (7) of section 64 :

Provided further that the High Court may, on petition made for the execution of the order of the Supreme Court in respect of any costs awarded thereby, transmit the order for execution to any court subordinate to the High Court.

(4) Where the judgment of the High Court is varied or reversed in appeal under this section, effect shall be given to the order of the Supreme Court in the manner provided in sub-section (7) of section 64.

This section is analogous to section 66-A of the Indian Income-tax Act. The case stated to the High Court must be heard by a Bench of at least two Judges. The procedure that is applied on the hearing by a Bench of the High Court is that contained in section 98 of the Civil Procedure Code. Section 98, C.P.C. is as follows :—

(1) Where an appeal is heard by a Bench of two or more judges, the appeal shall be decided in accordance with the opinion of such judges or of the majority (if any) of such judges ;

(2) Where there is no such majority which concurs in a judgment varying or reversing the decree appealed from, such decree shall be confirmed:— Provided that where the Bench hearing the appeal is composed of two judges belonging to a court consisting of more than two judges, and the judges composing the Bench differ in opinion on a point of law, they may state the point of law upon which they differ and the appeal shall then be heard upon that point only by one or more of the other judges, and such point shall be decided according to the opinion of the majority (if any) of the judges who have heard the appeal, including those who first heard it.

(3) Nothing in this section shall be deemed to alter or otherwise affect any provision of the Letters Patent of any High Court.

It is seen that sub-section (2) of section 98 does not apply nor sub-sec-section (3) will apply, if a case is heard by a Bench of only 2 judges; and if the two judges differ then the judges shall state the point of law upon which they differ and the case shall then be heard upon that point only by one or more of the other judges of the High Court, and such point shall be decided according to the opinion of the majority of the judges who have heard the case including those who first heard it. The amended Letters Patent for the High Courts of Calcutta, Madras and Bombay, Clause 36, states, if a Division Court is composed of two or more judges and the judges are divided in opinion as to the decision to be given on any point, such point shall be decided according to the opinion of the majority of the judges, if there shall be a majority; but if the judges should equally be divided, they shall state the point upon which they differ and the case shall then be heard upon that point by one or more of the other judges and the point shall be decided according to the opinion of the majority of the judges who have heard the case including those who first heard it.

Sub-section (2) provides an appeal to the Supreme Court from the judgment of the High Court delivered on a case stated only where the High Court certifies that the case is a fit one for appeal to the Supreme Court.

Sub-section (3) states that the provisions of the Code of Civil Procedure relating to the appeals to the Supreme Court shall so far as may be applied in the case of appeals under this section in like manner as they apply in the case of appeals from decrees of a High Court. An appeal is a creature of statute. Sub-section (2) of this section gives the right of appeal on the condition that the High Court certifies the case as a fit one for appeal. The reference in sub-section (3) to the provisions of the Code of Civil Procedure relating to appeals to the Supreme Court does not mean that there is a right of appeal without a certificate of the High Court to the effect that the case is a fit one for appeal where the provisions of the C.P.C. relating to appeals to Supreme Court are satisfied as to the valuation of the subject-matter of appeal viz., Rs. 20,000 and above. In *Gurumukh Rai* v. *Secretary of State* 1934 I.T.R. 412, *Commissioner of Income Tax* v. *Maharaj Kumar of Vizianagaram* 1935 I.T.R. 155 and *Delhi Cloth and General Mills Co. Ltd.* v. *Commissioner of Income-tax* 2 I.T.C. 439, it was held that sub-section (3) of section 66A of the Indian Income Tax Act which contains the same provision as sub-section (3) of this section could not be construed as authorising an appeal to the Privy Council or to the Supreme Court even though the appeal satisfies the requirements of section 110 of the Code of Civil Procedure. An appeal to the Supreme Court is therefore competent only where the High Court certifies the case to be a fit one for appeal. This certificate of fitness will be granted even in cases where the subject-matter of the appeal is less than Rs. 20,000 provided a substantial question of law is involved, or the question is of great general importance. Under section 136 (1) of the Constitution of India, a person who has been refused a certificate of fitness for appeal to the Supreme Court can apply to the Supreme Court to grant him special leave to appeal. Sub-section (3) by referring to Civil Procedure Code provisions relating to appeals to the Supreme Court brings about the applicability of Order 45 to such appeals with all amendments to the order made from time to time. The High Court is given power to transmit the order of the Supreme Court for execution to any Court subordinate to it on a petition presented to it for that purpose in respect of any costs awarded to the petitioner by the Supreme Court. The procedure mentioned in sub-section (7) of section 64 will apply to a case where the Supreme Court varies or reverses the decision of the High Court.

Section 66. *Grant of representation not to be delayed on reference to High Court.*—Where any grant of representation has been applied for, it shall not be delayed by reason of any reference to a High Court under section 64.

This section states that notwithstanding reference to a High Court under section 64, the grant of representation which has been applied for by any party should be granted. In other words, the court need not await the decision of the High Court on the reference.

Section 67. *Certificate of payment of duty, and penalty for non-payment.*—(1) Where the valuation is amended by the person accountable upon the Controller's requisition under sub-section (1) of section 61 or is enhanced by the Court upon the Board's reference under section 64, and in any case where the original valuation has been discovered to be too low, such person shall, within two months of the amendment or enhancement or discovery, pay the deficit duty which is payable in respect of the property upon the amended or enhanced or full valuation and the Controller shall thereupon grant him a certificate accordingly.

(2) Where the valuation is reduced by the Court on the Board's reference under section 64, the Controller shall refund to the person accountable any excess duty paid by him within two months from the date of receipt by him of the order and shall grant to him a certificate that the full duty payable in respect of the property has been paid.

(3) In any case where no account has been delivered as required by section 53 or clause (*a*) of section 57 the person who is called upon to accept the account prepared by the Controller under sub-section (2) of section 61 shall, within two months of his acceptance or, as the case may be, of the final disposal of the reference made under sub-section (1) of section 64, pay the full duty payable in respect of the property and the Controller shall thereupon grant him a certificate accordingly.

(4) If the person accountable does not pay the amount of duty due from him under sub-section (1) or sub-section (3) within the period specified therein, he shall be liable to a penalty of one thousand rupees or a sum equal to twice the amount due according as the Controller may elect :

Provided that the Controller may in any particular case reduce the penalty.

(5) Where a person accountable for the estate duty in respect of any property passing on a death applies to the Controller at any time and delivers and verifies a full statement to the best of his knowledge and belief of all property passing on such death and the several persons entitled thereto, the Controller may determine the estate duty payable in respect of the property and on payment of that duty, the Controller shall give him a certificate accordingly.

This section must be read with section 61 of the Act in order to comprehend its meaning. Where the accountable person is called upon by the Controller to amend the original valuation, this section says he

should pay the estate duty payable in respect of the amended valuation within two months of the amendment. Section 61 does not provide for any time within which the deficit duty arising under an amendment of the original valuation is to be paid. This section states that the period is two months. Three cases are contemplated by this section:

(1) where the person accountable upon the Controller's requisition under sub-section (1) of section 61 amends the original valuation;

(2) where the original valuation has been discovered to be too low;

(3) where the High Court upon the Board's reference under section 64 enhances the original valuation.

As regards (1) there is no difficulty of applying the section, because the person accountable agrees with the Controller and amends the original valuation; within two months of the date of amendment, he can pay the deficit estate duty.

As regards (2) if the accountable person does not agree that the original valuation is too low, the Controller is empowered to determine the estate duty on the basis of his estimate of valuation. Section 63 gives a right of appeal to the Board by the accountable person in this case and under sub-section (5) of section 63, the dispute in appeal relates to the amount of estate duty determined by the Controller, and therefore the party accountable need not pay the excess duty until his appeal is disposed of.

As regards (3) it is not possible to conceive of a reference to be made to the High Court by the Board. Nowhere in the Act the Board is invested with the power or the right to refer to the High Court any case decided by itself. Nor can it be conceived how there can arise any enhancement of estate duty by the High Court in a statement of the case submitted to it at the instance of the party accountable.

Sub-section (2) directs the Controller to refund to the person accountable any excess duty paid by him within two months from the date of the receipt by him of the order of the High Court reducing the valuation. The Controller is required to give a certificate to the effect that the full duty payable in respect of the property has been paid both in the case arising under sub-section (1) and in the case arising under sub-section (2). The same difficulties that are pointed out as arising under sub-section (1) arise in the application of this sub-section to the 3rd case. If the reference to the High Court is successful i.e., the accountable person's denial of liability is affirmed by the High Court no question of paying full duty in respect of the property will arise; although the Act lays a duty upon the persons described in section 53 and clause (*a*) of section 57 to deliver an account, if they do not deliver accounts, under section 61, sub-section (2), the Controller is entitled to prepare the account himself, and assess the estate duty payable on the basis of the account prepared by him. Sub-section (3) states that the persons mentioned in section 53 and section 57, clause (*a*) thereof must pay the estate duty as determined by the Controller within two months of their acceptance of the amount of duty determined by the Controller. In all other cases, where there is no acceptance by the accountable persons, and the matter is sent up to the High Court by means of a statement of case under the provisions of section 64 (1), the accountable persons are entitled to get certificates on payment of full duty in respect of the property from the Controller

within two months of the final disposal of the reference made under sub-section (1) of section 64. "Final disposal" within the meaning of sub-section (3) refers to the disposal of the matter by the Supreme Court in cases where an appeal has been filed in the Supreme Court.

Sub-section (4) authorises the Controller to levy a penalty of Rs. 1,000 or a sum equal to twice the amount due according as he may elect for failure of the accountable persons to pay the duty within the period of two months calculated as above mentioned. The Controller is further given by the proviso, power to reduce the penalty. Sub-section (5) is an enabling provision, and a wholesome one. Any person accountable for estate duty without waiting for the time given to him under the Act to deliver an account may immediately on the death of the deceased deliver an account duly verified by him and can pay the estate duty payable in respect of the property and obtain from the Controller a certificate. In this way the accountable person will get rid of his liability to account as quickly as possible.

Section 67 mainly deals with certificates to be granted by the Controller. The certificates that will be granted and can be obtained on fulfilment of the conditions specified under section 67 are: (1) Certificate under sub-section (5); (2) Certificate where the person accountable amended the original valuation, upon the Controller's requisition under sub-section (1) of section 61; (3) Certificate where the accountable person paid the duty in accordance with the decision of the High Court on reference to it; (4) Certificate where the accountable person even though he has not delivered an account, accepts the account prepared by the Controller under sub-section (2) of section 61 and pays the estate duty payable in accordance with the determination of the Controller; (5) Certificate where the accountable person mentioned in section 57 pays the full duty as determined by the Commissioner; (6) Where an accountable person who has carried the matter by reference to the High Court and from the decision of the High Court further in appeal to the Supreme Court and within two months of the decision of the Supreme Court pays the full duty payable.

Section 75 of the Act states the effect of the above certificates. Sub-section (5) of section 67 is based on section 8 (8) of the Finance Act, 1894, which is as follows :—The Commissioners on application from a person accountable for the duty on any property forming part of an estate shall, where they consider that it can conveniently be done, certify the amount of the valuation accepted by them for any class or description of property forming part of such estate. (See also section 43 of the Act.)

An application for a certificate under sub-section (5) of section 67 of the Act shall be in Form ED 2. (See rule 28).

The certificates under sub-sections (1), (2) and (3) of section 67 shall be in Form ED 4. [See rule 28, sub-rule (3)].

Section 68. *Commutation of duty in respect of interest in expectancy.*—The Controller in his discretion may, upon application by a person entitled to an interest in expectancy, commute the estate duty which would or might, but for the commutation, become payable in respect of such interest for a certain sum to be presently paid, and, for determining that sum, shall cause a present

value to be set upon such duty, regard being had to the contingencies affecting the liability to and rate and amount of such duty, and interest being reckoned at three per cent; and on the receipt of such sum the Controller shall give a certificate accordingly.

It is seen from the foregoing that section 38 of the Act gives an option for payment of estate duty in respect of an interest in expectancy either with the duty in respect of the rest of estate or when the interest falls into possession. This section enables a person accountable to apply for commutation of estate duty in respect of an interest in expectancy even where on the death of the deceased he has exercised the option given to him by not paying the estate duty on the death at the same time as the payment of estate duty in respect of the rest of the estate of the deceased; in spite of his deciding then to pay estate duty only when the interest falls into possession, he can change his mind and apply for commutation. In such a case the person accountable must give fullest particulars. It is necessary for the Controller to know the state of health of the life tenant and the expectation of life of the life tenant. The basis of commutation will be on the value at the date of commutation of the full future duty. It is not on the basis of the full duty on the present value of the expectant interest. In other words, the interest in expectancy will be valued as if it were in possession on the date of commutation. The value so determined will be discounted for the expectant duration of the prior interest. Under this section discretion is given to the Controller to commute; he is not bound to commute. Where the life interest according to the information furnished to him or according to the information that is made available to him from other sources will come to an end soon, he can refuse commutation. The fact that the reversion has already been sold is, however, no bar to the granting for commutation. This section also directs the issue of a certificate where the estate duty in respect of an interest in expectancy has been commuted. The discount rate is mentioned as 3% in the section. For calculation of the present value of the full future duty a reference to the mortality tables of authority and value is necessary.

Section 69. *Assessment in complicated cases.*—Where by reason of the number of deaths upon which property has passed or of the complicated nature of the interests of different persons in property which has passed on death, or from any other cause, it is difficult to ascertain exactly the amount of estate duty payable in respect of any property or any interest therein or so to ascertain the same without undue expense in proportion to the value of the property or interest, the Board, on the application of any person accountable for the duty and upon his giving to the Board all the information in his power respecting the amount of the property and the several interests therein and other circumstances of the case, may by way of composition for all or any of the duties payable in respect of the property or interest and the various interests therein or any of them, assess such sum on the value of the property or interest, as having regard to the circumstances appears proper, and may accept payment of the sum so assessed in full payment of all claims for estate duty in

respect of such property or interest, and shall give a certificate accordingly.

This section is based on section 13 of the Finance Act, 1894. Although styled as assessment in complicated cases, the section empowers the Board only to accept composition of a lump sum amount in quit of the estate duty that is payable in respect of the property of the deceased. The reasons for composition under this section are (1) the property passed under many deaths in a short time; (2) conflicting and complicated interests of beneficiaries; (3) too many beneficiaries; (4) difficulties in ascertaining exactly the amount of estate duty payable in respect of the property or any interest therein; (5) undue expense compared with the value of the property or interests; (6) for any other cause. "Any other cause" must be a cause analogous to those mentioned before. The value of the property passing on a death may be just the value on which estate duty is leviable. That is to say the value falls within the first slab. Before even the commencement of ascertainment of estate duty on the death, another death occurs and so on. The beneficiaries may have settled their claims not strictly in accordance with law but by way of compromise to obtain peace. Although it is not obligatory on the part of the Board to accept composition the existence of the facts mentioned above may induce the Board to accept composition. In this case the certificate is given by the Board as to payment of estate duty.

A certificate under section 69 of the Act shall be in Form ED 4. [See rule 28, sub-rule (3)].

Section 70. *Controller may allow postponement of payment on terms.*— (1) Where the Controller is satisfied that the estate duty leviable in respect of any property cannot, without excessive sacrifice, be raised at once, he may allow payment to be postponed for such period, to such extent, and on payment of such interest not exceeding four per cent, or any higher interest yielded by the property, and on such other terms as he may think fit.

(2) Notwithstanding anything contained in sub-section (1), estate duty in respect of immovable property may at the option of the person accountable be paid in eight equal yearly instalments or sixteen equal half-yearly instalments with interest at the rate of four per cent. per annum or any higher interest yielded by the property from the date on which the first instalment is payable and the interest on the unpaid portion of the duty shall be added to each instalment and paid accordingly ; but the duty for the time being unpaid with such interest to the date of payment may be paid at any time and in case where the property is sold shall be paid on the completion of the sale and if not so paid shall be recovered in the manner specified in section 73.

Sub-section (1) of this section is based on section 8 (9) of the Finance Act, 1894. Sub-section (2) of the section is based on section 6 (8) of the Finance Act, 1894. Sub-section (1) permits the Controller to grant extension of time for payment of estate duty even in the case of movable property. The Controller must be satisfied that without excessive sacrifice the amount

of estate duty cannot be raised at once. The postponement of payment will be only on condition that the person accountable will pay interest at 4% or will pay the higher interest yielded by the property. Where the property yields higher interest than 4%, the whole of that interest must be paid to the Controller. If the property yields less than 4% interest then the accountable person must agree to pay interest at 4%. The postponement may be granted for such period as the Controller deems fit. He can impose on the accountable person any other terms as he may think fit. Sub-section (2) deals with estate duty payable in respect of immovable property. It has been pointed out above that the estate duty in respect of immovable property may be paid in 8 equal yearly instalments or 16 equal half-yearly instalments, and that the first instalment is payable on the first anniversary of the death of the deceased. The accountable person has to pay interest at the rate of 4% per annum or any higher interest yielded by the property from the date on which the first instalment is due and payable. Interest on the unpaid portion of the duty shall be added to each instalment. The duty for the time being unpaid together with interest thereon may be paid at any time by the accountable person. Where the property is sold then the whole of the estate duty due together with interest will have to be paid on the completion of the sale. The sale of property within the period of instalments will put an end to the right of payment of estate duty by instalments. If it is not paid on the completion of the sale then the amount due will be recovered as if it were an arrear of land revenue.

Section 71. *Board may remit duty and interest outstanding after twenty years from death.*—If after the expiration of twenty years from a death upon which estate duty became leviable any such duty remains unpaid, the Board may, if it thinks fit, on the application of any person accountable or liable for such duty or interested in the property, remit the payment of such duty or any part thereof or any interest thereon.

This section is based on section 8 (11) of the Finance Act, 1894. The Board is given the power to remit estate duty and outstanding interest after 20 years of death. In order that the Board may exercise this power there should be an application to the Board made by any person accountable or by any person liable for such duty or by any person interested in the property. The Board may remit the payment of entire duty outstanding or only a part thereof or only interest. If the Board is unable to collect estate duty payable in respect of the property of the deceased within such a long period as 20 years then it is not worthwhile to keep the file on the shelves of the Board.

Section 72. *Forms.*—All affidavits, accounts, certificates, statements and forms used for the purposes of this Part of this Act shall be in such form and contain such particulars as may be prescribed by the Board and, if so required by the Board, shall be in duplicate and accounts and statements shall be delivered and verified on oath and by production of books and documents in the manner prescribed by the Board and any person who wilfully fails to comply with the provisions of this section shall be liable to the penalty mentioned in section 56.

This section states: (1) All affidavits (2) accounts (3) certificates and (4) statements, should only be in the forms prescribed by the Board by its rules. If the rules prescribed that any particulars should be given, those particulars must be given. Otherwise there is no proper compliance with the rules framed by the Board. The Board is given power to require supply of all affidavits, accounts, certificates and statements in duplicate. It may require that accounts and statements to be delivered shall be verified on oath. It may require production of books and documents in the manner prescribed by the rules made by it. Failure to comply with the provisions of this section will attract the levy of penalty mentioned in section 56. The penalty is Rs. 1,000 or a sum equal to double the amount of estate duty. The penalty that is imposed under this section is also subject to the provisions of section 56 with the result that the Controller may reduce the penalty in any particular case.

Section 73. *Recovery of duty and penalties.*—Any estate duty or deficit duty and any interest or penalty payable under this Act may, on the certificate of the Controller, be recovered from the person liable thereto as if it were an arrear of land revenue by any Collector in any State.

(1) Estate Duty (2) Deficit Duty (3) Interest (4) Penalty imposed under this Act may be recovered as if the same were an arrear of land revenue by any Collector in any State. All that is necessary is for the Controller to send a certificate to any Collector in any State which shall specify any one of the 4 items mentioned above as due. Collection of estate duty or deficit duty, any interest due or penalty payable under the Act can be as if it were an arrear of land revenue. The Revenue Recovery Act (I of 1890) must be perused in order to find out how an arrear of land revenue is collected. The collection of money as an arrear of land revenue is the most drastic form and method of collection. The important provisions of the said Act are mentioned below :—

Section 2.

In this Act, unless there is something repugnant in the subject or context,—

(1) "district" includes a presidency town ;

(2) "Collector" means the chief officer in charge of the land revenue administration of a district ; and

(3) "defaulter" means a person from whom an arrear of land revenue, or a sum recoverable as an arrear of land revenue is due, and includes a person who is responsible as surety for the payment of any such arrear or sum.

Section 3.

(1) Where an arrear of land revenue, or a sum recoverable as an arrear of land revenue, is payable to a Collector by a defaulter being or having property in a district other than that in which the arrear accrued or the sum is payable, the Collector may send to the Collector of that other district a certificate in the form as nearly as may be of the schedule, stating—

(*a*) the name of the defaulter and such other particulars as may be necessary for his identification, and

(*b*) the amount payable by him and the account on which it is due.

(2) The certificate shall be signed by the Collector making it, (or by any Officer to whom such Collector may, by order in writing, delegate this duty) and, save as otherwise provided by this Act, shall be conclusive proof of the matters therein stated.

(3) The Collector of the other district shall on receiving the Certificate, proceed to recover the amount stated therein as if it were an arrear of land revenue which had accrued in his own district.

Section 4.

(1) When proceedings are taken against a person under the last foregoing section for the recovery of an amount stated in a certificate, that person may, if he denies his liability to pay the amount or any part thereof and pays the same under protest made in writing at the time of payment and signed by him or his agent, institute a suit for the repayment of the amount or the part thereof so paid.

(2) A suit under the sub-section (1) must be instituted in a Civil Court having jurisdiction in the local area in which the office of the Collector who made the certificate is situate, and the suit shall be determined in accordance with the law in force at the place where the arrear accrued or the liability for the payment of the sum arose.

(3) In the suit the plaintiff may, notwithstanding anything in the last foregoing section, but subject to the law in force at the place aforesaid, give evidence with respect to any matter stated in the certificate.

(4) This section shall apply if under this Act as in force as part of the law of Burma, or under any other similar Act, forming part of the law of Burma, proceedings are taken against a person in Burma for the recovery of an amount stated in a certificate made by a Collector in British India.

Section 5.

Where any sum is recoverable as an arrear of land revenue by any public officer other than a Collector or by any local authority, the Collector of the district in which the office of that officer or authority is situate shall, on the request of the officer or authority, proceed to recover the sum as if it were an arrear of land revenue which has accrued in his own district, and may send a certificate of the amount to be recovered to the Collector of another district under the foregoing provisions of this Act, as if the sum were payable to himself.

Section 6.

(1) When the Collector of a district receives a certificate under this Act, he may issue a proclamation prohibiting the transfer or charging of any immovable property belonging to the defaulter in the district.

(2) The Collector may at any time, by order in writing, withdraw the proclamation, and it shall be deemed to be withdrawn when either the amount stated in the certificate has been recovered or the property has been sold for the recovery of that amount.

(3) Any private alienation of the property or of any interest of the defaulter therein, whether by sale, gift, mortgage or otherwise, made after the issue of the proclamation and before the withdrawal thereof, shall be void as against the (Crown) and any person who may purchase the property at a sale held for the recovery of the amount stated in the certificate.

(4) Subject to the foregoing provisions of this section, when proceedings are taken against any immovable property under this Act, for the recovery of an amount stated in a certificate, the interests of the defaulter alone therein shall be so proceeded against, and no incumbrances created, grants made or contracts entered into by him in good faith shall be rendered invalid by reason only of proceedings being taken against those interests.

(5) A proclamation under this section shall be made by beat of drum or other customary method, and by the posting of a copy thereof on a conspicuous place in or near the property to which it relates.

Section 7.

Nothing in the foregoing sections shall be construed—

(*a*) to impair any security provided by, or affect the provisions of, any other enactment for the time being in force for the recovery of land revenue or of sums recoverable as arrears of land revenue, or

(*b*) to authorise the arrest of any person for the recovery of any tax payable to the corporation, commissioner, committee, board, council or person having authority over a municipality under an enactment for the time being in force.

The certificate mentioned in section 3, sub-section (1) is as follows :—

From

The Collector of.....

To

The Collector of.....

Dated the.....of 19.....

The sum of Rs.....is payable on account of..... .....by....., son of....., resident of ....., who is believed (to be at.....) (to have property consisting of..... .....) at .....in your district.

Subject to the provisions of the Revenue Recovery Act, 1890, the said sum is recoverable by you as if it were an arrear of land revenue which had accrued in your own district, and you are hereby desired so to recover it and to remit it to my office at.....

A.B.,

Collector of.....

There are in force in the several States of India laws governing recovery of arrears of land revenue. These Provincial Laws may also be perused.

Rule 29 specifies the certificate referred to in section 73.

29. Duty to be recovered under certificate.—(1) For the purpose of recovery of duty under section 73 of the Act, the Controller shall issue a certificate in writing to the effect that—

(*a*) the person named in the certificate is the executor or other person accountable or liable under the Act to pay the duty ;

(*b*) the amount of duty stated in the certificate includes duty payable in respect of the property mentioned in the certificate ;

(*c*) notice of the duty payable was duly served on the person named in the certificate ;

(*d*) the sum named in the certificate was, at the date of the certificate, due to the Government of India in respect of duty.

(2) In this rule the expression "duty" includes any interest or penalty payable under the Act.

CHAPTER XXIX

CHARGE OF ESTATE DUTY ON PROPERTY AND FACILITIES FOR RAISING IT

Section 74. *Estate duty a first charge on property liable thereto.*— (1) Subject to the provisions of section 19, the estate duty payable in respect of property, movable or immovable, passing on the death of the deceased, shall be a first charge on the immovable property so passing (including agricultural land) in whomsoever it may vest on his death after the debts and incumbrances allowable under Part VI of this Act ; and any private transfer or delivery of such property shall be void against any claim in respect of such estate duty.

(2) A rateable part of the estate duty on an estate, in proportion to the value of any beneficial interest in possession in movable property which passes to any person (other than the legal representative of the deceased) on the death of the deceased shall be a first charge on such interest :

Provided that the property shall not be so chargeable as against a *bona fide* purchaser thereof for valuable consideration without notice.

(3) The Controller may release the whole or any part of any property, whether movable or immovable, from charge under this section in such circumstances and on such conditions as he thinks fit.

Section 9 (1) of the Finance Act, 1894 is as follows :—

A rateable part of the estate duty on an estate, in proportion to the value of any property which does not pass to the executor as such shall be a first charge on the property in respect of which duty is leviable, provided that the property shall not be so chargeable as against a *bona fide* purchaser thereof for valuable consideration without notice. Section 54, sub-section (8) of the Finance Act, 1940 states :—The following provisions of the Finance Act, 1894 shall not have effect in relation to the duty payable by virtue of section 46 of this Act, that is to say, (*a*) so much of sub-section (2) of section 6 as relates to payment of estate duty on personal property of which the deceased was competent to dispose at his death; and (*b*) so much of sub-section (3) of section 8 as relates to the accountability of the executor of the deceased in respect of personal property of which the deceased was competent to dispose at his death and sub-section (4) of that section ; and sub-section (1) of section 9 of the said Act shall have effect in relation to the estate as if the property passing by virtue of section 46 of this Act had been the property passing to the executor as such.

As this section is made subject to the provisions of section 19, there is no charge created under this section on the property of the deceased which represents benefits to him from the company. Section 19 itself provided for

the collection and incidence of duty arising under or by virtue of section 17 of the Act. Sub-section (1) of this section although mentions movable property in addition to immovable property passing on the death of the deceased, a first charge is created on the immovable property so passing. The charge under this section will fasten itself to agricultural land also in whomsoever it may vest on the death of the deceased. First of all debts and incumbrances allowable under Part VI of this Act have to be provided for and the charge is effective after payment of the debts and incumbrances, which are allowable; in other words, debts and incumbrances take precedence over the statutory charge created. The provision "any private transfer or delivery of such property shall be void against any claim in respect of such estate duty" is parallel to the provision contained in the Civil Procedure Code, section 64, which reads: "where an attachment has been made, any private transfer or delivery of the property attached or of any interest therein and any payment to the judgment debtor of any debt, dividend or other moneys contrary to such attachment, shall be void as against all claims enforceable under the attachment. Explanation—For the purposes of this section, claims enforceable under an attachment include claims for the rateable distribution of assets." The section does not prohibit private transfer or delivery of property over which the section creates a first charge. Such a transfer will be perfectly valid between the parties. If the estate duty has been paid in full by a person accountable after a private alienation of property then the alienee enjoys the property free from the charge. If it is necessary for the Revenue to proceed against the property charged in the hands of the alienee, the alienee has no claim to retain the property free from the charge. His claim cannot be entertained because the Revenue has a claim for estate duty on the property, which is in his possession. Sub-section (2) enacts that there shall be a first charge even on movable property which passes to any person other than the legal representative of the deceased to the extent of a proportion; the proportion is calculated as follows:—

$$\frac{\text{Total value of the property in the possession of the beneficiaries}}{\text{Total value of the property on which Estate Duty is payable}} \times \text{Estate Duty}$$

The proviso protects from the charge a *bona fide* purchaser for valuable consideration without notice. The charge under this section is created by the operation of law, namely, section 74. Section 100 of the Transfer of Property Act is as follows:—

"Where immovable property of one person is by act of parties or operation of law made security for the payment of money to another, and the transaction does not amount to a mortgage, the latter person is said to have a charge on the property; and all the provisions hereinbefore contained which apply to a simple mortgage shall, so far as may be, apply to such charge. Nothing in this section applies to the charge of a trustee on the trust property for expenses properly incurred in the execution of his trust, and, save as otherwise expressly provided by any law for the time being in force, no charge shall be enforced against any property in the hands of a person to whom such property has been transferred for consideration and without notice of the charge." Power is conferred by sub-section (3) on the Controller to release the whole or any part of the property whether movable or immovable from charge under this section in such circumstances, and on

Section 75. *Discharge from estate in certain cases.*—A certificate granted by the Controller under section 67, or by the Board under section 69, shall discharge the property included therein and the grantee so far as regards that property from any further claim for estate duty, but shall not discharge any person or property from estate duty in case of fraud or failure to disclose material facts and shall not affect the duty payable in respect of any property afterwards shown to have passed on the death nor any further duty payable by reason thereof in respect of the property included in the certificate :

Provided nevertheless that a certificate purporting to be a discharge of the whole estate duty payable in respect of any property included in the certificate shall exonerate a *bona fide* purchaser for valuable consideration without notice from the duty notwithstanding any such fraud or failure.

This section states the effect of certificates granted by the Controller or by the Board (see above under section 67 and under section 69). The certificate will discharge only the property included in the certificate, so far as regards that property from any further claim for estate duty. The grantee of the certificate will not be called upon to pay any additional estate duty in respect of the property covered by the certificate. Even the holder of a certificate will be liable if he is guilty of fraud, or if he has failed to disclose material facts. If it is established that any property which had passed on the death was omitted in the account that property will be liable for payment of estate duty not only to the extent of its proportionate share but also to the entirety of the estate duty which remains unpaid. The rate of estate duty also may become higher if the value of the omitted property is included in the total gross value of the property passing on the death. For the higher duty also this property remains liable. Likewise, the grantee of the certificate will remain accountable for payment of higher rate of duty that becomes payable on account of any property not being included in the original account for the estate duty. Fraud vitiates everything, and notwithstanding the certificate, the liability to pay estate duty remains in all cases where there is fraud or failure to disclose material facts or where there is omission from the original account of any property passing on the death. The proviso gives protection only to a *bona fide* purchaser for valuable consideration without notice even in a case of fraud or failure to disclose material facts or omission of the property from the original account on the part of accountable persons.

Section 76. *Person accountable to be repaid by trustees and owners in certain cases.*—If a person accountable under section 53 pays any part of the estate duty in respect of any property not passing to him, it shall, where occasion requires, be repaid to him by the trustees or owners of the property.

Compare with this section, section 9 (4) of the Finance Act, 1894. Section 9 (4) is : "if the rateable part of the estate duty in respect of any property is paid by the executor, it shall where occasion requires be repaid to him by the trustees or owners of the property, but if the duty is in respect

of real property, it may, unless otherwise agreed upon, be repaid by the same instalments and with the same interest as are in this Act mentioned." In the United Kingdom accountability and incidence to estate duty charged on property, apportionment of estate duty, reimbursement of estate duty, protection of *bona fide* purchasers for full consideration and without notice are provided for by many provisions. These subjects are regulated by various Acts such as the Customs and Inland Revenue Act, 1889, the Law of Property Act, 1925, The Trustee Act, 1925, the Administration of Justice Act, 1928, the Administration of Estates Act, 1925, The Settled Land Act, 1925, The Land Registration Act, 1925. In the Act these matters are regulated by a few simple sections; sections 53, 54, 55, 57 and section 76. This last section states that any accountable person within the meaning of section 53 who pays any part of the estate duty in respect of any property not passing to him will be entitled to repayment by the Trustees or owners of the property. The words in the section "where occasion requires" are vague. Nowhere in the Act is there a section dealing with apportionment of liability among all accountable persons, nor anywhere in the Act any rules are laid down for reimbursement of estate duty paid by an accountable person. There is no indication in the Act to what extent and from whom reimbursement can be had. Having regard to the limited application of section 76 it is submitted that the general law of the land will apply to all claims for reimbursement so that it is open to any accountable person to bring a suit in a Civil Court to obtain the relief he claims. Every person made accountable for estate duty under the Act is a debtor to the State [*Berry* v. *Gaukroger* (1903) 2 Ch. 116, pp. 130-31]. If he dies without discharging his liability completely the balance estate duty can be recovered from his legal representatives. Whether the State has priority with respect to the debts due to it is to be decided by the General Law. Section 74 of the Act enacts that estate duty shall be a first charge on the property passing on a death. There is no limitation for the State to recover its debts. The provisions contained in sections 59 and 71 of the Act do not operate as a bar of limitation.

The decision of the Court of Appeal in—

Re Keele Estates Aveling and another v. *Sneyd and others.*

[(1952) 2 All E.R. 164.]

will be of considerable help in the solution of questions that may arise out of the application of sub-section (2) of section 74 of the Act.

The facts of the case are taken from the judgment of Roxburgh, J.

"The property with which we are concerned is real property in strict settlement, which was originally settled by Ralph Sneyd Sr., who died on July 27, 1870. By his will, dated May 30, 1865, Ralph Sneyd senior devised the said settled estates to the use of his brother Walter Sneyd for life, and after his death to the use of Colonel Sneyd on limitations for the sons of Colonel Sneyd in tail—he had none—and in default of such issue to the use of Walter Sneyd, his heirs and assigns for ever. Walter Sneyd died on July 2, 1888, i.e., before the passing of the Finance Act, 1894, but Colonel Sneyd survived until Christmas day, 1949, and, therefore, when Walter Sneyd died he (Walter Sneyd) had a vested defeasible remainder in fee simple in the settled estates. Heavy estate duty became payable on the death of Colonel Sneyd. By his will, dated June 14, 1886, Walter Sneyd, in case he should

become entitled in fee simple to the real estate being freeholds of inheritance devised by the will of Ralph Sneyd senior, devised the same (subject to any estates or interests prior to the ultimate limitation to himself and also subject to a certain jointure and portions charged by his own will) and all his own real estate to the use of his trustees for a term of fifteen hundred years to commence from his decease, on the trusts thereinafter declared and from and after the expiration or determination of the said term of years and in the meantime subject thereto to various uses. The trusts of the term were to raise as and for the portion of each of his daughters (other than the eldest or any other daughter or daughters entitled as tenant for life in possession) the sum of £20,000 together with certain interest. The portion of each daughter was settled."

Per Sir Raymond Evershed, M.R.: "The daughters in whose favour was the term of fifteen hundred years for raising portions of £20,000 each were four in number.

The first question which is raised is whether those sums charged as I have described by Walter's will (for I will refer to the Reverend Walter Sneyd as "Walter") have to bear some part of the large sum for estate duty which fell to be payable on the death of the person described by Roxburgh, J., as Colonel Synad, who was a nephew of the original settlor, Ralph Synad, and a son of Walter. If the portioners do not bear any part of the estate duty which then became exigible, the effect will be that such duty must be borne by the persons entitled to the settled property under Walter's disposition, subject to the portions term. In effect the charge would fall on the present infant tenant in tail....

Two matters arise which clearly add to the singular nature of the circumstances of this case. In the first place, though Walter's will took effect and came into operation on his, Walter's death in July, 1888, the devises and other dispositions he made in regard to the property in question did not take effect until the passage of no less than sixty-one years from his, Walter's death, for during that intervening period Colonel Ralph Sneyd the younger was the tenant for life in possession under the terms of the original settlement made by Ralph Sneyd the elder. The second unusual feature which makes it perhaps unlikely that the facts presented to this court will find any close parallel hereafter is that at the death of Walter there was—it sounds a strange thing in these days—no such thing as estate duty, for Parliament had not then enacted the Finance Act, 1894; moreover, at that distant time the Land Transfer Act, 1897, had not been passed, so that real property did not pass to and vest in the personal representatives of a deceased proprietor. In the absence of testamentary disposition, the real estate would go to the heir-at-law, and if there was a will it would pass to the testamentary devisee.

The problem is: What is the effect of section 14 (1) in the circumstances that have occurred? The sub-section provides:

"In the case of property which does not pass to the executor as such, an amount equal to the proper rateable part of the estate duty may be recovered by the person, who being authorised or required to pay the estate duty in respect of any property has paid such duty, from the person entitled to any sum charged on such property (whether as capital or as an annuity or otherwise), under a disposition not containing any express provision to the contrary...."

Do its terms fit the circumstances as I have indicated them? The first requirement of the application of the section is contained in the first line in the words: "In the case of property which does not pass to the executor as such...." It is agreed that in the circumstances of this case the settled property which devolved on the special personal representatives of Colonel Ralph Sneyd is not to be described as property passing to the executors as such. Therefore, the first condition for the application of section 14 (1) is satisfied. The sub-section proceeds,

"....an amount equal to the proper rateable part of the estate duty may be recovered by the person, who being authorised or required to pay the estate duty in respect of any property had paid such duty, from the person...."

lastly referred to. As regards the second part of that sub-section, again there is no question of its applicability. The special personal representatives became liable and answerable for this large sum of duty which was then exigible, and they have paid it or are in the course of so doing. Therefore, they are entitled, within the terms of the section, to recover that duty from the person who is last mentioned in this sub-section. The contest is: Who is that person and does the description include the portioners in this case? The formula is:

"....from the person entitled to any sum charged on such property ....under a disposition not containing any express provision to the contrary." I confess that, on a first reading of the sub-section, it would appear tolerably plain, as a matter of language, that the portioners were persons aptly described by these words, for, as a result of Walter's will (which having been made before the Finance Act, 1894, naturally enough did not contain any express provision to the contrary) they were entitled to a sum of £20,000 each charged on such property, which means, of course, the settled property which passed on the death of Colonel Ralph Sneyd....

It seems to me, therefore, that the terms of the sub-section in this case are satisfied, the circumstance of the case being, as I have indicated, special in many respects. I confine my conclusion to these facts, and I attempt no answers to other possible cases which were put forward by way of illustration, but my conclusion so far stated will cover the case of the portioners under Walter's will, viz., his four daughters.

The situation of the five daughters of Major Sneyd is a little different and requires some further, though I think slight, explanation. I have said that they are concerned as the result of a deed executed in 1931, and that circumstance, again is, I think, important. The deed was executed by him long before the estate came into his possession, but the deed was an exercise of the power to appoint portions contained in his grandfather's will, the will of Walter Sneyd. That being so and the effect of the deed being equally, as I think, to charge the estates settled by the joint effect of all these instruments no distinction in principle emerges between the case of those portioners and the case of the portioners taking directly under the will of Walter....

I conclude that the sums of money to which the several portioners were entitled by virtue of the charges created, first, by Walter's will, and secondly, by Major Henry Sneyd's deed in 1931 are within the ambit of the language of section 14 (1), so as to entitle and require the trustees of the compound settlement, on behalf and in right of the tenant in tail (who are also the

special personal representatives of Colonel Sneyd and I think fill every other relevant capacity that it is possible for them to do, including that of being the statutory owners for the tenant in tail himself), to look to the sums respectively charged "as and for portions" to bear a rateable part of the several sums of duty. I think, accordingly, that the appeal should be allowed on this point."

Section 77. *Facilities for paying duty or raising amount already paid.*—(1) A person authorised or required to pay estate duty in respect of any property shall, for the purposes of paying the duty, or raising the amount of the duty when already paid, have power, whether the property is or is not vested in him, to raise the amount of such duty and any interest and expenses properly paid or incurred by him in respect thereof, by the sale or mortgage of or a terminable charge on that property or any part thereof.

Provided that any sum payable under any such sale, mortgage or terminable charge may be paid (to the extent to which such sum or part thereof represents the estate duty payable), not to the person raising the sum but to the Controller at the option of the person from whom the sum is being raised.

(2) A person having an interest in any property, who pays the estate duty in respect of that property, shall be entitled to the like charge, as the estate duty in respect of that property had been raised by means of a mortgage to him.

(3) Any money arising from the sale of property comprised in the settlement or held upon trust to lay out upon the trusts of a settlement may be expended in paying any estate duty in respect of property comprised in the settlement and held upon the same trusts.

Except for the proviso to sub-section (1) of this section, this section is based on section 9 (5) [equal to sub-section (1) of this section], section 9 (6) [equal to sub-section (2) of this section], section 9 (7) [equal to sub-section (3) of this section], of the Finance Act, 1894. The following facilities are provided by this section to any person accountable. (1) He may pay the estate duty from his own pocket; it may be that he is not in possession of any of the property which passed on the death. (2) He can mortgage any of the property which passed on the death. (3) He can create a terminable charge on that property or any part thereof. (4) He can sell that property. He can, if he has not paid the estate duty raise the amount of the estate duty including any interest that is due by a mortgage or sale of the property that passed on the death. He can also raise the amount of the estate duty by creating a terminable charge on the property. The lender of the amount of duty and interest due if any, thereon, for his own protection may offer to pay the amount directly to the Controller. The person accountable is entitled to be paid his expenses properly incurred by him in the above circumstances. Sub-section (2) gives the benefit of a charge in respect of any property of the deceased which passed and which he is in possession of, where he has paid the amount of estate duty in respect of that property.

Sub-scction (3) authorises the sale of settled property or part of it in order to pay estate duty. Any money held by trustees who are required to lay out same being trustees of a settlement, may utilise that money for payment of estate duty. The burden of payment of estate duty necessarily falls on the beneficiary. He may or may not be in possession of the property which passes on the death. The executor or the trustee in whom the property of the deceased vests is also a person accountable under the provisions of sections 53 and 57 of the Act. To facilitate payment of estate duty by persons accountable and to facilitate collection of estate duty this section has given the powers mentioned above to the persons accountable. It is necessary to point out that the following provisions have been made in the Finance Act 1894. Section 9 (2) : On an application submitting in the prescribed form the description of the lands or other subjects of property (whether hereditaments, stocks, funds, shares or securities) and of the debts and incombrances allowed by the Commissioners in assessing the value of the property for the purpoes of estate duty, the Commissioners shall grant a certificate of the estate duty paid in respect of the property and specify the debts and incumbrances so allowed, as well as the lands or other subjects of property. Section 9 (3) : Subject to any repayment of estate duty arising from want of title to the land or other subjects of property, or from the existence of any debt or incumbrance thereon for which under this Act an allowance ought to have been but has not been made or from any other cause, the certificate of the Commissioners shall be conclusive evidence that the amount of duty named therein is a first charge on the lands or other subjects of property after the debts and incumbrances allowed as aforesaid : Provided that any such repayment of duty by the Commissioners shall be made to the person producing to them the said certificate. Nowhere in the Act provision similar to that contained in section 9, sub-section (3) is made. As pointed out under section 76 there is no machinery provided in the Act for adjustment of the rights among the beneficiaries, the trustees, the executors and all other persons accountable. Even though section 74 creates a first charge on property which passed on the death, and even though the certificates which can be obtained from the Controller in respect of payment of whole or part of estate duty specified the charge, in the event of dispute, the charge can only be enforced in a competent Civil Court. (See *Lord Advocate* v. *Christie's Trustees*, 1905, 12 S.L.T. 690). The expression "where occasion requires" covers the following contingencies :

(1) where he pays estate duty,
(2) the property of the deceased has not passed to him as executor,
(3) where the beneficiaries under a trust or will are different,
(4) where the interests of the beneficiaries under the trust or the will are different,
(5) where the executor has not been directed by the deceased to pay the estate duty.

In the Finance Act, 1894, there are the following sub-sections to 14 which are absent from the Act.

(1) In the case of property which does not pass to the executor as such, an amount equal to the proper rateable part of the estate duty may be recovered by the person, who being authorised or

required to pay the estate duty in respect of any property has paid such duty, from the person entitled to any sum charged on such property (whether as capital or as an annuity or otherwise), under a disposition not containing any express provision to the contrary.

(2) Any dispute as to the proportion of estate duty to be borne by any property or person, may be determined upon application by any person interested in manner directed by rules of court, either by the High Court, or, where the amount in dispute is less than 50 pounds, by a county court for the county or place in which the person recovering the same resides, or the property in respect of which the duty is paid is situate.

(3) Any person from whom a rateable part of the estate duty can be recovered under this section shall be bound by the accounts and valuations as settled between the person entitled to recover the same and the Commissioners.

The Act does not offer as many facilities as are offered in the United Kingdom for payment of estate duty. Section 56 (1) of the Finance Act (1909-10), 1910, provides as follows:—

(1) The Commissioners may, if they think fit, on the application of any person liable to pay estate duty or settlement estate duty ....accept in satisfaction of the whole or any part of such duty [any such real (including leasehold) property] as may be agreed upon between the Commissioners and that person.

(2) No stamp duty shall be payable on any conveyance or, transfer of land to the Commissioners under this section.

(3) The Commissioners may hold any property transferred to them under this section and shall deal with it in such manner as Parliament may hereafter determine.

The facility of conveying any immovable property or leasehold property to the Controller in satisfaction of the whole or any part of estate duty is not made available to the accountable persons under the Act. The Finance Act, 1946 established a fund called the National Land Fund. This implemented the provisions of section 56 (1) of the Finance Act (1909-10), 1910. Reference may be made to sections 48 to 51 of the Finance Act, 1946 which is printed in the Appendices.

Lord Advocate v. *Moray* (Countess of), [1905 A.C. 531].

The facts of the case are taken from the judgment of Lord Dunedin. The late Edmund, Earl of Moray, succeeded as institute of tail in possession to large landed estates in Scotland in the year 1895. Under the provisions of the Finance Act, 1894, he was liable to pay estate and settlement estate duty in respect of the estates. He chose to avail himself of the option given by section 6, subsection (8), of that Act to pay by means of 16 half-yearly instalments. He died in June, 1901, having at that time paid 11 of the said instalments, amounting to £37,740, out of his own funds. This action is now raised by the Crown against the defenders, who are the trustees and executors of the said Edmund, Earl of Moray, under a trust disposition and settlement

conveying his property to them, and asks for estate duty and legacy duty on the said sum of £37,740. The learned judges of the First Division of the Court of Session have assoilizied the defenders in respect that in their view the late Earl took no steps during his life to make the £37,740 a charge on the landed estate in favour of himself and his executors, and that he having not done so, no right to do so passed to his executors.

Per Lord Dunedin : "The question, I think, is solved by the 9th section of the Act (Finance Act, 1894). Before I examine the terms of the section, it may be well to make some general observations on the principle of construction which a Scottish Court is obliged and bound to apply to such a statute. The Finance Act, 1894, is an Imperial Statute applying to England and Scotland alike. It is useless not to recognize the fact that such statutes are usually framed by draftsmen but little conversant with the forms and requirements of conveyancing in Scotland, and that the phraseology which they employ is apt to be directed by the Law of England, with which they are familiar.

In such circumstances the Scottish Court must do its best to give effect to the meaning of the statute, not by treating English law terms as unmeaning symbols, but as terms which, although not terms of art in Scotland, may be taken as words of ordinary popular signification, and as such are capable of application to the Scottish system.

It is true that the defect of expression is sought in some cases—and this is one of them—to be remedied by the provisions of an application clause. But an application clause is an aid to interpretation, not a code, and accordingly if it is defective the court is not thereby absolved from the duty otherwise cast upon it. I have thought this observation necessary, especially in view of what the Lord Ordinary has here said in his judgment about upsetting the fundamental rules of conveyance. If the meaning of the statute is clear, then the court must try and square the rules of conveyancing with that meaning as best it can, and nothing short of sheer impossibility will warrant it coming to the conclusion that a provision which professes to be Imperial is denied in Scotland the effect which it has in England. I am far, however, from suggesting that these principles have been hitherto ignored by the Court of Session. On the contrary, they have applied them, as I shall presently shew, to this very section in the case of Laurie (25 R. 636). And further, they have consistently done so in all cases other than those of entail which involve settlement duty. There is no definition of settled property in the application clause (section 23). And if we turn to the general definition clause (section 22), we find in (*h*) and (*i*) a definition which as a term of art is utterly meaningless to a Scottish conveyancer, but which the court has had no difficulty in applying as popular phraseology to the form of Scottish conveyancing."

Per Earl of Halsbury, L.C. :

"My Lords, this case turns upon the 6th sub-section of section 9 of the Finance Act, 1894. As I understand it, the question is whether a sum of £37,740, which had been paid by the late Earl of Moray in respect of estate duty, formed a transmissible interest, so that the Crown could claim duty upon it.

My Lords, two questions of a very different character appear to me to arise : one is whether the heir of entail, as the Earl was, is a limited owner

within the meaning of the 6th sub-section. I do not think it necessary to discuss that question at length, inasmuch as I understand that that point has been decided in Scotland, and I see no reason to question the propriety of the decision.

The other question appears to arise in respect of the appropriateness of the mode and manner by which the statute is to be effective in Scotland. Now to my mind the objection is of a character that would apparently displace the authority of the Legislature in respect of the technology of one part of the United Kingdom. I quite admit that for a time I certainly was very much impressed by Mr. Clyde's argument that, apparently by common consent among those who are familiar with Scottish forms of conveyancing, the language of the statute is absolutely inappropriate. I think one learned judge even goes so far as to say that it is unmeaning. I cannot quite concur in that, because, although it may be very inappropriate language, I do not think any one can really doubt what the meaning of the statute is; and if, although inappropriate language is used, it is known what the meaning of the Legislature is, that meaning must be obeyed in whatever form it may be necessary to adapt the practice of conveyancers to the particular thing that is to be done.

Now the question here is whether this is a charge or can be made a charge upon the estate in respect of which the late Earl did pay £37,740. I observe that those familiar with the subject are able to point out modes by which the thing can be effected although the language by which it is directed is absolutely inappropriate to Scottish conveyancing. To my mind the whole question has been expounded with great precision and accuracy by my noble and learned friend Lord Dunedin, whose judgment I am about to read. It is quite clear that whether you call it a charge, or by whatever word you choose to signify it, the thing meant is obvious enough, and the justice of it, if there be justice in it, is manifest enough. A limited owner having to pay for something which is not entirely his own, the Legislature has thought it right that there should be a charge upon the estate in respect of which he has paid it for such and such an amount. That is an intelligible proposition, although I notice that my noble and learned friend Lord Robertson points out what would be the injustice of the arrangement. If it could be said that one person is paying upon the property of another person, I cannot help thinking that the injustice, if there be injustice, is inherent in the nature of the statute, and does not arise from the construction which is to be placed upon it. One mode of illustrating and manifesting that, I think, is this—that if the question arose in England no lawyer would entertain any doubt that it could be properly effected; and is any difference to be made because it is in another part of the United Kingdom to which the Act equally applies, and because the language of conveyancers in that part of the Kingdom must be admitted to be absolutely inappropriate to the thing that is to be done? As regards the substance of the matter, when one looks through the mere technology and sees what is intended to be done, the thing is obvious enough. Under these circumstances it appears to me that the enactment of the Legislature must be obeyed, and that the judgment of the Court below ought, therefore, to be reversed."

Per Lord Macnaghten :

"My Lords, I am not at all insensible to the grave difficulties which have been pointed out so forcibly by the learned judges in Scotland. But I cannot think that those difficulties are insuperable. It must be borne in mind that the Act which your Lordships are now called upon to construe in its application to Scotland applies equally to the whole of the United Kingdom. It is a taxing Act. It must be presumed to have been the intention of Parliament to make the incidence of the taxation the same in Scotland as in England and Ireland, and to extend the same measure of relief, such as it is, to limited owners called upon to discharge a burthen on the inheritance wherever the property burthened may be situated.

Your Lordships may remember that much the same sort of question arose in Lord Saltoun's Case (1860) 3 Macq. 659 which was referred to in this House not long ago in *Special Commissioners* for *Income Tax* v. *Pemsel*, (1891) A.C. 531. In Lord Saltoun's case the Succession Duty Act, 1853, came under consideration, and it was held by this House, reversing the judgment of the Court of Session, that an extrinsic technicality—a technical rule of Scotch feudal conveyancing—must be disregarded when its effect would be to produce inequality. I may, perhaps, be permitted to remind your Lordships of a passage in the judgment of Lord Cranworth in that case, in which his Lordship, speaking of the decision then about to be pronounced, used these words : "This decision, though it would do violence to some of the best-established doctrines of Scotch law if the present question were one of conveyancing, may yet be well admitted in the construction of an Act intended to impose corresponding duties on succession happening under two different systems of law."

With these remarks I would ask your Lordships' attention to the language of the enactment which your Lordships have to apply to the case under consideration. The Finance Act, 1894, section 9, sub-section (6), declares that "a person having a limited interest in any property who pays the estate duty in respect of that property shall be entitled to the like charge as if the estate duty in respect of that property had been raised by means of a mortgage to him." He has, therefore, a statutory charge upon the property of the same effect and validity as if the charge had been created by a mortgage duly executed by a person or persons capable of creating such a charge. As applied to England and English land, the enactment is too clear for argument. The charge arises automatically. A person who is declared by statute to be entitled to a charge on doing a certain act gets the charge on doing the act by virtue of the statute. Nothing more is required to be said or done to perfect his security.

Now one has to apply this provision to land in Scotland, in respect of which the owner, being a limited owner, has paid the duty. The Courts in Scotland hold, and as it seems to me rightly hold, that an heir of entail in the position of the late Lord Moray is a limited owner. If the land in respect of which the duty was paid had been in England or Ireland, he would undoubtedly have had a charge for the amount paid. Why should he be at a disadvantage because the land in respect of which the duty is paid is situated in Scotland? The notion of charging Scottish property in this way may perhaps (to use Lord Wensleydale's language) "do violence to some of the best-

established doctrines of Scotch law." But still Parliament is omnipotent. The Courts in Scotland must give effect to the statute. I have no doubt that those Courts, on a proper application, could find some means of perfecting the security by a declaration duly recorded, or perhaps in some more appropriate way.

I need say nothing further upon this point, because I have had the advantage of reading the judgment of my noble and learned friend Lord Dunedin, and, if I may say so with all respect, I agree in it entirely.

I think the Crown is entitled to judgment, and the appeal ought to be allowed."

Per Lord Davey :

"My Lords, I hope that I have fully appreciated the views taken of this case by the learned judges in the Court of Session, and so powerfully put before us by Mr. Clyde in his argument for the respondents. The reasons given by the learned judges for their judgment undoubtedly oblige your Lordships to consider this case with some anxiety. I find myself, however, unable to agree in the conclusion arrived at and expressed in the interlocutors under appeal.

The question in this appeal is whether the late Lord Moray at the time of his death had a vested transmissible interest in the sum of £37,740 paid by him for instalments of the estate duty which had become payable by him to the Crown on the family settled estate to which he had succeeded as heir of entail in 1895. And the answer to the question depends primarily on the right construction of section 9, sub-section (6), of the Finance Act, 1894. By sub-section (1) of that section the estate duty is made a first charge on the property in respect of which the duty is leviable. By sub-section (5) a person required to pay the estate duty is empowered to raise the amount of such duty and any interest and expenses by sale or mortgage of the property, or any part thereof. Sub-section (6) is in the following words: "A person having a limited interest in any property who pays the estate duty in respect of that property shall be entitled to a like charge as if the estate duty in respect of that property had been raised by means of a mortgage to him."

It has been argued that an heir of entail, though under a strict entail, is not a person having a limited interest in the entailed estate. The contrary has been decided in the case of Laurie (1898) 25 R. 636. It is true he is in law a fiar, subject, however, to the fetters on his power of disposition. It is true also that means have been provided by the Legislature by which he can free himself from the fetters under certain onerous conditions, but so long as they remain he has, in my opinion, only a limited interest within the meaning of the Act.

On the construction of the 6th section two general observations may be made. First, the section applies to England and Scotland alike, and should, I presume, receive the same construction on both sides of the Tweed. And I think that the same principle applies as was laid down in the House with regard to the Succession Duty Act—*Lord Braybrooke* v. *Attorney-General* (1860) 9 H.L.C. 150—that the Act is not to be construed according to the technicalities of the law of England or Scotland, but according to the popular use of the language employed. Secondly, it should be pointed out that the words "charge" (in this connection) and "mortgage" are not technical words

in England any more than in Scotland. As regards this subject-matter, a charge in popular language is a burden on land, or the right to have a sum of money with which the estate is burdened raised out of it. A mortgage is but a security for money lent.

As to the meaning of the words in sub-section (6), apart from any technical difficulties of application, I should have thought there could not be any difference of opinion. They appear to me to mean that the limited owner who has paid the duty is put in the same position as if he had lent the money for the purpose on the security of a mortgage of the estate to himself. And I think the sub-section gives him all the rights of the holder of a valid and effectual security on the property. To construe the words as meaning only that he may give himself such a charge seems to me at variance with the plain meaning of the language used, and to give no effect to the words at the end of the section which the Legislature has used for the purpose of defining the nature of the charge to which the limited owner has become entitled on payment.

It humbly appears to me irrelevant to discuss whether such a charge or burden could be created by one individual in favour of another without prescribed formalities. This charge is created by the Legislature, and similar charges have been created by other taxing Acts. It does not appear to me a sufficient answer to say that the charge in the Succession Duty Act is in favour of the Crown. It makes no difference in the discussion of the means of effectuating the charge whether the holder of the charge is the Crown or a subject. What the rights of the holder of a valid security are it is not necessary for me to say.

Nor are your Lordships required in the present case to say by what means the intention of the Legislature may be effected. It would be for the Court of Session to determine whether it would give effect to the statutory charge by adjudication, or by the appointment of a judicial factor to receive the rents and profits, or by directing the sale of the property and ordaining the persons in whom it is vested to convey, or in some other way. But I have no doubt of the competence as well as the duty of the Court of Session when the question arises to give effect to what I am constrained to hold is the plain meaning of the statute. And I am fortified in so thinking by the judgment of my noble and learned friend Lord Dunedin, which I have had the opportunity of perusing.

I am therefore of opinion that the late Earl had at the time of his death a transmissible title to a sum of £37,740 to be raised out of the entailed estate. It is said that by the dispositions of his will he released his right in that sum to his successors in the estate. I express no opinion whether he did so or not. But, assuming that he did, it makes no difference to the right of the Crown to duty whether the sum in question passed to one person or another.

I am therefore of opinion that the appeal of the Crown should be allowed."

CHAPTER XXX

MISCELLANEOUS

Section 78. *Jurisdiction of Courts barred in certain cases.*—No suit shall be brought in any Civil Court to set aside or modify any estate duty determined under this Act and no prosecution suit or other proceeding shall lie against any officer of Government for anything in good faith done or intended to be done under this Act.

In many Acts similar provision barring the jurisdiction of Civil Courts exists. In the present Act, section 64 gives limited jurisdiction to the High Court of a State or the Supreme Court. The person aggrieved has this remedy only open to him. He cannot file any suit or take any proceedings in any court for setting aside or modifying the determination of estate duty by the Controller or by the Board. He is likewise precluded from calling in question in any court, anything in good faith done or intended to be done by any estate duty authority under this Act. Section 67 of the Indian Income Tax Act states: "No suit shall be brought in any Civil Court to set aside or modify any assessment made under this Act, and no prosecution, suit or other proceedings shall lie against any officer of the Government for anything in good faith done or intended to be done under this Act." This section and section 67 of the Indian Income Tax Act lead to the same result. The Judicial Officers' Protection Act, (XVIII of 1850), section 1 states :—

"No Judge, Magistrate, Justice of the Peace, Collector or other person acting judicially shall be liable to be sued in any Civil Court for any act done or ordered to be done by him in the discharge of his judicial duty, whether or not within the limits of his jurisdiction: provided that he at the time, in good faith, believed himself to have jurisdiction to do or order the act complained of; and no officer of any court or other person, bound to execute the lawful warrants or orders of any such Judge, Magistrate, Justice of the Peace, Collector or other person acting judicially shall be liable to be sued in any Civil Court, for the execution of any warrant or order, which he would be bound to execute, if within the jurisdiction of the person issuing the same."

The only condition required by this section is that the estate duty authority (see section 4 of the Act) must have done the act in good faith or intended to do the act in good faith. Good faith implies due care and caution. In spite of this section it is open to a party aggrieved to invoke the prerogative jurisdiction of any High Court or the Supreme Court in appropriate cases under article 226 of the Constitution of India or article 32 of the Constitution of India. This section is subject to articles 32 and 226 of the Constitution of India.

THE CONSTITUTION OF INDIA (PART III)

Right to Constitutional Remedies

Article 32—

(1) The right to move the Supreme Court by appropriate proceedings for the enforcement of the rights conferred by this Part is guaranteed.

(2) The Supreme Court shall have power to issue directions or orders or writs, including writs in the nature of habeas corpus, mandamus, prohibition, quo warranto and certiorari, whichever may be appropriate, for the enforcement of any of the rights conferred by this Part.

(3) Without prejudice to the powers conferred on the Supreme Court by clauses (1) and (2), Parliament may by law empower any other court to exercise within the local limits of its jurisdiction all or any of the powers exercisable by the Supreme Court under clause (2).

(4) The right guaranteed by this article shall not be suspended except as otherwise provided for by this Constitution.

Power of High Courts to issue certain writs

Article 226—

(1) Notwithstanding anything in article 32, every High Court shall have power, throughout the territories in relation to which it exercises jurisdiction, to issue to any person or authority, including in appropriate cases any Government, within those territories directions, orders or writs, including writs in the nature of habeas corpus, mandamus, prohibition, quo warranto and certiorari, or any of them, for the enforcement of any of the rights conferred by Part III and for any other purpose.

(2) The power conferred on a High Court by clause (1) shall not be in derogation of the power conferred on the Supreme Court by clause (2) of article 32.

The effect of the section is—

(1) No suit can be brought in any Civil Court to set aside or modify any estate duty determined under the Act.

(2) No prosecution will lie against any officer of Government for anything in good faith done or intended to be done under the Act.

(3) No other proceedings will lie against any officer of government for anything in good faith done or intended to be done under the Act.

As regards (1) this much may be said. Even if any estate duty authority performed its functions and did certain acts *mala fide* and determined the estate duty no suit can be brought to set aside or modify that determination. Civil Courts' jurisdiction is absolutely barred. They cannot pronounce that the determination of estate duty is *mala fide*. Neither a suit for injunction nor a suit for declaration as respects the determination is maintainable.

Section 13 of Act No. 11 of 1940 (The Foreigners Act) is "no suit, prosecution or other legal proceedings shall lie against any person for anything which is in good faith done or intended to be done under this Act." In 21 Q.B.D. 313 (*The Queen* v. *Commrs.* for Special Purposes of the Income Tax) Lord Esher, M.R., has stated "When an inferior court or tribunal or body, which has to exercise the power of deciding facts, is first established by Act of Parliament, the legislature has to consider what powers it will give that tribunal or body. It may in effect say that, if a certain state of facts exists and is shown to such tribunal or body before it proceeds to do certain things, it shall have jurisdiction to do such things, but not otherwise. There

it is not for them conclusively to decide whether that state of facts exists, and, if they exercise the jurisdiction without its existence, what they do may be questioned, and it will be held that they have acted without jurisdiction. But there is another state of things which may exist. The legislature may invest the tribunal or body with a jurisdiction, which includes the jurisdiction to determine whether the preliminary state of facts exists as well as the jurisdiction, on finding that it does exist, to proceed further or do something more. When the legislature are establishing such a tribunal or body with limited jurisdiction, they also have to consider, whatever jurisdiction they give them, whether there shall be any appeal from their decision, for otherwise there will be none. In the 2nd of the two cases I have mentioned it is an erroneous application of the formula to say that the tribunal cannot give themselves jurisdiction by wrongly deciding certain facts to exist, because the legislature gave them jurisdiction to determine all the facts, including the existence of the preliminary facts on which the further exercise of their jurisdiction depends; and if they were given jurisdiction so to decide, without any appeal being given, there is no appeal from such exercise of their jurisdiction."

In *Secretary of State* v. *Mask & Co.,* (L.R. 67 I.A. 222) it is stated *per* Lord Thankerton : "It is settled law that the exclusion of the jurisdiction of the Civil Courts is not to be readily inferred, but that such exclusion must either be explicitly expressed or clearly implied. It is also well settled that even if jurisdiction is so excluded, the Civil Courts have jurisdiction to examine into cases where the provisions of the Act have not been complied with, or the statutory tribunal has not acted in conformity with the fundamental principles of judicial procedure." In the same case Lord Thankerton stated: "The main principles to be observed in the present case are to be found in the well-known judgment of Willes J., in *Wolverhampton New Water Works Co.* v. *Hawkesford* [1859, 6 C.B. (N.S.) 336] at p. 356, which was approved of in the House of Lords in *Neville* v. *London Express News Paper Ltd.* (1919) A.C. 368. The question is whether the present case falls under the 3rd clause stated by Willes J., viz.: "where the statute creates a liability not existing at common law, and gives also a particular remedy for enforcing it....with respect to that class it has always been held, that the party must adopt the form of remedy given by the statute." In *The King* v. *Bloomsbury Income Tax Commissioner* (1915) 3 K.B. 768, Lord Reading C.J., after referring to XXI Q.B.D. 313 stated: "In my view an examination of the Income Tax Acts shows that the scheme of the Legislature is to entrust the decision of the facts to a tribunal of persons sepecially selected for the locality, and who are often in a better position than the courts to determine the questions of fact, sometimes very implicated, which may arise. The exigencies of the State require that there should be a tribunal to deal expeditiously and at comparatively little expense with all such questions and to decide them finally, reserving always to the individual the right to have the Commissioners' decisions on points of law reviewed by the Courts. The obligation is placed, for reasons of expediency, upon the person assessed to appeal to the Commissioners if he wishes to rid himself of an assessment which is, in his view, based upon wrong conclusions of fact, and this obligation rests equally upon a person who contends that he is not chargeable as upon a person who admits that he is chargeable but not to the extent of the assessment made upon him."

In A.I.R. (1937) Madras 241 there was an elaborate review of the case law on section 67 of the Indian Income Tax Act by Justice Varadachariar and Justice Stodart. The Income Tax Officer in that case assessed a certain person after making proper enquiries and deciding that he was a resident of British India. The assessee however did not pursue the remedies given by the Income Tax Act; he filed a suit challenging the assessment in a Civil Court. It was held that the suit was barred by section 67 of the Act as the Income Tax Officer had authority to decide the fact of the assessee's residence which was a matter within his jurisdiction to decide. The Judges further held that the absence of any remedies to the assessee could not be considered as an answer to the objection that the Civil Court had no jurisdiction to entertain the suit. This case further decided that in certain circumstances a writ of certiorari or of prohibition would lie.

Even in the case of (1915) 3 K.B. 768 Avory J. and Lush J., made it clear that a writ of prohibition would issue if the assessing authority had never satisfied itself that a person was chargeable or had acted without any enquiry or if its belief was founded on an obvious and manifest mistake in law.

Per Avory J.: "And the principle of law to be applied to this case is that laid down by Tindal C.J. in *Cave* v. *Mountain* (1840) 1 Man. and G. 257 [approved and adopted by Lord Denman, C.J. in *Reg.* v. *Bolton* (1841) 1 Q.B. 66, at p. 75], where he says, dealing with a question of the jurisdiction of magistrates, "But, if the charge be of an offence over which, if the offence charged be true in fact, the magistrate has jurisdiction, the magistrate's jurisdiction cannot be made to depend upon the truth or falsehood of the facts or upon the evidence being sufficient or insufficient to establish the *corpus delicti* brought under investigation", and that the remedy for any person aggrieved by an assessment made under section 52 either by reason of his not being chargeable at all, or by reason of it being excessive, is by appeal to the General Commissioners and by special case....

I am further of opinion that the question in dispute is concluded by the decision of the Court of Exchequer in *Allen* v. *Sharp* (2 Ex. 352). Parke B., in that case said (at p. 364): "If the language had been, 'to charge and assess all such persons as they honestly and *bona fide*, after due care and diligence, believed to be chargeable,' their assessment would beyond all question be final."

This is the very language of section 52 of the Act of 1880 as interpreted by the Court in *Rex.* v. *Kensington Income Tax Commissioners* (1913) 3 K.B. 870, and Parke B., further said in *Allen* v. *Sharp* (at p. 366): "An assessment not appealed from stands precisely in the same situation as one confirmed after appeal"....

The Court of Appeal having decided that prohibition will lie to the Commissioners at this stage, I think it might be the duty of the Court to interfere if it were shown that they had proceeded were about to proceed on any erroneous view of the law, but having come to the conclusion which I have already expressed, it appears to me that in the present case such a contention can only succeed if it were shown that there were no grounds upon which the surveyor or the Commissioners could honestly have believed that the applicant was chargeable, and in my opinion, although there may be difficult questions of fact and of law to be determined upon an appeal to the General Commissioners, and, if

necessary, upon a special case to be stated by them, it is impossible to say that the surveyor and the additional Commissioners may not upon the material before them have honestly come to the conclusion that the applicant was chargeable and that the assessment was just and proper, and there is no ground at this stage for suggesting that the General Commissioners on appeal would not decide the disputed questions according to law.

The Attorney-General has directed the attention of the Court to the practical inconvenience which would result if the contention of the applicant were upheld, and which is referred to by Parke B., in his judgment in *Allen* v. *Sharp*, and to the fact that in the several reported cases, many of which have been carried on appeal to the House of Lords and decided on special cases stated by the General Commissioners, the point now taken that prohibition would lie has never before been suggested, but in the view which I take of the construction of the statutes I have not deemed it necessary to have recourse to these considerations."

Per Lush J.: "That prohibition lies to the Commissioners has been decided by the Court of Appeal in *Rex.* v. *Kensington Income Tax Commissioners.* Whether the applicant is right in saying that he is entitled to the prohibition because the surveyor and the additional Commissioners have made a mistake in law I will consider later....

I therefore think that the surveyor has jurisdiction to report if he "discovers" that a person is chargeable, and the additional Commissioners have power then to assess, and that if the person assessed is aggrieved his only remedy is to appeal. The facts can then be ascertained. If there is no evidence to justify the assessment and the General Commissioners go wrong in holding that there is, or if they make any other mistake in law, their decision can be set right by appeal on a case stated or possibly then by prohibition....

I think that this Court could and should interfere to stop further proceedings if it were proved or admitted that the surveyor never had satisfied himself that a person was chargeable and had acted without any inquiry at all, and also if it were proved or admitted that his belief was founded on an obvious and manifest mistake in law...."

In 35 Calcutta 859 (*Chairman of Giridih Municipality* v. *Sirish Chandra Muzumdar*) Mukerjee J., said: "To put the matter in a different way, the civil court is not called upon to try the merits of the question, but to see whether the authorities possessed of limited jurisdiction have exceeded their bounds ...A similar view has been taken in the English Courts in more recent cases: *Ex-Bradlaugh* (1887) 3 Q.B.D. 509 and *Reg* v. *Bradley* (1893) 17 Cox. C.C. 739, and the provisions of section 220 of the Municipal Corporation Act of 1882 (45 and 46 Victoria Chap. 50) have been similarly interpreted. The principle applicable to cases of this description was elaborately examined by their Lordships of the Judicial Committee in *Colonial Bank of Australasia* v. *Willan* (1874) L.R. 5 P.C. 417, where it was pointed out by Sir James Colvil that the Court would have jurisdiction to interfere and quash the order of the quasi judicial authority upon the ground either of a manifest defect of jurisdiction in the tribunal that made the order or of manifest fraud in the party procuring it. It was also ruled that objection on the ground of defect of jurisdiction may be founded on the character and constitution of the Court or on the nature of the subject matter of enquiry, or on the

absence of some preliminary proceeding, which was necessary to give the jurisdiction to that tribunal. But the objection of defect of jurisdiction cannot be entertained, if it rests solely on the ground that the tribunal has erroneously found a fact, which was essential to the validity of the order and which it was competent to try. That the distinction, which the learned Vakil for the petitioner invites us to ignore, is well established on principle is further obvious from the fact that it is recognised not only in our system of law but in other systems of jurisprudence, for instance, it is universally recognised in American Courts. It has been repeatedly ruled that errors in assessment, which constitute irregularities merely and do not go to the ground work of the tax and render the assessment void, can be corrected only in the manner provided by the Statute, which creates the authority and the remedy so provided must be treated as exclusive. On the other hand, where the defects in assessment are jurisdictional, rendering them void the persons aggrieved thereby are entitled to invoke the ordinary judicial remedies, and all clear violations of law give rise to jurisdictional questions. In other words, while mere erroneous exercise of judgment is not reviewable by the Civil Court, any excess of jurisdiction makes the act liable to challenge in such Court, *State* v. *Williams*, (1904) 123 Wis. 61; 100 N.W. 1048, *Hacker* v. *Howe*, (1904) 101 N.W. 255, *Douglas* v. *Stone*, (1903) 191 U.S. 557, *Stanley* v. *Albancy* (1886) 121 U.S. 535."

In A.I.R. (1922) Patna 361 *Secretary of State for India* v. *A.H. Forbes*, Ross J., said: "where an authority is by Statute vested with exclusive powers over any subject matter, then so long as these powers are exercised on that subject matter, the Civil Court cannot interfere, but if the authority purports to exercise these powers on what is not the subject matter, then the court will interfere because the authority is not acting under the Statute and is not protected thereby."

In *Haji Rahmatulla Haji Pir Mahomed* v. *Secretary of State* (A.I.R. 1926 Bom. 50) it was stated that if the assessment was clearly *ultra vires* section 67 of the Indian Income Tax Act did not bar the suit. In 25 Madras 367 (*Fischer* v. *Twigg*) it was held that an imposition which was expressly prohibited by the Act could not be deemed to be made under the provisions of the Act. In 12 Madras 168, (*Venkata* v. *Chengadu*), Justice Muthuswami Iyer observed "the section (section 59, Madras Revenue Recovery Act) presupposes that certain proceedings were professedly taken under the Act and that there might be a valid case to redress on the ground that they were not in accordance with the provisions of the Act." In 1925 Sind 130, *Dayaram Ramadas* v. *Secretary of State*, it was stated that if the income tax authorities had assessed anything but income or had levied assessment on the classes of income exempted by the Act they would have overstepped the limits of their jurisdiction and the assessment would not have been under the Act. In 5 Rangoon 825 (*Dr. R. N. Singha* v. *Secretary of State*) a distinction had been drawn between erroneous assessment and *ultra vires* assessment. It was held that in the latter case there was no bar of the jurisdiction of civil courts. In 24 Madras 205 (*Standard Life Assurance Co.* v. *Municipal Council, Cocanada*), it was observed with reference to section 162, sub-section (2) of the District Municipalities Act "the question really is whether when a company.... which is not taxable under the Act is nevertheless taxed, it can be said that the provisions of the Act have been in substance and in effect complied with.

In other words immunity conferred on statutory authorities by the provision which shuts out the jurisdiction of the Civil Court does not extend to cases where their decisions are *ultra vires.*" In (1924) 1 K.B. 171 (*Rex* v. *Electricity Commissioners*) it was stated "wherever any body of persons having legal authority to determine questions affecting the rights of subjects, and having the duty to act judicially, act in excess of their authority they are subject to the controlling jurisdiction of the K.B. exercised in those writs." In 1929 Madras 179 (*Raja of Ramnad* v. *Secretary of State*) it was observed that where a certain income was outside the scope of the Act such as agricultural income or income not earned in or brought into British India, any assessment in respect of such income would be outside the scope of the Act and that a civil suit to recover it would not be barred. In A.I.R. 1943 Bombay 77 (*Dinshaw Darabshaw Shroff* v. *Commissioner of Income- Tax Central and another,* Beaumont C.J., observed "Although, no doubt, an Income Tax Officer making an assessment is not strictly acting as a Court of Law, it is clear from section 37, Income Tax Act, that he is acting in a quasi judicial capacity and he ought to conform to the more elementary rules of judicial procedure and in particular to conduct the case himself and not allow somebody else, even a superior officer to take the conduct out of his hands....Had an application been made to this court at an earlier stage of the proceedings, we should have interfered to prevent this irregularity and ordered Mr. Shaw to carry out his duty in a proper manner." Kania J., said in the same case: "The question of irregular exercise of jurisdiction is apart from the question whether the Income Tax Officer had any jurisdiction at all. The question of stopping him from exercising a jurisdiction which is never vested in him is clearly arguable under the decision of the Privy Council in 50 I.A. 227. But that case does not lend support to the argument of the petitioner that after an order of assessment is made, the court has jurisdiction to set aside such order. In 50 I.A. 227 (*P. C.*) *Alcock Ashdown & Co.*, v. *Chief Revenue Authority, Bombay*) the court was asked to direct the Commissioner to state a case, that is to perform a duty which the court held was on him to perform. Conversely under section 45, Specific Relief Act, if an Officer having no jurisdiction whatsoever was attempting to act as if he had jurisdiction, the Court may restrain him from acting in that way. But no case has been pointed out which goes to the length of saying that an order in fact made by a Revenue Officer could be set aside under an application for a writ of certiorari."

The words "intended to be done" mean action in the future already decided upon to be taken. The immunity conferred by this section applies whenever the acts challenged have been done in good faith whether with jurisdiction or without jurisdiction. If the authority concerned honestly believes that it has jurisdiction and does any act in that honest belief and with good faith then the act cannot be called in question in a civil court. When it is provided by this section that anything done or intended to be done in good faith by any estate duty authority shall not be called in question in any court it really means that no suit or other proceedings in a civil court can be brought challenging the determination of estate duty or the determination of valuation of any property made by any estate duty authority. In the District Municipalities Act and in the Madras City Municipal Act there are similar provisions conferring immunity on officers acting in good

faith in the discharge of their duties. Whenever it is alleged that the officer or the authority acted *mala fide* and with ulterior motives or purposes, the burden of establishing *mala fides* and ulterior motives is on the person who alleges it.

In *Spooner* v. *Juddow* (4 M.I.A. 353) it was observed by the Privy Council as follows:

"The point, therefore, is, whether the exception of jurisdiction only arises where the Defendants have acted strictly, according to the usage and practice of the country, and the regulations of the Governor and Council. But upon this supposition the proviso is wholly nugatory; for if the Supreme Court is to inquire whether the Defendants in this matter concerning the public revenue were right in the demand made, and to decide in their favour only if they acted in entire conformity to the Regulations of the Governor and Council of Bombay, they would equally be entitled to succeed, if the Statutes and the Charters contained no exception or proviso for their protection. Our books actually swarm with decisions putting a contrary construction upon such enactments, and there can be no rule more firmly established, than that if parties *bona fide* and not absurdly believe that they are acting in pursuance of Statutes, and according to law, they are entitled to the special protection which the Legislature intended for them, although they have done an illegal act. In this case it may well be that the warrant against the goods of Tookaydass did not authorize the taking the goods of Hurgovundass, or even that Hurgovundass might not be liable for the arrears of "quit-rent" which accrued before he became owner of the house. Still the Collector was evidently of opinion, that a distress might be made for the whole of the arrears due, and that it was sufficient to introduce into the warrant the name of Tookaydass, in whose name the house continued to be registered. The other Defendant never could have doubted the sufficiency of the warrant. If Indian revenue-officers have fallen into a mistake, or without bad faith have been guilty of an excess in executing the duties of their office, the object of the Legislature has been, that they should not be liable to be sued in a civil action before the Supreme Courts. Liability to be prosecuted criminally, stands upon a totally different foundation....

We are, therefore, bound to differ from the Judge below, who says, "that the jurisdiction of his Court has not been taken away, when the act complained of is not warranted by the country, or by the Company's Regulations." If it concerned the revenue, or was a matter concerning an act *bona fide* believed to be done according to the Regulations of the Governor and Council of Bombay, his jurisdiction was gone, although *prima facie* it appeared to be a trespass over which his jurisdiction might be properly exercised."

Section 270 of the Government of India Act, 1935 which enacted a bar of proceedings instituted against any person in respect of any act done or purported to be done in the execution of his duty as a servant of the Crown in India....is no longer in force after the Constitution of India has come into force. Likewise section 271 of the Government of India Act, 1935 has no operation now. Section 226 (1) of the Government of India Act, 1935 also is not in operation after the coming into force of the Indian Constitution. Under this section, suits or proceedings which relate to a matter concerning

revenue on the Original Side of the High Court are barred. The decision in *Governor-General in Council* v. *Raleigh Investment Co. Ltd.*, A.I.R. 1944 F.C. 51 is no longer of any importance. However, the statement to the following effect of Spens C.J., is applicable : "If the jurisdiction of the Court depends on the existence of certain facts, the jurisdictional or exclusionary provisions will ordinarily be of a qualified character and indicate what facts must be found before the jurisdiction can attach or be excluded." The legal position now is that writs in the nature of certiorari, prohibition and mandamus or other suitable writs, directions and orders may be issued by the Supreme Court under Art. 32 and by the High Court under Art. 226, of the Constitution of India. It is therefore open to a Civil Court to scrutinise whether any act is done in good faith in cases where the Act is challenged by any party aggrieved as done *mala fide*. The burden of proving *mala fides* is on the person alleging it.

In 1950 (2) M.L.J. 555 (*Ashutosh Lahiry* v. *The State of Delhi*), the Supreme Court of India held that the order of detention might be declared invalid if it would have been proved to have been made by the authorities concerned in *mala fide* exercise of their power and that the burden of proof of the absence of good faith was upon the petitioner. In A.I.R. 1951 Patna 47 at page 55 it was observed: "This Court can examine the grounds in order to see if the order of detention is *bona fide* or whether the grounds on which the order of detention is founded are based on materials of rationally probative value.... If the alleged grounds or the facts on which they are stated to be based, do not exist at all, then the order of detention cannot be said to be a *bona fide* order.... It must be remembered that when it is stated that the order is *mala fide,* no dishonest motive is necessarily imputed; it merely means that the order is bad for want of necessary care and caution, or is for some purpose other than what is stated in the order of detention. If an order of detention is stated to be based on certain grounds but on uncontroverted facts it appears that those grounds do not really exist, then it follows that the order of detention is made for reasons other than those disclosed in the grounds: in that sense the order will be a *mala fide* order, and will also contravene Art. 22 (5) of the Constitution. I must make it clear, however, that the onus of showing that the order is *mala fide,* rests on the detenu; and the onus is a heavy onus which may be very difficult to discharge. One of the ways by which a detenu can show that the order is not *bona fide* is by stating facts by means of an affidavit, and if these facts are uncontroverted, they may be taken into consideration by this Court for the purpose of seeing if the order is *bona fide,* or if the order is based on materials of a rationally probative value, or if the order contravenes the fundamental right guaranteed by Art. 22 (5) of the Constitution. I remember many cases in which an affidavit in reply was made by the State Government particularly in cases where the facts alleged by the detenu, if uncontroverted, were likely to lead to the inference that the order was not *bona fide.* A mere denial by the detenu would not be enough to discharge the onus which rests on him ; but the detenu may be in a position to state definite facts which would show that the order of detention was bad either for want of good faith, or on the ground that it was based on materials which did not at all exist in fact.... If the alleged facts exist where two inferences are possible, it is for the State Government to make up its mind

as to the inference to be drawn. This Court cannot say that a particular inference should have been drawn from the facts. But if the affidavit on behalf of the detenu discloses such specific circumstances as to show that the alleged facts or grounds are *nonest,* then the order has no legs to stand upon." In *Point of Ayr Collieries Ltd.* v. *Lloyd George,* [(1943) 2 All E.R. 546] it is stated : "It is for the competent authority, to judge of the adequacy of evidence before it. It is for the competent authority to judge of the credibility of that evidence. It is for the competent authority to judge whether or not it is desirable or necessary to make further investigation before taking action. It is for the competent authority to decide whether the situation requires an immediate step, or whether some delay may be allowed for further investigation, perhaps negotiation....one thing is certain and that is that those matters are not within the competence of this Court. It is the competent authority that is selected by Parliament to come to the decision, and if that decision is come to in good faith, this Court has no power to interfere, provided, of course, that the action is one which is within the four corners of the authority delegated to the Minister."

In A.I.R. 1950, S.C., p. 27, (*Gopalan* v. *State of Madras*) the Supreme Court held that it was open to the Court to examine the grounds of detention in order to see whether they were relevant to the object which the legislature had in view, such as, for instance, the prevention of Acts prejudicial to public safety, or were such as to show that the detention was not *bona fide.* In that case Mukherjea J., observed, "It is open to the person detained to contend that the detention order has been a *mala fide* exercise of power by the detaining authority, and, that, the grounds upon which it is based are not proper or relevant grounds which would justify detention under the provisions of the law.... It has been held in several cases, and, in my opinion, quite rightly, that if the grounds supplied to a detained person are of such a vague and indefinite character that no proper and adequate representation could be made in reply to the same, that itself would be an infraction of the right which has been given to the detenu under law."

In *State of Bombay* v. *Atmaram* (1951) S.C. 157, it was held that the question whether the vagueness or indefinite nature of the statement furnished to the detained person was such as to give him the earliest opportunity to make a representation to the authority was a matter within the jurisdiction of the Court's enquiry and subject to the Court's decision.

The following are some of the Statutes expressly barring jurisdiction of Civil Courts:—

1. The Madras Hindu Religious Endowments Act (XIX of 1951). Section 93.
2. The Madras Proprietory Estates Village Service Act (1899). Section 27.
3. The Madras Co-operative Societies Act (VI of 1932). Section 48.
4. The Madras Limited Proprietors Act (IV of 1911). Section 14.
5. The Madras Medical Registration Act (IV of 1914). Section 19.
6. The Madras District Municipalities Act (V of 1920). Section 354.
7. The Madras Revenue Recovery Act (II of 1864). Section 58.
8. The Madras Local Boards Act (XIV of 1920). Section 228.
9. The Punjab Land Alienation Act. Section 21.

10. Santhal Parganas Settlement Regulation (II of 1872).
11. C. P. Registration Act (1916). Section 20.
12. Indian Treasure Trove Act (1878). Section 14.
13. U. P. Local Rates Act (1914). Section 14.
14. Act (IX of 1890). Section 47.
15. Bengal Patwaris Regulation (1817). Section 34.
16. Bombay Rents, Hotel Rates and Lodging, House Control Act. (1947).
17. The Sea Customs Act (VIII of 1878). Section 181 (*c*).

In several ordinances also there are express provisions barring the Civil Courts' jurisdiction. In some enactments the jurisdiction of Civil Courts is barred impliedly. If an Act creates a special tribunal and by the provisions of the act the special tribunal is given jurisdiction to determine rights of parties the special tribunal alone has jurisdiction to determine these rights exclusively. With regard to the determination of these rights by the Special Tribunal the jurisdiction of the Civil Courts is impliedly barred. As examples of such Acts the following may be mentioned:

1. Assam Land Revenue Regulation I of 1886.
2. Coorg Land and Revenue Regulation I of 1896.
3. The Bombay Revenue Jurisdiction Act, 1876.
4. Indian Press Act I of 1910. Section 22.
5. Charitable Endowments Act VI of 1890. Section 14.
6. Madras Hereditary Village Offices Act, 1895. Section 14.

Authority being vested in another tribunal with exclusive powers to determine certain named questions or to determine certain specified matters, a Civil Court cannot interfere with it. But even in such a case if the tribunal purports to exercise powers on what is not the subject-matter or there is defect of jurisdiction or exercise of excess of jurisdiction, then the Civil Court has jurisdiction to question the acts of the tribunal. A Civil Court can always interfere if the authority acted *mala fide*. There is a tendency to curtail powers of issue of prerogative writs. But to have this effect it is necessary that there should be express negative words in the Statutes taking away the right of the Court to interfere by way of issue of prerogative writs. See Halsbury's Laws of England, Vol. 9, p. 862, para. 1458 under the title Crown Practice, and Robertson's Civil Proceedings by and against the Crown.

Section 79. *Power to take evidence on oath etc.*—Every authority specified in sub-section (1) of section 4, other than valuers, shall, for the purposes of this Act, have the same powers as are vested in a court under the Code of Civil Procedure, 1908 (Act V of 1908) when trying a suit in respect of the following matters, namely :—

(*a*) enforcing the attendance of any person and examining him on oath ;

(*b*) requiring the discovery and production of documents ;

(*c*) receiving evidence on affidavit ;

(*d*) issuing commissions for the examination of witnesses ;

and any proceeding before any such authority under this Act shall be deemed to be a judicial proceeding within the meaning of sections 193 and 228 of the Indian Penal Code (Act XLV of 1860).

The Board and Controllers of Estate Duty are invested by this section with all the powers which a Court under the Code of Civil Procedure has in the trial of a suit. Proceedings before them are further regarded as judicial proceedings. The result is that Orders X, XI, XIII, XVI, XIX and XXVI of the Civil Procedure Code apply to the proceedings before them. The Board or any Controller of Estate Duty can examine the parties (accountable persons) and also any companions of the parties. (See Order X of the Civil Procedure Code). For the powers of discovery and inspection, see Order XI of the Civil Procedure Code. For summoning and examination of witnesses, see Order XVI of the Civil Procedure Code. For affidavit evidence, see Order XXVI of the Civil Procedure Code. Order V relating to service of summons is set out in full under section 82. Sections 193 and 228 of the Indian Penal Code are as follows:—

193. Whoever intentionally gives false evidence in any stage of a judicial proceeding, or fabricates false evidence for the purpose of being used in any stage of a judicial proceeding, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine; and whoever intentionally gives or fabricates false evidence in any other case, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine.

Explanation 1.—A trial before a Court martial is a judicial proceeding.

Explanation 2.—An investigation directed by law preliminary to a proceeding before a Court of Justice, is a stage of a judicial proceeding, though that investigation may not take place before a Court of Justice.

Illustration

A, in an enquiry before a magistrate for the purpose of ascertaining whether *Z* ought to be committed for trial, makes on oath, a statement which he knows to be false. As this enquiry is a stage of a judicial proceeding, *A* has given false evidence.

Explanation.—An investigation directed by a Court of Justice according to law, and conducted under the authority of a Court of Justice, is a stage of a judicial proceeding, though that investigation may not take place before a Court of Justice.

Illustration

A, in an enquiry before an officer deputed by a Court of Justice to ascertain on the spot the boundaries of land, makes on oath a statement which he knows to be false. As this enquiry is a stage of a judicial proceeding, *A* has given false evidence.

228. Whoever intentionally offers any insult, or causes any interruption to any public servant, while such public servant is sitting in any stage of a judicial proceeding, shall be punished with simple imprisonment for a term which may extend to six months, or with fine which may extend to one thousand rupees or with both.

Section 80. *Disclosure of information by a public servant.*—The provisions of section 54 of the Indian Income-tax Act, 1922 (XI of 1922), shall apply to all accounts, statements, documents, evidence or affidavits given, produced or obtained in connection with or in the course of the proceedings under this Act :

Provided that nothing in the said section 54 shall apply to the disclosure of any such particulars to any person acting in the execution of this Act or of the Indian Income-tax Act, 1922 (XI of 1922), where it is necessary or desirable to disclose the same to him for the purposes of either this Act or the said Act.

By applying section 54 of the Indian Income-tax Act, 1922 to (1) all accounts, (2) statements, (3) documents, (4) evidence, (5) affidavits given, produced or obtained in connection with or in the course of the proceedings under this Act, confidentiality is achieved in respect of the record of determination of estate duty on property which passes on the death. It is the policy of the law that the above documents shall not be brought up in court against the person producing or making them or for that matter against any one else. (A.I.R. 1940, Madras, 161, *Mythili Ammal* v. *Janaki Ammal and another*). Under this section the records of the estate duty department are treated as confidential. In the Act there is no definition of "Public Servant." However in the Indian Income-tax Act it is stated that "Public Servant" has the same meaning as in the Penal Code (Act 45 of 1860). (*See* section 2, sub-section (13) of the Indian Income-tax Act). The same definition will apply for purposes of this Act also. The object of the section is to enable all persons accountable to feel that they can disclose freely all matters fully without fear of the same being disclosed to others. It is a prohibition on all the estate duty authorities against disclosure of matters coming to their knowledge in the course of the proceedings under the Act. Any official, who is concerned with the performance of any duty laid on him under the provisions of the Act being a Public Servant within the definition of the Indian Penal Code, is prohibited from disclosing any matters that come to his knowledge. Any Public Servant is prohibited from producing any of the documents referred to above or any records relating to determination of estate duty even voluntarily in court. He

will be liable to the punishment if he so produces, mentioned in sub-section (2) of section 54 of the Indian Income-tax Act. Any court also is deprived of the power to call for production of the above said documents. It is not merely a question of prohibition regarding production of the above said documents into any court by a Public Servant, but it is also a prohibition of a Public Servant against disclosure to any person at the peril of punishment mentioned in sub-section (2). There is no prohibition of any officer of estate duty being summoned by a court, but the court cannot compel him to produce the documents regarded as confidential before it. The prohibition applies to disclosure for purposes other than the estate duty proceedings. In fact the proviso encourages fullest disclosure to all persons acting in the execution of their duties under the Act. One officer can communicate to another officer all the information he has received and the other officer can obtain from the person accountable more information than he has already disclosed to one officer. In this way fullest information is collected regarding all property which passed on the death. At the same time the accountable persons need not be under any fear that the information given to the estate duty officers will be divulged by them to others as the prohibition against disclosure applies to all officers of the department. There is nothing, however, which prohibits persons who make the statements, who give the affidavits, etc., from producing these documents themselves into court. The section confers a privilege on the accountable persons, which they are at liberty to waive, so that it cannot be said that the documents are not admissible as evidence in a court. It is to be noted, however, that even the persons who are parties to the aforesaid documents cannot seek the aid of court for production of documents by requesting the court to direct the Estate Duty Department to produce them. It is permissible for all accountable persons to inspect and if they so desire obtain certified copies of the documents from the department. Where estate duty is levied in respect of a Hindu joint family on any interest ceasing on a death it is submitted that any member of the joint Hindu family will be entitled to get copies of any of the documents referred to in this section. In *Rama Rao* v. *Venkataramiah a Full Bench of the Madras High Court,* 1940 I.T.R. 450, held that statements, accounts and orders passed by the Income-tax authorities and every other document which was included in the record of proceedings were to be regarded as documents within the meaning of section 74 of the Indian Evidence Act. Similar view was expressed in *Buchibai* v. *Nagpur University,* 1947 I.T.R. 150 and in *Suraj Narain* v. *Jhabhulal,* 1945 I.T.R. 13. Sub-section (3), clause (*m*) of section 54 of the Indian Income Tax Act authorises the Income-tax Department to disclose to any Civil Court or Collector information whether a particular person has or has not been assessed to income-tax in any particular year or years. Under the Madras Agriculturists' Relief Act, 1938, if a person is assessed to income-tax for the period mentioned in the Act, he is disqualified from claiming the status of an agriculturist entitled to the benefits of relief granted by the Act [*see* 1946 (2) M.L.J. 257, *Venkataseshavatharam* v. *Venkata Rangiah*].

Section 54 of the Indian Income Tax Act is as follows:—

(1) All particulars contained in any statement made, return furnished or accounts or documents produced under the provisions of this Act, or in any evidence given, or affidavit or deposition made, in the course of any proceedings under this Act other than proceedings under this Chapter, or in any

record of any assessment proceeding, or any proceeding relating to the recovery of a demand, prepared for the purposes of this Act, shall be treated as confidential, and notwithstanding anything contained in the Indian Evidence Act, 1872, no Court shall, save as provided in this Act, be entitled to require any public servant to produce before it any such return, accounts, documents or record or any part of any such record, or to give evidence before it in respect thereof.

(2) If a public servant discloses any particulars contained in any such statement, return, accounts, documents, evidence, affidavit, deposition or record, he shall be punishable with imprisonment which may extend to six months, and shall also be liable to fine.

(3) Nothing in this section shall apply to the disclosure—

(*a*) of any such particulars for the purposes of a prosecution under the Indian Penal Code (XLV of 1860) in respect of any such statement, return, accounts, documents, evidence, affidavit or deposition, or for the purposes of a prosecution under this Act, or

(*b*) of any such particulars to any person acting in the execution of this Act where it is necessary to disclose the same to him for the purposes of this Act, or

(*c*) of any such particulars occasioned by the lawful employment under this Act of any process for the service of any notice or the recovery of any demand, or

(*d*) of any such particulars to a Civil Court in any suit or proceeding to which Government is a party, which relates to any matter arising out of any proceeding under this Act, or

(*e*) of any such particulars to the Comptroller and Auditor-General of India for the purpose of enabling him to discharge his functions under the Constitution, or

(*f*) of any such particulars to any officer appointed by the Comptroller and Auditor-General of India or the Central Board of Revenue to audit income-tax receipts or refunds, or

(*g*) of any such particulars, relevant to any inquiry into the conduct of an official of the Income-tax Department, to any persons (XXXVII of 1850) appointed Commissioners under the Public Servants (Inquiries) Act, 1850, or to an officer otherwise appointed to hold such inquiry, or to a Public Service Commission established under the Constitution, when exercising its functions in relation to any matter arising out of any such inquiry, or

(*gg*) of any such particulars, relevant to any inquiry into a charge of misconduct in connection with income-tax proceedings against a lawyer or registered accountant, to the authority referred to in sub-section (3) of section 61, when exercising the functions referred to in that sub-section, or

(*h*) of any such particulars occasioned by the lawful exercise by a public servant of his powers under the Indian Stamp Act, 1899, (II of 1899), to impound an insufficiently stamped document, or

(*i*) of such facts, to an authorised officer of the United Kingdom, or of any Indian State or of any part of His Majesty's Dominions

which has entered into an agreement with India for the granting of double taxation relief, as may be necessary for the purpose of enabling such relief or a refund under section 49 or section 49-AA of this Act to be given, or

(*j*) of such facts, to an officer of a State Government, as may be necessary for the purpose of enabling that Government to levy or realise any tax imposed by it, or

(*k*) of such facts, to any authority exercising powers under the Sea Customs Act, 1878, (VIII of 1878), or any Central Act imposing a duty of excise as may be necessary for enabling it duly to exercise such powers, or

(*l*) of such facts, to any person charged by law with the duty of inquiring into the qualifications of elector, as may be necessary to establish whether a person is or is not entitled to be entered on an electoral roll, or

(*m*) of so much of such particulars, to the appropriate authority, as may be necessary to establish whether a person has or has not been assessed to income-tax in any particular year or years, where under the provisions of any law for the time being in force such fact is required to be established, or

(*n*) of such particulars to the Reserve Bank of India as are required by that Bank to enable it to compile financial statistics of international investments and balance of payments, or

(*o*) of such information as may be required by any officer or department of the Central Government or of a State Government for the purpose of investigation into the conduct and affairs of any public servant, or

(*p*) of any such particulars to the Custodian of Evacuee Property appointed under the Administration of Evacuee Property Act, 1950, for the purpose of enabling him to discharge the duties imposed upon him by or under the said Act.

(4) Nothing in this section shall apply to the production by a public servant before a Court of any document, declaration or affidavit filed, or the record of any statement or deposition made in a proceeding under section 25-A or section 26-A, or to the giving of evidence by a public servant in respect thereof.

(5) No prosecution shall be instituted under this section except with the previous sanction of the Commissioner.

Section 81. *Arrangements with States to supply information.*—The Central Government may make arrangements with the Government of any State for exchange of such information as may be necessary for the purposes of levying or realising any estate duty under this Act or under any other law for the time being in force in that State.

In view of the provisions of section 30 of the Act it is necessary for the Central Government to enter into arrangements with States to supply information, and also to enter into agreements for avoidance or relief of double taxation with respect to estate duty. There are in most States estate duty or death duty Acts. It is to the advantage of all the States for proper realisation of the amount of estate duty to enter into such arrangements or agreements.

Section 82. *Service of Notices.*—Any notice or requisition under this Act may be served on the person therein named either by post or as if it were a summons issued by a court under the Code of Civil Procedure, 1908 (Act V of 1908).

Service of notices prescribed under the Act may be effected in one of two ways, (1) by sending the notice by post, (2) by sending the notice as if it were a summons issued by a court under the Code of Civil Procedure, 1908.

ORDER V, C.P.C.

Issue and Service of Summons

ISSUE OF SUMMONS.

1. (1) When a suit has been duly instituted a summons may be issued to the defendant to appear and answer the claim on a day to be therein specified:

Provided that no such summons shall be issued when the defendant has appeared at the presentation of the plaint and admitted the plaintiff's claim.

(2) A defendant to whom a summons has been issued under sub-rule (1) may appear—

(*a*) in person, or

(*b*) by a pleader duly instructed and able to answer all material questions relating to the suit, or

(*c*) by a pleader accompanied by some person able to answer all such questions.

(3) Every such summons shall be signed by the Judge or such officer as he appoints, and shall be sealed with the seal of the Court.

2. Every summons shall be accompanied by a copy or the plaint or, if so permitted, by a concise statement.

3. (1) Where the Court sees reason to require the personal appearance of the defendant, the summons shall order him to appear in person in Court on the day therein specified.

(2) Where the Court sees reason to require the personal appearance of the plaintiff on the same day, it shall make an order for such appearance.

4. No party shall be ordered to appear in person unless he resides—

(*a*) within the local limits of the Court's ordinary original jurisdiction, or

(*b*) without such limits but at a place less than fifty or (where there is railway or steamer communication or other established public conveyance for five-sixths of the distance between the place where he resides and the place where the Court is situate) less than two hundred miles distance from the Court-house.

5. The Court shall determine, at the time of issuing the summons, whether it shall be for the settlement of issues only, or for the final disposal of the suit; and the summons shall contain a direction accordingly :

Provided that, in every suit heard by a Court of Small Causes, the summons shall be for the final disposal of the suit.

6. The day for the appearance of the defendant shall be fixed with reference to the current business of the Court, the place of residence of the defendant and the time necessary for the service of the summons; and the day shall be so fixed as to allow the defendant sufficient time to enable him to appear and answer on such day.

7. The summons to appear and answer shall order the defendant to produce all documents in his possession or power upon which he intends to rely in support of his case.

8. Where the summons is for the final disposal of the suit, it shall also direct the defendant to produce, on the day fixed for his appearance, all witnesses upon whose evidence he intends to rely in support of his case.

SERVICE OF SUMMONS.

9. (1) Where the defendant resides within the jurisdiction of the Court in which the suit is instituted, or has an agent resident within that jurisdiction who is empowered to accept the service of the summons, the summons shall, unless the Court otherwise directs, be delivered or sent to the proper officer to be served by him or one of his subordinates.

(2) The proper officer may be an officer of a Court other than that in which the suit is instituted, and where he is such an officer, the summons may be sent to him by post or in such other manner as the Court may direct.

10. Service of the summons shall be made by delivering or tendering a copy thereof signed by the Judge or such officer as he appoints in this behalf, and sealed with the seal of the Court.

11. Save as otherwise prescribed, where there are more defendants than one, service of the summons shall be made on each defendant.

12. Wherever it is practicable, service shall be made on the defendant in person, unless he has an agent empowered to accept service, in which case service on such agent shall be sufficient.

13. (1) In a suit relating to any business or work against a person who does not reside within the local limits of the jurisdiction of the Court from which the summons is issued, service on any manager or agent, who, at the

time of service, personally carries on such business or work for such person within such limits, shall be deemed good service.

(2) For the purpose of this rule, the master of a ship shall be deemed to be the agent of the owner or charterer.

14. Where in a suit to obtain relief respecting, or compensation for wrong to, immovable property, service cannot be made on the defendant in person, and the defendant has no agent empowered to accept the service, it may be made on any agent of the defendant in charge of the property.

15. Where in any suit the defendant cannot be found and has no agent empowered to accept service of the summons on his behalf, service may be made on any adult male member of the family of the defendant who is residing with him.

Explanation.—A servant is not a member of the family within the meaning of this rule.

16. Where the serving officer delivers or tenders a copy of the summons to the defendant personally, or to an agent or other person on his behalf, he shall require the signature of the person to whom the copy is so delivered or tendered to an acknowledgment of service endorsed on the original summons.

17. Where the defendant or his agent or such other person as aforesaid refuses to sign the acknowledgment, or where the serving officer, after using all due and reasonable diligence, cannot find the defendant, and there is no agent empowered to accept service of the summons on his behalf, nor any other person on whom service can be made, the serving officer shall affix a copy of the summons on the outer door or some other conspicuous part of the house in which the defendant ordinarily resides or carries on business or personally works for gain, and shall then return the original to the Court from which it was issued with a report endorsed thereon or annexed thereto stating that he has so affixed the copy, the circumstances under which he did so, and the name and address of the person (if any) by whom the house was identified and in whose presence the copy was affixed.

18. The serving officer shall, in all cases in which the summons has been served under rule 16, endorse or annex, or cause to be endorsed or annexed, on or to the original summons a return stating the time when and the manner in which the summons was served and the name and address of the person (if any) identifying the person served and witnessing the delivery or tender of the summons.

19. Where a summons is returned under rule 17, the Court shall, if the return under that rule has not been verified by the affidavit of the serving officer, and may, if it has been so verified, examine the serving officer on oath, or cause him to be so examined by another Court, touching his proceedings, and may make such further inquiry in the matter as it thinks fit; and shall either declare that the summons has been duly served or order such service as it thinks fit.

20. (1) Where the Court is satisfied that there is reason to believe that the defendant is keeping out of the way for the purpose of avoiding service, or that for any other reason the summons cannot be served in the ordinary way, the Court shall order the summons to be served by affixing a copy thereof in some conspicuous place in the Court-house, and also upon some conspicuous

part of the house (if any) in which the defendant is known to have last resided or carried on business or personally worked for gain, or in such other manner as the Court thinks fit.

(2) Service substituted by order of the Court shall be as effectual as if it had been made on the defendant personally.

(3) Where service is substituted by order of the Court, the Court shall fix such time for the appearance of the defendant as the case may require.

21. A summons may be sent by the Court by which it is issued whether within or without the (State) either by one of its officers or by post to any Court (not being the High Court) having jurisdiction in the place where the defendant resides.

22. Where a summons issued by any Court established beyond the limits of the towns of Calcutta, Madras and Bombay, is to be served within any such limits, it shall be sent to the Court of Small Causes within whose jurisdiction it is to be served.

23. The Court to which a summons is sent under rule 21 or rule 22 shall, upon receipt thereof, proceed as if it had been issued by such Court and shall then return the summons to the Court of issue, together with the record if any of its proceedings with regard thereto.

24. Where the defendant is confined in a prison, the summons shall be delivered or sent by post or otherwise to the officer in charge of the prison for service on the defendant.

25. Where the defendant resides out of (States) and has no agent in the States empowered to accept service, the summons shall be addressed to the defendant at the place where he is residing and sent to him by post, if there is postal communication between such place and the place where the Court is situate.

"Provided that where any such defendant resides in Pakistan, the summons together with a copy thereof, may be sent for service on the defendant, to any Court in that country (not being the High Court) having jurisdiction in the place where the defendant resides :

Provided further that where any such defendant is a public officer in Pakistan (not belonging to the Pakistan military, naval or air forces) or is a servant of railway company or local authority in that country, the summons together with a copy thereof, may be sent for service on the defendant, to such officer or authority in that country as the Central Government may, by notification in the Official Gazette, specify in this behalf."

26. Where—

(*a*) in the exercise of any (foreign jurisdiction, vested in the Central Government) a Political Agent has been appointed, or a Court has been established or continued, with power to serve a summons issued by a Court under this Code in any foreign territory in which the defendant resides, or

(*b*) the (State Government) has, by notification in the (official Gazette), declared, in respect of any Court situate in any such territory and not established or continued in the exercise of any such jurisdiction as aforesaid, that service by such Court of any summons [issued under this Code by a Court of the (State).

shall be deemed to be valid service], the summons may be sent to such Political Agent or Court, by post or otherwise, for the purpose of being served upon the defendant; and, if the Political Agent or Court returns the summons with an endorsement signed by such Political Agent or by the Judge or other officer of the Court that the summons has been served on the defendant in manner hereinbefore directed, such endorsement shall be deemed to be evidence of service.

27. Where the defendant is a public officer (not belonging to the Indian) military (naval or air) forces, or is the servant of a railway company or local authority, the Court may, if it appears to it that the summons may be most conveniently so served, send it for service on the defendant to the head of the office in which he is employed, together with a copy to be retained by the defendant.

28. Where the defendant is a soldier, (sailor) (or airman), the Court shall send the summons for service to his commanding officer together with a copy to be retained by the defendant.

29. (1) Where a summons is delivered or sent to any person for service under rule 24, rule 27 or rule 28, such person shall be bound to serve it, if possible, and to return it under his signature, with the written acknowledgment of the defendant, and such signature shall be deemed to be evidence of service.

(2) Where from any cause service is impossible, the summons shall be returned to the Court, with a full statement of such cause and of the steps to procure service, and such statement shall be deemed to be evidence of non-service.

30. (1) The Court may, notwithstanding anything hereinbefore contained, substitute for a summons a letter signed by the Judge or such officer as he may appoint in this behalf, where the defendant is, in the opinion of the Court, of a rank entitling him to such mark of consideration.

(2) A letter substituted under sub-rule (1) shall contain all the particulars required to be stated in a summons, and, subject to the provisions of sub-rule (3), shall be treated in all respects as a summons.

(3) A letter so substituted may be sent to the defendant by post or by a special messenger selected by the Court or, in any other manner which the Court thinks fit; and, where the defendant has an agent empowered to accept service, the letter may be delivered or sent to such agent.

FORM OF SUMMONS.

Summons for disposal of suit. (*Order* 5, *Rules* 1, 5).

(Title)

(Name, description and place of residence).

To

WHEREAS.....has instituted a suit against you for .....you are hereby summoned to appear in this Court in person or by a pleader duly instructed and able to answer all material questions relating to the suit, or who shall be accompanied by some person able to answer all such questions on the.....day of.....19.....at .....o'clock in the.....noon to answer the claim; and as the day

fixed for your appearance is appointed for the final disposal of the suit, you must be prepared to produce on that day all the witnesses upon whose evidence and all the documents upon which you intend to rely in support of your defence.

Take notice that, in default of your appearance on the day before-mentioned the suit will be heard and determined in your absence.

Given under my hand and the seal of the Court, this....day of....19....

Judge.

(Seal)

NOTICE.—(1) Should you apprehend your witnesses will not attend of their own accord, you can have a summons from this Court to compel the attendance of any witness, and the production of any document that you have a right to call upon the witness to produce, on applying to the Court and on depositing the necessary expenses.

(2) If you admit the claim, you should pay the money into Court together with the costs of the suit, to avoid execution of the decree, which may be against your person or property or both.

Summons to appear in person. (Order 5, Rule 3)

(Title)

(Name, description and place of residence)

WHEREAS.....has instituted a suit against you for..... .....you are hereby summoned to appear in this Court in person on the.....day of.....19....., at.....o'clock in the .....noon, to answer the claim; and you are directed to produce on that day all the documents upon which you intend to rely in support of your defence.

Take notice that, in default of your appearance on the day before-mentioned, the suit will be heard and determined in your absence.

Given under my hand and the seal of the Court, this.....day of 19.....

Judge.

Section 83. *Appearance by authorised representatives.*—Any person accountable for estate duty who is entitled or required to attend before any authority specified in sub-section (1) of section 4 in connection with any proceeding under this Act, otherwise than when required under section 79 to attend in person, may attend by a person authorised by him in writing in this behalf, being a relative of or a person regularly employed by that person, or a legal practitioner or a chartered accountant.

Explanation.—In this section—

(*a*) a person regularly employed by the accountable person shall include any officer of a Scheduled Bank with which the accountable person maintains a current account or has other regular dealings ;

(*b*) 'legal practitioner' means an advocate, vakil or attorney of any High Court in the territories to which this Act extends and includes a pleader practising in any part of the said territories ;

(*c*) 'chartered accountant' means a chartered accountant as defined in the Chartered Accountants Act, 1949 (XXXVIII of 1949).

Except where any accountable person is required under section 79 to attend in person he may authorise a relative of his or a person regularly employed by him or a legal practitioner or a chartered accountant to attend before the Board or any Controller. The authorisation of the person should be in writing.

It is submitted that even where any person accountable is required under section 79 to attend in person, if the person so required to attend in person is unable to attend from sickness or infirmity, a commission may be issued for his examination. See Order XXVI, Rule 1 of the Civil Procedure Code. The explanation to this section states that a person regularly employed by the accountable person shall include any officer of a Scheduled Bank with which the accountable person maintains a current account or has dealings. "Legal practitioner" means an advocate, vakil, or Attorney of any High Court in the territories to which this act extends, and includes a pleader practising in any part of the said territory. Chartered Accountant is defined in the Chartered Accountants Act, 1949 (XXXVIII of 1949).

There does not seem to be any reason why a relative of an accountable person only should appear. More than any relative of any accountable person a clerk of his (Gumastha) who is in charge of all his affairs who is practically manager of his properties will be able to give all the necessary information to the Board or a Controller. This clerk or manager may not be a relative of his. There seems to be no real reason for not including such a person and for including a relative who after all may know nothing about the affairs of the deceased.

Act 38 of 1949

Section 2 (1) (*b*) "Chartered accountant" means a person who is a member of the Institute and who is in practice.

(2) A member of the Institute shall be deemed "to be in practice", when individually or in partnership with chartered accountants, he, in consideration of remuneration received or to be received

(*i*) engages himself in the practice of accountancy ; or

(*ii*) offers to perform or performs services involving the auditing or verification of financial transactions, books, accounts or records or the preparation, verification or certification of financial accounting and related statements or holds himself out to the public as an accountant ; or

(*iii*) renders professional services or assistance in or about matters of principle or detail relating to accounting procedure or the recording, presentation or certification of financial facts or data ; or

(*iv*) renders such other services as, in the opinion of the Council, are or be rendered by a chartered accountant ;

and the words "to be in practice" with their grammatical variations and cognate expressions shall be construed accordingly :

Explanation.—An associate or a fellow of the Institute who is a salaried employee of a chartered accountant or a firm of chartered accountants shall, notwithstanding such employment, be deemed to be in practice for the limited purpose of the training of articled clerks.

7. Every member of the Institute in practice shall be designated as a Chartered Accountant and no person practising the profession of Accountancy in India shall use any other designation whether in addition thereto or in substitution therefor :

Provided that nothing contained in this section shall be deemed to prohibit any such person from adding any other description or letters to his name, if entitled to thereto, to indicate, membership of such other institute of accountancy, whether in India or elsewhere, as may be recognised in this behalf, by the Council or any other qualification that he may possess, or to prohibit a firm, all the partners of which are members of the Institute and in practice, from being known by its firm name as Chartered Accountants.

Section 84. *Company to furnish particulars of deceased members to the Controller.*—(1) Where a company incorporated outside India carries on business in the territories to which this Act extends and has been treated for the purposes of the Indian Income-tax Act, 1922 (XI of 1922), as resident for two out of the three completed assessments immediately preceding, such company shall, within three months of the receipt of intimation of the death of a member dying after the commencement of this Act, furnish to the Controller such particulars as may be prescribed in respect of the shares of the deceased member in the company, and shall be liable to pay estate duty at the rates mentioned in Part III of the Second Schedule, on the principal value of the shares held by the deceased in the company except in cases where the deceased member was a person domiciled in India and the person accountable has obtained a certificate from the Controller showing that either the estate duty in respect thereof has been paid or will be paid or that none is due, as the case may be.

(2) If any member of a company formed and registered under the Indian Companies Act, 1913 (VII of 1913) dies after the commencement of this Act and the company through any of its principal officers as defined in section 18, has knowledge of the death, it shall not be lawful for the company to register the transfer of any shares standing in the name of the deceased member unless the company is satisfied that the transferee has acquired such shares for valuable consideration or there is produced before it a certificate from the Controller that either the estate duty in respect thereof has been paid or will be paid or none is due, as the case may be.

(3) Any company which fails to comply with the provisions of sub-section (1) or sub-section (2) shall be liable to a penalty of one thousand rupees or a sum equal to double the amount of the estate duty payable according as the Controller may direct :

Provided that the Controller may reduce the penalty in any particular case.

Companies which are incorporated outside India, if they carry on business in India are laid under a duty by this section to supply the Controller with such particulars as may be prescribed in respect of shares of the deceased members in the company under certain conditions: (1) the foreign incorporated company must be carrying on business in India, (2) it must have been treated as resident for 2 out of 3 completed assessments under the provisions of the Indian Income-tax Act, 1922, (3) a member of such a company must die after the commencement of the Act, (4) the person dying must not have been a person domiciled in India and the person accountable has not obtained a certificate from the Controller showing that estate duty has been paid, or will be paid or that none is due, (5) within 3 months of the receipt of intimation of the death of a member the full particulars called for by the Controller should be furnished. Sub-section (2) of this section enacts that it shall not be lawful for a company formed and registered under the Indian Companies Act, 1913, to register the transfer of any shares standing in the name of a deceased member of a company who dies after the commencement of the Act without it being satisfied that either the estate duty in respect thereof has been paid or will be paid or that none is due by production before it of a certificate from the Controller. A failure to comply with the provisions of sub-section (1) or sub-section (2) will attract a penalty of Rs. 1,000 or a sum equal to double that of the estate duty payable according to the discretion of the Controller. The proviso gives authority to the Controller to reduce the penalty in any particular case.

The following Rules have been made by the Board:

30. *Particulars to be furnished by a foreign company.*—For the purposes of section 84 of the Act, a company to which that section applies shall furnish to the Controller a statement showing the following particulars:—

(1) Name of the deceased member.
(2) Last known address.
(3) Date of death.
(4) Date of lodgment or notification of probate or letters of administration or of notice of death.
(5) Description of the shares and/or stocks held in the company by the member at the time of his death.
(6) No. of such shares and/or stocks with distinctive No. of stock or share certificates.
(7) Nominal value of the shares and stocks.
(8) Market value per share or stock at date of death.
(9) Basis of valuation.
(10) Total value of holding.
(11) Names and addresses of trustees, administrators or any other legal representatives.

31. *Particulars to be furnished by an Indian company.*—Where a company formed and registered under the Indian Companies Act, 1913 (VII of 1913) has come to know through any of its principal officers, of the death of any of its members, it shall within one month of the receipt of such knowledge, furnish the following particulars to the Assistant Controller or the Deputy Controller, who is exercising the functions of the Income-tax Officer in the case of the company—

A. Where any transfer of a part or whole of the stocks and shares standing in the name of the deceased has been registered by the company because it was satisfied that the transferee had acquired such shares for valuable consideration—

(*i*) name and address of the deceased member in whose name the shares stood ;

(*ii*) name and address of the transferee ;

(*iii*) description of the shares transferred (with distinctive numbers) ;

(*iv*) nominal value of the shares transferred ;

(*v*) amount of consideration paid by the transferee ;

(*vi*) name and address of the seller to whom or of the broker through whom the consideration was paid ;

(*vii*) description of any other shares still standing in the name of the deceased on the date of furnishing the particulars.

B. Where no transfer of any shares standing in the name of the deceased has been registered on the date of furnishing the particulars—

(*i*) name and address of the deceased member ;

(*ii*) description (with distinctive numbers) of stocks and shares standing in the name of the deceased ;

(*iii*) nominal value of the stocks and shares held ;

(*iv*) estimated market value thereof on the date of the death of the deceased ;

(*v*) name and address of the trustee, administrator or other legal representative of the deceased ;

(*vi*) whether any application has been received from any person for the transfer of such shares ;

(*vii*) if so, name and address of the person who has applied for transfer.

Part III of the The Second Schedule is in the case of shares held by a deceased member in any such company as is referred to in sub-section (1) of section 84—

	Rate of duty.
(1) If the principal value of the shares does not exceed, Rs. 5,000 ..	Nil.
(2) If the principal value of the shares exceeds Rs. 5,000 ..	7½ per cent.

Section 85. *Rule-making powers of the Board.*—(1) Subject to the condition of previous publication and subject to the control of the Central Government, the Board may make rules not inconsistent with this Act prescribing all matters which by this Act are

required or permitted to be prescribed, or which are necessary or convenient to be prescribed for carrying out the purposes of or giving effect to this Act.

(2) The power to make rules conferred by this section shall, on the first occasion of the exercise thereof, include the power to give retrospective effect to the rules or any of them from a date not earlier than the date of the commencement of this Act.

(3) All rules made under this Act shall be laid before both Houses of Parliament as soon as may be after they are made.

This section confers authority on the Board to make rules not inconsistent with the Act in respect of (1) all matters which are stated in the Act to be prescribed by rules, (2) in respect of all other matters which can properly be made the subject of rules, (3) in respect of all matters which are necessary or convenient although not prescribed or permitted but necessary or convenient for carrying out the purposes of or giving effect to this Act. Under sub-section (3) all such rules made by the Board shall be laid before both Houses of Parliament as soon as may be after they are made.

The Board framed The Estate Duty (controlled companies) Rules, and The Estate Duty Rules. The same were published in the Gazettee of India Extraordinary, dated 15-10 1953. These Rules were stated to be draft Rules, and that the same would be taken into consideration on or after 20-11-1953. Time was given till then for all persons likely to be affected thereby to make or submit representations and suggestions.

Sub-section (2) of this section enacts and provides for retrospective operation of these Rules, dating back the same to the commencement of the Act, *viz.*, 15-10-1953.

There are innumerable other minor matters regarding which the several sections of the Act empower the Board to make Rules. These further Rules to be hereafter made by the Board will have no retrospective operation. Sub-section (2) is: "the power to make rules .... shall, on the first occasion of the exercise thereof, include the power to give retrospective effect to the Rules...." This power is exhausted by the Rules referred to above made by the Board.

APPENDICES

APPENDIX—A.

THE CUSTOMS AND INLAND REVENUE ACT, 1881
(44 & 45 VICT. c. 12.)

[3rd June 1881.]

1. *Short title.*—This Act may be cited as the Customs and Inland Revenue Act, 1881.

PART III

STAMPS

As to Probate and Legacy Duties, and Duties on Accounts.

* * * * *

26. *Stamp duties to be under the care and management of the Commissioners of Inland Revenue.*—(3) As respects the duties imposed on affidavits in substitution for the duties on probates or letters of administration, the several provisions now in force in relation to the last-mentioned duties shall, so far as the same are consistent with the provisions of this Act, be deemed to be applicable to the said duties hereby imposed, and in the application thereof a probate or letters of administration having thereon such a certificate as is hereinafter mentioned shall for all purposes be deemed to have been duly stamped in respect of the value stated in the certificate.

27. *Grant of duties in respect of probate and letters of administration and on inventories.*—. . . there shall, save as is hereinafter expressly provided be charged and paid on the affidavit to be required and received from the person applying for the probate or letters of administration in England or Ireland, or on the inventory to be exhibited and recorded in Scotland, the stamp duties hereinafter specified ; (that is to say),

	DUTY
Where the estate and effects for or in respect of which the probate or letters of administration is or are to be granted, or whereof the inventory is to be exhibited and recorded, exclusive of what the deceased shall have been possessed of or entitled to as trustee, and not beneficially, shall be above the value of 100*l.*, and not above the value of 500*l.* ..	At the rate of one pound for every full sum of 50*l.*, and for any fractional part of 50*l.* over any multiple of 50*l.*;
Where such estate and effects shall be above the value of 500*l.*, and not above the value of 1,000*l.* ..	At the rate of one pound five shillings for every full sum of 50*l.*, and for any fractional part of 50*l.* over any multiple of 50*l.*;

Where such estate and effects shall be above the value of 1,000*l.* ..	At the rate of three pounds for every full sum of 100*l.*, and for any fractional part of 100*l.* over any multiple of 100*l.*

Provided that an additional inventory, to be exhibited or recorded in Scotland, of any effects of a deceased person, where a former inventory of the estate and effects of the same person has been exhibited and recorded prior to the first day of June one thousand eight hundred and eighty-one, shall be chargeable with the amount of stamp duty with which it would have been chargeable if this Act had not been passed.

30. *Probate or letters of administration to bear a certificate in lieu of stamp duty.*—No probate or letters of administration shall be granted by the Probate, Divorce, and Admiralty Division of the High Court of Justice in England, or by the Probate and Matrimonial Division of the High Court of Justice in Ireland, unless the same bear a certificate in writing under the hand of the proper officer of the court, showing that the affidavit for the Commissioners of Inland Revenue has been delivered, and that such affidavit, if liable to stamp duty, was duly stamped, and stating the amount of the gross value of the estate and effects as shown by the account.

33. *Provisions as to obtaining probate, &c., where gross value of estate does not exceed* £300.—(1) Where the whole personal estate and effects of any person dying on or after the first day of June, one thousand eight hundred and eighty-one (inclusive of property by law made such personal estate and effects for the purpose of the charge of duty, and any personal estate and effects situate out of the United Kingdom), without any deduction for debts or funeral expenses, shall not exceed the value of three hundred pounds, it shall be lawful for the person intending to apply for probate or letters of administration in England or Ireland to deliver to the proper officer of the court or to any officer of Inland Revenue duly appointed for the purpose, a notice in writing in the prescribed form, setting forth the particulars of such estate and effects, and such further particulars as may be required to be stated therein, and to deposit with him the sum of fifteen shillings for fees of court and expenses, [and also, in case the estate and effects shall exceed the value of one hundred pounds, the further sum of thirty shillings for stamp duty].

(2) If the officer has good reason to believe that the whole personal estate and effects of the deceased exceeds the value of three hundred pounds, he shall refuse to accept the notice and deposit until he is satisfied of the true value thereof.

(3) The principal registrars of the Probate, Divorce, and Admiralty Division of the High Court of Justice in England, and of the Probate and Matrimonial Division of the High Court of Justice in Ireland, in communication with the Commissioners of Inland Revenue, shall prescribe the form of notice, and make such regulations as may be necessary with respect to the transmission of notices by officers of Inland Revenue, the steps to be taken for the preparation and filling up of forms and documents, and generally all matters which may be necessary, so as to authorise the grant of probate or letters of administration.

(4) Officers of Inland Revenue are hereby empowered to administer all necessary oaths or affirmations, and in the case of letters of administration, to attest the bond and accept the same on behalf of the President or Judge of the Division.

(5) Where the estate and effects shall exceed the value of one hundred

pounds, the stamp duty payable on the affidavit for the Commissioners of Inland Revenue shall be the fixed duty of thirty shillings, and no more.

34. *Provision as to inventories where gross value of estate does not exceed* £300.—(1) The Intestates Widows and Children (Scotland) Act, 1875, and the Small Testate Estates (Scotland) Act, 1876, as amended by the Sheriff Courts (Scotland) Act, 1876, shall be extended so as to apply to any case where the whole personal estate and effects of a person dying on or after the first day of June, one thousand eight hundred and eighty-one, without any deduction for debts or funeral expenses, shall not exceed the value of three hundred pounds, whoever may be the applicant for representation, and wheresoever the deceased may have been domiciled at the time of death, and the fees payable under Schedule C, of each of the two first-mentioned Acts shall not exceed the sum of fifteen shillings, inclusive of the fee of two shillings and sixpence, to be paid to the commissary clerk, or sheriff clerk.

(2) In any such case where the estate and effects shall exceed the value of one hundred pounds, the stamp duty payable on the inventory shall be the fixed duty of thirty shillings, and no more.

35. *Provision in case of subsequent discovery that the value of estate exceeded* £300.—Where representation has been obtained in conformity with either of the two preceding sections, and it shall be at any time afterwards discovered that the whole personal estate and effects of the deceased were of a value exceeding three hundred pounds, then a sum equal to the stamp duty payable on an affidavit or inventory in respect of the true value of such estate and effects shall be a debt due to Her Majesty from the person acting in the administration of such estate and effects, and no allowance shall be made in respect of the sums deposited or paid by him, nor shall the relief afforded by the next succeeding section be claimed or allowed by reason of the deposit or payment of any sum.

36. *Relief from legacy duty in cases under* £300.—The payment of the sum of thirty shillings for the fixed duty on the affidavit or inventory in conformity with this Act shall be deemed to be in full satisfaction of any claim to legacy duty or succession duty in respect of the estate or effects to which such affidavit or inventory relates.

37. *Power to Commissioners to require explanations and proof in support of affidavit or inventory.*—It shall be lawful for the Commissioners of Inland Revenue at any time and from time to time within three years after the grant of probate or letters of administration or recording of inventory, as they may think necessary, to require the person acting in the administration of the estate and effects of any deceased person, to furnish such explanations, and to produce such documentary or other evidence respecting the contents of, or particulars verified by, the affidavit or inventory as the case may seem to them to require.

38. *Grant of duties on accounts of certain property.*—(1) Stamp duties at the like rates as are by this Act charged on affidavits and inventories shall be charged and paid on accounts delivered of the personal or movable property to be included therein according to the value thereof.

(2) The personal or movable property to be included in an account shall be property of the following descriptions, viz.:—

(*a*) Any property taken as a donatio mortis causa made by any person dying on or after the first day of June one thousand eight hundred and eighty-one, or taken under a voluntary disposition, made by any person so dying, purporting to operate as an immediate gift inter vivos whether by way of transfer, delivery, declaration of trust or otherwise, which shall not have been bona fide made [twelve] months before the death of the deceased.

(*b*) Any property which a person dying on or after such day having been absolutely entitled thereto, has voluntarily caused or may voluntarily cause to be transferred to or vested in himself and any other person jointly whether by disposition or otherwise, so that the beneficial interest therein or in some part thereof passes or accrues by survivorship on his death to such other person.

(*c*) Any property passing under any past or future voluntary settlement made by any person dying on or after such day by deed or any other instrument not taking effect as a will, whereby an interest in such property for life or any other period determinable by reference to death is reserved either expressly or by implication to the settlor, or whereby the settlor may have reserved to himself the right, by the exercise of any power, to restore to himself, or to reclaim the absolute interest in such property.

(3) . . .

39. *Delivery of accounts on oath.*—Every person who as beneficiary, trustee, or otherwise, acquires possession, or assumes the management, of any personal or movable property of a description to be included in an account according to the preceding section shall upon retaining the same for his own use, or distributing or disposing thereof, and in any case within six calendar months after the death of the deceased deliver to the Commissioners of Inland Revenue a full and true account, verified by oath, of such property duly stamped as required by this Act. Any officer authorised by the Commissioners for the purpose may administer the oath.

40. *Double duty payable in case of default.*—If any person who ought to obtain probate or letters of administration or deliver a further affidavit or to exhibit an inventory or who is required to deliver such account as aforesaid shall neglect to do so within the period prescribed by law for the purpose, he shall be liable to pay to Her Majesty double the amount of duty chargeable, and the same shall be a debt due from him to the Crown, and be recoverable by any of the ways or means now in force for the recovery of probate, legacy, or succession duties.

41-43. . . .

THE CUSTOMS AND INLAND REVENUE ACT, 1889

(52 & 53 VICT. c. 7.)

[31st May 1889.]

1. *Short title.*—This Act may be cited as the Customs and Inland Revenue Act, 1889.

PART II

STAMPS

* * * * * *

10. . . .

11. *Amendment of 44 & 45 Vict. c. 12, s. 38.*—(1) Sub-section two of section thirty-eight of the Customs and Inland Revenue Act, 1881, is hereby amended, as follows:—

The description of property marked (*a*) shall be read as if the word "twelve" were substituted for the word "three" therein, and the said description of property shall include property taken under any gift, whenever made, of which property bona fide possession and enjoyment shall not have been assumed by the donee immediately upon the gift and thenceforward retained, to the entire exclusion of the donor, or of any benefit to him by contract or otherwise :

The description of property marked (*b*) shall be construed as if the expression " to be transferred to or vested in himself and any other person" included also any purchase or investment effected by the person who was absolutely entitled to the property either by himself alone, or in concert, or by arrangement, with any other person :

The description of property marked (*c*) shall be construed as if the expression "voluntary settlement" included any trust whether expressed in writing or otherwise, in favour of a volunteer, and, if contained in a deed or other instrument effecting the settlement, whether such deed or other instrument was made for valuable consideration or not as between the settlor and any other person, and as if the expression "such property," wherever the same occurs, included the proceeds of sale thereof :

The charge under the said section shall extend to money received under a policy of assurance effected by any person dying on or after the first day of June, one thousand eight hundred and eighty-nine, on his life, where the policy is wholly kept up by him for the benefit of a donee, whether nominee or assignee, or a part of such money in proportion to the premiums paid by him, where the policy is partially kept up by him for such benefit.

(2) A return of stamp duty shall not be made under sub-section three of the said section thirty-eight by reason of, or in relation to, any account delivered on or after the first day of June, one thousand eight hundred and eighty-nine.

Limitation of Claims to Succession Duty or Legacy Duty in certain Cases.

12. *Purchasers and mortgagees exempted from liability to Succession duty after a specified period.*—(1) Notwithstanding the forty-second section of the Succession Duty Act, 1853, or any other provision contained in that Act, real property, or any estate or interest therein, shall not, as against a purchaser for valuable consideration, or a mortgagee, remain charged with or liable to payment of any sum for succession duty or duty hereinbefore imposed by this part of this Act, after the expiration of six years from the date of notice to the Commissioners of Inland Revenue of the fact that the successor, or any person in his right or on his behalf, has become entitled in possession to his succession or to the receipt of the income and profits thereof, or from the date of the first payment by such successor or person of any instalment or part of the duty, in case the successor shall not have availed himself of the option given to him by section twenty-two of the Customs and Inland Revenue Act, 1888, or after two years from the time for the payment by such successor of the last instalment or part of the duty, if he has availed himself of such option ; or, in the absence of any such notice or payment, after the expiration of twelve years from the happening of the event (whether before or after the passing of this Act) which gave rise to an immediate claim to such duty, or if such period of twelve years expires within six years from the date of the passing of this Act, then after the expiration of six years from the last-mentioned date.

(2) The duty (if any) unpaid at the expiration of such period of six years, or of twelve years or six years as the case may be, shall be payable and paid by the successor or the persons mentioned as accountable in section forty-four of the said Act, other than the purchaser or mortgagee, and shall become charged substitutively upon any other estate or interest comprised in the succession of the successor remaining vested in him, or in any person in his right or on his behalf, other than the purchaser or mortgagee, and in case of a mortgage upon the equity of redemption.

(3) This section is not to lessen or affect any liability of any successor or accountable person, other than the purchaser or mortgagee, to payment of duty, whether out of money received on any sale or mortgage, or otherwise; but a purchaser or mortgagee shall not, for the purpose of obtaining the exemption conferred by this section, be bound to see that the duty is discharged out of the money or other consideration paid or given as the consideration for the sale or mortgage.

13. *Power to deposit copies of documents and liability to duty to cease after specified period.*—(1) Any person may cause an attested copy [which shall be exempt from stamp duty] of any document which creates a liability for payment of any succession duty, or duty hereinbefore imposed by this part of this Act, other than a testamentary document admitted to probate, to be deposited with the Commissioners of Inland Revenue at their principal office in London, Edinburgh, or Dublin, as the case may require, and such copy shall be received at that office.

(2) The officer of the Commissioners receiving the copy shall, on request of the person making the deposit, and either by indorsement on the original document or otherwise, give a receipt in writing under his hand for the copy.

(3) After a receipt has been given by an officer for a copy of a document under this section, no person shall be liable for payment of any duty under such document after the expiration of six years from the date of notice to the Commissioners of the fact which gives rise to an immediate claim to such duty.

(4) The costs of depositing a copy of a document and obtaining a receipt under this section shall be deemed costs duly incurred by a trustee, executor, or administrator, or any other person in the execution of his duties as trustee, executor, or administrator, or otherwise, under the document.

14. *Liability to duty under documents admitted to probate to cease after a specified period.*—No person shall, under a testamentary document admitted to probate, or under letters of administration, or under a confirmation, be liable for payment of any legacy duty or succession duty, or duty hereinbefore imposed by this part of this Act, after the expiration of six years from the date of the settlement of the account in respect of which the duty is payable, where such account was in all respects a full and true account and contained all the facts material to be known by the Commissioners of Inland Revenue for the ascertainment of the rate and amount of duty; and no trustee, executor, or administrator shall, after the expiration of such six years, be liable to such duty if it is proved to the satisfaction of the Commissioners that the account rendered was correct to the best of his knowledge, information, and belief.

15. *As to notices under this part of this Act.*—Every notice referred to in this part of this Act shall be in writing and in such form as the Commissioners of Inland Revenue shall prescribe, and shall be delivered or sent in duplicate, and an acknowledgment of the receipt thereof, by or on behalf of the commissioner, upon the duplicate shall be forthwith returned to the person by whom the notice was delivered or sent.

THE FINANCE ACT, 1894
(57 & 58 VICT. c. 30.)

[31st July 1894.]

PART I
ESTATE DUTY
Grant of Estate Duty.

1. *Grant of Estate duty.*—In the case of every person dying after the commencement of this Part of this Act, there shall, save as hereinafter expressly provided, be levied and paid, upon the principal value ascertained

as hereinafter provided of all property, real or personal, settled or not settled, which passes on the death of such person a duty, called "Estate duty," at the graduated rates hereinafter mentioned, and the existing duties mentioned in the First Schedule to this Act shall not be levied in respect of property chargeable with such Estate duty.

2. *What property is deemed to pass.*—(1) Property passing on the death of the deceased shall be deemed to include the property following, that is to say:—

(*a*) Property of which the deceased was at the time of his death competent to dispose ;

(*b*) Property in which the deceased or any other person had an interest ceasing on the death of the deceased, to the extent to which a benefit accrues or arises by the cesser of such interest ; but exclusive of property the interest in which of the deceased or other person was only an interest as holder of an office, or recipient of the benefits of a charity, or as a corporation sole ;

(*c*) Property which would be required on the death of the deceased to be included in an account under section thirty-eight of the Customs and Inland Revenue Act, 1881, as amended by section eleven 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 ; and

(*d*) Any annuity or other interest purchased or provided by the deceased, either by himself alone or in concert or by arrangement with any other person, to the extent of the beneficial interest accruing or arising by survivorship or otherwise on the death of the deceased.

(2) . . . .

(3) Property passing on the death of the deceased shall not be deemed to include property held by the deceased as trustee for another person, under a disposition not made by the deceased, or under a disposition made by the deceased more than twelve months before his death where possession and enjoyment of the property was bona fide assumed by the beneficiary immediately upon the creation of the trust and thenceforward retained to the entire exclusion of the deceased or of any benefit to him by contract or otherwise.

3. *Exception for transactions for money consideration.*—(1) Estate duty shall not be payable in respect of property passing on the death of the deceased by reason only of a bona fide purchase from the person under whose disposition the property passes, nor in respect of the falling into possession of the reversion on any lease for lives, nor in respect of the determination of any annuity for lives, where such purchase was made, or such lease or annuity granted, for full consideration in money or money's worth paid to the vendor or grantor for his own use or benefit, or in the case of a lease for the use or benefit of any person for whom the grantor was a trustee.

(2) Where any such purchase was made, or lease or annuity granted, for partial consideration in money or money's worth paid to the vendor or grantor for his own use or benefit, or in the case of a lease for the use or benefit of any person for whom the grantor was a trustee, the value of the consideration shall be allowed as a deduction from the value of the property for the purpose of Estate duty.

4. *Aggregation of property to form one estate for purpose of duty.*—For determining the rate of Estate duty to be paid on any property passing on the death of the deceased, all property so passing in respect of which Estate duty is leviable shall be aggregated so as to form one estate, and the duty shall be levied at the proper graduated rate on the principal value thereof :

Provided that any property so passing, in which the deceased never had an interest, [or which under a disposition not made by the deceased passes immediately on the death of the deceased to some person other than the wife or husband or a lineal ancestor or lineal descendant of the deceased] shall not be aggregated with any other property but shall be an estate by itself, and the Estate duty shall be levied at the proper graduated rate on the principal value thereof ; [but if any benefit under a disposition not made by the deceased is reserved or given to the wife or husband or a lineal ancestor or lineal descendant of the deceased, such benefit shall be aggregated with property of the deceased for the purpose of determining the rate of Estate duty].

5. *Settled property.*—(1) . . .

(2) If Estate duty has already been paid in respect of any settled property since the date of the settlement, the Estate duty shall not, nor shall any of the duties mentioned in the fifth paragraph of the First Schedule to this Act, be payable in respect thereof, until the death of a person who was at the time of his death or had been at any time during the continuance of the settlement competent to dispose of such propery, [and who if on his death subsequent limitations under the settlement take effect, in respect of such property was sui juris at the time of his death or had been sui juris at any time while so competent to dispose of the property].

(3) In the case of settled property, where the interest of any person under the settlement fails or determines by reason of his death before it becomes an interest in possession, and subsequent limitations under the settlement continue to subsist, the property shall not be deemed to pass on his death [by reason only of the failure or determination of that interest].

(4) . . .

(5) . . .

Collection and Recovery of Duty and Value of Property.

6. *Collection and recovery of Estate duty.*—(1) Estate duty shall be a stamp duty, collected and recovered as hereinafter mentioned.

(2) The executor of the deceased shall pay the Estate duty in respect of all personal property (wheresoever situate) of which the deceased was competent to dispose at his death, on delivering the Inland Revenue affidavit, and may pay in like manner the Estate duty in respect of any other property passing on such death, which by virtue of any testamentary disposition of the deceased is under the control of the executor, or, in the case of property not under his control, if the persons accountable for the duty in respect thereof request him to make such payment.

(3) Where the executor does not know the amount or value of any property which has passed on the death, he may state in the Inland Revenue affidavit that such property exists, but he does not know the amount or value thereof, and that he undertakes, as soon as the amount and value are ascertained, to bring in an account thereof, and to pay both the duty for which he is or may be liable, and any further duty payable by reason thereof for which he is or may be liable in respect of the other property mentioned in the affidavit.

(4) Estate duty, so far as not paid by the executor, shall be collected upon an account setting forth the particulars of the property, and delivered

to the Commissioners within six months after the death by the person accountable for the duty, or within such further time as the Commissioners may allow.

(5) Every estate shall include all income accrued upon the property included therein down to and outstanding at the date of the death of the deceased.

(6) Interest . . . on the Estate duty shall be paid from the date of the death up to the date of the delivery of the Inland Revenue affidavit or account, or the expiration of six months after the death, whichever first happens, . . .

(7) The duty which is to be collected upon an Inland Revenue affidavit or account shall be due on the delivery thereof, or on the expiration of six months from the death, whichever first happens.

(8) Provided that the duty due upon an account of real property may, at the option of the person delivering the account, be paid by eight equal yearly instalments, or sixteen half-yearly instalments, with interest of the rate of three per cent. per annum from the date at which the first instalment is due, . . . and the first instalment shall be due at the expiration of twelve months from the death, and the interest on the unpaid portion of the duty shall be added to each instalment and paid accordingly ; but the duty for the time being unpaid, with such interest to the date of payment, may be paid at any time, and in case the property is sold, shall be paid on completion of the sale, and if not so paid shall be duty in arrear.

7. *Value of property.*—(1) In determining the value of an estate for the purpose of Estate duty allowance shall be made for reasonable funeral expenses and for debts and incumbrances ; but an allowance shall not be made—

(*a*) for debts incurred by the deceased, or incumbrances created by a disposition made by the deceased, unless such debts or incumbrances were incurred or created bona fide for full consideration in money or money's worth wholly for the deceased's own use and benefit and take effect out of his interest, nor

(*b*) for any debt in respect whereof there is a right to reimbursement from any other estate or person, unless such reimbursement cannot be obtained, nor

(*c*) more than once for the same debt or incumbrance charged upon different portions of the estate ;

and any debt or incumbrance for which an allowance is made shall be deducted from the value of the land or other subjects of property liable thereto—

(2) An allowance shall not be made in the first instance for debts due from the deceased to persons resident out of the United Kingdom, (unless contracted to be paid in the United Kingdom, or charged on property situate within the United Kingdom), except out of the value of any personal property of the deceased situate out of the United Kingdom in respect of which Estate duty is paid ; and there shall be no repayment of Estate duty in respect of any such debts, except to the extent to which it is shown to the satisfaction of the Commissioners, that the personal property of the deceased situate in the foreign country or British possession in which the person to whom such debts are due resides, is insufficient for their payment.

(3) Where the Commissioners are satisfied that any additional expense in administering or in realising property has been incurred by reason of the property being situate out of the United Kingdom, they may make an allowance from the value of the property on account of such expense not exceeding in any case five per cent. on the value of the property.

(4) Where any property passing on the death of the deceased is situate in a foreign country, and the Commissioners are satisfied that by reason

of such death any duty is payable in that foreign country in respect of that property, they shall make an allowance of the amount of that duty from the value of the property.

(5) The principal value of any property shall be estimated to be the price which, in the opinion of the Commissioners, such property would fetch if sold in the open market at the time of the death of the deceased:

Provided that, in the case of any agricultural property, where no part of the principal value is due to the expectation of an increased income from such property, the principal value shall not exceed twenty-five times the annual value as assessed under Schedule A. of the Income Tax Acts, after making such deductions as have not been allowed in that assessment and are allowed under the Succession Duty Act, 1853, and making a deduction for expenses of management not exceeding five per cent. of the annual value so assessed.

(6) Where an estate includes an interest in expectancy, Estate duty in respect of that interest shall be paid, at the option of the person accountable for the duty, either with the duty in respect of the rest of the estate or when the interest falls into possession, and if the duty is not paid with the Estate duty in respect of the rest of the estate, then—

(*a*) for the purpose of determining the rate of Estate duty in respect of the rest of the estate the value of the interest shall be its value at the date of the death of the deceased; and

(*b*) the rate of Estate duty in respect of the interest when it falls into possession shall be calculated according to its value when it falls into possession, together with the value of the rest of estate as previously ascertained.

(7) The value of the benefit accruing or arising from the cesser of an interest ceasing on the death of the deceased shall—

(*a*) if the interest extended to the whole income of the property, be the principal value of that property; and

(*b*) if the interest extended to less than the whole income of the property, be the principal value of an addition to the property equal to the income to which the interest extended.

(8) Subject to the provisions of this Act, the value of any property for the purpose of Estate duty shall be ascertained by the Commissioners in such manner and by such means as they think fit, and, if they authorise a person to inspect any property and report to them the value thereof for the purposes of this Act, the person having the custody or possession of that property shall permit the person so authorised to inspect it at such reasonable times as the Commissioners consider necessary.

(9) Where the Commissioners require a valuation to be made by a person named by them, the reasonable costs of such valuation shall be defrayed by the Commissioners.

(10) Property passing on any death shall not be aggregated more than once, nor shall Estate duty in respect thereof be more than once levied on the same death.

8. *Supplemental provisions as to collection, recovery, and repayment of and exemption from Estate duty.*—(1) The existing law and practice relating to any of the duties now leviable on or with reference to death shall, subject to the provisions of this Act and so far as the same are applicable, apply for the purposes of the collection, recovery, and repayment of Estate duty, and for the exemption of the property of common seamen marines or soldiers who are slain or die in the service of Her Majesty, and for the purpose of payment of sums under one hundred pounds without requiring representation, as if such law and practice were in terms made applicable to this part of this Act.

(2) Sections twelve to fourteen of the Customs and Inland Revenue Act, 1889, and section forty-seven of the Local Registration of Title (Ireland) Act, 1891, shall apply as if Estate duty were therein mentioned as well as Succession duty, and as if an account were not settled within the meaning of any of the above sections until the time for the payment of the duty on such account has arrived.

(3) The executor of the deceased shall, to the best of his knowledge and belief, specify in appropriate accounts annexed to the Inland Revenue affidavit all the property in respect of which Estate duty is payable upon the death of the deceased, and shall be accountable for the Estate duty in respect of all personal property wheresoever situate of which the deceased was competent to dispose at his death, but shall not be liable for any duty in excess of the assets which he has received as executor, or might but for his own neglect or default have received.

(4) Where property passes on the death of the deceased, and his executor is not accountable for the Estate duty in respect of such property, every person to whom any property so passes for any beneficial interest in possession, and also, to the extent of the property actually received or disposed of by him, every trustee, guardian, committee, or other person in whom any interest in the property so passing or the management thereof is at any time vested, and every person in whom the same is vested in possession by alienation or other derivative title shall be accountable for the Estate duty on the property, and shall, within the time required by this Act or such later time as the Commissioners allow, deliver to the Commissioners and verify an account, to the best of his knowledge and belief, of the property: Provided that nothing in this section contained shall render a person accountable for duty who acts merely as agent or bailiff for another person in the management of property.

(5) Every person accountable for Estate duty, and every person whom the Commissioners believe to have taken possession of or administered any part of the estate in respect of which duty is leviable on the death of the deceased, or of the income of any part of such estate, shall, to the best of his knowledge and belief, if required by the Commissioners, deliver to them and verify a statement of such particulars together with such evidence as they require relating to any property which they have reason to believe to form part of an estate in respect of which Estate duty is leviable on the death of the deceased.

(6) A person who wilfully fails to comply with any of the foregoing provisions of this section shall be liable to pay one hundred pounds, or a sum equal to double the amount of the Estate duty, if any, remaining unpaid for which he is accountable, according as the Commissioners elect: Provided that the Commissioners, or in any proceeding for the recovery of such penalty the Court, shall have power to reduce any such penalty.

(7) Estate duty shall, in the first instance, be calculated at the appropriate rate according to the value of the estate as set forth in the Inland Revenue affidavit or account delivered, but if afterwards it appears that for any reason too little duty has been paid, the additional duty shall, unless a certificate of discharge has been delivered under this Act, be payable, and be treated as duty in arrear.

(8) The Commissioners on application from a person accountable for the duty on any property forming part of an estate shall, where they consider that it can conveniently be done, certify the amount of the valuation accepted by them for any class or description of property forming part of such estate.

(9) Where the Commissioners are satisfied that the Estate duty leviable in respect of any property cannot without excessive sacrifice be raised at once, they may allow payment to be postponed for such period, to such extent, and on payment of such interest not exceeding four per cent. or any higher interest yielded by the property, and on such terms, as the Commissioners think fit.

(10) . . .

(11) If after the expiration of twenty years from a death upon which Estate duty became leviable any such duty remains unpaid, the Commissioners may, if they think fit, on the application of any person accountable or liable for such duty or interested in the property, remit the payment of such duty or any part thereof or any interest thereon.

(12) Where it is proved to the satisfaction of the Commissioners that too much Estate duty has been paid, the excess shall be repaid by them, and in cases where the over-payment was due to overvaluation by the Commissioners, with interest at three per cent. per annum.

(13) Where any proceeding for the recovery of Estate duty in respect of any property is instituted, the High Court shall have jurisdiction to appoint a receiver of the property and the rents and profits thereof, and to order a sale of the property.

(14) All affidavits, accounts, certificates, statements, and forms used for the purpose of this part of this Act shall be in such form, and contain such particualrs, as may be prescribed, and if so required by the Commissioners shall be in duplicate, and accounts and statements shall be delivered, and verified on oath and by production of books and documents in the manner prescribed, and any person who wilfully fails to comply with the provisions of this enactment shall be liable to the penalty above in this section mentioned.

(15) No charge shall be made for any certificate given by the Commissioners under this Act.

(16) The Estate duty may be collected by means of stamps or such other means as the Commissioners prescribe.

(17) The form of certificate required to be given by the proper officer of the Court under section thirty of the Customs and Inland revenue Act, 1881, may be varied by a rule of court in such manner as may appear necessary for carrying into effect this Act.

(18) Nothing in this section shall render liable to or accountable for duty a bona fide purchaser for valuable consideration without notice.

9. *Charge of Estate duty on property and facilities for raising it.*—(1) A rateable part of the Estate duty on an estate, in proportion to the value of any property which does not pass to the executor as such, shall be a first charge on the property in respect of which duty is leviable; provided that the property shall not be so chargeable as against a bona fide purchaser thereof for valuable consideration without notice.

(2) On an application submitting in the prescribed form the description of the lands or other subjects of property (whether hereditaments, stocks, funds, shares, or securities), and of the debts and incumbrances allowed by the Commissioners in assessing the value of the property for the purposes of Estate duty, the Commissioners shall grant a certificate of the Estate duty paid in respect of the property, and specify the debts and incumbrances so allowed, as well as the lands or other subjects of property.

(3) Subject to any repayment of Estate duty arising from want of title to the land or other subjects of property, or from the existence of any debt or incumbrance thereon for which under this Act an allowance ought to have been but has not been made, or from any other cause, the certificate of the

Commissioners shall be conclusive evidence that the amount of duty named therein is a first charge on the lands or other subjects of property after the debts and incumbrances allowed as aforesaid: Provided that any such repayment of duty by the Commissioners shall be made to the person producing to them the said certificate.

(4) If the rateable part of the Estate duty in respect of any property is paid by the executor, it shall where occasion requires be repaid to him by the trustees or owners of the property, but if the duty is in respect of real property, it may, unless otherwise agreed upon, be repaid by the same instalments and with the same interest as are in this Act mentioned.

(5) A person authorised or required to pay the Estate duty in respect of any property shall, for the purpose of paying the duty, or raising the amount of the duty when already paid, have power, whether the property is or is not vested in him, to raise the amount of such duty and any interest and expenses properly paid or incurred by him in respect thereof, by the sale or mortgage of or a terminable charge on that property or any part thereof.

(6) A person having a limited interest in any property, who pays the Estate duty in respect of that property, shall be entitled to the like charge, as if the Estate duty in respect of that property had been raised by means of a mortgage to him.

(7) Any money arising from the sale of property comprised in a settlement, or held upon trust to lay out upon the trusts of a settlement, and capital money arising under the Settled Land Act, 1882, may be expended in paying any Estate duty in respect of property comprised in the settlement and held upon the same trusts.

10. *Appeal from Commissioners.*—(1) Any person aggrieved by the decision of the Commissioners with respect to the repayment of any excess of duty paid, or by the amount of duty claimed by the Commissioners, whether on the ground of the value of any property or the rate charged or otherwise, may, on payment of, or giving security as hereinafter mentioned for, the duty claimed by the Commissioners or such portion of it as is then payable by him, appeal to the High Court within the time and in the manner and on the conditions directed by rules of Court, and the amount of duty shall be determined by the High Court, and if the duty as determined is less than that paid to the Commissioners the excess shall be repaid.

(2) No appeal shall be allowed from any order, direction, determination, or decision of the High Court in any appeal under this section except with the leave of the High Court or Court of Appeal.

(3) . . .

The Court, where it appears to the Court just, may order the Commissioners to pay on any excess of duty repaid by them interest at the rate of three per cent. per annum for such period as appears to the Court just.

(4) Provided that the High Court, if satisfied that it would impose hardship to require the appellant, as a condition of an appeal, to pay the whole or, as the case may be, any part of the duty claimed by the Commissioners or of such portion of it as is then payable by him, may allow an appeal to be brought on payment of no duty, or of such part only of the duty as to the Court seems reasonable, and on security to the satisfaction of the Court being given for the duty, or so much of the duty as is not so paid, but in such case the Court may order interest at the rate of three per cent. per annum to be paid on the unpaid duty so far as it becomes payable under the decision of the Court.

(5) Where the value as alleged by the Commissioners of the property in respect of which the dispute arises does not exceed ten thousand pounds,

the appeal under this section may be to the county court for the county or place in which the appellant resides or the property is situate, and this section shall for the purpose of the appeal apply as if such county court were the High Court: [Provided that in every such case any party shall have a right of appeal to Her Majesty's Court of Appeal].

(6) The county council of every county or county borough in Great Britain, shall, within twelve months after the commencement of this Act, and may thereafter from time to time, appoint a sufficient number of qualified persons to act as valuers for the purposes of this Act in their respective counties, and shall fix a scale of charges for the remuneration of such persons, and the Court may refer any question of disputed value under this section to the arbitration of any person so appointed for the county in which the appellant resides or the property is situate; and the costs of any such arbitration shall be part of the costs of the appeal.

Discharge from and Apportionment of Duty.

11. *Release of persons paying Estate duty.*—(1) The Commissioners on being satisfied that the full Estate duty has been or will be paid in respect of an estate or any part thereof shall, if required by the person accounting for the duty, give a certificate to that effect, which shall discharge from any further claim for Estate duty the property shown by the certificate to form the estate or part thereof as the case may be.

(2) Where a person accountable for the Estate duty in respect of any property passing on a death applies after the lapse of two years from such death to the Commissioners, and delivers to them and verifies a full statement to the best of his knowledge and belief of all property passing on such death and the several persons entitled thereto, the Commissioners may determine the rate of the Estate duty in respect of the property for which the applicant is accountable, and on payment of the duty at that rate, that property and the applicant so far as regards that property shall be discharged from any further claim for Estate duty, and the Commissioners shall give a certificate of such discharge.

(3) A certificate of the Commissioners under this section shall not discharge any person or property from Estate duty in case of fraud or failure to disclose material facts, and shall not affect the rate of duty payable in respect of any property afterwards shown to have passed on the death, and the duty in respect of such property shall be at such rate as would be payable if the value thereof were added to the value of the property in respect of which duty has been already accounted for;

(4) Provided nevertheless that a certificate purporting to be a discharge of the whole Estate duty payable in respect of any property included in the certificate shall exonerate a bona fide purchaser for valuable consideration without notice from the duty notwithstanding any such fraud or failure.

12. *Commutation of duty on interest in expectancy.*—The Commissioners in their discretion, upon application by a person entitled to an interest in expectancy, may commute the Estate duty which would or might, but for the commutation, become payable in respect of such interest for a certain sum to be presently paid, and for determining that sum shall cause a present value to be set upon such duty, regard being had to the contingencies affecting the liability to and rate and amount of such duty, and interest being reckoned at three per cent.; and on the receipt of such sum they shall give a certificate of discharge accordingly.

13. *Powers to accept composition for death duties.*—(1) Where, by reason of the number of deaths on which property has passed or of the complicated nature of the interests of different persons in property which has

passed on death, or from any other cause, it is difficult to ascertain exactly the amount of death duties or any of them payable in respect of any property or any interest therein, or so to ascertain the same without undue expense in proportion to the value of the property or interest, the Commissioners on the application of any person accountable for any duty thereon, and upon his giving to them all the information in his power respecting the amount of the property and the several interests therein, and other circumstances of the case, may by way of composition for all or any of the death duties payable in respect of the property, or interest, and the various interests therein, or any of them, assess such sum on the value of the property, or interest, as having regard to the circumstances appears proper, and may accept payment of the sum so assessed, in full discharge of all claims for death duties in respect of such property or interest, and shall give a certificate of discharge accordingly ;

(2) Provided that the certificate shall not discharge any person from any duty in case of fraud or failure to disclose material facts.

(3) In this section the expression "death duties" means the Estate duty under this Act, the duties mentioned in the First Schedule to this Act [and the legacy and succession duties] and the duty payable on any representation or inventory under any Act in force before the Customs and Inland Revenue Act, 1881.

14. *Apportionment of duty.*—(1) In the case of property which does not pass to the executor as such, an amount equal to the proper rateable part of the Estate duty may be recovered by the person, who being authorised or required to pay the Estate duty in respect of any property has paid such duty, from the person entitled to any sum charged on such property (whether as capital or as an annuity or otherwise), under a disposition not containing any express provision to the contrary.

(2) Any dispute as to the proportion of Estate duty to be borne by any property or person, may be determined upon application by any person interested in manner directed by rules of Court, either by the High Court, or, where the amount in dispute is less than fifty pounds, by a county court for the county or place in which the person recovering the same resides, or the property in respect of which the duty is paid is situate.

(3) Any person from whom a rateable part of Estate duty can be recovered under this section shall be bound by the accounts and valuations as settled between the person entitled to recover the same and the Commissioners.

15. *Exemptions from Estate duty.*—(1) Estate duty shall not be payable in respect of a single annuity not exceeding twenty-five pounds purchased or provided by the deceased, either by himself alone or in concert or arrangement with any other person, for the life of himself and of some other person and the survivor of them, or to arise on his own death in favour of some other person ; and if in any case there is more than one such annuity, the annuity first granted shall be alone entitled to the exemption under this section.

(2) It shall be lawful for the Treasury to remit the Estate duty, or any other duty leviable on or with reference to death, in respect of any such pictures, prints, books, manuscripts, works of art or scientific collections, as appear to the Treasury to be of national, scientific, or historic interest, and to be given or bequeathed for national purposes, or to any university, or to any county council or municipal corporation, and no property the duty in respect of which is so remitted shall be aggregated with any other property for the purpose of fixing the rate of Estate duty.

(3) Estate duty shall not be payable in respect of any pension or annuity payable by the Government of British India to the widow or child

of any deceased officer of such Government, notwithstanding that the deceased contributed during his lifetime to any fund out of which such pension or annuity is paid.

(4) Estate duty shall not be payable in respect of any advowson or church patronage [which would have been free from Succession duty under section twenty-four of the Succession Duty Act, 1853].

Small Estates.

16. *Provision for estates not exceeding* £1,000.—(1) The provisions of [section thirty-three] of the Customs and Inland Revenue Act, 1881 (relating to the obtaining of representation to the deceased where the gross value of his personal estate does not exceed three hundred pounds), shall apply with the necessary modifications to the case where the gross value of the property real and personal in respect of which Estate duty [would, if Estate duty were payable in respect of estates however small the principal value thereof, be payable on the death of the deceased], exclusive of property settled otherwise than by the will of the deceased, does not exceed five hundred pounds. . . .

(2) All such property may be comprised in the notice under the said section thirty-three.

[(3) Where the net value of the property, real and personal, in respect of which Estate duty would, if Estate duty were payable in respect of estates however small the principal value thereof, be payable on the death of the deceased, exclusive of property settled otherwise than by the will of the deceased, does not exceed (two thousand pounds), such property, for the purpose of Estate duty, shall not be aggregated with any other property, but shall form an estate by itself and the legacy and succession duties shall not be payable under the will or intestacy of the deceased in respect of that estate.]

(4) . . .

(5) . . .

Rates of Estate Duty.

17. *Scale of rates of Estate duty.*—The rates of Estate duty shall be according to the following scale :—

Where the Principal Value of the Estate						Estate Duty shall be payable at the Rate per cent. of
	£				£	
Exceeds	100	and does not exceed			500	One pound.
"	500	"	"		1,000	Two pounds.
"	1,000	"	"		10,000	Three pounds.
"	10,000	"	"		25,000	Four pounds.
"	25,000	"	"		50,000	Four pounds ten shillings.
"	50,000	"	"		75,000	Five pounds.
"	75,000	"	"		100,000	Five pounds ten shillings.
"	100,000	"	"		150,000	Six pounds.
"	150,000	"	"		250,000	Six pounds ten shillings.
"	250,000	"	"		500,000	Seven pounds.
"	500,000	"	"		1,000,000	Seven pounds ten shillings.
"	1,000,000	..	..	..	..	Eight pounds.

18. . . .

Local Taxation Grant.

* * * * *

British Possessions.

20. *Exception as to property in British possessions.*—(1) Where the Commissioners are satisfied, that in a British possession to which this section applies, duty is payable by reason of a death in respect of any property situate in such possession and passing on such death, they shall allow a sum equal to the amount of that duty to be deducted from the Estate duty payable in respect of that property on the same death.

(2) Nothing in this Act shall be held to create a charge for Estate duty on any property situate in a British possession, while so situate, or to authorise the Commissioners to take any proceedings in a British possession for the recovery of any Estate duty.

(3) Her Majesty the Queen may, by Order in Council, apply this section to any British possession, where Her Majesty is satisfied that, by the law of such possession, either no duty is leviable in respect of property situate in the United Kingdom when passing on death, or that the law of such possession as respects any duty so leviable is to the like effect as the foregoing provisions of this section.

(4) Her Majesty in Council may revoke any such Order, where it appears that the law of the British possession has been so altered that it would not authorise the making of an Order under this section.

Savings and Definitions.

21. *Savings.*—(1) Estate duty shall not be payable on the death of a deceased person in respect of personal property settled by a will or disposition made by a person dying before the commencement of this Part of this Act, in respect of which property, any duty mentioned in paragraphs one and two of the First Schedule to this Act, or the duty payable on any representation or inventory under any Act in force before the Customs and Inland Revenue Act, 1881, has been paid or is payable, unless in either case the deceased was at the time of his death, or at any time since the will or disposition took effect had been, competent to dispose of the property.

(2) Where a person died before the commencement of this Part of this Act, the duties mentioned in the First Schedule to this Act shall continue to be payable in like manner in all respects as if this Act had not passed.

(3) Where an interest in expectancy in any property has, before the commencement of this Part of this Act, been bona fide sold or mortgaged for full consideration in money or money's worth, then no other duty on such property shall be payable by the purchaser or mortgagee when the interest falls into possession, than would have been payable if this Act had not passed; and in the case of a mortgage, any higher duty payable by the mortgagor shall rank as a charge subsequent to that of the mortgagee.

(4) . . .

(5) Where a husband or wife is entitled, either solely or jointly with the other, to the income of any property settled by the other under a disposition which has taken effect before the commencement of this part of this Act, and on his or her death the survivor becomes entitled to the income of the property settled by such survivor, Estate duty shall not be payable in respect of that property until the death of the survivor.

22. *Definitions.*—(1) In this Part of this Act, unless the context otherwise requires:—

(*a*) The expressions "deceased person" and "the deceased" mean a person dying after the commencement of this Part of this Act:

(*b*) The expression "will" includes any testamentary instrument:

(*c*) The expression "representation" means probate of a will or letters of administration:

(*d*) The expression "executor" means the executor or administrator of a deceased person, and includes, as regards any obligation under this Part of this Act, any person who takes possession of or intermeddles with the personal property of a deceased person:

(*e*) The expression "Estate duty" means Estate duty under this Act:

(*f*) The expression "property" includes real property and personal property and the proceeds of sale thereof respectively and any money or investment for the time being representing the proceeds of sale:

(*g*) The expression "agricultural property" means agricultural land pasture and woodland, and also includes such cottages, farm buildings, farm houses, and mansion houses (together with the lands occupied therewith) as are of a character appropriate to the property:

(*h*) The expression "settled property" means property comprised in a settlement:

(*i*) The expression "settlement" means any instrument, whether relating to real property or personal property, which is a settlement within the meaning of section two of the Settled Land Act, 1882, or if it related to real property would be a settlement within the meaning of that section, and includes a settlement effected by a parol trust:

(*j*) The expression "interest in expectancy" includes an estate in remainder or reversion and every other future interest whether vested or contingent, but does not include reversions expectant upon the determination of leases:

(*k*) The expression "incumbrances" includes mortgages and terminable charges:

(*l*) The expression "property passing on the death" includes property passing either immediately on the death or after any interval, either certainly or contingently, and either originally or by way of substitutive limitation, and the expression "on the death" includes "at a period ascertainable only by reference to the death":

(*m*) The expression "the Commissioners" means the Commissioners of Inland Revenue:

(*n*) The expression "Inland Revenue affidavit" means an affidavit made under the enactments specified in the Second Schedule to this Act with the account and schedule annexed thereto:

(*o*) The expression "prescribed" means prescribed by the Commissioners.

(2) For the purposes of this Part of this Act—

(*a*) A person shall be deemed competent to dispose of property if he has such an estate or interest therein or such general power as would, if he were sui juris, enable him to dispose of the property, including a tenant in tail whether in possession or not; and the expression "general power" includes every power or authority enabling the donee or other holder thereof to appoint or dispose of property as he thinks fit, whether exercisable by instrument inter vivos or by will, or both, but exclusive of any power exercisable in a fiduciary capacity under a disposition

not made by himself, or exercisable as tenant for life under the Settled Land Act, 1882, or as mortgagee :

(*b*) A disposition taking effect out of the interest of the deceased person shall be deemed to have been made by him, whether the concurrence of any other person was or was not required :

(*c*) Money which a person has a general power to charge on property shall be deemed to be property of which he has power to dispose.

(3) This Part of this Act shall apply to property in which the wife or husband of the deceased takes an estate in dower or by the courtesy or any other like estate, in like manner as it applies to property settled by the will of the deceased.

Application to Scotland.

23. *Application of Part of Act to Scotland.*—In the application of this Part of this Act to Scotland unless the context otherwise requires :—

(1) The Court of Session shall be substituted for the High Court :

(2) "Sheriff court" shall be substituted for "county court" :

(3) "Confirmation" shall be substituted for "representation" :

(4) The expression "receiver of the property and of the rents and profits thereof," means a judicial factor upon the property :

(5) The expression "Inland Revenue affidavit," means the inventory of the personal estate of a deceased now required by law, and includes an additional inventory :

(6) The expression "on delivering the Inland Revenue affidavit," means on exhibiting and recording a duly stamped inventory as provided by section thirty-eight of the Probate and Legacy Duties Act, 1808 :

(7) Section thirty-four of the Customs and Inland Revenue Act, 1881, shall be substituted for section thirty-three of that Act, and the Acts referred to in such section thirty-four shall extend to an estate of a gross value not exceeding five hundred pounds, and an application under the said Acts may be made to any commissary clerk, and any commissary clerk shall affix the seal of the court to any representation granted in England or Ireland upon the same being sent to him for that purpose, enclosing a fee of two shillings and six pence :

(8) The expression "personal property" means movable property :

(9) The expression "real property" includes heritable property :

(10) The expression "incumbrance" includes any heritable security, or other debt or payment secured upon heritage :

(11) The expression "executor" means every person who as executor, nearest of kin, or creditor, or otherwise, intromits with or enters upon the possession or management of any personal property of a deceased person :

(12) The property comprised in any special assignation or disposition taking effect on death shall be deemed to pass on death within the meaning of this Act :

(13) The expression "trustee" includes a tutor, curator, and judicial factor :

(14) The expression "settled property" shall not include property held under entail :

(15) An institute or heir of entail in possession of an entailed estate shall whether sui juris or not be deemed for the purposes of this Act to be a person competent to dispose of such estate

[Provided that for the purposes of section eighteen of this Act such institute or heir of entail shall not be deemed to be a person competent to dispose of such estate, unless he is entitled to disentail it without obtaining the consent of any subsequent heir of entail, or having the consent of any subsequent heir valued and dispensed with] :

(16) Where an entailed estate passes on the death of the deceased to an institute or heir of entail, who is not entitled to disentail such estate without either obtaining the consent of one or more subsequent heirs of entail or having the consent of such one or more subsequent heirs valued and dispensed with, settlement Estate duty as well as Estate duty shall be paid in respect of such estate, but neither Estate duty nor settlement Estate duty shall be payable again in respect of such estate, until such estate is disentailed, or until an heir of entail to whom it passes on or subsequent to the death of the institute or heir first mentioned, and who is entitled to disentail it without obtaining the consent of any subsequent heir or heirs or having the consent of any subsequent heir or heirs valued and dispensed with, dies :

(17) Where an institute or heir of entail in possession of an entailed estate, who is not entitled to disentail such estate without either obtaining the consent of one or more subsequent heirs of entail or having the consent of such one or more subsequent heirs valued and dispensed with, has paid Estate duty in respect of such estate, and afterwards disentails such estate, he shall be entitled to deduct from the value in money of the expectancy or interest in such estate of such one or more subsequent heirs, payable by him to them in respect of their consents having been granted or dispensed with, a proper rateable part of the Estate duty paid by him as aforesaid :

(18) Where any person who pays Estate duty on any property, and in whom the property is not vested, is by this Act authorised to raise such duty by the sale or mortgage of that property, or any part thereof, it shall be competent for such person to apply to the Court of Session—

(*a*) for an order of sale of the property or part of it, and in the event of the court granting such order, it shall provide for the payment out of the price of the amount of the Estate duty which has been paid by such person, and the court shall thereafter make such order as to the disposal of the surplus, if any, of the price, by way of investment or otherwise, as to the court shall seem proper ; the court may in such order specify the time and place at which, the person by whom, and the advertisement or notice after which the sale shall be made, and may ordain the person in whom the property is vested to grant a disposition thereof in favour of the purchaser, and if the person in whom the property is vested refuses or fails to do so, the court shall grant authority to the clerk of court to execute such disposition, and such disposition so executed shall be as valid as if it had been executed by the person in whom the property is vested : or

(*b*) for an order ordaining the person in whom the property is vested to grant a bond and disposition in security over the property in favour of the person who has paid the Estate duty, for the amount of the said duty, and if the person in whom

the property is vested refuses, or fails to do so, the court shall grant authority to the clerk of court to execute such a bond and disposition in security, and such bond and disposition in security so executed shall be as valid as if it had been executed by the person in whom the property is vested, and shall be a first charge upon the property after any debt or incumbrance for which an allowance is directed to be made under this Act in determining the value of the property for the purpose of Estate duty ;

Provided also that summary diligence shall not be competent thereupon, and that nothing herein contained shall make the duty to be recovered by the methods of these sub-sections (*a*) and (*b*) recoverable at any earlier time than if it had been recovered by direct action against the person ultimately liable for the duty.

(19) This Part of this Act shall apply to property in which the wife or husband of the deceased takes an estate of terce or courtesy or any other like estate in like manner as it applies to property settled by the will of the deceased.

Commencement.

24. *Commencement of Part of Act.*—This Part of this Act shall come into operation on the expiration of the first day of August one thousand eight hundred and ninety-four, in this Part of this Act referred to as the commencement of this Part of this Act.

Short Title.

42. *Short Title.*—This Act may be cited as the Finance Act, 1894.

THE FINANCE ACT, 1896.

(59 & 60 VICT. c. 28.)

[7th August 1896.]

PART IV

DEATH DUTIES

Estate Duty.

14. *Exception to passing of property on enlargement of interest of settlor.*—Where property is settled by a person on himself for life, and after his death on any other persons with an ultimate reversion of an absolute interest or absolute power of disposition to the settlor, the property shall not be deemed for the purpose of the principal Act to pass to the settlor on the death of any such other person after the commencement of this Part of this Act, by reason only that the settlor, being then in possession of the property as tenant for life, becomes, in consequence of such death, entitled to the immediate reversion, or acquires an absolute power to dispose of the whole property.

15. *Reverter of property to disponer.*—(1) Where by a disposition of any property an interest is conferred on any person other than the disponer for the life of such person or determinable on his death, and such person enters into possession of the interest and thenceforward retains possession thereof to the entire exclusion of the disponer or of any benefit to him by contract or otherwise, and the only benefit which the disponer retains in the said property is subject to such life or determinable interest, and no other interest is created by the said disposition, then, on the death of such person after the commencement of this Part of this Act, the property shall not be

deemed for the purpose of the principal Act to pass by reason only of its reverter to the disponer in his lifetime.

(2) Where by a disposition of any property any such interest as above in this section mentioned is conferred on two or more persons, either severally or jointly, or in succession, this section shall apply in like manner as where the interest is conferred on one person.

(3) Provided that the foregoing sub-sections shall not apply where such person or persons taking the said life or determinable interest had at any time prior to the disposition been himself or themselves competent to dispose of the said property.

(4) Where the deceased person was entitled by law to the rents and profits of real property (as defined by section one of the Succession Duty Act, 1853) of his wife, and has died in her lifetime, such property shall not be deemed for the purpose of the principal Act to pass on his death by reason of her then becoming entitled to the property in virtue of her former interest.

16. *Estate duty on annuities.*—The estate duty in respect of any annuity or other definite annual sum, whether terminable or perpetual, referred to in section two (1) (*d*) of the principal Act, may, at the option of the person delivering the account, be paid by four equal yearly instalments, the first of which shall be due at the end of twelve months from the date of the death, and after the end of those twelve months interest on the unpaid portion of the duty shall be added to each instalment and paid accordingly, but the duty for the time being unpaid, with interest to the date of payment, may be paid at any time.

17. *Estate duty on fractions of one hundred pounds.*—Section seventeen of the principal Act shall have effect as if there were added at the end thereof the following proviso in substitution for the existing proviso as to fractional parts of ten pounds :—

Provided that where the principal value of an estate comprises a fraction of one hundred pounds in excess of one hundred pounds, or of any multiple of one hundred pounds, such fraction shall be excluded from the value of the estate for the purpose of determining both the rate and the amount of duty, except that where the principal value of the estate exceeds one hundred pounds and does not exceed two hundred pounds the duty shall be one pound.

18. *Interest upon estate duty and other death duties.*—(1) Simple interest at the rate of three per cent. per annum without deduction for income tax shall be payable upon all estate duty from the date of the death of the deceased, or, where the duty is payable by instalments, or becomes due at any date later than six months after the death, from the date at which the first instalment of the duty becomes due, and shall be recoverable in the same manner as if it were part of the duty.

(2) The foregoing provision shall apply to the interest on all death duties as defined by section thirteen of the principal Act in like manner as if it were herein re-enacted and made applicable to those duties.

(3) The Commissioners of Inland Revenue may remit the interest on any of such death duties where the amount appears to them to be so small as not to repay the expense and trouble of calculation and account.

19. *Incidence of settlement estate duty.*—(1) The settlement estate duty leviable in respect of a legacy or other personal property settled by the will of the deceased shall (unless the will contains an express provision to the contrary) be payable out of the settled legacy or property in exoneration of the rest of the deceased's estate.

(2) The settlement estate duty leviable in respect of any such legacy or property shall be collected upon an account setting forth the particulars of

the legacy or property, and delivered to the Commissioners by the executor within six months after the death, or within such further time as the Commissioners may allow.

20. *Objects of national, scientific, or historic interest.*—(1) Where any property passing on the death of a deceased person consists of such pictures, prints, books, manuscripts, works of art, scientific collections, or other things not yielding income as appear to the Treasury to be of national, scientific, or historic interest, [and is settled so as to be enjoyed in kind in succession by different persons,] such property shall not, on the death of such deceased person, be aggregated with other property, but shall form an estate by itself, and, while enjoyed in kind [by a person not competent to dispose of the same,] be exempt from estate duty, but if it is sold [or is in the possession of some person who is then competent to dispose of the same,] shall become liable to estate duty.

(2) The person selling the same, or for whose benefit the same is sold, [and also the person being in possession and competent to dispose of the same,] shall be accountable for the duty, and shall deliver an account, in accordance with section eight of the principal Act, in the case of a sale within one month after the sale, [and in the case of a person coming into possession, or if in possession becoming competent to dispose, within six months after he so comes into possession, or becomes competent to dispose].

21. *Allowance of succession duty, &c., paid out of capital before commencement of* 57 & 58 *Vict. c.* 30.—Where on the death of a deceased person estate duty becomes payable by a person in respect of any property passing under a settlement made by a will or disposition which took effect before the commencement of the principal Act, and before that commencement any duty mentioned in paragraphs three to five of the First Schedule to the principal Act has been paid or is payable under the same will or disposition on the capital value of the property, the Commissioners of Inland Revenue shall allow the duty so paid or payable as a deduction from the estate duty to the extent to which it has been paid or is payable in respect of the property on which estate duty is payable.

22. *Appeal from county court under* 57 & 58 *Vict. c.* 30, *s.* 10.—There shall be added to subsection five of section ten of the principal Act the following proviso: Provided that in every such case any party shall have a right of appeal to Her Majesty's Court of Appeal.

23. *Amendment of* 57 & 58 *Vict. c.* 30, *as to certain heirs of entail in Scotland.*—The Finance Act, 1894, shall be construed as if there were added in section twenty-three thereof, after sub-section fifteen, the following enactment:

Provided that for the purposes of section eighteen of this Act such institute or heir of entail shall not be deemed to be a person competent to dispose of such estate, unless he is entitled to disentail it without obtaining the consent of any subsequent heir of entail, or having the consent of any subsequent heir valued and dispensed with.

24. *Commencement and construction of Part of Act.*—(1) Unless the context otherwise requires—

(*a*) this Part of this Act shall come into operation on the first day of July one thousand eight hundred and ninety-six, which day is in this Part of this Act referred to as the commencement of this Part of this Act; and

(*b*) the expression "deceased person" means a person dying after the commencement of this Part of this Act.

(2) Part I of the Finance Act, 1894, is in this Act referred to as "the principal Act."

PART VII

MISCELLANEOUS

39. *Construction of Act.*

* * * * * * *

Part Four of this Act shall be construed together with Part One of the Finance Act, 1894.

* * * * * * *

41. *Short title.*—This Act may be cited as the Finance Act, 1896.

THE FINANCE ACT, 1898.

(61 & 62 VICT. c. 10.)

[1st July 1898.]

PART V

ESTATE DUTIES

13. *Persons not sui juris not to be deemed competent to dispose for the purpose of breaking settlements.*—Section five, sub-section two, of the Finance Act, 1894, shall be read and have effect as if the following words had been inserted at the end thereof, "and who if on his death subsequent limitations under the settlement take effect in respect of such property was sui juris at the time of his death or had been sui juris at any time while so competent to dispose of the property."

14. *Settlement estate duty repayment.*—Where in the case of a death occurring after the commencement of this Act settlement estate duty is paid in respect of any property contingently settled, and it is thereafter shown that the contingency has not arisen, and cannot arise, the said duty paid in respect of such property shall be repaid.

PART VI

MISCELLANEOUS

17. *Short title.*—This Act may be cited as the Finance Act, 1898.

THE FINANCE ACT, 1900.

(63 & 64 VICT. c. 7.)

[9th April 1900.]

PART III

DEATH DUTIES

11. *Amendment of 57 & 58 Vict. c. 30 as to property passing on death.*—(1) In the case of every person dying after the thirty-first day of March nineteen hundred, property whether real or personal in which the deceased person or any other person had an estate or interest limited to cease on the death of the deceased shall, for the purpose of the Finance Act, 1894, and the Acts amending that Act, be deemed to pass on the death of the deceased, notwithstanding that that estate or interest has been surrendered, assured, divested, or otherwise disposed of, whether for value or not, to or for the benefit of any person entitled to an estate or interest in remainder or reversion in such property, unless that surrender, assurance, divesting, or disposition was bona fide made or effected twelve months before the death of the deceased,

and bona fide possession and enjoyment of the property was assumed thereunder immediately upon the surrender, assurance, divesting, or disposition, and thenceforward retained to the entire exclusion of the person who had the estate or interest limited to cease as aforesaid, and of any benefit to him by contract or otherwise.

(2) This section shall inter alia apply in Scotland to the conveyance or discharge of any life rent in favour of the fiar, or to the propulsion of the fee under any simple or tailzied destination.

12. *Amendment of 57 & 58 Vict. c. 30, s. 4, as to aggregation.*—(1) The exclusion enacted by the proviso to section four of the Finance Act, 1894, of property from aggregation shall in the case of every person dying after the passing of this Act cease to have effect, except as regards property in which the deceased never had an interest.

Provided that where an interest in expectancy (within the meaning of Part I, of the Finance Act, 1894) in any property has before the passing of this Act been bona fide sold or mortgaged for full consideration in money or money's worth, then no other duty on such property shall be payable by the purchaser or mortgagee when the interest falls into possession than would have been payable if this section had not passed; and in the case of a mortgage any higher duty payable by the mortgagor shall rank as a charge subsequent to that of the mortgagee.

(2) Where settled property passes, or is deemed to pass, on the death of a person dying after the passing of this Act under a disposition made by a person dying before the commencement of Part I of the Finance Act, 1894, and such property would, if the disponer had died after the commencement of the said Part, have been liable to Estate duty upon his death, the aggregation of such property, with other property passing upon the first-mentioned death, shall not operate to enhance the rate of duty payable either upon the settled property or upon any other property so passing by more than one half per cent. in excess of the rate at which duty would have been payable if such settled property had been treated as an estate by itself.

13. *Amendment of 59 & 60 Vict. c. 28, s. 17, as to exclusion of fractions from value.*—(1) For the purpose of determining the rate and the amount of duty, the exclusion under section seventeen of the Finance Act, 1896, of any fraction from the principal value of the estate shall in the case of every person dying after the passing of this Act cease to have effect.

(2) The Commissioners of Inland Revenue may, if they think fit, accept a statement by or on behalf of any accountable person as a correction of any Inland Revenue affidavit or account within the meaning of Part I of the Finance Act, 1894, for the purposes of that Act and the Acts amending that Act, without requiring that statement to be verified on oath.

14. *Remission of death duties in case of persons killed in war.*—(1) Where any person dies from wounds inflicted, accident occurring, or disease contracted, within twelve months before death, while an active service against an enemy, whether on sea or land, and was, when the wounds were inflicted, the accident occurred, or the disease was contracted, either subject to the Naval Discipline Act or subject to military law, whether as an officer, non-commissioned officer, or soldier, under Part V of the Army Act, the Treasury may, if they think fit, on the recommendation of the Secretary of State or of the Admiralty, as the case requires, remit, or in the case of duty already paid repay, up to an amount not exceeding one hundred and fifty pounds in any one case, the whole or any part of the death duties (within the meaning of sub-section three of section thirteen of the Finance Act, 1894) leviable in respect of property passing upon the death of the deceased to his widow

or lineal descendants if the total value for the purpose of estate duty of the property so passing does not exceed five thousand pounds.

(2) This section shall take effect in the case of any person dying since the eleventh day of October one thousand eight hundred and ninety-nine.

PART VI

GENERAL

* * * * * * *

19. *Short title.*—This Act may be cited as the Finance Act, 1900.

THE FINANCE ACT, 1907.

(7 EDW. 7, c. 13.)

[9th August 1907.]

PART III

DEATH DUTIES

12. *Amended rates of estate duty.*—The scale set out in the First Schedule to this Act shall, in the case of persons dying on or after the nineteenth day of April nineteen hundred and seven, be substituted for the scale of rates of estate duty set out in section seventeen of the Finance Act, 1894 (in this Part of this Act referred to as the principal Act):

Provided that where an interest in expectancy (within the meaning of Part I of the principal Act) in any property has before the nineteenth day of April nineteen hundred and seven been bona fide sold or mortgaged for full consideration in money or money's worth, then no other duty on that property shall be payable by the purchaser or mortgagee when the interest falls into possession than would have been payable if this section had not passed; and in the case of a mortgage any higher duty payable by the mortgagor shall rank as a charge subsequent to that of the mortgagee.

13. *Extension of power to remit death duties.*—The power of the Commissioners under sub-section (11) of section eight of the principal Act to remit the payment of estate duty or interest thereon shall apply to the other duties which are included in the definition of death duties in sub-section (3) of section thirteen of that Act as well as to estate duty.

14. *Power to entertain application for discharge from claims for estate duty made at any time.*—The Commissioners may, if they think fit, entertain any application made for the purpose of sub-section (2) of section eleven of the principal Act (which relates to discharge from claims for estate duty), at whatever time the application is made; and, as respects any application so entertained, the provisions of that sub-section shall have effect notwithstanding that the application is made before the lapse of the two years mentioned in that sub-section.

15. *Calculation of the allowance to be made in respect of duty paid before the commencement of the Finance Act,* 1894.—The deduction to be allowed under section twenty-one of the Finance Act, 1896, in respect of death duties previously paid on property on which estate duty is payable shall, instead of being the amount of the duty paid or payable, be the amount which would have been payable on account of the duty if the duty were calculated on the value of the property on which estate duty is payable: Provided that, if as respects any such deduction the person by whom the duty is payable requires the Commissioners, on the first delivery of his account, to calculate the deduction as if this section had not passed, the deduction shall be so calculated.

16. *Limited aggregation of certain settled property abolished.*—In the case of persons dying on or after the nineteenth day of April nineteen hundred and seven, any settled property which would, under sub-section (2) of section twelve of the Finance Act, 1900, be aggregated with other property so as to enhance the rate of duty to the limited extent provided in that section, shall, for the purposes of the principal Act, instead of being so aggregated, be treated as an estate by itself.

PART VII
GENERAL

30. *Construction and short title.*—(1) . . .

(2) . . .

Part III of this Act shall be construed together with the Finance Act, 1894.

* * * * * *

(3) This Act may be cited as the Finance Act, 1907.

FIRST SCHEDULE

Section 12.

SCALES OF RATES OF ESTATE DUTY

Where the Principal Value of the Estate					Estate Duty shall be payable at the Rate per cent. of
	£			£	
Exceeds	100	and	does not exceed	500	One pound.
„	500	„	„	1,000	Two pounds.
„	1,000	„	„	10,000	Three pounds.
„	10,000	„	„	25,000	Four pounds.
„	25,000	„	„	50,000	Four pounds ten shillings.
„	50,000	„	„	75,000	Five pounds.
„	75,000	„	„	100,000	Five pounds ten shillings.
„	100,000	„	„	150,000	Six pounds.
„	150,000	„	„	250,000	Seven pounds.
„	250,000	„	„	500,000	Eight pounds.
„	500,000	„	„	750,000	Nine pounds.
„	750,000	„	„	1,000,000	Ten pounds.
„	1,000,000	„	„	1,500,000	Ten pounds on one million and eleven pounds on the remainder.
„	1,500,000	„	„	2,000,000	Ten pounds on one million, and twelve pounds on the remainder.
„	2,000,000	„	„	2,500,000	Ten pounds on one million, and thirteen pounds on the remainder.
„	2,500,000	„	„	3,000,000	Ten pounds on one million, and fourteen pounds on the remainder.
„	3,000,000	..	.. ..		Ten pounds on one million, and fifteen pounds on the remainder.

THE FINANCE (1909-10) ACT, 1910.

(10 EDW. 7 & 1 GEO. 5, c. 8.)

[29th April 1910.]

PART I
DUTIES ON LAND VALUES

33. *Appeals to referees.*—(1) Except as expressly provided in this part of this Act, any person aggrieved may appeal within such time and in such manner as may be provided by rules made under this section against the

first or any subsequent determination by the Commissioners of the total value or site value of any land ; or against the amount of any assessment of duty under this Part of this Act ; or against a refusal of the Commissioners to make any allowance or to make the allowance claimed, where the Commissioners have power to make such an allowance under this Part of this Act ; or against any apportionment of the value of land or of duty or any assessment or apportionment of the consideration on any transfer or lease made by the Commissioners under this Part of this Act ; or against the determination of any other matter which the Commissioners are to determine or may determine under this Part of this Act:

Provided that—

(*a*) an appeal shall not lie against a provisional valuation made by the Commissioners of the total or site value of any land except on the part of a person who has made an objection to the provisional valuation in accordance with this Act ; and

(*b*) the original total value and the original site value and the site value as ascertained under any subsequent valuation shall be questioned only by means of an appeal against the determination by the Commissioners of that value where there is an appeal under this Act, and shall not be questioned in any case on an appeal against an assessment of duty.

(*2*) An appeal under this section shall be referred to such one of the panel of referees appointed under this Part of this Act as may be selected in manner provided by rules under this section . . .

42. *Application of Part I to Scotland.*—In the application of this Part of this Act to Scotland, unless the context otherwise requires—

(1) . . .

"Court of Session" shall be substituted for "High Court": Provided that, for the purposes of appeals from the decisions of referees, the judges of the Court of Session named for the purpose of hearing appeals under the Valuation of Lands (Scotland) Acts shall be substituted for the High Court, subject to such regulations as may be prescribed by Act of Sederunt, and the appeal from such judges shall be to the House of Lords, and in sub-section (2), (3), and (4) of section ten of the Finance Act, 1894, as applied with reference to any such appeal the said judges shall be substituted for the High Court. "Sheriff Court" shall be substituted for "County Court," and there shall be an appeal from the sheriff court to the said judges, whose decision in such case shall be final.

* * * * * *

PART III

DEATH DUTIES

54. *Amended rates of estate duty and settlement estate duty.*—The scale set out in the Second Schedule to this Act shall, in the case of persons dying on or after the thirtieth day of April nineteen hundred and nine, be substituted for the scale set out in the First Schedule to the Finance Act, 1907, as the scale of rates of estate duty, and two per cent. shall be substituted for one per cent. in section seventeen of the Finance Act, 1894 (in this Part of this Act referred to as the principal Act), as the rate of settlement estate duty.

55. *Limitation of relief from estate duty in respect of settled property.*—For the purpose of any claim to relief from estate duty under sub-section (2) of section five or subsection (1) of section twenty-one of the principal Act,

in the case of persons dying on or after the thirtieth day of April, nineteen hundred and nine, payment of or liability to duty, whether the payment was made or the liability attached before, on, or after that date, shall not be deemed to be a payment of or liability to duty in respect of settled property if the payment was made or the liability attached in respect of an interest in expectancy in any property on the death of a person other than the settlor.

56. *Power to transfer land in satisfaction of estate duty, settlement estate duty, or succession duty.*—(1) The Commissioners may, if they think fit, on the application of any person liable to pay estate duty or settlement estate duty [or succession duty in respect of any real (including leasehold) property], accept in satisfaction of the whole or any part of such duty such part of the property as may be agreed upon between the Commissioners and that person.

(2) No stamp duty shall be payable on any conveyance or transfer of land to the Commissioners under this section.

(3) The Commissioners may hold any property transferred to them under this section and shall deal with it in such manner as Parliament may hereafter determine.

57. *Limitation on debts deductible from value of estate.*—Where a debt or incumbrance has been incurred or created in whole or in part for the purpose of or in consideration for the purchase or acquisition or extinction, whether by operation of law or otherwise, of any interest in expectancy within the meaning of the principal Act in any property passing or deemed to pass on the death of a person dying after the passing of this Act, and any person whose interest in expectancy is so purchased, acquired, or extinguished becomes (under any disposition made by, or through devolution of law from, or under the intestacy of, the deceased) entitled to any interest in that property, then in determining the value of the estate of the deceased for the purpose of estate duty no allowance shall be made in respect of such debt or incumbrance, and any property charged with any such debt or incumbrance shall be deemed to pass freed from that debt or incumbrance:

Provided that—

(*a*) If part only of such debt or incumbrance was incurred or created for such purpose or as such consideration as aforesaid, this provision shall apply to that part of such debt or incumbrance only; and

(*b*) If a person whose interest in expectancy in the property so purchased, acquired, or extinguished becomes entitled to an interest in part only of that property, this provision shall apply only to such part of the debt or incumbrance as bears the same proportion to the whole debt or incumbrance as the value of the part of the property to an interest in which he becomes entitled bears to the value of the whole of that property.

58. . . .

59. *Provision as to gifts and dispositions inter vivos.*—(1) In the case of a person dying on or after the thirtieth day of April, nineteen hundred and nine, the period preceding the death of the deceased before which a disposition purporting to operate as an immediate gift inter vivos must have been made, [or a surrender, assurance, divesting, or disposition must have been made or effected,] in order that the property taken under the disposition, [or affected by the surrender, assurance, divesting, or disposition,] may not be included as property passing on the death of the deceased, shall be five years instead of twelve months before the death, and accordingly paragraph (*a*) of sub-section (2) of section thirty-eight of the Customs and Inland Revenue Act, 1881 (as amended by section eleven of the Customs and Inland Revenue Act,

1889, and applied by paragraph (*c*) of sub-section (1) of section two of the principal Act), sub-section (3) of section two of the principal Act, [and section eleven of the Finance Act, 1900,] shall be read as if five years were substituted for twelve months:

Provided that this section shall not apply to any gift inter vivos, [surrender, assurance, divesting, or disposition] made [or effected] before the thirtieth day of April, nineteen hundred and eight, or made or effected for public or charitable purposes.

(2) So much of paragraph (*c*) of sub-section (1) of section two 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, or which are proved to the satisfaction of the Commissioners to have been part of the normal expenditure of the deceased, and to have been reasonable, having regard to the amount of his income, or to the circumstances, or which, in the case of any donee, do not exceed in the aggregate one hundred pounds in value or amount.

(3) Where [property taken under such a disposition as aforesaid or affected by such a disposition or determination as is mentioned in section forty-three of the Finance Act, 1940,] is deemed to be property passing on the death of the deceased by reason only that the property was not, as from the date of [the disposition or determination,] retained to the entire exclusion of the deceased or a person who had an estate or interest limited to cease on the death of the deceased, and of any benefit to him by contract or otherwise, the property shall not be deemed to pass on the death of the deceased if subsequently, by means of the surrender of the benefit reserved or otherwise, it is enjoyed to the entire exclusion of the deceased or such other person as aforesaid, and of any benefit to him by contract or otherwise, for such period preceding the death of the deceased as is provided by this section [or the said section forty-three].

60. *Amendment as to value of property.*—(1) In the case of any person dying on or after the thirtieth day of April nineteen hundred and nine, the proviso to sub-section (5) of section seven of the principal Act (which relates to the estimation of the principal value of property for the purposes of estate duty) shall cease to have effect.

(2) In estimating the principal value of any property under sub-section (5) of section seven of the principal Act, in the case of any person dying on or after the thirtieth day of April, nineteen hundred and nine, the Commissioners shall fix the price of the property according to the market price at the time of the death of the deceased, and shall not make any reduction in the estimate on account of the estimate being made on the assumption that the whole property is to be placed on the market at one and the same time:

Provided that where it is proved to the Commissioners that the value of the property has been depreciated by reason of the death of the deceased, the Commissioners in fixing the price shall take such depreciation into account.

(3) An appeal shall not lie under section ten of the principal Act, whether as originally enacted or as applied by any other enactment, where the question in dispute is a question of the value of any real (including leasehold) property, but, if any person is aggrieved by the decision of the Commissioners as to the value of any such property, he may appeal against the decision in manner prescribed by Part I of this Act, and the provisions as to appeals under that Part of this Act shall apply accordingly.

61. *Special provisions with respect to certain classes of property.*—(1) Notwithstanding anything in the last preceding section, the proviso to sub-section (5) of section seven of the principal Act shall continue to apply to the valuation of property consisting of a tenancy from year to year, includ-

ing any tenancy which is, or is deemed to be, subject to statutory conditions under the Land Law (Ireland) Acts, and for determining the gross value or the net value of property for the purpose of section sixteen of the principal Act.

(2) Where [it is claimed for the purposes of sub-section (1) of section sixteen of the principal Act that the gross value of any property does not exceed five hundred pounds] and such property includes property which is proved to the satisfaction of the Commissioners to be subject to a charge created for the purpose of securing unpaid purchase money, or money borrowed for the purpose of paying purchase money, or to be subject to or liable to be made subject to a charge for securing an advance made or to be made for the purpose of the purchase thereof, the value thereof for the purpose of determining the gross value of the property under the said section shall be taken to be its value subject to such charge or liability as aforesaid.

(3) Land subject to an annuity under the Land Purchase (Ireland) Acts shall be treated as real property for the purposes of sub-section (8) of section six of the principal Act (relating to the payment of estate duty by instalments).

(4) Where the property passing on the death of a person dying after the passing of this Act comprises the purchase money of land agreed to be sold under the Land Purchase (Ireland) Acts, but the purchase money has not been paid, the estate duty payable in respect of that purchase money may, at the option of the person liable to pay the same, be postponed until the purchase money is actually paid, and shall then become payable, but the person liable to pay the duty shall in the meantime pay annually interest on the amount of the duty payable at the rate of three per cent. per annum.

(5) [Where an estate, in respect of which estate duty is payable on the death of a person dying on or after the thirtieth day of April, nineteen hundred and nine, comprises land on which timber, trees, wood, or underwood are growing, the value of such timber, trees, wood, or underwood shall not be taken into account in estimating the principal value of the estate or the rate of estate duty, and estate duty shall not be payable thereon, but shall, at the rate due to the principal value of the estate, be payable on the net moneys (if any) after deducting all necessary outgoings since the death of the deceased, which may from time to time be received from the sale of timber, trees, or wood when felled or cut during the period which may elapse until the land, on the death of some other person, again becomes liable or would, but for this sub-section, have become liable to estate duty, and the owners or trustees of such land shall account for and pay the same accordingly as and when such moneys are received, with interest at the rate of three per cent. per annum from the date when such moneys are received.]

Provided that if at any time the timber, trees, or wood are sold, either with or apart from the land on which they are growing, the amount of estate duty on the principal value thereof which, but for this sub-section, would have been payable on the death of the deceased, after deducting the amount (if any) of estate duty paid in respect of the timber, trees, or wood under this sub-section since that date, shall become payable.

[This sub-section shall apply to succession duty payable in respect of woodlands in like manner as it applies to estate duty, except that nothing in this sub-section shall affect the rate of succession duty.]

63. *Extension of exemptions of objects of national, scientific, or historic interest.*—In the case of any person dying on or after the thirtieth day of April, nineteen hundred and nine, section twenty of the Finance Act, 1896 (which gives an exemption for objects of national, scientific, or historic interest), shall be extended so as to give an exemption from legacy and

succession duty as well as from estate duty, and as so extended shall take effect whether the property in respect of which the exemption is given is settled or not, and as if the reference therein to national, scientific, or historic interest included a reference to artistic interest, and duty shall only become chargeable when the property is sold, and then only in respect of the last death on which the property passed.

64. *Protection of purchasers and mortgagees of interests in expectancy.*—Where an interest in expectancy within the meaning of Part I of the principal Act in any property has, before the thirtieth day of April, nineteen hundred and nine, been bona fide sold or mortgaged for full consideration in money or money's worth, then no other duty on that property shall be payable by the purchaser or mortgagee when the interest falls into possession than would have been payable if this part of this Act had not passed, and in the case of a mortgage any higher duty payable by the mortgagor shall rank as a charge subsequent to that of the mortgagee.

PART VIII

GENERAL

94. *Penalty for making false statement or representation.*—If any person for the purpose of obtaining any allowance, reduction, rebate, or repayment in respect of any duty under this Act, either for himself or for any other person, or in any return made with reference to any duty under this Act, knowingly makes any false statement or false representation, he shall be liable on summary conviction to imprisonment for a term not exceeding six months with hard labour.

96. *Repeal, construction, and short title.*—(1) . . .

(2) Any reference to "the Commissioners" in Part II, Part VI, or Part VII of this Act shall be construed as a reference to the Commissioners of Customs and Excise, and any reference to "the Commissioners" in any other Part of this Act shall be construed as a reference to the Commissioners of Inland Revenue.

(3) Part III of this Act shall be construed together with the Finance Act, 1894.

* * * * * *

(7) This Act may be cited as the Finance (1909-10) Act, 1910.

SECOND SCHEDULE

Section 54.

SCALE OF RATES OF ESTATE DUTY

Where the Principal Value of the Estate					Estate Duty shall be payable at the Rate per cent. of
	£			£	
Exceeds	100	and does not exceed		500	1
"	500	"	"	1,000	2
"	1,000	"	"	5,000	3
"	5,000	"	"	10,000	4
"	10,000	"	"	20,000	5
"	20,000	"	"	40,000	6
"	40,000	"	"	70,000	7
"	70,000	"	"	100,000	8
"	100,000	"	"	150,000	9
"	150,000	"	"	200,000	10
"	200,000	"	"	400,000	11
"	400,000	"	"	600,000	12
"	600,000	"	"	800,000	13
"	800,000	"	"	1,000,000	14
"	1,000,000	..	.. ..		15

THE FINANCE ACT, 1911

(1 & 2 GEO. 5, c. 48.)

[16th December 1911.]

PART V

DEATH DUTIES

18. *Valuation of cottages for purposes of estate duty.*—It is hereby declared that, in estimating for the purposes of sub-section (5) of section seven of the Finance Act, 1894, the principal value of any agricultural property which comprises cottages occupied by persons employed solely for agricultural purposes in connexion with the property, no account shall be taken of any value attributable to the fact that the cottage is suitable for the residential purposes of any persons other than agricultural labourers or workmen on the estate.

19. . . .

PART VI

GENERAL

22. *Short title.* . . .

(3) This Act may be cited as the Finance Act, 1911.

THE FINANCE ACT, 1912

(2 & 3 GEO. 5, c. 8.)

[7th August 1912.]

PART III

INLAND REVENUE (MISCELLANEOUS)

9. *Estate duty on timber.*—Where an estate, in respect of which estate duty is payable on the death of a person dying on or after the thirtieth day of April, nineteen hundred and nine, comprises land on which timber, trees, wood, or underwood are growing, the value of such timber, trees, wood, or underwood shall not be taken into account in estimating the principal value of the estate or the rate of estate duty, and estate duty shall not be payable thereon, but shall, at the rate due to the principal value of the estate, be payable on the net moneys (if any), after deducting all necessary outgoings since the death of the deceased, which may from time to time be received from the sale of timber, trees, or wood when felled or cut during the period which may elapse until the land, on the death of some other person, again becomes liable or would, but for this sub-section, have become liable to estate duty, and the owners or trustees of such land shall account for and pay the same accordingly, as and when such moneys are received, with interest at the rate of three per cent. per annum from the date when such moneys are received.

This section shall take effect in substitution for the first paragraph of sub-section five of section sixty-one of the Finance (1909-10) Act, 1910.

PART V
GENERAL

13. *Short title.* . . .

(2) This Act may be cited as the Finance Act, 1912.

THE FINANCE ACT, 1914.
(4 & 5 GEO. 5, c. 10.)

[31st July 1914.]

PART III
DEATH DUTIES

12. *Amended rates of estate duty.*—The scale set out in the First Schedule to this Act shall, in the case of persons dying after the fifteenth day of August, nineteen hundred and fourteen, be substituted for the scale of rates of estate duty set out in the Second Schedule to the Finance (1909-10) Act, 1910, as the scale of rates of estate duty.

13. *Reducion of full amount of duty where the margin above the limit of value is small.*—(1) The amount of estate duty payable on an estate at the rate applicable thereto under the scale of rates of duty shall, where necessary, be reduced so as not to exceed the highest amount of duty which would be payable at the next lower rate, with the addition of the amount by which the value of the estate exceeds the value on which the highest amount of duty would be so payable at the lower rate.

(2) . . .

14. *Abolition of settlement estate duty and of relief in respect of settled property.*—Any relief from the payment of estate duty given by sub-section (2) of section five, or by sub-section (1) of section twenty-one of the Finance Act, 1894 (which relate to settled property), or by sub-section (16) of section twenty-three of that Act (which relates to entailed estates in Scotland) shall cease in the case of any person dying after the fifteenth day of August, nineteen hundred and fourteen, and settlement estate duty shall not be levied in the case of persons dying after the eleventh day of May, nineteen hundred and fourteen:

Provided that—

(*a*) nothing in this section shall affect the relief given by the above-mentioned provisions of the Finance Act, 1894, in cases where, before or after the passing of this Act, estate duty has been paid or any of the duties specified in sub-section (1) of section twenty-one of that Act have, either before or after the passing of this Act, been paid or are payable upon the death of one of the parties to a marriage, so far as respects the payment of estate duty on the death of the other party to the marriage; and

(*b*) on the first occasion on which estate duty becomes payable in respect of any property which would not have been payable but for this section, the amount of settlement estate duty, if any, which has been paid in respect of that property, shall be allowed against the amount of estate duty payable on that occasion, and if it exceeds that amount, the excess shall be repaid to the estate, and in addition, a sum equal to simple interest on the said amount of settlement estate duty calculated at the rate of three per cent. per annum from the fifteenth day of August, nineteen hundred and fourteen, up to the date of the occasion shall be paid to the several persons or their representatives who would have been entitled to the income arising from that amount, if that amount had on the fifteenth day of August, nineteen hundred and four-

teen, been added to the capital of the settled property and shall be divided amongst those persons or their representatives according to the several interests they would have had in that income ; and

(*c*) Section eleven of the Finance Act, 1900, as amended by section fifty-nine of the Finance (1909-10) Act, 1910, shall not operate on any such surrender, assurance, divesting, or disposition as is mentioned in the said section eleven made by any person between the fifteenth day of August, nineteen hundred and fourteen, and the first day of April, nineteen hundred and fifteen, so as to make any estate duty payable on the death of that person which would not have been payable but for this section.

15. *Relief in respect of quick succession where property consists of land or a business.*—Where the Commissioners of Inland Revenue are satisfied that estate duty has become payable on any property consisting of land or a business (not being a business carried on by a company), or any interest in land or such a business, passing upon the death of any person, and that subsequently within five years estate duty has again become payable on the same property or any part thereof passing on the death of the person to whom the property passed on the first death, the amount of estate duty payable on the second death (if that death occurs after the passing of this Act) in respect of the property so passing shall be reduced as follows :—

Where the second death occurs within one year of the first death, by fifty per cent. ;

Where the second death occurs within two years of the first death, by forty per cent. ;

Where the second death occurs within three years of the first death, by thirty per cent. ;

Where the second death occurs within four years of the first death, by twenty per cent. ;

Where the second death occurs within five years of the first death, by ten per cent. ;

Provided that where the value, on which the duty is payable, of the property on the second death exceeds the value, on which the duty was payable, of the property on the first death, the latter value shall be substituted for the former for the purpose of calculating the amount of duty on which the reduction under this section is to be calculated.

16. *Protection of purchasers and mortgagees of interests in expectancy.*—Where an interest in expectancy within the meaning of Part I of the Finance Act, 1894, in any property has, before the eleventh day of May, nineteen hundred and fourteen, been bona fide sold or mortgaged for full consideration in money or money's worth, then no other duty on that property shall be payable by the purchaser or mortgagee when the interest falls into possession than would have been payable if this Part of this Act had not passed, and in the case of a mortgage any higher duty payable by the mortgagor shall rank as a charge subsequent to that of the mortgagee.

PART V

MISCELLANEOUS

18. *Construction and short title.*—(1) . . .

(2) . . .

Part III of this Act shall be construed together with the Finance Act, 1894.

(3) This Act may be cited as the Finance Act, 1914.

FIRST SCHEDULE

Section 12.

SCALE OF RATES OF ESTATE DUTY

Where the Principal Value of the Estate							Estate Duty shall be payable at the Rate per cent. of	Values below which the duty is reduced under s. 13 (1) of this Act.
	£				£			£ s. d.
Exceeds	100	and	does	not	exceed	500	1	101 0 3
"	500	"	"			1,000	2	505 2 1
"	1,000	"	"			5,000	3	1,010 6 3
"	5,000	"	"			10,000	4	5,052 1 8
"	10,000	"	"			20,000	5	10,105 5 4
"	20,000	"	"			40,000	6	20,212 15 4
"	40,000	"	"			60,000	7	40,430 2 2
"	60,000	"	"			80,000	8	60,652 3 6
"	80,000	"	"			100,000	9	80,879 2 6
"	100,000	"	"			150,000	10	101,111 2 3
"	150,000	"	"			200,000	11	151,685 7 11
"	200,000	"	"			250,000	12	202,272 14 7
"	250,000	"	"			300,000	13	252,873 11 4
"	300,000	"	"			350,000	14	303,488 7 6
"	350,000	"	"			400,000	15	354,117 13 0
"	400,000	"	"			500,000	16	404,761 18 2
"	500,000	"	"			600,000	17	506,024 2 0
"	600,000	"	"			800,000	18	607,317 1 6
"	800,000	"	"			1,000,000	19	809,876 10 11
"	1,000,000	..	..	..	..	..	20	1,012,500 0 0

THE FINANCE (No. 2) ACT, 1915
(5 & 6 GEO. 5, c. 89.)

[23rd December 1915.]

PART IV
GENERAL

46. . . .

47. *Power of Treasury to issue securities free of taxation.*—The Treasury may, if they think fit, during the continuance of the present war and a period of twelve months thereafter, issue any securities which they have power to issue for the purpose of raising any money or any loan with a condition that neither the capital nor the interest thereof shall be liable to any taxation, present or future, so long as it is shown in manner directed by the Treasury that the securities are in the beneficial ownership of persons who are neither domiciled nor ordinarily resident in the United Kingdom, and securities issued with such a condition shall be exempt accordingly.

51. *Short title.*— . . .

(3) This Act may be cited as the Finance (No. 2) Act, 1915.

THE FINANCE ACT, 1917
(7 & 8 GEO. 5, c. 31.)

[2nd August 1917.]

PART IV
DEATH DUTIES

29. *Remission of death duties in cases of members of the crews of vessels killed in war.*—Section fourteen of the Finance Act, 1900, as extended by the Death Duties (Killed in War) Act, 1914 [and section forty-six of the Finance (No. 2) Act, 1915] shall apply in the case of a master or a member of the crew of a ship or a fishing boat dying, whether before or after the passing of

this Act, from causes arising out of the operations of the present war and within twelve months from the occurrence to which death is due, in like manner as it applies in the case of a person dying from such wounds, accident, or disease as are mentioned in the said section fourteen, with this qualification, that the Treasury shall act on the recommendation of the Board of Trade instead of on that of the Secretary of State or the Admiralty.

PART VII

GENERAL

38. *Construction and short title.*—(1) . . .

Part IV of this Act shall be construed together with the Finance Act, 1894.

(2) This Act may be cited as the Finance Act, 1917.

THE FINANCE ACT, 1918

(8 & 9 GEO. 5, c. 15.)

[30th July 1918.]

44. *Extension of 4 & 5 Geo. 5, c. 76, to property passing to certain collaterals.*—The Death Duties (Killed in War) Act, 1914 (which extends as respects the present war the relief from death duties given by section fourteen of the Finance Act, 1900), shall have effect, and shall be deemed always to have had effect, as though the references therein to lineal ancestors included references to brothers and sisters and the descendants of brothers and sisters of the deceased.

45. *Short title.*— . . .

(3) This Act may be cited as the Finance Act, 1918.

THE FINANCE ACT, 1919

(9 & 10 GEO. 5, c. 32.)

[31st July 1919.]

PART III

DEATH DUTIES

29. *Amended rates of estate duty.*—The scale set out in the Third Schedule to this Act shall, in the case of persons dying after the commencement of this Act, be substituted for the scale set out in the First Schedule to the Finance Act, 1914, as the scale of rates of estate duty:

[Provided that, where an interest in expectancy within the meaning of Part I of the Finance Act, 1894, in any property has, before the thirtieth day of April, nineteen hundred and nineteen, been bona fide sold or mortgaged for full consideration in money or money's worth, then no other duty on that property shall be payable by the purchaser or mortgagee when the interest falls into possession than would have been payable if this Part of this Act had not passed, and in the case of a mortgage any higher duty payable by the mortgagor shall rank as a charge subsequent to that of the mortgagee.]

30. *Interest on death duties.*—Section eighteen of the Finance Act, 1896 (which determines the rate of interest on death duties), shall, in its application to interest accruing due after the commencement of this Act, have effect as though four per cent. were substituted for three per cent. as the rate of interest per annum.

31. *Extension of relief from death duties in case of persons killed in the war.*—Section fourteen of the Finance Act, 1900 (which relates to the remission of death duties in case of persons killed in war), and any enactment

amending or extending that section, shall, in their application to the present war, have effect and be deemed always to have had effect as though—

(*a*) three years were substituted for twelve months wherever that expression occurs; and

(*b*) in the said section fourteen the expression "wounds inflicted, accident occurring or disease contracted while on active service against an enemy" included wounds inflicted, accident occurring or disease contracted in the course of operations arising directly out of the present war, but after its termination.

PART V

GENERAL

38. *Construction and short title.*—(1) . . .

Part III of this Act shall be construed together with the Finance Act, 1894.

* * * * * *

(2) This Act may be cited as the Finance Act, 1919.

* * * * * *

SCHEDULE.

THIRD SCHEDULE

Section 29.

SCALE OF RATES OF ESTATE DUTY

Where the Principal Value of the Estate.					Estate Duty shall be payable at the Rate per cent. of	Values below which the duty is reduced under s. 13 (1) of the Finance Act, 1914.
	£			£		£ s. d.
Exceeds	100	and does not	exceed	500	1	101 0 3
"	500	"	"	1,000	2	505 2 1
"	1,000	"	"	5,000	3	1,010 6 3
"	5,000	"	"	10,000	4	5,052 1 8
"	10,000	"	"	15,000	5	10,105 5 4
"	15,000	"	"	20,000	6	15,159 11 6
"	20,000	"	"	25,000	7	20,215 1 1
"	25,000	"	"	30,000	8	25,271 14 9
"	30,000	"	"	40,000	9	30,329 13 2
"	40,000	"	"	50,000	10	40,444 8 11
"	50,000	"	"	60,000	11	50,561 16 0
"	60,000	"	"	70,000	12	60,681 16 5
"	70,000	"	"	90,000	13	70,804 12 0
"	90,000	"	"	110,000	14	91,046 10 3
"	110,000	"	"	130,000	15	111,294 2 5
"	130,000	"	"	150,000	16	131,547 12 5
"	150,000	"	"	175,000	17	151,807 4 7
"	175,000	"	"	200,000	18	177,134 3 0
"	200,000	"	"	225,000	19	202,469 2 9
"	225,000	"	"	250,000	20	227,812 10 0
"	250,000	"	"	300,000	21	253,164 11 2
"	300,000	"	"	350,000	22	303,846 3 1
"	350,000	"	"	400,000	23	354,545 9 2
"	400,000	"	"	450,000	24	405,263 3 2
"	450,000	"	"	500,000	25	456,000 0 0
"	500,000	"	"	600,000	26	506,756 15 2
"	600,000	"	"	800,000	27	608,219 3 7
"	800,000	"	"	1,000,000	28	811,111 2 3
"	1,000,000	"	"	1,250,000	30	1,028,571 8 7
"	1,250,000	"	"	1,500,000	32	1,286,764 14 2
"	1,500,000	"	"	2,000,000	35	1,569,230 15 5
"	2,000,000	..	..	.. ..	40	2,166,666 13 4

THE FINANCE ACT, 1921

(11 & 12 GEO. 5, c. 32.)

PART IV

DEATH DUTIES

44. *Objects of national, scientific, historic, and artistic interest to be exempt from death duties if sold to national or public institutions.*—Notwithstanding anything in section twenty of the Finance Act, 1896 (which, as amended by section sixty-three of the Finance (1909-10) Act, 1910, gives exemption from estate duty, legacy duty, and succession duty to objects of national, scientific, historic, and artistic interest so long as they remain unsold), or in the said section sixty-three, duty shall not become chargeable on the sale, after the passing of this Act, of any property in respect of which exemption has been allowed under those sections, if the sale is to the National Gallery, British Museum, or other similar national institution, any university, any county council, any municipal corporation, in the United Kingdom, or the National Art Collections Fund.

PART VI

GENERAL

63. *Provision for cases where documents relating to death duties have been lost, destroyed or damaged.*—(1) Where any document in the custody of the Commissioners relating to duty charged or chargeable in respect of any property has been lost or destroyed, or has been so defaced or damaged as to be illegible or otherwise useless, the Commissioners may require any person appearing to them to be accountable or to have accounted for that duty, to furnish to them to the best of his ability such information, particulars and evidence, including evidence by affidavit, as they may require for replacing that document, and any person so appearing to be accountable shall be liable to discharge all claims in respect of that duty, unless he proves to the satisfaction of the Commissioners that those claims have already been discharged or that he is not accountable for the duty.

(2) The Commissioners shall have all such powers for the purpose of enforcing any requirement made by them under this section as they had for the purpose of enforcing the delivery of the document which is to be replaced, and all statutory provisions in that behalf, including provisions as to penalties, shall apply accordingly with the necessary modifications.

(3) The Commissioners shall pay to any person complying with any requirement under this section his reasonable cost of so doing, and, if any question arises as to the amount so to be paid as costs, the question shall be referred to and determined by a taxing master of the High Court, or in Scotland by the auditor of the Court of Session.

(4) Where the Commissioners are required by any person to issue any document certifying that any duty has been paid or is not payable, or to make any allowance in respect of any duty paid, or to do any act or thing consequent on the payment of duty, they may, where the evidence of the payment of or of non-liability to duty has been destroyed, refuse, notwithstanding any enactment to the contrary, to comply with the requirement except on proof to their satisfaction that the duty has been paid or is not payable, or that the act or thing required to be done is in the circumstances reasonably necessary, as the case may be.

(5) Where the Commissioners declare that by reason of the loss, destruction, defacement, or damage of any document they are unable to certify that there is no claim for duty in respect of any property, a court may, in any

proceedings relating to that property, notwithstanding any enactment to the contrary, dispose of that property or the proceeds of sale thereof without making provision for the payment of any duty chargeable in respect thereof:

Provided that nothing in the foregoing provision shall affect any right of the Commissioners as against any person accountable for any duty so chargeable, not being a purchaser for value without notice that there is a claim for duty in respect thereof.

(6) In this section, unless the context otherwise requires—

The expression "document" includes affidavit, account, and record;

The expression "Commissioners" means the Commissioners of Inland Revenue;

The expression "duty" means any death duty.

65.—*Construction and short title.*—(1) Part IV of this Act shall be construed together with the Finance Act, 1894.

(2) This Act may be cited as the Finance Act, 1921.

* * * * * *

THE LAW OF PROPERTY ACT, 1925
(15 & 16 GEO. 5, c. 20.)

[9th April 1925.]

PART I
GENERAL PRINCIPLES AS TO LEGAL ESTATES, EQUITABLE INTERESTS AND POWERS

Death Duties

16. *Liability for death duties.*—(1) A personal representative shall be accountable for all death duties which may become leviable or payable on the death of the deceased in respect of land (including settled land) which devolves upon him by virtue of any statute or otherwise.

(2) In every other case the estate owner (other than a purchaser who acquires a legal estate after the charge for death duties has attached and free from such charge), shall be accountable for all the duties aforesaid which become leviable or payable in respect of his estate in the land or any interest therein capable of being over-reached by his conveyance, being a conveyance to a purchaser made under the Settled Land Act, 1925, or pursuant to a trust for sale.

(3) For the purpose of raising the duty, and the costs of raising the same, the personal representative or other person accountable as aforesaid shall have all the powers which are by any statute conferred for raising the duty.

(4) Nothing in this Act shall alter any duty payable in respect of land, or impose any new duty thereon, or affect the remedies of the Commissioners of Inland Revenue against any person other than a purchaser or a person deriving title under him.

(5) Notwithstanding that any duties are by this section made payable by the personal representative or other person aforesaid, nothing in this Part of this Act shall affect the liability of the persons beneficially interested or their respective interests in respect of any duty, and they shall accordingly account for or repay the same and any interest and costs attributable thereto to the said Commissioners or to the personal representative or other person accountable as aforesaid, as the case may require.

(6) Nothing in this Part of this Act shall impose on a personal representative, tenant for life, statutory owner, trustee for sale, or other person in a fiduciary position, as such, any liability for payment of duty, in excess of the assets (including land) vested in him or in the trustees of the settlement which may for the time being be available in his hands or in the hands of such trustees for the payment of the duty or which would have been so avail-

able but for his or their own neglect or default, or impose a charge for duties on leasehold land, or render a mortgagee liable in respect of any charge for duties which is not paramount to his mortgage.

(7) The said Commissioners, on being satisfied that a personal representative or other person accountable has paid or commuted or will pay or commute all death duties for which he is accountable in respect of the land or any part thereof, shall, if required by him, give a certificate to that effect, which shall discharge from any further claim for such duty the land to which the certificate extends, and the production of such certificate to the land registrar or other proper officer shall be a sufficient authority to enable him to cancel any land charge registered in respect of the duty so far as it affects the land to which the certificate extends.

17. *Protection of purchasers from liability for death duties.*—(1) Where a charge in respect of death duties is not registered as a land charge, a purchaser of a legal estate shall take free therefrom, unless the charge for duties attached before the commencement of this Act and the purchaser had notice of the facts giving rise to the charge.

(2) Where a charge in respect of death duties is not registered as a land charge, the person who conveys a legal estate to a purchaser, and the proceeds of sale, funds, and other property (if any) derived from the conveyance and the income thereof shall (subject as in this Act provided) be or remain liable in respect of and stand charged with the payment of the death duties the charge for which is over-reached by the conveyance, together with any interest payable in respect of the same.

(3) Notwithstanding that any death duties may be payable by instalments, on a conveyance of a legal estate by way of sale exchange or legal mortgage all death duties payable in respect of the land dealt with and remaining unpaid shall, if the charge for the duties is over-reached by such conveyance, immediately become payable and carry interest at the rate of four pounds per centum per annum from the date of the conveyance :

Provided that, where by reason of this subsection an amount is paid or becomes payable for duties and interest in excess of the amount which would have been payable if the duties had continued to be paid by instalments, such excess shall be repaid or allowed as a deduction by the Commissioners of Inland Revenue.

(4) Except in the case of a conveyance to a purchaser, a conveyance shall take effect subject to any subsisting charge or liability for payment of the duties and interest, if any, notwithstanding that the charge for duties may not have been registered.

(5) This section does not apply to registered land.

18. *Application of capital money in discharge of death duties.*—(1) Capital money liable to be laid out in the purchase of land to be settled in the same manner as the land in respect of which any death duties may have become payable, and personal estate held on the same trusts as the proceeds of sale of land, being land held on trust for sale in respect of which any such duties may have become payable, may, by the direction of the tenant for life, statutory owner, or trustee for sale who is accountable, and although the duty is only payable in respect of an interest which is or is capable of being over-reached by a conveyance to a purchaser, be applied in discharging all or any of the duties aforesaid and the costs of discharging the same.

(2) Where the duties would not, except by virtue of the last sub-section, be payable out of the capital money or personal estate aforesaid—

(*a*) the amount so paid shall be repaid by the person liable for the duty to the trustees of the settlement or the trustees for sale

by the like instalments and at the like rate of interest by and at which the unpaid duty and the interest thereon might have been paid, or, where the land has been conveyed to a purchaser, would have been paid if the land had not been so conveyed ;

(*b*) the interest of the person so liable, remaining subject to the settlement of the land or of the proceeds of sale, shall stand charged with the repayment of the instalments and the interest aforesaid ;

(*c*) the trustees of the settlement or the trustees for sale shall be entitled to recover and receive any excess of duty which may become repayable by the said Commissioners.

PART XII

CONSTRUCTION, JURISDICTION, AND GENERAL PROVISIONS

205. *General definitions.*—(1) In this Act unless the context otherwise requires, the following expressions have the meanings hereby assigned to them respectively, that is to say :—

* * * * * *

(ii) "Conveyance" includes a mortgage, charge, lease, assent, vesting declaration, vesting instrument, disclaimer, release and every other assurance of property or of an interest therein by any instrument, except a will ; "convey" has a corresponding meaning ; and "disposition" includes a conveyance and also a devise, bequest, or an appointment of property contained in a will ; and "dispose of" has a corresponding meaning ;

* * * * * *

(iv) "Death duty" means estate duty, [succession duty, legacy duty], and every other duty leviable or payable on a death ;

(v) "Estate owner" means the owner of a legal estate, but an infant is not capable of being an estate owner ;

* * * * * *

(ix) "Land" includes land of any tenure, and mines and minerals, whether or not held apart from the surface, buildings or parts of buildings (whether the division is horizontal, vertical or made in any other way) and other corporeal hereditaments ; also a manor, an advowson, and a rent and other incorporeal hereditaments and an easement, right, privilege, or benefit in, over, or derived from land; but not an undivided share in land; and "mines and minerals" include any strata or seam of minerals or substances in or under any land, and powers of working and getting the same but not an undivided share thereof ; and "manor" includes a lordship, and reputed manor or lordship ; and "hereditament" means any real property which on an intestacy occurring before the commencement of this Act might have devolved upon an heir ;

(x) "Legal estates" mean the estates, interests and charges, in or over land (subsisting or created at law) which are by this Act authorised to subsist or to be created as legal estates ; "equitable interests" mean all the other interests and charges in or over land or in the proceeds of sale thereof ; an equitable interest "capable of subsisting as a legal estate" means such as could validly subsist or be created as a legal estate under this Act ;

* * * * * *

(xvi) "Mortgage" includes any charge or lien on any property for securing money or money's worth ; "legal mortgage" means a

mortgage by demise or subdemise or a charge by way of legal mortgage and "legal mortgagee" has a corresponding meaning; "mortgage money" means money or money's worth secured by a mortgage; "mortgagor" includes any person from time to time deriving title under the original mortgagor or entitled to redeem a mortgage according to his estate interest or right in the mortgaged property; "mortgagee" includes a chargee by way of legal mortgage and any person from time to time deriving title under the original mortgagee; and "mortgagee in possession" is, for the purposes of this Act, a mortgagee who, in right of the mortgage, has entered into and is in possession of the mortgaged property; and "right of redemption" includes an option to repurchase only if the option in effect creates a right of redemption;

(xvii) "Notice" includes constructive notice;

(xviii) "Personal representative" means the executor, original or by representation, or administrator for the time being of a deceased person, and as regards any liability for the payment of death duties includes any person who takes possession of or intermeddles with the property of a deceased person without the authority of the personal representatives or the court;

* * * * * *

(xxi) "Purchaser" means a purchaser in good faith for valuable consideration and includes a lessee, mortgagee or other person who for valuable consideration acquires an interest in property except that in Part I of this Act and elsewhere where so expressly provided "purchaser" only means a person who acquires an interest in or charge on property for money or money's worth; and in reference to a legal estate includes a charge by way of legal mortgage; and where the context so requires "purchaser" includes an intending purchaser; "purchase" has a meaning corresponding with that of "purchaser"; and "valuable consideration" includes marriage but does not include a nominal consideration in money;

(xxii) "Registered land" has the same meaning as in the Land Registration Act, 1925, and "Land Registrar" means the Chief Land Registrar under that Act;

* * * * * *

(xxiv) "Sale" includes an extinguishment of manorial incidents, but in other respects means a sale properly so called;

* * * * * *

(xxvi) "Tenant for life," "statutory owner," "settled land," "settlement," "vesting deed," "subsidiary vesting deed," "vesting order," "vesting instrument," "trust instrument," "capital money," and "trustees of the settlement" have the same meanings as in the Settled Land Act, 1925;

* * * * * *

(xxix) "Trust for sale," in relation to land, means an immediate binding trust for sale, whether or not exercisable at the request or with the consent of any person, and with or without a power at discretion to postpone the sale; "trustees for sale" mean the persons (including a personal representative) holding land on

trust for sale ; and "power to postpone a sale" means power to postpone in the exercise of a discretion ;

* * * * * *

209. *Short title, commencement, extent.*—(1) This Act may be cited as the Law of Property Act, 1925.

(2) . . .

(3) This Act extends to England and Wales only.

THE LAND REGISTRATION ACT, 1925

(15 & 16 GEO. 5, c. 21.)

[9th April 1925.]

PART I

PRELIMINARY

3. *Interpretation.*—In this Act unless the context otherwise requires, the following expressions have the meanings hereby assigned to them respectively, that is to say :—

(iii) "Death duty" means estate duty, [succession duty, legacy duty] and every other duty leviable or payable on any death ;

(iv) "Estate owner" means the owner of a legal estate, but an infant is not capable of being an estate owner ;

* * * * * *

(viii) "Land" includes land of any tenure (including land, subject or not to manorial incidents, enfranchised under Part V of the Law of Property Act, 1922), and mines and minerals, whether or not held with the surface, buildings or parts of buildings (whether the division is horizontal, vertical or made in any other way) and other corporeal hereditaments ; also a manor, an advowson, and a rent and other incorporeal hereditaments, and an easement, right, privilege, or benefit in, over, or derived from land ; but not an undivided share in land ; and "hereditaments" mean real property which on an intestacy might, before the commencement of this Act, have devolved on an heir ;

* * * * * *

(xv) "Minor interests" mean the interests not capable of being disposed of or created by registered dispositions and capable of being overridden (whether or not a purchaser has notice thereof) by the proprietors unless protected as provided by this Act, and all rights and interests which are not registered or protected on the register and are not overriding interests, and include—

(*a*) in the case of land held on trust for sale, all interests and powers which are under the Law of Property Act, 1925, capable of being overridden by the trustees for sale, whether or not such interests and powers are so protected ; and

(*b*) in the case of settled land, all interests and powers which are under the Settled Land Act, 1925, and the Law of Property Act, 1925, or either of them, capable of being overridden by the tenant for life or statutory owner, whether or not such interests and powers are so protected as aforesaid ;

* * * * * *

(xvii) "Personal representative" means the executor, original or by representation, or administrator for the time being of a deceased person, and as regards any liability for the payment of death

duties includes any person who takes possession of or intermeddles with the property of a deceased person without the authority of the personal representatives or the court; and where there are special personal representatives for the purposes of any settled land, it means, in relation to that land, those representatives;

* * * * * *

(xx) "Proprietor" means the registered proprietor for the time being of an estate in land or of a charge;

(xxi) "Purchaser" means a purchaser in good faith for valuable consideration and includes a lessee, mortgagee, or other person who for valuable consideration acquires any interest in land or in any charge on land;

(xxii) "Registered dispositions" mean dispositions which take effect under the powers conferred on the proprietor by way of transfer, charge, lease or otherwise and to which (when required to be registered) special effect or priority is given by this Act on registration;

(xxiii) "Registered estate," in reference to land, means the legal estate, or other registered interest, if any, as respects which a person is for the time being registered as proprietor, but does not include a registered charge and a "registered charge" includes a mortgage or incumbrance registered as a charge under this Act;

(xxiv) "Registered land" means land or any estate or interest in land the title to which is registered under this Act or any enactment replaced by this Act, and includes any easement, right, privilege, or benefit which is appurtenant or appendant thereto, and any mines and minerals within or under the same and held therewith;

* * * * * *

(xxvi) "Settled land" "settlement" "tenant for life" "statutory owner" "trustees of the settlement" "capital money" "committee" "lunatic" "defective" "trust corporation" "trust instrument" "vesting deed" "vesting order" "vesting assent" and "vesting instrument" have the same meanings as in the Settled Land Act, 1925;

* * * * * *

(xxviii) "trust for sale," in relation to land, means an immediate binding trust for sale, whether or not exercisable at the request or with the consent of any person, and with or without a power at discretion to postpone the sale;

(xxix) "Trustees for sale" mean the persons (including a personal representative) holding land on trust for sale;

* * * * * *

PART VI

GENERAL PROVISIONS AS TO REGISTRATION AND THE EFFECT THEREOF

73. *Provisions as to death duties.*—(1) A registered disposition in favour of a purchaser shall operate to vest in him the estate or interest transferred or created by the disposition free from all claims of His Majesty for death duties, notwithstanding that notice of a claim for duties may be noted on the register under this section.

(2) A disposition to any person, other than a purchaser, shall take effect subject to any charge for payment of death duties and the interest thereon whether notice of a claim for the duties is entered on the register or not.

(3) A personal representative, in whom the registered estate vests on a death, shall be accountable for all death duties which may become leviable or payable on the death of the deceased in respect of the registered land or any interest therein.

(4) In every other case the proprietor of a registered estate (other than a purchaser who acquires a registered estate free from the charge for duties) shall be accountable for all the death duties which become leviable or payable in respect of that estate or of any minor interest capable of being overridden by a registered disposition made by him.

(5) A personal representative or other proprietor who disposes of any interest in registered land to a purchaser by a disposition which is registered or protected on the register, and the proceeds of sale, funds and other property, if any, derived from the disposition and the income thereof, shall (subject as hereinafter provided) be and remain liable in respect of and stand charged with the payment of the duties the charge for which is overridden by the disposition, together with any interest payable in respect of the same.

(6) Notwithstanding that any duties may be payable by instalments, on a disposition of a registered estate by way of sale, exchange, or charge, all death duties payable in respect of the estate dealt with remaining unpaid, the charge for which is overridden by such disposition, shall immediately become payable and carry interest at the rate of four pounds per centum per annum from the date of the disposition ;

Provided that, where by reason of this sub-section an amount is paid or becomes payable for duties in excess of the amount which would have been payable if the duties had continued to be paid by instalments, such excess shall be repaid or allowed as a deduction by the Commissioners of Inland Revenue.

(7) Where on the death of a proprietor it appears to the registrar that a charge for death duties has arisen, the registrar shall enter notice of the charge on the register in the prescribed manner.

(8) When any such notice is entered, the registrar shall, before registering or entering notice of any disposition which would operate to override the charge for duties, give notice of the intended registration or entry to the said Commissioners, and cancel the notice of the claim for duties so far as it relates to the land or interest therein comprised in the disposition.

(9) When all claims for duties have been satisfied, or no such claims arise, or the said Commissioners are satisfied that the duties will be paid or commuted, they shall notify the fact to the registrar, who shall thereupon cancel the notice, if any, of the claim.

(10) For the purpose of raising the duty and the costs of raising the same, the personal representative or other proprietor accountable as aforesaid shall have all the powers which are by any statute conferred on any person for raising the duty.

(11) Notwithstanding that any duties are by this section made payable by the personal representative or proprietor of the land, nothing herein contained shall affect the liability of the persons beneficially interested or of their minor interests in respect of any duty, and such person shall accordingly account for or repay the same, and any interest and cost attributable thereto, to the said Commissioners or to the personal representative or other proprietor made accountable, and nothing in this section shall affect the remedies of the said Commissioners against any person other than a purchaser.

(12) Capital money liable to be laid out in the purchase of land to be settled in the same manner as the land in respect of which the duty became payable, and personal estate held on the same trusts as the proceeds of sale

of land (in respect of which the duty became payable) held on trust for sale, may, by the direction of the person accountable, and although the duty is only payable in respect of a minor interest which is or is capable of being overridden by a disposition to a purchaser, be applied in discharging all or any of the duties and costs aforesaid.

(13) Where the duties would not, except by virtue of the last sub-section, be payable out of capital money, the amount so paid shall be repaid by the person liable for the duty to the trustees of the settlement or trustees for sale, by the like instalments and at the like rate of interest by and at which the unpaid duty and the interest thereon might have been paid if the land had not been disposed of, and the minor or other interests of the persons liable and remaining subject to the settlement of the land or of the proceeds of the sale, shall stand charged with the repayment of the instalments and interest aforesaid ; and the trustees of the settlement or the trustees for sale shall be entitled to recover and receive any excess of duty which may become repayable by the said Commissioners.

(14) Nothing in this section shall impose on a personal representative, trustee, or other person in a fiduciary position, as such, any liability for payment of duty in excess of the assets (including real estate) vested in him or in the trustees of the settlement which may for the time being be available in his or their hands for the payment of the duty, or which would have been so available but for his or their own neglect or default, or impose on the proprietor of a registered charge any liability to discharge death duties unless the claim was paramount to his charge.

(15) In this section "purchaser" includes only a purchaser for money or money's worth.

(16) This section only applies to death duties which become payable or leviable after the commencement of this Act.

With respect to death duties which become payable or leviable before that date section thirteen of the Land Transfer Act, 1897, and all the other provisions of the Land Transfer Acts, 1875 and 1897, relating to death duties shall, notwithstanding any repeal, continue to apply.

PART VIII

APPLICATION TO PARTICULAR CLASSES OF LAND

87. *Changes of ownership of settled land.*—(1) On the death of a proprietor, or of the survivor of two or more joint proprietors of settled land (whether the land is settled by his will or by an instrument taking effect on or previously to his death), his personal representative shall hold the settled land subject to payment or to making provision for payment of all death duties and other liabilities affecting the land, and having priority to the settlement, upon trust to transfer the same by an assent in the prescribed manner to the tenant for life or statutory owner, and in the meantime upon trust to give effect to the minor interest under the settlement ; but a transfer shall not be made to an infant.

* * * * * *

148. *Short title, commencement and extent.*—(1) This Act may be cited as the Land Registration Act, 1925.

(2) This Act shall come into operation on the first day of January, nineteen hundred and twenty-six, but shall be deemed to come into operation immediately after the Law of Property Act, 1925, the Settled Land Act, 1925, the Land Charges Act, 1925, the Trustee Act, 1925, and the Administration of Estates Act, 1925, come into operation.

(3) This Act extends to England and Wales only.

THE LAND CHARGES ACT, 1925
(15 & 16 GEO. 5, c. 22.)

[9th April 1925.]

PART V
LAND CHARGES

10. *Register of land charges.*—(1) The following classes of charges on, or obligations affecting, land may be registered as land charges in the register of land charges, namely :—

* * * * *

Class C :—A mortgage charge or obligation affecting land of any of the following kinds, created either before or after the commencement of this Act, but if created before such commencement only if acquired under a conveyance made after such commencement, namely :—

* * * * * *

(ii) Any equitable charge acquired by a tenant for life or statutory owner under the Finance Act, 1894, or any other statute, by reason of the discharge by him of any death duties or other liabilities, and to which special priority is given by the statute (in this Act called "a limited owner's charge") ;

* * * * * *

Class D :—A charge or obligation affecting land of any of the following kinds, namely :—

(i) Any charge acquired by the Commissioners of Inland Revenue under any Statute passed or hereafter to be passed for death duties leviable or payable on any death which occurs after the commencement of this Act ; and

* * * * * *

(2) A land charge shall be registered in the name of the estate owner whose estate is intended to be affected except that, in the case of a land charge registered before the commencement of this Act, under any enactment replaced by this Act, in the name of a person not being the estate owner, it may remain so registered until it is registered in the name of the estate owner in the prescribed manner.

(3) Where a land charge is not created by an instrument, short particulars of the effect of the charge shall be furnished with the application to register the charge.

(4) Nothing in this section shall be deemed to authorise the Commissioners of Inland Revenue to register a land charge in respect of any claim for death duties unless the duty has become a charge on the land, and the application to register any such charge shall state the duties in respect of which the charge is claimed, and, so far as possible, shall define the land affected, and such particulars shall be entered or referred to in the register.

* * * * * *

(8) The registration of a land charge may be vacated pursuant to an order of the court or a judge thereof.

* * * * * *

13. *Protection of purchasers against land charges created after certain dates.*—(2) A land charge of Class B, Class C or Class D, created or arising after the commencement of this Act, shall (except as hereinafter provided) be void as against a purchaser of the land charged therewith, or of any interest in such land, unless the land charge is registered in the appropriate register before the completion of the purchase :

Provided that, as respects a land charge of Class D and an estate contract created or entered into after the commencement of this Act, this sub-section only applies in favour of a purchaser of a legal estate for money or money's worth.

PART VIII

GENERAL

20. *Definitions.*—In this Act, unless the context otherwise requires, the following expressions have the meanings hereby respectively assigned to them, that is to say :—

* * * * * *

(4) "Estate owner," "legal estate," "equitable interest," "trust for sale," "charge by way of legal mortgage," "will," and "death duty" have the same meanings as in the Law of Property Act, 1925 ;

* * * * * *

(6) "Land" includes land of any tenure, and mines and minerals, whether or not severed from the surface, buildings or parts of buildings (whether the division is horizontal, vertical or made in any other way) and other corporeal hereditaments, also a manor, an advowson and a rent and other incorporeal hereditaments, and an easement, right, privilege or benefit in, over or derived from land, but not an undivided share in land, and "hereditament" means real property which, on an intestacy occurring before the commencement of this Act, might have devolved on an heir ;

(7) "Land charge" means a land charge of every class and includes a local land charge ;

(8) "Purchaser" means any person (including a mortgagee or lessee) who, for valuable consideration, takes any interest in land or in a charge on land ; and "purchase" has a corresponding meaning ;

* * * * * *

(13) "Tenant for life," "statutory owner," "vesting instrument" and "settlement" have the same meanings as in the Settled Land Act, 1925.

23. *Application to registered land.*—(1) As respects pending actions, writs, orders, deeds of arrangement and land charges (not including local land charges) required to be registered or re-registered after the commencement of this Act, this Act shall not apply thereto if and so far as they affect registered land, and can be protected under the Land Registration Act, 1925, by lodging or registering a creditor's notice, restriction, caution, inhibition or other notice.

(2) Nothing in this Act imposes on the registrar any obligation to ascertain whether or not a pending action, writ, order, deed of arrangement or land charge affects registered land.

26. *Short title, commencement and extent.*—(1) This Act may be cited as the Land Charges Act, 1925.

(2) . . .

(3) This Act extends to England and Wales only.

THE ADMINISTRATION OF ESTATES ACT, 1925

(15 & 16 GEO. 5, c. 23.)

[9th April 1925.]

36. *Effect of assent or conveyance by personal representative.*—

* * * * * *

(8) A conveyance of a legal estate by a personal representative to a purchaser shall not be invalidated by reason only that the purchaser may have notice that all the debts, liabilities, funeral, and testamentary or administration expenses, duties, and legacies of the deceased have been discharged or provided for,

(9) An assent or conveyance given or made by a personal representative shall not, except in favour of a purchaser of a legal estate, prejudice the right of the personal representative or any other person to recover the estate or interest to which the assent or conveyance relates, or to be indemnified out of such estate or interest against any duties, debt, or liability to which such estate or interest would have been subject if there had not been any assent or conveyance.

(10) A personal representative may, as a condition of giving an assent or making a conveyance, require security for the discharge of any such duties, debt, or liability, but shall not be entitled to postpone the giving of an assent merely by reason of the subsistence of any such duties, debt or liability if reasonable arrangements have been made for discharging the same; and an assent may be given subject to any legal estate or charge by way of legal mortgage.

* * * * * *

PART V

SUPPLEMENTAL

53. *General Savings.*—

* * * * * *

(3) Nothing in this Act shall—

(*a*) alter any death duty payable in respect of real estate or impose any new duty thereon:

(*b*) render any real estate liable to legacy duty or exempt it from succession duty:

(*c*) alter the incidence of any death duties.

THE FINANCE ACT, 1925

(15 & 16 GEO. 5, c. 36.)

[30th June 1925.]

PART III

DEATH DUTIES

22. *Amended rates of estate duty.*—The scale set out in the Fourth Schedule to this Act shall in the case of persons dying after the commencement of this Act be substituted for the scale set out in the Third Schedule to the Finance Act, 1919, as the scale of rates of estate duty:

[Provided that, where an interest in expectancy within the meaning of Part I, of the Finance Act, 1894, in any property has, before the twenty-eighth day of April, nineteen hundred and twenty-five, been bona fide sold or mortgaged for full consideration in money or money's worth, then no other duty on that property shall be payable by the purchaser or mortgagee when the interest falls into possession than would have been payable if this Part of this Act had not passed, and in the case of a mortgage any higher duty payable by the mortgagor shall rank as a charge subsequent to that of the mortgagee.]

23. *Estate duty payable in respect of agricultural property to be charged in part on agricultural value at rate under Finance Act,* 1919.—(1) Where an estate in respect of which estate duty is payable on the death of a person dying after the commencement of this Act comprises or consists of agricultural property, the estate duty payable in respect of the agricultural property shall, instead of being charged on the principal value thereof at the appropriate rate payable under this Act, be charged as follows, that is to say, the duty shall be charged on the agricultural value of the property at the appropriate

rate payable under the scale of rates set out in the Third Schedule to the Finance Act, 1919, and shall be charged on the amount by which the principal value of the agricultural property exceeds the agricultural value thereof (in this Act referred to as "the excess principal value") at the appropriate rate payable under the scale set out in the Fourth Schedule to this Act.

(2) For the purposes of this section the agricultural value of agricultural property shall be taken to be the value which the property would bear if it were subject to a perpetual covenant prohibiting its use otherwise than as agricultural property, decreased by the value of any timber, trees, wood or underwood growing thereon.

(3) Where any agricultural property is subject to a mortgage, debt or incumbrance in respect of which an allowance is by law to be made for the purposes of estate duty, the mortgage, debt or incumbrance shall, for the purposes of this section, be apportioned between the agricultural value of the property and the excess principal value of the property in proportion to the amounts of those two values respectively.

(4) In this section the expression "agricultural property" means agricultural property within the meaning of paragraph (*g*) of sub-section (1) of section twenty-two of the Finance Act, 1894, and the expression "appropriate rate" means the rate of estate duty appropriate to the principal value of the estate passing on the death of the deceased.

24. . . .

PART IV

GENERAL

28. *Construction, short title, application, and repeal.*—

* * * * *

(3) Part III of this Act shall be construed together with the Finance Act, 1894.

(4) This Act may be cited as the Finance Act, 1925.

(5) Such of the provisions of this Act as relate to matters with respect to which the Parliament of Northern Ireland has power to make laws shall not extend to Northern Ireland.

THE FINANCE ACT, 1927
(17 & 18 GEO. 5, c. 10.)

[29th July 1927.]

PART IV

MISCELLANEOUS AND GENERAL

* * * * *

51. *Relief under s.* 16 *of Finance Act,* 1907, *in connection with certain settled property to cease.*—Section sixteen of the Finance Act, 1907 (which provides that settled property to which sub-section (2) of section twelve of the Finance Act, 1900, applies, instead of being aggregated with other property to a limited extent only under the said section twelve, shall, in the case of persons dying on or after the nineteenth day of April, nineteen hundred and seven, be treated as an estate by itself), shall be repealed so far as relates to persons dying after the commencement of this Act:

Provided that, where an interest in expectancy within the meaning of Part I of the Finance Act, 1894, in any property has before the eleventh day of April, nineteen hundred and twenty-seven, been bona fide sold or mortgaged for full consideration in money or money's worth, then no other duty on that

property shall be payable by the purchaser or mortgagee when the interest falls into possession than would have been payable if this section had not passed, and in the case of a mortgage any higher duty payable by the mortgagor shall rank as a charge subsequent to that of the mortgagee.

52. . . .

53. *Authorisation of disclosure of information in connection with taxes to officers of Northern Ireland Government.*—The obligation as to secrecy imposed by any enactment with regard to any tax placed under the care and management of the Commissioners of Inland Revenue shall not prevent the disclosure by any authorised officer of those Commissioners to any authorised officer of the Government of Northern Ireland of information necessary for the purpose of determining the liability of any person to any tax or the title of any person to repayment or allowance of any tax placed under the care and management of the Ministry of Finance for Northern Ireland.

* * * * *

57. *Construction, short title, application and repeal.*—

* * * * *

(3) Any reference in this Act to any enactment shall be construed as a reference to that enactment as amended by any subsequent enactment, including this Act.

(4) This Act may be cited as the Finance Act, 1927.

(5) Such of the provisions as relate to matters with respect to which the Parliament of Northern Ireland has power to make laws shall not extend to Northern Ireland.

* * * * *

THE FINANCE ACT, 1928
(18 & 19 GEO. 5, c. 17.)

[3rd August 1928.]

PART III
MISCELLANEOUS

* * * * *

30. *Exemption from income tax, estate duty and stamp duties in case of trust funds and gifts for reduction of National Debt.*—(1) Where any property is held upon trust in accordance with directions which are valid and effective under section nine of the Superannuation and other Trust Funds (Validation) Act, 1927 (which provides for the validation of trust funds for the reduction of the National Debt), any income arising from that property or from any accumulations of any such income and any profits of any description otherwise accruing to the property and liable to be accumulated under the trust shall be exempt from income tax.

(2) Where any person gives such directions as are mentioned in the said section nine by any instrument, and the directions take effect during his life and immediately after the making of the instrument, the property directed to be held in accordance with those directions shall be exempt from estate duty, unless the Treasury, within three months after they receive notice of the taking effect of the instrument, disclaim the interest of the National Debt Commissioners under the said directions.

(3) Where an absolute gift of any property is made during the lifetime of the donor to the National Debt Commissioners to be applied by them in reduction of the National Debt, the property shall be exempt from estate duty as from the date when it is transferred to the Commissioners.

* * * * *

35. *Construction, short title, application and repeal.*—

* * * * *

(4) This Act may be cited as the Finance Act, 1928.

(5) Such of the provisions of this Act as relate to matters with respect to which the Parliament of Northern Ireland has power to make laws shall not extend to Northern Ireland.

* * * * *

THE FINANCE ACT, 1930
(20 & 21 GEO. 5, c. 28.)

[1st August 1930.]

PART III
ESTATE DUTY

Rates of Estate Duty.

33. *Amended rates of estate duty.*—The scale set out in the Second Schedule of this Act shall in the case of persons dying after the commencement of this Act be substituted for the scale set out in the Fourth Schedule to the Finance Act, 1925, as the scale of rates of estate duty:

[Provided that, where an interest in expectancy within the meaning of Part I of the Finance Act, 1894 (in this Part of this Act referred to as "the principal Act"), in any property (other than property deemed to pass on a death by virtue of the provisions of the next succeeding section but one of this Act) has, before the fourteenth day of April, nineteen hundred and thirty, been bona fide sold or mortgaged for full consideration in money or money's worth, then no other duty on that property shall be payable by the purchaser or mortgagee when the interest falls into possession than would have been payable if this Part of this Act had not passed, and in the case of a mortgage any higher duty payable by the mortgagor shall rank as a charge subsequent to that of the mortgagee.]

Companies.

34. *Estate duty where property of deceased has been transferred to a company.*—(1) On the death after the commencement of this Act of any person who has, at any time after the thirty-first day of July, nineteen hundred and eighteen—

(*i*) made to a company to which this Part of this Act applies, whether directly or indirectly, any such transfer as is specified in sub-section (2) of this section; and

(*ii*) received within the prescribed period out of the resources or at the expense of the company, whether directly or indirectly, any such benefit as is so specified,

there shall be computed for each accounting year falling wholly or partly within the prescribed period the proportion which the total value of the benefits so received in the accounting year bears to the total income of the company in the accounting year, and, if the average of the proportions so computed exceeds fifty per cent., there shall for the purposes of estate duty be deemed to pass on the death (over and above any other property which passes or is deemed to pass thereon), such sum of money not exceeding the value of the total assets of the company as bears to the said value the same proportion as the said average proportion:

Provided that—

(*a*) the sum computed as aforesaid shall be reduced by the amount, if any, by which the principal value at the date of death—

(1) of the subject of the transfer; or

(2) if the subject of the transfer has been sold or exchanged by the company, either of the subject of the transfer or of the property in the hands of the company which is or represents the proceeds of the sale or exchange

is shown to the satisfaction of the Commissioners of Inland Revenue to fall short of the said sum ; and

(*b*) notwithstanding anything in this section, the value of any property or any interest in property shall not be taken into account, directly or indirectly, for the purpose of assessment of estate duty more than once on the same death ; and

(*c*) if the total assets of the company comprise any property which is by virtue of the next succeeding section deemed to pass on the death, there shall in computing the said proportions and ascertaining the sum of money, if any, which is deemed to pass virtue of this section, be subtracted—

(1) from the value of the total assets of the company, the value of the said property as ascertained for the purposes of the next succeeding section ;

(2) from the total income of the company in every accounting year and also from the total value of the benefits received by the deceased therein, a sum equal to so much of that total income as is ascribable to—

(*i*) that property ; or

(*ii*) in a case where that property is deemed to pass as being or representing the proceeds of any other property, that other property or the proceeds thereof or any property representing those proceeds.

(2) The transfers referred to in the preceding subsection are transfers, whether made for consideration or not, of property (being property which, if it had been in the disposition of the deceased at his death, would have been property in respect of which estate duty would have been payable on the death) or any interest in any such property, other than—

(*a*) bona fide sales where the consideration for the sale was received or receivable wholly by the deceased for his own use or benefit and was satisfied or to be satisfied in one or more of the following manners, that is to say, by a capital sum of a fixed amount or by shares in or debentures of the company ;

(*b*) transfers of or incidental to the transfer of a business, not being a business which substantially consists in holding, managing, developing or dealing in land situate in Great Britain ;

(*c*) transfers of, or of any interest in, property which by virtue of the next succeeding section is deemed to pass on the death ;

(*d*) transfers of patents or copyrights, or of any movable tangible property except money and securities ;

(*e*) transfers where either the deceased or the company is acting in the capacity of trustee, factor, agent, receiver, or manager ;

and the benefits so referred to are—

(*i*) any payments made, whether for consideration or not, to or for the benefit of the deceased, other than the following payments, that is to say :—

(1) dividends in respect of shares in the company ;

(2) interest on, and repayments in respect of, money lent to the company ;

(3) payments of or on account of purchase money under a bona fide sale, where that purchase money is a capital sum of a fixed amount ;

(4) payments of or on account of royalties, not being royalties limited to cease at the death of the deceased :

(*ii*) any right in or enjoyment of any land.

(3) In ascertaining for the purposes of this section the value of a benefit—

(*a*) in the case of a benefit consisting of a payment, a deduction shall be made in respect of any income tax (other than sur-tax) paid or borne by the deceased in respect of that payment ; and

(*b*) the value of a benefit consisting of any right in or enjoyment of land shall be computed by reference to the annual value of that land as ascertained for purposes of income tax, due allowance being made in respect of any rent paid by the deceased.

(4) In ascertaining for the purposes of this section the total income for any accounting year of a company, the income of the company from any source shall be computed in accordance with the provisions of the Income Tax Acts relating to the computation of income from such a source, subject to the modification that the computation shall be made by reference to the actual income for the accounting year and not by reference to the income for any other period :

Provided that—

(*a*) no deduction shall be made in respect of any payment made to or for the benefit of, or any other benefit accorded to, the deceased, except dividends on preference shares in, and interest on money lent to, the company ; and

(*b*) subject to the provisions of the last preceding paragraph, deductions shall be made for—

(*i*) income tax paid or borne by the company ; and

(*ii*) interest on money lent to the company ; and

(*iii*) dividends on preference shares ; and

(*iv*) rents, royalties and other payments by the company on which income tax is deducted at source.

(5) Where the accounting years falling wholly or partly within the prescribed period do not coincide with the periods for which the accounts of the company are made up, the Commissioners of Inland Revenue may for the purpose of ascertaining the total income of the company for an accounting year divide any of the said periods and make such apportionments and aggregations of the income of the company as may be necessary, so, however, that any apportionments so made shall be made in proportion to the number of months or fractions of months in the respective periods for which the apportionment is made.

(6) In this section—

The expression "accounting year,"—

(*a*) in relation to a company which at the time of the death of the deceased person has made up accounts for a period of twelve months ending on a date within the twelve months next preceding the death, means a period of twelve months ending either on that date, or on the same day of the year in any previous year ; and

(*b*) in relation to any other company, means a period of twelve months ending on such date within the twelve months next preceding the death as may be determined by the Commis-

sioners of Inland Revenue or on the same day of the year in any previous year ; and

The expression "the prescribed period" means the period which—

(*i*) ends on the date on which the last accounting year ends ; and

(*ii*) begins three years before that date, or, if the company in question was not then in existence, on the day on which the company came into existence.

(7) Property which is deemed to pass on a death by virtue of the provisions of this section shall, notwithstanding anything in any Act, be an estate by itself, and shall not be aggregated with any other property.

35. *Estate duty where property in which deceased held a life interest is transferred to a company.*—(1) Where at any time before the death of a person dying after the commencement of this Act any property in which the deceased had an estate or interest limited to cease at his death, was transferred by the deceased and the person interested in the remainder or reversion, whether directly or indirectly, and whether by one or more transactions, to or for the benefit of a company to which this Part of this Act applies, then unless—

(*a*) the transfer was made before the first day of August, nineteen hundred and eighteen ; or

(*b*) the property was settled property and the interest of the deceased would in any case have failed by reason of his death before it would have become an interest in possession; or

(*c*) the share of the consideration payable to the deceased in respect of the transfer was satisfied otherwise than by an allotment of shares in the company or the grant to him by the company of an annuity or other right to receive periodical payments, not being payments on account of purchase money being a capital sum of fixed amount ; or

(*d*) the deceased had at least three years before his death relinquished all interest in the property and had not at any time within those three years the possession or enjoyment (otherwise than under a lease or agreement for a lease at a rack rent) of any part thereof or of any benefit secured by him, whether by contract or otherwise, in relation to the relinquishment of his interest therein, and was not at any time within the said period in receipt of or entitled to any payment from the company, otherwise than in respect or on account of debentures or loans or purchase money being a capital sum of a fixed amount,

the property shall be deemed for the purposes of estate duty to pass on the death in like manner as if the estate or interest of the deceased therein had continued until the death :

Provided that where the property or any part thereof has been bona fide sold or exchanged by the company during the deceased's lifetime for full consideration in money or money's worth, the property or so much thereof as has been so sold or exchanged shall not be deemed to pass on the death, but in lieu thereof the proceeds of the sale or exchange or, as the case may be, the property which, at the time of death, represents those proceeds shall be deemed so to pass.

(2) In determining the value of any property deemed to pass under this section, there shall be deducted from the principal value thereof—

(*a*) so much of any sum borrowed by the company as has been applied by the company in the improvement of the property, and has not at the death been repaid by the company ;

(*b*) a sum equal to the capital sum of money paid to the deceased as part of the consideration for the transfer; and where estate duty is payable in connection with the death on any shares of or debentures in the company, a sum equal to the principal value of such of those shares or debentures as were transferred or allotted to the deceased in consideration of the transfer of the property.

(3) Property which is deemed to pass on death by virtue of the provisions of this section shall, notwithstanding anything in any Act, be an estate by itself, and shall not be aggregated with any other property.

36. *Charge of duty and powers of recovery.*—(1) The estate duty payable in respect of any property which is by virtue of the provisions of the two last preceding sections deemed to pass on the death of any person shall be a debt due from the company concerned to His Majesty.

(2) The company concerned shall be accountable for any such duty and shall, for the purpose of raising and paying that duty, have all the powers conferred on accountable persons by the principal Act, and if the duty or any part thereof is paid by the executor of the deceased it shall be repaid to him by the company.

(3) Where on the death of any person a claim for duty arises by virtue of any of the provisions of the two last preceding sections, the company concerned shall notify the Commissioners of Inland Revenue of the death of the said person, and any company wilfully failing to give such a notification shall be liable to a penalty not exceeding five hundred pounds.

(4) The Commissioners of Inland Revenue may, for the purposes of carrying the two last preceding sections and the next following section of this Act into effect, require any company to which this Part of this Act applies to furnish to them within two months copies of such of the balance sheets and profit and loss or income and expenditure accounts, and such other particulars, as the Commissioners may reasonably require, and if any company fails to comply with the provisions of this sub-section—

(i) the company shall be liable to a penalty not exceeding five hundred pounds, and every director, manager, secretary or other officer of the company who knowingly and wilfully authorises or permits the failure shall be liable to the like penalty; and

(ii) an order may be made against all or any of the directors of the company requiring them to comply with the requirements of the Commissioners in like manner as an order may be made against any person who is accountable for succession duty or legacy duty to deliver an account and the provisions of section fifty-five of the Crown Suits, etc. Act, 1865, and in Scotland the provisions of section forty-seven of the Succession Duty Act, 1853, shall apply accordingly, subject to the necessary modifications.

37. *Valuation of shares in certain companies.*—(1) Where there pass on the death of any person dying after the commencement of this Act, any shares (not being preference shares) in any company to which this Part of this Act applies; then if either—

(*a*) there is deemed by virtue of the provisions of this Part of this Act to pass on the death a sum of money computed by reference to the value of the total assets of the company; or

(*b*) the control of the company was immediately before the death in the hands of the deceased;

the principal value of those shares for the purposes of estate duty shall not be ascertained in the manner provided by sub-section (5) of section seven of the principal Act, but shall be ascertained by reference to the value of the total assets of the company:

Provided that in cases falling within paragraph (*a*) of this sub-section, the value of the total assets of the company shall, for the purposes of this section, be deemed to be reduced by the sum of money therein referred to.

(2) For the purposes of this section the control of a company shall be deemed to be in the hands of a person if—

(*a*) by virtue of the shares which he controls he has control of more than half the voting power of the company; or

(*b*) he has by virtue of the provisions in the memorandum of association or articles of the company, or other instrument whatsoever constituting or defining the constitution of the company, the powers of a board of directors or of a governing director or the right to nominate a majority of the directors or the power to veto the appointment of a director, or powers of the like nature; or

(*c*) he has otherwise the right to receive, or the power to dispose of, more than half of the income of the company.

(3) This section shall not apply to shares which have, within the period of twelve months immediately preceding the death of the deceased, been the subject of dealings on a recognised stock exchange in the United Kingdom or been quoted in the official list of such a stock exchange.

38. *Interpretation.*—In this Part of this Act the following expressions have the meanings hereby respectively assigned to them, that is to say—

"Company to which this Part of this Act applies" means any body corporate wheresoever incorporated, which either—

(i) is so constituted as not to be controlled by its shareholders or by any class thereof; or

(ii) has not issued to the public, or, in the case of a company which is about to make an issue of shares to the public, will not, when it has made that issue, have issued to the public, more than half of the shares by the holders whereof it is controlled:

"Share" includes any interest whatsoever in a company, by whatsoever name it is called, analogous to a share, and the expression "shareholder" shall be construed accordingly:

"Preference share" means a share the holder whereof is entitled to a dividend at a fixed rate only:

"Value of the total assets of the company" means the principal value, ascertained in accordance with the provisions of sub-section (5) of section seven of the principal Act of all the assets of the company as a going concern, including goodwill, after deducting therefrom—

(i) [the principal value so ascertained] of any debentures, debenture stock and preference shares of the company;

(ii) all debts of the company incurred or created bona fide for consideration in money or money's worth;

(iii) such sum as on a just and fair computation represents any future or contingent liabilities of the company or any liabilities thereof which are uncertain in amount;

(iv) the amount of any reserve fund separately invested which is bona fide intended to be applied in payment of pensions to employees or otherwise for the benefit of them or their dependents or relatives, and in no other manner.

Miscellaneous.

39. *Death duties on property subject to an annuity which has been surrendered.*—In the case of a person dying after the commencement of this Act, property which was subject to an annuity or other periodical payment limited to cease on the death of the deceased shall, for the purposes of the principal Act be deemed to pass on the death of the deceased to the extent of the benefit which would accrue from the cesser of that annuity or other payment notwithstanding that the annuity or other payment has been surrendered, assured, divested or otherwise disposed of during the lifetime of the deceased, whether for value or not, to or for the benefit of the person entitled to the property, unless the surrender, assurance, divesting or disposition was bona fide made or effected three years before the death of the deceased and the person entitled to the annuity or other payment was not at any time within that period in receipt of any substituted annuity or other periodical payment limited to cease on his death, being an annuity or payment which was secured, whether by contract or otherwise, to him in return for the surrender, assurance, divesting or disposition.

40. *Exemption from death duties of objects of national, scientific, historic or artistic interest.*—(1) Where there pass on the death of a person dying after the commencement of this Act any objects to which this section applies, the value of those objects shall not be taken into account for the purpose of estimating the principal value of the estate passing on the death or the rate at which estate duty is chargeable thereon, and those objects shall, while enjoyed in kind, be exempt from death duties.

(2) In the event of the sale of any objects to which this section applies, death duties shall, subject as hereinafter provided, become chargeable on the proceeds of sale in respect of the last death on which the objects passed and, as respects estate duty, at the rate appropriate to the principal value of the estate passing on that death upon which estate duty is leviable, and with which the objects would have been aggregated if they had not been objects to which this section applies, and the person by whom or for whose benefit the objects were sold shall be accountable for the duties and shall deliver an account for the purposes thereof within one month after the sale :

Provided that death duties shall not become chargeable as aforesaid if the sale is to the National Gallery, British Museum, or any other similar national institution, any university, county council or municipal corporation in Great Britain, or the National Art Collections Fund.

(3) The objects to which this section applies are such pictures, prints, books, manuscripts, works of art, scientific collections or other things not yielding income as on a claim being made to the Treasury under this section appear to them to be of national, scientific, historic or artistic interest.

(4) Nothing in this section shall affect the power of the Treasury under sub-section (2) of section fifteen of the principal Act to remit death duties chargeable in respect of any objects to which that section applies.

PART VI

MISCELLANEOUS AND GENERAL

53. *Construction, short title and application.*—

* * * * * *

(3) Part III of this Act shall be construed as one with the Finance Act, 1894.

* * * * * *

(5) Any reference in this Act to any enactment shall be construed as a reference to that enactment as amended by any subsequent enactment, including this Act.

(6) This Act may be cited as the Finance Act, 1930.

(7) Such of the provisions of this Act as relate to matters with respect to which the Parliament of Northern Ireland has power to make laws shall not extend to Northern Ireland.

* * * * * *

SECOND SCHEDULE Section 33.

SCALE OF RATES OF ESTATE DUTY

Principal value of estate.					Rate per cent. of Duty.	Values below which the duty is reduced under s. 13(1) of the Finance Act, 1914.
	£			£		£ s. d.
Exceeding	100	and not exceeding		500	1	101 0 3
"	500	"	"	1,000	2	505 2 1
"	1,000	"	"	5,000	3	1,010 6 3
"	5,000	"	"	10,000	4	5,052 1 8
"	10,000	"	"	12,500	5	10,105 5 4
"	12,500	"	"	15,000	6	12,632 19 7
"	15,000	"	"	18,000	7	15,161 5 10
"	18,000	"	"	21,000	8	18,195 13 1
"	21,000	"	"	25,000	9	21,230 15 5
"	25,000	"	"	30,000	10	25,277 15 7
"	30,000	"	"	35,000	11	30,337 1 7
"	35,000	"	"	40,000	12	35,397 14 7
"	40,000	"	"	45,000	13	40,459 15 5
"	45,000	"	"	50,000	14	45,523 5 2
"	50,000	"	"	55,000	15	50,588 4 9
"	55,000	"	"	65,000	16	55,654 15 3
"	65,000	"	"	75,000	17	65,783 2 8
"	75,000	"	"	85,000	18	75,914 12 9
"	85,000	"	"	100,000	19	86,049 7 8
"	100,000	"	"	120,000	20	101,250 0 0
"	120,000	"	"	150,000	22	123,076 18 6
"	150,000	"	"	200,000	24	153,947 7 5
"	200,000	"	"	250,000	26	205,405 8 2
"	250,000	"	"	300,000	28	256,944 8 11
"	300,000	"	"	400,000	30	308,571 8 7
"	400,000	"	"	500,000	32	411,764 14 2
"	500,000	"	"	600,000	34	515,151 10 4
"	600,000	"	"	800,000	36	618,750 0 0
"	800,000	"	"	1,000,000	38	825,806 9 1
"	1,000,000	"	"	1,250,000	40	1,033,333 6 8
"	1,250,000	"	"	1,500,000	42	1,293,103 9 0
"	1,500,000	"	"	2,000,000	45	1,581,818 3 8
"	2,000,000	..	.. .. ..		50	2,200,000 0 0

THE FINANCE ACT, 1931
(21 & 22 GEO. 5, c. 28.)

[31st July 1931.]

PART IV
MISCELLANEOUS AND GENERAL

40. *Exemption from death duties in case of land given to National Trust.*—(1) Where any estate or interest in land—

(*a*) is given, devised, or bequeathed by any person to, and so as to become indefeasibly vested in, the National Trust and is held by that Trust inalienably for the public benefit ; or

(*b*) is given, devised, or bequeathed by any person to, and so as to become indefeasibly vested in, the Commissioners of Works, or a local authority, and accepted by the Commissioners or authority under section two of the Ancient Monuments Consolidation and Amendment Act, 1913 ;

the Treasury may, if that person dies after the commencement of this Act, and the estate or interest was the whole estate or interest of that person in the land, remit any duties leviable on or with reference to the death of that person, and no property the duties in respect of which are remitted under this section shall be aggregated with any other property for the purpose of fixing the rate of any estate duty.

(2) In this section the expression "National Trust" means the National Trust for Places of Historic Interest or Natural Beauty incorporated by the National Trust Act, 1907.

41. *Exemption of savings certificates held by persons domiciled in Channel Islands or Isle of Man from estate duty.*—Where the holder of a war savings certificate or a national savings certificate is at the time of his death domiciled in the Channel Islands or the Isle of Man, his rights under the certificate shall, for the purposes of the enactments relating to estate duty payable in Great Britain, be deemed to be property situate out of Great Britain.

44. *Construction, short title, application and repeal.*—

* * * * * *

(4) This Act may be cited as the Finance Act, 1931.

(5) Such of the provisions of this Act as relate to matters with respect to which the Parliament of Northern Ireland has power to make laws shall not extend to Northern Ireland.

* * * * * *

THE FINANCE (No. 2) ACT, 1931
(21 & 22 GEO. 5, c. 49.)

[5th October 1931.]

PART IV
MISCELLANEOUS AND GENERAL

22. *Provisions in cases where Treasury has power to borrow money.*—(1) Any securities issued by the Treasury under any Act may be issued with the condition that—

(*a*) so long as the securities are in the beneficial ownership of persons who are not ordinarily resident in the United Kingdom, the interest thereon shall be exempt from income tax ; and

(*b*) so long as the securities are in the beneficial ownership of persons who are neither domiciled nor ordinarily resident in the United Kingdom, neither the capital thereof nor the interest thereon shall be liable to any taxation present or future.

* * * * * *

25. *Construction, short title and repeal.* . . .

(4) This Act may be cited as the Finance (No. 2) Act, 1931.

* * * * * *

THE FINANCE ACT, 1933
(23 & 24 GEO. 5, c. 19.)

[28th June 1933.]

PART V
MISCELLANEOUS AND GENERAL

43. *Reduction of rate of interest on death duties.*—(1) Section thirty of the Finance Act, 1919 (which amended section eighteen of the Finance Act, 1896, by increasing the rate of interest on death duties from three to four per cent. per annum), shall cease to have effect except as respects interest accruing due before the twenty-sixth day of April, nineteen hundred and thirty-three, and the said section eighteen shall have effect as originally enacted as respects interest accruing due on or after that date.

(2) Sub-section (3) of section seventeen of the Law of Property Act, 1925, and sub-section (6) of section seventy-three of the Land Registration Act, 1925, shall have effect, as respects interest accruing due on or after the said date, as if for the words "four pounds" there were substituted the words "three pounds."

47. *Short title, construction, extent and repeals.*—(1) This Act may be cited as the Finance Act, 1933.

* * * * * *

(6) Such of the provisions of this Act as relate to matters with respect to which the Parliament of Northern Ireland has power to make laws shall not extend to Northern Ireland.

* * * * * *

THE FINANCE ACT, 1934
(24 & 25 GEO. 5, c. 32.)

[12th July 1934.]

PART IV
MISCELLANEOUS AND GENERAL

28. *Estate duty in respect of annuities and other interests.*—For the purposes of paragraph (*d*) of sub-section (1) of section two of the Finance Act, 1894, where an annuity or other interest has been purchased or provided by the deceased, either by himself alone or in concert or by arrangement with any other person, the extent of any beneficial interest therein accruing or arising by survivorship or otherwise on the death of the deceased shall be ascertained and shall be deemed always to have been ascertainable, without regard to any interest in expectancy the beneficiary may have had therein before the death:

Provided that, in a case where the deceased died before the passing of this Act, this section shall not apply to a beneficial interest accruing or arising under a disposition of property which produced income falling to be dealt with under the disposition during the lifetime of the deceased if no estate duty was paid in respect of the beneficial interest before the eighth day of December, nineteen hundred and thirty-two.

30. *Short title, construction, extent and repeals.*—(1) This Act may be cited as the Finance Act, 1934.

* * * * * *

(4) Any reference in this Act to any other enactment shall be construed as a reference to that enactment as amended or applied by any subsequent enactment including this Act.

* * * * * *

(6) Such of the provisions of this Act as relate to matters with respect to which the Parliament of Northern Ireland has power to make laws shall not extend to Northern Ireland.

* * * * * *

THE FINANCE ACT, 1935
(25 & 26 GEO. 5, c. 24.)

[10th July 1935.]

PART IV
MISCELLANEOUS AND GENERAL

35. *Further relief of small annuities from estate duty.*—(1) Sub-section (1) of section fifteen of the Finance Act, 1894 (which exempts from estate duty certain annuities not exceeding twenty-five pounds) shall have effect, in the case of an annuity purchased or provided by a person dying after the passing of this Act, as if the words "fifty-two pounds" were substituted for the words "twenty-five pounds."

(2) An annuity of less than one hundred and four pounds which would, but for the fact that it exceeds fifty-two pounds, be exempted from estate duty under the provisions of the said sub-section as amended by this section, shall be chargeable with estate duty as if it were an annuity of twice the amount by which it exceeds fifty-two pounds and as if the said provisions were not in force.

35. *Short title, construction, extent and repeals.*—(1) This Act may be cited as the Finance Act, 1935.

* * * * * *

(6) Such of the provisions of this Act as relate to matters with respect to which the Parliament of Northern Ireland has power to make laws shall not extend to Northern Ireland.

THE FINANCE ACT, 1936
(26 GEO. 5 & 1 EDW. 8, c. 34.)

[16th July 1936.]

PART III
DEATH DUTIES

24. *Modification of exemption from estate duty on property situate abroad.*—The exemption from estate duty which exists by virtue of sub-section (2) of section two of the Finance Act, 1894, in the case of certain property situate out of Great Britain shall, subject as hereinafter provided, cease so far as relates to any such property passing on the death of a person dying after the passing of this Act domiciled in some part of Great Britain:

Provided that nothing in this section shall operate so as to charge with duty any such property—

(*a*) which passes under or by reason of a disposition made by a person who, at the date on which the disposition took effect, was domiciled elsewhere than in some part of Great Britain, unless the disposition was made, directly or indirectly, on behalf of or at the expense of, or out of funds provided by, a person who at that date was domiciled in some part of Great Britain; or

(*b*) which by the law of the country in which it is situate is immovable property.

25. *Extension of relief under s.* 5 (2) *of* 57 & 58 *Vict. c.* 30 *to cases where estate duty has been paid in Northern Ireland.*—The payment (whether before or after the passing of this Act) of estate duty chargeable under the law in force in Northern Ireland on the death of a party to a marriage shall, for the purpose of any relief given by sub-section (2) of section five of the Finance Act, 1894, as respects the payment of any duty on the death after the passing of this Act of the other party to the marriage, have the like effect in all respects as if the duty paid had been chargeable under the law in force in Great Britain.

26. *Exemption from death duties of certain property if sold to Friends of National Libraries.*—Section forty-four of the Finance Act, 1921, and the proviso to sub-section (2) of section forty of the Finance Act, 1930 (which provide that death duties shall not become chargeable in respect of certain property on the sale thereof to the National Gallery, British Museum, or certain other institutions and persons therein mentioned), shall have effect as if the references to such a sale included a reference to a sale after the passing of this Act to the society known as "the Friends of the National Libraries."

27. *Extension of* 21 & 22 *Geo.* 5 *c.* 28, *s.* 40, *to land given to National Trust for Scotland.*—In section forty of the Finance Act, 1931 (which provides for exemption from death duties in the case of land given to the National Trust), the expression "National Trust" shall include the body incorporated under the National Trust for Scotland Order Confirmation Act, 1935, by the name of "The National Trust for Scotland for Places of Historic Interest or Natural Beauty."

Provided that, in relation to the said body, the reference in the said section forty to the commencement of the Finance Act, 1931, shall be construed as a reference to the passing of this Act.

PART IV

MISCELLANEOUS AND GENERAL

* * * * * *

35. *Short title, construction, extent and repeals.*—(1) This Act may be cited as the Finance Act, 1936.

* * * * * *

(4) Any reference in this Act to any other enactment shall be construed as a reference to that enactment as amended by any subsequent enactment, including (unless the context otherwise requires) this Act.

* * * * * *

(6) Such of the provisions of this Act as relate to matters with respect to which the Parliament of Northern Ireland has power to make laws shall not extend to Northern Ireland.

* * * * * *

THE FINANCE ACT, 1937

(1 EDW. 8 & 1 GEO. 6, c. 54.)

[30th July 1937.]

PART V

MISCELLANEOUS AND GENERAL

* * * * * *

31. *Exemption from death duties in case of land transferred to National Trust.*—(1) Where any estate or interest in land (in this section referred to as "the settled property") is given, devised or bequeathed by any person (in

this section referred to as "the disponer") in such manner as to render the National Trust entitled indefeasibly to the settled property subject to one or more life interests created by the gift, devise or bequest, being life interests to which this section applies, but to no other interest so created, exemption from death duties shall be granted subject to and in accordance with the provisions of this section.

(2) The life interests to which this section applies are—

(*a*) a life interest (whether extending to the whole or to a part only of the rents and profits arising from the settled property, and whether or not determinable upon an event other than death) given to the disponer ;

(*b*) a like interest given to the spouse or a child of the disponer and commencing, so as to entitle the beneficiary as from its commencement to receipt for his own use of all the rents and profits to which it extends, on the date of the cesser of an interest given to the disponer as aforesaid ;

(*c*) a like interest given to the spouse or a child of the disponer and commencing as aforesaid on the date on which the gift is made ;

(*d*) a like interest devised or bequeathed to the spouse or a child of the disponer and commencing as aforesaid on the date of the disponer's death.

(3) In the case of any estate duty that would, but for this provision, have been leviable in respect of the settled property or any part thereof on or with reference to the death after the passing of this Act of the disponer, or of a person, whether being the disponer or a spouse or child of his, to whom such an interest as aforesaid is given, devised or bequeathed, exemption shall be granted, if on the death the settled property passes, or a benefit accrues therefrom, to the National Trust, as follows, that is to say—

(*a*) exemption shall be granted as to an amount of that duty (whether being the whole or a part thereof) corresponding to the extent to which the settled property passes, or a benefit accrues therefrom, to the National Trust as compared with the extent to which the settled property passes, or a benefit accrues therefrom, to any person or persons entitled to such an interest or interests as aforesaid ;

(*b*) for the purposes of this sub-section, the extent to which on a death the settled property passes, or a benefit accrues therefrom, to any person shall be computed by reference to the extent to which that person becomes on the death entitled to receive for his own use the rents and profits arising from the settled property computed as at the death ;

Provided that, where the death is that of the disponer under a gift and the National Trust is immediately before the death entitled to any extent to receipt of the rents and profits of the settled property for its own use, the settled property shall be deemed to that extent to pass to the National Trust on the death ;

(*c*) where exemption is granted as to a part of the estate duty leviable on or with reference to any death, the residue thereof shall be charged and borne in like manner as if the passing on the death, or the benefit accruing on the death, as the case may be, had been a passing, or a benefit accruing, wholly to the person or persons other than the National Trust mentioned in paragraph (*a*) of this sub-section.

(4) . . .

(5) The exemptions from duty conferred by the foregoing provisions of this section shall not have effect unless within six months from the date on which the gift is made, or the date of the death of the testator, as the case may be, or, in the case of a gift made before the date of the passing of this Act, that date, or within such extended period as the Commissioners of Inland Revenue may allow, the interest of the National Trust has been so dealt with as to be held by the Trust inalienably.

(6) Where the requirements of sub-section (1) of section forty of the Finance Act, 1931, are fulfilled in relation to any estate or interest in land given, devised or bequeathed by any person to the National Trust, then, if that person dies after the passing of this Act, the estate or interest shall be exempt from any duties which might under that sub-section have been remitted by the Treasury.

(7) In this section the expression "the National Trust" has the same meaning as in section forty of the Finance Act, 1931.

* * * * * *

34. *Short title, construction, extent and repeals.*—(1) This Act may be cited as the Finance Act, 1937.

* * * * * *

(4) Any reference in this Act to any other enactment shall be construed as a reference to that enactment as amended by any subsequent enactment, including (unless the context otherwise requires) this Act.

(5) Such of the provisions of this Act as relate to matters with respect to which the Parliament of Northern Ireland has power to make laws shall not extend to Northern Ireland.

* * * * * *

THE FINANCE ACT, 1938

(1 & 2 GEO. 6, c. 46.)

[29th July 1938.]

PART VI

ESTATE DUTY

47. *Estate duty on cesser by death of a limited interest in unascertained residue.*—(1) The following provisions of this section shall have effect for the purpose of the operation of Part I of the Finance Act, 1894 (in this Part of this Act referred to as "the principal Act") in relation to the death of a person on whose death an interest in the residue of the estate of a testator or intestate, or in a part thereof, is limited to cease, and who dies before the completion of the administration of the estate.

(2) Such an interest shall, until the completion of the administration, be deemed to be an interest in the unadministered estate, of the testator or intestate, as for the time being held by his personal representatives subject to outstanding charges on residue and to any adjustments between capital and income remaining to be made in a due course of administration, and in the property (if any) representing ascertained residue.

(3) Such an interest shall be deemed to have become an interest in possession on the date as from which the income of the residue would have been attributable to that interest if the residue had been ascertained immediately after the death of the testator or intestate.

(4) Where such an interest is an interest in a part only of the residue of an estate, the references in the foregoing provisions of this section to the unadministered estate, to residue and to charges on residue, shall be construed as references to a corresponding part thereof,

(5) In this section—

(*a*) the expression "unadministered estate" means all the property for the time being held by the personal representatives of a testator or intestate as such, excluding property devolving on the personal representatives otherwise than as assets for payment of his debts and property that is the subject of a specific disposition ;

(*b*) the expression "ascertained residue" means property which, having ceased to be held by the personal representatives as such, is held as part of the residue ;

(*c*) the expressions "personal representatives," "charges on residue," and "specific disposition" have the meanings assigned to them respectively by Part III of this Act ;

(*d*) references to personal representatives as such shall be construed as provided in the said Part III.

(6) In the application of this section to Scotland—

(*a*) references to the completion of the administration of an estate shall be construed as provided in the said Part III ;

(*b*) for sub-section (2) the following sub-section shall be substituted :

"(2) Such an interest shall, until the completion of the administration, be deemed to be an interest in the estate of the testator or intestate, as for the time being held by his personal representatives subject to outstanding charges on residue and to any adjustments between capital and income remaining to be made in a due course of administration."

(7) This section shall have effect, and shall be deemed always to have had effect, whether the person on whose death such an interest is limited to cease died before or dies after the commencement of this Act :

Provided that, in a case where that person died before the commencement of this Act and no estate duty was paid in respect of the cesser of that interest before the commencement of this Act, any question as to the operation of Part I of the Finance Act, 1894, in relation to his death shall be determined without regard to the provisions of this section.

48. *Amendment as respects settled property.*—Sub-section (3) of section five of the principal Act (which provides that, in the case of settled property, where the interest of any person under the settlement fails or determines by reason of his death before it becomes an interest in possession, and subsequent limitations under the settlement continue to subsist, the property shall not be deemed to pass on his death) shall have effect, in the case of a person dying after the passing of this Act, as if there has been inserted at the end thereof the words "by reason only of the failure or determination of that interest."

49. *Amendments as respects property transferred to, and shares in, certain companies.*—(1) In relation to a person dying after the passing of this Act, sections thirty-four to thirty-eight of the Finance Act, 1930 (which charge estate duty where property has been transferred to certain companies and provide for the valuation of shares in such companies) shall have effect subject to the provisions of this section.

(2) For the purpose of determining the rate of estate duty, property which is deemed to pass on the death of any such person by virtue of the provisions of section thirty-four or section thirty-five of the said Act shall not be an estate by itself, but shall be aggregated with other property which is to be aggregated under section four of the principal Act ; and accordingly sub-section (7) of the said section thirty-four and sub-section (3) of the said section thirty-five shall cease to have effect.

(3) For the purpose of the definition of "the value of the total assets of the company" contained in section thirty-eight of the said Act, the deduction to be made in respect of any debentures, debenture stock or preference shares of the company shall, instead of being the par or redemption value thereof, whichever is the greater, be the principal value thereof ascertained in accordance with the provisions of sub-section (5) of section seven of the principal Act; and accordingly paragraph (i) of that definition shall be amended by substituting the words "the principal value so ascertained" for the words "the par or redemption value, whichever is the greater."

PART VII

MISCELLANEOUS AND GENERAL

* * * * * *

55. *Short title, construction, extent and repeals.*—(1) This Act may be cited as the Finance Act, 1938.

* * * * * *

(4) Part VI of this Act shall be construed as one with the Finance Act, 1894.

(5) Any reference in this Act to any other enactment shall be construed as a reference to that enactment as amended by any subsequent enactment, including (unless the context otherwise requires) this Act.

(6) Such of the provisions of this Act as relate to matters with respect to which the Parliament of Northern Ireland has power to make laws shall not extend to Northern Ireland.

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THE FINANCE ACT, 1939
(2 & 3 GEO. 6, c. 41.)

[28th July 1939.]

PART IV

ESTATE DUTY

29. *Increased rates of estate duty.*—In the case of persons dying after the twenty-fifth day of April, nineteen hundred and thirty-nine, the rates of Estate duty set out in the Second Schedule to the Finance Act, 1930, shall, so far as they relate to estates the principal value of which exceeds fifty thousand pounds, be increased, in the case of each rate, by one-tenth of the amount thereof:

[Provided that, where an interest in expectancy within the meaning of Part I of the Finance Act, 1894, in any property (other than property deemed to pass on a death by virtue of section thirty-five of the Finance Act, 1930) has, before the twenty-sixth day of April, nineteen hundred and thirty-nine, been bona fide sold or mortgaged for full consideration in money or money's worth, then no other duty on that property shall be payable by the purchaser or mortgagee when the interest falls into possession than would have been payable if this section had not passed, and, in the case of a mortgage, any higher duty payable by the mortgagor shall rank as a charge subsequent to that of the mortgagee.]

30. *Estate duty on certain interests arising on death.*—(1) Paragraph (*d*) of sub-section (1) of section two of the Finance Act, 1894, (which provides that property passing on the death of a deceased person shall be deemed to include any annuity or other interest purchased or provided by the deceased)

shall have effect in relation to an annuity or other interest that was purchased or provided wholly or in part by any person who was at any time entitled to, or amongst whose resources there was at any time included, any property derived from the deceased, as if that annuity or other interest had been provided by the deceased, or, if it is proved to the satisfaction of the Commissioners that the application of all the property derived from the deceased would have been insufficient to provide the whole of that annuity or other interest, as if a similar annuity or interest of an amount reduced to an extent proportionate to the insufficiency proved had been provided by the deceased:

Provided that for the purpose of determining whether there would have been any such insufficiency as aforesaid, and the extent thereof, there shall be excluded from the property derived from the deceased any part thereof as to which it is proved to the satisfaction of the Commissioners that the disposition of which it, or the property which it represented, was the subject matter was not made with reference to, or with a view to enabling or facilitating, the purchase or provision of the annuity or other interest, or the recoupment in any manner of the cost thereof.

(2) For the purpose of section four of the Finance Act, 1894, the deceased shall be deemed to have had an interest in any property included by virtue of this section in the property passing on the death of the deceased.

(3) In this section the following expressions have the meanings hereby assigned to them respectively, that is to say—

(*a*) "property derived from the deceased" means any property which was the subject matter of a disposition made by the deceased, either by himself alone or in concert or by arrangement with any other person, otherwise than for full consideration in money or money's worth paid to him for his own use or benefit, or which represented any of the subject matter of such a disposition, whether directly or indirectly and whether by virtue of one or more intermediate dispositions, and whether any such intermediate disposition was or was not for full or partial consideration;

(*b*) "disposition" includes any trust, covenant, agreement or arrangement; and

(*c*) "subject matter" includes, in relation to any disposition, any annual or periodical payment made or payable under or by virtue of the disposition.

(4) This section shall have effect only in the case of a person dying after the twenty-fifth day of April, nineteen hundred and thirty-nine.

31. *Exclusion of certain debts, etc., from the deduction in valuing for estate duty.*—(1) Any allowance which, but for this provision, would be made under sub-section (1) of section seven of the Finance Act, 1894, for a debt incurred by the deceased as mentioned in paragraph (*a*) of that subsection, or for an incumbrance created by a disposition made by the deceased as therein mentioned, shall be subject to abatement to an extent proportionate to the value of any of the consideration given therefor which consisted of—

(*a*) property derived from the deceased; or

(*b*) consideration not being such property as aforesaid, but given by any person who was at any time entitled to, or amongst whose resources there was at any time included, any property derived from the deceased:

Provided that if, where the whole or a part of the consideration given consisted of such consideration as is mentioned in paragraph (*b*) of this subsection, it is proved to the satisfaction of the Commissioners that the value

of the consideration given, or of that part thereof, as the case may be, exceeded that which could have been rendered available by application of all the property derived from the deceased, other than such (if any) of that property as is included in the consideration given or as to which the like facts are proved in relation to the giving of the consideration as are mentioned in the proviso to sub-section (1) of the last preceding section in relation to the purchase or provision of an annuity or other interest, no abatement shall be made in respect of the excess.

(2) Money or money's worth paid or applied by the deceased in or towards satisfaction or discharge of a debt or incumbrance in the case of which sub-section (1) of this section would have had effect on his death if the debt or incumbrance had not been satisfied or discharged, or in reduction of a debt or incumbrance in the case of which that sub-section has effect on his death, shall, unless so paid or applied [five years] before the death, be treated as property deemed to be included in the property passing on the death by virtue of paragraph (*c*) of sub-section (1) of section two of the Finance Act, 1894, and Estate duty shall, notwithstanding anything in section three of that Act, be payable in respect thereof accordingly.

(3) The provisions of sub-section (3) of the last preceding section shall have effect for the purpose of this section as they have effect for the purpose of that section.

(4) This section shall have effect only in the case of a person dying after the twenty-fifth day of April, nineteen hundred and thirty-nine.

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PART VI

MISCELLANEOUS

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38. *Short title, construction and extent.*—(1) This Act may be cited as the Finance Act, 1939.

* * * * * *

(4) Part IV of this Act shall be construed as one with Part I of the Finance Act, 1894.

(5) Any reference in this Act to any other enactment shall, unless the contrary is expressly provided or the context otherwise requires, be construed as a reference to that enactment as amended by any subsequent enactment, including this Act.

* * * * * *

(7) Such of the provisions of this Act as relate to matters with respect to which the Parliament of Northern Ireland has power to make laws shall not extend to Northern Ireland.

THE FINANCE (No. 2) ACT, 1939

(2 & 3 GEO. 6, c. 109)

[12th October 1939.]

PART IV

ESTATE DUTY

23. *Increased rates of Estate duty.*—In the case of persons dying after the twenty-seventh day of September, nineteen hundred and thirty-nine, section twenty-nine of the Finance Act, 1939 (which relates to the rates of Estate duty) shall not apply, and the rates of Estate duty set out in the Second Schedule to the Finance Act, 1930, shall—

(*a*) so far as they relate to estates the principal value of which exceeds ten thousand pounds but does not exceed fifty thousand pounds,

be increased, in the case of each rate, by one-tenth of the amount thereof ; and

(*b*) so far as they relate to estates the principal value of which exceeds fifty thousand pounds, be increased, in the case of each rate, by one-fifth of the amount thereof.

[Provided that, where an interest in expectancy within the meaning of Part I of the Finance Act, 1894, in any property (other than property deemed to pass on a death by virtue of section thirty-five of the Finance Act, 1930) has, before the twenty-eighth day of September, nineteen hundred and thirty-nine, been bona fide sold or mortgaged for full consideration in money or money's worth—

(i) no other duty on that property shall be payable by the purchaser or mortgagee when the interest falls in possession than would have been payable if this section had not passed ; and

(ii) in the case of a mortgage, any higher duty payable by the mortgagor shall rank as a charge subsequent to that of the mortgagee.]

PART V

GENERAL

24. *Short title, construction and extent.*—(1) This Act may be cited as the Finance (No. 2) Act, 1939.

* * * * * *

(4) Part IV of this Act shall be construed as one with Part I of the Finance Act, 1894.

(5) Any reference in this Act to any other enactment shall, unless the contrary is expressly provided or the context otherwise requires, be construed as a reference to that enactment as amended by any subsequent enactment, including this Act.

(6) Such of the provisions of this Act as relate to matters with respect to which the Parliament of Northern Ireland has power to make laws shall not extend to Northern Ireland.

THE FINANCE ACT, 1940

(3 & 4 GEO. 6, c. 29.)

[27th June 1940.]

PART IV

ESTATE DUTY

General

43. *Disposition or determination of life interests, etc.*—(1) Subject to the provisions of this section, where an interest limited to cease on a death has been disposed of or has determined, whether by surrender, assurance, divesting, forfeiture or in any other manner (except by the expiration of a fixed period at the expiration of which the interest was limited to cease), whether wholly or partly, and whether for value or not, after becoming an interest in possession [and the disposition or determination (or any of them if there are more than one) is not excepted by sub-section (2) of this section, then]

(*a*) if [had there been no disposition or determination as aforesaid of that interest and no disposition of any interest expectant upon or subject to that interest], the property in which the interest subsisted would have passed on the death under section one of the Finance Act, 1894, that property shall be deemed

by virtue of this section to be included as to the whole thereof in the property passing on the death; or

(*b*) if [had there been no disposition or determination as aforesaid of that interest and no disposition of any interest expectant upon or subject to that interest], the property in which the interest subsisted would have been deemed by virtue of paragraph (*b*) of sub-section (1) of section two of the said Act to be included to a particular extent in the property passing on the death, the property in which the interest subsisted shall be deemed by virtue of this section to be included to that extent in the property passing on the death.

(2) [Where a disposition or determination of an interest limited to cease on the death] was bona fide effected or suffered [five years] before the death (or, if it was effected or suffered for public or charitable purposes, one year before the death) [the disposition or determination shall be excepted by this sub-section]—

(*a*) if bona fide possession and enjoyment of the property in which the interest subsisted was assumed immediately thereafter by the person becoming entitled by virtue of or upon the disposition or determination and thenceforward retained to the entire exclusion of the person who [immediately before the disposition or determination] had the interest and of any benefit to him by contract or otherwise; or

(*b*) in the case of a partial determination, if the conditions specified in the preceding paragraph were not satisfied by reason only of the retention or enjoyment by the deceased of possession of some part of the property, or of some benefit, by virtue of the provisions of the instrument under which he had the interest:

Provided that nothing in this sub-section shall be construed as affecting any charge of estate duty arising otherwise than by virtue of the provisions of the preceding sub-section.

(3) In the application of sub-section (1) of this section to a case in which an incumbrance on the property in which the interest in question subsisted has been created by associated operations which included a disposition of that interest, references to that property shall be construed as references to that property free from the incumbrance, except in a case in which the incumbrance was created for consideration in money or money's worth which was applied for purposes calculated to maintain or increase the value of that property, and, in that case, shall be construed as references to that property subject to the incumbrance to the extent to which the consideration was so applied.

(4) In sub-section (3) of section fifty-nine of the Finance (1909-10) Act, 1910 (which relates to a subsequent surrender of a benefit reserved), for the words "property taken under such a disposition or affected by such a surrender, assurance, divesting, or disposition as aforesaid" there shall be substituted the words "property taken under such a disposition as aforesaid or affected by such a disposition or determination as is mentioned in section forty-three of the Finance Act, 1940," for the words "the disposition, surrender, assurance, or divesting" there shall be substituted the words "the disposition or determination," and at the end of the sub-section there shall be inserted the words "or the said section forty-three."

(5) This section shall not apply to any such surrender, assurance, divesting or disposition, as is mentioned in proviso (*c*) to section fourteen of the Finance Act, 1914, so as to make any estate duty payable which would not have been payable but for the provisions of that section.

(6) This section shall have effect only in relation to a person dying after the commencement of this Act, and section eleven of the Finance Act, 1900, and sections thirty-five and thirty-nine of the Finance Act, 1930, shall not have effect in relation to such a person.

(7) This section shall *inter alia* apply in Scotland to the conveyance or discharge of any life rent, and to the propulsion of the fee under any tailzied destination, and for the purposes of this section the interest of an institute or heir of entail in Scotland shall be deemed to be an interest limited to cease on a death.

44. *Purchases of annuities, etc., from relatives.*—[(1) Any disposition made by the deceased in favour of a relative of his shall be treated for the purposes of paragraph (*c*) of sub-section (1) of section two of the Finance Act, 1894, as a gift unless :—

(*a*) the disposition was made on the part of the deceased for full consideration in money or money's worth paid to him for his own use or benefit ; or

(*b*) the deceased was concerned in a fiduciary capacity imposed on him otherwise than by a disposition made by him and in such a capacity only ;

and references to a gift in the other enactments relating to estate duty (including this Part of this Act) shall be construed accordingly :

Provided that where the disposition was made on the part of the deceased for partial consideration in money or money's worth paid to him for his own use or benefit, the value of the consideration shall be allowed as a deduction from the value of the property for the purposes of estate duty.

(1A) Where the deceased made a disposition of property in favour of a relative of his, the creation or disposition in favour of the deceased of an annuity or other interest limited to cease on the death of the deceased or of any other person shall not be treated for the purposes of this section or of sub-section (1) of section seven of the Finance Act, 1894, as consideration for the disposition made by the deceased.

(1B) If a company to which this section applies was concerned in a transaction in relation to which it is claimed that the provisions of paragraph (*a*) of or the proviso to sub-section (1) of this section have effect, those provisions shall have effect in relation thereto if and only if, and to the extent only to which, the Commissioners are satisfied that those provisions would have had effect in the following circumstances, namely, if the assets of the company had been held by it on trust for the members thereof and any other person to whom it is under any liability incurred otherwise than for the purposes of the business of the company wholly and exclusively, in accordance with the rights attaching to the shares in and debentures of the company and the terms on which any such liability was incurred, and if the company had acted in the capacity of a trustee only with power to carry on the business of the company and to employ the assets of the company therein.

(1C) Any gift made in favour of a relative of the deceased by a company of which the deceased at the time of the gift had control within the meaning of sub-section (3) of section fifty-five of this Act shall be treated for the purposes of paragraph (*c*) of sub-section (1) of section two of the Finance Act, 1894, as a gift made by the deceased, and the property taken under the gift shall be treated as included by virtue of that paragraph in the property passing on the death of the deceased, if and to the extent to which the Commissioners are satisfied that they would fall to be so treated in the circumstances mentioned in the last foregoing sub-section.]

(2) In this section the expression "relative" means, in relation to the deceased,—

(*a*) the wife or husband of the deceased ;

(*b*) the father, mother, children, uncles and aunts, of the deceased ; and

(*c*) any issue of any person falling within either of the preceding paragraphs and the other party to a marriage with any such person or issue ;

and references to "children" and "issue" include references to illegitimate children and to adopted children.

(3) In this section the expression "annuity" includes any series of payments, whether inter-connected or not, whether of the same or of varying amounts, and whether payable at regular intervals or otherwise, and payments of dividends or interest on shares in or debentures of a company shall be treated for the purposes of this section as a series of payments constituting an annuity limited to cease on a death if the payments are liable to cease on the death, or the amounts thereof are liable to be reduced on the death, by reason directly or indirectly of the extinguishment or any alteration of rights attaching to, or of the issue of, any shares in or debentures of a company.

(4) If the deceased has made in favour of a company to which this section applies a disposition which, if it had been made in favour of a relative of his, would have fallen within sub-section (1) of this section, this section shall have effect in like manner as if the disposition had been made in favour of a relative of his, unless it is shown to the satisfaction of the Commissioners that no relative of the deceased was, at the time of the disposition or subsequently during the life of the deceased, a member of the company.

For the purposes of this sub-section a person who is, or is deemed by virtue of this provision to be, a member of a company to which this section applies and which is a member of another such company shall be deemed to be a member of that other company.

(5) Where there have been associated operations effected with reference to the receiving by the deceased of any payment in respect of such an annuity or other interest as is mentioned in [sub-section (1A)] of this section, or effected with a view to enabling him to receive or to facilitating the receipt by him of any such payment, this section shall have effect in relation to each of those associated operations as it has effect in relation to the creation or disposition in favour of the deceased of such an annuity or other interest.

45. *Gifts by way of creation of burden or release of right.*—(1) The creation by a person or with his consent of a debt or other right enforceable against him personally or against property of which he was or might become competent to dispose, or to charge or burden for his own benefit, shall be deemed for the purposes of the enactments relating to estate duty, including this Part of this Act, to have been a disposition made by that person, and in relation to such a disposition the expression "property" in the said enactments, shall include the debt or right created.

(2) The extinguishment at the expense of the deceased of a debt or other right shall be deemed for the purposes of the said enactments to have been a disposition made by the deceased in favour of the person for whose benefit the debt or right was extinguished, and in relation to such a disposition the expression "property" in the said enactments shall include the benefit conferred by the extinguishment of the debt or right.

(3) The proviso to section four of the Finance Act, 1894 (which excepts from aggregation property in which the deceased never had an interest) shall not have effect in relation to property passing on the death of the deceased

which consists of a debt or right or benefit that is treated as property by virtue of this section.

Estate duty in respect of deceased's benefits from certain companies.

46. *Charge on company's assets in respect of deceased's benefits therefrom.*—(1) Where a person dying after the commencement of this Act has made to a company to which this section applies a transfer of any property (other than an interest limited to cease on his death or property which he transferred in a fiduciary capacity), and any benefits accruing to the deceased from the company accrued to him in the [five years] ending with his death, the assets of the company shall be deemed for the purposes of estate duty to be included in the property passing on his death to an extent determined, in accordance with sub-section (2) of this section by reference to the proportion that the aggregate amount of the benefits accruing to the deceased from the company bore to the net income of the company.

[(2) The extent to which the assets of the company are to be deemed to be included as aforesaid shall be the proportion ascertained by comparing the aggregate amount of the benefits accruing to the deceased from the company in the last five accounting years with the aggregate amount of the net income of the company for the said years :

Provided that—

(*a*) where, in any of the said accounting years, the company sustained a loss, the amount of that loss shall be deducted in ascertaining the said aggregate net income of the company ;

(*b*) where the company came into existence in the last but three, or in the last but two, or in the last but one, or in the last, of the said accounting years, the references in this sub-section to the said accounting years shall be construed as references to the last four, the last three, the last two, or, the last, of those years, as the case may be.]

(3) The assets of the company which are deemed to be included in the property passing on the death of the deceased by virtue of this section shall include any assets thereof which have been disposed of or distributed by the company at any time between the beginning of the first of the accounting years aforesaid and the death of the deceased, either—

(*a*) in or towards satisfaction of rights attaching to shares in or debentures of the company, or

(*b*) otherwise howsoever except as follows, that is to say, by way of sale for full consideration in money or money's worth received by the company for its own use and benefit, or in or towards discharge of taxes or rates or other liability imposed by or under an enactment, or in or towards discharge of a fine or penalty or of a liability for tort incurred without collusion with the injured party,

including assets which have been so disposed of or distributed in a winding up, whether continuing at or completed before the death :

Provided that this sub-section shall not apply to assets disposed of or distributed by way of payments from which income tax was deductible, or which were assessible to income tax, of amounts not exceeding in the aggregate, as respects payments made in any accounting year or in the period between the end of the last accounting year and the death of the deceased, the amount of the income of the company for that year or period.

(4) This section shall have effect subject to and in accordance with the succeeding provisions of this Part of this Act, and the provisions contained

in the Seventh Schedule to this Act shall have effect for the purpose of supplementing and interpreting this section and the succeeding provisions of this Part of this Act.

(5) Sections thirty-four, thirty-six, and thirty-eight, of the Finance Act, 1930, shall not have effect in relation to a person dying after the commencement of this Act.

47. *Matters to be treated as benefits to deceased from company.*—(1) The following shall be treated as benefits accruing to the deceased from the company, that is to say—

(*a*) any income of the company, and any periodical payment out of the resources or at the expense of the company, which the deceased received for his own benefit whether directly or indirectly, and any enjoyment in specie of land or other property of the company or of a right thereover which the deceased had for his own benefit whether directly or indirectly ;

(*b*) any such income or payment or enjoyment which the deceased was entitled to receive or have as aforesaid ; and

(*c*) any such income or payment or enjoyment which the deceased could have become entitled to receive or have as aforesaid by an exercise in the [five years] ending with his death of any power exercisable by him or with his consent ;

and where the deceased could, by an exercise in the said [five years] of any such power as aforesaid, have become entitled to receive as aforesaid any payment out of the resources or at the expense of the company not being a periodical payment, but did not in fact receive or become entitled to receive that payment, there shall be treated as a benefit accruing to the deceased from the company interest on that payment at the average rate from the earliest date on which he could have become entitled to receive it.

(2) In this Part of this Act the expression "periodical payment" means a payment by way of dividend or interest, a payment by way of remuneration not being a single lump sum payment, and any other payment being one of a series of payments, whether inter-connected or not, whether of the same or of varying amounts, and whether payable at regular intervals or otherwise.

(3) The amounts to be taken into account for the purposes of sub-section (2) of section forty-six of this Act in respect of benefits accruing to the deceased from the company, and the time at which such a benefit is to be treated for the purposes of that section as having accrued to him, shall be determined in accordance with the provisions of paragraphs 1 and 2 respectively of the Seventh Schedule to this Act.

48. *Surrender of title to, or of power to obtain, benefits.*—(1) Subject to the provisions of sub-section (3) of this section, if the deceased has made, whether for value or not, a surrender of his title to receive any such income or payment or enjoyment as is mentioned in the last preceding section, or of any such power as is therein mentioned, the last preceding section shall have effect as if the surrender had not been made.

(2) The deceased shall be deemed to have made such a surrender as aforesaid if a right which he had to receive any such income or payment or enjoyment as aforesaid, or if any such power as aforesaid, has been extinguished or suspended by the effect solely or partly of any disposition made by him or with his consent of shares in or debentures of a company or of any other property or right, or of the exercise or the leaving unexercised by him or with his consent of any power or right, or of the extinguishment or suspension by him or with his consent of any power or right, otherwise than in a fiduciary

capacity, or if apart from such a disposition or other act or omission he would have become entitled to receive any such income or payment or enjoyment as aforesaid but by the effect solely or partly thereof he did not become entitled to receive it.

(3) This section shall not apply to a surrender made bona fide before the beginning of the [five years] ending with the death of the deceased (or, if it was made for public or charitable purposes, before the beginning of the year ending with his death) if the deceased was at all times during those [five years], or during that year, as the case may be, entirely excluded from receiving, or being entitled to receive, or having any capacity by an exercise of any power exercisable by him or with his consent to receive, any periodical payment by virtue of the surrender or of any associated operations of which the surrender was one.

49. *Determination of net income of company.*—The income of the company for any accounting year, or for the period between the end of the last accounting year and the death of the deceased, shall be determined by computing the amount of the income of the company from each source in accordance with the provisions of the Income Tax Acts relating to the computation of income from such a source (subject to the modification that the computation shall be made by reference to the actual income for that year or period, and not by reference to the income for any other period), and the net income of the company for any accounting year shall be determined by deducting from the income of the company for that year the aggregate of the amounts of—

(*a*) the liabilities of the company for that year in respect of any kind of payment from which income tax is deductible, or which is assessable to income tax, but excluding liabilities in respect of any dividend on shares of or interest on debentures in the company and liabilities incurred otherwise than for the purposes of the business of the company wholly and exclusively ;

(*b*) any income of the company for that year of a kind in respect of which repayment of income tax can be claimed under section thirty-three of the Income Tax Act, 1918, or otherwise ; and

(c) any deduction or set off that could have been claimed for income tax purposes if the computation of the income of the company had been made by reference to the assessable income for that year and not to the actual income :

Provided that there shall be excluded from the computation of the income of the company any income thereof which was neither bona fide earned in the ordinary course of business nor the produce of income-yielding assets held by it.

50. *Determination of value of assets of company.*—(1) In determining the value of the estate for the purpose of estate duty the provisions of subsection (1) of section seven of the Finance Act, 1894, as to making allowance for debts and incumbrances shall not have effect as respects any debt or incumbrance to which assets of the company passing on the death by virtue of section forty-six of this Act were liable, but the Commissioners shall make an allowance from the principal value of those assets for all liabilities of the company (computed, as regards liabilities which have not matured at the date of the death, by reference to the value thereof at that date, and, as regards contingent liabilities, by reference to such estimation as appears to the Commissioners to be reasonable) other than—

(*a*) liabilities in respect of shares in or debentures of the company ; and

(*b*) liabilities incurred otherwise than for the purposes of the business of the company wholly and exclusively.

(2) In estimating the principal value of the said assets the Commissioners shall fix the price thereof on the basis of a sale of the business of the company as a going concern.

(3) Where the said assets include any distributed assets, if partial consideration (other than the extinguishment, or an alteration, of rights attaching to shares in or debentures of a company to which section forty-six of this Act applies) was given for the distribution in money or money's worth received by the company for its own use and benefit, a further allowance shall be made, in addition to the allowances specified in sub-section (1) of this section, of an amount equal to the value of the consideration given.

(4) For the purpose of the estimation of the principal value of any distributed assets sub-section (5) of section seven of the Finance Act, 1894, and sub-section (2) of section sixty of the Finance (1909-10) Act, 1910, shall have effect with the substitution for the reference therein to the time of the death of the deceased of a reference to the time of the distribution, and effect shall be given to the proviso to the said sub-section (2) (which relates to depreciation by reason of the death of the deceased) as at the time of the distribution only, due regard being had to the expectation of life of the deceased at that time.

51. *Limitation on, and prevention of duplication, of charge.*—(1) If it is shown to the satisfaction of the Commissioners that—

(*a*) the value of all such property as is mentioned in sub-section (1) of section forty-six of this Act, of which the deceased made a transfer to the company, together with an amount equal to any excess of interest at the average rate on the value thereof from the date or respective dates of transfer to the death of the deceased over the aggregate amount of the benefits received by the deceased by virtue of the transfer, is less than—

(*b*) the value on which estate duty would be chargeable on the death under the said section if all benefits accruing to him from the company other than the benefits received by him by virtue of the transfer were disregarded,

an amount equal to the deficiency shall be deducted from the proportion of the value of the company's assets that corresponds to the benefits received by him by virtue of the transfer.

References in this sub-section to benefits received by the deceased by virtue of a transfer shall be construed as references to benefits accruing to him from the company which he received or had as consideration for the transfer, or in consequence of his having received as consideration therefor shares or debentures or other property which produced any of those benefits.

[(1A) Where the following conditions are satisfied, that is to say, that the deceased has, within five years before his death, disposed of any shares in or debentures of the company for consideration in money or money's worth paid to him for his own use or benefit, and that any benefits accrued to the deceased from the company by virtue of those shares or debentures or by virtue of a power's having been exercisable by him or with his consent in relation to those shares or debentures, then :

(*a*) if the value of the said consideration is equal to or greater than the proportion of the value of the company's assets that corresponds to the benefits that so accrued to him, or if the Com-

missioners are satisfied that the said proportion would not, if fully ascertained, be found to be substantially in excess of the vaule of the said consideration, duty on the said proportion shall not be payable ;

(*b*) in any other case, the amount on which duty is to be charged in respect of the said proportion shall be reduced by the amount of the value of the said consideration ;

Provided that, in the case of any shares or debentures:—

(i) this sub-section shall not apply where estate duty is payable on the death on their value or any part thereof or would be so payable but for an exemption from estate duty ; and

(ii) for the purpose of determining to what extent, if any, the disposition of them satisfies the conditions of this sub-section, section fifty-six of this Act (which relates to transactions through the medium of a company) shall apply as it applies for the purposes of section three of the Finance Act, 1894.]

[(2) Where the following conditions are satisfied, that is to say that any benefits accrued to the deceased from the company by virtue of any interest that he at any time had in shares in or debentures of the company, or by virtue of a power's having at any time been exercisable by him or with his consent in relation to shares in or debentures of the company, and apart from this sub-section estate duty would be payable on the death both on the value of those shares or debentures by virtue of any of any of the enactments relating to that duty other than section forty-six of this Act and on the proportion of the value of the company's assets that corresponds to the benefits that so accrued to him by virtue of that section, then—

(*a*) if the value of the shares or debentures is equal to, or greater than, the said proportion, or if the Commissioners are satisfied that the said proportion would not, if fully ascertained, be found to be substantially in excess of the value of the shares or debentures, duty on the said proportion shall not be payable ;

(*b*) in any other case, the amount on which duty is to be charged in respect of the said proportion shall be reduced by the amount of the value of the shares or debentures.

(2A) Where the conditions set out in the last preceding sub-section would be satisfied but for the fact that, by reason of an exemption from estate duty (not being an exemption on the ground that the deceased or other person having an interest in the shares or debentures ceasing on the death of the deceased had only an interest as the holder of an office), that duty is not payable on the value of the shares or debentures, paragraphs (*a*) and (*b*) of that sub-section shall apply as if that exemption did not operate and as if the duty had been payable on the value of the shares and debentures accordingly:

Provided that where—

(*a*) the exemption in question depends on a payment of any duty on an earlier death, or does not depend on such a payment but depends wholly or partly on any dispositions having been made ; and

(*b*) since the date of that death or disposition, as the case may be, the shares or debentures have been substantially increased in value by reason of a transfer of property to any company by any person or by reason of the extinguishment of, or any alteration of the rights attaching to, shares in or debentures of any company,

then, unless the exemption takes the form of a deduction from the value of the shares or debentures of a fixed amount which is independent of the value of the shares or debentures, the references in paragraphs (*a*) and (*b*) of the last preceding sub-section to the value of the shares or debentures therein mentioned shall have effect as if they were references to the value thereof reduced to the extent to which, in the opinion of the Commissioners, that value is attributable to that transfer, extinguishment or alteration.

(2B) Where, by reason of an exemption from estate duty, that duty is payable on part only of the value of the shares or debentures, sub-section (2) of this section shall, with the necessary adaptations, be applied to the part of the value of the shares or debentures on which duty is payable and sub-section (2A) of this section shall be applied to the part of the value of the shares or debentures affected by the exemption ; and, where there are two or more exemptions from estate duty each of which operates on part only of the value of the shares or debentures and the exemptions are such that the said sub-section (2A) would operate differently in relation to them, then, whether or not there is any part of the value of the shares or debentures on which estate duty is payable, the said sub-section (2A) shall, with the necessary adaptations, be applied separately in relation to the parts of the value of the shares or debentures affected by each exemption.

(2C) In this section the expression "exemption from estate duty" includes any exemption conferred by any provision of the enactments relating to estate duty which has the effect of exempting property, in whole or in part, from the duty, whether that provision takes the form that the property is not to be deemed to pass, or the form that the duty is not to be payable, or the form that a deduction is to be made from the value of the property, or any other form ; and the reference in paragraph (*b*) of the proviso to sub-section (2A) of this section to an increase in the value of the shares of debentures includes, where those shares or debentures have been acquired in substitution for any other property, any increase in the value of any property which those shares or debentures directly or indirectly represent.]

(3) References in this section to the proportion of the value of the company's assets that corresponds to any particular benefits shall be construed as references to so much of the value on which estate duty is chargeable on the death by virtue of section forty-six of this Act as is chargeable by reason of the bringing of those benefits into the computation made under sub-section (2) of that section.

(4) So much of any income or periodical payment or enjoyment of a kind mentioned in section forty-seven of this Act as is shown to the satisfaction of the Commissioners to have represented, or to have been such that it would if received have represented, reasonable remuneration to the deceased for any services rendered by him as the holder of an office under the company shall, notwithstanding anything in that section, not be treated for the purposes of this Part of this Act as a benefit accruing to the deceased from the company ; and any liability of the company in respect of the remuneration of any person as the holder of an office under the company shall be treated for the purposes of this Part of this Act as incurred for the purposes of the business of the company wholly and exclusively to the extent to which it is shown to the satisfaction of the Commissioners that the amount thereof was reasonable, and to that extent only.

52. *Aggregation.*—For the purposes of section four of the Finance Act, 1894, the deceased shall be deemed to have had an interest in the property deemed by virtue of section forty-six of this Act to be included in the property passing on his death.

53. *Duty to give information to Commissioners on death.*—(1) The company shall be under obligation to inform the Commissioners, within one month from the date of the death of the deceased, of the death, of the fact that the deceased made a transfer of property to the company, and of the fact that benefits accrued to the deceased from the company, and every person who was an officer of the company at that date, or, if the company has been wound up and dissolved before that date, who was an officer of the company at any time, shall be under the like obligation as respects such of the facts aforesaid as are within his knowledge, unless he knows, or has reasonable cause for believing, that the information in question has already been given to the Commissioners by the company or some other person.

(2) If the company or any such person as aforesaid who is under obligation by virtue of the preceding subsection to give any information to the Commissioners makes default in the performance of that obligation, the defaulter shall be liable to a penalty not exceeding five hundred pounds.

54. *Collection and incidence of duty under s.* 46.—(1) The following persons shall be accountable for the duty payable on the death of the deceased by virtue of section forty-six of this Act, that is to say:—

(*a*) the company;

(*b*) any person (other than a bona fide purchaser for full consideration in money or money's worth received by the company for its own use and benefit) who receives, whether directly from the company or otherwise, or disposes of, any assets which the company had, whether as capital or as income, at the death or at any time thereafter;

(*c*) any person who received any distributed assets of the company on their distribution:

Provided that a person shall not,—

(i) by virtue of paragraph (*b*) of this subsection, be accountable in respect of any assets for any duty in excess of the value of those assets, or

(ii) by virtue of paragraph (*c*) of this subsection, be accountable in respect of any assets for more than a part of the duty bearing to the whole thereof the same proportion that the value of the distribution of those assets bears to the principal value of the assets of the company passing on the death by virtue of section forty-six of this Act after making the allowances to be made under section fifty of this Act.

For the purposes of this subsection the expressions "distributed assets" and "assets of the company passing on the death" do not include any distributed assets of the company which the deceased received on their distribution; and a person who, having received any distributed assets of the company, has died before the deceased shall be deemed to have been a person accountable by virtue of paragraph (*c*) of this subsection.

(2) Where a company incorporated outside the United Kingdom is accountable for any duty by virtue of the preceding subsection or of this subsection, every person who is a member of that company at the death shall also be accountable for a rateable part of that duty in proportion to the value of his interest in that company.

(3) A person accountable for any duty by virtue of this section shall, for the purpose of raising and paying the duty, have all the powers conferred on accountable parties by Part I of the Finance Act, 1894.

(4) On a winding up of the company subsection (1) of section two hundred and sixty-four of the Companies Act, 1929 (which determines what debts shall have priority over other debts in a winding up) shall have effect as if there were included in paragraph (*a*) of that subsection a reference to any duty payable in respect of assets of the company passing on a death by virtue of section forty-six of this Act, and section seventy-eight of the Companies Act, 1929, shall have effect accordingly.

(5) The duty payable on the death of the deceased by virtue of section forty-six of this Act shall be a first charge by way of floating security on the assets which the company had at the death or has at any time thereafter, and any part of the duty for which by virtue of paragraph (*c*) of sub-section (1) of this section any person is accountable in respect of any distributed assets shall be a first charge also on those assets :

Provided that nothing in this sub-section shall operate to make any property chargeable as against a bona fide purchaser thereof for valuable consideration without notice.

(6) Where any duty has been—

(*a*) paid by a person accountable therefor by virtue only of paragraph (*c*) of sub-section (1) of this section ; or

(*b*) raised by virtue of sub-section (5) of this section out of any distributed assets charged therewith ;

that person or, as the case may be, the person who was entitled to those assets subject to the charge, may (without prejudice to any right of contribution or indemnity which he may have apart from this sub-section) recover the amount of the duty so paid or raised as aforesaid from any person who is accountable therefor otherwise than by virtue of the said paragraph (*c*).

(7) No part of the duty paid by the company shall be recoverable by it from any person on the ground only that he is entitled to any interest in, or to any sum charged on, the assets which the company had at the death of the deceased.

(8) The following provisions of the Finance Act, 1894, shall not have effect in relation to the duty payable by virtue of section forty-six of this Act, that is to say—

(*a*) so much of sub-section (2) of section six as relates to payment of estate duty on personal property of which the deceased was competent to dispose at his death ; and

(*b*) so much of sub-section (3) of section eight as relates to the accountability of the executor of the deceased in respect of personal property of which the deceased was competent to dispose at his death, and sub-section (4) of that section ;

and sub-section (1) of section nine of the said Act shall have effect in relation to the estate as if the property passing by virtue of section forty-six of this Act had been property passing to the executor as such.

(9) Sub-section (5) of this section in its application to Scotland shall have effect as if the provisions thereof relating to a charge by way of floating security on the assets of the company were omitted.

General provisions as to certain companies.

55. *Valuation for estate duty of shares and debentures of certain companies.*—(1) Where for the purposes of estate duty there pass, on the death of a person dying after the commencement of this Act, shares in or debentures of a company to which this section applies, then if—

(*a*) the deceased had the control of the company at any time during the [five years] ending with his death ; or

(*b*) dividends which were declared by the company for any period falling wholly or partly within those [five years], or which, not having been declared for any particular period, were declared at a time within those [five years], together with any amounts which accrued due during any period falling wholly or partly within those [five years] for interest on debentures of the company, are, as to amounts forming in the aggregate more than one-half of the total amount of such dividends and interest, to be treated by virtue of any of the provisions of sections forty-seven and forty-eight of this Act as benefits accruing to the deceased from the company, or would have fallen to be so treated if the deceased had made a transfer of property to the company ; or

(*c*) the deceased had at any time during those [five years] a beneficial interest in possession in shares in or debentures of the company, or in both, of an aggregate nominal amount representing one-half or more of the aggregate nominal amount of the shares in and debentures of the company then issued and outstanding, and no other person had at that time the control of the company ;

the principal value of the shares or debentures, in lieu of being estimated in accordance with the provisions of sub-section (5) of section seven of the Finance Act, 1894, shall be estimated by reference to the net value of the assets of the company in accordance with the provisions of the next succeeding sub-section.

(*2*) For the purposes of such ascertainment as aforesaid—

(*a*) the net value of the assets of the company shall be taken to be the principal value thereof estimated in accordance with the said sub-section (5), less the like allowance for liabilities of the company as is provided by sub-section (1) of section fifty of this Act in relation to the assets of a company passing on a death by virtue of section forty-six of this Act, but subject to the modification that allowance shall be made for such a liability as is mentioned in paragraph (*b*) of that sub-section unless it also falls within paragraph (*a*) thereof ;

(*b*) the aggregate value of all the shares and debentures of the company issued and outstanding at the death of the deceased shall be taken to be the same as the net value of the assets of the company ;

(*c*) in a case in which there are both shares in and debentures of the company issued and outstanding at the death, or different classes of either, the net value of the assets of the company shall be apportioned between them with due regard to the rights attaching thereto respectively ; and

(*d*) the value of any share, or of any debenture, or of a share or debenture of any class, shall be a rateable proportion, ascertained by reference to nominal amount, of the net value of the assets of the company as determined under paragraph (*a*) of this subsection, or, in the case mentioned in paragraph (*c*) of this subsection, of the part thereof apportioned under that paragraph to the shares of the company, or to its debentures, or to that class thereof, as the case may be.

(3) For the purposes of this section a person shall be deemed to have control of a company at any time if he then had—

(*a*) the control of powers of voting on all questions, or on any particular question, affecting the company as a whole which if exercised would have yielded a majority of the votes capable of being exercised thereon ; or

(*b*) the capacity to exercise, or to control the exercise of any of the following powers, that is to say, the powers of a board of directors or of a governing director of the company, power to nominate a majority of directors or a governing director thereof, power to veto the appointment of a director thereof, or powers of a like nature ;

or if he could have obtained such control or capacity by an exercise at that time of a power exercisable by him or with his consent.

(4) This section shall not apply to the valuation of shares or debentures of a class as to which permission to deal has been granted by the committee of a recognised stock exchange in the United Kingdom and dealings in the ordinary course of business on that stock exchange have been recorded during the year ending with the death of the deceased, and, in making an apportionment under paragraph (*c*) of sub-section (2) of this section in the case of a company having shares or debentures of such a class, the part of the value of the assets of the company to be apportioned to shares or debentures of that class shall be determined by reference to the prices recorded on such dealings.

(5) Control of a company which a person had in a fiduciary capacity shall be disregarded for the purposes of this section.

(6) In this section references to the assets of a company shall be construed as references to the assets that it had at the death of the deceased.

(7) Section thirty-seven of the Finance Act, 1930, shall not have effect in relation to a person dying after the commencement of this Act.

56. *Limitation of exceptions for consideration, and for exclusion of deceased, where company concerned.*—(1) For the purposes of section three of the Finance Act, 1894 (which relates to exceptions for transactions for money consideration), if a company to which this section applies was concerned in a transaction in relation to which it is claimed that the provisions of that section have effect, or in any one or more of associated operations of which that transaction formed one, those provisions shall have effect in relation thereto if and only if, and to the extent only to which, the Commissioners are satisfied that those provisions would have had effect in the following circumstances, namely, if the assets of the company had been held by it on trust for the members thereof and any other person to whom it is under any liability incurred otherwise than for the purposes of the business of the company wholly and exclusively, in accordance with the rights attaching to the shares in and debentures of the company and the terms on which any such liability was incurred, and if the company had acted in the capacity of a trustee only with power to carry on the business of the company and to employ the assets of the company therein.

(2) Where a company to which this section applies was concerned in the disposition or determination of an interest limited to cease on a death effected or suffered as mentioned in sub-section (2) of section forty-three of this Act, or in a surrender made as mentioned in sub-section (3) of section forty-eight of this Act, or was concerned in any one or more of associated operations of which the disposition or determination or surrender formed one, the conditions as to the entire exclusion of the person who had the interest or of the deceased,

and of any benefit to him, specified in the said sub-section (2) or in the said sub-section (3) as the case may be, shall be treated as having been satisfied if and only if they would have been so treated in the circumstances aforesaid.

57. *Information for purposes of s.* 46 *and s.* 55.—(1) The provisions of sub-section (5) of section eight of the Finance Act, 1894 (which relate to the delivery of particulars relating to property forming part of an estate in respect of which estate duty is leviable on a death) shall, on a death on which it appears to the Commissioners that section forty-six or fifty-five of this Act has effect, appy to the company, and to any other company to which the said section forty-six or fifty-five, as the case may be, applies, and to every person who is or was at any time an officer or auditor of that company or of any such other company, as those provisions apply to a person who has administered any part of the estate.

(2) Sub-section (6) of section eight of the Finance Act, 1894 (which relates to the penalty for a failure to comply with any of the provisions of sub-section (5) of that section) shall have effect as respects a failure to comply with any of the said provisions as applied by the preceding sub-section with the substitution of five hundred pounds for one hundred pounds.

(3) An order may be made against any person who fails to comply with any of the provisions of sub-section (5) of section eight of the Finance Act, 1894, as applied by sub-section (1) of this section requiring him to comply with those provisions, in like manner as an order to deliver an account may be made against any person who is accountable for succession duty or legacy duty, and the provisions of section fifty-five of the Crown Suits, &c. Act, 1865, and in Scotland the provisions of section forty-seven of the Succession Duty Act, 1853, shall apply accordingly subject to the necessary modifications.

Interpretation and definitions.

58. *Interpretation of estate duty provisions.*—(1) The companies to which sections forty-four, forty-six, fifty-five and fifty-six of this Act respectively apply are any company which, at any relevant time, was, or would on the assumptions hereinafter mentioned have been deemed, for the purposes of sub-section (6) of section twenty-one of the Finance Act, 1922, to be under the control of not more than five persons, and for the purposes of this sub-section—

(*a*) the expression "relevant time" means any time during the period ending with the death of the deceased and beginning, as respects the said section fifty-five, [five years] before his death, and, as respects each of the others of the said sections of this Act, at the date of the disposition transfer or other transaction or event relevant for the purposes of that section, or, if that disposition transfer or other transaction or event was one of associated operations, at the date of the earliest of those operations ; and

(*b*) the assumptions hereinbefore mentioned are—

(i) the sub-section (3) of section nineteen of the Finance Act, 1936, had, with any necessary adaptations, applied in relation to companies incorporated outside the United Kingdom as it applies in relation to companies other than companies within the meaning of the Companies Act, 1929, or any corresponding enactment in force in Northern Ireland, and

(ii) that, subject as aforesaid, the provisions of section twenty-one of the Finance Act, 1922, and of any other Act relating to the said section twenty-one, as those provisions were in force immediately before the passing of this Act, had always been in force and so in force and had remained so in force until the date of the death.

(2) A person shall be deemed for the purposes of this Part of this Act to have made a transfer of property to a company if the property came to be included in the resources of the company by the effect of a disposition made by him or with his consent or of any associated operations of which such a disposition formed one.

(3) A person shall be deemed to have received or had any payment, income, enjoyment, assets, or interest, the receipt or having whereof by him is relevant for the purposes of this Part of this Act, if any of the following conditions have been satisfied in relation thereto, that is to say,—

(*a*) if the relevant payment or other matter has been applied in any manner for the benefit of that person, or has been dealt with by that or any other person in any manner calculated to cause it to inure for the benefit of that person at any time, whether in the form of income or not, or if any property which was or would be available for the purpose by reason of the effect or successive effects of any one or more of associated operations relating to the relevant payment or other matter has been so applied or dealt with ;

(*b*) if any advantages received or to be received at any time by that person have been provided out of that payment or other matter, or out of any such property as aforesaid ;

(*c*) if that person became able in any manner to control the application of the relevant payment or other matter, or any such property as aforesaid, otherwise than in a fiduciary capacity ;

(*d*) if the relevant payment or other matter, or any such property as aforesaid, has been applied in any manner so as to increase the value to that person of any property in which he was beneficially interested ; or

(*e*) as respects such income as is mentioned in sub-section (1) of section forty-seven of this Act, if the receipt by, or accrual to, the company of that income operated in any manner so as to increase the value to that person of any property in which that person was beneficially interested, so however that the amount of the income which that person is to be treated as having received by virtue of this paragraph shall be limited to the amount of the increase in value of the property in question ;

and references in this Part of this Act to the deceased's receiving or having, or being or becoming entitled to receive or have, any such payment or other matter as aforesaid shall be construed accordingly.

(4) References in this Part of this Act to a disposition's being made by any person, to a power's being exercised or exercisable by any person, or to any other act's being done by any person, include references to its being made, or being exercised or exercisable, or being done, by him and another jointly or by another at his direction or by a company of which he had control within the meaning of sub-section (3) of section fifty-five of this Act, whether with or without the consent of any other person ; references importing an omission on the part of any person in relation to any such matter as aforesaid shall be construed in like manner ; and references in relation to any such matter

as aforesaid to its being made, or being exercised or exercisable, or being done or omitted, with the consent of any person include references to its being made, or being exercised or exercisable, or being done or omitted, at his request or with or subject to his acquiescence.

(5) References in this Part of this Act to a person having any power or control or doing any act in a fiduciary capacity shall be construed as references to his having that power or control or doing that act in a fiduciary capacity imposed on him otherwise than by a disposition made by him and in such a capacity only.

(6) References in the enactments relating to estate duty (including this Part of this Act) to an interest's being limited to cease on a death shall be construed as including references to its being subject to a limitation, in whatsoever form, having the effect of providing in the alternative for its cesser on the death or on the occurrence of some event, or the expiration of some period, before the death.

59. *Definitions for purposes of Part IV.*—In this Part of this Act, unless the context otherwise requires, the following expressions have the meanings hereby assigned to them respectively, that is to say—

"Accounting year" has the meaning assigned to it by paragraph 6 of the Seventh Schedule to this Act ;

"Assets" includes goodwill ;

"Associated operations" means any two or more operations of any kind being,—

(*a*) operations which affect the same property, or one of which affects some property and the other or others of which affect property which represents, whether directly or indirectly, that property, or income arising from that property, or any property representing accumulations of any such income ; or

(*b*) any two operations of which one is effected with reference to the other, or with a view to enabling it to be effected or to facilitating its being effected, and any third operation having a like relation to either of those two, and any fourth operation having a like relation to any of those three, and so on ;

whether those operations are effected by the same person or by different persons, whether they are connected otherwise than as aforesaid or not, and whether they are contemporaneous or any of them precedes or follows any other ;

["Average rate" means, in relation to a company, a rate per cent. per annum, the percentage being ascertained by—

(*a*) computing the aggregate amount of the net income of the company for the relevant accounting years (a deduction being made, where the company sustained a loss in any of those years, of the amount of the loss) ;

(*b*) dividing that amount by the number of those years ; and

(*c*) comparing the result with the principal value of the assets of the company passing on the death of the deceased by virtue of section forty-six of this Act after making the allowances to be made under section fifty of this Act] ;

"Company" includes any body corporate, wheresoever incorporated ;

"Debenture" means, in relation to a company, any obligation of the company in respect of any loan capital issued by the company otherwise than as consideration for a loan made to it in the ordinary course

of a banking business, or in respect of any debt incurred by the company—

(*a*) for any money borrowed by the company, otherwise than by way of temporary loan made in the ordinary course of a banking business ;

(*b*) for any transfer of capital assets made to the company by any person, unless the obligation is one resulting from a dealing with a person who transferred such assets to the company in, and on terms consistent with, the ordinary course of a business carried on by him ;

(*c*) without consideration, or for consideration the value of which to the company at the time when the debt was incurred was substantially less than the value at that time of the debt (including any premium thereon) ; or

(*d*) where the debt was of such a nature that it would, in the ordinary course of business and apart from some special arrangement, have carried interest, if the debt did not carry interest or carried interest at a rate which was either unreasonably high or unreasonably low ;

"Disposition" includes any trust, covenant, agreement or arrangement, whether made by a single operation or by associated operations, and also, in relation to shares in or debentures of a company, the extinguishment or any alteration of rights attaching thereto, whether effected by a single operation or by associated operations ;

"Distributed assets" means, in relation to a company, assets of the company to which sub-section (3) of section forty-six of this Act applies which were disposed of or distributed by the company as mentioned in that sub-section, and "value of the distribution" means, in relation to any distributed assets, the value thereof or, if partial consideration (other than the extinguishment, or an alteration, of rights attaching to shares in or debentures of a company to which that section applies) was given for the distribution in money or money's worth received by the company for its own use and benefit, the value thereof less the value of the consideration given ;

"Dividend" includes a bonus which would be treated as income for the purposes of the Income Tax Acts ;

"Member" means, in relation to a company, a holder in his own right of any share in or debenture of the company, and a person interested in any share in or debenture of the company held, whether by himself or another, otherwise than in the holder's own right ;

"Officer" means, in relation to a company, any person who exercises the functions of a director, manager, secretary or liquidator of the company;

"Payment" includes a transfer of property and a set-off or release of an obligation, and references to the amount of a payment include, in relation to property transferred or to an obligation set-off or released, references to the value thereof ;

"Periodical payment" has the meaning assigned to it by sub-section (2) of section forty-seven of this Act ;

"Power" includes any right or power exercisable by virtue of the holding of shares in or debentures of a company, and any right or power to procure an issue of shares in or debentures of a company ; and

"Tort" in relation to Scotland means delict or quasi delict.

PART V

MISCELLANEOUS

60. *Extension of power of Treasury to attach exemptions from taxation to securities.*—(1) The power of the Treasury under section twenty two of the Finance (No. 2) Act, 1931, to issue securities with the condition as to exemption from taxation specified in that section shall extend to the issuing of securities with that condition so modified, whether as to the extent of the exemption or the cases in which the exemption is to operate, as the Treasury may specify in the terms of the issue.

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64. *Remission of death duties in cases of members of the crews of vessels killed in war.*—(1) Sub-section (1) of section thirty-eight of the Finance Act, 1924, (which relates to relief in respect of death duties payable on the deaths of members of His Majesty's Forces who die from wounds inflicted while on active service or from any of the other causes therein mentioned) shall have effect in relation to masters and members of the crews of ships and fishing boats, and pilots, dying (whether before or after the commencement of this Act) from causes arising during the period of the present emergency out of the operations of war, as it has effect in relation to members of His Majesty's Forces dying from such wounds or other causes as are therein mentioned, with this qualification, that the Treasury shall act on the recommendation of the Minister of Shipping instead of that of the Secretary of State or the Admiralty.

(2) In the case of deaths from such causes as are mentioned in the said section thirty-eight arising during the period of the present emergency of persons to whom that section applies, and of deaths from such causes as are mentioned in the preceding sub-section arising during that period of persons to whom that sub-section applies, where the Commissioners of Inland Revenue are satisfied that estate duty has become chargeable on any property passing on such a death and that subsequently estate duty has again become chargeable on the same property or any part thereof on another such death, being the death of a person to whom that property or that part thereof passed on the earlier death, the whole of the death duties payable on the later death on that property or that part thereof shall be remitted or, if paid, shall be repaid, and that property or that part thereof shall not be aggregated with any other property passing on the later death for the purpose of determining the rate of estate duty.

(3) In this section the expression "pilot" has the meaning assigned to it by section seven hundred and forty-two of the Merchant Shipping Act, 1894, and "the period of the present emergency" means the period beginning on the third day of September, nineteen hundred and thirty-nine and ending on such date as may be declared by His Majesty under the Courts (Emergency Powers) Act, 1939, to be the date on which the emergency that was the occasion of the passing of that Act came to an end.

65. *Short title, construction, extent and repeal.*—(1) This Act may be cited at the Finance Act, 1940.

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(5) Part IV of this Act shall be construed as one with Part I of the Finance Act, 1894.

(6) Any reference in this Act to any other enactment shall, unless the contrary is expressly provided or the context otherwise requires, be construed as a reference to that enactment as amended by any subsequent enactment, including this Act.

(7) Such of the provisions of this Act as relate to matters with respect to which the Parliament of Northern Ireland has power to make laws shall not extend to Northern Ireland.

SEVENTH SCHEDULE

Sections 46 & 47.

PROVISIONS SUPPLEMENTARY TO SECTION FORTY-SIX AND SUCCEEDING PROVISIONS OF PART IV

Amounts to be taken into account in respect of benefits, and time when benefits are to be treated as accruing.

1.—(1) The provisions of this paragraph shall have effect for the purpose of determining the amounts to be taken into account, for the purposes of sub-section (2) of section forty-six of this Act, as the amounts of benefits accruing to the deceased from the company.

(2) No amount shall be taken into account more than once.

(3) Where an amount is taken into account by reference to the deceased's having been entitled to a benefit which he did not in fact receive, or by reference to a power which was not in fact exercised or was surrendered, due regard shall be had to the effect that his receiving the benefit, or the powers being exercised, would have had in relation to other benefits.

(4) The amounts that are to be taken into account by reference to the deceased's having been entitled to a benefit which he did not in fact receive, or by reference to a power which was not in fact exercised or was surrendered, shall be such as would have fallen to be taken into account as benefits received by the deceased if he had acted in relation to the claiming of benefits and the exercise of powers during the (five years) ending with his death to his greatest financial advantage, due regard being had to any consideration which he would have had to give in respect of a claim to any benefit or the exercise of any power.

(5) In making for the purposes of the last preceding sub-paragraph a computation of any diminution of income which the deceased would have sustained by giving any such consideration as is therein mentioned, or of any increase of income which the company would have obtained from any such consideration to be given to the company, it shall be assumed that the consideration would have yielded income equal to interest at the average rate on the amount or value thereof.

(6) The amounts to be taken into account shall include any income-tax which the deceased paid or bore in respect of the benefits in question.

(7) The amount to be taken into account in respect of a benefit consisting of any enjoyment in specie of land or other property of the company or of a right thereover shall be the value of the enjoyment thereof for the period during which the benefit subsisted, and that value shall be calculated in the case of land by reference to the annual value of the land as ascertained for the purposes of income-tax chargeable under Schedule A.

2.—(1) The provisions of this paragraph shall have effect for the purpose of determining—

(a) whether a benefit accruing to the deceased from the company is to be treated as having accrued to him during the (five years) ending with his death, or during a particular accounting year, or at any other relevant time; and,

(b) the period during which a benefit consisting of any enjoyment in specie of land or other property of the company or of a right thereover is to be treated as having subsisted.

(2) A benefit consisting of income of the company or a periodical payment which the deceased received, or became entitled to (but did not in fact) receive, shall be treated as having accrued to him at the earliest time at which he could have obtained receipt thereof.

(3) A benefit consisting of income of the company or a periodical payment which the deceased could have become entitled to receive by an exercise in the (five years) ending with his death of a power which was not in fact exercised or was surrendered shall be treated as having accrued to him at the earliest time at which he could have obtained receipt thereof if he had acted as mentioned in sub-paragraph (4) of paragraph 1 of this Schedule.

(4) A benefit consisting of interest on such a payment other than a periodical payment as is mentioned in sub-section (1) of section forty-seven of this Act which the deceased could have become entitled to receive shall be treated as having accrued to him in any accounting year to the extent to which the period during which the interest is to be treated as accruing fell within that year.

(5) A benefit consisting of any such enjoyment in specie as aforesaid shall be treated as having accrued to the deceased in the said (five years) if any part of the period during which it subsisted fell within those years, and shall be treated as having accrued to him in any accounting year to the extent to which the period during which it subsisted fell within that year.

(6) A benefit consisting of any such enjoyment in specie as aforesaid shall be treated as having subsisted during the following period, that is to say—

(a) in the case of enjoyment that the deceased had, during the period for which he had it;

(b) in the case of enjoyment which he became entitled to (but did not in fact) have, during the period for which he could have had it;

(c) in the case of enjoyment which he could have become entitled to have by an exercise in the (five years) ending with his death of a power which was not in fact exercised or was surrendered, during the period for which he could have had it if he had acted as mentioned in sub-paragraph (4) of paragraph 1 of this Schedule.

Adjustments as to Distributed Assets and Additions to Assets.

3.—(1) Where the assets of the company passing on the death of the deceased by virtue of section forty-six of this Act include any distributed assets, or by reason of the company's having been wound up or dissolved before the death consist of distributed assets, the following provisions of this paragraph shall have effect.

(2) The net income of the company shall be determined as if the income of the company had included, or the company had had income equal to, interest on a sum equal to the value of each distribution at the average rate from the date thereof.

(3) If on any distribution the deceased received beneficially an interest in any of the distributed assets, the benefits accruing to the deceased from the company shall be ascertained as if the amount brought into the income of the company under the last preceding sub-paragraph by reference to the value of the distribution of those assets had been income of the company which the deceased was entitled to receive immediately on its accrual to the company, or, where the interest in those assets which the deceased received was less than an absolute interest, had been such income to an extent corresponding to the proportion which the value of the interest in those assets received by him bore to the value of those assets.

(4) Where sub-paragraph (3) of this paragraph has effect—

(a) the value on which, apart from this provision, estate duty would be payable on the death of the deceased by virtue of section forty-six of this Act, shall be reduced by an amount equal to the value of the distribution of the assets in question, or, where the interest in those assets which the deceased received was less than an absolute interest, by an amount equal to the proportion aforesaid of that value; and

(b) any amount which is treated as a benefit accruing to the deceased from the company by virtue of that sub-paragraph shall be treated for the purposes of sub-section (1) of section fifty-one of this Act as a benefit received by him.

4.—(1) Where the principal value of the assets of the company passing on the death of the deceased by virtue of section forty-six of this Act is increased by reason of an addition's having been made to the assets of the company, otherwise than by way of receipts representing income in respect of which the company was liable to pay or bear income-tax, between the beginning of the first of the relevant accounting years and the death of the deceased, either—

(a) in consideration of an issue of shares in or debentures of the company, or

(b) otherwise howsoever, except by way of purchase for full consideration in money or money's worth given by the company,

the following provisions of this paragraph shall have effect in relation to the added assets.

(2) The net income of the company shall be determined as if the income of the company had included interest on a sum equal to the value of the addition at the average rate from the beginning of the first of the relevant accounting years to the date of the addition.

(3) If a transfer of any of the added assets or of any interest in any of them was made to the company by the deceased, the benefits accruing to the deceased

from the company shall be ascertained as if the amount brought into the income of the company under the last preceding sub-paragraph by reference to the value of the addition of those assets had been income of the company which the deceased was entitled to receive immediately on its accrual to the company, or had been such income to an extent corresponding to the proportion which the value of the interest transferred bore to the value of those assets, as the case may be.

(4) Where sub-paragraph (3) of this paragraph has effect, if the deceased received as consideration for the addition of the assets in question an interest in any shares in or debentures of the company in respect of which estate duty would be payable on his death apart from anything in sub-section (2) of section fifty-one of this Act, any amount which is treated as a benefit accruing to him from the company by virtue of that sub-paragraph shall be treated for the purposes of the said sub-section (2) as a benefit accruing to him by virtue of his interest in those shares or debentures.

(5) In this paragraph the expression "value of the addition" means, in relation to any added assets, the value thereof or, if partial consideration (other than an issue of, or an alteration of rights attaching to, shares in or debentures of the company) was given therefor in money or money's worth out of the resources or at the expense of the company, the value thereof less the value of the consideration given.

Prevention of duplication of charge in respect of benefits and charge in respect of shares.

5.—For the purposes of sub-section (2) of section fifty-one of this Act, where the benefits that accrued to the deceased from the company in the relevant accounting years included benefits that accrued to him otherwise than as mentioned in that sub-section, but the deceased had at any time an interest in, or a power was at any time exercisable in relation to, shares in or debentures of the company in respect of which estate duty would be payable on his death apart from anything in that sub-section, and by virtue of that interest or power benefits accrued to the deceased from the company in those years, or would so have accrued to him if any payments had been made by virtue of rights attached to those shares or debentures, then—

(a) if the first-mentioned benefits consisted to any extent of payments made out of moneys which, if not so applied, could have been applied in increasing the last-mentioned benefits, or as payments which would have constituted such benefits; or

(b) if the first-mentioned benefits are brought into the computation made under sub-section (2) of section forty-six of this Act to the exclusion to any extent of the last-mentioned benefits;

the first-mentioned benefits shall to that extent be treated as if they had accrued to the deceased by virtue of his interest in, or of the power exercisable in relation to, the said shares or debentures.

"Accounting year."

6.—(1) The expression "accounting year" means if the company has, before the death of the deceased, made up accounts for a period of twelve months ending in the last year of his life, that period and each previous period of twelve months ending on the date corresponding to that to which the accounts were made up, or, if not, a period of twelve months ending on such date in the last year of his life as the Commissioners may determine and each previous period of twelve months ending on the date corresponding to the date determined.

(2) The expression "relevant accounting years" means the accounting years by reference to which the extent of the passing of the assets of the company is to be determined under section forty-six of this Act.

(3) Where an accounting year does not coincide with a period for which accounts of the company were made up, the Commissioners may, for the purpose of determining the income or net income of the company for that accounting year, divide any such period and make such apportionments and aggregations of the income of the company as may be necessary, so, however, that any apportionments so made shall be made in proportion to the number of months or fractions of months in the respective periods for which the apportionment is made.

THE FINANCE (No. 2) ACT, 1940
(3 & 4 GEO. 6, c. 48.)

[22nd August 1940.]

PART IV

ESTATE DUTY

16. *Increased rates of estate duty.*—In the case of persons dying after the twenty-third day of July, nineteen hundred and forty, the scale set out in the Sixth Schedule to this Act shall be substituted for the scale set out in the Second Schedule to the Finance Act, 1930, as the scale of rates of estate duty, and section twenty-three of the Finance (No. 2) Act, 1939, shall not apply.

17. *Effect of increase of rates on certain sales and mortgages.*—(1) Subject to the provisions of sub-section (2) of this section, where an interest in expectancy in any property has, whether before or after the passing of this Act, been bona fide sold or mortgaged for full consideration in money or money's worth, and the rates of estate duty in force in the case of a person dying when the interest falls into possession are higher than the rates in force in the case of a person dying at the time of the sale or mortgage, then—

(*a*) no other duty on that property shall be payable by the purchaser or mortgagee when the interest falls into possession than would have been payable if the rates of estate duty applicable had been the rates in force in the case of a person dying at the time of the sale or mortgage ; and

(*b*) in the case of a mortgage, any higher duty payable by the mortgagor shall rank as a charge subsequent to that of the mortgagee.

(2) Sub-section (1) of section fifty-six of the Finance Act, 1940 (which restricts the operation of the provisions of section three of the Finance Act, 1894, relating to transactions for full consideration, in the case of such transactions with companies to which the said section fifty-six applies) shall apply for the purposes of the foregoing sub-section as it applies for the purposes of the said section three.

(3) This section shall apply in the case of interests in expectancy falling into possession after the twenty-third day of July, nineteen hundred and forty.

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PART VI

GENERAL

42. *Short title, construction, extent and repeal.*—(1) This Act may be cited as the Finance (No. 2) Act, 1940.

* * * * * *

(5) Part IV of this Act shall be construed as one with Part I of the Finance Act, 1894.

(6) Any reference in this Act to any other enactment shall, unless the context otherwise requires, be construed as a reference to that enactment as amended by any subsequent enactment, including this Act.

(7) Such of the provisions of this Act as relate to entertainments duty and estate duty shall not extend to Northern Ireland.

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THE FINANCE ACT, 1941
(4 & 5 GEO. 6, c. 30.)

[22nd July 1941.]

PART II
INCOME TAX

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7. *Provision for the crediting of certain amounts of income tax.*—

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(4) Any assignment of or charge on any amount to be credited under this section, and any agreement for any such assignment or charge, shall be void, and any such amount shall be exempt from death duties payable on any death occurring before the date fixed by the Treasury under sub-section (1) of this section; but any claim to any such amount shall, subject as aforesaid, be transmissible as if it were a debt due from the Crown, and references in the foregoing provisions of this section to an individual, a man or his wife shall, except where the context otherwise requires, be deemed to include references to persons claiming through or under them respectively:

Provided that nothing in this sub-section shall affect any assignment or charge made by the personal representatives of any person acting in their capacity as such, or any agreement for any such assignment or charge.

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PART IV
MISCELLANEOUS AND GENERAL

45. *Exemption from estate duty of gifts to His Majesty.*—(1) Property which, at any time during the period of the present emergency, is given absolutely before the death of the donor for the use of His Majesty, shall be exempt from estate duty on the death of the donor.

(2) In this section, the expression "the period of the present emergency" means the period beginning on the third day of September, nineteen hundred and thirty-nine, and ending on such date as may be declared by His Majesty under the Courts (Emergency Powers) Act, 1939, to be the date on which the emergency that was the occasion of the passing of that Act came to an end.

(3) This section shall have effect and be deemed always to have had effect in relation to all deaths, whether occurring before or after the passing of this Act.

46. *Relief from death duties in case of deaths due to operations of war.*—(1) If, in the case of any death, it is proved to the satisfaction of the Commissioners of Inland Revenue that it is a death to which this section applies, they shall give the same relief from death duties as, under section thirty-eight of the Finance Act, 1924 (which relates to certain deaths of members of His Majesty's Forces) is to be given in the cases to which that section applies; and the deaths to which this section applies shall be deemed, for the purposes of sub-section (2) of section sixty-four of the Finance Act, 1940 (which provides for the remission in certain cases of death duties on property passing on successive deaths), to be included among the deaths to which that sub-section applies, and that sub-section shall have effect accordingly:

Provided that the relief to be given under this sub-section in the case of a married woman whose husband survives her shall be calculated as if, in the enactments referred to in section thirty-eight of the Finance Act, 1924, any reference to a widow included a reference to a surviving husband.

(2) This section applies to the death of any person from injuries received by him, whether before or after the passing of this Act, but during the period of the present emergency and within twelve months of his death, being injuries caused by the operations of war.

Provided that this section does not apply to deaths from such causes as are mentioned in section thirty-eight of the Finance Act, 1924, of persons to whom that section applies, or to deaths from such causes as are mentioned in sub-section (1) of section sixty-four of the Finance Act, 1940, of persons to whom that sub-section applies.

(3) In this section the expression "the period of the present emergency" means the period beginning on the third day of September, nineteen hundred and thirty-nine and ending on such date as may be declared by His Majesty under the Courts (Emergency Powers) Act, 1939, to be the date on which the emergency that was the occasion of the passing of that Act came to an end.

* * * * * *

52. *Short title, construction and extent.*—(1) This Act may be cited as the Finance Act, 1941.

* * * * * *

(5) Any reference in this Act to any other enactment shall, unless the context otherwise requires, be construed as a reference to that enactment as amended by any subsequent enactment, including this Act.

(6) Such of the provisions of this Act as relate to death duties shall not extend to Northern Ireland.

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THE FINANCE ACT, 1943

(6 & 7 GEO. 6, c. 28.)

[22nd July 1943.]

PART IV

MISCELLANEOUS

26. *Amendment of ss.* 30 *and* 31 *of Finance Act,* 1939.—(1) Sections thirty and thirty-one of the Finance Act, 1939 (which provide respectively—

(*a*) for the charging of estate duty on annuities or other interests purchased or provided by persons having property derived from the deceased; and

(*b*) for disallowing, for estate duty purposes, debts to persons having property derived from the deceased and charging duty on repayments of such debts),

shall, in the case of a person dying after the twelfth day of April, nineteen hundred and forty-three, have effect subject to the provisions of this section.

(2) In those sections, the expression "property derived from the deceased" shall include any property which was the subject-matter of a disposition, made by the deceased, either by himself alone or in concert or by arrangement with any other person, notwithstanding that the disposition was made for full consideration in money or money's worth paid to the deceased for his own use or benefit, or which represented any of the subject-matter of such a disposition, whether directly or indirectly, and whether by virtue of one or more intermediate dispositions, and whether any such intermediate disposition was or was not for full or partial consideration:

Provided that where the first-mentioned disposition was for full consideration in money or money's worth paid to the deceased for his own use or benefit and it is proved to the satisfaction of the Commissioners of Inland

Revenue that the disposition was not part of associated operations which included—

(*a*) a disposition by the deceased, either by himself alone or in concert or by arrangement with any other person, otherwise than for full consideration in money or money's worth paid to the deceased for his own use or benefit; or

(*b*) a disposition by any other person operating to reduce the value of the property of the deceased,

then, in considering whether estate duty should be charged under those sections, the said first-mentioned disposition shall be left out of account as if this section did not apply in relation to it.

(3) In this section the expressions "disposition" and "subject-matter" have the meanings assigned to them by sub-section (3) of the said section thirty, and the expression "associated operations" has the meaning assigned to it by section fifty-nine of the Finance Act, 1940.

27. *Reduction of rate of interest on death duties.*—(1) Section eighteen of the Finance Act, 1896 (which determines the rate of interest on death duties) shall, as respects interest accruing due on or after the thirteenth day of April, nineteen hundred and forty-three, have effect with the substitution for the reference therein to three per cent. of a reference to two per cent.

(2) As respects interest accruing due on or after the said date, two per cent. shall be substituted for three per cent. as the rate of interest charged—

(*a*) by sub-section (3) of section seventeen of the Law of Property Act, 1925, as amended by sub-section (2) of section forty-three of the Finance Act, 1933, on death duties payable and remaining unpaid in respect of land which, by virtue of the said sub-section (3), become immediately payable on a conveyance of the land which over-reaches the charge for the duties; and

(*b*) by sub-section (6) of section seventy-three of the Land Registration Act, 1925, as so amended, on death duties payable and remaining unpaid in respect of a registered estate which, by virtue of the said sub-section (6), become immediately payable on a disposition of the estate which overrides the charge for the duties.

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31. *Short title, construction, extent and repeal.*—(1) This Act may be cited as the Finance Act, 1943.

* * * * * *

(5) Any reference in this Act to any other enactment shall, except in so far as the context otherwise requires, be construed as a reference to that enactment as amended by or under any other enactment, including this Act.

(6) This Act shall not extend to Northern Ireland in so far as it relates to duties with respect to which the Parliament of Northern Ireland has power to make laws.

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THE FINANCE ACT, 1944
(7 & 8 GEO. 6, c. 23.)

[13th July 1944.]

PART VI
ESTATE DUTY

Basis of charge in respect of deceased's benefits from certain companies.

35. *Amendment of basis of charge on company's assets in respect of deceased's benefits from the company.*—In section forty-six of the Finance

Act, 1940 (which provides that, where the deceased has made to a company to which that section applies a transfer of any property and any benefits accruing to him from the company accrued to him in the three years ending with his death, the assets of the company shall be deemed for the purposes of estate duty to be included to a certain extent in the property passing on his death), for sub-section (2) there shall be substituted the following sub-section :—

"(2) The extent to which the assets of the company are to be deemed to be included as aforesaid shall be the proportion ascertained by comparing the aggregate amount of the benefits accruing to the deceased from the company in the last three accounting years with the aggregate amount of the net income of the company for the said years :

Provided that—

(*a*) where, in any of the said accounting years, the company sustained a loss, the amount of that loss shall be deducted in ascertaining the said aggregate net income of the company ;

(*b*) where the company came into existence in the last but one, or in the last, of the said accounting years, the references in this sub-section to the said accounting years shall be construed as references to the last two, or, as the case may be, the last, of those years".

36. *Amendment of s.* 59 *of Finance Act,* 1940.—In section fifty-nine of the Finance Act, 1940, for the definition of "Average rate" there shall be substituted the following definition—

"'Average rate' means, in relation to a company, a rate per cent. per annum, the percentage being ascertained by—

(*a*) computing the aggregate amount of the net income of the company for the relevant accounting years (a deduction being made, where the company sustained a loss in any of those years, of the amount of the loss) ;

(*b*) dividing that amount by the number of those years ; and

(*c*) comparing the result with the principal value of the assets of the company passing on the death of the deceased by virtue of section forty-six of this Act after making the allowances to be made under section fifty of this Act."

37. *Computation of losses.*—Section forty-nine of the Finance Act, 1940, shall, with the necessary adaptations, apply to the determination, for the purposes of Part IV of that Act of any loss sustained by a company as it applies to the determination for the purposes thereof of the net income of a company.

Amendment as to avoidance of duplication of charge where deceased has received benefits from a company.

38. *Amendment of s.* 51 *of Finance Act,* 1940.—For sub-section (2) of section fifty-one of the Finance Act, 1940 (which contains provisions for preventing the duplication of charge of estate duty in certain cases) there shall be substituted the following sub-sections—

"(2) Where the following conditions are satisfied, that is to say, that any benefits accrued to the deceased from the company by virtue of any interest that he at any time had in shares in or debentures of the company, or by virtue of a power's having at any time been exercisable by him or with his consent in relation to shares in or debentures of the company, and apart from this sub-section estate duty would be payable on the death both on

the value of those shares or debentures by virtue of any of the enactments relating to that duty other than section forty-six of this Act and on the proportion of the value of the company's assets that corresponds to the benefits that so accrued to him by virtue of that section, then—

(*a*) if the value of the shares or debentures is equal to, or greater than, the said proportion, or if the Commissioners are satisfied that the said proportion would not, if fully ascertained, be found to be substantially in excess of the value of the shares or debentures, duty on the said proportion shall not be payable ;

(*b*) in any other case, the amount on which duty is to be charged in respect of the said proportion shall be reduced by the amount of the value of the shares or debentures.

(2A) Where the conditions set out in the last preceding sub-section would be satisfied but the fact that, by reason of an exemption from estate duty (not being an exemption on the ground that the deceased or other person having an interest in the shares or debentures ceasing on the death of the deceased had only an interest as the holder of an office), that duty is not payable on the value of the shares or debentures, paragraphs (*a*) and (*b*) of that sub-section shall apply as if that exemption did not operate and as if the duty had been payable on the value of the shares and debentures accordingly :

Provided that where—

(*a*) the exemption in question depends on a payment of any duty on an earlier death, or does not depend on such a payment but depends wholly or partly on any dispositions having been made ; and

(*b*) since the date of that death or disposition, as the case may be, the shares or debentures have been substantially increased in value by reason of a transfer of property to any company by any person or by reason of the extinguishment of, or any alteration of the rights attaching to, shares in or debentures of any company,

then, unless the exemption takes the form of a deduction from the value of the shares or debentures of a fixed amount which is independent of the value of the shares or debentures, the references in paragraphs (*a*) and (*b*) of the last preceding sub-section to the value of the shares or debentures therein mentioned shall have effect as if they were references to the value thereof reduced to the extent to which, in the opinion of the Commissioners, that value is attributable to that transfer, extinguishment or alteration.

(2B) Where, by reason of an exemption from estate duty, that duty is payable on part only of the value of the shares or debentures, sub-section (2) of this section shall, with the necessary adaptations, be applied to the part of the value of the shares or debentures on which duty is payable and sub-section (2A) of this section shall be applied to the part of the value of the shares or debentures affected by the exemption ; and, where there are two or more exemptions from estate duty each of which operates on part only of the value of the shares or debentures

and the exemptions are such that the said sub-section (2A) would operate differently in relation to them, then, whether or not there is any part of the value of the shares or debentures on which estate duty is payable, the said sub-section (2A) shall, with the necessary adaptations, be applied separately in relation to the parts of the value of the shares or debentures affected by each exemption.

(2c) In this section the expression "exemption from estate duty" includes any exemption conferred by any provision of the enactments relating to estate duty which has the effect of exempting property, in whole or in part, from the duty, whether that provision takes the form that the property is not to be deemed to pass, or the form that the duty is not to be payable, or the form that a deduction is to be made from the value of the property, or any other form ; and the reference in paragraph (*b*) of the proviso to sub-section (2A) of this section to an increase in the value of shares or debentures includes, where those shares or debentures have been acquired in substitution for any other property, any increase in the value of any property which those shares or debentures directly or indirectly represent."

Computation of net income of company

39. *Computation of net income of company.*—In determining under section forty-nine of the Finance Act, 1940, the net income of a company for any accounting year, no deduction from the income of the company shall be made in respect of—

(*a*) the amount of any liability, deduction or set-off for which allowance has already been made in computing the amount of the income of the company ; or

(*b*) the amount of any loss sustained before the beginning of that year, or of any payment which, under section nineteen of the Finance Act, 1928, would be treated as a loss sustained before the beginning of that year ; or

(*c*) the amount of any deduction representing the diminished value by reason of wear and tear during any previous year of any machinery or plant.

Relaxation of provisions as to purchases of annuities from relatives

40. *Relaxation of provisions of Finance Act,* 1940, *as to purchases of annuities, etc., from relatives.*—(1) Subject to the provisions of this section, the relief specified therein shall be granted where, on the death of a person who has made a disposition of property in favour of a relative of his or a company (hereafter in this section referred to as "the disposition"), any estate duty becomes, or would but for this section become, payable by virtue of [sub-section (1A) of] section forty-four of the Finance Act, 1940 (which relates to purchases of annuities or other interests from relatives).

(2) The sum on which estate duty would be payable apart from this section on the death in respect of the property which was the subject-matter of the disposition or in respect of the property liable to a debt or incumbrance created by the deceased which was the subject-matter of the disposition, as the case may be, shall first be computed and, subject to the limitations provided for by sub-section (3) of this section, there shall then be allowed as a deduction from that sum—

(*a*) the amount, if any, by which the aggregate of the payments which have been made on account of the annuity or other interest for

the period from the date when the annuity or other interest began to accrue in favour of the deceased until his death, exceeds the aggregate of the income derived from the deceased by virtue of the disposition for the period from the date of the disposition until his death ; and

(*b*) simple interest on so much, if any, of the amount aforesaid, and for such period, as, in the opinion of the Commissioners, is in all the circumstances just, at the rates from time to time payable during that period on death duties in arrear.

In this sub-section, the expression "the aggregate of the income derived from the deceased by virtue of the disposition" means—

(i) in relation to so much of the property which was the subject-matter of the disposition as did not consist of a debt or incumbrance created by the deceased, such amount as, in the opinion of the Commissioners, is in all the circumstances equal to a reasonable return from the property ; and

(ii) in relation to so much of the property which was the subject-matter of the disposition as did consist of a debt or incumbrance created by the deceased, the aggregate amount of the interest paid or payable by the deceased in respect of that debt or incumbrance.

(3) The amount to be allowed as a deduction under sub-section (2) of this section shall, in the circumstances specified in the provisions of the Third Schedule to this Act, be limited to the extent specified in those provisions respectively.

In the said Schedule, the expression "the disposition" has the same meaning as in this section, the expression "the annuity payments" means the payments specified in paragraph (*a*) of sub-section (2) of this section, and the expression "the amount allowed" means the amount to be allowed as a deduction under this section.

(4) In this section, the expressions "relative" and "annuity" have the meanings assigned to them by section forty-four of the Finance Act, 1940, and sections fifty-eight and fifty-nine of that Act shall apply for the interpretation of this section and the said Third Schedule as they apply for the interpretation of Part IV of that Act.

Application of Part VI

41. *Application of Part VI.*—The last preceding section shall have effect in the case of all persons dying after the twenty-seventh day of June, nineteen hundred and forty, but save as aforesaid the provisions of this Part of this Act shall have effect in the case only of persons dying after the passing of this Act.

PART VII

MISCELLANEOUS

42. *Trading with the enemy.*—The provisions of the Fourth Schedule to this Act shall have effect in relation to income tax and death duties where persons, income or property are or is affected by the law relating to trading with the enemy.

43. . . .

* * * * * *

49. *Short title, construction, extent and repeals.*—(1) This Act may be cited as the Finance Act, 1944.

* * * * * *

(6) Part VI of this Act shall be construed as one with Part I of the Finance Act, 1894.

(7) Any reference in this Act to any other enactment shall, except so far as the context otherwise requires, be construed as a reference to that enactment as amended by or under any other enactment, including this Act.

(8) The provisions of the Fourth Schedule to this Act shall, if provision in that behalf is made by an Act of the Parliament of Northern Ireland, apply with any necessary modifications to death duties payable in Northern Ireland as they apply to death duties payable in Great Britain, but save as aforesaid such of the provisions of this Act as relate to matters with respect to which the Parliament of Northern Ireland has power to make laws shall not extend to Northern Ireland.

* * * * * *

THIRD SCHEDULE Section 40.

LIMITATIONS ON RELIEF FROM ESTATE DUTY CHARGEABLE UNDER FINANCE ACT, 1940, s. 44.

1.—(1) The provisions of sub-section (1) of section thirty-one of the Finance Act, 1939 (which provides, amongst other things, for the disallowance of debts the consideration for which was property derived from the deceased) shall, in the manner specified in this paragraph, have effect in relation to the computation of the amount allowed.

(2) Where, if—

(a) the annuity payments had formed the consideration for a debt created by the deceased equal to the total amount of those payments; and

(b) sub-section (1) of section seven of the Finance Act, 1894 (which provides for an allowance for debts in computing the amount on which estate duty is payable), were applied to that debt.

the full amount of that debt would not, having regard to the operation of sub-section (1) of the said section thirty-one, have been allowable under sub-section (1) of the said section seven, the annuity payments shall, for the purpose of ascertaining the amount allowed, be reduced so as not to exceed the amount, if any, which would have been allowable in the circumstances aforesaid under sub-section (1) of the said section seven

Provided that, in applying the said section thirty-one for the purposes of this paragraph, property which is the subject-matter of the disposition shall not be treated as property derived from the deceased.

[2.—Where under section forty-four of the Finance Act, 1940, a deduction for partial consideration would have been allowable in respect of the annuity or other interest if sub-section (1A) of that section had not applied to the disposition and if any other consideration for the disposition had not been given, the amount allowed shall not exceed the amount of that deduction.]

3.—Where the amount allowed is allowed as a deduction from the value of the property liable to a debt or incumbrance created by the deceased, it shall not exceed the amount, if any, which would be allowed under sub-section (1) of section seven of the Finance Act, 1894, if section forty-four of the Finance Act, 1940, had not been passed.

FINANCE (No. 2) ACT, 1945

(9 & 10 GEO. 6, c. 13.)

[20th December 1945.]

PART V

RELIEF FROM DOUBLE TAXATION

* * * * *

54. *Agreements for relief from double estate duty.*—(1) If His Majesty by Order in Council declares that arrangements specified in the Order have been made with the Government of any territory outside the United Kingdom with a view to affording relief from double taxation in relation to estate duty

payable under the laws of the United Kingdom and any duty of a similar character imposed under the laws of that territory, and that it is expedient that those arrangements should have effect, the arrangements shall, notwithstanding anything in any enactment have effect so far as they provide for relief from estate duty, or for, determining the place where any property is to be treated as being situated for the purposes of estate duty.

(2) Where arrangements have effect by virtue of this section—

(*a*) sub-section (4) of section seven of the Finance Act, 1894 (which provides for relief in respect of duty payable in a foreign country) shall not have effect in relation to duty to which the arrangements apply chargeable under the laws of the territory concerned ; and

(*b*) if the territory concerned is one to which section twenty of the Finance Act, 1894, applies, no allowance shall be made under that section in respect of duty to which the arrangements apply chargeable under the laws of that territory.

(3) Any arrangements to which effect is given under this section may include provision for relief from duty in the case of deaths occurring before the passing of this Act or before the making of the arrangements and provisions as to property which is not itself subject to double duty, and the provisions of this section shall have effect accordingly.

(4) Notwithstanding anything in the Government of Ireland Act, 1920, the Parliament of Northern Ireland shall, as respects estate duty payable under the laws of Northern Ireland, have power to make laws for purposes similar to the purposes of this section.

55. *Disclosure of information.*—(1) Where any arrangements have effect by virtue of this Part of this Act, the obligation as to secrecy imposed by any enactment shall not prevent the Commissioners of Inland Revenue or any authorised officer of the Commissioners of Inland Revenue from disclosing to any authorised officer of the Government with which the arrangements are made such information as is required to be disclosed under the arrangements.

* * * * * *

56. *Supplementary.*—(1) Any Order in Council made under this Part of this Act may be revoked by a subsequent Order in Council, and any such revoking Order may contain such transitional provisions as appear to His Majesty to be necessary or expedient.

(2) Before any Order proposed to be made under this Part of this Act is submitted to His Majesty in Council, a draft thereof shall be laid before the Commons House of Parliament, and the Order shall not be so submitted unless an Address is presented to His Majesty by that House praying that the Order be made.

PART VI

MISCELLANEOUS

57. *Relief from death duties on land subsequently acquired by government departments, local authorities, etc.*—(1) The following provisions of this section shall have effect where an interest in land—

(*a*) is compulsorily acquired by a government department or a local or public authority within the meaning of the Acquisition of Land (Assessment of Compensation) Act, 1919 ; or

(*b*) is acquired by agreement by such a government department or local or public authority as aforesaid, being a department or authority who, when the agreement is made, are authorised by,

or are or can be authorised under, any enactment to acquire that interest in land compulsorily,

and, in either case, the date of acquisition falls within the period of five years from the seventeenth day of November, nineteen hundred and forty-four.

(2) If it is proved to the satisfaction of the Commissioners of Inland Revenue—

(*a*) that estate duty has been paid, or is payable, in respect of the whole of the interest, and that that interest was valued for the purposes of that duty as at a date after the thirty-first day of March, nineteen hundred and thirty-nine, and before the date of acquisition ; and

(*b*) that the persons to whom the interest passed beneficially on the death on which the duty was payable were the same persons as were beneficially interested therein at the date of acquisition, and the beneficial interests which they respectively took on the death were the same beneficial interests as they respectively had at the date of acquisition ; and

(*c*) that the interest was the same in all respects and with the same incidents at the date of acquisition and at all dates relevant for the purpose of ascertaining the duty ; and

(*d*) that the land in which the interest subsisted was in the same state and with the same incidents and held with the same land at the date of acquisition and at all dates relevant for the purpose of ascertaining the duty ; and

(*e*) that the duty fell or falls to be wholly borne by the persons who were beneficially interested at the date of the acquisition according to the respective interests which they then had ; and

(*f*) that the acquisition did not operate to sever the land from land with which it was held at any of the dates relevant for the purpose of ascertaining the duty,

the amount of duty payable in respect of the interest shall, where necessary, be reduced by repayment or remission of duty so as not to exceed the amount which would have been payable in respect thereof if the principal value of the interest had been equal to the amount of the compensation or price payable for the purchase thereof, including, in the case of compensation, any supplement thereto under section fifty-eight or section fifty-nine of the Town and Country Planning Act, 1944, or any corresponding enactment relating to Scotland.

(3) Where the Commissioners are satisfied that the provisions of the last preceding sub-section would have had effect but for all or any of the following facts, that is to say—

(*a*) that the requirement in paragraph (*a*) thereof is not fulfilled in that the duty was paid or payable on part of the interest only ; or

(*b*) that one or more of the requirements respectively specified in paragraphs (*b*) to (*e*) thereof are only partly fulfilled ; or

(*c*) that the requirement in paragraph (*f*) thereof is not fulfilled,

they may grant to any of the persons paying or bearing any of the duty such relief by repayment or remission of duty as may seem to them just and reasonable.

(4) The two last preceding sub-sections shall have effect in relation to any legacy or succession duty becoming payable on the principal value of the interest as they have effect in relation to estate duty, subject, however, to the modification that for the references to the death there shall be substituted

references to the happening of any event or the expiry of any period upon which the legacy or succession duty became or becomes payable.

(5) An interest which is limited to expire, or is subject to an interest which is limited to expire, shall not be treated for the purposes of this section as being the same in all respects at different dates.

(6) In this section, the expression "the date of acquisition" means—

(*a*) in the case of a compulsory acquisition, the date of the service of the notice to treat ; and

(*b*) in the case of an acquisition by agreement, the date of the making of the agreement,

and the reference in this sub-section to the service of the notice to treat shall be taken to include a reference to the constructive service of such a notice which, by virtue of the Sixth Schedule to the Town and Country Planning Act, 1944, or by virtue of any other enactment, is to be deemed to be served.

* * * * * *

62. *Short title, construction, extent and repeals.*—(1) This Act may be cited as the Finance (No. 2) Act, 1945.

* * * * * *

(5) Parts V and VI of this Act, so far as they relate to estate duty, shall be construed as one with Part I of the Finance Act, 1894.

(6) Any reference in this Act to any other enactment shall, unless the context otherwise requires, be construed as a reference to that enactment as amended by or under any other enactment, including this Act.

(7) Save as otherwise expressly provided, such of the provisions of this Act as relate to matters with respect to which the Parliament of Northern Ireland has power to make laws shall not extend to Northern Ireland.

* * * * * *

THE FINANCE ACT, 1946

(9 & 10 GEO. 6, c. 64.)

[1st August 1946.]

PART V

DEATH DUTIES

46. *Altered rates of estate duty.*—In the case of persons dying on or after the tenth day of April, nineteen hundred and forty-six—

[(*a*) the scale set out in Part I of the Tenth Schedule to this Act shall be substituted for the scale set out in the Sixth Schedule to the Finance (No. 2) Act, 1940 as the scale of rates of estate duty ; and

(*b*) as respects the agricultural value of agricultural property, the entries set out in Part II of the Tenth Schedule to this Act shal be substituted for the entries relating to estates the principal value of which does not exceed ten thousand pounds in the scale of rates set out in the Third Schedule to the Finance Act, 1919 ; and]

(*c*) the enactments mentioned in Part III of the Tenth Schedule to this Act shall have effect subject to the amendments specified in that Part of that Schedule, being amendments consequential on the relief of small estates from payment of estate duty which is effected by the preceding provisions of this section.

47. *Gifts inter vivos, etc.*—The enactments mentioned in Part I of the Eleventh Schedule to this Act (which relate to the effect for estate duty purposes of gifts *inter vivos* and of certain other transactions effected and circumstances prevailing in the life time of the deceased) shall, in the case of persons dying on or after the tenth day of April, nineteen hundred and forty-six, have effect subject to the amendments specified in that Part of that Schedule, being amendments extending to five years before the death the period of three years before the death which is material for the purposes of those enactments and amendments consequential on that extension :

Provided that the amendments specified in the said Part I shall have effect subject to the transitional provisions set out in Part II of the said Schedule being provisions which—

(*a*) exempt gifts made before the tenth day of April nineteen hundred and forty-three from the operation of the said amendments so far as they relate to gifts *inter vivos* ; and

(*b*) make analogous provision in relation to others of the said amendments.

PART VI

THE NATIONAL LAND FUND

48. *The National Land Fund.*—(1) There shall be established a fund to be called the National Land Fund which shall be under the control and management of the Treasury and shall be used for the purposes mentioned in this Part of this Act and for such other purposes as Parliament may hereafter determine.

(2) . . . .

(3) Any sums from time to time standing to the credit of the National Land Fund which are not immediately required for the purposes thereof may be invested in such manner as the Treasury may direct.

(4) The Treasury shall, as respects each financial year, prepare an account of receipts into and payments out of the National Land Fund, and any account prepared under this sub-section shall, on or before the thirtieth day of November next following the expiration of the financial year in question be transmitted to the Comptroller and Auditor General who shall examine and certify the account and lay copies thereof, together with his report thereon, before both Houses of Parliament.

49. *Extension of power to accept property in satisfaction of death duties.*—[The Commissioners of Inland Revenue shall have power to accept property under section fifty-six of the Finance (1909-10) Act, 1910, in satisfaction or part satisfaction of any estate duty, settlement estate duty, succession duty or legacy duty and accordingly] in sub-section (1) of the said section fifty-six [for the words "estate duty or settlement estate duty or succession duty in respect of any real (including leasehold) property" there shall be substituted the words "any estate duty, settlement estate duty, succession duty or legacy duty" and] for the words "such part of the property" there shall be substituted the words "any such real (including leasehold) property."

50. *Disposition of property accepted in satisfaction of death duty.*—(1) The provisions of this section shall have effect where, under section fifty-six of the Finance (1909-10) Act, 1910, the Commissioners of Inland Revenue accept any property in satisfaction or part satisfaction of any duty.

(2) The Treasury may, if they think fit, direct that a sum equal to the amount of the duty, or, as the case may be, the part of the duty, shall be paid to the Commissioners out of the National Land Fund and dealt with by them as if it were a payment on account of the duty.

(3) The property shall be disposed of in such manner as the Treasury may direct, and in particular, but without prejudice to the generality of the preceding provision, the Treasury may direct that all or any of the property shall, on such conditions as they may direct, be transferred to or to trustees for any body of persons not established or conducted for profit and having as its object, or one of its objects, the provision, improvement or preservation of amenities enjoyed, or to be enjoyed, by the public or the acquision of land to be used by the public.

(4) The Treasury shall lay before both Houses of Parliament as soon as may be after the end of each financial year a statement giving particulars of any transfers under subsection (3) of this section to or to trustees for any such body as is therein mentioned in that year.

(5) Any reference in the preceding provisions of this section to the disposal or transfer of any property shall be deemed to include a reference to the granting of a lease or a sub-lease for any period and on any terms in respect of that property.

51. *Supplemental Provisions.*—(1) Where the Treasury have determined that any property accepted or to be accepted by the Commissioners under section fifty-six of the Finance (1909-10) Act, 1910, is to be disposed of under subsection (3) of the last preceding section, whether to or to trustees for any such body as is therein mentioned or to any other person, they may direct that disposal thereof shall be effected by means of a transfer direct to or to trustees for that body or direct to any other person to whom the property is to be disposed of, instead of the property being transferred to the Commissioners.

(2) The Treasury may in any case direct that any property accepted by the Commissioners under the said section fifty-six shall, instead of being transferred to the Commissioners, be transferred to a person nominated by the Treasury, and where property is transferred under this subsection, the person to whom it is transferred shall, subject to any directions thereafter given as to the disposal thereof under subsection (3) of the last preceding section, hold the property and manage it in accordance with such directions as may be given to him by the Treasury.

(3) Where under subsection (2) of the last preceding section, the Treasury direct a payment to be made out of the National Land Fund in respect of any property, any sums received on the disposal of that property or any part thereof under subsection (3) of that section, including any premium received on or rent payable under any lease or sub-lease of any property disposed of thereunder by way of lease or sub-lease, and any sums otherwise received in connection with that property, shall be paid into the National Land Fund, and any sums required to defray any expenses incurred in connection with that property in so far as it has not yet been disposed of under the said subsection (3) (including, in the case of leasehold property, any rent payable in respect thereof) shall be defrayed out of the National Land Fund.

(4) No stamp duty shall be payable on any conveyance or transfer of property made under subsection (3) of the last preceding section to or to trustees for any such body of persons as is mentioned in the said subsection (3) or on any conveyance or transfer made under subsection (2) of this section to any such person nominated by the Treasury as is mentioned in the said subsection (2).

PART VIII

MISCELLANEOUS

* * * * * *

67. *Short title construction, extent and repeals.*—(1) This Act may be cited as the Finance Act, 1946.

* * * * * *

(6) Part V of this Act shall be construed as one with Part I of the Finance Act, 1894.

* * * * * *

(8) Any reference in this Act to any other enactment shall, except so far as the context otherwise requires, be construed as a reference to that enactment as amended by or under any other enactment, including this Act.

(9) Save as otherwise expressly provided, such of the provisions of this Act as relate to matters with respect to which the Parliament of Northern Ireland has power to make laws shall not extend to Northern Ireland.

* * * * *

SCHEDULES

TENTH SCHEDULE

Section 46.

PART I

GENERAL SCALE OF RATES OF ESTATE DUTY

Principal Value of Estate.			Rate per cent. of Duty.	Values below which the duty is reduced under s. 13 (1) of the Finance Act, 1914.
	£	£		£ s. d.
	Not exceeding	2,000	Nil	
Exceeding	2,000 and not exceeding	3,000	1	2,020 4 1
"	3,000 " "	5,000	2	3,030 12 3
"	5,000 " "	7,500	3	5,051 11 0
"	7,500 " "	10,000	4	7,578 2 6
"	10,000 " "	12,500	6	10,212 15 4
"	12,500 " "	15,000	8	12,771 14 10
"	15,000 " "	20,000	10	15,333 6 8
"	20,000 " "	25,000	12	20,454 10 11
"	25,000 " "	30,000	14	25,581 7 11
"	30,000 " "	35,000	16	30,714 5 9
"	35,000 " "	40,000	18	35,853 13 3
"	40,000 " "	45,000	20	41,000 0 0
"	45,000 " "	50,000	22	46,153 17 0
"	50,000 " "	60,000	24	51,315 15 10
"	60,000 " "	75,000	27	62,465 15 1
"	75,000 " "	100,000	30	78,214 5 9
"	100,000 " "	150,000	35	107,692 6 2
"	150,000 " "	200,000	40	162,500 0 0
"	200,000 " "	250,000	45	218,181 16 5
"	250,000 " "	300,000	50	275,000 0 0
"	300,000 " "	500,000	55	333,333 6 8
"	500,000 " "	750,000	60	562,500 0 0
"	750,000 " "	1,000,000	65	857,142 17 2
"	1,000,000 " "	2,000,000	70	1,166,666 13 4
"	2,000,000 " "	—	75	2,400,000 0 0

PART II

ENTRIES TO BE SUBSTITUTED FOR CERTAIN ENTRIES IN THE SCALE OF RATES APPLICABLE TO THE AGRICULTURAL VALUE OF AGRICULTURAL PROPERTY

	£	Does not exceed				2,000	..	..	Nil
Exceeds	2,000	and does not exceed				3,000	..	..	1
"	3,000	"	"	"	"	5,000	..	..	2
"	5,000	"	"	"	"	7,500	..	..	3
"	7,500	"	"	"	"	10,000	..	..	4

PART III

CONSEQUENTIAL AMENDMENTS.

1. In subsection (1) of section thirty-three of the Customs and Inland Revenue Act, 1881, the words "and also, in case the estate and effects shall exceed the value of one hundred pounds, the further sum of thirty shillings for stamp duty" shall cease to have effect; sub-section (5) of that section shall cease to have effect; and sub-section (2) of section thirty-four of that Act, and sections thirty-five and thirty-six of that Act, shall cease to have effect.

2. In sub-section (1) of section sixteen of the Finance Act, 1894, for the words "sections thirty-three, thirty-five and thirty-six" there shall be substituted the words "section thirty-three", for the words "is payable on the death of the deceased" there shall be substituted the words "would, if estate duty were payable in respect of estates however small the principal value thereof, be payable on the death of the deceased" and the words "and where the gross value does not exceed three hundred pounds the fixed duty shall be thirty shillings, and where the gross value exceeds three hundred pounds and does not exceed five hundred pounds the fixed duty shall be fifty shillings" shall cease to have effect.

3. For sub-section (3) of the said section sixteen the following sub-section shall be substituted :—

"(3) Where the net value of the property, real and personal, in respect of which estate duty would, if estate duty were payable in respect of estates however small the principal value thereof, be payable on the death of the deceased, exclusive of property settled otherwise than by the will of the deceased, does not exceed one thousand pounds, such property, for the purpose of estate duty, shall not be aggregated with any other property, but shall form an estate by itself (and the legacy and succession duties shall not be payable under the will or intestacy of the deceased in respect of that estate)."

4. Subsection (5) of the said section sixteen shall cease to have effect.

5. Section fourteen of the Revenue Act, 1903, shall cease to have effect.

6. In subsection (2) of section sixty-one of the Finance (1909-10) Act, 1910, for the words "it is claimed that a fixed duty is payable in respect of any property under subsection (1) of section sixteen of the principal Act as being property of a gross value not exceeding three hundred pounds or five hundred pounds, as the case may be," there shall be substituted the words "it is claimed for the purposes of subsection (1) of section sixteen of the principal Act that the gross value of any property does not exceed five hundred pounds."

7. In subsection (2) of section thirteen of the Finance Act, 1914, for the words "estate duty is payable on the death of the deceased" there shall be substituted the words "estate duty would be payable on the death of the deceased if estate duty were payable in respect of estates however small the principal value thereof."

ELEVENTH SCHEDULE Section 47.

AMENDMENTS AS TO GIFTS INTER VIVOS, ETC.

PART I

AMENDMENTS.

1. In subsection (1) of section fifty-nine of the Finance (1909-10) Act, 1910, for the words "three years" there shall be substituted, in both places where those words occur, the words "five years."

2. In subsection (2) of section thirty-one of the Finance Act, 1939, for the words "three years" there shall be substituted the words "five years."

3. In subsection (2) of section forty-three of the Finance Act, 1940, for the words "three years" there shall be substituted the words "five years."

4. In subsection (1) of section forty-six of the Finance Act, 1940, for the words "three years" there shall be substituted the words "five years" and for subsection (2) of that section (as amended by section thirty-five of the Finance Act, 1944) there shall be substituted the following subsection :—

"(2) The extent to which the assets of the company are to be deemed to be included as aforesaid shall be the proportion ascertained by comparing the aggregate amount of the benefits accruing to the deceased from the company in the last five accounting years with the aggregate amount of the net income of the company for the said years :

Provided that—

(a) where, in any of the said accounting years, the company sustained a loss, the amount of that loss shall be deducted in ascertaining the said aggregate net income of the company ;

(b) where the company came into existence in the last but three, or in the last but two, or in the last but one, or in the last, of the said accounting years, the references in this subsection to the said accounting years shall be construed as references to the last four, the last three, the last two or the last, of those years, as the case may be."

5. In subsection (1) of section forty-seven of the Finance Act, 1940, for the words "three years," in both places where those words occur, there shall be substituted the words "five years."

6. In subsection (3) of section forty-eight of the Finance Act, 1940, for the words "three years" in both places where those words occur there shall be substituted the words "five years."

7. In subsection (1) of section fifty-five and paragraph (a) of subsection (1) of section fifty-eight of the Finance Act, 1940, and in the Seventh Schedule to that Act, for the words "three years", wherever those words occur, there shall be substituted the words "five years."

8. Section thirty-five of the Finance Act, 1944, shall cease to have effect.

PART II

TRANSITIONAL PROVISIONS

1. In the case of persons dying on or after the tenth day of April, nineteen hundred and forty-six, but before the tenth day of April, nineteen hundred and forty-eight, the following enactments amended by Part I of this Schedule, that is to say—

(a) subsection (1) of section fifty-nine of the Finance (1909-10) Act, 1910 ;
(b) subsection (2) of section thirty-one of the Finance Act, 1939 ;
(c) subsection (2) of section forty-three of the Finance Act, 1940 ;
(d) subsection (3) of section forty-eight of the Finance Act, 1940 ; and
(e) subsection (1) of section fifty-five of the Finance Act, 1940, paragraph (a) of subsection (1) of section fifty-eight of that Act, and, for the purpose of determining whether the conditions set out in paragraph (b) of subsection (1) of the said section fifty-five are satisfied in relation to a company, subsection (1) of section forty-seven of and paragraph 2 of the Seventh Schedule to that Act,

shall, as so amended, have effect as if the references therein to the five years before or ending with the death of the deceased were references to the said five years less so much thereof as fell before the tenth day of April, nineteen hundred and forty-three.

2.—(1) No part of the assets of any company shall be deemed by virtue of subsection (1) of section forty-six of the Finance Act, 1940, to be included in the property passing on the death of any person dying on or after the tenth day of April, nineteen hundred and forty-six, but before the tenth day of April, nineteen hundred and forty-eight, unless benefits accruing to the deceased from the company accrued to him on or after the tenth day of April, nineteen hundred and forty-three.

(2) The provisions of the Finance Act, 1940, as to what are to be treated as benefits accruing to the deceased from the company and as to when a benefit is treated as having accrued therefrom shall, as amended by this Schedule, apply for the purposes of this paragraph as they apply for the purposes of the said section forty-six, subject to the modification that the references in section forty-seven of that Act, and paragraph 2 of the Seventh Schedule to that Act, to the five years ending with the death of the deceased shall be treated as references to the said five years less so much thereof as fell before the tenth day of April, nineteen hundred and forty-three.

THE FINANCE ACT, 1947

(10 & 11 GEO. 6, c. 35.)

[31st July 1947.]

PART V

DEATH DUTIES

49. . . .

50. *Limits of value.*—(1) In the case of a person dying on or after the sixteenth day of April, nineteen hundred and forty-seven, the following enactments, namely—

(*a*) subsection (3) of section sixteen of the Finance Act, 1894 (which provides for treating as an estate by itself for the purposes of estate duty, and for exempting from legacy and succession duty, any estate not exceeding one thousand pounds exclusive of property settled otherwise than by the will of the deceased) ; and

(*b*) . . .

shall have effect with the words "two thousand pounds" instead of the words "one thousand pounds" . . .

51. *Relief from estate duty on bearer securities compulsorily registered.*—Where, in consequence of the restrictions imposed by the Defence (Finance) Regulations, 1939, or the Exchange Control Act, 1947, on the issue of coupons representing dividends or interest, bearer securities situate outside the United Kingdom have been or are converted into or exchanged for registered securities situate in Great Britain, then for the purposes of any claim for estate duty in respect of the passing of the registered securities on a death occurring after the thirty-first day of March, nineteen hundred and forty-seven, they shall be treated as situate outside Great Britain :

Provided that this section shall apply only if, between the conversion or exchange and the death (or, in a case where the securities pass by reason of a gift inter vivos or of the disposition or determination of an interest limited to cease on the death, between the conversion or exchange and the gift, disposition or determination) the securities neither have been disposed of nor have passed on the death of a person competent to dispose thereof.

PART VII

MISCELLANEOUS

* * * * * *

74. *Short title, construction, extent and repeals.*—(1) This Act may be cited as the Finance Act, 1947.

* * * * * *

(6) Part V of this Act shall be construed as one with Part I of the Finance Act, 1894.

* * * * * *

(9) Any reference in this Act to any other enactment shall, except so far as the context otherwise requires, be construed as a reference to that enactment as amended by or under any other enactment, including this Act.

(10) Such of the provisions of this Act as relate to matters with respect to which the Parliament of Northern Ireland has power to make laws shall not extend to Northern Ireland.

(11) The enactments specified in the Eleventh Schedule to this Act are hereby repealed to the extent mentioned in the third column of that Schedule.

* * * * * *

ELEVENTH SCHEDULE

Section 74.

ENACTMENTS REPEALED

PART I

MISCELLANEOUS

Session and Chapter.	Short Title.	Extent of Repeal.
9 & 10 Geo. 6, c. 64.	The Finance Act, 1946.	....as respects persons dying on or after the sixteenth day of April, nineteen hundred and forty-seven, paragraph 7 of Part III of the Tenth Schedule.

THE CROWN PROCEEDINGS ACT, 1947

(10 & 11 GEO. 6, c. 44.)

[31st July 1947.]

PART II

JURISDICTION AND PROCEDURE

The High Court

13. *Civil proceedings in the High Court.*—Subject to the provisions of this Act, all such civil proceedings by or against the Crown as are mentioned in the First Schedule to this Act are hereby abolished, and all civil proceedings by or against the Crown in the High Court shall be instituted and proceeded with in accordance with rules of court and not otherwise.

In this section the expression "rules of court" means, in relation to any claim against the Crown in the High Court which falls within the jurisdiction of that court as a prize court, rules of court made under section three of the Prize Courts Act, 1894.

14. *Summary applications to High Court in certain revenue matters.*—(1) Subject to and in accordance with rules of court, the Crown may apply in a summary manner to the High Court:—

(*a*) for the furnishing of information required to be furnished by any person under the enactments relating to death duties;

(*b*) for the delivery of accounts and payment of duty under the said enactments by persons accountable for or chargeable with such duty and by persons who have taken possession of and administered the estates of deceased persons without obtaining probate or letters of administration;

(*c*) for the delivery of an account under section two of the Stamp Duties Management Act, 1891, or under that section as amended or applied by any subsequent enactment;

(*d*) for the payment of sums improperly withheld or retained within the meaning of the said section two.

* * * * * *

County Court

15. *Civil proceedings in the county court.*—(1) Subject to the provisions of this Act, and to any enactment limiting the jurisdiction of a county court (whether by reference to the subject matter of the proceedings to be brought or the amount sought to be recovered in the proceedings or otherwise) any civil proceedings against the Crown may be instituted in a county court.

(2) Any proceedings by or against the Crown in a county court shall be instituted and proceeded with in accordance with county court rules and not otherwise.

PART III

JUDGMENTS AND EXECUTION

26. *Execution by the Crown.*—(1) Subject to the provisions of this Act, any order made in favour of the Crown against any person in any civil proceedings to which the Crown is a party may be enforced in the same manner as an order made in an action between subjects, and not otherwise.

This subsection shall apply both in relation to proceedings pending at the commencement of this Act and in relation to proceedings instituted thereafter.

(2) Sections four and five of the Debtors Act, 1869 (which provide respectively for the abolition of imprisonment for debt, and for saving the power of committal in case of small debts), shall apply to sums of money payable and debts due to the Crown :

Provided that for the purpose of the application of the said section four to any sum of money payable or debt due to the Crown, the section shall have effect as if there were included among the exceptions therein mentioned default in payment of any sum payable in respect of death duties or purchase tax.

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PART IV

MISCELLANEOUS AND SUPPLEMENTAL

Supplemental

35. *Rules of court and county court rules.*—(1) Any power to make rules of court or county court rules shall include power to make rules for the purpose of giving effect to the provisions of this Act, and any such rules may contain provisions to have effect in relation to any proceedings by or against the Crown in substitution for or by way of addition to any of the provisions of the rules applying to proceedings between subjects.

(2) Provision shall be made by rules of court and county court rules with respect to the following matters :—

(*a*) for providing for service of process, or notice thereof, in the case of proceedings by the Crown against persons, whether British subjects or not, who are not resident in the United Kingdom ;

(*b*) for securing that where any civil proceedings are brought against the Crown in accordance with the provisions of this Act the plaintiff shall, before the Crown is required to take any step in the proceedings, provide the Crown with such information as the Crown may reasonably require as to the circumstances in which it is alleged that the liability of the Crown has arisen and as to the departments and officers of the Crown concerned ;

(*c*) for providing that in the case of proceedings against the Crown the plaintiff shall not enter judgment against the Crown in default of appearance or pleading without the leave of the court to be obtained on an application of which notice has been given to the Crown ;

(*d*) for excepting proceedings brought against the Crown from the operation of any rule of court providing for summary judgment without trial, and for enabling any such proceedings to be put

in proper cases into any special list which may be kept for the trial of short causes in which leave to defend is given under any such rule of court as aforesaid';

(*e*) for authorising the Crown to deliver interrogatories without the leave of a court in any proceedings for the enforcement of any right for the enforcement of which proceedings by way of English information might have been taken if this Act had not been passed, so, however, that the Crown shall not be entitled to deliver any third or subsequent interrogatories without the leave of the court ;

(*f*) for enabling evidence to be taken on commission in proceedings by or against the Crown ;

(*g*) for providing :—

(i) that a person shall not be entitled to avail himself of any set-off or counterclaim in any proceedings by the Crown for the recovery of taxes, duties or penalties, or to avail himself in proceedings of any other nature by the Crown of any set-off or counterclaim arising out of a right or claim to repayment in respect of any taxes, duties or penalties ;

(ii) that a person shall not be entitled without the leave of the court to avail himself of any set-off or counterclaim in any proceedings by the Crown if either the subject-matter of the set-off or counterclaim does not relate to the Government department in the name of which the proceedings are brought or the proceedings are brought in the name of the Attorney-General ;

(iii) that the Crown when sued in the name of a Government department, shall not, without the leave of the court, be entitled to avail itself of any set-off or counterclaim if the subject-matter thereof does not relate to that department ; and

(iv) that the Crown, when sued in the name of the Attorney-General, shall not be entitled to avail itself of any set-off or counterclaim without the leave of the court.

(3) Provision may be made by rules of court for regulating any appeals to the High Court, whether by way of case stated or otherwise, under enactments relating to the revenue, and any rules made under this subsection may revoke any enactments or rules in force immediately before the commencement of this Act so far as they regulate any such appeals, and may make provision for any matters for which provision was made by any enactments or rules so in force.

* * * * * *

PART V

APPLICATION TO SCOTLAND

41. *Application of Act to Scotland.*—The provisions of this Part of this Act shall have effect for the purpose of the application of this Act to Scotland.

42. *Exclusion of certain provisions.*—Section one, Part II (except section thirteen so far as relating to proceedings mentioned in the First Schedule) and section twenty-one, Part III (except section twenty-six) and section twenty-eight of this Act shall not apply to Scotland.

43. *Interpretation for purposes of application to Scotland.*—In the application of this Act to Scotland :—

(*a*) for any reference to the High Court (except a reference to that Court as a prize court) there shall be substituted a reference to

the Court of Session; for any reference to the county court there shall be substituted a reference to the sheriff court; the expression "plaintiff" means pursuer; the expression "defendant" means defender; the expression "county court rules" means Act of Sederunt applying to the sheriff court; and the expression "injunction" means interdict;

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44. *Proceedings against the Crown in the sheriff court.*—Subject to the provisions of this Act and to any enactment limiting the jurisdiction of the sheriff court (whether by reference to the subject matter of the proceedings or otherwise) civil proceedings against the Crown may be instituted in the sheriff court in like manner as if the proceedings were against a subject:

Provided that where in any proceedings against the Crown in the sheriff court a certificate by the Lord Advocate is produced to the effect that the proceedings may involve an important question of law, or may be decisive of other cases, or are for other reasons more fit for trial in the Court of Session, the proceedings shall be remitted to the Court of Session, and where any proceedings have been so remitted to the Court of Session, and it appears to that court that the remit has occasioned additional expense to the pursuer, the Court shall take account of the additional expense so occasioned in deciding any question as to expenses.

49. *Application to Scotland of s.* 26.—Section twenty-six of this Act shall have effect as if for subsection (2) thereof there were substituted the following subsection:—

"(2) The exception in respect of taxes contained in section four of the Debtors (Scotland) Act, 1880, from the enactment therein contained abolishing imprisonment for debt shall apply only in respect of death duties and purchase tax."

50. *Application to Scotland of s.* 35.—Section thirty-five of this Act shall have effect as if for subsection (2) thereof there were substituted the following subsection:—

"(2) The following provisions shall apply as regards proceedings in the Court of Session or the sheriff court:—

(*a*) where decree in absence has been granted against the Crown the decree shall not be operative without the leave of the court obtained on an application of which notice has been given to the Crown;

(*b*) a person shall not be entitled to avail himself of any set-off or counterclaim in any proceedings by the Crown for the recovery of taxes, duties or penalties, or to avail himself in proceedings of any other nature by the Crown of any set-off or counterclaim arising out of a right or claim to repayment in respect of any taxes, duties or penalties;

(*c*) a person shall not be entitled without the leave of the court to avail himself of any set-off or counterclaim in any proceedings by the Crown if the subject matter of the set-off or counterclaim does not relate to the Government department on whose behalf the proceedings are brought;

(*d*) the Crown, in any proceedings against a Government department, or against the Lord Advocate on behalf of a Government department, shall not, without the leave of the court, be entitled to avail itself of any set-off or counterclaim if the subject-matter thereof does not relate to that department."

PART VI

EXTENT, COMMENCEMENT, SHORT TITLE, &c.

52. *Extent of Act.*—Subject to the provisions hereinafter contained with respect to Northern Ireland, this Act shall not affect the law enforced in courts elsewhere than in England and Scotland, or the procedure in any such courts.

* * * * * *

54. *Short title.*—(1) This Act may be cited as the Crown Proceedings Act, 1947.

* * * * * *

FIRST SCHEDULE

Section 23.

PROCEEDINGS ABOLISHED BY THIS ACT

1.—(1) Latin informations and English informations.

(2) Writs of capias ad respondendum, writs of subpoena ad respondendum, and writs of appraisement.

(3) Writs of scire facias.

(4) Proceedings for the determination of any issue upon a writ of extent or of diem clausit extremum.

(5) Writs of summons under Part V of the Crown Suits &c. Act, 1865.

2.—(1) Proceedings against His Majesty by way of petition of right, including proceedings by way of petition of right intituled in the Admiralty Division under section fifty-two of the Naval Prize Act, 1864.

(2) Proceedings against His Majesty by way of monstrans de droit.

* * * * * *

THE FINANCE ACT, 1948

(11 & 12 GEO. 6, c. 49.)

[30th July 1948.]

PART VIII

MISCELLANEOUS

76. *Estate duty where policies kept up or effected under settlements.*—(1) For the purposes of the last paragraph of subsection (1) of section eleven of the Customs and Inland Revenue Act, 1889 (which, as applied for the purposes of estate duty, provides that money received under a policy of assurance effected by the deceased person on his life and kept up by him shall be treated as passing on his death) so much of the premiums paid on any policy of assurance as was, by virtue or in consequence of a settlement made by the deceased, paid out of property, whether or not provided by the deceased, comprised in the settlement or out of income, whether or not provided by the deceased, arising under the settlement, shall be treated as having been paid by the deceased:

Provided that any payments which were not made either out of property provided directly or indirectly by the deceased for the purposes of the settlement, or out of property representing that property, or out of income provided directly or indirectly by the deceased whether arising from such property or otherwise, shall not be treated as having been made by the deceased if the Commissioners of Inland Revenue are satisfied that those payments were not made as part of any reciprocal arrangements between the deceased and any other person.

(2) For the purposes of the said enactment in the Customs and Inland Revenue Act, 1889, a policy of assurance on the life of a deceased person effected by virtue or in consequence of a settlement made by the deceased shall be treated as having been effected by the deceased.

(3) This section shall be deemed to have had effect as respects persons dying on or after the seventh day of April, nineteen hundred and forty-eight.

(4) For the purposes of this section—

(*a*) the expression "settlement" includes any disposition, trust, covenant, agreement or arrangement; and

(*b*) a person shall be deemed to have made a settlement if he has made or entered into the settlement directly or indirectly, and in particular (but without prejudice to the generality of the foregoing words of this paragraph) if he has provided or undertaken to provide funds directly or indirectly for the purposes of the settlement, or has made with any other person a reciprocal arrangement for that other person to make or enter into the settlement.

77. *Further provision for relief from double death duty.*—(1) If His Majesty by Order in Council declares that arrangements specified in the Order have been made with the Government of any territory outside the United Kingdom, the laws of which do not provide for a duty similar to estate duty, with a view to affording relief from double taxation in relation to estate duty payable under the laws of the United Kingdom and any duty leviable on, or by reference to, death imposed under the laws of that territory, and that it is expedient that those arrangements should have effect, the arrangements shall, notwithstanding anything in any enactment, have effect so far as they provide for determining the place where any property is to be treated as being situated for the purposes of estate duty.

(2) Any arrangements to which effect is given under this section may include provisions as respects deaths occurring on or after the seventh day of April, nineteen hundred and forty-eight, and provisions as to property which is not itself subject to double duty and the provisions of this section shall have effect accordingly.

(3) Any Order in Council made under this section may be revoked by a subsequent Order in Council, and any such revoking Order may contain such transitional provisions as appear to His Majesty to be necessary or expedient.

(4) Before any Order proposed to be made under this section is submitted to His Majesty in Council, a draft thereof shall be laid before the Commons House of Parliament, and the Order shall not be so submitted unless an address is presented to His Majesty by that House praying that the Order be made.

* * * * * *

82. *Short title, construction, extent and repeals.*—(1) This Act may be cited as the Finance Act, 1948.

* * * * * *

(7) So much of Part VIII of this Act as relates to estate duty shall be construed as one with Part I of the Finance Act, 1894.

(8) Any reference in this Act to any other enactment shall, except so far as the context otherwise requires, be construed as a reference to that enactment as amended by or under any other enactment, including this Act.

(9) Save as otherwise expressly provided, such of the provisions of this Act as relate to matters with respect to which the Parliament of Northern Ireland has power to make laws shall not extend to Northern Ireland.

* * * * * *

THE FINANCE ACT, 1949

(12, 13 & 14 GEO. 6, c. 47.)

[30th July 1949.]

PART III

DEATH DUTIES AND CORPORATION DUTY

27. *Abolition of duties.*—(1) Legacy duty and succession duty shall not be chargeable on a legacy derived from a testator or intestate dying after the commencement of this Part of this Act, or on a succession conferred after that commencement, nor on any other legacy or succession in so far as the duty would apart from this section be payable in connection with any such event as is mentioned in the next following subsection.

(2) The events referred to in the foregoing subsection are any of the following events happening after the commencement of this Part of this Act, that is to say—

(*a*) the death of any person ;

(*b*) the determination or failure of any charge, estate, interest or trust ;

(*c*) the exercise of a power of appointment ;

(*d*) the making of any payment or the application of any property, if the duty would apart from this section be chargeable—

(i) under section eleven of the Legacy Duty Act, 1796, or under that section as applied by section thirty-two of the Succession Duty Act, 1853 (which deal with benefits of uncertain amount receivable from time to time) ; or

(ii) under section twenty-five of the Succession Duty Act, 1853 (which deals with premiums for the renewal of a lease or the grant of a reversionary lease) ;

(*e*) any other event which, under the provisions of the relevant will or disposition or the rules governing the distribution of the intestate's estate, affects the right to the legacy or succession or to the enjoyment thereof or which changes the nature of the property comprised therein or any part of that property.

(3) The reference in subsection (1) of this section to duty being payable in connection with an event shall, in relation to legacy duty, include its being payable when the legacy is paid, delivered, retained, satisfied or discharged in connection with that event, and for the purposes of this section the expression "legacy" includes residue and share of residue.

(4) Where this section applies to the succession duty on a succession, it shall apply also to any temporary estate duty which would otherwise be chargeable thereon under section six of the Customs and Inland Revenue Act, 1889.

28. *Increase in estate duty and modification of provisions related to legacy or succession duty.*—(1) In the case of persons dying after the commencement of this Part of this Act, the scale set out in the Seventh Schedule to this Act shall be substituted for the scale set out in Part I of the Tenth Schedule to the Finance Act, 1946, as the scale of rates of estate duty, and the scale in accordance with which estate duty is to be charged on the agricultural value of agricultural property under section twenty-three of the Finance Act, 1925, shall (instead of being that referred to in that section) be the same scale as applies in other cases with a reduction of forty-five per cent. in each of the rates.

(2) As respects property passing on the death of a person dying after the commencement of this Part of this Act, subsection (2) of section two of the Finance Act, 1894 (which exempts from estate duty property situate abroad and not chargeable with legacy duty or succession duty), and section

twenty-four of the Finance Act, 1936 [which restricts the exemption conferred by the said subsection (2)], shall not have effect; but that property shall be deemed for the purposes of estate duty not to include any property passing on the death which is situate out of Great Britain if it is shown that the proper law regulating the devolution of the property so situate, or the disposition under or by reason of which it passes, is the law neither of England nor of Scotland and that one at least of the following conditions is satisfied, namely:—

(*a*) that the deceased did not die domiciled in any part of Great Britain;

(*b*) that the property so situate passes under or by reason of a disposition;

(i) made by a person who, at the date at which the disposition took effect, was domiciled elsewhere than in some part of Great Britain; and

(ii) not made, directly or indirectly, on behalf of, or at the expense of, or out of funds provided by, a person who at that date was domiciled in some part of Great Britain;

(*c*) that the property so situate is, by the law of the country in which it is situate, immovable property;

or if the property so situate passes only by virtue of paragraph (*c*) of subsection (1) of section two of the Finance Act, 1894, as having been the subject of a gift inter vivos and it is shown that one at least of the said conditions is satisfied.

(3) In the case of persons dying after the commencement of this Part of this Act, the enactments relating to estate duty (including the provisions of section nine of the Finance Act, 1894, as to the charge of duty and the facilities for raising it) shall apply to lands and chattels so settled by Act of Parliament or royal grant that no one of the persons successively in possession thereof is capable of alienating the same as those enactments apply to other settled property, and subsection (5) of section five of the Finance Act, 1894 (which provides that estate duty on lands and chattels so settled shall be leviable on the successor's interest valued as for succession duty), shall accordingly not apply.

29. *Allowance for, or repayment of, legacy or succession duty paid on capital of settled fund.*—(1) Where—

(*a*) legacy duty or succession duty in respect of interests under a settlement has been satisfied by the payment (whether before or after the commencement of this Part of this Act) of the duty on the capital value of the settled property; and

(*b*) estate duty becomes leviable on that property or any part thereof (hereafter in this section referred to as "the property passing") by reason of its passing under the settlement on the death after that commencement of a person not competent to dispose of the property passing; and

(*c*) the property passing has not previously passed as aforesaid;

then, subject to the provisions of this section, the estate duty on the property passing shall be payable at the reduced rate obtained by deducting from the rate at which it would be payable apart from this section the rate at which the legacy or succession duty was paid, or if the second of the two last mentioned rates is the higher shall be treated as satisfied.

(2) Where by virtue of the foregoing subsection the estate duty which would otherwise be payable on the property passing is treated as satisfied, and the amount of that duty is less than the amount of the legacy or succes-

sion duty paid on the property passing, then subject to the following provisions of this section the Commissioners shall on a claim being made and on production of such evidence as they may require of the title of the claimant repay the difference between those amounts.

(3) Any sums falling to be repaid under the last foregoing subsection shall be deemed to be an accretion, as at the date at which they become payable, to the fund out of which the legacy or succession duty was paid, and the persons entitled to the repayment shall be determined accordingly:

Provided that where that fund has been vested in a person or persons beneficially entitled thereto the repayment may be made to, or to the executors of, that person or (as the case may be) any of those persons for the benefit of those entitled to the repayment.

(4) Where the property passing includes part only of the property on the capital value of which the legacy or succession duty was paid, the duty shall be apportioned for the purposes of subsection (2) of this section in such manner as the Commissioners think just.

(5) Where on a death any of the property on the capital value of which the legacy or succession duty was paid is deemed to pass to a limited extent, the foregoing subsections shall apply (whether on that or a subsequent death) as if a proportionate part of that property had passed on the first mentioned death.

(6) Any reference in this section to the rate at which the estate duty on the property passing would be payable apart from this section shall be taken as a reference to the rate per cent. representing the proportion which the amount of the duty (after allowing for any reduction or relief under any other enactment) bears to the principal value of the property passing; and any reference in this section to the rate at which legacy or succession duty was paid shall be taken as a reference to the rate per cent. representing the proportion which the total duty paid bore to the value on which it was paid.

31. *Exemption from estate duty of maintenance funds given to National Trust.*—(1) Any exemption from estate duty conferred by section thirty-one of the Finance Act, 1937, in relation to an estate or interest in land given, devised or bequeathed by any person to the National Trust shall, in the case of duty leviable on or with reference to a death occurring after the commencement of this Part of this Act, be granted also, and to the like extent, to any other property given, devised or bequeathed by him with that estate or interest as a source of income for the upkeep of the land.

(2) Property shall not be deemed for the purposes of this section to be given, devised or bequeathed with an estate or interest in land if either is subject to an interest or power of appointment created by the gift, devise or bequest to which the other is not subject:

Provided that for the purposes of this subsection any trust to apply income of the property for the upkeep of the land or in meeting liabilities or expenses accruing in respect of the land or the property (including a trust to accumulate income for any such purpose) shall be treated as creating the like interests in the property as may from time to time subsist in the land.

(3) Where property given, devised or bequeathed with an estate or interest in land is in the opinion of the Commissioners more than enough to provide (with a reasonable margin) for the upkeep of the land out of the income of the property, so much only as is in their opinion enough for that purpose shall be deemed to be given, devised or bequeathed as mentioned in subsection (1) of this section.

(4) In this section the expression "National Trust" means the National Trust for Places of Historic Interest or Natural Beauty or, in relation to

Scotland, the National Trust for Scotland for Places of Historic Interest or National Beauty.

32. *Extension of relief on compulsory acquisitions.*—(1) Where an interest in land is acquired as mentioned in subsection (1) of section fifty-seven of the Finance (No. 2) Act, 1945 (which gives partial relief from death duties on land subsequently acquired by government departments, local authorities, etc.), and the date of acquisition falls after the end of the period so mentioned but before the first day of January, nineteen hundred and fifty-four (being the terminal date for the provisions enacted in section fifty-two of the Planning Act to eliminate values attributable to vacant possession), then, subject to subsection (3) of this section, the said section fifty-seven shall apply as if the date of acquisition had fallen within the period mentioned in subsection (1) thereof.

(2) Subject as aforesaid, the said section fifty-seven (hereafter in this section referred to as "the principal section") shall apply also in relation to acquisitions by any persons to whom the Acquisition of Land (Assessment of Compensation) Act, 1919, is extended by subsection (1) of section fifty-seven of the Planning Act, as if those persons were a local or public authority within the meaning of the said Act of 1919, and shall so apply notwithstanding that the date of acquisition fell before the commencement of this Part of this Act, if it did not fall before the passing of the Planning Act.

(3) Where either of the foregoing subsections applies to an acquisition, any reduction supposed by subsection (2) of the principal section to be made in the principal value for purposes of duty of the interest acquired shall be limited so as not to exceed the amount by which, in the opinion of the Commissions, the compensation or price paid for the purchase of the interest would have been increased if section fifty-two of the Planning Act had not been passed; and subsections (3) and (4) of the principal section shall have effect accordingly.

(4) In this section the expression "the date of acquisition" has the same meaning as in the principal section, and the expression "the Planning Act" means the Town and Country Planning Act, 1947.

(5) In the application of this section to Scotland, for references to the Town and Country Planning Act, 1947, and to sections fifty-two and fifty-seven thereof there shall respectively be substituted references to the Town and Country Planning (Scotland) Act, 1947, and to sections forty-nine and fifty-four thereof.

33. *Extension of exemption for small gifts inter vivos.*—(1) So much of paragraph (*c*) of subsection (1) of section two of the Finance Act, 1894, as makes gifts inter vivos property which is deemed to pass on the death of the deceased shall not apply to gifts which, in the case of any donee, do not exceed in the aggregate five hundred pounds in value or amount, if it is shown to the satisfaction of the Commissioners—

(*a*) that the property taken by the donee did not include any interest in settled property; and

(*b*) that bona fide possession or enjoyment of the property so taken was assumed by the donee immediately upon the gift and thenceforward retained to the entire exclusion of the deceased or of any benefit to him by contract or otherwise.

(2) Where the foregoing subsection would apply in the case of any donee except that the Commissioners are satisfied of the facts mentioned in paragraphs (*a*) and (*b*) thereof as respects some only of the gifts to him, it shall apply to any of the gifts as respects which they are so satisfied.

(3) This section shall not be taken as affecting the relief given by subsection (2) of section fifty-nine of the Finance (1909-10) Act, 1910, where in the case of any donee the gifts do not exceed one hundred pounds in value or amount.

PART VII

MISCELLANEOUS

52. *Short title, construction, extent and repeals.*—(1) This Act may be cited as the Finance Act, 1949.

* * * * * *

(4) Part III of this Act shall be construed as one with Part I of the Finance Act, 1894.

* * * * * *

(8) Any reference in this Act to any other enactment shall, except so far as the context otherwise requires, be construed as a reference to that enactment as amended by or under any other enactment, including this Act.

(9) Save as otherwise expressly provided, such of the provisions of this Act as relate to matters with respect to which the Parliament of Northern Ireland has power to make laws shall not extend to Northern Ireland.

(10) The enactments specified in the Eleventh Schedule to this Act are hereby repealed to the extent mentioned in the third column of that Schedule:

Provided that the repeals effected by any Part of that Schedule shall be subject to the savings (if any) provided for at the end of that Part.

(11) The inclusion of express savings in this Act shall not be taken as affecting the application thereto of any provision of the Interpretation Act, 1889, as to the effect of repeals.

SEVENTH SCHEDULE

GENERAL SCALE OF RATES OF ESTATE DUTY

Principal Value of Estate.					Rate per cent. of Duty.	Values below which the duty is reduced under s. 13 (1) of the Finance Act, 1914.		
	£			£		£	s.	d.
		Not exceeding		2,000	Nil.			
Exceeding	2,000	and not exceeding		3,000	1	2,020	4	1
"	3,000	"	"	5,000	2	3,030	12	3
"	5,000	"	"	7,500	3	5,051	11	0
"	7,500	"	"	10,000	4	7,578	2	6
"	10,000	"	"	12,500	6	10,212	15	4
"	12,500	"	"	15,000	8	12,771	14	10
"	15,000	"	"	17,500	10	15,333	6	8
"	17,500	"	"	20,000	12	17,897	14	7
"	20,000	"	"	25,000	15	20,705	17	8
"	25,000	"	"	30,000	18	25,914	12	9
"	30,000	"	"	35,000	21	31,139	4	10
"	35,000	"	"	40,000	24	36,381	11	7
"	40,000	"	"	45,000	28	42,222	4	6
"	45,000	"	"	50,000	31	46,956	10	6
"	50,000	"	"	60,000	35	53,076	18	6
"	60,000	"	"	75,000	40	65,000	0	0
"	75,000	"	"	100,000	45	81,818	3	8
"	100,000	"	"	150,000	50	110,000	0	0
"	150,000	"	"	200,000	55	166,666	13	4
"	200,000	"	"	300,000	60	225,000	0	0
"	300,000	"	"	500,000	65	342,857	2	11
"	500,000	"	"	750,000	70	583,333	6	8
"	750,000	"	"	1,000,000	75	900,000	0	0
"	1,000,000	"	"	—	80	1,250,000	0	0

ELEVENTH SCHEDULE

PART IV
DEATH DUTY REPEALS

Session and Chapter.	Short Title.	Extent of Repeal.
36 Geo. 3. c. 52.	The Legacy Duty Act, 1796.	The whole Act, except section thirty-seven.
39 Geo. 3. c. 73.	The Legacy Duty Act, 1799.	The whole Act.
45 Geo. 3. c. 28.	The Legacy Duty Act, 1805.	The whole Act.
48 Geo. 3. c. 149.	The Probate and Legacy Duties Act, 1808.	Section forty-four.
55 Geo. 3. c. 184.	The Stamp Act, 1815.	Section two, so far as related to legacy duty ; Part III of the Schedule from the beginning of the heading "Legacies and Successions" onwards.
8 & 9 Vict. c. 76.	The Revenue Act, 1845.	Section four.
16 & 17 Vict. c. 51.	The Succession Duty Act, 1853.	The whole Act except sections forty-seven, forty-nine and fifty-three.
24 & 25 Vict. c. 92.	The Probate Duty Act, 1861.	Section one.
26 & 27 Vict. c. 87.	The Trustee Savings Banks Act, 1863.	In section forty-one, the words from "nor upon any legacy" to "administration" where next occurring.
31 & 32 Vict. c. 124.	The Inland Revenue Act, 1868.	Section nine.
43 Vict. c. 14.	The Customs and Inland Revenue Act, 1880.	Sections eleven to thirteen.
44 & 45 Vict. c. 12.	The Customs and Inland Revenue Act, 1881.	Sections forty-one to forty-three.
46 & 47 Vict. c. 47.	The Provident Nominations and Small Intestacies Act, 1883.	Subsection (1) of section ten.
51 & 52 Vict. c. 8.	The Customs and Inland Revenue Act, 1888.	Sections twenty-one and twenty-two.
52 & 53 Vict. c. 7.	The Customs and Inland Revenue Act, 1889.	Section six ; in section seven, the words "or in respect of the value of any succession upon the death of any person so dying"; section ten.
57 & 58 Vict. c. 30.	The Finance Act, 1894.	Subsection (2) of section two ; subsection (5) of section five ; in subsection (3) of section thirteen, the words "and the legacy and succession duties"; subsection (4) of section fifteen from "which" onwards ; section eighteen ; paragraphs 3 and 5 of the First Schedule and in paragraph 4 of that Schedule the words "and 6."
59 & 60 Vict. c. 25.	The Friendly Societies Act, 1896.	Subsections (3) and (4) of section fifty-seven.
10 Edw. 7 & 1 Geo. 5. c. 8.	The Finance (1909-10) Act, 1910.	In subsection (1) of section fifty-six, the words "or succession duty in respect of any real (including leasehold) property"; section fifty-eight ; subsection (5) of section sixty-one from "This subsection shall apply" onwards.
3 & 4 Geo. 5. c. 31.	The Industrial and Provident Societies (Amendment) Act, 1913.	In section six, the words "and a duly stamped receipt for the succession or legacy duty" and the words "succession or legacy" where last occurring.

Session and Chapter.	Short Title.	Extent of Repeal.
4 & 5 Geo. 5. c. 10.	The Finance Act, 1914.	Subsection (2) of section thirteen.
5 & 6 Geo. 5. c. 89.	The Finance (No. 2) Act, 1915.	Section forty-six.
7 & 8 Geo. 5. c. 31.	The Finance Act, 1917.	In section twenty-nine, the words "and section forty-six of the Finance (No. 2) Act, 1915".
12 & 13 Geo. 5. c. 17.	The Finance Act, 1922.	Section forty-four.
13 & 14 Geo. 5. c. 14.	The Finance Act, 1923.	Section thirty-seven.
15 & 16 Geo. 5. c. 18.	The Settled Land Act, 1925.	In the definition of "death duty" in subsection (1) of section one hundred and seventeen, the words "succession duty, legacy duty".
15 & 16 Geo. 5. c. 20.	The Law of Property Act, 1925.	In the definition of "death duty" in subsection (1) of section two hundred and five, the words "succession duty, legacy duty".
15 & 16 Geo. 5. c. 21.	The Land Registration Act, 1925.	In the definition of "death duty" in section three, the words "succession duty, legacy duty".
15 & 16 Geo. 5. c. 36.	The Finance Act. 1925.	Section twenty-four.
16 & 17 Geo. 5. c. 29.	The Adoption of Children Act, 1926.	In subsection (3) of section five, the words "succession legacy or other".
16 & 17 Geo. 5. c. 60.	The Legitimacy Act, 1926.	In section seven, the words "succession, legacy or other".
17 & 18 Geo. 5. c. 10.	The Finance Act, 1927.	Section fifty-two.
20 & 21 Geo. 5. c. 28.	The Finance Act, 1930.	Section forty, except as respects estate duty.
20 & 21 Geo. 5. c. 37.	The Adoption of Children (Scotland) Act, 1930.	In subsection (4) of section five the words "succession, legacy or other".
26 Geo. 5. & 1 Edw. 8. c. 34.	The Finance Act, 1936.	Section twenty-four.
1 Edw. 8 & 1 Geo. 6. c. 54.	The Finance Act, 1937.	Subsection (4) of section thirty-one.
1 & 2 Geo. 6. c. 45.	The Inheritance (Family Provision) Act, 1938.	In subsection (1) of section five, the words "succession duty, legacy duty".
7 & 8 Geo. 6. c. 23.	The Finance Act, 1944.	Section forty-three; in the Fourth Schedule, Part III and paragraph 3 of Part IV from the first "and" onwards.
9 & 10 Geo. 6. c. 13.	The Finance (No. 2) Act, 1945.	Subsection (4) of section fifty-seven.
9 & 10 Geo. 6. c. 64.	The Finance Act, 1946.	In section forty-six, paragraphs (a) and (b); section forty-nine, except the words "in subsection (1) of the said section fifty-six" and the words following the last "and"; in the Tenth Schedule, Parts I and II, and in Part III paragraph 3 from "and the legacy" onwards.
10 & 11 Geo. 6. c. 35.	The Finance Act, 1947.	Section forty-nine; in section fifty, paragraph (b) of subsection (1), and the words from "and accordingly" in that subsection to the end of the section.
11 & 12 Geo. 6. c. 39.	The Industrial Assurance and Friendly Societies Act, 1948.	In subsection (3) of section eighteen, paragraphs (a) and (c).

Saving.

The repeal of any enactment by this Part of this Schedule shall not affect its operation in relation to estate duty leviable on or by reference to a death occurring before the commencement of this Act, or in relation to any legacy duty, succession duty or temporary estate duty under section six of the Customs and Inland Revenue Act, 1889, to which section twenty-seven of this Act does not apply.

* * * * *

THE LANDS TRIBUNAL ACT, 1949

(12, 13 & 14 GEO. 6, c. 42.)

[14th July 1949.]

1. *Establishment and jurisdiction of Lands Tribunal.*—(1) There shall be set up, to exercise the jurisdiction hereafter mentioned in this Act, the following tribunals, namely—

(*a*) a tribunal for Scotland to be called "the Lands Tribunal for Scotland"; and

(*b*) a tribunal for the remainder of the United Kingdom, to be called "the Lands Tribunal."

(2) Except in so far as the context otherwise requires, references in this Act to the Lands Tribunal shall be taken, in relation to Scotland, as references to the Lands Tribunal for Scotland.

(3) There shall be referred to and determined by the Lands Tribunal—

(*a*) any question which is by any Act (including a local or private Act) directed, in whatever terms, to be determined by a person or one or more persons selected from either of the following panels, that is to say:—

* * * * * *

(ii) the panel of referees appointed under Part I of the Finance (1909-10) Act, 1910;

or which is so directed to be determined in the absence of agreement to the contrary;

* * * * * *

2. *Members, officers and expenses of Lands Tribunal.*—(1) The Lands Tribunal shall consist of a President and such number of other members as the Lord Chancellor may determine, to be appointed by the Lord Chancellor.

(2) The President shall be either a person who has held judicial office under the Crown (whether in the United Kingdom or not) or a barrister-at-law of at least seven years' standing, and of the other members of the Lands Tribunal such number as the Lord Chancellor may determine shall be barristers-at-law or solicitors of the like standing and the others shall be persons who have had experience in the valuation of land appointed after consultation with the President of the Royal Institution of Chartered Surveyors.

(3) In the case of the temporary absence or inability to act of the President, the Lord Chancellor may appoint another member of the Lands Tribunal to act as deputy for the President, and a member so appointed shall, when so acting, have all the functions of the President.

(4) If a member of the Lands Tribunal becomes, in the opinion of the Lord Chancellor, unfit to continue in office or incapable of performing his duties, the Lord Chancellor shall forthwith declare his office to be vacant and shall notify the fact in such manner as he thinks fit, and thereupon the office shall become vacant.

(5) Subject to the last foregoing subsection, the appointment of a member of the Lands Tribunal shall be for such term as may be determined by the Lord Chancellor, with the approval of the Treasury, before his appointment, and shall be subject to such conditions as may be so determined, and a person who ceases to hold office as a member of the Lands Tribunal shall be eligible for re-appointment thereto.

(6) There may be paid to the members of the Lands Tribunal such remuneration, and such travelling and subsistence allowances, and to persons who have been members thereof such superannuation allowances, as the Lord Chancellor may, with the approval of the Treasury, determine.

(7) The Lord Chancellor may appoint such officers and servants of the Lands Tribunal as he may, with the approval of the Treasury as to numbers and remuneration, determine.

(8) The remuneration and allowances of members and superannuation allowances of past members of the Lands Tribunal, the remuneration of the officers and servants appointed by the Lord Chancellor, and such other expenses of the Lands Tribunal as the Treasury may determine, shall be defrayed out of moneys provided by Parliament.

(9) In relation to the Lands Tribunal for Scotland this section shall have effect with the substitution—

(*a*) of references to the Lord President of the Court of Session, or, in subsections (5) to (8), to the Secretary of State for references to the Lord Chancellor ;

(*b*) of a reference to the chairman of the Scottish Branch of the Royal Institution of Chartered Surveyors for the reference to the President of that institution ;

(*c*) of references to an advocate for references to a barrister-at-law.

3. *Procedure, appeals, costs and fees.*—(1) Subject to the provisions of this Act, the jurisdiction of the Lands Tribunal may be exercised by any one or more of its members, and references in this Act to the Lands Tribunal shall be construed accordingly.

(2) The member or members who is or are to deal with any case shall be selected as follows—

(*a*) the President may select a member or members to deal with a particular case or class or group of cases ; or

(*b*) the President may select for a class or group of cases members from amongst whom a member or members to deal with any particular case shall be selected, and the selection from amongst those members of a member or members to deal with a particular case shall then be made either by the President or, if he so directs, by one of those members appointed by the President to be their chairman.

* * * * * *

(3) Where a case is dealt with by two or more members of the Tribunal—

(*a*) if the President is one of them he shall preside at the hearing and, if he is not, one of them shall be nominated to preside at the hearing by the person selecting them to deal with the case ;

(*b*) a decision shall be taken, in the event of a difference between the members dealing with the case, by the votes of the majority and, in the event of an equality of votes, the person presiding at the hearing shall be entitled to a second or casting vote.

(4) A decision of the Lands Tribunal shall be final—

Provided that any person aggrieved by the decision as being erroneous in point of law may, within such time as may be limited by rules of court, require the tribunal to state and sign a case for the decision of the court, and, where the decision of the Lands Tribunal is given on a review by way of appeal of the previous decision of another person, that person if dissatisfied with the decision of the Lands Tribunal shall be treated for this purpose as a person aggrieved thereby.

(5) Subject to the following provisions of this section, the Lands Tribunal may order that the costs of any proceedings before it incurred by any party shall be paid by any other party and may tax or settle the amount of any costs to be paid under any such order or direct in what manner they are to be taxed.

(6) Subject to the provisions of this Act, rules may be made for regulating proceedings before the Lands Tribunal and, subject to the approval of the Treasury, the fees chargeable in respect of those proceedings, and may in particular—

(*a*) make provision—

(i) as to the form in which any decision of the Tribunal is to be given, and as to the amendment of any such decision in pursuance of any directions which may be given by the court dealing with an appeal under this section ;

(ii) as to the time within which any proceedings before the Tribunal are to be instituted ;

(iii) as to the evidence which may be required or admitted in any such proceedings ;

(*b*) provide for the Tribunal to sit with assessors when dealing with cases calling for special knowledge and, subject to the approval of the Treasury, for making payments to the assessors as part of the expenses of the Tribunal ;

(*c*) apply in relation to the Tribunal any of the provisions of the Arbitration Acts, 1889 to 1934.

* * * * * *

(9) Subject to this Act, any rules made by . . . . the Reference Committee under the Finance (1909-10) Act, 1910, which are in force immediately before the commencement of this Act shall, so far as they relate to matters with respect to which there is power to make rules under this section, have effect with any necessary modifications as if made in the exercise of that power ; and any instrument prescribing the fees chargeable under either of the said Acts which is then in force shall also have effect as aforesaid.

Subject to this Act any reference to rules made by either of the said Committees or to any such instrument as aforesaid shall, unless the context otherwise requires, include a reference to the rules made or having effect under this section.

(10) Rules made under this section shall provide for preserving, so far as appears to the rule-making authority to be practicable, the effect of things done before the commencement of this Act in or for the purposes of the exercise of any jurisdiction transferred by this Act to the Lands Tribunal, and those rules may exclude the operation of this Act, in whole or in part, in relation to any proceedings pending at the commencement of this Act.

(11) Subject to the following subsection—

(*a*) the court referred to in subsection (4) of this section shall be the Court of Appeal ;

(*b*) the rule-making authority for the purposes of this Act shall be the Lord Chancellor.

(12) In relation to the Lands Tribunal for Scotland, the following provisions shall have effect—

(*a*) the court referred to in subsection (4) of this section shall be the Court of Session, and no appeal shall lie from a decision of the Court of Session on a case stated under that subsection except with the leave of that court;

(*b*) the rule-making authority for the purposes of this Act shall be the Lord President of the Court of Session;

(*c*) paragraph (*c*) of subsection (6) of this section shall not apply but the Lands Tribunal for Scotland shall have the like powers for securing the attendance of witnesses and the production of documents, and with regard to the examination of witnesses on oath, as if the Tribunal were an arbiter under a submission, and any order of the Tribunal may be recorded for execution in the Books of Council and Session and shall be enforceable accordingly.

* * * * * *

7. *Savings, etc.*—(1) The transfer of any jurisdiction to the Lands Tribunal by or under this Act shall not affect the principles on which any question is to be determined or the persons on whom the determination is binding, or any provision which requires particular matters to be expressly dealt with or embodied in the determination, or which relates to evidence and is not contained in the Acquisition of Land Act.

* * * * * *

8. *Interpretation* . . . .

(2) Except in so far as the context otherwise requires, any reference in this Act to an enactment shall be construed as referring to that enactment as amended, extended or applied by any other enactment.

(3) Any power under this Act to make rules shall be exercisable by statutory instrument, and the Statutory Instruments Act, 1946, shall apply to a statutory instrument containing rules made under this Act by the Lord President of the Court of Session in like manner as if the rules had been made by a Minister of the Crown.

* * * * * *

10. *Short title, commencement, transitional provisions and repeal.*—

(1) This Act may be cited as the Lands Tribunal Act, 1949.

(2) Sections one to four of this Act shall come into force on such day as His Majesty may by Order in Council appoint, and different days may be appointed for Scotland and for the remainder of the United Kingdom.

(3) References in this Act to the commencement thereof refer, in relation to any part of the United Kingdom, to the beginning of the day so appointed for that part. . . .

(4) The enactments specified in the Second Schedule to this Act are hereby repealed, as from the commencement of this Act, to the extent specified in the third column of that Schedule:

Provided that (without prejudice to the operation either of any provision of the Interpretation Act, 1889, as to the effect of repeals or of any provision of this Act giving power to make rules as to pending proceedings) the repeal of any enactment by this section shall not affect its operation in cases where a decision has been given before the commencement of this Act, so far as relates to appeals, cases stated, costs or fees.

SCHEDULES

* * * * * *

Section 10. SECOND SCHEDULE

REPEALS

Session and Chapter.	Short Title.	Extent of Repeal.
* *	* *	* * * *
Edw. 7 & 101 Geo. 5. c. 8.	The Finance (1909-10) Act, 1910.	In section thirty-three, sub-section (2) from the first "and" onwards and subsections (3) to (5); section thirty-four.
* *	* *	* * * *

THE FINANCE ACT, 1950

(14 GEO. 6, c. 15.)

[28th July 1950.]

PART IV

ESTATE DUTY

43. *Disposition or determination of life interests, etc.*—(1) Subsections (1) and (2) of section forty-three of the Finance Act, 1940, shall be amended as provided by Part I of the Seventh Schedule to this Act, and accordingly shall have effect as set out in Part II of that Schedule with the amendments made by the Eleventh Schedule to the Finance Act, 1946, and by this subsection.

(2) Where an interest limited to cease on a death (within the meaning of the said section forty-three) has been disposed of or has determined, bona fide possession and enjoyment of the property shall not be deemed for the purposes of subsection (2) of that section to be assumed immediately thereafter and thenceforward retained to the entire exclusion of a person who had the interest and of any benefit to him by contract or otherwise, if at any time thereafter he has a benefit by virtue of any operations associated with the disposition or determination, nor while he has such a benefit shall the property be deemed to be enjoyed to the entire exclusion as aforesaid for the purposes of subsection (3) of section fifty-nine of the Finance (1909-10) Act, 1910 (which relates to the surrender of benefits reserved).

(3) In the last foregoing subsection—

(*a*) the reference to any operations associated with the disposition shall be taken as referring to any associated operations as defined by section fifty-nine of the Finance Act, 1940, of which the disposition is one; and

(*b*) the reference to any operations associated with the determination shall be taken as referring to any associated operations as so defined of which any disposition resulting in, or effected in contemplation of or with reference to, the determination is one.

(4) This section shall have effect in relation to any death occurring after the eighteenth day of April, nineteen hundred and fifty, whether or not the relevant interest is disposed of or determines after that date.

44. *Collection of duty from trustees after disposition or determination of life interest, etc.*—(1) Where an interest limited to cease on a death (within the meaning of section forty-three of the Finance Act, 1940) after becoming an interest in possession is disposed of or determines wholly or partly, then,

whatever the nature of the property in which the interest subsisted, the following persons shall be accountable for any estate duty payable on the death by virtue of that section (in addition to any persons accountable therefor apart from this section), that is to say—

(*a*) if the settlement under which the interest subsisted is in existence at the death, the trustees for the time being of that settlement; and

(*b*) if it is not, the persons who were the last trustees of that settlement.

(2) Notwithstanding anything in the foregoing subsection or in section eight of the Finance Act, 1894, no person shall be accountable as trustee of a settlement for any estate duty payable by virtue of the said section forty-three in respect of property paid or applied to or for the benefit of a person not of full age in the exercise of any express or implied power of advancement under the settlement, where that person is not and does not become absolutely and indefeasibly entitled to any share or interest in the property comprised in the settlement, and the property so paid or applied to him or for his benefit does not exceed altogether in amount one half of his presumptive share or interest in the property so comprised.

(3) Where—

(*a*) the trustees of a settlement may become accountable for estate duty payable by virtue of the said section forty-three in respect of any property; and

(*b*) it is intended that the property or any part thereof shall cease to be comprised in the settlement;

then if the trustees obtain from the Commissioners a certificate of the amount which in the opinion of the Commissioners may properly be treated as the prospective amount of the duty, and give the Commissioners all the information and evidence required by the Commissioners in connection with the application for the certificate, no person shall be accountable as trustee of the settlement for the duty to which the certificate relates to an amount in excess of the amount certified.

(4) It is hereby declared that a person who may become accountable as trustee of a settlement for estate duty payable by virtue of the said section forty-three on property which is or has been comprised in the settlement has a lien for the prospective amount of the duty and the costs in respect thereof on any property in his hands which is so comprised.

(5) Where the trustees of a settlement may become accountable for estate duty payable by virtue of the said section forty-three on property which is or has been comprised in the settlement, they may refuse to execute a deed of discharge under section seventeen of the Settled Land Act, 1925, with respect to any land so comprised, or to make or concur in a conveyance of any such land to a person entitled to it as mentioned in subsection (5) of section seven of that Act, unless they are satisfied that they are effectually indemnified against their liability by virtue of this section up to the prospective amount of the duty and the costs in respect thereof.

(6) Where land comprised in a settlement is not vested in the trustees of the settlement, but they are entitled under the last foregoing subsection to refuse to make or concur in a conveyance such as is there mentioned, they may require the person having the possession of the last or only principal vesting instrument to endorse on or annex to that instrument a memorandum that any such conveyance of land so comprised requires the concurrence of the trustees for the time being of the settlement, or, in the case of registered land, they may require the proprietor to apply for the entry on the register

of a restriction to the like effect; and thereafter no such conveyance shall be made except by the trustees for the time being or with their concurrence.

(7) References in this section to the prospective amount of any duty are to be taken as referring to the prospective amount of the duty on the assumption that it will become chargeable.

(8) Subsections (1) and (2) of this section shall have effect in relation to any death occurring after the eighteenth day of April, nineteen hundred and fifty, whether or not the relevant interest is disposed of or determines after that date, so however that no person shall by virtue of the said subsection (1) be accountable as trustee of any settlement for any duty except to the extent of the property comprised in the settlement after the said eighteenth day of April; and subsection (3) of this section shall be deemed always to have had effect and to have applied with any necessary modifications to duty payable by virtue of section eleven of the Finance Act, 1900, or section thirty-nine of the Finance Act, 1930, as it applies to duty payable by virtue of section forty-three of the Finance Act, 1940.

45. *Parliamentary settled estates.*—(1) Where land or chattels are so settled, whether by Act of Parliament or royal grant, that no one of the persons successively in possession thereof is capable of alienating the same, then notwithstanding anything in subsection (3) of section twenty-eight of the Finance Act, 1949 (which directs that the estate duty law shall apply to land and chattels so settled in the same way as to other settled property), on the death of a tenant in tail of the property comprised in the settlement estate duty shall not be chargeable as respects any part of that property in the case of which he has disposed of his personal interest to or for the benefit of the person who may from time to time be his successor and in the case of which the conditions of the next following subsection are satisfied.

(2) The conditions to be satisfied are—

(*a*) that the disposition of the tenant in tail's personal interest was bona fide effected five years before his death;

(*b*) that bona fide possession and enjoyment of the property was assumed immediately after the disposition by the tenant in tail's successor and thenceforward retained to the entire exclusion of the tenant in tail and of any benefit to him by contract or otherwise or (bona fide possession and enjoyment of the property having been so assumed) the property was enjoyed to the entire exclusion as aforesaid for the five years before the tenant in tail's death;

(*c*) that there is not (by reason of any subsequent disposition of the tenant in tail's personal interest or otherwise) any change on the tenant in tail's death in the person beneficially entitled to possession of the property or the income arising therefrom;

Provided that for the purposes of paragraph (*b*) of this subsection, subsection (2) of section forty-three of this Act shall apply in relation to any disposition of a tenant in tail's personal interest as it applies for the purposes of the enactments therein mentioned in relation to a disposition of an interest limited to cease on a death.

(3) For the purpose of paragraph (*c*) of the last foregoing subsection there shall not be deemed to be a change on a tenant in tail's death in the person beneficially entitled to the income arising from any property by reason only that a jointure or other annuity payable out of that income arises on the tenant in tail's death under the settlement comprising the property or ceases on the tenant in tail's death, but nothing in this section shall affect the duty chargeable on any property on the tenant in tail's death by reason of some

other person's having or having had in that property an interest limited to cease on that death.

(4) In this section the expression "tenant in tail" means tenant in tail in possession within the meaning of the Settled Land Act, 1925, and references to a tenant in tail of any property include one of two or more tenants in tail in common or tenants in tail in co-parcenary of that property; and in relation to any tenant in tail of property—

(*a*) the expression "personal interest" means his right as tenant in tail to possession of the property or the income arising therefrom or a share thereof during his life; and

(*b*) the expression "successor" means the person who, if the tenant in tail were dead, would be tenant in tail in his place, whether as heir under the entail or as tenant in tail in remainder.

46. *Disposition in favour of relatives.*—(1) In relation to a person dying after the eighteenth day of April, nineteen hundred and fifty, there shall be substituted for subsection (1) of section forty-four of the Finance Act, 1940, the following subsections—

'(1) Any disposition made by the deceased in favour of a relative of his shall be treated for the purposes of paragraph (*c*) of subsection (1) of section two of the Finance Act, 1894, as a gift unless—

(*a*) the disposition was made on the part of the deceased for full consideration in money or money's worth paid to him for his own use or benefit; or

(*b*) the deceased was concerned in a fiduciary capacity imposed on him otherwise than by a disposition made by him and in such a capacity only;

and references to a gift in the other enactments relating to estate duty (including this Part of this Act) shall be construed accordingly:

Provided that where the disposition was made on the part of the deceased for partial consideration in money or money's worth paid to him for his own use or benefit, the value of the consideration shall be allowed as a deduction from the value of the property for the purpose of estate duty.

(1A) Where the deceased made a disposition of property in favour of a relative of his, the creation or disposition in favour of the deceased of an annuity or other interest limited to cease on the death of the deceased or of any other person shall not be treated for the purposes of this section or of subsection (1) of section seven of the Finance Act, 1894, as consideration for the disposition made by the deceased.

(1B) If a company to which this section applies was concerned in a transaction in relation to which it is claimed that the provisions of paragraph (*a*) of or the proviso to subsection (1) of this section have effect, those provisions shall have effect in relation thereto if and only if, and to the extent only to which, the Commissioners are satisfied that those provisions would have had effect in the following circumstances, namely, if the assets of the company had been held by it on trust for the members thereof and any other person to whom it is under any liability incurred otherwise than for the purposes of the business of the company wholly and exclusively, in accordance with the rights attaching to the shares in and debentures of the company and the terms on which any such liability was incurred, and if the company had acted in the capacity of a trustee only with power to carry on the business of the company and to employ the assets of the company therein.

(1C) Any gift made in favour of a relative of the deceased by a company of which the deceased at the time of the gift had control within the meaning of subsection (3) of section fifty-five of this Act shall be treated for the purposes of paragraph (*c*) of subsection (1) of section two of the Finance Act, 1894, as a gift made by the deceased, and the property taken under the gift shall be treated as included by virtue of that paragraph in the property passing on the death of the deceased, if and to the extent to which the Commissioners are satisfied that they would fall to be so treated in the circumstances mentioned in the last foregoing subsection."

(2) Where the foregoing subsection applies—

(*a*) references to subsection (1A) of the said section forty-four shall be substituted :

(i) for the reference to subsection (1) of that section in subsection (5) thereof ; and

(ii) for the reference to that section in subsection (1) of section forty of the Finance Act, 1944 (which allows from the value of the property chargeable by virtue of the said section forty-four a deduction for the deceased's annuity payments, but limits the deduction to the amount specified in the Third Schedule to that Act) ; and

(*b*) section forty of the Finance Act, 1944, shall have effect also as if for paragraph 2 of the Third Schedule to that Act there were substituted the following paragraph :

"2. Where under section forty-four of the Finance Act, 1940, a deduction for partial consideration would have been allowable in respect of the annuity or other interest if subsection (1A) of that section had not applied to the disposition and if any other consideration for the disposition had not been given, the amount allowed shall not exceed the amount of that deduction."

47. *Amendment of s.* 51 *of Finance Act,* 1940.—In section fifty-one of the Finance Act, 1940, (which relates to the charge for estate duty under the provisions of that Act about companies, and contains provisions for preventing duplication of the charge), there shall be inserted after subsection (1) the following subsection :—

"(1A) Where the following conditions are satisfied, that is to say, that the deceased has, within five years before his death, disposed of any shares in or debentures of the company for consideration in money or money's worth paid to him for his own use or benefit, and that any benefits accrued to the deceased from the company by virtue of those shares or debentures or by virtue of a power's having been exercisable by him or with his consent in relation to those shares or debentures, then :

(*a*) if the value of the said consideration is equal to or greater than the proportion of the value of the company's assets that corresponds to the benefits that so accrued to him, or if the Commissioners are satisfied that the said proportion would not, if fully ascertained, be found to be substantially in excess of the value of the said consideration, duty on the said proportion shall not be payable ;

(*b*) in any other case, the amount on which duty is to be charged in respect of the said proportion shall be reduced by the amount of the value of the said consideration ;

Provided that, in the case of any shares or debentures—

(i) this subsection shall not apply where estate duty is payable on the death on their value or any part thereof or would be so payable but for an exemption from estate duty ; and

(ii) for the purpose of determining to what extent, if any, the disposition of them satisfies the conditions of this subsection, section fifty-six of this Act (which relates to transactions through the medium of a company) shall apply as it applies for the purposes of section three of the Finance Act, 1894."

48. *Objects of national, scientific, historic or artistic interest.*—(1) Subject to the next following subsection, section forty of the Finance Act, 1930 (which exempts from estate duty objects of national, scientific, historic or artistic interest), shall apply to objects which pass on a death occurring after the date of the passing of this Act only if an undertaking is given, by such person as the Treasury think appropriate in the circumstances of the case, that, until the objects again pass on a death or are sold—

(*a*) the objects will be kept permanently in the United Kingdom and will not leave it temporarily except for a purpose and a period approved by the Treasury ; and

(*b*) reasonable steps will be taken for the preservation of the objects ; and

(*c*) reasonable facilities for examining the objects for the purpose of seeing the steps taken for their preservation, or for purposes of research, will be allowed to any person authorised by the Treasury so to examine them.

(2) If on a claim for exemption under the said section forty it is made to appear to the Treasury that any documents for which the exemption is claimed contain information which for personal or other reasons ought to be treated as confidential, the Treasury may exclude those documents either altogether or to such extent as they think fit from any undertaking under the foregoing subsection so far as the undertaking relates to the examination of the documents for purposes of research.

(3) Where any objects are exempted from estate duty in pursuance of an undertaking under subsection (1) of this section, and the Treasury are satisfied that at any time during the period for which the undertaking was given it has not been observed in a material respect, then estate duty shall become chargeable, on the value at that time of those objects in respect of the death on which the exemption was given and at the rate appropriate to the principal value of the estate passing on that death upon which estate duty is leviable, and with which the objects would have been aggregated if they had not been objects to which the said section forty applies ; and any person who, if the objects were sold when the duty becomes chargeable, would be entitled to receive (whether for his own benefit or not) the proceeds of sale or any income arising therefrom shall be accountable for the duty.

(4) Where any objects are sold after becoming chargeable with estate duty under this section in respect of any death, the proceeds of sale shall not be chargeable with estate duty in respect of the same death under subsection (2) of the said section forty.

PART V

MISCELLANEOUS

* * * * * * *

50. *Short title, construction, extent and repeals.*—(1) This Act may be cited as the Finance Act, 1950.

* * * * * *

(5) Part IV of this Act shall be construed as one with Part I of the Finance Act, 1894.

(6) Any reference in this Act to any other enactment shall, except so far as the context otherwise requires, be construed as a reference to that enactment as amended by or under any other enactment, including this Act.

(7) Save as otherwise expressly provided, such of the provisions of this Act as relate to matters with respect to which the Parliament of Northern Ireland has power to make laws shall not extend to Northern Ireland.

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SCHEDULES

* * * * * *

SEVENTH SCHEDULE

SECTION 43 (1) AND (2) OF THE FINANCE ACT, 1940

PART I

AMENDMENTS

1.—(1) In subsection (1), immediately before paragraph (a), there shall be inserted the words "and the disposition or determination (or any of them if there are more than one) is not excepted by subsection (2) of this section, then".

(2) In paragraph (a) and in paragraph (b) of subsection (1) for the words "apart from the disposition or determination" there shall be substituted the words "had here been no disposition or determination as aforesaid of that interest and no disposition of any interest expectant upon or subject to that interest".

2.—(1) In subsection (2) for the words "the relevant disposition or determination" there shall be substituted the words "a disposition or determination of an interest limited to cease on the death".

(2) In subsection (2) for the words "the preceding subsection shall not have effect" there shall be substituted the words "the disposition or determination shall be excepted by this subsection".

(3) In paragraph (a) of subsection (2) before the word "had" there shall be inserted the words "immediately before the disposition or determination."

PART II

SECTION 43 (1) AND (2) AS AMENDED

(1) Subject to the provisions of this section, where an interest limited to cease on a death has been disposed of or has determined, whether by surrender, assurance, divesting, forfeiture or in any other manner (except by the expiration of a fixed period at the expiration of which the interest was limited to cease), whether wholly or partly, and whether for value or not, after becoming an interest in possession, and the disposition or determination (or any of them if there are more than one) is not excepted by subsection (2) of this section, then—

(a) if, had there been no disposition or determination as aforesaid of that interest and no disposition of any interest expectant upon or subject to that interest, the property in which the interest subsisted would have passed on the death under section one of the Finance Act, 1894, that property shall be deemed by virtue of this section to be included as to the whole thereof in the property passing on the death ; or

(b) if, had there been no disposition or determination as aforesaid of that interest and no disposition of any interest expectant upon or subject to that interest, the property in which the interest subsisted would have been deemed by virtue of paragraph (b) of subsection (1) of section two of the said Act to be included to a particular extent in the property passing on the death, the property in which the interest subsisted shall be deemed by virtue of this section to be included to that extent in the property passing on the death.

(2) Where a disposition or determination of an interest limited to cease on the death was bona fide effected or suffered five years before the death (or, if it was effected or suffered for public or charitable purposes, one year before the death), the disposition or determination shall be excepted by this subsection—

(a) if bona fide possession and enjoyment of the property in which the interest subsisted was assumed immediately thereafter by the person becoming entitled by virtue of or upon the disposition or determination and thenceforward retained to the entire exclusion of the person who immediately before the disposition or determination had the interest and of any benefit to him by contract or otherwise; or

(b) in the case of a partial determination, if the conditions specified in the preceding paragraph were not satisfied by reason only of the retention or enjoyment by the deceased of possession of some part of the property, or of some benefit, by virtue of the provisions of the instrument under which he had the interest:

Provided that nothing in this subsection shall be construed as affecting any charge of estate duty arising otherwise than by virtue of the provisions of the preceding subsection.

THE FINANCE ACT, 1951

(14 & 15 GEO. 6, c. 43.)

[1st August, 1951.]

PART IV

DEATH DUTIES

33. *Exemptions from estate duty in connection with preservation of land for public benefit.*—(1) Section thirty-one of the Finance Act, 1937, and section thirty-one of the Finance Act, 1949 (which sections exempt from estate duty in certain circumstances land given to the National Trust and maintenance funds given with land so exempted, and are hereafter in this section respectively called "the 1937 section" and "the 1949 section"), shall in the case of property given to the National Trust be extended as follows:—

(*a*) any exemption from estate duty conferred by the 1937 section in relation to an estate or interest in land given by any person to the Trust shall be granted also, and to the like extent, to any objects ordinarily kept at the time of the gift in a building forming part of the land, and given by him with that estate or interest with a view to their preservation or use in the building, and where objects so given are exempted by virtue of this paragraph the 1949 section shall apply as if they formed part of the building;

(*b*) where a person gives to the Trust any objects ordinarily kept at the time of the gift in a building which is then inalienably vested in the Trust, and he does so with a view to the objects' preservation or use in the building, then (subject to paragraph (*d*) of this subsection) the 1937 section and the 1949 section shall apply in the case of the objects so given as if the property comprised in the gift had been an estate or interest in land, except that any condition as to the Trust's interest being held by it inalienably for the public benefit shall not apply;

(*c*) where a person gives property to the Trust as a source of income for the upkeep—

(i) of any land which is at the time of the gift inalienably vested in the Trust; or

(ii) of any objects which are then vested in the Trust and ordinarily kept in a building forming part of any such land, having been

given to the Trust with a view to their preservation or use in that building ;

and he gave or joined in giving to the Trust its estate or interest in that land or those objects, as the case may be, then (subject to paragraph (*d*) of this subsection) the 1937 section shall apply in the case of any of the property so given, whether an estate or interest in land or not, as it applies to an estate or interest in land, except that any condition as to the Trust's interest being held by it inalienably for the public benefit shall not apply ;

(*d*) paragraph (*b*) and sub-paragraph (ii) of paragraph (*c*) of this subsection shall not apply in the case of any objects unless the gift of the objects or property in respect of which exemption is claimed by virtue of that paragraph is made by a person who also gave or joined in giving to the Trust its estate or interest in the building in which the objects are ordinarily kept at the time of the said gift.

(2) Where, with a view to the preservation of a house or other building for the public benefit, a person gives or has given an estate or interest in the building to, or to trustees for, a Government department, a local authority or any other body not established or conducted for profit, and the Treasury (whether before or after the time of the gift) direct that the gift should be treated as falling within this subsection, then the 1937 section and the 1949 section, together with the foregoing subsection of this section, shall apply in relation to the building and any grounds given with it and specified in the direction, as if references to the National Trust were references to that department, authority or body or to those trustees as the case may be and as if their estate or interest in the building and any such grounds were inalienably vested in them.

In the two next following subsections any reference to a building includes any grounds specified or to be specified in a direction under this subsection relating to the building.

(3) The Treasury shall not give a direction under the foregoing subsection in the case of any building unless in their opinion—

(*a*) the building is one for the preservation of which special steps should be taken by reason of its outstanding historic or architectural or aesthetic interest and the cost of preserving it ; and

(*b*) the department authority or body in question is an appropriate one to be responsible for the building's preservation ;

and before giving any such direction the Treasury may require such undertakings to be entered into as they think appropriate for securing the preservation of the building and reasonable access thereto for the public (including undertakings restricting the use or disposal of the building).

(4) Any undertakings entered into as aforesaid may be varied from time to time by agreement between the Treasury and the person bound by the undertakings, and the Treasury may require further undertakings to be entered into as a condition for agreeing to any such variation or consenting to anything for which their consent is required by any undertaking ; and the obligations imposed by any such undertaking shall be enforceable for the public benefit by injunction (or, in Scotland, by interdict or by petition under section ninety-one of the Court of Session Act, 1868), and any purported disposition of a building in contravention thereof be void, as if the obligation had been imposed by Act of Parliament.

(5) For the purposes of this section, except in so far as the context otherwise requires,—

(*a*) the expression "gift" includes devise and bequest and the expression "give" shall be construed accordingly, and in relation to a devise or bequest any reference to the time of the gift shall be construed as a reference to the time of the testator's death;

(*b*) the expression "vested" means indefeasibly vested, and a building or land shall be deemed to be inalienably vested in the National Trust if an estate or interest therein is vested in the Trust (whether in possession or not) and has been so dealt with as to be held by the Trust inalienably;

(*c*) any reference to giving objects shall be construed as a reference to giving the whole or a limited interest in the objects, and any reference to objects being vested in the National Trust shall be construed accordingly;

(*d*) the expression "National Trust" means the National Trust for Places of Historic Interest or Natural Beauty or, in relation to Scotland, the National Trust for Scotland for Places of Historic Interest or Natural Beauty;

(*e*) the expression "local authority" means the Common Council of the City of London or a local authority within the meaning of the Local Government Act, 1933, the London Government Act, 1939, or the Local Government (Scotland) Act, 1947.

(6) An object shall not be deemed for the purposes of paragraph (*a*) of sub-section (1) of this section to be given with an estate or interest in land if either is subject to an interest or power of appointment created by the gift of it to which the other is not subject:

Provided that, where the object is given subject to one or more life interests created by the gift of it to which the estate or interest is not subject, but which (if it were so subject) would fall within subsection (2) of the 1937 section, then the said paragraph (*a*) shall apply in relation to the object as it would apply if the estate or interest had also been given subject to that life interest or those life interests.

(7) Where the property given by any person as a source of income for the upkeep of any land or objects is in the opinion of the Commissioners more than enough to provide (with a reasonable margin) for the upkeep of the land or objects out of the income of the property, so much only as is in their opinion enough for that purpose shall be deemed for the purposes of paragraph (*c*) of subsection (1) of this section to be given as a source of income for the upkeep of the land or objects, and in determining what is enough for that purpose the Commissioners shall have regard to any other property given by the same or any other person as a source of income for the upkeep of the land or objects or any part thereof (with or without any other land or objects).

(8) This section applies to duty leviable on or with reference to any death occurring after the commencement of this Act but in relation to duty so leviable shall apply to gifts made before as well as after that commencement.

34. *Government securities exempt from taxation while in foreign ownership.*—(1) Where the Treasury issue securities subject to any such condition as is authorised by section twenty-two of the Finance (No. 2) Act, 1931, for an exemption from taxation so long as the securities are in the beneficial ownership of persons neither domiciled nor ordinarily resident in the United Kingdom, the condition so far as it relates to duties leviable on or with

reference to a death shall be such as to operate by reference to the persons in whose beneficial ownership the securities are immediately before, not after, the death.

(2) This section shall be deemed always to have had effect, and to have applied for the purpose of section forty-seven of the Finance (No. 2) Act, 1915, as it applies for the purpose of section twenty-two of the Finance (No. 2) Act, 1931 ; and any condition subject to which securities have been issued by virtue of either of those sections before the passing of this Act shall be construed accordingly :

Provided that any duty which, apart from this proviso, would be or have been leviable in accordance with this section in respect of any securities on or with reference to a death occurring before the fourteenth day of December, nineteen hundred and fifty, shall not be so leviable if no part of the duty was paid before that date.

35. *Restriction on re-opening cases on the ground of legal mistake.*—(1) For the purpose—

(*a*) of any claim by the Commissioners under subsection (7) of section eight of the Finance Act, 1894, for payment of additional duty ; or

(*b*) of any claim against the Commissioners under subsection (12) of that section for repayment of excess of duty ;

the question whether the duty paid was too little or too much, and (if so) what was the right amount, shall, in so far as it appears that the payment and its acceptance were regarded as satisfying the claim for duty, and were so regarded on a view of the law which at the time was generally received or adopted in practice, be determined on the same view of the law (subject to any express enactment to the contrary), notwithstanding that it appears from a subsequent legal decision or otherwise that that view was or may have been wrong.

(2) This section shall have effect as from the eleventh day of April, nineteen hundred and fifty-one, but not so as to affect any appeal to a court of law which was brought before that day under section ten of the Finance Act, 1894.

PART V

MISCELLANEOUS

44 *Short title, construction, extent and repeals.*—(1) This Act may be cited as the Finance Act, 1951.

* * * * * * *

(5) Part IV of this Act shall be construed as one with Part I of the Finance Act, 1894.

* * * * * *

(7) Any reference in this Act to any other enactment shall, except so far as the context otherwise requires, be construed as a reference to that enactment as amended or applied by or under any other enactment, including this Act.

(8) Such of the provisions of this Act as relate to matters with respect to which the Parliament of Northern Ireland has power to make laws shall not extend to Northern Ireland.

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FINANCE ACT, 1952

[15 & 16 GEO. 6 & 1 Eliz. 2, c. 33.]

[9th July, 1952.]

PART VI

MISCELLANEOUS AND GENERAL

* * * * * *

Exemption from estate duty for members of armed forces, etc.

71.—(1) Estate duty shall not be chargeable by reason of the death on or after the twelfth day of March, nineteen hundred and fifty-two, of a person in whose case it is certified by the Admiralty, the Army Council, the Air Council or the Secretary of State that the deceased died from a wound inflicted, accident occurring or disease contracted at a time (whether before, on or after the said twelfth day of March) when the following conditions were satisfied, that is to say, that the deceased was a member of any of the armed forces of the Crown or was employed as a person of any of the descriptions specified in the Thirteenth Schedule to this Act or (not being a member of any of those forces or employed as aforesaid) was subject to the law governing any of those forces by reason of association with or of accompanying any body of those forces and (in any case) was either—

(*a*) on active service against an enemy, or

(*b*) on other service of a warlike nature or which in the opinion of the Treasury involved the same risks as service of a warlike nature,

or that the deceased died from a disease contracted at some previous time, the death being due to or hastened by the aggravation of the disease during a period (whether beginning before, on or after the said twelfth day of March) when the deceased satisfied the conditions aforesaid.

(2) For the purposes of the exemption from estate duty chargeable on property passing on the death of a surviving spouse estate duty shall be deemed to have been paid on property passing on the death of a person in whose case a certificate under the last foregoing subsection has been given that he died as mentioned in that subsection.

(3) The enactments specified in Part V of the Fourteenth Schedule to this Act are repealed, subject to and in accordance with the following provisions:—

(*a*) the said repeals shall not affect the operation of any of those enactments as applied by any other enactment;

(*b*) subject to the last foregoing paragraph, the said repeals shall have effect in the case of persons dying on or after the twelfth day of March, nineteen hundred and fifty-two.

Estate duty (amendments of Finance Act, 1940, Part IV)

72.—(1) In relation to deaths occurring after the commencement of this Act, Part IV of the Finance Act, 1940 (which deals mainly with the charge of estate duty on the assets of certain companies where property has been transferred thereto by the deceased), shall be amended in accordance with the following provisions of this section.

(2) Any reference to a transfer of property (except in the definition of "payment" in section fifty-nine) shall include a reference to a payment of money, and the expressions "disposition" and "value" respectively, in relation to money, shall include payment and amount.

(3) Where, in the case of any company, the conditions specified in subsection (1A) of section fifty-one (which was inserted by section forty-seven of the Finance Act, 1950, and which in certain cases relieves from the charge on a company's assets a proportion not exceeding the value of the consideration paid to the deceased for shares or debentures disposed of by him) are satisfied in relation to any shares in or debentures of the company, and the aggregate value at the deceased's death of all such shares and debentures in relation to which the conditions are satisfied is shown to the satisfaction of the Commissioners of Inland Revenue to be greater than the value of the consideration paid for them as mentioned in that subsection, then that subsection shall have effect as if references to the aggregate value aforesaid were substituted for references to the value of the said consideration.

(4) In the last foregoing subsection, references to the aggregate value of any shares or debentures refer to their principal value ascertained as if they passed on the death:

Provided that—

(*a*) where the deceased did not dispose of all the relevant shares and debentures in one parcel, the principal value of each of the parcels separately disposed of (whether at different times or at one time but to different persons) shall be computed separately, and the aggregate value shall be taken to be the total of the separate values so computed; and

(*b*) where any of the relevant shares and debentures have, since the deceased disposed of them, been substantially increased in value by reason of a transfer of property to any company by any person, or by reason of the extinguishment of, or any alteration of the rights attaching to, shares in or debentures of any company, their principal value shall be reduced to such extent as in the opinion of the Commissioners of Inland Revenue is necessary to offset the increase attributable to the transfer, extinguishment or alteration.

* * * * * *

Short title, construction, extent and repeals.

76.—(1) This Act may be cited as the Finance Act, 1952.

* * * * * *

(6) Any reference in this Act to any other enactment shall, except so far as the context otherwise requires, be construed as a reference to that enactment as amended or applied by or under any other enactment including this Act.

(7) Such of the provisions of Parts I and VI of this Act as relate to matters with respect to which the Parliament of Northern Ireland has power to make laws shall not extend to Northern Ireland.

(8) The enactments specified in the Fourteenth Schedule to this Act are hereby repealed to the extent mentioned in the third column of that Schedule, but this repeal has effect—

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(*c*) in the case of Part V, as provided by subsection (3) of section seventy-one;

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THIRTEENTH SCHEDULE

ESTATE DUTY: LIST OF WOMEN'S SERVICES

1. Member of Queen Alexandra's Royal Naval Nursing Service or any reserve thereof.

2. Member of the Women's Royal Naval Service or any reserve thereof.

3. Woman medical or dental practitioner serving in the Royal Navy or any naval reserve.

4. Member of the Auxiliary Territorial Service.

5. Woman employed with the Royal Army Medical Corps or the Royal Army Dental Corps with relative rank as an officer.

6. Member of the Women's Auxiliary Air Force.

7. Woman employed with the Medical Branch or the Dental Branch of the Royal Air Force with relative rank as an officer.

8. Member of the Voluntary Aid Detachments employed under the Admiralty, Army Council or Air Council.

FOURTEENTH SCHEDULE

REPEALS

* * * * * *

PART V

REPEALS RELATING TO RELIEF FROM ESTATE DUTY FOR MEMBERS OF ARMED FORCES, ETC.

Session and Chapter	Short Title	Extent of Repeal
55 Geo. 3, c. 184	The Stamp Act, 1815	In the Schedule, in Part III, the exemption for testamentary instrument and inventories of common seamen, marines or soldiers.
57 & 58 Vict. c. 30	The Finance Act, 1894	In section eight, in subsection (1), the words "and for the exemption of the property of common seamen, marines or soldiers who are slain or die in the service of Her Majesty".
63 & 64 Vict. c. 7	The Finance Act, 1900	Section fourteen.
14 & 15 Geo. 5, c. 21.	The Finance Act, 1924	Section thirty-eight.

APPENDIX—B

Comparative table showing corresponding sections of the Estate Duty Act, 1953, the U.K. Acts and the Pakistan Estate Duty Act, 1950.

Sections of the Indian Estate Duty Act.	Sections of the U.K. Acts.	Sections of the Pakistan Estate Duty Act.
Section 1.	——	Section 1. This act came into force on 1st April, '50.
Section 2.	Section 22 (1) of the Finance Act, 1894. Clauses (*a*), (*b*), (*c*), (*d*), (*e*), (*f*), (*g*), (*h*), (*i*), (*j*), (*k*), (*l*), (*m*), (*n*) and (*o*).	Section 2 and sub-sections 2 (*a*) (*b*), 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16 and 17.
Section 3.	Section 22 (2) of the Finance Act, 1894 and Clauses (*a*), (*b*) and (*c*).	Section 3, with some changes.
Section 4.	——	——
Section 5.	Section 1 of the Finance Act, 1894.	Sections 4 and 5.
Section 6.	Section 2 (1) (*a*) of the Finance Act, 1894.	Section 6.
Section 7.	Section 2 (1) (*b*) of the Finance Act, 1894.	Section 7.
Section 8.	Section 38 (1) (2) (*a*) of the Customs	Section 8.
Section 9.	and Inland Revenue Act, 1881. Sec-	Section 9.
Section 10.	tion 11 (1) of the Customs and Inland Revenue Act, 1889. Section 59 (1) and (3) of the Finance (1909-10) Act, 1910.	Section 10.
Section 11.	Section 43 (1) of the Finance Act, 1940, as amended by Section 43 (1) of the Finance Act, 1950.	Section 11.
Section 12.	Section 38 (2) (*c*) of the Customs and Inland Revenue Act, 1881. Section 11 (1) of the Customs and Inland Revenue Act, 1889. Section 2 (1) (*c*) of the Finance Act, 1894.	Section 12.
Section 13.	Section 38 (2) (*b*) of the Customs and Inland Revenue Act, 1881. Section 11 (1) of the Customs and Inland Revenue Act, 1889. Section (2) (1) (*c*) of the Finance Act, 1894.	Section 13.
Section 14.	Section 11 (1) of the Customs and Inland Revenue Act, 1889. Section (2) (1) (*c*) of the Finance Act, 1894.	Section 14.
Section 15.	Section 2 (1) (*d*) of the Finance Act, 1894. Section 28 of the Finance Act, 1934.	Section 15.

Sections of the Indian Estate Duty Act.	Sections of the U.K. Acts.	Sections of the Pakistan Estate Duty Act.
Section 16.	Section 30 of the Finance Act, 1939. Section 26 of the Finance Act, 1943.	Section 16.
Section 17.	Section 46 of the Finance Act, 1940, as amended by Section 47 of the Finance Act of 1946. Sections 52 and 58 (1) of the Finance Act, 1940.	Section 17.
Section 18.	Section 53 of the Finance Act, 1940.	Section 19.
Section 19.	Section 54 of the Finance Act, 1940.	Section 20.
Section 20.	——	Section 18 (substantial provisions made herein).
Section 21.	Section 2 (2) of the Finance Act, 1894. Section 24 of the Finance Act, 1936. Section 28 (2) of the Finance Act, 1949.	Section 21.
Section 22.	Section 2 (3) of the Finance Act, 1894. Section 59 (1), (3) of the Finance (1909-10) Act, 1910. Section 47 of the Finance Act, 1946.	Section 22.
Section 23.	Section 5 (3) of the Finance Act, 1894. Section 48 of the Finance Act, 1938. Section 47 (4) of the Finance Act, 1938. Section 14 of the Finance Act, 1896.	Section 26.
Section 24.	Section 15 of the Finance Act, 1896.	Section 27.
Section 25.	Section 21 (5) of the Finance Act, 1894.	——
Section 26.	Section 3 of the Finance Act, 1894.	Section 28.
Section 27.	Section 44 of the Finance Act, 1940. Section 46 (1) of the Finance Act, 1950.	Section 30.
Section 28.	Section 17 (1) of the Finance (No. 2) Act, 1940.	Section 32.
Section 29.	Section 5 (2) of the Finance Act, 1894. Section 13 of the Finance Act, 1898.	——
Section 30.	Section 54 (1) of the Finance (No. 2) Act, 1945.	Section 33.
Section 31.	Section 15 of the Finance Act, 1914.	Section 34.
Section 32.	——	——
Section 33.	Section 51 of the Finance Act, 1940. Section 38 of the Finance Act, 1944. Section 47 of the Finance Act, 1950. Section 40 of the Finance Act, 1944.	Section 35.
Section 34.	Section 4 of the Finance Act, 1894. Section 12 of the Finance Act, 1900. Section 45 (3) of the Finance Act, 1940.	Section 36.
Section 35.	Section 28 (1) and 7th schedule to Finance Act, 1949.	Section 37.

Sections of the Indian Estate Duty Act.	Sections of the U.K. Acts.	Sections of the Pakistan Estate Duty Act.
Section 36.	Section 7 (5) of the Finance Act, 1894. Section 60 (2) of the Finance (1909-10) Act, 1910.	Section 38.
Section 37.	——	Section 39.
Section 38.	Section 7 (6) of the Finance Act, 1894.	Section 40.
Section 39.	——	——
Section 40.	Section 7 (7) of the Finance Act, 1894.	Section 41.
Section 41.	Section 7 (8) of the Finance Act, 1894.	Section 42.
Section 42.	Section 7 (9) of the Finance Act, 1894.	Section 43.
Section 43.	Section 8 (8) of the Finance Act, 1894.	Section 44.
Section 44.	Section 7 (1) of the Finance Act, 1894.	Section 45.
Section 45.	Section 57 of the Finance (1909-10) Act, 1910.	Section 46.
Section 46.	Section 31 of the Finance Act, 1939. Section 26 of the Finance Act, 1943. Section 44 of the Finance Act, 1940.	Section 47.
Section 47.	Section 7 (2) of the Finance Act, 1894.	Section 48.
Section 48.	Section 7 (3) of the Finance Act, 1894.	Section 49.
Section 49.	Section 7 (4) of the Finance Act, 1894.	Section 50.
Section 50.	——	——
Section 51.	Compare Section 6 (1) of the Finance Act, 1894.	Section 51.
Section 52.	Section 34 of the Finance Act, 1917. Section 42 of the Finance Act, 1918.	Section 52.
Section 53.	Sections 6 (2), 6 (3), 8 (3), 8 (4) and 8 (18) of the Finance Act, 1894. Section 54 (8) of the Finance Act, 1940.	Section 53.
Section 54.	Sections 44 (1), (3), (4) and (7) of the Finance Act, 1950.	——
Section 55.	Section 8 (5) of the Finance Act, 1894. Section 57 of the Finance Act, 1940.	Section 54.
Section 56.	Section 8 (6) of the Finance Act, 1894.	Section 55.
Section 57.	Section 8 (3) of the Finance Act, 1894. Section 57 (1), (2) and (3) *re*: Controlled companies.	Section 56.
Section 58.	Sections 6 (4), (6) and (7) of the Finance Act, 1894.	Section 57.
Section 59.	——	——
Section 60.	Section 11 (1) of the Finance Act, 1894.	Section 58.
Section 61.	——	——
Section 62.	——	Section 59.
Section 63.	——	Section 59.
Section 64.	——	Section 60.
Section 65.	——	Section 60.
Section 66.	——	——

Sections of the Indian Estate Duty Act.	Sections of the U.K. Acts.	Sections of the Pakistan Estate Duty Act.
Section 67.	Section 11 (2) of the Finance Act, 1894. Section 14 of the Finance Act, 1907.	Section 61.
Section 68.	Section 12 of the Finance Act, 1894.	Section 62.
Section 69.	Section 13 (1) of the Finance Act, 1894.	Section 63.
Section 70.	Section 8 (9) of the Finance Act, 1894.	Section 64.
Section 71.	Section 8 (11) of the Finance Act, 1894.	Section 65.
Section 72.	Section 8 (14) of the Finance Act, 1894.	Section 66.
Section 73.	——	Section 67.
Section 74.	——	Sections 68 and 69.
Section 75.	Section 11 (2), (3) and (4) of the Finance Act, 1894.	Section 70.
Section 76.	Section 9 (4) of the Finance Act, 1894.	Section 71.
Section 77.	Section 9 (5), (6) and (7) of the Finance Act, 1894.	Section 72.
Section 78.	——	Section 73.
Section 79.	——	——
Section 80.	——	——
Section 81.	——	——
Section 82.	——	——
Section 83.	——	——
Section 84.	——	Section 74.
Section 85.	——	Section 75.

SPECIAL MATTER ON GIFTS

The Estate Duty Act, 1953, applies to all persons dying on and after 15-10-1953, in the territory to which the Act applies. In this territory there exist many communities who are governed by their own personal laws, in some matters the statutory laws themselves permitting this. The Mahomedans including Khojas and Memons who are governed by Mahomedan law are not bound by the provisions of statutes like the Indian Succession Act, the Transfer of Property Act and the Trusts Act in respect of wills, gifts and wakfs. A Mahomedan is entitled to settle property in perpetuity for the benefit of his descendants provided there is an ultimate gift in favour of Charity : see the Mussalman Wakf Validating Act, 1913, which is given retrospective effect. A Mahomedan can make a gift during death-illness. (Marz-ul-maut). This corresponds to gifts *mortis causa* dealt with under section 8 of the Estate Duty Act. But he cannot make such a gift in excess of a third of his estate after payment of funeral expenses and debts, unless the heirs give their consent after the death of the donor to the excess taking effect. He can make a gift of the whole of his property even to a stranger to the entire exclusion of his heirs, but he cannot by his will do what he can do by means of a gift i.e., a transfer of property *inter vivos*. A gift in Mahomedan law of movable or immovable property does not require writing. It may be made orally. However, three essentials are required for a valid gift : (1) the declaration of a gift by the donor ; (2) an acceptance of a

gift expressed or implied, by or on behalf of the donee; and (3) delivery of possession of the subject of the gift by the donor to the donee. The delivery should be of such possession as the subject of the gift is susceptible of. Neither a Sunni nor a Shia Mahomedan can make a gift in favour of an unborn person. Life estates and vested remainders are unknown to Mahomedan law. However, life estates will be construed as interests in the usufruct. Through the medium of a wakf, a Mahomedan can create successive life interests in favour of unborn persons. Section 1 of the Mussalman Wakf Validating Act, 1913, is: "Wakf means a permanent dedication by a person professing the Mussalman faith of any property for any purpose recognized by the Mussalman law as religious, pious or charitable. Under this Act, the subject of wakf may be any property, movable and immovable, shares in joint stock companies, Government promissory notes and cash. Under Mahomedan law the moment a wakf comes into existence all rights of property in the subject of the wakf vest in the Almighty. The doctrine of *cy-pres* applies to wakfs provided they are valid. Wakfs may be created orally or by writing. The Indian Trusts Act II of 1882 does not apply to wakfs. (See section 1 of the Act.) The Indian Registration Act however applies so that if a wakfnama comprises immovable property upwards of Rs. 100 it has got to be registered. The Hanafi law permits the donor (wakif) to reserve for himself even the whole income of the property for his life. Under Shia law the wakif cannot reserve for himself a life interest in the income or any portion of the income. The Privy Council in *Abadi Begum* v. *Kaniz Zainab* (1927) 54 I.A. 33, held that four conditions govern the validity of a wakf. These are "(1) It must be perpetual. (2) Absolute and unconditional. (3) Possession must be given to the mowkoof (beneficiary) of the thing, appropriated. (4) It must be taken entirely out of the wakif or appropriator." The last condition had been felicitously expressed by the Privy Council "the wakif must not eat out of the wakf". Wakfs are either public or private. A public wakf is one for a public religious or charitable object. A private wakf is one for the benefit of the wakif's family and his descendants. A private wakf for the benefit of the wakif's family and his descendants is valid under section 3 of the Mussalman Wakf Validity Act, 1913, provided that the ultimate benefit is expressly or impliedly for the poor or for any other purpose recognized by the Mussalman law as a religious, pious or charitable purpose of a permanent character. Section 4 of the Act is: no such wakf shall be deemed to be invalid merely because the benefit reserved therein for the poor or other religious, pious or charitable purpose of a permanent nature is postponed until after the extinction of the family, children or descendants of the person creating the wakf.

Whatever the Mahomedan law as to gifts and wakf, all Mahomedans are bound by the provisions of the Estate Duty Act, 1953, and the result is that both gifts and wakfs made and created by Mahomedans are subject to the provisions of the Estate Duty Act. The Controllers of Estate Duty will have to apply and enforce the statutory provisions of the Estate Duty Act and their task in this behalf involves heavy work by way of examination and determination of the conditions of the gifts and wakfnamas.

Under the Mahomedan law, a will (vasiyat) may be made orally or in writing. No formality whatsoever is required. Even if a Mahomedan will is in writing it need not even be signed; neither is there any necessity of attestation. The limit of testamentary power is only the third of the surplus of the estate after payment of funeral expenses and debts. The Indian Succession Act, 1925, does not apply to wills of Mahomedans. A Mahomedan will can be admitted in evidence in a Court of Law even though a obtained after it is duly proved. The pro-

visions of the Probate and Administration Act, 1881 and the corresponding provisions of the Indian Succession Act, 1925 will however, apply to executors under Mahomedans' wills.

See further the following cases :—

A.I.R. 1937 P.C. 174 (*Mahabir Prasad* v. *Mustafa Hussain*).

I.L.R. 28 Allahabad 715 (*Aulea Bibi* v. *Allauddin*).

7 Bom. L.R. 558 (*In re Aba Satar*).

HINDU LAW

Under Hindu Law, the idol of a temple or the image of the deity in the Hindu Pantheon is a juristic entity vested with the capacity of receiving gifts and holding properties. In *Vidya Varuthi Thirtha* v. *Balusami Ayyar* (44 Madras, 831 = 48 I.A. 302, Privy Council) it is observed : "when the gift is directly to an idol or a temple, a seisin to complete the gift is necessarily effected by human agency. Called by whatever name, he is the manager and custodian of the idol of the institution. In almost every case, he is given the right to a part of the usufruct, the mode of enjoyment and the amount of the usufruct depending again on usages and customs."

In *Jagindra Nath Roy* v. *Hemantha Kumari Devi* (31 I.A. 203), Sir Arthur Wilson remarks "There is no doubt that an idol may be regarded as a juridical person capable as such of holding property, thought it is only in an ideal sense that the property is so held."

In *Damodhar Das* v. *Lakhan Das* (37 I.A. 147), the Privy Council observed at page 151, "The learned judges of the High Court have rightly held that in point of law the property dealt with by the ekrarnama was prior to its date to be regarded as vested not in the mahant but in the legal entity the idol, the mahant being only representative and manager."

In *Prmatha Nath Mullick* v. *Pradhyumna Kumar Mullick* (52 I.A. 245), it was observed as follows : "A Hindu idol is according to long established authority, founded upon the religious customs of the Hindus, and the recognition thereof by Courts of law, a "juristic entity". It has a juridical status with the power of suing and being sued. Its interests are attended to by the person, who has the deity in his charge and who is in law its manager with all the powers which would, in such circumstances, on analogy, be given to the manager of the estate of an infant heir."

Pandit Prannath Saraswati says at page 127 of his Tagore Lectures for 1892, "The books of rituals contain a direction that before removing the image into the temple the building itself should be formally given away to the God for whom it is intended. The sankalpa or formula of resolve makes the Deity himself the recipient of the gift which as in the case of other gifts, has to be made by the donor taking in his hands water, sesamum, the sacred kush grass, and the like. It is this ceremony which divests the proprietorship of the temple from the builder and vests it in the image, which by the process of vivification, has acquired existence as the juridical personage."

In A.I.R. 1928 All. 689 (*Rangacharya* v. *Guru Revti Raman Acharya*) the following propositions are stated to have been firmly established :—

(1) The idol of a Hindu temple is a juridical entity.

(2) It holds and owns the property dedicated to it in an ideal sense.

(3) It can sue and can be sued through its manager and its estate is represented by the sebait who manifests the will of the deity and represents its dealings with the outer world.

(4) The sebait is not a trustee for the idol and no legal estate vests in him.

Section 2 (17) of the Estate Duty Act, 1953.

"Public charitable purpose" includes relief of the poor, education, medical relief and the advancement of any other object of general public utility within the territory of India.

Section 4 (3) of the Indian Income-Tax Act, 1922, is :—

(3) Any income, profits or gains falling within the following classes shall not be included in the total income of the person receiving them :

(*i*) Any income derived from property held under trust or other legal obligation wholly for religious or charitable purposes, and in the case of property so held in part only for such purposes, the income applied, or finally set apart for application, thereto.

(*i*-a) Any income derived from business carried on on behalf of a religious or charitable institution when the income is applied solely to the purposes of the institution and—

(*a*) the business is carried on in the course of the carrying out of a primary purpose of the institution, or

(*b*) the work in connection with the business is mainly carried on by beneficiaries of the institution.

(*ii*) Any income of a religious or charitable institution derived from voluntary contributions and applicable solely to religious or charitable purposes***

In this sub-section "Charitable Purpose" includes relief of the poor, education, medical relief and the advancement of any other object of general public utility, but nothing contained in clause (*i*), clause (*i-a*) or clause (*ii*) shall operate to exempt from the provisions of this Act that part of the income of a private religious trust which does not enure for the benefit of the public. The above quoted provisions of section 2 (17) of the Estate Duty Act, 1953, lead more or less to the same result. Cases therefore decided in India with reference to the above-quoted provisions of the Indian Income-Tax Act will be of considerable help in the interpretation of section 2 (17) of the Estate Duty Act.

In *Tribune Press* v. *Income-tax Commissioner, Punjab* (66 I.A. 241 = A.I.R. 1939 P.C. 208), the Privy Council interpreted section 4 subsection (3) clause 1 of the Indian Income-Tax Act. Sir George Rankin who delivered the judgment in this case held that the question "whether a particular object is of general public utility, like the question whether a particular trust is charitable, is a question of law, though doubtless it is for the commissioner to find and state any facts bearing thereon." The Privy Council in this case had to consider three trusts made by Sardar Dialsingh, a Sikh inhabitant of the Punjab in and by his Will. Two of the trusts were for the establishment and maintenance of (1) an Arts College, (2) a public library. The third trust was for the maintenance of the Tribune Press and Newspaper in Anarkaly, Lahore, in an efficient condition, keeping up the liberal policy of the said newspaper and devoting the surplus income of the said Press and Newspaper after defraying all current expenses in improving the said Newspaper, and placing it on a footing of permanency. It was held that the object of the trust might fairly be described as "the object of supplying this Province with an organ of educated public opinion" and that it should *prima facie* be held to be an object of general public utility.

In Mahomed Ibrahim Riza Malak v. *Commissioner of Income-Tax, Nagpur* (A.I.R. 1930 P.C. 226), the deeds of trust contained the following provisions :—"for carrying on the agricultural, industrial, commercial and other pursuits of a community which is a sect of the Dawood Bora Tribe,

located at Nagpur ; for entertaining guests, giving at homes or parties, for such donations for charitable or religious purposes, contributions to memorials, funds raised for holding social, educational, religious, industrial or political conferences or congresses, and for public entertainment." The spiritual head of the community for the time being was authorised to carry out the said objects of the trusts as he deemed fit. It was held that the income derived from the property held under these trusts was not wholly for religious or charitable purposes. The whole of the income of the property was held assessable to income-tax.

In *All India Spinners Association* v. *Commissioner of Income-Tax, Bombay* (A.I.R. 1944 P.C. 88), the Privy Council held that a formal deed was not necessary to constitute a trust, still less to constitute a legal obligation binding the trustee, the council and the members *inter se.* It also held that the purposes of the association included the advancement of other purposes of general public utility than the purpose of relief of the poor. "It is now recognised that the Indian Act must be construed on its actual words and is not to be governed by the English decisions on the topic. The English decisions on the law of charity are not based upon definite and precise statutory provisions. They have been developed by the Chancery Courts in the course of more than three centuries. The Act of XLIII Elizabeth (1601) contained in a preamble a list of charitable objects which fell within the Act, and this was taken as a sort of chart or scheme which the Court adopted as a groundwork for developing the law. In doing so they made liberal use of analogies so that the modern English law can only be ascertained by considering a mass of particular decisions often difficult to reconcile. It is true that section 4 (3) of the Act has largely been influenced by Lord Macnaghten's definition of charity in 1891 A.C. 531 at page 583, *Pemsel* v. *Commissioners for Special Purposes of Income-Tax,* but that definition has no statutory authority and is not precisely followed in the most material particular ; the words of the section are "for the advancement of any other object of general public utility" whereas Lord Macnaghten's words were "other purposes beneficial to the community." The difference in language, particularly the inclusion in the Indian Act of the word "public" is of importance. The Indian Act gives a clear and succinct definition which must be construed according to its actual language and meaning. English decisions have no binding authority on its construction and though they may sometimes afford help or guidance, they cannot relieve the Indian Courts from their responsibility of applying the language of the Act to the particular circumstances that emerge under conditions of Indian life. * * * * * Clause (1) of the Constitution establishes the Association as an organisation for the development of handspinning and Khaddar. This is the dominant object and purpose of the Association. It is to be a permanent organisation, unaffected and uncontrolled by politics, and though established with the consent of the All India Congress Committee as an integral part of the Congress Association, it is to have independent existence and powers. The statement of the object excludes in their Lordships' opinion any question of profit making and also excludes any element of party politics. Any participation in political propaganda would be *ultra vires.* Under clause (3) "the funds and assets" then held by the All India Spinners Association were to vest in the Board of Trustees, who were also to be the Executive Council and "to hold the same for the purposes of the Association." Clause (4) defines the powers of the Council of the Association, which is to have independent existence and "they are to do all things which may be necessary for the furtherance of its objects." There is of course a special provision enabling the Council to act as an agency on behalf of the Congress to receive self-spun yarn as subscriptions to the

Congress, but that has been rightly regarded as a separate and independent matter, apart from the general object of the Association and not affecting its freedom from political purposes. There is no power to distribute any surplus income among its members. By clause (20) every person wishing to join the Association must sign an application to be enrolled stating that he has read the rules and forwarding his subscription. On a fair construction of the Constitution, their Lordships cannot agree with the opinion of the learned Judges that no trust or legal obligation is shown binding the Association or its Trustees or Council to devote the property of the Association from which the income is derived to the charitable purposes for which the Association was formed, assuming for the moment that the purposes were charitable within the meaning of the Act. * * * * * Here the property consisted of the organisation and the undertaking as well as in the fluctuating stock of yarn and cloth. * * * * * The limits fixed by the section must be strictly observed and its definition must be satisfied by the character of the Association and its activities. Whether that is so depends on the true construction of the section and on the meaning and effect of the constitution which defines the character of the Association. The construction of the section is obviously a question of law, but so also is the question what is the real purpose of the Association. The Court must make its decision on the latter point on the basis of the facts found for it, but given the facts the question is one of law. In this particular case the principal fact is the constitution, the true construction of which is again a question of law. The High Court were prepared to assume (in the words of Wadia J.) that—

> "the real underlying object of the Association was to benefit the poor agriculturists in the villages, specifically at that time of the year when they were not actively engaged in agricultural operations."

The Judges in India with their knowledge of Indian conditions are peculiarly qualified to form an opinion on these matters. But their Lordships see no sufficient reason to doubt the conclusion that the primary object of the Association was the relief of the poor. That would be enough *prima facie* to satisfy the statute. But there is good ground for holding that the purposes of the Association included the advancement of other purposes of general public utility. These last are very wide words. * * * * * These words their Lordships think would exclude the object of private gain, such as an undertaking for commercial profit though all the same it would subserve general public utility. But private profit was eliminated in this case. Though the connection in one sense of the association with Congress was relied on as not consistent with "general public utility" because it might be for the advancement primarily of a particular party, it is sufficiently clear in this case that the association's purposes were independent of and were not affected by the purposes or propaganda of Congress. Nor is there any ground for the Court holding that the scheme is not one which "may be" for the public benefit. The Court might in proper cases refuse to admit as charitable schemes, purposes eccentric or impracticable. But though economists might differ about the wisdom of some aspect at least of the association's purposes, the Court could not hold that it was beyond the pale of legitimate charitable trusts. This general line of reasoning seems to accord with that of the board in 66 I.A. 241."

In *Subhas Chandra Bose* v. *Gordhandas I. Patel* (A.I.R. 1940—Bombay 76), it was held that every trust must be expressed in sufficiently clear language to enable the Court to ascertain what were its purpose and object. "This is so under English law and also under section 6, Trusts Act, and that the principle applies to charitable trusts was laid down as long ago as the case in (1805) 10 Ves. Jun 522 (*Morice* v. *Bishop of Durham*)". In this case

the late Vithalbhai J. Patel disposed of his residuary estate under a Will in favour of Mr. Subhas Chandra Bose to be spent by the latter or his nominee according to his instructions for the political uplift of India and preferably for the publicity work on behalf of India's cause in other countries. The question was whether or not that gift of the residue was valid in law. "Mr. Bose argues that in India a trust for general public utility would be valid, and that the courts are not bound by the English cases which exclude such a purpose from charitable trusts, and he contends, secondly, that even if we are bound by the English cases, nevertheless this gift is equivalent to a gift to India and falls within the line of cases which may be referred to as "the locality cases." We have been referred to a great many of the English cases, and I think, not for the first time in my life, that they are not by any means in a satisfactory condition.

In (1891) A.C. 531 Lord Macnaghten ventured on a definition of charity in the legal sense, that is as falling within the Statute of Elizabeth. He says this (page 583) :

> 'Charity' in its legal sense comprises four principal divisions ; trusts for the relief of poverty ; trusts for the advancement of education ; trusts for the advancement of religion ; and trusts for other purposes beneficial to the community, not falling under any of the preceding heads.

That definition, except in relation to religion, which is obviously not in the same position in India as in England, where there is only one religion, is very much the same as the definition in the Indian Charitable Endowments Act. Now, very soon after (1891) A.C. 531 had been decided the Courts in England unfortunately, as I venture to think, held that the fourth class in Lord Macnaghten's definition, viz., trusts for other purposes beneficial to the community was not really a definition at all, that all that Lord Macnaghten meant was that charity in the legal sense might embrace purposes beneficial to the community, but that all purposes beneficial to the community were not charitable. That was laid down as early as (1896) 2. Ch. 451 (*In re Macduff ; Macduff* v. *Macduff*) and the result was largely to destroy any practical utility in the definition given by Lord Macnaghten, because instead of having merely to enquire whether a particular gift fell within one of the four classes, if such gift fell within the fourth class the Court had to go further and enquire whether it was charitable or not. However, undoubtedly under English case law a gift for general public utility is not a good charitable gift, because it might be employed for purposes which are not considered charitable. But side by side with cases of that nature there exists another line of cases which have been referred to as "the locality cases" in which it has been held that a gift for the benefit of a particular place, whether a parish, a city, a county, or a country is charitable, although the purposes of the gift are not specified and the gift could apparently be applied for the general purposes of the locality. I need not refer to the cases in detail, because they are all collected and discussed in (1932) I Ch. 153, (*Smith In re ; Public Trustee* v. *Smith*) in the English Court of Appeal. Those cases undoubtedly exist and show that a gift for the benefit of a locality is good. I must confess that I feel great difficulty in seeing how those cases can be brought within the purview of the law relating to charitable trusts. It is very difficult to see why if a gift for the general purposes of the community is not charitable, because it might be applied for purposes which are not charitable, a gift to a particular place is charitable, though that also might apparently be applied to non-charitable purposes in the locality. And this difficulty is not diminished where the locality is extended to the whole of England as it was by the case in (1932) 1 Ch 153 where the gift was to

England.. Lawrence L.J. at the end of his judgment pointing out the principle on which the judgment was based, says (page 173) :

> The conclusion I have arrived at, after considering all the authorities to which our attention has been drawn, is that the present case falls within the principle of the cases in which the gift is for the benefit of a particular class and therefore for a specified public purpose, and not within the line of cases in which the gift is for public purpose of a general and wholly unrestricted nature.

I do not myself see why a gift to a class if it be regarded as being for a specified purpose should be any more for a charitable purpose than a gift to the community or to an individual. However, there the cases are, and if we had in this case a gift to India, or a gift to the people of India, and if so whether that principe which has been gradually extended from a parish to a country should now be extended to a sub-continent. However, as we have not got a gift to India, or the Indian people, that interesting question does not arise for decision. With regard to the more general argument of Mr. Bose that what we have got here is in effect a gift for the general public utility of India, I would only say that if we really had such a gift, I should approach the argument of Mr. Bose that a gift for general public utility is a good charitable gift in India, with much sympathy ; and if the authorities were not too strong for me I should be glad to hold in favour of the argument, relying on the statutory definitions of "charitable purpose" in India, and also having regard to the rather unsatisfactory state of the English authorities. But again we have not got here a gift for the general public utility of India, and therefore that question also does not call for decision.

What we have got here is a gift for the political uplift of India, and one cannot possibly disregard the adjective "political". Assuming that the meaning of those words is that for which Mr. Bose contends, i.e., that they denote improvement in the political system of India, and therefore to that extent must be beneficial to India, the difficulty is that the words are too vague. * * * * * Where a testator shows a general charitable intention, but the particular charitable purpose indicated for some reasons fails, the Court will give effect to the general charitable intention and will get over the defect in the particular intention by framing a scheme. But here there is no general charitable intention ; there is no intention whatever expressed, except that the money is to be used for the political uplift of India, and if that is too vague to be enforced there is nothing left. * * * * * A trust to advance a political purpose is clearly bad on the ground given by Lord Parker in (1917) A.C. 406, *Bowman* v. *Secular Society, Ltd.*, that a trust for the attainment of political objects is invalid, not because it is illegal, but because the Court has no means of judging whether any proposed political change will or will not be for the public welfare or benefit. Mr. Sarat Bose has drawn our attention to the fact that that dictum is criticised by the learned authors of Edn. 5 of Tudor on Charities, but the dictum was accepted by the Privy Council in 41 Bom. L.R. 1150, *Trustees of Tribune Press* v. *Commissioner of Income-tax, Punjab*. I think the Privy Council in that case were definitely of opinion that if the Tribune newspaper was employed for the advancement of particular political purposes the trust under which it was managed would not be charitable. In my opinion, whatever meaning one attaches to the expression "political uplift of India", it is impossible to give effect to it as a valid trust, because it is too vague for the Courts to enforce."

In *D. V. Arur* v. *Income-tax Commissioner, Bombay* (A.I.R. 1946 Bombay 44), the operative part of the deed of Trust directs that the trustees are to hold the trust fund upon trust to administer and control the same and apply and devote the net annual income of the Vidyanidhi in and towards the

objects and purposes of a scheme whereunder the trust moneys ought to be utilised for awarding scholarships to young men or women who are descendants of the Arurkar family which expression shall mean descendants in male line of Devapana Arur, the founder of Sri Umamaheswar temple of Kailaje near Karkal, in South Kanara District. The trust deed further directs that the surplus income if any up to 50 per cent. may be devoted to awarding of scholarships to deserving applicants in the Saraswat community (owing allegiance to Sri Chitrapur Mutt) and the balance if any being added on to the corpus of the nidhi. "Mr. Setalvad on behalf of the Crown has pointed out, the conception of charitable purposes in England and in India is not necessarily the same. In England a great array of judicial decisions have invested the Statute of Elizabeth with an imposing mantle of judge-made law, into which is woven the legal conception of charity. In India the popular notion of a charitable purpose is almost unlimited in its scope. But during the last eighty years numerous statutes concerning taxation, civil procedure, transfer of property, and charitable endowments have laid down a legal conception of charitable purposes so far as these statutes are concerned, which considerably curtails the popular ideology of what is charitable.

The earliest statute appears to be the Civil Procedure Code of 1857. In the Code of 1877 the expression used is a trust for public charitable purposes; in the Transfer of Property Act of 1882, the restrictions imposed by certain sections of that Act "shall not apply to property transferred for the benefit of the public, for the advancement of religion, knowledge, commerce, health, safety or any other object beneficial to mankind;" in the Income-tax Act of 1886 by subsection 5 (1) "nothing in section 4 shall render liable to tax . . . . any income derived from property solely employed for religious or public charitable purpose;" in the Charitable Endowments Act of 1890, section 2 "charitable purpose" includes "relief of the poor, education, medical relief and the advancement of any other object of general public utility, but does not include a purpose which relates exclusively to religious teaching and worship," in the Civil Procedure Code of 1908, section 92, which concerns the commencement of proceedings for an alleged breach of express or constructive trusts "created for public purposes of a charitable or religious nature;" in the Income-tax Act of 1918, section 3 (2) provides that the Act shall not apply to certain classes of income including income derived from property held under trust or other legal obligation wholly for religious or charitable purposes and in that section "charitable purpose" includes relief of the poor, education, medical relief and the advancement of any other object of general public utility. The preamble to the Charitable and Religious Trusts Act of 1920 refers to trusts "created for public purposes, of a charitable or religious nature." In the Income-tax Act of 1922 the definition of "charitable purpose" contained in section 4 (3) (ix) is the same as that in the 1939 Act quoted above without the qualification that nothing contained in clause (1), clause (1) (*a*) and clause (ii) shall operate to exempt from the provisions of this Act that part of the income of a private religious trust which does not enure for the benefit of the public.

In my opinion, looking at the definitions in the various Acts, a charitable purpose which is not of a religious character must contain the element of benefiting the public. So that a trust, the object and scope of which is limited to the education of the members of a family, would not come within the definition of a charitable purpose contained in the Income-tax Act either as it stood in 1922 or as amended in 1939. What we have to do is to construe the statute, no doubt the public nature of the trust can be satisfied by benefit conferred on a substantial section of the community. * * * * * Public utility must always be a matter of degree, so that circumstances must be examined to ascertain whether the section or class of the community to be benefited

can be said to be public as opposed to being private. In my opinion a trust, for the benefit of the members of a family or for the descendants of a named individual, imports a conception or notion of something which is private and not something which is public. This view is supported by various cases in the Indian High Courts and in particular by (1941) 9 I.T.R. 375, *Commissioner of Income-tax, Madras* v. *Jamal Mahammad ;* (1942) 10 I.T.R. 512 *In re Mercantile Bank of India Agency, Ltd.,* and (1944) 12 I.T.R. 179 *Commissioner of Income-tax, Madras* v. *Aga Abbas Ali Shirazi.* Accordingly, in my opinion, the first question should be answered in the negative."

Per Kania J. * * * * * "Reading the scheme as a whole it seems to me that this settlement was for awarding scholarships to the members of the Arurkar family, and to emphasize this object the genealogical tree was annexed to the scheme. I do not think the number of those eligible at the date of the settlement matters, because the initial object is for the benefit of the descendants of named persons, and under the circumstances the idea of benefiting a section of the public in any way is excluded. It has been recognised that the line dividing public and private settlements is difficult to define, but on a true construction of this deed it seems clear that the settlement was for the education of the members of the Arurkar family of which Devappayya was the founder. On the true construction of the words "charitable objects" therefore this settlement does not fall within the class of excepted settlements under the Income-tax Act."

In *R.M.S. Firm* v. *Muthuswami Odayar* (A.I.R. 1941 Mad. 188), it was held that the offering of prayers, japams, etc., at the grave could not be said *ex necessitate rei* to be not for the public benefit or for the benefit of any section of the public. As however that purpose having been subordinated to the main purpose of the dedication which was to feed poor pilgrims and distribute oil among them during the ten days of a well known festival in the neighbourhood, the dedication was obviously for the benefit of the public. The Court in this case was considering the dedication with reference to the application of section 18 of the Transfer of Property Act. The Court held that the feeding of poor pilgrims did advance religion according to the tenets of Roman Catholic religion and that therefore the dedication was "for the benefit of the public" within the meaning of those words which are found in section 18 of the Transfer of Property Act.

In *Commissioner of Income-tax, Madras* v. *Jamal Mahammad* (A.I.R. 1941 Mad. 535) it was held that the expression "charitable purposes" must be construed strictly ; as the result of decisions in England spread over a long period the expression could only be applied to a public charity, and that there was no such thing as a private charitable trust. It is pointed out in this case that there may be a private trust for religious purposes and that is why the amendment was made to section 4 (3) in 1939 in order to put beyond all doubt the intention of the Legislature not to exempt even private trusts for religious purposes. Leach, C. J., who delivered the judgment in this case observed : "the Income-tax Act is an enactment expressed in the English language and the words used in it must be given the same meaning as is given in the construction of similar statutes in England. Giving the words their accepted meaning, the exemption only applies to a Trust the object of which is public utility. * * * * *" In A.I.R. 1931 Lahore 578 *Umer Baksh* v. *Commissioner of Income-tax, Punjab,* the Lahore High Court expressly held that the expression "religious or charitable purposes in section 4 (3) (i) has to be construed with reference to English law and not to the personal law of the assessee and this opinion was accepted by the Patna High Court in 10 I.T.C. 7 = A.I.R. 1936 Pat. 532 (*Humayun Rajah Chowdhry* v. *Commissioner of Income-tax, B & O*)."

In *Commissioner of Income-tax, Madras* v. *G. D. Naidu*, Industrial Educational Trust (A.I.R. 1942 Madras 625), one G. D. Naidu created the G. D. Naidu Industrial Educational Trust and purported to endow it with the shares held by him in six transport companies of which he had the control and immovable property worth Rs. 1,10,000. Mr. Naidu constituted himself the managing trustee of the Trust and gave himself full power to deal with its assets. It was held that in view of the provision of the trust deed by which the assets could be utilised for G. D. Naidu's own purposes or the purposes of his companies, the deed could not be said to have created a trust wholly for charitable purposes. It was further held that the idea that some day the institution contemplated by the deed might be founded was not sufficient to obtain exemption from Income-tax under section 4 (3) (1).

In *Muthuswami Naidu* v. *Rayalu Naidu* (A.I.R. 1925 Mad. 689), it was held that Vanabhojanam Dharmam was not too vague an object of a charitable trust.

In *Draivia Sundaram Pillai* v. *N. Subramania Pillai* (A.I.R. 1945 Mad. 217) it was held that a direction to erect Matam for feeding of the poor and within its precincts to instal an idol, where there was to be daily puja as well as puja on festival days, had the effect of constituting a public charity. So also the direction to the supply of butter milk to poor persons constituted a bequest for public charity. A direction however, that money should be spent on the building of a tomb (Samadhi) and its maintenance did not constitute a charitable endowment. A court of law cannot apply the doctrine of *cy-pres* unless it can be gathered from the dedication, the terms of the Will and the provisions of a trust deed or settlement that the donor had a general charitable intention. If such an intention is clearly expressed it will be given effect to in another way, should the way intended by the donor be open to objection or be impracticable. Where there is a general charitable intention the fact that the donor wanted his name to be kept prominently before the public would not render his action invalid.

In *Trustees of Gordhandas F.C.T.* v. *Income-tax Commissioner, Bombay* (A.I.R. 1952 Bombay 346), a trust described as 'Gordhandas Govindram Family Charity Trust' was created by a trust deed setting apart a sum of Rs. 11 lakhs out of the joint family property of Gordhandas Govindram. The primary object of the trust was to benefit the poor members of the family of the settlor. By clause 2 of the deed it was provided that the balance of the income after payment of all necessary outgoings should be applied in giving help or relief to such poor Vaishya Hindus or other Hindus as the trustee may consider deserving of help in the manner and to the extent specified therein and subject to the directions contained in the next following clauses. These clauses provided for maintenance and marriage expenses of the members of the family of the settlor. It was only after all the members of the family were exhausted that a section of the public, the Vaishyas or other Hindus, could take any benefit under the trust. Chagla, C. J., stated "It is clear, apart from authorities, that in India relief of the poor by itself would not be a charitable object unless it involved an object of general public utility. To further analyse this proposition it must result in any charity which was intended for the relief of the poor relatives of the settlor or donor not being a charity that falls within the definition of the Act. It is impossible to contend that the relief of poverty when that relief is restricted to members of one's family can be a charitable object which is of general public utility. It may be that if the intention was clearly to benefit the public generally and incidentally or indirectly the members of the family of the settlor were also benefited, then a view may be taken that the settlement was for a charitable purpose; but when you have a case in which the

primary purpose of the settlor is to benefit the members of his family and remotely and indirectly to benefit the general public, then it cannot be stated that the settlement is for a charitable purpose within the meaning of the Income-tax Act. * * * * * Then there is rather a significant decision of the Court of Appeal in 'Compton', In *re* : *'Powell* v. *Compton'* (1945) 1 Ch. 123. In that case it was held that a gift for the education of the descendants of named persons must be regarded as a family trust and not as one for the benefit of a section of the community and the Court of Appeal rejected the statement of law in Tudor on Charities as unsupported by authorities, viz., "bequests for the education of the donor's descendants and kinsmen at a school or college were valid"; and with considerable hesitation and reluctance they came to the conclusion that trusts in favour of poor relatives of the donor must be considered a valid charitable trust that being the law at that date. But they pointed out that the principles of law were anomalous and were not to be extended to apply to a different class of cases. Therefore, to-day in England it is only in cases of poverty that a charitable trust may be restricted to members of one's family and with regard to other classes of charity English Courts have refused to extend that principle. * * * * * Reliance was placed on a decision of an English Court, In *re* : *Cohen-National Provincial and Union Bank of England, Ltd.,* v. *Cohen,* (1949) 36 T.L.R. 16. There the charity which was considered was the power given to the trustees to select a deserving Jewish girl and pay such selected girl on her marriage a certain amount as dowry and that charity was held good, amongst other grounds, on the ground that the settlor intended to encourage marriage amongst Jews and it was for the benefit of Jewish religion. Therefore, the view was taken (it is a judgment of a Single Judge) that it may encourage marriage in a particular community, and therefore it must be for the benefit of the community. But even that view cannot apply to the trust deed before us because expenses are not given primarily for the benefit of any community or section of the community but marriage expenses are given for the benefit primarily of the members of the Seksaria family. Without meaning any disrespect to that family, I do not think that it can be considered that an enlargement of that family is necessarily for general public utility or even for the benefit of a section of the public." It was held in this case that the income from the trust was not held in trust wholly for charitable purposes and was therefore not exempted from taxation under section 4 (3) (1) of the Act.

In *In re Lokamanya Tilak Jubliee National Trust Fund, Bombay* (A.I.R. 1942 Bombay 61) the objects of the Trust Fund are :—

(*a*) The advancement of any purpose which might in the uncontrolled opinion of the managing committee be national or of national importance for the inhabitants of British India by any means which in the like opinion of the managing committee be constitutional.

(*b*) The political advancement of India having for its goal the acquisition of complete national autonomy or "Swarajya" to be attained by all constitutional agitation and means.

(*c*) The diffusion of political education and knowledge as to the political affairs of India and propagandist work both in India as well as in the any part of the world outside India having for its aim the acquisition of complete national autonomy or "Swarajya" as aforesaid.

(*d*) Any object which may conduce to any of the aforesaid objects.

Beaumont, C. J., said : "The objects specified are clearly distributive. The whole of the trust fund can be applied for any one or more of the objects specified, and if any one of those objects do not fall within the purview of

the legal definition of "charity" the trust cannot be regarded as a good charitable trust. One has, of course, to bear in mind the definition of "charitable purposes" in section 4 (3), Income-tax Act, which provides that "charitable purposes" include relief of the poor, education, medical relief, and the advancement of any other object of general public utility. That goes further than the definition of charity to be derived from the English cases, because it embraces purposes of general public utility ; and if all the purposes in the trust deed could be regarded as of general public utility for the benefit of the inhabitants of British India, then the trust would be, in my opinion, a good charitable trust. But, to my mind, (*a*) and (*b*), at any rate cannot be brought within those limits. Clause (*a*) includes the advancement of any purpose which may in the opinion of the managing committee be national or of national importance for the inhabitants of British India by any means which in the like opinion of the managing committee be constitutional.

It is impossible to say that the managing committee may not regard purposes which are not according to law charitable, as being nevertheless of national importance for the inhabitants of British India, and the committee may regard methods as constitutional which the law would not regard as constitutional. Assuming the objects specified in sub-clause (*a*) to be charitable, this is not the case of a gift for such charitable purposes as the managing committee may think fit. A gift of that sort would, no doubt, be good, because the managing committee would be bound to keep within the ambit of charity, and if they go beyond the legal boundary, they can be controlled by the Court. But I know of no authority for the proposition that a gift for such purposes as a particular individual or individuals may consider to be charitable is good. There are many purposes which an individual, acting quite *bona fide*, may regard as charitable, but which the law does not so regard. Therefore, I think sub-clause (*a*) goes too far ; and I think sub-clause (*b*) goes too far also, because it is really a gift for political purposes. Assuming that the attainment of national autonomy may be regarded as a national purpose accepted generally by, and for the good of, the inhabitants of British India, there is a very keen divergence of opinion as to the methods by which that national autonomy should be attained ; and it is impossible, I think, to avoid the conclusion that a gift for the attainment of that object by such methods as the managing committee may approve is really a gift for political purposes, and as such falling within the ruling in (1917) A.C. 406. In my opinion therefore it is impossible to say that the Income-tax Officer was wrong in holding that the income of the trust does not fall within the purview of section 4 (3) (i)."

In *Mirza Hidayat Beg* v. *Seth Bihari Lal* (A.I.R. 1941 All, 225), the trust there was established during the days of the non-co-operation movement. It was for education and for founding and maintaining a school for imparting education. "The law has been well settled that indefiniteness or uncertainty in relation to the objects of a trust may render the entire trust void. To determine uncertainty or indefiniteness in relation to trusts, one of the rules of the English Court of equity is that the Court must be in a position to supervise the trust and administer it in case of a breach of trust or in case of any other circumstance arising in connexion with it in which such a course becomes necessary and where the Court is not in a position to administer the trust by reason of the vagueness of the object of trust the trust is void ; see *Morice* v. *Bishop of Durham* [(1805) 10 Ves. 522] : *In re Hummeltenberg* [(1923) 1 Ch. 237]. Another rule of equity is that a Court cannot make a new will for the founder of trusts if he has left his language vague or uncertain so that either his meaning cannot be found out or the natural meaning of expression used by him is such that it can equally apply to charitable objects and also to non-charitable

objects, and it is not possible to separate them in law : See *Grimond* v. *Grimond* [(1905) A.C. 124]. These rules are firmly established and there is no question about them.

Questions of indefiniteness do arise when trusts are for alternative objects, one or the other of which may not be charitable and where it is open to a trustee to devote the entire funds on objects non-charitable without being called upon to answer a charge of breach of trust, e.g., where trust is for charitable or philanthropic or patriotic objects, where authority is given alternatively to devote funds for patriotic or philanthropic objects, some of which may not be charitable at all. The main problem in such cases is whether the alternative clauses are to be read disjunctively or conjunctively : *See* [(1896) 2 Ch. 451]. *In re Macduff ; Macduff* v. *Macduff* [(1902) A.C. 37]. *Blair* v. *Duncan,* [(1918) A.C. 337]. *Houston* v. *Burns,* [(1923) 1 Ch. 258]. *In re Tetley* and [(1924) A.C. 262], *Attorney-General* v. *National Provincial and Union Bank of England.* Questions of indefiniteness also do arise where trust is for a vague or indefinite purpose like "dharam," "philanthropy," "patriotism," expressions which include objects which may or may not be charitable. The leading case in India on this topic is the judgment of the Judicial Committee in *Ranchordas Vandravandas* v. *Parvathi Bai* [(23) Bombay 725]. But even in cases where a trust for charity is allied with non-charitable objects and it is possible to read the clause conjunctively or charity overshadows other objects of trust and controls them the trusts are enforced : See *In re Smith, Public Trustee* v. *Smith* [(1932) 1 Ch. 153]. And it is difficult to see how a purely legal question of indefiniteness or uncertainty can arise with reference to a trust for a single object and single object only which is wholly charitable. The only question which may arise in such a case is whether the object had been sufficiently specified or not, which will be a question of fact depending upon the construction of a particular document with the aid of surrounding circumstances....

In our judgment the trust is not open to an attack on the ground of vagueness or uncertainty and it is one which, if necessary, can be administered by Court and no question of making a fresh trust for the settlor arises in the case. The next question is whether the trust is for a non-charitable purpose. In England a trust for political purposes is regarded as non-charitable and consequently indefinite. In Halsbury's Laws of England, Edition II, p. 137, para. 178, the law is stated as follows : A trust for the attainment of political objects is invalid not because it is illegal—for every one is at liberty to advocate or promote by any lawful means a change in the law—but because the Court has no means of judging whether a proposed change in the law will or will not be for the public benefit, and therefore cannot say that a gift to secure the change is a charitable gift. Any purpose with the object of influencing the Legislature is a political purpose.

In *Bowman* v. *Secular Society Ltd.* [(1917) A.C. 406] at page 442, Lord Parker in his speech has observed as follows:—But a trust for the attainment of political objects has always been held invalid, not because it is illegal, for every one is at liberty to advocate or promote by any lawful means a change in the law, but because the Court has no means of judging whether a proposed change in the law will or will not be for the public benefit, and therefore cannot say that a gift to secure the change is a charitable gift.

In England a trust for educational purposes, also where educational purposes are subordinated to political purposes so as to make the dominant purpose of trust a political one, is also regarded as non-charitable and consequently indefinite : See [(1933) 17 Tax Cas. 508]. *Bonar Law Memorial Trust* v. *Inland Revenue Commissioners* [(1926) 10 Tax Cas. 748]. *Commissioners of Inland Revenue* v. *Temperance Council of Christian Churches of England*

and Walcs and also (66 I.A. 241) *Trustees of the Tribune Trust, Lahore* v. *Commissioner of Income-tax, Lahore*. But we do not understand it to be the law in England that a trust for education and for founding and maintaining a school for imparting education becomes non-charitable and consequently indefinite merely because it is to be administered by a political party, nor is such a trust to be regarded to be as non-charitable and consequently void for uncertainty because it directs the ideal of a particular political party to be followed in education so long as the trust is intended to be really for education and educational purposes and it is not a mere cloak for political propaganda or authorises or permits the trustees to carry on political propaganda under cover of trust. Indeed, we know that where political purpose or non-charitable purpose was subordinated and educational purpose preponderated even in a mixed trust such a trust was maintained and enforced: See [(1898) 2 Ch. 638] In *re Scowcroft, Omrod* v. *Bishop of Itchington*, and [(1931) 1 Ch. 240], at pages 250 and 252 : In *re Hood, Public Trustee* v. *Hood*. The trust in this case is for national education and for the establishment and maintenance of a school where national education is to be imparted and for a boarding house and for giving scholarships for foreign studies. It may be that in the Board of Trustees there are six persons belonging to a political party and one political party has a predominant voice in its administration. It may be that the education to be imparted in the institution is to follow the ideals of a political party but the real purpose of the trust was education and we are definitely of opinion that the trustees under this trust so conducting education as to make it political propaganda will not be following the directions of the settlor and can be restrained.

There remains the question whether the trust is opposed to public policy. The deed was executed at a time when what is called the non-co-operation movement was in full swing. The Congress in those days advocated a policy of a triple boycott, one of which was a boycott of the British Courts. In the deed it is laid down that the education in the institution shall be on Congress lines and it should be free from official restriction or official management. Sir Tej contends that the author of the trust implied that the British Courts should have no jurisdiction over this trust or its administration and the trusts created expressedly or impliedly with a condition that the Courts of the land should have no control over it, such a trust is opposed to public policy and should not be recognized. It is possible that the settlor may have intended to exclude the jurisdiction of Courts but he has not said so and as a matter of construction it is not possible to read the clause in the deed as excluding the jurisdiction of British Courts even with the aid of the surrounding circumstances on which Sir Tej relies. But even if this deed has contained an express clause stating that jurisdiction of British Courts should be excluded, in our judgment such a clause could be disregarded and should not be a fatal objection to the validity to the trust."

It was however decided in this case that the trust was a sham transaction and was never really acted upon.

In *Commissioner of Income Tax* v. *Aga Abbas Ali Shirazi* [A.I.R. 1944, Madras, 292], the settlement in question was made for the following purposes: (1) for the benefit of the donor's poor relations, (2) for celebrating Moharram and other religious festivals of the Shiyas, (3) for the conduct of marriages and burials of poor Mussulmans, (4) for the benefit of poor Syeds and (5) for such other religious, pious or charitable purposes as are allowed by Mussalman law as applicable to Shiyas. The settlor directed that 10% of the income should be utilised for celebrating the Moharram and other religious festivals, 30% for distribution among his poor relations and 20% for the conduct of marriages and burials of poor Mahomedans and for the benefit of deserving

Syeds. The deed of settlement also provided that the Mutwallis shall be at liberty from time to time to vary the distribution of the income among the objects of the wakf on unanimous resolution of all the three Mutwallis passed at meetings specially held for the purpose. The first of the objects for which the settlement was made, namely, for the benefit of the poor relations of the settlor could not be deemed to be a settlement for a charitable purpose within the meaning of section 4 (3) (*i*) of the Indian Income-tax Act, 1922. As the trustees (Mutwallis) had been given the power to apply the whole of the income of the trust for this one purpose the deed did not fulfil the requirements of the section. So it was held that the exemption from Income-tax could not be granted. It was further held that if there had not been this discretion given to the trustees and the settlor had merely directed that a specified part of the income of the property should be devoted to a purpose which was charitable within the meaning of the section such part of the income would be exempt from tax.

In *Commissioner of Income-tax, West-Bengal* v. *Administrator-General of Bengal* [(1952) 21 I.T.R. 241], a Hindu governed by the Dayabagha law disposed of all his properties by will. Para. 9 of the will directed the setting apart of a sum of Rs. 1,75,000 as debutter fund. The money was to be invested in 3½% Government security. This fund was made over absolutely by the will to the testator's family deities, Radhakrishna and Gopal. The will contained detailed direction as to how the income was to be spent for worship and pooja. After spending the income for these purposes, if any balance remained the same had to be spent in periodical festivals of the said family deities. Paras. 13 to 21 of the will related to gifts to charities like maintenance of children's wards, award of scholarships and sinking of tanks, wells, etc. The testator himself had drawn up a scheme for management of the debutter property. It was held that the public had no right in the management of the property having regard to the provisions of the will. It was also held that the trust in favour of the deities was not a public trust and that no benefit was conferred on the public in general or upon any class of sectarians with the result that no exemption from Income-tax could be claimed.

See further the following cases :—

Chaturbhuj Vallabhdas v. *Commissioner of Income-tax* [(1946), 14 I.T.R. 144] ;

Commissioner of Income-tax v. *Karim Bros. Charity Fund* [(1943) 11 I.T.R. 603] ;

Commissioner of Income-tax, C.P. and U.P. v. *Shri Dwarka Dheesh Temple, Kanpur* [(1946) 14 I.T.R. 440] ; and

Vallubhdas Karsondas v. *Commissioner of Income-tax, Bombay* [(1947) 15 I.T.R. 32].

In *J.K. Trust, Bombay* v. *Commissioners of Income-tax and Excess Profits-tax, Bombay City* (58 Bombay Law Reporter 135), it is pointed out that section 4 (3) (*i*) confers exemption on income from the property only when the property itself is settled upon a charitable trust. In other words, there is no exemption of any income howsoever earned or received which is spent upon a charitable trust or for a public charitable purpose. *Dehors* the property settled on charitable trust mere income even though applied for a public charitable purpose is not exempted from tax. It is only the income which is derived from property which is settled upon a charitable trust that is exempted from payment of tax.

Summary of Law as to Policies of Life Insurance.

Nature of Policy Moneys:—There is one peculiarity in a policy of insurance upon the life of a deceased person ; during his life the moneys assured thereby were not in existence, *qua* money. Immediately before the death his property in the policy consisted of a contingent right to sue at a future period upon a contract which at that time had not been broken. The moneys assured would not in that event have passed on the death, as, to so pass, they should have previously existed, but on that death, or at some period ascertainable by reference to the death, the right to the moneys accrued or arose for the first time. "Property" which "passes" on the death under section 5 (of our Act) must be taken to include moneys assured by a policy of insurance on the deceased's life, which are vested in him at his death, although that which really passed was not the actual money assured, but the benefit of the contract of insurance. Property deemed to be included in property passing on the death within section 7 (1) (of our Act), includes property assured by a policy of insurance on his life. The thing subjected to taxation is "the beneficial interest accruing or arising by survivorship or otherwise," on the death of the deceased. The words "a benefit accrues or arises" in section 7 (1) indicate not the transfer upon death to another of something which the deceased or some other person had before or at the death, but the springing up, upon the death, and the then vesting in another of property which previously had not been existing in anyone. Such is the exact description of money secured by a policy of insurance.

It is conceivable that the following cases may arise and they are catalogued hereunder. In each case it is stated whether estate duty is exigible or not and if exigible, what is the measure or the extent of the levy.

1. Policy effected by the deceased on his life for his own benefit.

Estate duty is payable on the policy moneys.

2. Policy effected by the deceased on his life and wholly kept up by him for the benefit of a donee or an assignee or a nominee.

Estate duty is payable on the policy moneys.

3. Policy effected by the deceased on his life and after some years, the deceased brought into existence a donee or an assignee or a nominee. The deceased paid premiums up to the date of the donation or assignation or nomination. Thereafter the donee or assignee or nominee paid the premiums until the death of the deceased.

As the deceased (donor) had not paid any premiums after the donation or assignation or nomination, no estate duty is payable in respect of the policy moneys.

4. Policy effected by the deceased on his life and the deceased after some years brought into existence a donee or an assignee or a nominee. After the date of the donation or assignation or nomination, the deceased paid five premiums and the donee or assignee or nominee paid ten premiums when the deceased died, and the premiums ceased.

This is a case where the policy was kept up by the deceased partially for the benefit of a donee or an assignee or nominee and in this case estate duty is to be paid to the extent of the proportion which the number of premiums paid by the donee or assignee or nominee between the date of the donation or assignation or nomination and the death of the assured, bears to the total number of premiums paid during that period. The total number of premiums paid in respect of the policy of insurance is 25. It is seen that the deceased had paid in all fifteen premiums, but for the purpose and ascertainment of the proportion of the policy moneys for a levy of estate duty,

the ten premiums paid by the deceased before the date of donation or assignation or nomination must be ignored. Therefore estate duty is payable in respect of 5/10 or 1/2 of the policy moneys. (See *Lord Advocate* v. *Inzievar Estates Limited* [(1938) A.C. 402].

5. Policy effected by the deceased on his life for the benefit of his wife or children or any of them under the provisions of the Married Women's Property Act, 1874.

On the death of the deceased no estate duty is payable in respect of the policy moneys. In this case a trust is created in favour of the deceased's wife or children or any of them and the beneficiaries are entitled to sue the Insurance Company for recovery of the policy moneys, if they are not paid under the terms of the policy to them on the death of the deceased.

6. Policy effected by the deceased on his life and premiums paid by the deceased for some years. Thereafter the deceased transferred the policy to another. A trust was created under the terms of which the deceased was released from all obligation to pay the further premiums due on the policy. The assignee or the trustees of the settlement paid all the subsequent premiums up to the date of the death of the deceased which took place not less than two years after the transfer of the policy and the creation of the settlement.

Estate duty is not payable in respect of the policy moneys. (See *D'Avigdor Goldsmid* v. *Inland Revenue Commissioners* [(1953) 1 All E.R. 403].

7. Policy effected by the deceased on his life and premiums paid by him for 10 years. Afterwards the deceased converted the policy into a fully paid up policy having been unable to continue the policy. Then he irrevocably assigned the policy in favour of another, (even his wife or children).

In this case to determine whether estate duty is payable in respect of the policy moneys regard must be had to the provisions of the Act relating to gifts. If the deceased survived the assignation for two years, then no estate duty will be payable. Of course, there should be no reservation of benefit to the deceased in the deed of assignation.

8. Policy effected by the deceased on his life for the benefit of himself and his wife or another. Both the deceased and that other have beneficial interest in the policy. That other paid all the premiums.

On the death of the deceased estate duty is not leviable in respect of the policy moneys. If both the deceased and the other beneficial owner of the policy paid premiums estate duty will be levied on a portion of the moneys. The extent of the proportion will be determined by taking into account the number of premiums paid by the deceased and the number of premiums paid by the other beneficial owner.

9. Policy effected by the deceased on his life for his own benefit. After paying premiums for some years the deceased made a disposition of his property including the policy of insurance. A trust deed was executed under the provisions of which he and two others became trustees of the settlement (the disposition). Under the settlement the policy moneys were to be taken by his son.

The deceased in this case held the insurance policy as a trustee along with two others for his son. If he survived the settlement for two years estate duty is not payable in respect of the policy moneys. If in this case the deceased was sole trustee for his son then he should survive for at least five years in order that policy moneys should escape payment of estate duty. Where the deceased settled a policy of insurance effected by him on his life on his son by means of a settlement deed whereunder strangers were appointed

trustees of the settlement, no estate duty is leviable in respect of the policy moneys if the deceased survived the settlement for at least two years. (See section 22 of our Act).

10. The deceased took out a policy of insurance on his life by virtue or in consequence of a settlement made by him.

(i) All the premiums were paid by the deceased from his own pocket without reference to the settled property.

Estate duty is payable in respect of the policy moneys on his death.

(ii) All the premiums were paid not by the deceased but from and out of the income of one of the settled properties. This item had been brought into the settlement by the deceased's wife which had belonged to her. Notwithstanding this, the deceased would be treated as the person who had paid indirectly the premiums.

Therefore estate duty is payable in respect of the policy moneys.

(iii) The premiums were paid from and out of the income of an item of the settled property which prior to the settlement had belonged to the deceased.

In this case the deceased would be regarded as a person who had made the payment of the premiums. So estate duty will be payable in respect of the policy moneys.

(iv) The deceased entered into reciprocal arrangements with another person and under these arrangements that other person paid the premiums in respect of the policy of insurance.

The deceased in this case would be regarded as a person who paid the premiums and estate duty will be payable in this case in respect of the policy moneys.

(v) All the premiums in respect of the policy of insurance effected by the deceased on his life were paid by the deceased's father-in-law and there were no reciprocal arrangements entered into between the deceased and his father-in-law. The father-in-law paid all the premiums solely out of generous motives from his own pocket.

Evidence is forthcoming on the questions :

(*a*) that no reciprocal arrangements whatsoever were entered into between the deceased and his father-in-law, and

(*b*) that the father-in-law paid from his own pocket all the premiums.

If the controller is satisfied as regards (*a*) and (*b*) the policy moneys escape payment of the duty.

11. The deceased effected an endowment policy in his own name for the benefit of another to mature on that other attaining a specified age. All the premiums were paid by the deceased till the maturity of the policy. As the deceased was alive at the date of maturity of the policy no question of estate duty on the policy money arises. All endowment policies for the benefit of others such as the policy holder's children for purposes of their marriages or education are governed by this principle if the facts are as stated above.

12. An endowment policy was taken out by the deceased in his own name for the benefit of his daughter or mature on the daughter attaining a specified age. The premiums were paid by the deceased up to the date of his death which occurred before the date of the maturity of the policy.

In this case estate duty is payable on the policy moneys because the policy moneys belonged to the estate of the assured; by expressing the endowment policy to be for the benefit of the daughter, the deceased does not thereby constitute himself a trustee for the daughter.

See the following cases :—

Cleaver v. *Mutual Reserve Fund Life Association* [(1892) 1 Q.B. 147]

In *re Engelbach's Estate* :

Tibbetts v. *Engelbach* [(1924) 2 Ch. 348].

13. In the case of a policy effected by the deceased on his whole life, but under the contract of insurance payment of premiums was limited to 15 years or 20 years, if the assured dies before the period of 15 or 20 years any moneys received under the policy will be subject to payment of estate duty.

If the assured paid the premiums for 15 years or 20 years, and although he is relieved of the obligation to pay any further premiums in respect of the policy, the policy moneys will not become due until the death of the assured. In this case also on the death of the assured estate duty is payable in respect of the policy moneys.

14. In the case of an endowment policy effected by the deceased on his life on condition that the assured will pay the premiums for a stated period of years, the policy moneys become payable on the expiration of the period. The assured is alive and he can receive the moneys himself.

In this case policy moneys can be dealt with by the assured as he pleases, and if there is any disposition made by him of his property including these policy moneys that disposition will be governed by the provisions of the Estate Duty Act, namely sections 9, 10, 11 and 12. If they are not disposed of they augment the estate of the deceased and on his death the policy moneys along with the rest of the estate left by the deceased will be liable to payment of estate duty.

The words "kept up" do not require that premiums should be payable throughout the whole period of the policy, but only that the premiums whenever payable, should be paid for the purpose of keeping the policy on foot and a final payment as a composition for all future premiums will be the payment of a premium for the purposes of section 14 of the Act.

The word "wholly" is related solely to the payment of premiums, and not to the beneficial interest of the donee. The proper date for inquiring who is the donee for purposes of section 14 is the date when the policy moneys become payable. The fact the assured also has a contingent interest in the policy moneys does not mean that the payment of premiums made by him is not wholly for the benefit of the donee. It cannot be contended on his behalf that the payments have been made for the benefit of himself and the donee so as to take the case out of section 14 (1) of the Act. The insertion of the words "in proportion to the premiums paid by him" deal with a case where the deceased did not himself wholly keep up the policy but only did so partially.

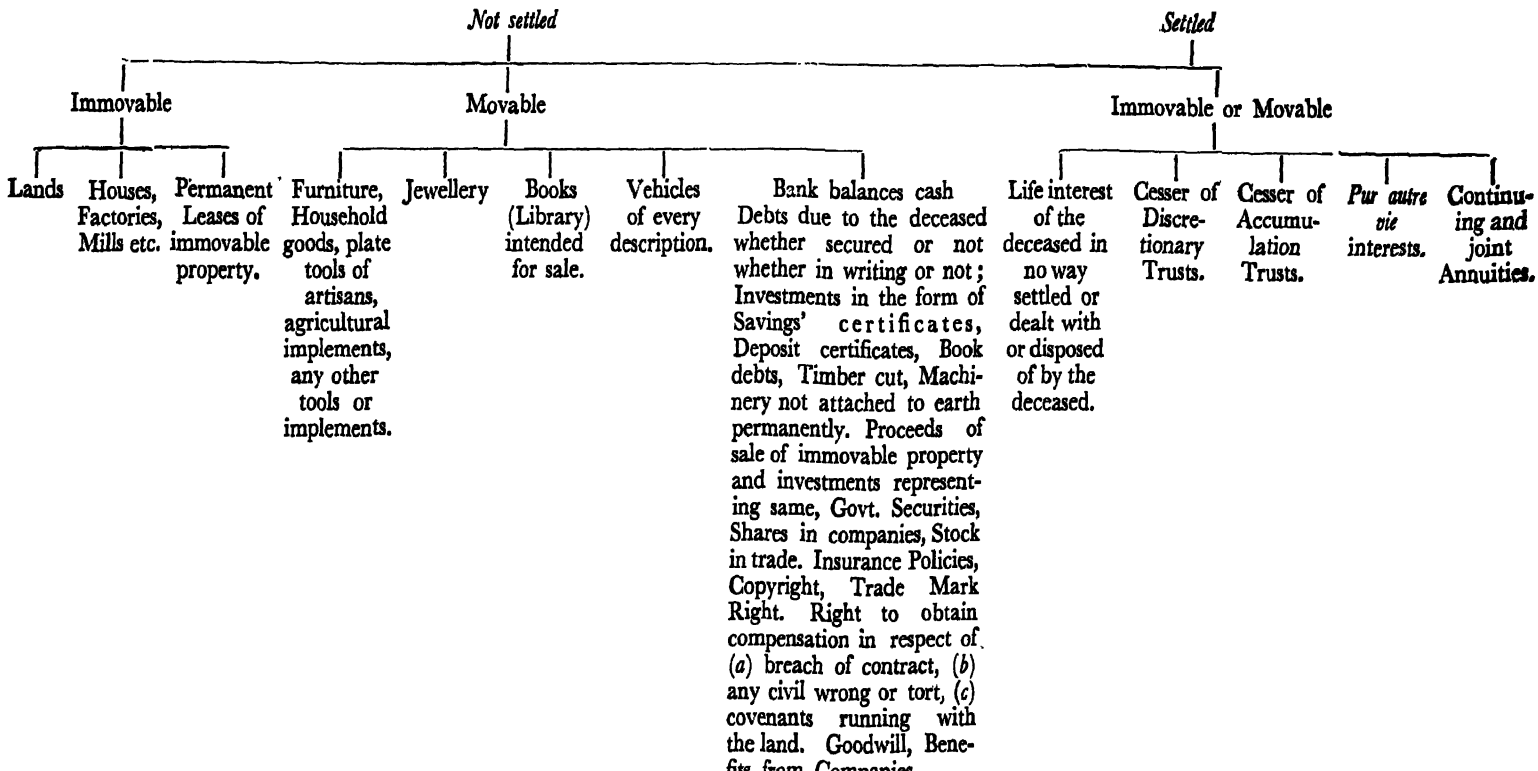
See the following cases :—

Re Oakes. Public Trustee v. *Inland Revenue Commissioners* (1950) 2 All E.R. 851, and

Barclays' Bank Ltd., v. *Attorney-General* (1944) A.C. 372.

PROPERTY OF THE DECEASED LIABLE TO ESTATE DUTY

Property which actually passes



PROPERTY DEEMED TO PASS

	Indian Act Provisions.	English Finance Acts Corresponding Provisions.
1. Debt or right created [S. 2 (15) Explanation I].	S. 2 (15), *Explanation I.* The creation by a person or with his consent of a debt or other right enforceable against him personally or against property which he was or might become competent to dispose of, or to charge or burden for his own benefit, shall be deemed to have been a disposition made by that person, and in relation to such a disposition the expression " property " shall include the debt or right created.	S. 45 (1) of The Finance Act, 1940 is word for word same.
2. Benefit conferred by the extinguishment of the debt or right. [S. 2 (15) Explanation II].	S. 2 (15), *Explanation II.* The extinguishment at the expense of the deceased of a debt or other right shall be deemed to have been a disposition made by the deceased in favour of the person for whose benefit the debt or right was extinguished, and in relation to such a disposition the expression " property " shall include the benefit conferred by the extinguishment of the debt or right.	S. 45 (2) of The Finance Act, 1940 is word for word same.
3. Such an estate or interest therein or such general power as would, if he were *sui juris*, enable him to dispose of the property. [S. 3.—Interpretation :—(*a*)]	S. 3. Interpretation.—(*a*) A person shall be deemed competent to dispose of property if he has such an estate or interest therein or such general power as would, if he were *sui juris*, enable him to dispose of the property.	S. 22 (2) (*a*) of The Finance Act, 1894. A person shall be deemed competent to dispose of property if he has such an estate or interest therein or such general power as would, if he were *sui juris*, enable him to dispose of the property, (including a tenant in tail whether in possession or not) ; and the expression " *general power* " *includes every power or authority enabling the donee or other holder thereof to appoint or dispose of property as he thinks fit, whether exercisable by instrument inter vivos or by will, or both, but exclusive of any power exercisable in a fiduciary capacity under a disposition not made by himself*, (or exercisable as tenant for life under the Settled Land Act, 1882) *or as mortgagee.* [S. 2 (9) of the Indian Act.]
(4) property taken under a disposition which is traceable to the interest of the deceased whether the concurrence of any other person was or was not required.	S. 3.—Interpretation :—(*b*) a disposition taking effect out of the interest of the deceased shall be deemed to have been made by him, whether the concurrence of any other person was or was not required.	S. 22 (2) (*b*) of The Finance Act, 1894 : "A disposition taking effect out of the interest of the deceased person shall be deemed to have been made by him, whether the concurrence of any other person was or was not required " is word for word same.

(5) money which the deceased had a general power to charge on the property of another person.	S. 3.—Interpretation :—(*c*) money which a person has a general power to charge on the property of another person shall be deemed to be an interest in that property of which the former has power to dispose of.	S. 22 (2) (*c*) of The Finance Act, 1894. " Money which a person has a general power to charge on property shall be deemed to be property of which he has power to dispose," is word for word same.
NOTE :—(3), (4), (5) refer back to S. 6.		
(6) Interests ceasing on death : including co-parcenary interest in the joint family property of a Hindu governed by (*a*) the Mitakshara Law, (*b*) Marumakkattayam law (*c*) Aliyasantana law.	S. 7 (1) Subject to the provisions of this section, property in which the deceased or any other person had an interest ceasing on the death of the deceased shall be deemed to pass on the deceased's death to the extent to which a benefit accrues or arises by the cesser of such interest, including, in particular, a co-parcenary interest in the joint family property of a Hindu family governed by the Mitakshara, Marumakkattayam or Aliyasantana law. (2) If a member of a Hindu co-parcenary governed by the Mitakshara school of law dies, then the provisions of subsection (1) shall apply with respect to the interest of the deceased in the co-parcenary property only— (*a*) if the deceased had completed his eighteenth year at the time of his death ; or (*b*) where he had not completed his 18th year at the time of his death, if his father or other male ascendant in the male line was not a co-parcener of the same family at the time of his death. *Explanation.*—Where the deceased was also a member of a sub-co-parcenary (within the co-parcenary) possessing separate property of its own ; the provisions of this sub-section shall have effect separately in respect of the co-parcenary and the sub-co-parcenary. (3) If a member of any *tarwad* or *tavazhi* governed by the Marumakkattayam rule of inheritance or a member of a *Kutumba* or *Kavaru* governed by the Aliyasantana rule of inheritance dies, then the provisions of sub-section (1) shall not apply with respect to the interest of the deceased in the property of the *tarwad*, *tavazhi*, *Kutumba* or *Kavaru*, as the case may be, unless the deceased had completed his eighteenth year.	S. 2 (1) (*b*) of the Finance Act, 1894. Property in which the deceased or any other person had an interest ceasing on the death of the deceased, to the extent to which a benefit accrues or arises by the cesser of such interest ; (but exclusive of property the interest in which of the deceased or other person was only an interest as holder of an office, or recipient of the benefits of a charity, or as a corporation sole). Bracketed portion is Explanation to Sec. 7 (4). Section 7 (7) of the Finance Act, 1894. The value of the benefit accruing or arising from the cesser of an interest, ceasing on the death of the deceased shall :— (*a*) if the interest extended to the whole income of the property, be the principal value of the property ; and (*b*) if the interest extended to less than the whole income of the property, be the principal value of an addition to the property equal to the income to which the interest extended.

PROPERTY DEEMED TO PASS—(*Contd.*)

	Indian Act Provisions.	English Finance Acts Corresponding Provisions.
	(4) The provisions of sub-section (1) shall not apply to the property in which the deceased or any other person had an interest only as holder of an office or recipient of the benefits of a charity, or as a corporation sole. *Explanation.*—For the removal of doubts, it is hereby declared that the holder of a Sthanam is neither the holder of an office nor a corporation sole within the meaning of this sub-section.	S. 2 (1) (*b*) of the Finance Act, 1894.
(7) Gifts *mortis causa*.	S. 8. Property taken as a gift made in contemplation of death shall be deemed to pass on the donor's death.	S. 2 (1) (*c*) of the Finance Act, 1894, read with S. 38 (2) (*a*) of the Customs and Inland Revenue Act, 1881. Property which would be required on the death of the deceased to be included in an account under Sec. 38 of the Customs and Inland Revenue Act, 1881, as amended by S. 11 of the Customs and Inland Revenue Act, 1899, 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. S. 38 (2) (*a*) of Customs and Inland Revenue Act, 1881. Any property taken as a *donatio mortis causa*, made by any person dying on or after 1-6-1881 or taken under a voluntary disposition, made by any person so dying, purporting to operate as an immediate gift inter vivos whether by way of transfer, delivery, declaration of trust or otherwise, which shall not have been bona fide made three months before the death of the deceased. (*b*) Any property which a person dying on or after such day having been absolutely entitled thereto, has voluntarily caused or may voluntarily cause to be transferred to or vested in himself and any other person jointly whether by disposition or otherwise, so that the beneficial interest therein or in some part thereof passes or accrues by survivorship on his death to such other person.

		(c) Any property passing under any past or future testamentary settlement made by any person dying on or after such day by deed or any other instrument not taking effect as a will, whereby an interest in such property for life or for any other period determinable by reference to death is reserved either expressly or by implication to the settlor, or whereby the settlor may have reserved to himself the right, by the exercise of any power, to restore to himself, or to claim the absolute interest in such property. See also for further amendments S. 11 of Customs and Inland Revenue Act, 1889, S. 59 of the Finance Act, (1909-10), S. 47 of the Finance Act, 1946, and S. 46 of the Finance Act, 1950.
(8) Gifts inter vivos made within 2 years	Ss. 9 and 10 of the Act.	
(9) Gifts inter vivos whenever made, where donor was not entirely excluded.	S. 9. Property taken under a disposition made by the deceased purporting to operate as an immediate gift inter vivos whether by way of transfer, delivery, declaration of trust, settlement upon persons in succession, or otherwise, which shall not have been bona fide made 2 years or more before the death of the deceased shall be deemed to pass on the death : Provided that in the case of gifts made for public charitable purposes the period shall be 6 months.	S. 2 (1) (c) of the Finance Act, 1894, is : Property which would be required on the death of the deceased to be included in an amount under S. 38 of the Customs and Inland Revenue Act, 1881, as amended by S. 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.
	S. 10. Property taken under any gift, whenever made, shall be deemed to pass on the donor's death to the extent that bona fide possession and enjoyment of it was not immediately assumed by the donee and thenceforward retained to the entire exclusion of the donor or of any benefit to him by contract or otherwise ; Provided that the property shall not be deemed to pass by reason only that it was not, as from the date of the gift, exclusively retained as aforesaid, if, by means of the surrender of the reserved benefit or otherwise, it is subsequently enjoyed to the entire exclusion of the donor or of any benefit to him for at least 2 years before the death.	S. 59 of the Finance Act, 1909-10 is (1). In the case of a person dying on or after 30-4-1909, the period preceding the death of the deceased, before which a disposition purporting to operate as an immediate gift inter vivos must have been made, . . . in order that the property taken under the disposition, ... may not be included as property passing on the death of the deceased, shall be five years instead of 12 months before the death, and accordingly paragraph (a) of sub-section (2) of S. 38 of the Customs and Inland Revenue Act, 1889, and applied by paragraph (c) of sub-section (1) of section two of the principal Act, subsection (3) of section two of the principal Act, ... shall be read as if five years were substituted for 12 months

	Indian Act Provisions.	English Finance Acts Corresponding Provisions.
		Provided that this section shall not apply to any gift inter vivos .... made ..... before the 30-4-1938, or made or effected for public or charitable purposes. (2) So much of paragraph (*c*) of subsection (1) of section two 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, or which are proved to the satisfaction of the Commissioners, to have been part of the normal expenditure of the deceased, and to have been reasonable, having regard to the amount of his income, or to the circumstances, or which, in the case of any donee, do not exceed in the aggregate one hundred pounds in value or amount. (3) Where (property taken under such a disposition as aforesaid or affected by such a disposition or determination as is mentioned in section forty-three of the Finance Act, 1940), is deemed to be property passing on the death of the deceased by reason only that the property was not, as from the date of (the disposition or determination) retained to the entire exclusion of the deceased or a person who had an estate or interest limited to cease on the death of the deceased, and of any benefit to him by contract or otherwise, the property shall not be deemed to pass on the death of the deceased if subsequently, by means of the surrender of the benefit reserved or otherwise, it is enjoyed to the entire exclusion of the deceased or such other person as aforesaid, and of any benefit to him by contract or otherwise, for such period preceding the death of the deceased as is provided by this section (or the said section forty-three).

(10) Life interests or annuities ceasing on death disposed of before death. (section 11)

(11) Property settled wherein settlor reserved an interest for himself. (section 12)

(12) Joint Investments. (section 13)

(13) Insurance Policies on Life kept up for the benefit of a donee. (section 14)

(14) Annuities and other interests purchased or provided by the deceased. (section 15)

(15) Ditto purchased or provided by others out of the property derived from the deceased. (section 16)

(16) Property transferred to a controlled company in the circumstances mentioned by section 17.

(17) Dispositions made by the deceased in favour of Relatives in circumstances mentioned in section 27.

In re Engelbach's Estate.

Tibbetts v. *Engelbach.*

(1924, II Chancery Division, p. 348.)

Insurance—Endowment Policy—Policy Money payable at End of Twenty-one years to daughter of Assured if then alive—Death of Assured within Period—Daughter not Party to the Contract—No Trust in Favour of Daughter—Policy Money, whether Part of Assured's Estate.

An endowment policy taken out by a person in his own name for the benefit of his daughter, to mature on her attaining a specified age, creates no legal estate in the daughter, and she cannot sue on the contract, nor does the assured thereby constitute himself a trustee for his daughter of the policy and of the moneys payable thereunder. If, therefore, the assured dies before the policy matures, the policy moneys belong, not to the daughter, but to the estate of the assured, and must be paid to his executors.

Cleaver v. *Mutual Reserve Fund Life Association* (1892) 1 Q.B. 147 followed.

On February 3, 1902, the testator took out an endowment policy with the Norwich Union Life Insurance Society to provide for the payment of the sum of £3,000 on February 3, 1923, if his daughter should so long live, at the annual premium of £99. In the proposal form which the testator had to fill up and sign, he inserted opposite the words "Full name and description of the Proposer," the words "Edward Coryton Engelbach, for his daughter Mary Noel, aged one month." By such policy the sum of £3,000 was expressed to be payable to the testator's daughter (therein called "the nominee"), her executors, administrators, or assigns, if she should survive February 3, 1923, and if she should not survive that date all the premiums which should have been paid were to be repaid without interest to the testator, his executors, administrators, or assigns. The testator paid the premiums down to and including that due in 1911, but he failed to pay the premium due on February 3, 1912. By a resolution of the directors of the society, dated March 8, 1912, and indorsed on the policy, the policy was revived as a fully paid-up policy for the reduced sum of £1,428-12*s.*, with return in the event of previous death. By his will, dated March 10, 1914, the testator gave all his residuary estate to his trustees upon trust for his wife for life, and after her death upon trust for such of his children as his wife should by deed or will appoint,

and in default of such appointment in trust for his children in equal shares, and he directed that the share of his daughter should be retained by his trustees upon certain trusts therein set out. The testator died on March 7, 1916, leaving a widow and three children. His widow died on May 23, 1919, without having exercised the power of appointment given to her by the will. The sum of £1,428-12*s.*, payable under the policy, was paid by the Norwich Union Life Insurance Society on February 9, 1923, and the receipt for the same was signed by the testator's daughter. By a settlement, dated February 15, 1923, she assigned such money (inter alia) to trustees upon certain trusts therein set out, but by an arrangement between her and the trustees of the testator's estate, it was paid to a firm of solicitors on account of whoever might be held to be entitled thereto.

This summons was taken out by two of the trustees of the testator's will, and it asked whether the sum of £1,428-12*s.*, formed part of the estate of the testator and was payable to the trustees of his will, or whether the same belonged to and was payable to the trustees of the settlement as the assigns of the testator's daughter.

P.H.L. Brough (W. M. Hunt with him) for the plaintiffs.

Hughes K.C. and Winterbotham for the testator's daughter and the trustees of the settlement. There can be no question but that the policy moneys belong to the testator's daughter. This was plainly an advancement by the testator for the benefit of his daughter the policy to belong to her if she survived or attained twenty-one. The presumption is in favour of the daughter: In *re Richardson,* (1882) 47 L.T. 514.

Apart from authority, from the very nature of the case the moneys are to be paid to the daughter if she attained twenty-one. That was the contract. If she died under twenty-one, the father was entitled to get back the premiums paid, so that he could not have assigned the policy to her. The terms of the contract were for payment to the daughter, and the policy makes her father a trustee for her.

Stamp for the other residuary legatees. There can be no question of the testator's daughter having the legal estate. The contract was between the testator and the society; she was not a party to it, and cannot sue on it. The question then arises whether there was sufficient in the whole transaction to make the testator a trustee for his daughter. In order to hold that the testator had made himself a trustee, the Court would have to find, on the face of the policy, such a declaration of trust as would be valid between strangers. There was no such declaration in this policy, which was nothing more than a contract to pay a third party. It was a mere mandate, which was ended by the testator's death: *Gandy* v. *Gandy* (1885) 30 Ch. D. 57. The effect of taking out a policy in the name of a third party is considered at length in *Cleaver* v. *Mutual Reserve Fund Life Association* (1892) 1 Q.B. 147. The money was simply the money of the testator in the hands of the society, and on the policy maturing he could demand to have it paid back to him. The executors now stand in his shoes. If the society pays the nominee, it cannot get a good discharge. That case was followed by Eve J. in *In re Burgess' Policy* (1915) 113 L.T. 443, but it was not even cited in *In re A Policy* No. 6402 of the Scottish Equitable Life Assurance Society (1902) 1 Ch. 282, where Joyce J. assumed that the nominee had a legal estate in the policy, and on that he grafted the doctrine of resulting trust. It is difficult to distinguish between *Cleaver* v. *Mutual Reserve Fund Life Association* (1892) 1 Q.B. 147 and the present case; the only distinction would be in the exact words of the proposal form.

Hughes K.C. in reply. The testator was a trustee for his daughter. He was contracting with the society on her behalf, but for himself if she died

under twenty-one. The clear object of the policy was to provide for the daughter at twenty-one. The executors would have been trustees for her if the money had been paid to them. This is an endowment policy, not a life insurance policy. It is provide for the testator's daughter, and to form part of her estate. There is every reason here for saying that the testator was a trustee for his daughter. *In re Flavell* (1883) 25 Ch. D. 89 referred to.

Romer J. A very similar question to the present one arose in *Cleaver* v. *Mutual Reserve Fund Life Association.*

Before considering that case, however, I may say this: the daughter could of course successfully claim these moneys if she had at the death of the testator a legal right to them, that is to say, a right at law to recover the moneys from the society, because, although that legal right might have been given to her purely voluntarily by her father, still there would be no resulting trust in favour of the father, seeing that there would be a presumption of advancement. The only other ground upon which the daughter could claim these moneys as against the executors of her father would be that the father in some way constituted himself a trustee for the daughter of the policy and of the moneys payable thereunder.

In *Cleaver* v. *Mutual Reserve Fund Life Association* it appears that a policy had been effected by one James Maybrick on his own life. It provided, in effect, that on the death of James Maybrick the money should be payable to Florence Maybrick, his wife, if then living, and that otherwise it should be payable to his personal representatives so that the Court had to deal there, as I have to deal here, with a policy which provided for the payment of the policy moneys not to the person who effected the policy but to a third party. The question the Court had to decide was whether, inasmuch as the assured, James Maybrick, had been murdered by his wife, the insurance money formed part of the estate of the assured, on the ground that the trust which in that case was expressly imposed upon the policy moneys by the Married Women's Property Act, was a trust which could not in the circumstances be enforced. Property Act, 1882. The decision therefore turned upon the Married Women's and Fry, L. J. dealt with the case in the first instance, as though the Married Women's Property Act had no application at all, and they considered what was the real effect at law and in equity of an insurance effected by a man on his own life, that insurance containing a provision that on the death of the assured the money should be paid to somebody other than the assured.

Lord Esher M. R. said this [(1892) 1 Q.B. 151]. "This policy of insurance is in a somewhat peculiar form, which I suppose is of recent invention. It does not state on the face of it with whom it is made, but states that for the considerations therein mentioned the defendants make the insured a member, and promise that on his death the policy money shall be payable to Florence Maybrick his wife, if then living, otherwise to his legal personal representatives. I will first consider what the legal effect of such a policy would be apart from the Married Women's Property Act, and if no such Act had been passed. The contract is with the husband, and with nobody else. The wife is no party to it. Apart from the statute, the right to sue on such a contract would clearly pass to the legal personal representatives of the husband. The promise is one which could only take effect upon his death, and therefore it must be meant to be enforced by them. The condition on which the money is to become payable is the death of James Maybrick." A little further on he says: "Apart from the statute, what would be the effect of making the money payable to the wife? It seems to me that as between the executors and the defendants it would have no effect. She is no party to the contract; and I do not think that the defendants could have any right to follow the money they were bound to pay and consider how the

executors might apply it. It does not seem to me that, apart from the statute, such a policy would create any trust in favour of the wife."

Fry L. J. says [(1892) 1 Q.B. 157] : "James Maybrick insured his life in the policy in question in the year 1888" (I will leave out passage which I must refer to in a moment), "and in the policy itself she is named as the payee of the policy-moneys in the event, which happened, of her surviving her husband. Independently of the Married Women's Property Act, 1882, the effect of this transaction was, in my opinion, to create a contract by the defendants with James Maybrick that the defendants would, in the event which has occurred, pay Florence Maybrick the £2,000 assured ; it would be broken by non-payment to her ; but the cause of action resulting from such breach would vest in the executors of the assured, and not in the payee. She was, independently of the statute, a stranger to the contract ; it might have been put an end to by the contracting parties without her consent, and the breach of it would have given her no cause of action against any one."

It follows from that that in the present case the daughter could not have enforced this contract in her own name against the insurance company, and that she was an absolute stranger to the contract, which could have been put an end to by both of the contracting parties without her assent. It also follows from that decision that the mere fact that the policy moneys are expressed to be paid to somebody other than the assured does not make the assured a trustee of the policy or of the policy moneys for the person so nominated.

I might mention that that case was followed in somewhat similar circumstances by Eve J. in *In re Burgess' Policy* (113 L.T. 443).

There is however a decision of Joyce J. in In re *A* Policy No. 6402 of the Scottish Equitable Life Assurance Society (1902) 1 Ch. 282, which at first sight certainly seems to lend some colour to the argument presented to me on behalf of the daughter here. In that case a policy of insurance had been taken out by *A* on his own life "for behoof of *B*", and the policy provided that *B* should be entitled to receive the policy moneys on *A*'s death. It was held that the legal personal representatives of *B* who received the moneys on the death of *A*, were trustees of the policy moneys for the legal personal representatives of *A*. The actual decision therefore is in accordance with the two cases I have already referred to. But the grounds on which Joyce J. based his decision were these. He treated *B* as the person who had the right at law to enforce the policy and give a receipt for the policy moneys, but held that, being a stranger to *A* and there being no consideration for his so being put into possession of this legal right to enforce the policy, *B* would hold the policy moneys when received as trustee for *A* in accordance with the doctrine of *Dyer* v. *Dyer* (1788) 2 Cox, 92, 93 ; 1 Watk. Copy 216.

It is said that it was quite unnecessary for Joyce J. to consider the case of *Dyer* v. *Dyer* if Mr. Stamp's argument in this case is correct, because a very short way out of the difficulty was to say that *B* had never obtained any legal interest in the policy or any right to receive the moneys payable thereunder. In point of fact, that particular point does not appear to have been argued at all, and *Cleaver* v. *Mutual Reserve Fund Life Association* (1892) 1 Q.B. 147 was not even cited. I cannot, therefore, regard that decision as carrying any weight in the determination of the particular point I have to deal with.

Coming therefore as I do to the conclusion that the daughter did not acquire any interest at law or in equity to the policy or the policy moneys merely by reason of the fact that the policy moneys are expressed to be

payable to her, I still have to consider whether the testator ever constituted himself a trustee for the daughter in some other way.

It appears that in the proposal form which the father had to fill up and sign, he inserted opposite the words "Full name and description of the Proposer" the words "Edward Coryton Engelbach, for his daughter Mary Noel, aged one month," and it is said that by that means he constituted himself a trustee of the moneys payable under the policy.

But that point is also, I think, concluded by the authority of *Cleaver* v. *Mutual Reserve Fund Life Association*. In the passage in Fry L. J.'s judgment, part of which I read just now, he says: "By the proposal which was made part of the policy he" (that is Mr. Maybrick) "expressed the policy to be effected for the benefit of his wife," and he came to the conclusion that, apart from section 11 of the Married Women's Property Act, 1882, that fact would not have constituted Mr. Maybrick a trustee of the policy or the policy moneys for his wife.

The only distinction that I can see between that case and the present one is this. In the proposal form Mr. Engelbach, the father, did not say that he was effecting this policy for the benefit of his daughter, but said that he was making the proposal for his daughter. It is sought from that to draw the inference that the father was, by this proposal form, stating that he was entering into the contract on behalf of his daughter, not merely for her benefit, but was making the whole contract on her behalf. I cannot think that that is the true construction of this proposal form. It appears to me extraordinarily unlikely that a father would purport to enter into such a contract as this as agent for his daughter who was one month old, a contract which involved, if the father and the daughter were to get any benefit out of it, the continuous payment of a premium by the father. I think that the words "of the proposal" really mean no more in this case than the proposal made in the Maybrick Case (1892) 1 Q.B. 157 and that the father entered into this contract in his own name and on his own behalf, but for the benefit of his daughter.

In these circumstances I feel constrained by the authorities to which I have referred to decide against the contention of the daughter, and I must declare that the policy moneys form part of the estate of the father.

The costs of all parties as between solicitor and client will come out of the policy money.

The Revenue Commissioners v. *Andrew O' Donohoe* (*otherwise Donohoe*)
(1936) I.R. 342

Absolute assignment subject to charge and covenant for support and maintenance of assignor—whether possession of assignee exclusive of any "benefit to the donor" "by contract or otherwise"—Finance Act, 1894, section 2 (1) (*c*).

A, in consideration of natural love and affection, assigned absolutely to his cousin *B*, by a deed dated 11th April 1927, a farm, together with the farmhouse and its contents, the livestock thereon and the chattels and effects, subject however, to the right of *A* to the exclusive use of a room in the dwelling house upon the said lands with the use in common with *B* of the kitchen and passages of the said house and to the right of his support therein. *B* also covenanted with *A* to permit him to enjoy the said rights and to provide personal attendance on him.

On the death of *A*, *B* was assessed to estate duty upon all the property comprised in the said deed.

Held, that the property transferred by *A* to *B* was not possessed or enjoyed by the latter to the entire exclusion of the donor or of any benefit

to him by contract or otherwise and accordingly, that estate duty was payable thereon under section 2 (1) (*c*) of the Finance Act, 1894.

Per O'Byrne J.: "This is a motion that, notwithstanding the cause to the contrary shown by Andrew O' Donohoe (otherwise Donohoe) the defendant, an order of attachment do issue against the defendant for neglecting to deliver to the plaintiffs, the Revenue Commissioners, an account upon oath of the property which passed on the death of James Donohoe deceased, within the meaning of the Finance Act, 1894, under a deed, dated the 11th day of April, 1927, and for failing to pay the estate duty chargeable thereon.

In form this is, of course, a motion for attachment, but, as I understand it, the substance of the present application is to determine the liability of Andrew O' Donohoe to pay estate duty on the property which passed on the death of James O' Donohoe the deceased.

The deed of the 11th April, 1927, was made between James Donohoe of the one part and Andrew O' Donohoe the defendant in the present proceedings of the other part. It recited that James Donohoe was unable through old age to farm his lands of Walderstown thereinafter described, and had agreed with his cousin Andrew O' Donohoe to assign to him the said farm and all household furniture, farm implement, livestock and other chattels and effects thereon, and it was thereby witnessed that the said James Donohoe, in consideration of the natural love and affection which he had and bore to his cousin Andrew, and of the covenants on Andrew's part thereinafter contained, assigned the said farm and the other property above recited to the said Andrew O' Donohoe to hold the same unto the said Andrew O' Donohoe, his executors, administrators and assigns for all the estate, tenant right and interest therein of the said James Donohoe, " subject however"—and this is the material portion of the deed—"to the right of the said James Donohoe to the exclusive use of a room in the dwelling house upon said lands with the use in common with the said Andrew O' Donohoe of the kitchen and passages of the said house and to the right of his support therein which is to include all necessary fuel at the expense of the said Andrew O' Donohoe and the use of donkey and trap when required." By the same deed, the said Andrew O' Donohoe for himself and his assigns covenanted with the said James Donohoe to permit the said James Donohoe to enjoy the rights subject to which he (Andrew) had taken the property and in addition covenanted to provide the said James Donohoe with any personal attendance he might require, and with an ample supply of fuel.

Andrew O' Donohoe, having taken the property given him under the deed, and having presumably gone into possession thereof, the question now arises as to whether estate duty is payable on the death of James Donohoe, which occurred on the 9th of February, 1935.

Section 1 of the Finance Act, 1894, provides that :—

> "In the case of every person dying after the commencement of this Act (i.e., 1st August, 1894) there shall, save as hereinafter expressly provided, be levied and paid, upon the principal value ascertained as hereinafter provided of all property, real or personal, settled or not settled, which passes on the death of such person a duty called "estate duty" at the graduated rates hereinafter mentioned, and the existing duties mentioned in the First Schedule to this Act shall not be levied in respect of property chargeable with such estate duty."

Section 2 of the same Act provides :—

> "(1) Property passing on the death of the deceased shall be deemed to include the property following, that is to say" :— and, amongst the classes of property enumerated, is

"(*c*) Property which would be required on the death of the deceased to be included in an account under section 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."

Consequently when I come to consider whether the property in question here passed, or must be deemed to have passed, on the death of James Donohoe for the purposes of estate duty, what I have to consider is whether that property comes within the provisions of the Acts mentioned in section 2, subsection (1) (*c*), above cited, as amended by the terms of that section itself.

Section 38, subsection (2) of the Customs and Inland Revenue Act, 1881, provides :—

"The personal or movable property to be included in an account shall be property of the following descriptions, viz :—

"(*a*) Any property taken as a *donatio mortis causa* made by any person dying on or after the first day of June, 1881, or taken under a voluntary disposition, made by any person so dying, purporting to operate as an immediate gift inter vivos whether by way of transfer, delivery, declaration or trust or otherwise, which shall not have been bona fide made three months before the death of the deceased."

That section is amended by section 11, subsection (1) of the Customs and Inland Revenue Act, 1889, as follows :—

"The description of property marked (*a*) shall be read as if the word "twelve" were substituted for the word "three" therein, and the said description of property shall include property taken under any gift, whenever made, of which property bona fide possession and enjoyment shall not have been assumed by the donee immediately upon the gift and thenceforward retained, to the entire exclusion of the donor, or of any benefit to him by contract or otherwise."

Thus the question I have to determine is whether or not the property included in the deed of the 11th April, 1927, is property taken under a gift, of which property bona fide possession and enjoyment was not assumed by the donee immediately upon the gift and thenceforward retained to the entire exclusion of the donor, or of any benefit to him by contract or otherwise.

Several cases have arisen on the interpretation of section 2, subsection (1) (*c*) incorporating the amending section of the Act of 1889 above cited. It is necessary, however, to refer only to few of them.

The first of such cases to which I wish to refer is the case of *A. G.* v. *Worrall* (1895) 1 Q.B. 99. In that case certain hereditaments had been mortgaged to the defendant's father to secure a loan. The sum of £23,924 remaining due upon the mortgage, by a deed between the defendant's father, the mortgagors and the defendant in 1886 it was witnessed that in consideration of £575 paid by the defendant to the mortgagors and in further consideration of the covenant on the part of the defendant thereinafter contained, such covenant being accepted by the defendant's father in satisfaction of his mortgage debt, from which he thereby released the mortgagors and the defendant, the mortgagors and the defendant's father conveyed the mortgaged hereditaments to the defendant in fee simple, discharged from the mortgage debt, and the defendant covenanted to pay to his father an annuity of £735 during his life time. The defendant's father died in 1899 leaving a will which was duly proved.

In these circumstances it was held that the transaction carried out by the deed was a "gift" of the mortgage debt to the defendant by his father within section 11, subsection (1) of the Act of 1899, and that bona fide possession thereof had not been "assumed by the donee immediately upon the gift and thenceforward retained, to the entire exclusion of the donor, or of any benefit to him by contract or otherwise," within the meaning of the section. At p. 104 of the Report, Lord Esher, M. R., referred to the transaction and asked what was its true nature. He continued as follows:—

"It appears to me in truth to have been this. The father being entitled to the mortgage debt of £23, 924 so charged on the land, and the son having a sum of £575 of his own, it was arranged that the son should with that sum purchase the equity of redemption from the mortgagor, and the father should give him the amount of the mortgage debt, and in that way the son should become entitle to the whole of the property free from the mortgage debt. Then the father stipulates that the son shall covenant to pay to him an annuity of £735. That being, in my opinion, in reality the nature of the transaction, how was it carried into effect in point of form? The parties enter into a deed, the terms of which appear to me to import what I have already stated to be the truth of the matter, viz, that the father intended to make a gift to the son of the amount of the mortgage debt, and the son intended to give to the mortgagors £575 for the equity of redemption. The mortgagors, in consideration of that sum, convey to the son the equity of redemption, and the father releases the mortgage debt, which in plain English, means that he gives it to his son. Then by the same deed, and obviously as part of the same transaction, the son covenants to pay to the father an annuity of £735 during his lifetime. The law being that for this purpose we are to look to the truth or substance of the transaction, does this transaction so regarded come within the statutes relied on by the Crown? I think that it comes within section 11, subsection (1), of the amending statute of 1889. It was in my opinion, a gift within that enactment. I have already said that what was given was the mortgage debt, which was personal property. Also, I think that possession of the property was not assumed and retained by the donee 'to the entire exclusion of any benefit to the donor by contract or otherwise.' It appears to me that the covenant by the son to pay an annuity to the father prevented this from being a pure and simple gift, and, therefore, it comes within the statutes."

Lopes, L. J., at p. 107 of the Report, having referred to the provisions of the section said: As I read that provision it is not necessary that the benefit to the donor should be by way of reservation, but any benefit to him by contract or otherwise will suffice to bring the case within the enactment. Applying that construction of the words to the present case, it seems to me impossible here to say that there was no benefit to the donor by contract or otherwise within the meaning of the Act."

The next case to which I should like to refer is the case of *Earl Grey* v. *Attorney-General* (1900) A.C. 124. In that case, by deed in 1885 real and personal estate was given by the owner to the appellant subject to an annual rent-charge issuing out of the realty, the appellant covenanting to pay the rent-charge and all the funeral and testamentary expenses and all the donor's debts at his death to the full exhaustion of all his property. In the event of the appellant's donor's lifetime or of any breach of covenant by the appellant the donor had power to revoke the deed wholly or in part: any revocation to be without prejudice to any purchase or mortgage made before the revocation. The donor released the rent-charge and power of revocation by deed in September, 1894, and died in October,1894. It was held that, benefits having been reserved to the donor, estate duty was pay-

able upon all the property comprised in the deed of 1885 as property passing upon the death of the donor within the meaning of the Finance Act, 1894, sections 1 and 2, subsection (1) (*c*).

In the course of his judgment Lord Halsbury L. C. said :—

"My Lords, there are some cases so extremely plain that it is difficult to give any better exposition of the question than that which the statute itself provides. In the present case I did not at first quite understand the argument presented to your Lordships, and I am not absolutely certain that I have got much further now; but at all events, forming my own judgment upon the statute, nothing appears to me much more plain that this, that what the Act of Parliament intended to prevent was that what has been described as a gift inter vivos should nevertheless reserve to the settlor some benefit, or some part of that which purported to be given inter vivos. In this case can anybody doubt that something has been reserved to the settlor? The settlement itself has reserved £4,000 a year, and has reserved a right also on the part of the settlor that all his debts up to the period of his death should be paid and the payment secured by the estate. It seems to me that it is burning daylight to say that is not within the express language of the statute, and I am really wholly unable to understand why these words are not as plain in the statute itself as any explanatory exposition could make them."

It seems to me that every word of that judgment applied to the present case. But an Irish case has been referred to, which, regarded superficially would seem to lead to a contrary conclusion. That case is In re Cochrane, reported in the King's Bench Division in (1905) 2 I.R. 626, and in the Court of appeal in (1906) 2 I.R. 200. In that case *C* made a settlement more than 12 months before his death whereby he conveyed a mortgage debt of £15,000 to trustees, upon trust to pay £575 of the income to his daughter *S* for life, and after her death in trust for her children who should answer a particular description, with power, however, by her will, to appoint to her husband during his life a yearly sum of £300, payable out of the income. If there should be no child who would answer the description specified, the trustees were to hold the trust funds after the death of *S* (but subject to the annuity to *S*'s husband) in trust for *C* absolutely. The trustees, during the life of *S*, were to hold the balance of the income, after the payment of the yearly sum of £575 to *S* or the annuity to *S*'s husband, upon trust for *C* absolutely. In these circumstances it was held by the King's Bench Division and on appeal by the Court of Appeal (affirming the King's Bench Division) that upon the death of *C*, neither the ultimate contingent trust for *C* of the corpus of the fund, nor the trust for *C* of the surplus income, rendered the gift one of which bona fide possession and enjoyment had not been assumed by the donee immediately upon the gift, and thenceforward retained to the entire exclusion of the donor, or of any "benefit to him by contract or otherwise" within the meaning of the statutes referred to in the Finance Act, 1894, section 2, subsection (1) (*c*).

In the course of his judgment Lord Chancellor Walker, at p. 202, said : "It is contended, on behalf of the Crown, that if there be a resulting trust to the donor of any part, however small, of a capital sum settled by a donor, estate duty must be paid on the entire capital sum within the meaning and true construction of the section. This is a contention I cannot assent to. In order to ascertain what is the gift we must see what is given. Does the donor give what he does not part with? I think he does not give what he receives or retains : and if it was not included in the gift he made, then there was an entire exclusion of the donor from the property taken under the gift, and what was given was exclusively possessed and enjoyed by the donee.

Now, very clearly, that passage is wholly applicable to the case which the Lord Chancellor was considering, where, as is apparent from the facts I have stated the settlor did not part with all his estate but retained a part of it for himself. Lord Justice Fitz Gibbon at p. 203 made the distinction even clearer :—"If a man purporting to make a gift to his daughter tries, Ananias like, 'to keep back part' of it for himself, it may be just enough to make him pay duty on the whole, and that is the mischief at which the Act aims. But Sir Henry Cochrane did nothing of that kind. He gave the annuity absolutely to his daughter, and he gave her and her children the fund in certain events absolutely so far as he gave it at all : but nothing over that, whether you call it a reversion, a reservation, or a surplus, was included in the gift. What has been absolutely given cannot be afterwards be assessed as passing on the donor's death and only what has not been given can be taken into account for assessment to the death duties." Lord Justice Holmes begins his judgment by saying that:—"When six Judges have given their reasons for arriving at the same conclusion a seventh who is in agreement with them cannot, and ought not, to have much to say." Nevertheless I should like to refer to his judgment at p. 205 because he there sets out the facts so clearly. He said:—"By the two indentures Mrs. Day is given an annuity of £575 a year during her life : her husband is given an annuity not exceeding £300, dependent on an appointment thereof by the will of the wife : and, subject thereto after Mrs. Day's death, the capital sum of £15,000 is to go to such of her children as shall answer a particular description. These are the gifts to be found in the two indentures, and estate duty is not to be paid thereon. What is not so given remained the property of Sir Henry Cochrane, not as a reservation from a gift, but as property not given at all. Upon such property, it is admitted that estate duty was payable on his death ; but I cannot accept the argument that it is also payable on property which he had parted with completely and irrecovably."

Applying the criteria established by these cases, what is the position in the present case ? By the deed of the 11th April, 1927, James Donohoe transferred the property mentioned therein to the defendant Andrew O' Donohoe, and, looking at the truth and substance of the transaction, it seems to me that he transferred his entire property, but that the property so transferred was charged with certain rights in favour of the settlor. The conveyance is expressed to be subject to the right of James Donohoe to the exclusive use of a room in the dwelling house ; and subject to, and—as I read the deed—charged with the right of all necessary fuel at the expense of the defendant and to have the use of a donkey and trap when required. In addition to that charge, the defendant entered into a personal covenant to secure these rights to the old man and to provide personal attendance as he should require.

In these circumstances, can it be said that the property comprised in the deed was property "of which the bona fide possession and enjoyment" had been "assumed by the donee immediately upon the gift and thenceforward retained, to the entire exclusion of the donor or of any benefit to him by contract or otherwise" ?

It seems to me that it is only necessary to state the question thus, to see that there can be but one possible answer thereto. In my opinion, it is clear beyond question that the property transferred by James Donohoe to the defendant was not possessed or enjoyed by the latter to the entire exclusion of the donor or of any benefit to him by contract or otherwise.

Accordingly, in my opinion, the property in question comes within the provisions of the Finance Act, 1894, section 2 subsection (1) (*c*) and estate duty is payable thereon.

Re Clay's Policy of Assurance, Clay v. *Earnshaw* [(1937) 2 All E.R. 548].

Husband and wife—Insurance policy—For benefit of wife and children—Adopted child—No legal adoption—Married Women's Property Act, 1882 (c. 75), section 11.

Insurance—Policy moneys—Trust—Benefit of wife and named daughter —Named person an adopted child.

A policy effected by the assured under and by virtue of the Married Women's Property Act, 1882, section 11, was stated to be for the benefit of the wife of the assured, and if she were dead at the time the policy moneys became payable then for his daughter, naming her, and if both of them were then dead for the executors, administrators or assigns of the assured. The daughter was an adopted child, and there had been no legal adoption under the Adoption of Children Act, 1926 :—

Held : (i) there was no effective trust for the adopted child by virtue of the Married Women's Property Act, 1882, section 11, and the infant was outside the scope of that section.

(ii) the adopted child had no legal right to claim the policy moneys from the insurance company. The only persons who had such a right were the assured and his wife, who could surrender the policy or otherwise deal with it without reference to the infant.

Re Engelbach's Estate, Tibbetts v. *Engelbach* (1924) 2 Ch. 348, followed.

Summons asking for a declaration that the first defendant had no beneficial interest in a policy on the life of the plaintiff issued by Phoenix Assurance Co., Ltd.

E. J. Heckscher for the Plaintiff the assured : Elizabeth Elvira Earnshaw was not a child of the assured, and, so far as she is concerned, the policy must be treated as taken out for the benefit of a stranger. The first defendant has no right either in law or in equity to the policy moneys. (Counsel referred to *Re Engelbach's Estate, Tibbetts* v. *Engelbach.*)

W. G. H. Cook for the first defendant, the adopted daughter : This case is entirely novel, and is not covered by the case which has been cited. There is an adoption agreement, and there is, on the face of the policy, a trust, quite apart from the Act. On the construction of the policy, there is a clear declaration of trust. The plaintiff had placed himself in *loco parentis* to the infant and in the position of a trustee for her on the terms set out in the document. (Counsel referred to *Re Englebach's Estate, Cleaver* v. *Mutual Reserve Fund Life Association* (1892) 1 Q.B. 147, *Re Richardson, Weston* v. *Richardson* (1882) 47 L.T. 514, *Re Seyton, Seyton* v. *Satterthwaite* (1887) 34 Ch. D. 511, *Re Policy No.* 6402 *of the Scottish Equitable Life Assurance Society* (1902) 1 Ch. 282, and *Milroy* v. *Lord,* 31 L.J. Ch. 798.

T.D.D. Divine for the second defendant, the wife of the assured.

Farwell, J. : The question I am concerned with in this case is whether Elizabeth Elvira Earnshaw has any, and, if so, what, interest in certain policy moneys, or whether she has no interest, so that the plaintiff, with the concurrence of his wife only, can surrender the policy. The facts are these. The plaintiff, who is the assured, took out a policy with the Phoenix Assurance Co., on April 4, 1924. That policy was a policy for moneys to be paid on the death of the assured. The amount of the policy was £1,000, and the persons for whose benefit it was taken out were :

Mignon Elvira Clay nee Andree, wife of the assured, should she be living if and when the policy moneys become payable and if not living at that time then for the benefit of Elizabeth Elvira Clay, daughter of the assured, should she survive Mignon Elvira Clay and be living if and when the policy

moneys become payable. If they both predecease the assured then for the executors, administrators or assigns of the assured.

This policy is effected by the assured under and by virtue of the Married Women's Property Act, 1882, section 11, so far as it is expressed to be for his wife and daughter, and there are on the back of the policy certain privileges and conditions which I need not read. There is also an endorsement by which the policy is exchanged for a fully paid-up policy for the sum of £879, instead of the sum of money provided for in the policy. There are certain persons for whom this policy is said to be effected. The first is the wife of the assured. The second of them is the infant, who is not in fact the daughter of the assured, but she was a child who was adopted by the assured and his wife. She was not adopted legally because the adoption took place before the Adoption Act, 1926, came into force, and there has been no adoption since, but the assured and his wife adopted the child so far as they could, and the assured has put himself in *loco parentis* to this child. But, however that may be, it is quite plain that the infant cannot come and seek the benefit of the Married Women's Property Act, 1882, section 11, because that section provides:

A policy of assurance effected by any man on his own life, and expressed to be for the benefit of his wife, or of his children, or of his wife and children, or any of them, or by any woman on her own life, and expressed to be for the benefit of her husband, or of her children or of her husband and children, or any of them, shall create a trust in favour of the objects therein named, and the moneys payable under any such policy shall not, so long as any object of the trust remains unperformed, form part of the estate of the insured, or be subject to his or her debts.

Now, that section speaks of the children of the assured, and there is in the Act nothing whatever to indicate that the word "children" is not used in its strict legal sense, and it is quite well established that "children" means the lawful children of the person insured. That being so, it is impossible, in my view, to bring this infant within the benefit of this section of the Act, because the person concerned was not a child of the assured in any legal sense, although it may be that the assured had in some way put himself in the position of a parent. It seems to be plain that if there is an effective trust in favour of this infant, it cannot be by virtue of section 11 of the Act of 1882. The infant is outside the scope of that section altogether, because she is not a child of the assured, and therefore the policy being taken out and expressed in the sense that it is, although it does create a trust in favour of the wife, it does not create a trust in favour of the infant. It is said that the fact that the assured had put himself in *loco parentis* to this child, and that this policy is expressed to be for the benefit of the infant is enough to create a trust in favour of the infant, apart altogether from section 11 of the Act. It is to be noted that the policy itself expressly states that it is effected under and by virtue of the Married Women's Property Act, 1882, section 11. Therefore, prima facie, the intention of the assured was to create a trust by virtue of that section in favour of his wife and children, and that some indication that it was the intention to create a trust is to be inferred from the fact that it was by reference to the Act. But if the Act itself did not create the trust it is difficult to see how any such trust can be created. It is said that I ought to be able to find that the various payments made were by way of advancement, and that I ought to be able to find that there is here created, apart altogether from the Act, an enforceable trust in favour of the infant. In my judgment, that argument is completely answered in *Re Engelbach's Estate*. The headnote of that case is:

An endowment policy taken out by a person in his own name for the

benefit of his daughter, to mature on her attaining a specified age, creates no legal estate in the daughter, and she cannot sue on the contract, nor does the assured thereby constitute himself a trustee for his daughter of the policy and of the moneys payable thereunder. If, therefore, the assured dies before the policy matures, the policy moneys belong, not to the daughter, but to the estate of the assured, and must be paid to his executors.

The headnote ends with a reference to *Cleaver* v. *Mutual Reserve Fund Life Association,* a decision of the Court of Appeal.

In Re Engelbach's Estate, the testator took out a policy to provide for the payment of a sum to his daughter on a certain date if she should so long live. In the proposal form there were inserted the words: "Edward Coryton Engelbach for his daughter Mary Noel, aged one month." A sum of £3,000 was expressed to be payable to the testator's daughter if she should survive February 3, 1923, and, if she should not, all the premiums paid were to be repaid to the testator. The testator paid the premiums down to a certain date, and then he ceased to pay. By a resolution of the directors of the insurance society the policy was revived as a fully paid-up policy for a reduced sum. By his will he gave all his estate to his trustees upon trust for his wife for life. A summons was then taken out by two of the trustees of the will, asking whether the sum payable under the policy formed part of the estate of the testator or not. Romer J., when he came to determine this question, said this, at p. 351 :

A very similar question to the present one arose in *Cleaver* v. *Mutual Reserve Fund Life Association.* Before considering that case, however, I may say this : the daughter could of course successfully claim these moneys if she had at the death of the testator a legal right to them, that is to say, a right at law to recover the moneys from the society, because, although that legal right might have been given to her purely voluntarily by her father, still there would be no resulting trust in favour of the father, seeing that there would be a presumption of advancement.

Now, as I understand Romer, J., he is saying this : in order to give effect to the presumption of advancement, you have first to find that the daughter has a right to the money. If she has a legal right to claim the money, the fact that it was a voluntary payment made by her father is no answer to the daughter's claim, because she can set up that these payments were made by way of advancement, and that would defeat the resulting trust which would otherwise follow. But, unless and until there is some right in the person who claims the money to do that, the doctrine of advancement does not operate to defeat the resulting trust. The only ground would be for the father to constitute himself in some way a trustee for his daughter. Then Romer, J., deals with the case of *Cleaver* v. *Mutual Reserve Fund Life Association* (1892) 1 Q.B. 147, and cites certain passages from the judgment of Lord Esher M. R., and on the authority of that case comes to the conclusion that, apart from the Act, there can be no trust, and he comes to the conclusion that the daughter in that case had no legal right, and that the policy moneys formed part of the testator's estate. In this case. that decision exactly applies. The daughter is a person who cannot claim the benefit of the Married Women's Property Act, 1882, section 11, and as, apart from that Act, there is nothing which would entitle her in any event to claim against the insurance company any legal right to the money, the consequence is that, as between the assured and the insurance company, the only persons who have any right are the assured and his wife. They can deal with it as they please, and surrender the policy, or otherwise deal with it, without any reference to the infant and I propose to make a declaration accordingly. The plaintiff must pay the costs.

In Re Sinclair's Life Policy (1938) 1 Ch. 799.

Insurance—Endowment policy—Policy money payable at end of seventeen years to godson of assured if then alive—Death of assured within period —Godson not party to contract—No trust in favour of godson—Law of Property Act, 1925 (15 Geo. 5, c. 20), section 56, subsection (1) ; section 205, subsection (1) (xx).

In 1919, J. G. S. took out an endowment policy in his own name for the benefit of his godson to mature in seventeen years. J. G. S. died in 1924 :—

Held, that there was no trust in favour of the godson.

In re Engelbach's Estate (1924) 2 Ch. 348 followed.

Section 56, subsection (1) of the Law of Property Act, 1925, provides that "A person may take an immediate or other interest in land or other property, or the benefit of any condition, right of entry, covenant or agreement over or respecting land or other property, although he may not be named as a party to the conveyance or other instrument" :—

Held, that the section gave no beneficial interest in the policy money to the godson, and that it formed part of the estate of J. G. S.

Adjourned Summons.

This was a summons taken out by Hervey Cecil Rowan Hopwood, an infant, by his father and next friend, Hervey Hopwood, against the executors of James Graeme Sinclair, asking for the determination of the question whether certain moneys, which were paid into Court to the credit of this matter under a policy of life insurance by the Sun Life Assurance Company of Canada, belonged to and were payable to the infant applicant or whether they formed part of the estate of J. G. Sinclair.

The infant applicant was born on April 13, 1919, in Ceylon. J. G. Sinclair, at the request of the infant's father, acted as one of his godfathers. On November 1, 1919, J. G. Sinclair signed an insurance proposal form, which was headed "Special child's endowment," issued by the Shanghai Life Insurance Company (now represented by the Sun Life Assurance Company of Canada). In the proposal form J. G. Sinclair described himself as godfather of the infant, and he gave the name and age of the infant, to be referred to in the policy as the "nominee". Then followed details of the policy desired. The endowment was to mature in seventeen years and the premium was to be paid yearly, subject to the following provisions : (*a*) In the event of the death of the applicant, J. G. Sinclair, the policy was to be continued to maturity, except as provided in provision "B", without further payment of premiums : (*b*) In the event of the death of the infant, whether occurring before or after the death of the applicant, all premiums paid, together with simple interest at the rate of 3½ per cent. per annum, should be payable to the applicant if living, or if not living to his legal personal representatives, and the policy should cease to be in force ; (*c*) the policy should participate in the profits of the company if continued in force until the end of the endowment ; (*d*) the policy should, at the termination of the endowment period, be payable either to the applicant signing the application or the infant. Then the question was asked : "Is the policy to be payable at the end of the endowment to the applicant signing this application or to the child?" In answer to that question the word "applicant" was struck out and the words "to the child" were inserted. The policy itself, dated November 29, 1919, carried into effect the provisions contained in the application. It also contained an option of surrender, which provided that after three years' premiums had been paid, the assured, J. G. Sinclair, might, upon giving written notice to the company, within two months after any default in payment of premium, but not later, surrender the policy to the company. The policy was to date from November 1,

the date of the signing of the application. Subsequently J. G. Sinclair handed the policy to H. Hopwood, the infant applicant's father, and told him to retain it so that he could in due course collect payment for his son.

J. G. Sinclair died on May 30, 1924, and the policy matured on November 1, 1936.

Farwell J.: This is a summons taken out by Hervey Cecil Rowan Hopwood, an infant, by his father and next friend, Hervey Hopwood, against the executors of James Graeme Sinclair, asking for the determination of the question whether certain moneys which were paid into Court to the credit of this matter under a policy of life insurance by the Sun Life Assurance Company of Canada, belong to and are payable to the applicant infant, or whether they form part of the estate of James Graeme Sinclair. James Sinclair's executors are here in a representative capacity, and are bound, whatever their feelings might be in the matter, to claim this money which, if they are entitled to it forms part of James Sinclair's estate.

The claim to these policy moneys on behalf of the infant is put in two ways. It is said first that the effect of this insurance effected by Mr. Sinclair on his life on behalf of the infant under all the circumstances, and having regard to the terms of the proposal and the policy itself, is sufficient to establish a trust in favour of the infant; that is to say, that Mr. Sinclair declared himself a trustee of the policy moneys, if and when he received them, for the infant, and that the infant is therefore now entitled to claim as against the legal personal representatives of Mr. Sinclair that they hold the same on trust for him, the infant. In my judgment, the circumstances in this case are not sufficient to enable me to say that any such trust has been proved. There is no doubt, I think, on the evidence that Mr. Sinclair was desirous of making some provision for his godson, and that he contemplated doing it by means of this policy on his life; but that is a very long way from saying that he thereby constituted himself a trustee of the moneys payable under the policy. I think that the evidence falls short of that which would be necessary to constitute such a trust.

I have been referred to two cases which are not dissimilar to this: one of them is a decision of Romer J. in *In re Engelbach's Estate* (1924) 2 Ch. 348. In that case the headnote is: "An endowment policy taken out by a person in his own name for the benefit of his daughter, to mature on her attaining a specified age, creates no legal estate in the daughter, and she cannot sue on the contract, nor does the assured thereby constitute himself a trustee for his daughter of the policy and of the moneys payable thereunder. If, therefore, the assured dies before the policy matures, the policy moneys belong, not to the daughter, but to the estate of the assured, and must be paid to his executors." In that case Romer J. followed the decision in *Cleaver* v. *Mutual Reserve Fund Life Association* (1892) 1 Q.B. 147. The facts in the present case are not exactly similar to the facts in the case before Romer J., but it seems to me that, applying the principle of that decision, I am bound to hold there is not here enough to entitle the infant to succeed on the ground that a trust was created in his favour.

The other decision is a recent decision of my own (1937) 2 All E.R. 548, and the real question, or one of the main questions, to be considered there, was whether an adopted child came within the provisions of the Married Women's Property Act, 1882 (45 and 46 Vict. *c.* 75), *s.* II. I held that an adopted child did not come within the word "children" as used in that section, and on that footing, and following the decision of Romer, J. in *In re Engelbach's Estate* (1924) 2 Ch. 348, I held that the infant child was not entitled to succeed.

In the present case I can see nothing which would have obliged Mr. Sinclair to keep up the policy ; had he allowed the policy to lapse, by failing to pay the premium at any time, I can see no possible ground upon which the infant, or any one on behalf of the infant, would have been entitled to sue him for damages or require him to continue to keep up the policy ; and indeed, had Mr. Sinclair changed his mind and surrendered the policy and received the surrender value, the money so received would have been his money, and the infant would have had no claim to it. Having regard to those circumstances, it seems to me to be impossible to say that there was any such trust as would render the money in the hands of Mr. Sinclair's executors trust money on behalf of the infant. I regret to have to come to that conclusion, because I have little doubt that had Mr. Sinclair lived till the policy matured he would have permitted the infant to have the money ; but although I have no doubt Mr. Sinclair did intend by this method of taking out a policy to benefit the infant, that is not enough to justify me in saying that the executors, who must do their duty to their own estate, are under any obligation to hand over the policy moneys to the infant.

The other way in which the argument on behalf of the infant is put is that it is a case to which section 56 of the Law of Property Act, 1925, applies. That section provides : "A person may take an immediate or other interest in land or other property, or the benefit of any condition, right of entry, covenant or agreement over or respecting land or other property, although he may not be named as a party to the conveyance or other instrument." It is material to notice that the word "property" is defined in the Act, section 204, subsection (1) (xx), as including "anything in action and any interest in real or personal property." It is quite obvious that that section, if it were read quite literally, would have an over-reaching effect which was never the intention, and could not have been the intention, of the Legislature. As has been pointed out by Luxmoore, J. and Simonds, J. and the Master of the Rolls in the Court of Appeal in the cases to which I have been referred, a reasonable construction must be put upon this section. It is said that in this case the infant is entitled to take advantage of the section because he is a person who takes an immediate or other interest in land or other property, although he may not be named as a party to the conveyance or other instrument. It is said here that the infant, although not one of the contracting parties, and therefore not one of the parties who could have enforced the covenant (that is to say as against the Insurance Company or as against Mr. Sinclair), nevertheless is a person who gets a benefit under the contract, because he is the person who is named in the policy as the person to whom the money is to be paid. In my judgment, whatever the section does mean, and to whatever form of contract it is to apply, it does not apply in this case. The infant is no doubt a person named in the policy as a person to whom the money may be paid, but in my judgment that alone is not sufficient to enable him to take advantage of the section and recover and retain the money as his property. Although the infant is a person who might have received the money if Mr. Sinclair had lived till the policy came to maturity and made no claim to it, or if Mr. Sinclair's executors made no claim to it, he is not a person who, as between himself and Mr. Sinclair or Mr. Sinclair's executors, is entitled to require payment of the money to him. This section cannot, in my judgment, give him a beneficial title to the policy moneys, if apart from the section he has no such title. Moreover, even if he could recover the moneys under this section, since he has no beneficial interest in them, he would hold them as trustee for the executors, who could call upon him to account to them. Under these circumstances this section does not assist the applicant and this application fails and must be dismissed.

Summons dismissed, costs as between solicitor and client to be paid out of the policy money.

Re Oakes (deceased). Public Trustee v. *Inland Revenue Commissioners.* [(1950) 11 All E.R., 851)] [Chancery Division (Romer, J.), Oct. 12, 1950].

Estate Duty—Property deemed to pass—Money received under policy of assurance—"Effected" by deceased—"Wholly kept up .... for .... a donee"—Payment of initial premiums by third party—Commutation of premiums—Policy for the benefit of donee and the deceased—Customs and Inland Revenue Act, 1889 (c. 7), section 11 (1)—Finance Act, 1894 (c. 30), section 2 (1) (*c*).

In 1904 the deceased took out three policies of assurance on his life, expressed to be for the benefit of his wife under the Married Women's Property Act, 1882, section 11, in the event of his wife's surviving him, but for his own benefit if his wife did not survive him. The first two premiums on the policies were paid, not by the deceased, but by his wife's father. Thereafter, the deceased paid the annual premiums until 1919, when he paid a lump sum in lieu of future annual premiums, thus converting the policies into fully paid policies. In 1920 the deceased and his wife, who were between them entitled to the whole beneficial interest in the policies, settled them by a voluntary settlement for the benefit of their issue. In 1948 the deceased died, leaving his wife surviving him and the Crown claimed estate duty in respect of the proportion of the policy moneys equivalent to the proportion of the premiums paid by the deceased, under the Finance Act, 1894, section 2 (1) (*c*), which incorporates the Customs and Inland Revenue Act, 1881, section 38, as amended by the Customs and Inland Revenue Act, 1889, section 11 (1). By section 11 (1) of the Act of 1889 the charge imposed by section 38 (2) of the Act of 1881 was extended to "....money received under a policy of assurance effected by any person .... on his life, where the policy is wholly kept up by him for the benefit of a donee, whether nominee or assignee, or a part of such money in proportion to the premiums paid by him, where the policy is partially kept up by him for such benefit."

Held: (i) the policies were "effected" within section 11 (1) of the Act of 1889 by the deceased and not by the wife's father.

(ii) the policies were "kept up" notwithstanding that no premium was paid after 1919, because those words required only that moneys, whenever payable, should be paid for the purpose of keeping the policies on foot, and the final payment made in 1919, as a composition for all future premiums, was the payment of a premium for the purposes of section 11 (1).

(iii) although the deceased was beneficially interested in the policies as well as his wife, they were "wholly kept up" by the deceased "for the benefit of a donee" within the meaning of section 11 (1), the word "wholly" relating solely to the payment of the premiums and not to the beneficial interest of the donee.

Romer, J.: This is an application the object of which is to obtain the decision of the court on the liability, and the extent of the liability, of the estate of Montagu Percy Rowland Oakes to estate duty on certain policy moneys which became payable by reason of his death, which took place on September 2, 1948. The summons also raised the question as to liability to succession duty but, as I understand it, since the summons was issued the Crown have taken up an attitude on that matter which is acceptable to the plaintiff, and, accordingly, it has ceased to be relevant for discussion.

Mr. Oakes, whom I will hereafter refer to as "the deceased", effected three separate policies of assurance with the Law Life Assurance Society, each dated December 10, 1904, on his life, for the sums of £2,000, £2,000 and

£3,100 respectively, with profits, in consideration of twenty-five annual payments of £74, £74 and £114-14*s.* respectively under the Married Women's Property Act, 1882, section 11 for the benefit of Ellen Winifred Louise Oakes, nee Cawston, his wife, in the event, and in the event only, of her surviving him. In the event of her not surviving him, the benefit of the policies would be vested in the deceased himself. The policies then contained certain privileges to which I need not refer, including the right in certain events to convert the policies into fully paid up policies. On February 27, 1919, the policies for £2,000 were converted into fully paid up policies and declared to be exempt from payment of any future premiums, in consideration of the payment of £558-8*s.*-11*d.* in respect of each policy, and in consideration of £860-18*s.*-10*d.*, paid on the same date the policy for £3,100 was similarly converted into a fully paid up policy. Those payments were made by the deceased. The first two annual premiums on each of the three policies had, however, been paid by the wife's father. There was, apparently, some uncertainty as to who paid the premiums which became payable from 1906 to 1908 inclusive, but the Crown are prepared to approach the matter on the footing that they were not paid by the deceased. The wife's father, in so far as it is material, died on December 27, 1918.

The policies having been converted into fully paid up policies, the deceased and his wife executed a voluntary settlement on July 21, 1920, and, "as beneficial owners according to their respective interests," they assigned to the trustee the said three several policies of assurance on certain trusts for the benefit of their daughters and their daughters' issue. The wife survived the deceased, and she is, so far as I am aware, still living. The sum of £20,830 was paid on the death of the deceased in respect of the sums assured by the said three policies, including bonuses. The estimated rate of estate duty payable on the property forming the estate of the deceased and property in which he had a life interest, and also in respect of the said policy moneys or the limited interests therein so far as liable thereto, is approximately forty per cent., so that the amount involved in this question of estate duty is of some importance to the estate of the deceased. The wife's father was, until some years before his death, possessed of considerable wealth and would normally be described as a wealthy man, but at a date subsequent to 1909 he got into financial difficulties. The deceased was an officer of comparatively junior rank in His Majesty's Army, and was at first entitled only to his military pay, without being possessed of any other income, but at some time after 1908 he became entitled in possession to additional income or property.

The Crown say that estate duty is payable in respect of a proportion of the policy moneys which is equivalent to the proportion of the total premiums paid in keeping up the policies which was paid by the deceased. The claim is founded on the latter part of section 11 (1) of the Customs and Inland Revenue Act, 1889, which, among other things, amends the Customs and Inland Revenue Act, 1881, section 38 (2). The words in section 11 (1) on which the question depends are:

"The charge under the said section shall extend to money received under a policy of assurance effected by any person dying on or after June 1, 1889, on his life, where the policy is wholly kept up by him for the benefit of a donee, whether nominee or assignee, or a part of such money in proportion to the premiums paid by him, where the policy is partially kept up by him for such benefit."

The argument on behalf of the plaintiff, representing the estate, is that that taxing provision does not apply to the present case. In the first place, it is said that, having regard to the fact that the wife's father paid the first two premiums, it cannot be said of the deceased that he was the person who

"effected" the policy of assurance. It is said that, although it was the deceased who applied for the policy and presumably filled up the necessary forms for obtaining it, nevertheless the payment of the first premium was an essential ingredient to the obtaining of the policy, and, accordingly, the policy was "effected" at least as much, by the father-in-law as it was effected by the deceased, and so it is said that, *in limine*, the provision is not applicable to the facts of this case. I am unable to accept that view of the matter. It seems to me that the mere fact that the father-in-law in this case, who was a wealthy man and whose daughter was marrying a comparatively impecunious officer in the army, promised to pay, and did pay, the first two premiums on this policy, which, after all, had been taken out for the benefit of his daughter, does not come within a long way of resulting in his "effecting" the policy. The policy was, to my mind, undoubtedly "effected" by the husband, viz., the deceased, and the fact that his father-in-law was generous enough, or thought it proper, to pay the first two premiums is an irrelevant factor for consideration. In my judgment, it is clear that these policies were effected by the deceased.

On that view of the matter, one has to consider the further language of this taxing provision. Counsel for the plaintiff said that the policy was not "kept up" between 1919 and 1948 by the deceased at all, first, since one cannot "keep up" a policy which no longer requires to be kept up because it is a fully paid up policy, and, secondly, because, if it was kept up by anybody, it was kept up, not by the deceased but by the deceased and his wife, who executed a settlement of these policies and dedicated them to a certain trust. Counsel agrees that in 1919 the deceased made a payment to convert these policies into fully paid up policies, but he says that that did not amount to a keeping up, which involves the payment of annual or periodical premiums. I do not think that matter is of any significance, and, indeed, I do not understand the argument except on the footing that, unless you can say of a policy that the premiums are payable for the purpose of keeping it up until the policy matures and the time arrives for payment, such a policy is outside the provisions. That is putting a construction on those words which I do not think they bear. There is nothing in the words about keeping up down to the date of maturity, but the reference is to moneys which, whenever payable, are paid for the purpose of keeping the policy on foot. Therefore, I do not think that any weight can be attached to that argument.

Counsel for the trustee further said that the wife was not a "donee" for whose benefit the policy was kept up. He said, and said rightly, that the wife, although a beneficiary, was a contingent beneficiary only, and that, in so far as the policy was kept up at all at the instance of the deceased, it was kept up just as much for his own benefit as for hers, because he would be entitled to the policy moneys if he survived his wife, and, accordingly, although the wife was a donee within the meaning of the words as used in this provision, which expressly include in that meaning nominees or assignees, nevertheless the policy was not wholly kept up by the deceased for her benefit. I think it forms a necessary part of the argument which was addressed to me by counsel for the plaintiff on that point that you have got to read the section as though it said: "Where the policy is wholly kept up by him wholly for the benefit of the donee." Indeed, I think counsel would be inclined to read these words as though "wholly", was transferred from the position which it in fact occupies to a position a few words later on, so that it would control, not only the payments of premiums, but also the beneficial interest, and, of course, that is not so. The word "wholly" is related solely to the payment of the premiums, and not to the beneficial interest of the donee.

However, it is a fact that the husband was at all material times until the settlement in possession of a contingent beneficiary interest, and, accordingly,

it remains open to the argument that the payments were made, not exclusively for the benefit of the wife, but for the benefit of them both. In my view of the matter, the wife, who was, undoubtedly, a donee for the purpose of this provision, was a person for whose benefit the policy was kept up. It seems to me that where you find a wife who is a nominee of a policy taken out under the Married Women's Property Act, 1882, and moneys are then paid by the husband to keep the policy on foot, she is, undoubtedly, a donee for whose benefit the policy is kept up. It may be that the proper date for inquiring who is the donee may be, for the purpose of the provision, the date when the policy moneys became payable and, if one applies that test, it is clear that at the date when the policy moneys became payable if it had not been for the settlement, the wife would have been the person who would have been the donee, because she had survived the husband. Accordingly, I do not think that the mere fact that the husband himself had a contingent beneficial interest in these policies between 1904 and 1920 prevents, or displaces, the view that the wife, for whose benefit primarily these policies were taken out, is to be regarded as a donee for the purpose of this section, and, therefore, I hold that she was, and that payments were made for her benefit, although not exclusively for her benefit.

There is a further point, and this is an alternative way of putting the case on behalf of the estate—that, in any case, assuming that the taxing provisions applied before, the sums which were paid to convert the policies into fully paid policies in 1919 are not "premiums" for the purposes of the section. It is said that the only premiums which can come within the purview and scope of the provision are annual or other periodical payments which have to be made to keep the policy alive, and that that cannot be said of these payments which were made, as it is said, not to keep the policy alive, but to establish it once and for all.

I was referred to one passage in the speech of Lord Wright in *Barclays Bank, Ltd.* v. *A.G.* (1944) 2 All E.R. 208. That case was a totally different case from the present matter because there a settlor assigned two policies of assurance which he had effected on his own life to trustees for the benefit of his son and others together with certain investments. He also assigned certain investments to the trustees, and it was the income of those investments that the trustees were directed to use in order to pay the premiums on the policies. On the settlor's death the Crown claimed estate duty on the amount of the policy moneys which had been paid to the trustees of the settlements, it being contended that the policies had been "wholly kept up" by the settlor, "for the benefit of a donee" within the meaning of the Customs and Inland Revenue Act. 1889, section 11 (1). The House of Lords held that the policies were not "wholly kept up" by the settlor after the date of the settlements within the meaning of that subsection, and that, therefore, estate duty was not payable. In the course of his speech, Lord Wright said [(1944) A.C. 379]:

"I think that "keeping up" a policy according to the ordinary use of language connotes payment of the premiums, which is the normal method of keeping up a policy. This generally involves periodical payments, and, though a single premium policy is not unknown, that would have the effect not so much of keeping up a policy as establishing its operation once and for all. The Act did not, apparently, contemplate this contingency, but, however that may be, the insertion of the words 'in proportion to the premiums paid by him' is necessary to deal with the case where the deceased did not himself wholly keep up the policy but only did so partially."

Counsel for the plaintiff relied, I think, on that part of the speech of Lord Wright in support of the view that nothing can be regarded as a premium for the purpose of this provision of the Act of 1889 unless it is an ordinary

annual or other periodically recurring payment made for the purpose of keeping the policy on foot. I think that that argument overlooks the true nature and effect of what was done in 1919. These policies required annual premiums over a period of twenty-five years, and a certain number of those years still remained outstanding when this transaction was effected, but in fact all that it amounted to was that the deceased paid these lump sums in composition of those future outstanding annual premiums. It seems to me to be a remarkable conclusion if, notwithstanding that that was the effect of the payments, and notwithstanding that, if the premiums themselves had continued to be paid by the deceased until his death, the section would have been attracted, nevertheless it is not attracted because the premiums were paid in advance by one lump sum. Counsel for the Crown pointed to the fallacy of the plaintiff's argument on this point by illustrating the case of a policy which provides for payment of a comparatively small annual premium for a period of fifteen years, and then for the payment of a very much larger and final premium in the sixteenth year, and he said that it could hardly be suggested that the payment of the fifteen small sums was to be regarded as the payment of premiums, but that the larger payment, the final payment, was not a payment of premium. I think that clearly, in that case, the final payment would be a payment of a premium, just as much as the earlier ones.

So, in the present case, I come to the conclusion without any great hesitation that the payments made in 1919, which were merely pre-payments of future premiums are to be regarded on the same lines as the payment of the annual premiums had they been paid. Therefore, it seems to me that all the points on which the objection to the payment of estate duty is founded fail, and that, accordingly, liability to estate duty is attracted under the provisions of this part of the section that I have read. There is no difficulty in applying the result of the conclusions which I have reached, because the position was stated by Rowlatt, J., in *A.G.* v. *Meech* (1931), 15 Annotated Tax Cases 619, and commented on favourably by Lord Macmillan in *Lord Advocate* v. *Inzievar Estates* (1938) 2 All E.R. 424. There Lord Macmillan, in dealing with the case then before the House, said [(1938) A.C. 413]:

> "Of the eleven premiums paid during that period in the present case the deceased paid four and the donees paid seven—that is to say, the deceased paid four elevenths and the respondents paid seven elevenths of the premiums falling due during that period. It follows, in my opinion, that the part of the proceeds of the policy which is proportionate to the premiums paid by the deceased within the meaning of the statute is four elevenths. I am fortified in this reading of the subsection by the fact that it also commended itself to Rowlatt, who in the case of *A.G.* v. *Meech* said of the subsection: 'I think it simply means that, where after the assignment what has kept up the policies has been provided partly by the assignor and partly by the assignee, the policy moneys are to be subject to and escape duty in the same proportion'."

That is the principle which I think should be applied in the present case.

APPENDIX—C

THE CHARITABLE ENDOWMENTS ACT (VI of 1890)

Whereas it is expedient to provide for the vesting and administration of property held in trust for charitable purposes; it is hereby enacted as follows :—

2. In this Act "Charitable purpose" includes relief of the poor, education, medical relief and the advancement of any other object of general public utility, but does not include a purpose which relates exclusively to religious teaching or worship.

3. (1) The Central Government may appoint an officer of the Government by the name of his office to be treasurer of charitable endowments for India, and the Government of any State may appoint an officer of the Government by the name of his office to be treasurer of Charitable endowments for the State.

(2) Such treasurer shall, for the purposes of taking, holding and transferring movable or immovable property under the authority of this Act, be a corporation sole by the name of the Treasurer of Charitable Endowments for (India or, as the case may be, the State) and, as such Treasurer, shall have perpetual succession and a corporate seal, and may sue and be sued in his corporate name.

3-A. In the subsequent provisions of this Act "the appropriate Government" means, as respects a charitable endowment, the objects of which do not extend beyond a single State and are not objects to which the executive authority of the Central Government extends, the Government of the State, and as respects any other charitable endowment the Central Government.

4. (1) Where any property is held or is to be applied in trust for a charitable purpose, the (appropriate Government), if it thinks fit, may, on application made as hereinafter mentioned, and subject to the other provisions of this section, order, by notification in the Official Gazette, that the property be vested in the Treasurer of Charitable Endowments on such terms as to the application of the property or the income thereof as may be agreed on between the (appropriate Government) and the person or persons making the application, and the property shall thereupon so vest accordingly.

(2) When any property has vested under this section in a Treasurer of Charitable Endowments, he is entitled to all documents of title relating thereto.

(3) [* * *].

(4) Any order under this section vesting property in a Treasurer of Charitable Endowments shall not require or be deemed to require him to administer the property, or impose or be deemed to impose upon him the duty of a trustee with respect to the administration thereof.

5. (1) On application made as hereinafter mentioned, and with the concurrence of the person or persons making the application, the (appropriate Government) if it thinks fit, may settle a scheme for the administration of any property which has been or is to be vested in the Treasurer of Charitable Endowments, and may in such scheme appoint, by name or office, a person or persons, not being or including such Treasurer, to administer the property.

(2) On application, made as hereinafter mentioned, and with the concurrence of the person or persons making the application, the (appropriate

Government) may, if it thinks fit, modify any scheme settled under this section or substitute another scheme in its stead.

(3) A scheme settled, modified or substituted under this section, shall, subject to the other provisions of this section, come into operation on a day to be appointed by the (appropriate Government) in this behalf, and shall remain in force so long as the property to which it relates continues to be vested in the Treasurer of Charitable Endowments or until it has been modified or another such scheme has been substituted in its stead.

(4) Such a scheme, when it comes into operation, shall supersede any decree or direction relating to the subject-matter thereof in so far as such decree or direction is in any way repugnant thereto, and its validity shall not be questioned in any Court, nor shall any Court give, in contravention of the provisions of the scheme or in any way contrary or in addition thereto, a decree or direction regarding the administration of the property to which the scheme relates :

(Provided that nothing in this subsection shall be construed as precluding a Court from inquiring whether the Government by which a scheme was made was the appropriate Government.)

(5) In the settlement of such a scheme effect shall be given to the wishes of the author of the trust so far as they can be ascertained, and, in the opinion of the (appropriate Government), effect can reasonably be given to them.

(6) Where a scheme has been settled under this section for the administration of property not already vested in the Treasurer of Charitable Endowments, it shall not come into operation until the property has become so vested.

6. (1) The application referred to in the two last foregoing sections must be made,—

(*a*) if the property is already held in trust for a charitable purpose, then by the person acting in the administration of the trust, or, where there are more persons than one so acting, then by those persons, or a majority of them ; and

(*b*) if the property is to be applied in trust for such a purpose, then by the person or persons proposing so to apply it.

(2) For the purpose of this section the executor or administrator of a deceased trustee of property held in trust for a charitable purpose shall be deemed to be a person acting in the administration of the trust.

8. (1) Subject to the provisions of this Act, a Treasurer of Charitable Endowments, shall not, as such Treasurer, act in the administration of any trust whereof any of the property is for the time being vested in him under this Act.

(2) Such Treasurer shall keep a separate account of each property for the time being so vested, in so far as the property consists of securities for money, and shall apply the property or the income thereof in accordance with the provision made in that behalf in the vesting order under section 4 or in the scheme, if any, under section 5, or in both those documents.

(3) In the case of any property so vested other than securities for money, such treasurer, shall, subject to any special order which he may receive from the authority by whose order the property became vested in him, permit the persons acting in the administration of the trust to have the possession, management and control of the property, and the application of the income thereof, as if the property had been vested in them.

THE CHARITABLE AND RELIGIOUS TRUSTS ACT (XIV of 1920)

An Act to provide more effectual control over the administration of Charitable and Religious Trusts.

Whereas it is expedient to provide facilities for the obtaining of information regarding trusts created for public purposes of a charitable or religious nature, and to enable the trustees of such trusts to obtain the direction of a Court on certain matters, and to make special provision for the payment of the expenditure incurred in certain suits against the trustees of such trusts; it is hereby enacted as follows :—

1. (1) This Act may be called the Charitable and Religious Trusts Act, 1920.

(2) It extends to the whole of India except the State of Jammu and Kashmir.

Provided that the (Government of any State) may, by notification in the (Official Gazette), direct that this Act, or any specified part thereof, shall not extend to (that State or any specified area therein) or to any specified trust or class of trusts.

2. In this Act, unless there is anything repugnant in the subject or context, "the Court" means the Court of the District Judge (or any other Court empowered in that behalf by the State Government) and includes the High Court in the exercise of its ordinary original civil jurisdiction.

3. Save as hereinafter provided in this Act, any person having an interest in any express or constructive trust created or existing for a public purpose of a charitable or religious nature may apply by petition to the Court within the local limits of whose jurisdiction any substantial part of the subject-matter of the trust is situate to obtain an order embodying all or any of the following directions, namely :—

(1) directing the trustee to furnish the petitioner through the Court with particulars as to the nature and objects of the trust, and of the value, condition, management and application of the subject-matter of the trust, and of the income belonging thereto, or as to any of these matters, and

(2) directing that the accounts of the trusts shall be examined and audited :

Provided that no person shall apply for any such direction in respect of accounts relating to a period more than three years prior to the date of the petition.

4. (1) The petition shall show in what way the petitioner claims to be interested in the trust, and shall specify, as far as may be, the particulars and the audit which he seeks to obtain.

(2) The petition shall be in writing and shall be signed and verified in the manner prescribed by the Code of Civil Procedure, 1908, for signing and verifying plaints.

5. (1) If the Court on receipt of a petition under section 3, after taking such evidence and making such inquiry, if any, as it may consider necessary, is of opinion that the trust to which the petition relates is a trust to which this Act applies, and that the petitioner has an interest therein, it shall fix a date for the hearing of the petition and shall cause a copy thereof together with notice of the date so fixed, to be served on the trustee and upon any other person to whom in its opinion notice of the petition should be given.

(2) On the date fixed for hearing of the petition, or any subsequent date to which the hearing may be adjourned, the Court shall proceed to hear the petitioner and the trustee, if he appears, and any other person who has

appeared in consequence of the notice, or who it considers ought to be heard, and shall make such further inquiries, if any, as it thinks fit. The trustee may, and, if so required by the Court, shall at the time of the first hearing or within such time as the Court may permit present a written statement of his case. If he does present a written statement, the statement shall be signed and verified in the manner prescribed by the Code of Civil Procedure, 1908, for signing and verifying pleadings.

(3) If any person appears at the hearing of the petition and either denies the existence of the trust or denies that it is a trust to which this Act applies, and undertakes to institute within three months a suit for a declaration to that effect and for any other appropriate relief, the Court shall order a stay of the proceedings and, if such suit is so instituted, shall continue the stay until the suit is finally decided.

(4) If no such undertaking is given, or if after the expiry of the three months no such suit has been instituted, the Court shall itself decide the question.

(5) On completion of the inquiry provided for in subsection (2), the Court shall either dismiss the petition or pass thereon such other order as it thinks fit :

Provided that, where a suit has been instituted in accordance with the provisions of subsection (3), no order shall be passed by the Court which conflicts with the final decision therein.

(6) Save as provided in this section, the Court shall not try or determine any question of title between the petitioner and any person claiming title adversely to the trust.

6. If a trustee without reasonable excuse fails to comply with an order made under subsection (5) of section 5, such trustee shall, without prejudice to any other penalty or liability which he may incur under any law for the time being in force, be deemed to have committed a breach of trust affording ground for a suit under the provisions of section 92 of the Code of Civil Procedure, 1908 ; and any such suit may, so far as it is based on such failure, be instituted without the previous consent of the Advocate-General.

7. (1) Save as hereinafter provided in this Act, any trustee of an express or constructive trust created or existing for a public purpose of a charitable or religious nature may apply by petition to the Court, within the local limits of whose jurisdiction any substantial part of the subject-matter of the trust is situate, for the opinion, advice or direction of the Court on any question affecting the management or administration of the trust property, and the Court shall give its opinion, advice or direction, as the case may be, thereon :

Provided that the Court shall not be bound to give such opinion, advice or direction on any question which it considers to be a question not proper for summary disposal.

(2) The Court, on a petition under subsection (1), may either give its opinion, advice or direction thereon forthwith, or fix a date for the hearing of the petition, and may direct a copy thereof, together with notice of the date so fixed, to be served on such of the persons interested in the trust, or to be published for information in such manner, as it thinks fit.

(3) On any date fixed under subsection (2) or on any subsequent date to which the hearing may be adjourned, the Court, before giving any opinion, advice or direction, shall afford a reasonable opportunity of being heard to all persons appearing in connection with the petition.

(4) A trustee stating in good faith the facts of any matter relating to the trust in a petition under subsection (1), and acting upon the opinion, advice or direction of the Court given thereon, shall be deemed, as far as his

own responsibility is concerned, to have discharged his duty as such trustee in the matter in respect of which the petition was made.

8. The costs, charges and expenses of and incidental to any petition, and all proceedings in connection therewith, under the foregoing provisions of this Act shall be in the discretion of the Court, which may direct the whole or any part of any such costs, charges and expenses to be met from the property or income of the trust in respect of which the petition is made or to be borne and paid in such manner and by such persons as it thinks fit :

Provided that no such order shall be made against any person (other than the petitioner) who has not received notice of the petition and had reasonable opportunity of being heard thereon.

9. No petition under the foregoing provisions of this Act in relation to any trust shall be entertained in any of the following circumstances, namely :

(*a*) if a suit instituted in accordance with the provisions of section 92 of the Code of Civil Procedure, 1908, is pending in respect of the trust in question ;

(*b*) if the trust property is vested in the Treasurer of Charitable Endowments, the Administrator-General, the Official Trustee or any society registered under the Societies Registration Act, 1860 ; or

(*c*) if a scheme for the administration of the trust property has been settled or approved by any Court of competent jurisdiction or by any other authority acting under the provisions of any enactment.

10. (1) In any suit instituted under section 14 of the Religious Endowments Act, 1863, or under section 92 of the Code of Civil Procedure, 1908, the Court trying such suit may, if, on application of the plaintiff and after hearing the defendant and making such inquiry as it thinks fit, it is satisfied that such an order is necessary in the public interest, direct the defendant either to furnish security for any expenditure incurred or likely to be incurred by the plaintiff in instituting and maintaining such suit, or to deposit from any money in his hands as trustees of the trust to which the suit relates such sum as such Court considers sufficient to meet such expenditure in whole or in part.

(2) When any money has been deposited in accordance with an order made under subsection (1), the Court may make over to the plaintiff the whole or any part of such sum for the conduct of the suit. Before making over any sum to the plaintiff, the Court shall take security from the plaintiff for the refund of the same in the event of such refund being subsequently ordered by the Court.

11. (1) The provisions of the Code of Civil Procedure, 1908, relating to—

(*a*) the proof of facts by affidavit,

(*b*) the enforcing of the attendance of any person and his examination on oath,

(*c*) the enforcing of the production of documents, and

(*d*) the issuing of commissions,

shall apply to all proceedings under this Act, and the provisions relating to the service of summonses shall apply to the service of notices thereunder.

(2) The provisions of the said Code relating to the execution of decrees shall apply to all proceedings under this Act, and the provisions relating to Act.

12. No appeal shall lie from any order passed or against any opinion, advice or direction given under this Act.

THE CODE OF CIVIL PROCEDURE (V of 1908)

* * * * * *

92. (1) In the case of any alleged breach of any express or constructive trust created for public purposes of a charitable or religious nature, or where the direction of the Court is deemed necessary for the administration of any such trust, the Advocate-General, or two or more persons having an interest in the trust and having obtained the consent in writing of the Advocate-General, may institute a suit, whether contentious or not, in the principal Civil Court of original jurisdiction or in any other Court empowered in that behalf by the (State Government) within the local limits of whose jurisdiction the whole or any part of the subject-matter of the trust is situate to obtain a decree—

(*a*) removing any trustee ;
(*b*) appointing a new trustee ;
(*c*) vesting any property in a trustee ;
(*d*) directing accounts and inquiries ;
(*e*) declaring what proportion of the trust-property or of the interest therein shall be allocated to any particular object of the trust ;
(*f*) authorizing the whole or any part of the trust-property to be let, sold, mortgaged or exchanged ;
(*g*) settling a scheme ; or
(*h*) granting such further or other relief as the nature of the case may require.

(2) Save as provided by the Religious Endowments Act, 1863, [or by any corresponding law in force in a Part B State] no suit claiming any of the reliefs specified in subsection (1) shall be instituted in respect of any such trust as is therein referred to except in conformity with the provisions of that subsection.

93. The powers conferred by sections 91 and 92 on the Advocate-General may, outside the Presidency-towns, be, with the previous sanction of the (State Government), exercised also by the Collector or by such officer as the (State Government) may appoint in this behalf.

THE INDIAN CONTRACT ACT (IX OF 1872)

* * * * * *

By whom Contracts must be performed.

Person by whom promise is to be performed.

40. If it appears from the nature of the case that it was the intention of the parties to any contract that any promise contained in it should be performed by the promisor himself, such promise must be performed by the promisor. In other cases, the promisor or his representatives may employ a competent person to perform it.

Illustrations.

(a) A promises to pay B a sum of money. A may perform this promise either by personally paying the money to B or by causing it to be paid to B by another: and if, A dies before the time appointed for payment, his representatives must perform the promise, or employ some person to do so.

(b) A promises to paint a picture for B. A must perform this promise personally.

Effect of accepting performance from third person.

41. When a promisee accepts performance of the promise from a third person, he cannot afterwards enforce it against the promisor.

42. When two or more persons have made a joint promise, then unless a contrary intention appears by the contract, all such persons, during their joint lives, and after the death of any of them, his representative jointly with the survivor, or survivors, and after the death of the last survivor, the representatives of all jointly, must fulfil the promise.

Devolution of joint liabilities.

43. When two or more persons make a joint promise, the promisee may, in the absence of express agreement to the contrary, compel any one or more of such joint promisors to perform the whole of the promise.

Any one of joint promisors may be compelled to perform.

Each of two or more joint promisors may compel every other joint promisor to contribute equally with himself to the performance of the promise, unless a contrary intention appears from the contract.

Each promisor may compel contribution.

If any one of two or more joint promisors makes default in such contribution, the remaining joint promisors must bear the loss arising from such default in equal shares.

Sharing of loss by default in contribution.

Explanation.—Nothing in this section shall prevent a surety from recovering from his principal, payments made by the surety on behalf of the principal, or entitle the principal to recover anything from the surety on account of payments made by the principal.

Illustrations.

(a) **A, B** and **C** jointly promise to pay **D** 3,000 rupees. **D** may compel either **A** or **B** or **C** to pay him 3,000 rupees.

(b) **A, B** and **C** jointly promise to pay **D** the sum of 3,000 rupees. **C** is compelled to pay the whole. **A** is insolvent, but his assets are sufficient to pay one-half of his debts. **C** is entitled to receive 500 rupees from **A**'s estate, and 1,250 rupees from **B**.

(c) **A, B** and **C** are under a joint promise to pay **D** 3,000 rupees. **C** is unable to pay anything, and **A** is compelled to pay the whole. **A** is entitled to receive 1,500 rupees from **B**.

(d) **A, B** and **C** are under a joint promise to pay **D** 3,000 rupees **A** and **B** being only sureties for **C**. **C** fails to pay. **A** and **B** are compelled to pay the whole sum. They are entitled to recover it from **C**.

44. Where two or more persons have made a joint promise, a release of one of such joint promisors by the promisee does not discharge the other joint promisor or joint promisors; neither does it free the joint promisor so released from responsibility to the other joint promisor or joint promisors.

Effect of release of one joint promisor.

45. When a person has made a promise to two or more persons jointly, then, unless a contrary intention appears from the contract, the right to claim performance rests, as between him and them, with them during their joint lives, and, after the death of any of them, with the representative of such deceased person jointly with the survivor or survivors, and after the death of the last survivor, with the representatives of all jointly.

Devolution of joint rights.

Illustration.

A, in consideration of 5,000 rupees lent to him by **B** and **C**, promises **B** and **C**, jointly to repay them that sum with interest on a day specified. **B** dies. The right to claim performance rests with **B**'s representative jointly with **C** during **C**'s life, and after the death of **C** with the representatives of **B** and **C** jointly.

* * * * * *

Liability of person to whom money is paid, or thing delivered, by mistake or under coercion.

72. A person to whom money has been paid, or anything delivered by mistake or under coercion, must repay or return.

Illustrations.

(a) **A** and **B** jointly owe 100 rupees to **C**. **A** alone pays the amount to **C** and **B**, not knowing this fact, pays 100 rupees over again to **C**. **C** is bound to repay the amount to **B**.

(b) A Railway Company refuses to deliver up certain goods to the consignee, except upon the payment of an illegal charge for carriage. The consignee pays the sum charged in order to obtain the goods. He is entitled to recover so much of the charge as was illegally excessive.

THE COURT FEES ACT (VII OF 1870)

* * * * * *

[Chief Controlling Revenue Authority was omitted by A.LO., 1937.]

2. In this Act "Collector" shall include any officer authorised by the Chief Controlling Revenue Authority to perform the functions of a Collector under this Act.

Bombay amendment.

Bengal amendment.

2. In this Act, unless there is anything repugnant in the subject or context.

(1) * * * * * *

(2) Chief Controlling Revenue Authority means the Board of Revenue ;

(3) "Collector" includes any officer not below the rank of Sub-deputy Collector appointed by the Collector to perform the functions of a Collector under this Act ;

(4) * * * * * *

U.P. amendment.

2. (i) * * * * * *

(ii) "Collector" includes any officer, not below the rank of a Deputy Collector, appointed by the Collector, with the previous sanction of the Chief Controlling Revenue Authority, to perform the functions of a Collector under the Act.

(iii) * * * * * *

(iv) * * * * * *

Probates, Letters of Administration and Certificates of Administration.

Relief where too high a court fee has been paid.

19A. Where any person on applying for the probate of a will or letters of administration has estimated the property of the deceased to be of greater value than the same has afterwards proved to be, and has consequently paid too high a court fee, thereon, if, within six months after the true value of the property has been ascertained, such person produces the probate or letters to the Chief Controlling Revenue Authority for the local area in which the probate or letters has or have been granted ;

and delivers to such authority a particular inventory and valuation of the property of the deceased, verified by affidavit or affirmation,

and if such authority is satisfied that a greater fee was paid on the probate or letters than the law required,

the said authority may—

(*a*) cancel the stamp on the probate or letters if such stamp has not been already cancelled ;

(*b*) substitute another stamp for denoting the court fee which should have been paid thereon ; and

(*c*) make an allowance for the difference between them as in the case of spoiled stamps, or repay the same in money, at his discretion.

Relief where debts due from a deceased person have been paid out of his estate.

19B. Whenever it is proved to the satisfaction of such authority that an executor or administrator has paid debts due from the deceased to such an amount as, being deducted out of the amount or value of the estate, reduces the same to a sum which, if it had been the whole gross amount or value of the estate, would have occasioned a less court fee to be paid on the probate or letters of administration granted in respect of such estate than has been actually paid thereon under this act.

Such authority may return the difference, provided the same be claimed within three years after the date of such probate or letters.

But when, by reason of any legal proceeding, the debts due from the deceased have not been ascertained and paid, or his effects have not been recovered and made available, and in consequence thereof the executor or administrator is prevented from claiming the return of such difference within the said term of three years, the said authority may allow such further time for making the claim as may appear to be reasonable under the circumstances.

Relief in case of several grants.

19C. Whenever a grant of probate or letters of administration has been or is made in respect of the whole of the property belonging to an estate, and the full fee chargeable under this Act has been or is paid thereon, no fee shall be chargeable under the said Act when a like grant is made in respect of the whole or any part of the same property belonging to the same estate.

Whenever such a grant has been or is made in respect of any property forming part of an estate, the amount of fees then actually paid under this Act shall be deducted when a like grant is made in respect of property belonging to the same estate, identical with or including the property to which the former grant relates.

Probates declared valid as to trust-property though not covered by court-fees.

19D. The probate of the will or the letters of administration of the effects of any person deceased heretofore or hereafter granted shall be deemed valid and available by his executors or administrators for recovering, transferring or assigning any movable or immovable property whereof or whereto the deceased was possessed or entitled, either wholly or partially as a trustee, notwithstanding the amount or value of such property is not included in the amount or value of the estate in respect of which a court fee was paid on such probate or letters of administration.

Provision for case where too low a court-fee has been paid on probate, etc.

19E. Where any person on applying for probate or letters of administration has estimated the estate of the deceased to be of less value than the same has afterwards proved to be, and has in consequence paid too low a court fee thereon, the Chief Controlling Revenue authority for the local area in which the probate or letters has or have been granted may, on the value of the estate of the deceased being verified by affidavit or affirmation, cause the probate or letters of administration to be duly stamped on payment of the full court fee which ought to have been originally paid thereon in respect of such value and of the further penalty, if the probate or letters is or are produced within one year from the date of grant, of five times, or, if it or they is or are produced after one year from such date, of twenty times, such proper court fee, without any deduction of the court fee originally paid on such probate or letters :

Provided that, if the application be made within six months after the ascertainment of the true value of the estate, and the discovery that too low

a court fee was at first paid on the probate or letters, and if the said authority is satisfied that such fee was paid in consequence of a mistake or of its not being known at the time some particular part of the estate belonged to the deceased, and without any intention of fraud or to delay the payment of the proper court fee, the said authority may remit the said penalty, and cause the probate or letters to be duly stamped on payment only of the sum wanting to make up the fee which should have been at first paid thereon.

Administrator to give proper security before letters stamped under section 19E.

19F. In case of letters of administration on which too low a court fee has been paid at first, the said authority shall not cause the same to be duly stamped in manner aforesaid until the administrator has given such security to the Court by which the letters of administration have been granted as ought by law to have been given on the granting thereof in case the full value of the estate of the deceased had been then ascertained.

Executors, etc., not paying full court fee on probates etc., within six months after discovery of under-payment.

19G. Where too low a court fee has been paid on any probate or letters of administration in consequence of any mistake, or of its not being known at the time that some particular part of the estate belonged to the deceased, if any executor or administrator acting under such probate or letters does not within six months * * * * * after the discovery of the mistake or of any effects not known at the time to have belonged to the deceased apply to the said authority and pay what is wanting to make up the court fee which ought to have been paid at first on such probate or letters, he shall forfeit the sum of one thousand rupees and also a further sum at the rate of ten rupees percent. on the amount of the sum wanting to make up the proper court fee.

Notice of application for probate or letters of administration to be given to Revenue authorities, and procedure thereon.

19H (1) Where an application for probate or letters of administration is made to any court other than a High Court, the court shall cause notice of the application to be given to the Collector.

(2) Where such an application as aforesaid is made to a High Court, the High Court shall cause notice of the application to be given to the Chief Controlling Revenue Authority (for the local area in which the High Court is situated).

(3) The Collector within the local limits of whose revenue-jurisdiction the property of the deceased or any part thereof is, may at any time inspect or cause to be inspected, and take or cause to be taken copies of, the record of any case in which application for probate or letters of administration has been made ; and if, on such inspection or otherwise, he is of opinion that the petitioner has under-estimated the value of the property of the deceased, the Collector may, if he thinks fit, require the attendance of the petitioner, (either in person or by agent) and take evidence and inquire into the matter in such manner as he may think fit, and if he is still of opinion that the value of the property has been under-estimated, may require the petitioner to amend the valuation.

(4) If the petitioner does not amend the valuation to the satisfaction of the Collector, the Collector may move the Court before which the application for probate or letters of administration was made, to hold an inquiry into the true value of the property :

Provided that no such motion shall be made after the expiration of six months from the date of the exhibition of the inventory required by section 277 of the Indian Succession Act, 1865, or, as the case may be, by section 98 of the Probate and Administration Act, 1881.

(5) The Court, when so moved as aforesaid, shall hold, or cause to be held, an inquiry accordingly, and shall record a finding as to the true value as near as may be, at which the property of the deceased should have been estimated. The Collector shall be deemed to be a party to the inquiry.

(6) For the purposes of any such inquiry, the Court or person authorised by the Court to hold the inquiry may examine the petitioner for probate or letters of administration on oath (whether in person or by commission), and may take such further evidence as may be produced to prove the true value of the property. The person authorised as aforesaid to hold the inquiry shall return to the Court the evidence taken by him and report the result of the inquiry, and such report and the evidence so taken shall be evidence in the proceeding, and the Court may record a finding in accordance with the report, unless it is satisfied that it is erroneous.

(7) The finding of the Court recorded under subsection (5) shall be final, but shall not bar the entertainment and disposal by the Chief Controlling Revenue Authority of any application under section 19E.

(8) The State Government may make rules for the guidance of Collectors in the exercise of the powers conferred by subsection (3).

Payment of Court fees in respect of Probates and letters of administration.

19I. (1) No order entitling the petitioner to the grant of probate or letters of administration shall be made upon an application for such grant until the petitioner has filed in the Court a valuation of the property in the form set forth in the third schedule, and the Court is satisfied that the fee mentioned in No. 11 of the first schedule has been paid on such valuation.

(2) The grant of probate or letters of administration shall not be delayed by reason of any motion made by the Collector under section 19H, subsection (4).

Recovery of penalties etc.

19J. (1) Any excess fee found to be payable on an inquiry held under section 19H, subsection (6) and any penalty or forfeiture under section 19G, may, on the certificate of the Chief Controlling Revenue Authority be recovered from the executor or administrator as if it were an arrear of land-revenue by any Collector.

(2) The Chief Controlling Revenue Authority may remit the whole or any part of any such penalty or forfeiture as aforesaid, or any part of any penalty under section 19E or of any court fee under section 19E in excess of the full court fee which ought to have been paid.

Sections 6 and 28 not to apply to probate or letters of administration.

19K. Nothing in section 6 or section 28 shall apply to probate or letters of administration.

THE INDIAN INCOME-TAX ACT (XI of 1922) (*section* 4) (3) (i)

Any income derived from property held under trust or other legal obligations wholly for religious or charitable purposes, and in the case of property so held in part only for such purposes, the income applied, or finally set apart for application, thereto.

(i-*a*) Any income derived from business carried on on behalf of a religious or charitable institution when the income is applied solely to the purposes of the institution, and

(*a*) the business is carried on in the course of the carrying out of a primary purpose of the institution, or

(*b*) the work in connection with the business is mainly carried on by beneficiaries of the institution:

(ii) Any income of a religious or charitable institution derived from voluntary contributions and applicable solely to religious or charitable purposes.

In this subsection "Charitable purpose" includes relief of the poor, education, medical relief and the advancement of any other object of general public utility, but nothing contained in clause (i), clause (i-*a*) or clause (ii) shall operate to exempt from the provisions of this Act that part of the income of a private religious trust which does not enure for the benefit of the public.

THE INDIAN INSURANCE ACT (IV of 1938)

Nomination by policy-holder.

39. (1) The holder of a policy of life insurance on his own life, may, when effecting the policy or at any time before the policy matures for payment, nominate the person or persons to whom the money secured by the policy shall be paid in the event of his death.

(2) Any such nomination in order to be effectual shall, unless it is incorporated in the text of the policy itself, be made by an endorsement on the policy communicated to the insurer and registered by him in the records relating to the policy and any such nomination may at any time before the policy matures for payment be cancelled or changed by an endorsement or a further endorsement or a will, as the case may be, but unless notice in writing of any such cancellation or change has been delivered to the insurer, the insurer shall not be liable for any payment under the policy made *bona fide* by him to a nominee mentioned in the text of the policy or registered in records of the insurer.

(3) The insurer shall furnish to the policy-holder a written acknowledgement of having registered a nomination or a cancellation or change therof, and may charge a fee not exceeding one rupee for registering such cancellation or change.

(4) A transfer or assignment of a policy made in accordance with section 38 shall automatically cancel a nomination:

Provided that the assignment of a policy to the insurer who bears the risk on the policy at the time of the assignment, in consideration of a loan granted by that insurer on the security of the policy within its surrender value, or its reassignment on payment of the loan shall not cancel a nomination, but shall affect the rights of the nominee only to the extent of the insurer's interest in the policy.

(5) Where the policy matures for payment during the lifetime of the person whose life is insured, or where the nominee, or, if there are more nominees than one, all the nominees die before the policy matures for payment, the amount secured by the policy shall be payable to the policy-holder or his heirs or legal representatives or the holder of a succession certificate, as the case may be.

(6) Where the nominee or, if there are more nominees than one, a nominee or nominees survive the person whose life is insured, the amount secured by the policy shall be payable to such survivor or survivors.

(7) The provisions of this section shall not apply to any policy of life insurance to which section 66 of the Married Women's Property Act, 1874, applies.

Commission and Rebates and Licensing of Agents.

Prohibition of payment by way of commission or otherwise for procuring business.

40. (1) No person shall, after the expiry of six months from the commencement of this Act, pay or contract to pay any remuneration or reward whether by way of commission or otherwise for soliciting or procuring insurance business in India to any person except an insurance agent or a person acting on behalf of an insurer who for the purposes of insurance business employs insurance agents.

(2) No insurance agent shall be paid or contract to be paid by way of commission or as remuneration in any form an amount exceeding, in the case of life insurance business, forty per cent. of the first year's premium payable on any policy or policies effected through him and five per cent. of a renewal premium, or, in the case of business of any other class, fifteen per cent. of the premium:

Provided that insurers, in respect of life insurance business only, may pay, during the first ten years of their business, to their insurance agents fifty-five per cent. of the first year's premium payable on any policy or policies effected through them and six per cent. of the renewal premiums.

(3) Nothing in this section shall prevent the payment under any contract existing prior to the 27th day of January, 1937, of gratuities or renewal commission to any person, whether an insurance agent within the meaning of this Act or not, or to his representatives after his decease in respect of insurance business effected through him before the said date.

THE MARRIED WOMEN'S PROPERTY ACT (III of 1874)

* * * * * *

III. Insurance by Wives and Husbands.

Married women may effect policy of insurance.

5. Any married woman may effect a policy of insurance on her own behalf and independently of her husband; and the same and all benefit thereof, if expressed on the face of it to be so effected, shall enure as her separate property, and the contract evidenced by such policy shall be as valid as if made with an unmarried woman.

Insurance by husband for benefit of wife.

6. (1) A policy of Insurance effected by any married man on his own life, and expressed on the face of it to be for the benefit of his wife, or of his wife and children, or any of them, shall ensure and be deemed to be a trust for the benefit of his wife, or of his wife and children, or any of them, according to the interest so expressed, and shall not, so long as any object of the trust remains, be subject to the control of the husband, or to his creditors, or form part of his estate.

When the sum secured by the policy becomes payable, it shall, unless special trustees are duly appointed to receive and hold the same, be paid to the Official Trustee of the State in which the office at which the Insurance was effected is situate, and shall be received and held by him upon the trusts expressed in the policy, or such of them as are then existing.

And in reference to such sum he shall stand in the same position in all respects as if he had been duly appointed trustee thereof by a High Court, under Act No. XVII of 1864 (to constitute an Office of Official Trustee), section 10.

Nothing herein contained shall operate to destroy or impede the right of any creditor to be paid out of the proceeds of any policy of assurance which may have been effected with intent to defraud creditors.

(2) Notwithstanding anything contained in section 2, the provisions of subsection (1) shall apply in the case of any policy of Insurance such as is referred to therein which is effected by any Hindu, Mohammadan, Sikh, or Jain, in Madras, after the 31st day of December, 1913, or in any other part of India, after the 1st day of April, 1923 :

Provided that nothing herein contained shall affect any right or liability which has accrued or been incurred under any decree of a competent Court passed before the 1st day of April, 1923.

THE MUSSALMAN WAKF VALIDATING ACT

(VI of 1913)

An Act to declare the rights of Mussalmans to make settlements of property by way of "wakf" in favour of their families, children and descendants.

Whereas doubts have arisen regarding the validity of wakfs created by persons professing the Mussalman faith in favour of themselves, their families, children and descendants, and ultimately for the benefit of the poor or for other religious, pious or charitable purposes ; and whereas it is expedient to remove such doubts ; It is hereby enacted as follows :—

1. (1) This Act may be called the Mussalman Wakf Validating Act, 1913.

(2) It extends to the whole of India except Part B States.

2. In this Act, unless there is anything repugnant in the subject or context,—

(1) "Wakf" means the permanent dedication by a person professing the Mussalman faith of any property for any purpose recognised by the Mussalman law as religious, pious or charitable.

(2) "Hanafi Mussalman" means a follower of the Mussalman faith who conforms to the tenets and doctrines of the Hanafi school of Mussalman law.

3. It shall be lawful for any person professing the Mussalman faith to create a wakf which in all other respects is in accordance with the provisions of Mussalman law, for the following among other purposes :—

(*a*) for the maintenance and support wholly or partially of his family, children or descendants, and

(*b*) where the person creating a wakf is a Hanafi Mussalman, also for his own maintenance and support during his lifetime or for the payment of his debts out of the rents and profits of the property dedicated :

Provided that the ultimate benefit is in such cases expressly or impliedly reserved for the poor or for any other purpose recognised by the Mussalman law as a religious, pious or charitable purpose of a permanent character.

4. No such wakf shall be deemed to be invalid merely because the benefit reserved therein for the poor or other religious, pious or charitable purpose of a permanent nature is postponed until after the extinction of the family, children or descendants of the person creating the wakf.

5. Nothing in this Act shall affect any custom or usage whether local or prevalent among Mussalmans of any particular class or sect.

THE OFFICIAL TRUSTEES ACT (II of 1913)

An Act to consolidate and amend the law constituting the Office of Official Trustee.

Whereas it is expedient to consolidate and amend the law constituting the office of the Official Trustee ; it is hereby enacted as follows :—

PART I

Preliminary.

1. (1) This Act may be called The Official Trustees Act, 1913.

(2) It extends to the whole of India, including Part 'B' states.

(3) It shall come into force on such date as the Central Government by notification in the Official Gazette may direct.

* * * * * *

3. For the purposes of this Act the High Court [* * *] shall have jurisdiction throughout the (Division).

PART II

The Office of Official Trustee.

4. (1) The State Government for each State, shall appoint an Official Trustee.

Provided that nothing herein contained shall be deemed to bar the appointment of the same person as Official Trustee for two or more Divisions.

(2) No person shall be appointed to the Office of Official Trustee (**) who is not—

(*a*) a Barrister ; or

(*b*) an Advocate, Attorney or Vakil enrolled by a High Court ; or

(*c*) a person holding the office of Deputy Administrator-General at the commencement of this Act ; [or

(*d*) in the case of a State other than Bengal, Madras or Bombay a person already in the service of the Crown.]

5. The Government may appoint a Deputy or Deputies to assist the Official Trustee ; and any Deputy so appointed shall, subject to the control of the Government and the general or special orders of the Official Trustee, be competent to discharge any of the duties and exercise any of the powers of the Official Trustee, and when discharging such duties or exercising such powers, shall have the same privileges and be subject to the same liabilities as the Official Trustee.

6. The Official Trustee, shall be a corporation sole by the name of the Official Trustee of the (Division) for which he is appointed and, as such Official Trustee, shall have perpetual succession and an Official seal, and may sue and be sued in his corporate name.

PART III

Rights, Powers, Duties and Liabilities of Official Trustee.

7. (1) Subject to, and in accordance with, the provisions of this Act and the rules made thereunder, the Official Trustee may, if he thinks fit,—

(*a*) act as an ordinary trustee ;

(*b*) be appointed trustee by a Court of competent jurisdiction.

(2) Save as hereinafter expressly provided, the Official Trustee shall have the same powers, duties and liabilities, and be entitled to the same rights

and privileges and be subject to the same control and orders of the Court as any other trustee acting in the same capacity.

(3) The Official Trustee may decline, either absolutely or except on such condition as he may impose, to accept any trust.

(4) The Official Trustee shall not accept any trust under any composition or scheme or arrangement for the benefit of creditors nor of any estate known or believed by him to be insolvent.

(5) The Official Trustee shall not, save as provided by any rules made under this Act, accept any trust for a religious purpose or any trust which involves the management or carrying on of any business.

(6) The Official Trustee shall not administer the estate of a deceased person, unless he is expressly appointed sole executor of, and sole trustee under, the Will of such person.

(7) The Official Trustee shall always be sole trustee, and it shall not be lawful to appoint the Official Trustee to be Trustee along with any other person.

8. (1) Any person intending to create a trust other than a trust which the Official Trustee is prohibited from accepting under the provisions of this Act may, by the instrument creating the trust and with the consent of the Official Trustee, appoint him by that name or any other sufficient description to be the trustee of the property subject to such trust :

Provided that the consent of the Official Trustee shall be recited in the said instrument and that such instrument shall be duly executed by the Official Trustee.

(2) Upon such appointment the property subject to the trust shall vest in such Official Trustee, and shall be held by him upon the trusts declared in such instrument.

9. When the Official Trustee has by that name or any other sufficient description been appointed trustee under any will, the executor of the will (the testator) or the administrator of his estate shall, after obtaining probate or letters of administration, notify in the prescribed manner the contents of such will to such Official Trustee ; and if such Official Trustee consents to accept the trust, then upon the execution by such executor or administrator of an instrument in writing transferring the property subject to the trust to the Official Trustee, such property shall vest in such Official Trustee, and shall be held by him upon the trusts expressed in the said will :

Provided that the consent of the Official Trustee shall be recited in the said instrument and that such instrument shall be duly executed by the Official Trustee.

10. (1) If any property is subject to a trust other than a trust which the Official Trustee is prohibited from accepting under the provisions of this Act, and there is no trustee within the local limits of the ordinary or extraordinary original civil jurisdiction of the High Court willing or capable to act in the trust, the High Court may, on application, make an order for the appointment of the Official Trustee by that name with his consent to be the trustee of such property.

(2) Upon such order such property shall vest in the Official Trustee and shall be held by him upon the same trusts as the same was held previously to such order, and the previous trustee or trustees (if any) shall be exempt from liability as trustees of such property save in respect of acts done before the date of such order.

(3) Nothing in this section shall be deemed to affect the provisions of the Trustees' and Mortgagees' Powers Act, 1886, or the Indian Trusts Act, 1882.

11. (1) If any property is subject to a trust, other than a trust which the Official Trustee is prohibited from accepting under the provisions of this Act, and all the trustees or the surviving or continuing trustee or trustees and all persons beneficially interested in the trust are desirous that the Official Trustee shall be appointed in the room of such trustee or trustees, it shall be lawful for such trustee or trustees, by an instrument in writing to appoint the Official Trustee by that name or any other sufficient description with his consent to be the trustee of such property :

Provided that the consent of the Official Trustee shall be recited in the said instrument and that such instrument shall be duly executed by him.

(2) Upon such appointment such property shall vest in the Official Trustee and shall be held by him upon the same trusts as the same was held previously to such appointment, and the previous trustee or trustees shall be exempt from all liability as trustees of such property save in respect of acts done before the date of such appointment.

12. (1) If any infant or lunatic is entitled to any gift, legacy or share of the assets of a deceased person, it shall be lawful for the person by whom such gift is made, or executor or administrator by whom such legacy or share is payable or transferable or any trustee of such gift, legacy or share, to transfer the same by an instrument in writing to the Official Trustee by that name or any other sufficient description with his consent :

Provided that the consent of the Official Trustee shall be recited in the said instrument and that such instrument shall be duly executed by the Official Trustee.

(2) Any money or property transferred to the Official Trustee under this section shall vest in him and shall be subject to the same provisions as are contained in this Act as to other property vested in such Official Trustee.

13. (1) No Official Trustee, shall be required by any Court to enter into any bond or security on his appointment in any capacity under this Act.

(2) No Official Trustee or Deputy Official Trustee shall be required to verify otherwise than by his signature any petition presented by him under the provisions of this Act, and if the facts stated in such petition are not within the Official Trustee's personal knowledge, the petition may be verified and subscribed by any person competent to make the verification.

14. The entry of the Official Trustee by that name in the books of a company, shall not constitute notice of a trust ; and a company shall not be entitled to object to enter the name of the Official Trustee on its register by reason only that the Official Trustee is a corporation ; and, in dealing with property, the fact that person dealt with is the Official Trustee shall not of itself constitute notice of a trust.

15. (1) The revenues of the Government [* * *] shall be liable to make good all sums required to discharge any liability which the Official Trustee, if he were a private trustee, would be personally liable to discharge, except when the liability is one to which neither the Official Trustee nor any of his officers has in any way contributed or which neither he nor any of his officers could by the exercise of reasonable diligence have averted, and in either of those cases the Official Trustee shall not, nor shall the revenues (of the Government) (******) be subject to any liability.

(2) Nothing in subsection (1) shall be deemed to render the revenues (of the Government) [* * *] or any Official Trustee appointed under this Act liable for anything done by or under the authority of any Official Trustee before the commencement of this Act.

16. Nothing in section 80 of the Code of Civil Procedure, 1908, shall apply to any suit against the Official Trustee in which no relief is claimed against him personally.

* * * * * *

PART VI

Miscellaneous.

23. When any moneys payable to a beneficiary under a trust have been in the hands of any Official Trustee for a period of twelve years or upwards whether before or after the commencement of this Act in consequence of the Official Trustee having been unable to trace the person entitled to receive the same, such moneys shall be transferred in the prescribed manner to the account and credit of the Government [* * *] :

Provided that no such moneys shall be so transferred if any suit or proceeding if pending in respect thereof in any Court.

24. (1) If any claim is made to any money so transferred and such claim is established to the satisfaction of the prescribed authoriiy, the Government [* * *] shall pay to the claimant the amount in respect of which the claim is established.

(2) If such claim is not established to the satisfaction of the prescribed authority, the claimant may, without prejudice to his right to take any other proceedings for the recovery of such moneys, apply by petition to the High Court against the (Government) and, after taking such evidence as it thinks fit, such Court shall make such order on the petition in regard to the payment of such moneys as it thinks fit, and such order shall be binding on all parties to the proceedings :

(Provided that nothing in this section affects any option afforded to a claimant by section 179 of the Government of India Act, 1935.)

(3) The Court may further direct by whom all or any part of the costs of such proceedings shall be paid.

25. The High Court may make such orders as it thinks fit respecting any trust property vested in the Official Trustee, or in the interest or produce thereof.

26. Any order under this Act may be made, on the application of any person beneficially interested in any trust property or of any trustee thereof.

27. Any order made by a High Court under this Act shall have the same effect as a decree.

28. The Official Trustee may, in addition to and not in derogation of any other powers of expenditure lawfully exercisable by him, incur expenditure—

(*a*) on such acts as may be necessary for the proper care and management of any property belonging to any trust administered by him ; and

(*b*) with the sanction of the High Court on such religious, charitable and other objects and on such improvements as may be reasonable and proper in the case of such property.

29. (1) Nothing in this Act shall be deemed to prevent the transfer by the Official Trustee of any property vested in him to—

(*a*) the original trustee (if any) ; or

(*b*) any other lawfully appointed trustee ; or

(*c*) any other person if the Court so directs.

(2) Upon such transfer such property shall vest in such trustee, and shall be held by him upon the same trusts as those upon which it was held prior to such transfer, and the Official Trustee shall be exempt from all liability as trustee of such property except in respect of acts done before such transfer :

Provided that, in the case of any transfer under this section, the Official Trustee shall be entitled to retain out of the property any fees leviable in accordance with the provisions of this Act.

THE POWERS-OF-ATTORNEY ACT (VII of 1882)

An Act to amend the law relating to Powers-of-Attorney.

For the purpose of amending the law relating to Powers-of-Attorney: It is hereby enacted as follows:—

1. This Act may be called The Powers-of-Attorney Act, 1882.

It applies to the whole of India; and it shall come into force on the first day of May, 1882.

2. The donee of a power-of-attorney may, if he thinks fit, execute or do any assurance, instrument or thing in and with his own name and signature, and his own seal, where sealing is required, by the authority of the donor of the power; and every assurance, instrument and thing so executed and done, shall be as effectual in law as if it had been executed or done by the donee of the power in the name, and with the signature and seal, of the donor thereof.

This section applies to powers-of-attorney created by instruments executed either before or after this Act comes into force.

3. Any person making or doing any payment or act in good faith, in pursuance of a power-of-attorney, shall not be liable in respect of the payment or act by reason that, before the payment or act, the donor of the power had died or become lunatic, of unsound mind, or bankrupt or insolvent, or had revoked the power, if the fact of death, lunacy, unsoundness of mind, bankruptcy, insolvency or revocation was not, at the time of the payment or act, known to the person making or doing the same.

But this section shall not affect any right against the payee of any person interested in any money so paid; and that person shall have the like remedy against the payee as he would have had against the payer, if the payment had not been made by him.

This section applies only to payments and acts made or done after this Act comes into force.

4. (*a*) An instrument creating a power-of-attorney, its execution being verified by affidavit, statutory declaration or other sufficient evidence, may, with the affidavit or declaration, if any, be deposited in the High Court within the local limits of whose jurisdiction the instrument may be.

(*b*) A separate file of instruments so deposited shall be kept and any person may search that file, and inspect every instrument so deposited; and a certified copy thereof shall be delivered out to him on request.

(*c*) A copy of an instrument so deposited may be presented at the office and may be stamped or marked as a certified copy, and, when so stamped or marked, shall become and be a certified copy.

(*d*) A certified copy of an instrument so deposited shall, without further proof, be sufficient evidence of the contents of the instrument and of the deposit thereof in the High Court.

(*e*) The High Court may, from time to time, make rules for the purposes of this section, and prescribing, with the concurrence of the State Government, the fees to be taken under clauses (*a*), (*b*) and (*c*).

(*f*) [* * *]

(*g*) This section applies to instruments creating powers-of-attorney executed either before or after this Act comes into force.

5. A married woman, whether a minor or not, shall, by virtue of this Act, have power, as if she were unmarried and of full age, by a non-testa-

mentary instrument, to appoint an attorney on her behalf, for the purpose of executing any non-testamentary instrument or doing any other act which she might herself execute or do; and the provisions of this Act, relating to instruments creating powers-of-attorney shall apply thereto.

This section applies only to instruments executed after this Act comes into force.

THE RELIGIOUS ENDOWMENTS ACT (XX of 1863)

An Act to enable the Government to divest itself of the management of religious endowments.

Preamble

Whereas it is expedient to relieve the Boards of Revenue, and the local Agents, in the Presidency of Fort William in Bengal, and the Presidency of Fort Saint George, from the duties imposed on them by Regulation XIX, 1810, of the Bengal Code (*for the due appropriation of the rents and produce of lands granted for the support of Mosques, Hindu Temples, Colleges, and other purposes; for the maintenance and repair of Bridges, Sarais, Kattras and other public buildings; and for the custody and disposal of Nazul property or Escheats*), and Regulation VII, 1817, of the Madras Code (*for the due appropriation of the rents and produce of lands granted for the support of Mosques, Hindu Temples and Colleges or other public purposes; for the maintenance and repair of Bridges, Choultries, or Chattrams, and other public buildings; and for the custody and disposal of Escheats*), so far as those duties embrace the superintendence of lands granted for the support of Mosques or Hindu Temples and for other religious uses; the appropriation of endowments made for the maintenance of such religious establishments; the repair and preservation of buildings connected therewith, and the appointment of trustees or managers thereof; or involve any connection with the management of such religious establishments [* * *];

It is enacted as follows:—

* * * * * *

2. In this Act * * the words "Civil Court" and "Court" shall (save as provided in section 10) mean the principal Court of original civil jurisdiction in the district in which (or any other Court empowered in that behalf by the State Government) within the local limits of the jurisdiction of which the mosque, temple or religious establishment is situate, relating to which or to the endowment whereof, any suit shall be instituted or application made under the provisions of this Act.

3. In the case of every mosque, temple or other religious establishment to which the provisions of either of the Regulations specified in (the preamble to this Act) are applicable, and nomination of the trustee, manager or superintendent thereof, at the time of the passing of this Act, is vested in, or may be exercised by, the Government or any public Officer, or in which the nomination of such trustee, manager or superintendent, shall be subject to the confirmation of the Government or any public Officer, the State Government shall, as soon as possible after the passing of this Act, make special provision as hereinafter provided.

4. In the case of every such mosque, temple or other religious establishment which, at the time of the passing of this Act, shall be under the management of any trustee, manager or superintendent, whose nomination shall not vest in, nor be exercised by, nor be subject to the confirmation of the Govern-

ment, or any public Officer, the State Government shall, as soon as possible after the passing of this Act, transfer to such trustee, manager or superintendent, all the landed or other property which, at the time of the passing of this Act, shall be under the superintendence or in the possession of the Board of Revenue or any local agent, and belonging to such mosque, temple or other religious establishment, except such property as is hereinafter provided ;

and the powers and responsibilities of the Board of Revenue, and the local agents, in respect to such mosque, temple or other religious establishment, and to all land and other property so transferred, except as regards acts done and liabilities incurred by the said Board of Revenue or any local agent, previous to such transfer, shall cease and determine.

* * * * * *

14. Any person or persons, interested in any mosque, temple or religious establishment, or in the performance of the worship or of the service thereof, or the trusts relating thereto, may, without joining as plaintiff any of the other persons interested therein, sue before the Civil Court, the trustee, manager or superintendent of such mosque, temple or religious establishment or the member of any committee appointed under this Act, for any misfeasance, breach of trust or neglect of duty, committed by such trustee, manager, superintendent or member of such committee, in respect of the trusts vested in, or confided to them respectively ;

and the Civil Court may direct the specific performance of any act by such trustee, manager, superintendent or member of a committee,

and may decree damages and costs against such trustee, manager, superintendent or member of a committee,

and may also direct the removal of such trustee, manager, superintendent or member of a committee.

15. The interest required in order to entitle a person to sue under the last preceding section need not be a pecuniary, or a direct or immediate, interest or such an interest as would entitle the person suing to take any part in the management or superintendence of the trusts.

Any person having a right of attendance, or having been in the habit of attending, at the performance of the worship or service of any mosque, temple or religious establishment, or of partaking in the benefit of any distribution of alms, shall be deemed to be a person interested within the meaning of the last preceding section.

* * * * * *

18. No suit shall be entertained under this Act without a preliminary application being first made to the Court for leave to institute such suit, [* * *].

The Court, on the perusal of the application, shall determine, whether there are sufficient *prima facie* grounds for the institution of a suit, and, if in the judgment of the Court there are such grounds, leave shall be given for its institution.

If the Court shall be of opinion that the suit has been for the benefit of the trust and that no party to the suit is in fault, the Court may order the costs or such portion as it may consider just to be paid out of the estate.

* * * * * *

21. In any case in which any land or other property has been granted for the support of an establishment partly of a religious and partly of a secular character,

or in which the endowment made for the support of an establishment is appropriated partly to religious and partly to secular uses,

the Board of Revenue, before transferring to any trustee, manager or superintendent, or to any committee of management appointed under this Act, shall determine what portion, if any, of the said land or other property shall remain under the superintendence of the said Board for application to secular uses,

and what portion shall be transferred to the superintendence, of the trustee, manager or superintendent, or of the committee,

and also what annual amount, if any, shall be charged on the land or other property which may be so transferred to the superintendence of the said trustee, manager or superintendent, or of the committee, and made payable to the said Board or to the local agents, for secular uses as aforesaid.

In every such case the provisions of this Act shall take effect only in respect to such land and other property as may be so transferred.

22. Except as provided in this Act, it shall not be lawful, [* * *] for any Government in India or for any officer of any Government in his official character,

to undertake or resume the superintendence of any land or other property granted for the support of, or otherwise belonging to, any mosque, temple or other religious establishment, or

to take any part in the management or appropriation of any endowment made for the maintenance of any such mosque, temple or other establishment, or

to nominate or appoint any trustee, manager or superintendent thereof, or to be in any way concerned therewith.

23. Nothing in this Act shall be held to affect the provisions of the Regulations mentioned in this Act, except in so far as they relate to mosques, Hindu temples and other religious establishments ; or to prevent the Government from taking such steps as it may deem necessary, under the provisions of the said regulations, to prevent injury to and preserve buildings remarkable for their antiquity, or for their historical or architectural value or required for the convenience of the public.

THE SOCIETIES REGISTRATION ACT (XXI of 1860)

[21st May 1860.]

An Act for the Registration of Literary, Scientific and Charitable Societies.

Preamble

Whereas it is expedient that provision should be made for improving the legal condition of Societies established for the promotion of literature, science, or the Fine Arts, or for the diffusion of useful knowledge, the diffusion of Political Education or for Charitable purposes ;

It is enacted as follows :

Societies formed by memorandum of Association and Registration.

(1) Any seven or more persons associated for any literary, scientific or charitable purpose, or for any such purpose as is described in section 20 of this Act, may by subscribing their names to a memorandum of Association and filing the same with the Registrar of Joint Stock Companies form themselves into a society under this Act.

THE SPECIFIC RELIEF ACT (I OF 1877)

* * * * * *

3. In this Act, unless there be something repugnant in the subject or context,—

Interpretation clause

"obligation" includes every duty enforceable by law;

"trust" includes every species of express, implied or constructive fiduciary ownership;

"trustee" includes every person holding, expressly, by implication or constructively, a fiduciary character.

Illustrations.

(a) **Z** bequeaths land to **A**, "not doubting that he will pay thereout an annuity of rupees thousand to **B** for his life." **A** accepts the bequest. **A** is a trustee, within the meaning of this act, for **B**, to the extent of the annuity.

(b) **A** is the legal, medical or spiritual adviser of **B**. By availing himself of his situation as such adviser, **A** gains some pecuniary advantage which might otherwise have accrued to **B**. **A** is a trustee for **B**, within the meaning of this Act, of such advantage.

(c) **A**, **B**'s banker, discloses for his own purposes the state of **B**'s account. **A** is a trustee, within the meaning of this Act, for **B**, of the benefit gained by him by means of such disclosure.

(d) **A**, the mortgagee of certain lease-holds, renews the lease in his own name. **A** is a trustee, within the meaning of this Act, of the renewed lease, for those interested in the original lease.

(e) **A**, one of several partners, is employed to purchase goods for the firm. **A**, unknown to his co-partners, supplies them, at the market price, with goods previously bought by himself when the price was lower, and thus makes a considerable profit. **A** is a trustee for his co-partners, within the meaning of this Act, of the profit so made.

(f) **A**, the manager of **B**'s Indigo Factory, becomes Agent for **C**, a vendor of Indigo-seed, and receives without **B**'s assent, commission on the seed purchased from **C** for the Factory. **A** is a trustee, within the meaning of this Act, for **B**, of the commission so received.

(g) **A** buys certain land with notice that **B** has already contracted to buy it. **A** is a trustee within the meaning of this Act, for **B**, of the land so bought.

(h) **A** buys land from **B**, having noticed that **C** is in occupation of the land. **A** omits to make any inquiry as to the nature of **C**'s interest therein. **A** is a trustee, within the meaning of this Act, for **C** to the extent of that interest.

"Settlement" means any instrument (other than a will or codicil as defined by the Indian Succession Act) whereby the destination or devolution of successive interests in movable or immovable property is disposed of or is agreed to be disposed of;

and all words occurring in this act, which are defined in the Indian Contract Act, 1872, shall be deemed to have the meanings respectively assigned to them by that Act.

Note :—What is the proper stamp duty payable on or in respect of any instrument must be ascertained by looking up the Amending Acts in force, at the time of the transaction as there has been enhancement of stamp duties from time to time.

'INDIAN STAMP ACT (II of 1899)

(as modified up to the 15th July 1950)

* * * * * *

(10) *Conveyance.*—"Conveyance" includes a conveyance on sale and every instrument by which property, whether movable or immovable, is transferred *inter vivos* and which is not otherwise specifically provided for by Schedule I ;

* * * * * *

(14) *Instrument.*—"Instrument" includes every document by which any right or liability is, or purports to be, created, transferred, limited, extended, extinguished or recorded ;

* * * * * *

(16) *Lease.*—"Lease" means a lease of immovable property, and includes also—

(*a*) a patta ;

(*b*) a kabuliyat or other undertaking in writing, not being a counterpart of a lease to cultivate, occupy or pay or deliver rent for, immovable property ;

(*c*) any instrument by which tolls of any description are let ;

(*d*) any writing on an application for a lease intended to signify that the application is granted ;

(16A) *Marketable security.*—"Marketable security" means a security of such a description as to be capable of being sold in any stock market in [the States] or in the United Kingdom ;

(17) *Mortgage-deed.*—"Mortgage-deed" includes every instrument whereby, for the purpose of securing money advanced, or to be advanced, by way of loan, or an existing or future debt, or the performance of an engagement, one person transfers, or creates, to, or in favour of, another, a right over or in respect of specified property ;

* * * * * *

(19) *Policy of insurance.*—"Policy of insurance" includes—

(*a*) any instrument by which one person, in consideration of a premium, engages to indemnify another against loss, damage or liability arising from an unknown or contingent event ;

(*b*) a life-policy, and policy insuring any person against accident or sickness, and any other personal insurance ;

* * * * * *

(21) *Power-of-attorney.*—"Power-of-attorney" includes any instrument (not chargeable with a fee under the law relating to court fees for the time being in force) empowering a specified person to act for and in the name of the person executing it ;

(22) *Promissory note.*—"Promissory note" means a promissory note as defined by the Negotiable Instruments Act, 1881 (XXVI of 1881) ;

* * * * * *

(24) *Settlement.*—"Settlement" means by non-testamentary disposition, in writing of movable or immovable property made—

(*a*) in consideration of marriage,

(*b*) for the purpose of distributing property of the settlor among his family or those for whom he desires to provide, or for the purpose of providing for some person dependent on him, or

(*c*) for any religious or charitable purpose ;

and includes an agreement in writing to make such a disposition [and, where any such disposition has not been made in writing, any instrument recording, whether by way of declaration of trust or otherwise, the terms of any such disposition] ;

* * * * *

D.—Of Valuations for Duty.

20. *Conversion of amount expressed in foreign currencies.*—(1) Where an instrument is chargeable with *ad valorem* duty in respect of any money expressed in any currency other than that of [the States] such duty shall be calculated on the value of such money in the currency of [the States] according to the current rate of exchange on the day of the date of the instrument.

(2) The [Central Government] may, from time to time, by notification in the [official Gazette] prescribe a rate of exchange for the conversion of British or any foreign currency into the currency of [the States] for the purposes of calculating stamp-duty, and such rate shall be deemed to be the current rate for the purposes of subsection (1).

21. *Stock and marketable securities how to be valued.*—Where an instrument is chargeable with *ad valorem* duty in respect of any stock or of any marketable or other security, such duty shall be calculated on the value of such stock or security according to the average price or the value thereof on the day of the date of the instrument.

22. *Effect of statement of rate of exchange or average price.*—Where an instrument contains a statement of current rate of exchange, or average price, as the case may require, and is stamped in accordance with such statement, it shall so far as regards the subject-matter of such statement, be presumed, until the contrary is proved, to be duly stamped.

23. *Instruments reserving interest.*—Where interest is expressly made payable by the terms of an instrument, such instrument shall not be chargeable with duty higher than that with which it would have been chargeable had no mention of interest been made therein.

[23A. *Certain instruments connected with mortgages of marketable securities to be chargeable as agreements.*—(1) Where an instrument (not being a promissory note or bill of exchange)—

(*a*) is given upon the occasion of the deposit of any marketable security by way of security for money advanced or to be advanced by way of loan, or for an existing of future debt, or

(*b*) makes redeemable or qualifies a duly stamped transfer, intended as a security, of any marketable security,

it shall be chargeable with duty as if it were an agreement or memorandum of an agreement chargeable with duty under [Article No. 5 (*c*)] of Schedule I.

(2) A release or discharge of any such instrument shall only be chargeable with like duty.]

24. *How transfer in consideration of debt, or subject to future payment, etc., to be charged.*—Where any property is transferred to any person in consideration, wholly or in part, of any debt due to him, or subject either certainly or contingently to the payment or transfer of any money or stock, whether being or constituting a charge or incumbrance upon the property or not, such

debt, money or stock is to be deemed the whole or part, as the case may be, of the consideration in respect whereof the transfer is chargeable with *ad valorem* duty :

Provided that nothing in this section shall apply to any such certificate of sale as is mentioned in Article No. 18 of Schedule I.

Explanation.—In the case of a sale of property subject to a mortgage or other incumbrance, any unpaid mortgage-money or money charged, together with the interest (if any) due on the same, shall be deemed to be part of the consideration for the sale :

Provided that, where property subject to a mortgage is transferred to the mortgagee, he shall be entitled to deduct from the duty payable on the transfer the amount of any duty already paid in respect of the mortgage.

Illustrations.

(1) *A* owes *B*, Rs. 1,000. *A* sells a property to *B*, the consideration being Rs. 500 and the release of the previous debt of Rs. 1,000. Stamp-duty is payable on Rs. 1,500.

(2) *A* sells a property to *B* for Rs. 500 which is subject to a mortgage to *C* for Rs. 1,000 and unpaid interest Rs. 200. Stamp-duty is payable on Rs. 1,700.

(3) *A* mortgages a house of the value of Rs. 10,000 to *B* for Rs. 5,000. *B* afterwards buys the house from *A*. Stamp-duty is payable on Rs. 10,000 less the amount of stamp-duty already paid for the mortgage.

25. *Valuation in case of annuity, etc.*—Where an instrument is executed to secure the payment of an annuity or other sum payable periodically, or where the consideration for a conveyance is an annuity or other sum payable periodically, the amount secured by such instrument or the consideration for such conveyance, as the case may be, shall, for the purposes of this Act, be deemed to be—

(*a*) where the sum is payable for a definite period so that the total amount to be paid can be previously ascertained—such total amount ;

(*b*) where the sum is payable in perpetuity or for an indefinite time not terminable with any life in being at the date of such instrument or conveyance—the total amount which, according to the terms of such instrument or conveyance, will or may be payable during the period of twenty years calculated from the date on which the first payment becomes due ; and

(*c*) where the sum is payable for an indefinite time terminable with any life in being at the date of such instrument or conveyance—the maximum amount which will or may be payable as aforesaid during the period of twelve years calculated from the date on which the first payment becomes due.

(*Chapter II.—Stamp-duties*).

26. *Stamp where value of subject-matter is indeterminate.*—Where the amount or value of the subject-matter of any instrument chargeable with *ad valorem* duty cannot be, or (in the case of an instrument executed before the commencement of this Act) could not have been, ascertained at the date of its execution or first execution, nothing shall be claimable under such instrument more than the highest amount or value for which, if stated in an instrument of the same description, the stamp actually used would, at the date of such execution, have been sufficient :

[Provided that, in the case of the lease of a mine in which royalty or a share of the produce is received as the rent or part of the rent, it shall be

sufficient to have estimated such royalty or the value of such share, for the purpose of stamp-duty,—

(*a*) when the lease has been granted by or on behalf of [the Government], at such amount or value as the Collector may, having regard to all the circumstances of the case have estimated as likely to be payable by way of royalty or share to [the Government] under the lease ; or

(*b*) when the lease has been granted by any other person, at twenty thousand rupees a year ;

and the whole amount of such royalty or share, whatever it may be, shall be claimable under such lease :]

Provided also that, where proceedings have been taken in respect of an instrument under section 31 or 41, the amount certified by the Collector shall be deemed to be the stamp actually used at the date of execution.

27. *Facts affecting duty to be set forth in instrument.*—The consideration (if any) and all other facts and circumstances affecting the chargeability of any instrument with duty, or the amount of the duty with which it is chargeable, shall be fully and truly set forth therein.

28. *Direction as to duty in case of certain conveyances.*—(1) Where any property has been contracted to be sold for one consideration for the whole, and is conveyed to the purchaser in separate parts by different instruments, the consideration shall be apportioned in such manner as the parties think fit, provided that a distinct consideration for each separate part is set forth in the conveyance relating thereto, and such conveyance shall be chargeable with *ad valorem* duty in respect of such distinct consideration.

(2) Where property contracted to be purchased for one consideration for the whole, by two or more persons jointly, or by any person for himself and others, or wholly for others, is conveyed in parts by separate instruments to the persons by or for whom the same was purchased, for distinct parts of the consideration, the conveyance of each separate part shall be chargeable with *ad valorem* duty in respect of the distinct part of the consideration therein specified.

(3) Where a person, having contracted for the purchase of any property but not having obtained a conveyance thereof contracts to sell the same to any other person and the property is in consequence conveyed immediately to the sub-purchaser, the conveyance shall be chargeable with *ad valorem* duty in respect of the consideration for the sale by the original purchaser to the sub-purchaser.

(4) Where a person, having contracted for the purchaser of any property but not having obtained a conveyance thereof, contracts to sell the whole, or any part thereof, to any other person or persons, and the property is in consequence conveyed by the original seller to different persons in parts, the conveyance of each part sold to a sub-purchaser shall be chargeable with *ad valorem* duty in respect only of the consideration paid by such sub-purchaser, without regard to the amount or value of the original consideration ; and the conveyance of the residue (if any) of such property to the original purchaser shall be chargeable with *ad valorem* duty in respect only of the excess of the original consideration over the aggregate of the considerations paid by the sub-purchasers :

Provided that the duty on such last-mentioned conveyance shall in no case be less than one rupee.

(5) Where a sub-purchaser takes an actual conveyance of the interest of the person immediately selling to him, which is chargeable with *ad valorem* duty in respect of the consideration paid by him and is duly stamped accord-

ingly, any conveyance to be afterwards made to him of the same property by the original seller shall be chargeable with a duty equal to that which would be chargeable on a conveyance for the consideration obtained by such original seller, or, where such duty would exceed five rupees, with a duty of five rupees.

E.—Duty by whom payable.

29. *Duties by whom payable.*—In the absence of an agreement to the contrary, the expense of providing the proper stamp shall be borne,—

(*a*) in the case of any instrument described in any of the following articles of Schedule I, namely—

No. 2 (Administration Bond),

[No. 6 (Agreement relating to Deposit of Title-deeds, Pawn or Pledge),]

No. 13 (Bill of exchange),

No. 15 (Bond),

No. 16 (Bottomry Bond),

No. 26 (Customs Bond),

No. 27 (Debenture),

No. 32 (Further charge),

No. 34 (Indemnity-bond),

No. 40 (Mortgage-deed),

No. 49 (Promissory-note),

No. 55 (Release),

No. 56 (Respondentia Bond),

No. 57 (Security-bond or Mortgage-deed),

No. 58 (Settlement),

No. 62 (*a*) (Transfer of shares, in an incorporated company or other body corporate),

No. 62 (*b*) (Transfer of debentures, being marketable securities, whether the debenture is liable to duty or not, except debentures provided for by section 8),

No. 62 (*c*) (Transfer of any interest secured by a bond, mortgage-deed or policy of insurance),—

by the person drawing, making or executing such instrument ;

[(*b*) in the case of a policy of insurance other than fire-insurance—by the person effecting the insurance :

(*bb*) in the case of a policy of fire-insurance—by the person issuing the policy :]

(*c*) in the case of a conveyance (including a re-conveyance of mortgage property)—by the grantee : in the case of a lease or agree to lease—by the lessee or intended lessee :

(*d*) in the case of a counterpart of a lease—by the lessor :

(*e*) in the case of an instrument of exchange— by the parties in equal shares :

(*f*) in the case of a certificate of sale—by the purchaser of the property to which such certificate relates : and

(*g*) in the case of an instrument of partition—by the parties there to in proportion to their respective shares in the whole property partitioned, or, when the partition is made in execution of an order passed by a Revenue-authority or Civil Court or arbitrator, in such proportion as such authority, Court or arbitrator directs.

(*Schedule I.—Stamp-Duty on Instruments.*)

SCHEDULE I

Description of Instrument.	Proper Stamp-duty.
* * *	
7. **APPOINTMENT IN EXECUTION OF A POWER,** whether of trustees or of property, movable or immovable, where made by any writing not being a Will.	Fifteen rupees.
8. **APPRAISEMENT OR VALUATION** made otherwise than under an order of the Court in the course of a suit—	
(a) where the amount does not exceed Rs. 1,000.	The same duty as a Bond (No. 15) for such amount.
(b) in any other case . . .	Five rupees.
Exemptions.	
(a) Appraisement or valuation made for the information of one party only, and not being in any manner obligatory between parties either by agreement or operation of law.	
(b) Appraisement of crops for the purpose of ascertaining the amount to be given to a landlord as rent.	
* * *	
ASSIGNMENT. See **Conveyance (No. 23), Transfer (No. 62),** and **Transfer of Lease (No. 63),** as the case may be.	
* * *	
15. **BOND** [as defined by section 2 (5)] not being a **Debenture (No. 27),** and not being otherwise provided for by this Act, or by the Court-fees Act, 1870— (VII of 1870.)	
where the amount or value secured does not exceed Rs. 10.	Two annas.
where it exceeds Rs. 10 and does not exceed Rs. 50	Four annas.
Ditto 50 ditto 100	Eight annas.
Ditto 100 ditto 200	One rupee.
Ditto 200 ditto 300	One rupee eight annas.
Ditto 300 ditto 400	Two rupees.
Ditto 400 ditto 500	Two rupees eight annas.
Ditto 500 ditto 600	Three rupees.
Ditto 600 ditto 700	Three rupees eight annas.
Ditto 700 ditto 800	Four rupees.
Ditto 800 ditto 900	Four rupees eight annas.
Ditto 900 ditto 1,000	Five rupees.
and for every Rs. 500 or part thereof in excess of Rs. 1,000.	Two rupees eight annas.
See **Administration-Bond (No. 2), Bottomry Bond (No. 16), Customs Bond (No. 26), Indemnity-Bond (No. 34), Respondentia Bond (No. 56), Security Bond (No. 57).**	

(*Schedule I.—Stamp-Duty on Instruments.*)

SCHEDULE I—(*Contd.*)

Description of Instrument.	Proper Stamp-duty.
15. **BOND**—Contd.	
Exemptions.	
Bond, when executed by—	
(a) headmen nominated under rules framed in accordance with the Bengal Irrigation Act, 1876, section 99, for the due performance of their duties under that Act;	Ben. Act. III of 1876.
(b) any person for the purpose of guranteeing that the local income derived from private subscriptions to a charitable dispensary or hospital or any other object of public utility shall not be less than a specified sum per mensem.	
* * *	
17. **CANCELLATION**—Instrument of (including any instrument by which any instrument previously executed is cancelled), if attested and not otherwise provided for.	Five rupees.
See also **Release (No. 55), Revocation of Settlement (No. 58-B), Surrender of Lease (No. 61), Revocation of Trust (No. 64-B).**	
* * *	
23. **CONVEYANCE** [as defined by section 2 (10)] not being a **Transfer** charged or exempted under No. 62.—	
where the amount or value of the consideration for such conveyance as set forth therein does not exceed Rs. 50;	Eight annas.
where it exceeds Rs. 50 but does not exceed Rs. 100	One rupee.
Ditto 100 ditto 200	Two rupees.
Ditto 200 ditto 300	Three rupees.
Ditto 300 ditto 400	Four rupees.
Ditto 400 ditto 500	Five rupees.
Ditto 500 ditto 600	Six rupees.
Ditto 600 ditto 700	Seven rupees.
Ditto 700 ditto 800	Eight rupees.
Ditto 800 ditto 900	Nine rupees.
Ditto 900 ditto 1,000	Ten rupees.
and for every Rs 500 or part thereof in excess of Rs. 1,000.	Five rupees.
Exemption.	
Assignment of copyright by entry made under the Indian Copyright Act, 1847, section 5.	XX of 1847.

(*Schedule I.—Stamp-Duty on Instruments.*)

SCHEDULE I—(*Contd.*)

Description of Instrument.	Proper Stamp-duty.	
* * *		
27. **DEBENTURE** (whether a mortgage debenture or not), being a marketable security transferable—		
(a) by endorsement or by a separate instrument of transfer :	The same duty as a Bond (No. 15) for the same amount.	
(b) by delivery	The same duty as a Conveyance (No. 23) for a consideration equal to the face amount of the debenture.	
Explanation.—The term "Debenture" includes any interest coupons attached thereto but the amount of such coupons shall not be included in estimating the duty.		
Exemption.		
A debenture issued by an incorporated company or other body corporate in terms of a registered mortgage-deed, duly stamped in respect of the full amount of debentures to be issued thereunder, whereby the company or body borrowing makes over, in whole or in part, their property to trustees for the benefit of the debenture-holders: provided that the debentures so issued are expressed to be issued in terms of the said mortgage-deed.		
[See also **Bond (No. 15), and sections 8 and 55.**]		
* * *		
33. **GIFT**—Instrument of, not being a **Settlement (No. 58) or Will or Transfer (No. 62).**	The same as duty a Conveyance (No. 23) for a consideration equal to the value of the property as set forth in such instrument.	
HIRING AGREEMENT or agreement for service. See **Agreement (No. 5).**		
* * *		
	If drawn singly.	If drawn in duplicate, for each part.
47. **POLICY OF INSURANCE**—Contd.		
D.—Life Insurance or other Insurance not specifically provided for, except such a **Re-Insurance** as is described in Division **E** of this article—		
(i) for every sum insured not exceeding **Rs. 250** ;	Two annas.	One anna.

SCHEDULE I—(*Contd.*)

Description of Instrument.	Proper Stamp-duty.	
	If drawn singly.	If drawn in duplicate, for each part.
47. **POLICY OF INSURANCE**—Contd.		
D.—Life Insurance or other Insurance not specifically provided for, etc.—Contd.		
(ii) for every sum insured exceeding Rs. 250 but not exceeding Rs. 500 ;	Four annas.	Two annas.
(iii) for every sum insured exceeding Rs. 500 but not exceeding Rs. 1,000 and also for every Rs. 1,000 or part thereof in excess of Rs. 1,000.	Six annas.	Three annas.
Exemption.		
Policies of life-insurance granted by the Director-General of Post Offices in accordance with rules for Postal Life-Insurance issued under the authority of the [Central Government.]		
* * *		
58. **SETTLEMENT—**		
A.—**Instrument** of (including a deed of dower)	The same duty as a Bond (No. 15) for a sum equal to the amount or value of the property settled as set forth in such settlement : Provided that, where an agreement to settle is stamped with the stamp required for an instrument of settlement, and an instrument of settlement in pursuance of such agreement is subsequently executed, the duty on such instrument shall not exceed eight annas.	
Exemptions. (1) Deed of dower executed on the occasion of a marriage between Muhammadans.		
* * *		
B.—**Revocation** of . . . . . See also **Trust (No 64).**	The same duty as a Bond (No. 15) for a sum equal to the amount or value of the property concerned as set forth in the Instrument of Revocation but not exceeding ten rupees.	

(*Schedule I.—Stamp-Duty on Instruments.*)

SCHEDULE I—(*Contd.*)

Description of Instrument.	Proper Stamp-duty.
* * *	
62. **TRANSFER** (whether with or without consideration)—	
(a) of shares in an incorporated company or other body corporate ;	[One-half] of the duty payable on a Conveyance (No. 23) for a consideration equal to the value of the share.
(b) of debentures, being marketable securities, whether the debenture is liable to duty or not, except debentures provided for by section 8 ;	[One-half] of the duty payable on a Conveyance (No. 23) for a consideration equal to the face amount of the debenture.
(c) of any interest secured by a bond, mortgage-deed or policy of insurance—	
(i) if the duty on such bond, mortgage-deed or policy does not exceed five rupees ;	The duty with which such bond, mortgage-deed or policy of insurance is chargeable.
(ii) in any other case . . .	Five rupees.
II of 1874. (d) of any property under the Administrator General's Act, 1874, section 31 ;	Ten rupees.
(e) of any trust-property without consideration from one trustee to another trustee or from a trustee to a beneficiary.	Five rupees or such smaller amount as may be chargeable under clauses (a) to (c) of this Article.
Exemptions.	
Transfers by endorsement—	
(a) of a bill of exchange, cheque or promissory note ;	
(b) of a bill of lading, delivery order, warrant for goods, or other mercantile document of title to goods;	
(c) of a policy of insurance ;	
(d) of securities of the [Central Government.]	
See also section 8.	

SCHEDULE I—(*Contd.*)

Description of Instrument.	Proper Stamp-duty.
* * *	
64. **TRUST—**	
A.—**Declaration of**—of, or concerning, any property when made by any writing not being a **Will.**	The same duty as a Bond (No. 15) for a sum equal to the amount or value of the property concerned as set forth in the instrument but not exceeding fifteen rupees.
B.—**Revocation of**—of, or concerning, any property when made by any instrument other than a **Will.**	The same duty as a Bond (No. 15) for a sum equal to the amount or value of the property concerned as set forth in the instrument but not exceeding ten rupees.
See also Settlement (No. 58).	
VALUATION. See Appraisement (No. 8).	
VAKIL. See Entry as a Vakil (No. 30).	

THE INDIAN SUCCESSION ACT (XXXIX OF 1925)

* * * * * *

Of Wills and Codicils.

Person capable of making wills.

59. Every person of sound mind not being a minor may dispose of his property by will.

Explanation I.—A married woman may dispose by will of any property which she could alienate by her own act during her life.

Explanation II.—Persons who are deaf or dumb or blind are not thereby incapacitated for making a will if they are able to know what they do by it.

Explanation III.—A person who is ordinarily insane may make a will during an interval in which he is of sound mind.

Explanation IV.—No person can make a will while he is in such a state of mind whether arising from intoxication or from illness or from any other cause, that he does not know what he is doing.

Illustrations.

(i) **A** can perceive what is going on in his immediate neighbourhood, and can answer familiar questions, but has not a competent understanding as to the nature of his property, or the persons who are of kindred to him, or in whose favour it would be proper that he should make his will. **A** cannot make a valid will.

(ii) **A** executes an instrument purporting to be his will, but he does not understand the nature of the instrument, nor the effect of its provisions. This instrument is not a valid will.

(iii) **A**, being very feeble and debilitated, but capable of exercising a judgment as to the proper mode of disposing of his property, makes a will. This is a valid will.

60. A father, whatever his age may be, may by will appoint a guardian or guardians for his child during his minority.

Testamentary guardian.

61. A will or any part of a will, the making of which has been caused by fraud or coercion, or by such importunity as takes away the free agency of the testator, is void.

Will obtained by fraud, coercion, or importunity.

Illustrations.

(i) **A** falsely and knowingly represents to the testator that the testator's only child is dead, or that he has done some undutiful act and thereby induces the testator to make a will in his, **A's** favour; such will has been obtained by fraud, and is invalid.

(ii) **A**, by fraud and deception, prevails upon the testator to bequeath a legacy to him. The bequest is void.

(iii) **A**, being a prisoner by lawful authority, makes his will. The will is not invalid by reason of the imprisonment.

(iv) **A** threatens to shoot **B**, or to burn his house or to cause him to be arrested on a criminal charge, unless he makes a bequest in favour of **C**. **B**, in consequence, makes a bequest in favour of **C**. The bequest is void, the making of it having been caused by coercion.

(v) **A**, being of sufficient intellect, if undisturbed by the influence of others, to make a will, yet being so much under the control of **B** that he is not a free agent, makes a will, dictated by **B**. It appears that he would not have executed the will but for fear of **B**. The will is invalid.

(vi) **A**, being in so feeble a state of health as to be unable to resist importunity, is pressed by **B** to make a will of a certain purport and does so merely to purchase peace and in submission to **B**. The will is invalid.

(vii) **A** being in such a state of health as to be capable of exercising his own judgment and volition, **B** uses urgent intercession and persuasion with him to induce him to make a will of a certain purport. **A**, in consequence of the intercession and persuasion, but in the free exercise of his judgment and volition, makes his will in the manner recommended by **B**. The will is not rendered invalid by the intercession and persuasion of **B**.

(viii) **A**, with a view to obtain a legacy from **B**, pays him attention and flatters him and thereby produces in him a capricious partiality to **A**. **B**, in consequence of such attention and flattery, makes his will, by which he leaves a legacy to **A**. The bequest is not rendered invalid by the attention and flattery of **A**.

62. A will is liable to be revoked or altered by the maker of it at any time when he is competent to dispose of his property by will.

Will may be revoked or altered.

* * * * * *

118. No man having a nephew or niece or any nearer relative shall have power to bequeath any property to religious or charitable uses, except by a will executed not less than twelve months before his death, and deposited within six months from its execution in some place provided by law for the safe custody of the wills of living persons.

Bequest to religious or charitable uses.

Illustrations.

A having a nephew makes a bequest by a will not executed and deposited as required—

for the relief of poor people;

for the maintenance of sick soldiers;

for the erection or support of a hospital;

for the education and preferment of orphans;

for the support of scholars;

for the erection or support of a school;
for the building and repairs of a bridge;
for the making of roads;
for the erection or support of a church;
for the repairs of a church;
for the benefit of ministers of religion;
for the formation or support of a public garden.

All these bequests are void.

THE TRANSFER OF PROPERTY ACT (IV of 1882)

CHAPTER I

Preliminary.

1. This Act may be called THE TRANSFER OF PROPERTY ACT, 1882. It shall come into force on the first day of July, 1882.

Short title, Commencement.

It extends in the first instance to the whole of India except the State of Jammu and Kashmir.

But this Act or any part thereof may by notification in the Official Gazette be extended to the whole or any part of the said territories by the State Government concerned.

And any State Government may from time to time, by notification in the Official Gazette, exempt, either retrospectively or prospectively, any part of the territories administered by such State Government from all or any of the following provisions, namely:—

Sections 54, paragraphs 2 and 3, 59, 107, and 123.

Notwithstanding anything in the foregoing part of this section, sections 54, paragraphs 2, and 3, 59, 107, and 123 shall not extend or be extended to any district or tract of country for the time being excluded from the operation of the Indian Registration Act, 1908, under the power conferred by the first section of that Act, or otherwise.

2. In the territories to which this Act extends for the time being the enactments specified in the schedule hereto annexed shall be repealed to the extent therein mentioned. But nothing herein contained shall be deemed to affect.

Repeal of Acts.

(*a*) the provisions of any enactment not hereby expressly repealed

(*b*) any terms or incidents of any contract or constitution of property which are consistent with the provisions of this Act, and are allowed by the law for the time being in force;

Saving of certain enactments, incidents, rights, liabilities, etc.

(*c*) any right or liability arising out of a legal relation constituted before this Act comes into force, or any relief in respect of any such right or liability; or

(*d*) save as provided by section 57 and chapter IV of this Act, any transfer by operation of law or by, or in execution of, a decree or order of a Court of competent jurisdiction;

and nothing in the second chapter of this Act shall be deemed to affect any rule of Muhammadan Law.

Interpretation clause.

3. In this Act, unless there is something repugnant in the subject or context,—"immovable property" does not include standing timber, growing crops or grass ;

"Instrument" means a non-testamentary instrument :

"Attested" in relation to an instrument, means (and shall be deemed always to have meant) attested by two or more witnesses each of whom has seen the executant sign or affix his mark to the instrument or has seen some other person sign the instrument in the presence and by the direction of the executant, or has received from the executant a personal acknowledgement of his signature or mark, or of the signature of such other person, and each of whom has signed the instrument in the presence of the executant; but it shall not be necessary that more than one of such witnesses shall have been present at the same time, and no particular form of attestation shall be necessary.

"registered" means registered in India under the law for the time being in force regulating the registration of documents ;

"attached to the earth" means—

(*a*) rooted in the earth, as in the case of trees and shrubs ;

(*b*) imbedded in the earth, as in the case of walls or building ; or

(*c*) attached to what is so imbedded for the permanent beneficial enjoyment of that to which it is attached ;

"actionable claim" means a claim to any debt, other than a debt secured by mortgage of immovable property or by hypothecation or pledge of movable property, or to any beneficial interest in movable property not in the possession, either actual or constructive, of the claimant, which the Civil Courts recognize as affording grounds for relief, whether such debt or beneficial interest be existent, accruing, conditional, or contingent ;

A person is said to have "notice" of a fact when he actually knows that fact, or when, but for wilful abstention from an enquiry or search which he ought to have made, or gross negligence, he would have known it.

Explanation I.—Where any transaction relating to immovable property is required by law to be and has been effected by a registered instrument, any person acquiring such property or any part of, or share or interest in, such property shall be deemed to have notice of such instrument as from the date of registration or, where the property is not at all situated in one sub-district, or where the registered instrument has been registered under sub-section (2) of section 30 of the Indian Registration Act, 1908, from the earliest date on which any memorandum of such registered instrument has been filed by any Sub-Registrar within whose sub-district any part of the property which is being acquired or of the property wherein a share or interest is being acquired, is situated :

Provided that—

(1) the instrument has been registered and its registration completed in the manner prescribed by the Indian Registration Act, 1908, and the rules made thereunder,

(2) the instrument (or memorandum) has been duly entered or filed, as the case may be, in books kept under section 51 of that Act, and

(3) the particulars regarding the transaction to which the instrument relates have been correctly entered in the indexes kept under section 55 of that Act.

Explanation II.—Any person acquiring any immovable property or any share or interest in any such property shall be deemed to have notice of the

title, if any, of any person who is for the time being in actual possession thereof.

Explanation III.—A person shall be deemed to have had notice of any fact if his agent acquires notice thereof whilst acting on his behalf in the course of business to which that fact is material.

Provided that, if the agent, fraudulently conceals the fact, the principal shall not be charged with notice thereof as against any person, who was a party to or otherwise cognizant of the fraud.

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Transfer in Perpetuity for benefit of Public.

18. The restrictions in sections 14, 16 and 17 shall not apply in the case of a transfer of property for the benefit of the public in the advancement of religion, knowledge, commerce, health, safety, or any other object beneficial to mankind.

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CHAPTER VII

Of Gifts

"Gift" defined.

122. "Gift" is the transfer of certain existing movable or immovable property made voluntarily and without consideration, by one person called the donor, to another called the donee and accepted by or on behalf of the donee.

Acceptance when to be made.

Such acceptance must be made during the lifetime of the donor, and while he is still capable of giving.

If the donee dies before acceptance, the gift is void.

Transfer how effected.

123. For the purpose of making a gift of immovable property, the transfer must be effected by a registered instrument signed by or on behalf of the donor, and attested by at least by two witnesses.

For the purpose of making a gift of movable property, the transfer may be effected, either by a registered instrument signed as aforesaid or by delivery.

Such delivery may be made in the same way as goods sold may be delivered.

Gift of existing and future property.

124. A gift comprising both existing and future property is void as to the latter.

Gift to several, of whom one does not accept.

125. A gift of a thing to two or more donees, of whom one does not accept it, is void as to the interest which he would have taken had he accepted.

When gift may be suspended or revoked.

126. The donor and donee may agree that on the happening of any specified event, which does not depend on the will of the donor, a gift shall be suspended or revoked ; but a gift which the parties agree shall be revocable wholly or in part, at the mere will of the donor, is void wholly or in part, as the case may be.

A gift may be also be revoked in any of the cases (save want, or failure of consideration) in which, if it were a contract, it might be rescinded.

Save as aforesaid, a gift cannot be revoked.

Nothing contained in this section shall be deemed to affect the rights of transferees for consideration without notice.

Illustrations.

(a) A gives a field to B, reserving to himself, with B's assent, the right to take back the field in case B and his descendants die before A. B dies without decendants in A's life-time. A may take back the field.

(b) A gives a lakh of rupees to B, reserving to himself with B's assent, the right to take back at pleasure Rs. 10,000 out of the lakh. The gift holds good as to Rs. 90,000 but is void as Rs. 10,000 which continue to belong to A.

Onerous gifts.

127. Where a gift is in the form of single transfer to the same person of several things of which one is and the others are not, burdened by an obligation, the donee can take nothing by the gift unless he accepts it fully.

Where a gift is in the form of two or more separate and independent transfers to the same person of several things, the donee is at liberty to accept one of them and refuse the others, although the former may be beneficial and the latter onerous.

Onerous gift to disqualified person.

A donee not competent to contract and accepting property burdened by any obligation, is not bound by his acceptance. But if, after becoming competent to contract, and being aware of the obligation, he retains the property given, he becomes so bound.

Illustrations.

(a) A has shares in X, a prosperous joint-stock company, and also shares in Y, a joint-stock company in difficulties. Heavy calls are expected in respect of shares in Y. A gives B all his shares in joint-stock companies. B refuses to accept the shares in Y. He cannot take the shares in X.

(b) A, having a lease for a term of years of a house at a rent which he and his representatives are bound to pay during the term and which is more than the house can be let for, gives to B, the lease, and also, has a separate and independent transaction, a sum of money, B refuses to accept the lease. He does not, by this refusal, forfeit the money.

Universal donee.

128. Subject to the provisions of section 127, where a gift consists of the donor's whole property, the donee is personally liable for all the debts due by (and liabilities of) the donor at the time of the gift to the extent of the property comprised therein.

Saving of donations mortis causa and Mohammadan law.

129. Nothing in this Chapter relates to gifts of movable property made in contemplation of death, or shall be deemed to affect any rule of Muhammadan Law.

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CHAPTER VIII

Of Transfers of Actionable Claims.

Transfer of actionable claim.

130. (1) The transfer of an actionable claim whether with or without consideration shall be effected only by the execution of an instrument in writing signed by the transferor or his duly authorised agent, and shall be complete and effectual upon the execution of such instrument, and thereupon all the rights and remedies of the transferor, whether by way of damages or otherwise, shall vest in the transferee, whether such notice of the transfer as is hereinafter provided be given or not:

Provided that every dealing with the debt or other actionable claim by the debtor or other person, from or against whom the transferor would, but

for such instrument of transfer as aforesaid, have been entitled to recover or enforce such debt or other actionable claim, shall (save where the debtor or other person is a party to the transfer or has received express notice thereof as hereinafter provided) be valid as against such transfer.

(2) The transferee of an actionable claim may, upon the execution of such instrument of transfer as aforesaid, sue or institute proceedings for the same in his own name without obtaining the transferor's consent to such suit or proceedings, and without making him a party thereto.

Exception.—Nothing in this section applies to the transfer of a marine or fire policy of insurance (or affects the provisions of section 38 of the Insurance Act, 1938).

Illustrations.

(i) **A** owes money to **B**, who transfers the debt to **C**. **B** then demands the debt from **A**, who, not having received notice of the transfer, as prescribed in section 131 pays **B**. The payment is valid, and **C** cannot sue **A** for the debt.

(ii) **A** effects a policy on his own life with an Insurance Company and assigns it to a bank for securing the payment of an existing of future debt. If **A** dies, the bank is entitled to receive the amount of the policy, and to sue on it without the concurrence of A's executor, subject to the proviso in subsection of (1) section 130 and to the provisions of section 132.

Transfer of policy of marine insurance.

130A. (1) A policy of marine insurance may be transferred by assignment unless it contains terms expressly prohibiting assignment, and may be assigned either before or after loss.

(2) A policy of marine insurance may be assigned by endorsement thereon or in any other customory manner.

(3) Where the insured person has parted with or lost his interest in the subject-matter, insured, and has not, before or at the time of so doing, expressly or impliedly agreed to assign the policy, any subsequent assignment of the policy is inoperative :

Provided that nothing in this subsection affects the assignment of a policy after loss.

(4) Nothing in clause (*e*) of section 6 shall affect the provisions of this section. (Inserted by Act VI of 1944.)

Notice to be in writing signed.

131. Every notice of transfer of an actionable claim shall be in writing, signed by the transferor or his agent duly authorised in this behalf, or, in case the transferor refuses to sign, by the transferee or his agent, and shall state the name and address of the transferee.

Liability of transferee of actionable claim.

132. The transferee of an actionable claim shall take it subject to all the liabilities and equities to which the transferor was subject in respect thereof at the date of the transfer.

Illustrations.

(i) **A** transfers to **C** a debt due to him by **B**, **A** being then indebted to **B**. **C** sues **B** for the debt due to **B** to **A**. In such suit **B** is entitled to set off the debt due by **A** to him although **C** was unaware of it at the date of such transfer.

(ii) **A** executed a bond in favour of **B** under circumstances entitling the former to have it delivered up and cancelled. **B** assigns the bond to **C** for value and without notice of such circumstances. **C** cannot enforce the bond against **A**.

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Assignment of rights under policy of insurance against fire.

135. Every assignee, by endorsement or other writing, of a policy of insurance against fire, in whom the property in the subject insured shall be absolutely vested at the date of the assignment, shall have transferred and vested in him all rights of suit as if the contract contained in the policy had been made with himself. (Substituted by Act VI of 1944.)

Assignment of rights under policy of marine insurance.

135A. (1) Where a policy of marine insurance has been assigned so as to pass the beneficial interest therein, the assignee of the policy is entitled to sue thereon in his own name ; and the defendant is entitled to make any denfence arising out of the contract which he would have been entitled to make if the action had been brought in the name of the person by or on behalf of whom the policy was effected.

(2) Where the insurer pays for a total loss, either of the whole, or, in the case of goods, of any apportionable part, of the subject-matter insured, he thereupon becomes entitled to take over the interest of the insured person in whatever may remain of the subject-matter so paid for and he is thereby subrogated to all the rights and remedies of the insured person in and in respect of that subject-matter as from the time of the casualty causing the loss.

(3) Where the insurer pays for a partial loss, he acquires no title to the subject-matter insured, or such part of it as may remain, but he is thereupon subrogated to all rights and remedies of the insured persons as from the time of the casualty causing the loss, in so far as the insured person has been indemnified by such payment for the loss.

(4) Nothing in clause (*c*) of section 6 shall affect the provisions of this section. (Inserted by Act VI of 1944.)

THE TRUSTEES' AND MORTGAGEES' POWERS ACT
(XXVIII of 1886)

An Act to give to Trustees, Mortgagees and others, in cases to which English Law is applicable, certain powers now commonly inserted in Settlements, Mortgages and Wills, and to amend the Law of Property and relieve Trustees.

Preamble

Whereas it is expedient that in cases to which English Law is applicable certain powers and provisions usually inserted in settlements, mortgages, wills and other instruments should be made incident to the estates of the persons interested, so as to dispense with the necessity of inserting the same in terms in every such instrument, and that in such cases trustees should be relieved ; It is enacted as follows :—

1. In the construction of this Act, unless there be something repugnant in the subject or context,—

"Immovable property" shall include land, any benefit to arise out of land, and things attached to the earth or permanently fastened to anything which is attached to the earth :

"mortgage" shall be taken to include every instrument by virtue whereof immovable property is in any manner conveyed, pledged or charged as security for the repayment of money or money's worth lent, and to be reconveyed or released on satisfaction of the debt :

"mortgagor" shall be taken to include every person by whom any such conveyance, pledge or charge as aforesaid shall be made :

"mortgagee" shall be taken to include every person to whom or in whose favour any such conveyance, pledge or charge as aforesaid is made or transferred; and

"High Court" means (a Court which is a High Court for the purposes of the Government of India Act, 1935).

Power of Trustees for Sale, etc., and Trustees of renewable Leaseholds.

2. In all cases where, by any will, deed or other instrument of settlement, it is expressly declared that trustees or other persons therein named or indicated shall have a power of sale, either generally or in any particular event, over any immovable property named or referred to in, or from time to time subject to, the uses or trusts of such will, deed or other instrument, it shall be lawful for such trustees or other persons, whether such property be vested in them or not, to exercise such power of sale by selling such property either together or in lots, and either by public auction or private contract, and either at one time or at several times.

3. It shall be lawful for the persons making any such sale to insert any such special or other stipulations either as to title or evidence of title, or otherwise, in any conditions of sale, or contract for sale, as they shall think fit; and also to buy in the property or any part thereof at any sale by auction and to rescind or vary any contract for sale, and to re-sell the property which shall be so brought in, or as to which the contract shall be so rescinded, without being responsible for any loss which may be occasioned thereby;

and no purchaser under any such sale shall be bound to enquire whether the persons making the same may or may not have in contemplation any particular re-investment of the purchase-money in the purchase of any other property or otherwise.

4. For the purpose of completing any such sale as aforesaid, the persons empowered to sell as aforesaid shall have full power to convey or otherwise dispose of the property in question, in such manner as may be necessary.

5. The money so received upon any such sale as aforesaid shall be laid out in the manner indicated in that behalf in the will, deed or instrument containing the power of sale;

and until the money to be received upon any sale as aforesaid shall be so disposed of, the same shall be invested at interest in Government securities for the benefit of such persons as would be entitled to the benefit of the money, and the interest and profits thereof, in case such money were then actually laid out as aforesaid:

Provided that if the will, deed or instrument shall contain no such indication, the persons empowered to sell as aforesaid shall invest the money so received upon any such sale in their names upon Government securities in India, and the interest of such securities shall be paid and applied to such person or persons for such purposes and in such manner as the rents and profits of the property sold as aforesaid would have been payable or applicable in case such sale had not been made.

Powers of Mortgagees

6. Where any principal money is secured or charged by deed on any immovable property, or on any interest therein, the person to whom such money shall, for the time being be payable, his executors, administrators and assigns, shall, at any time after the expiration of one year from the time when such principal money shall have become payable, according to the terms of the deed, or after any interest on such principal-money shall have been in

arrear for six months, or after any omission to pay any premium on any insurance which by the terms of the deed ought to be paid by the person entitled to the property subject to the charge, have the following powers to the same extent (but no more) as if they had been in terms conferred by the person creating the charge, namely :—

1*st*, a power to sell or concur with any other person in selling the whole or any part of the property by public auction or private contract, subject to any reasonable conditions he may think fit to make, and to rescind or vary contracts for sale, or buy in and re-sell the property, from time to time, in like manner :

2*nd*, a power to appoint or obtain the appointment of a receiver of the rents and profits of the whole or any part of the property in manner hereinafter mentioned.

7. Receipts for purchase-money given by the person or persons exercising the power of sale hereby conferred shall be sufficient discharges to the purchasers, who shall not be bound to see to the application of such purchase money.

8. No such sale as last aforesaid shall be made until after six months' notice in writing given to the person or one of the persons entitled to the property subject to the charge, or affixed on some conspicuous part of such property ; but when a sale has been effected in professed exercise of the powers hereby conferred, the title of the purchaser shall not be liable to be impeached on the ground that no case had arisen to authorize the exercise of such power, or that no such notice as aforesaid had been given ; but any person damnified by any such unauthorized exercise of such power shall have his remedy in damages against the person or persons selling.

9. The money arising by any sale effected as aforesaid shall be applied by the person receiving the same as follows :—

first, in payment of all the expenses incident to the sale or incurred in any attempted sale ;

secondly, in discharge of all interests and costs then due in respect of the charge in consequence whereof the sale was made ; and

thirdly, in discharge of all the principal moneys then due in respect of such charge ;

and the residue of such money shall be paid to the person entitled to the property subject to the charge, his executors, administrators or assigns, as the case may be.

10. The person exercising the power of sale hereby conferred shall have power by deed to convey or assign to and vest in the purchaser the property sold for all the estate and interest therein which the person who created the charge had power to dispose of :

Provided that nothing herein contained shall be construed to authorize the mortgagee of a term of years to sell and convey the fee-simple of the property comprised therein in cases where the mortgagor could have disposed of such fee-simple at the date of the mortgage.

11. At any time after the power of sale hereby conferred shall have become exercisable, the person entitled to exercise the same shall be entitled to demand and recover from the person entitled to the property subject to the charge all the deeds and documents in his possession or power relating to the same property, or to the title thereto, which he would have been entitled to demand and recover if the same property had been conveyed, appointed or surrendered to and were then vested in him for all the estate and interest which the person creating the charge had power to dispose of ;

and, where the legal estate shall be outstanding in a trustee, the person entitled to a charge created by a person equitably entitled, or any purchaser from such person, shall be entitled to call for a conveyance of the legal estate to the same extent as the person creating the charge could have called for such a conveyance if the charge had not been made.

12. Any person entitled to appoint or obtain the appointment of a receiver as aforesaid may, from time to time, if any person or persons has or have been named in the deed of charge for that purpose, appoint such person or any one of such persons to be receiver, or if no person be so named, then may, by writing delivered to the person or any one of the persons entitled to the property subject to the charge, or affixed on some conspicuous part of the property, require such last-mentioned person or persons to appoint a fit and proper person as receiver, and if no such appointment be made within ten days after such requisition, then may in writing appoint any person he may think fit.

No person shall be ineligible for the office of receiver merely because he is an officer of the High Court.

13. Every receiver appointed as aforesaid shall be deemed to be the agent of the person entitled to the property subject to the charge, who shall be solely responsible for his acts or defaults, unless otherwise provided for in the charge.

14. Every receiver appointed as aforesaid shall have power to demand and recover and give effectual receipts for all the rents, issues and profits of the property of which he is appointed receiver, by suit, distress or otherwise in the name either of the person entitled to the property subject to the charge, or of the person entitled to the money secured by the charge, to the full extent of the estate or interest which the person who created the charge had power to dispose of.

15. Every receiver appointed as aforesaid may be removed by the like authority, or on the like requisition as before provided with respect to the original appointment of a receiver, and new receivers may be appointed from time to time.

16. Every receiver appointed as aforesaid shall be entitled to retain out of any money received by him, in lieu of all costs, charges and expenses whatsoever, such a commission, not exceeding five per centum on the gross amount of all money received, as shall be specified in his appointment, and if no amount shall be so specified, then five per centum on such gross amount.

17. Every receiver appointed as aforesaid shall, if so directed in writing by the person entitled to the money secured by the charge, insure and keep insured from loss or damage by fire, out of the money received by him, the whole or any part of the property included in the charge which is in its nature insurable.

18. Every receiver appointed as aforesaid shall pay and apply all the money received by him in the first place in discharge of Government revenue and of all taxes, rates and assessments whatsoever, and in payment of his commission as aforesaid, and of the premiums on the insurances, if any ; and in the next place in payment of all interest accruing due in respect of any principal money then charged on the property over which he is receiver, or on any part thereof ; and, subject as aforesaid, shall pay all the residue of such money to the person for the time being entitled to the property subject to the charge, his executors, administrators or assigns.

19. The powers and provisions contained in sections 6 to 18 of this Act, both inclusive, relate only to mortgages or charges made to secure money advanced or to be advanced by way of loan, or to secure an existing or future debt.

Leases

20. Where any licence to do any act which without such licence would create a forfeiture, or give a right to re-enter, under a condition or power reserved in any lease heretofore granted, or to be hereafter granted, shall at any time after this Act comes into operation be given to any lessee or his assigns, every such licence shall, unless otherwise expressed, extend only to the permission actually given, or to any specific breach of any proviso or covenant made or to be made, or to the actual assignment, under-lease or other matter thereby specifically authorised to be done, but not so as to prevent any proceeding for any subsequent breach (unless otherwise specified in such licence) ;

and all rights under covenants and powers of forfeiture and re-entry in the lease contained shall remain in full force and shall be available as against any subsequent breach of covenant or condition, assignment, under-lease or other matter not specifically authorized or made dispunishable by such licence, in the same manner as if no such licence had been given ; and the condition or right of re-entry shall be and remain in all respects as if such licence had not been given, except in respect of the particular matter authorized to be done.

21. Where in any lease heretofore granted or to be hereafter granted there is or shall be a power or condition of re-entry on assigning or under-letting, or doing any other specified act without licence, and a licence at any time after the passing of this Act shall be given to one of several lessees or co-owners to assign or under-let his share or interest, or to do any other act prohibited to be done without licence, or shall be given to any lessee or owner, or any one of several lessees or owners, to assign or under-let part only of the property, or to do any other such act as aforesaid in respect of part only of such property, such licence shall not operate to destroy or extinguish the right of re-entry in case of any breach of the covenant or condition by the co-lessee or co-lessees, or owner or owners of the other shares or interest in the property, or by the lessee or owner of the rest of the property (as the case may be) over or in respect of such shares or interests or remaining property, but such right of re-entry shall remain in full force over or in respect of the shares or interests or property not the subject of such licence.

22. Where the revision upon a lease is severed, and the rent or other reservation is legally apportioned, the assignee of each part of the reversion shall, in respect of the apportioned rent or other reservation allotted or belonging to him, have and be entitled to the benefit of all conditions or powers of re-entry for non-payment of the original rent or other reservation, in like manner as if such conditions or powers had been reserved to him as incident to his part of the reversion in respect of the apportioned rent or other reservation allotted or belonging to him.

Rent-charges.

23. The release from a rent-charge of part of the immovable property charged therewith shall not extinguish the whole rent charge, but shall operate only to bar the right to recover any part of the rent-charge out of the property released, without prejudice nevertheless to the rights of all persons interested in the property remaining unreleased, and not concurring in or confirming the release.

Powers.

24. A deed hereafter executed in the presence of and attested by two or more witnesses in the manner in which deeds are ordinarily executed and attested shall, so far as respects the execution and attestation thereof, be a

valid execution of a power of appointment by deed or by any instrument in writing not testamentary, notwithstanding it shall have been expressly required that a deed or instrument in writing made in exercise of such power should be executed or attested with some additional or other form of execution or attestation or solemnity :

Provided always that this provision shall not operate to defeat any direction in the instrument creating the power, that the consent of any particular person shall be necessary to a valid execution, or that any act shall be performed in order to give validity to any appointment, having no relation to the mode of executing and attesting the instrument :

and nothing herein contained shall prevent the donee of a power from executing it conformably to the power by writing or otherwise than by an instrument executed and attested as an ordinary deed, and to any such execution of a power this provision shall not extend.

25. Where, by any will which shall come into operation after the passing of this Act, the testator shall have charged his immovable property or any specific portion thereof with the payment of his debts, or with the payment of any legacy or other specific sum of money, and shall have bequeathed the property so charged to any trustee or trustees for the whole of his estate or interest therein, and shall not have made any express provision for the raising of such debt, legacy, or sum of money out of such property, it shall be lawful for the said legatee or legatees in trust notwithstanding any trust actually declared by the testator, to raise such debts, legacy or money as aforesaid by sale and absolute disposition by public auction or private contract, of the said property or any part thereof, or by a mortgage of the same, or partly in one mode and partly in the other ;

and any deed or deeds of mortgage so executed may reserve such rate of interest and fix such period or periods of repayment as the person or persons executing the same shall think proper.

26. The powers conferred by the last preceding section shall extend to all and every person or persons in whom the property bequeathed in trust shall for the time being be vested by survivorship, or under the laws relating to intestate or testamentary succession, or to any person or persons who may be appointed under any power in the will, or by the High Court, to succeed to the trusteeship vested in such legatee or legatees in trust as aforesaid.

27. If any testator who shall have created such a charge as is described in section 25 of this Act shall not have bequeathed the property charged as aforesaid in such terms as that his whole estate and interest therein shall become vested in any trustee or trustees, the executor or executors (if any) for the time being named in such will shall have the same or the like power of raising the said moneys as is hereinbefore vested in the legatee or legatees in trust of the said property, and such power shall from time to time devolve on and become vested in the person or persons (if any) in whom the executorship shall for the time being be vested.

28. Purchasers or mortgagees shall not be bound to enquire whether the powers conferred by sections 25, 26 and 27 of this Act, or any of them shall have been duly and correctly exercised by the person or persons acting in virtue thereof.

Inheritance.

29. In cases of intestacies occurring before the first day of January, 1866, where there shall be a total failure of heirs of the purchaser, or where any immovable property shall be descendible as if an ancestor had been the purchaser thereof, and there shall be a total failure of the heirs of such ancestor,

then and in every such case the property shall descend, and the descent shall thenceforth be traced, from the person last entitled to the property as if he had been the purchaser thereof.

This section shall be read as part of Act No. XXX of 1839 (*for the amendment of the Law of Inheritance*).

Assignment of Movables and Terms for Years.

30. Any person shall have power to assign movable property now by law assignable, terms for years of immovable property, and estates by *elegit* directly to himself and another person or other persons or corporation, by the like means as he might assign the same to another.

Purchasers.

31. The *bona fide* payment to and the receipt of any person to whom any purchase or mortgage-money shall be payable upon any express or implied trust shall effectually discharge the person paying the same from seeing to the application, or being answerable for the misapplication thereof.

Investment of Trust-funds.

32. Trustees having trust money in their hands which it is their duty to invest at interest shall be at liberty, at their discretion, to invest the same in any Government securities, and such trustees shall also be at liberty, at their discretion, to call in any trust funds invested in any other securities than as aforesaid, and to invest the same on any such securities as aforesaid, and also from time to time, at their discretion, to vary any such investments as aforesaid for others of the same nature:

Provided always that no such original investment as aforesaid, and no such change of investment as aforesaid, shall be made where there is a person under no disability entitled in possession to receive the income of the trust-fund for his life, or for a term of years determinable with his life, or for any greater estate, without the consent in writing of such person.

Trustees and Executors.

33. In all cases where any property is held by trustees in trust for a minor, either absolutely or contingently on his attaining majority, or on the occurrence of any event previously to his attaining majority, it shall be lawful for such trustees, at their sole discretion, to pay to the guardians (if any) of such minor, or otherwise to apply for or towards the maintenance or education of such minor, the whole or any part of the income to which such minor may be entitled in respect of such property, whether there be any other fund applicable to the same purpose, or any other person bound by law to provide for such maintenance or education, or not;

and such trustees shall accumulate all the residue of such income by way of compound interest, by investing the same and the resulting income thereof from time to time in proper securities, for the benefit of the person who shall ultimately become entitled to the property from which such accumulations shall have arisen:

Provided always, that it shall be lawful for such trustees at any time, if it shall appear to them expedient, to apply the whole or any part of such accumulations as if the same were part of the income arising in the then current year.

34. Whenever any trustee, either original or substituted, and whether appointed by any High Court or otherwise, shall die, or be six months absent from India, or desire to be discharged from, or refuse, or become unfit or incapable, to act in the trusts or powers in him reposed, before the same shall have been fully discharged and performed, it shall be lawful for the per-

son or persons nominated for that purpose by the deed, will or other instrument creating the trust (if any), or if there be no such person, or no such person able and willing to act, then for the surviving or continuing trustees or trustee for the time being, or the acting executors or executor or administrators or administrator, of the last surviving and continuing trustee, or for the retiring trustees, if they shall all retire simultaneously, or for the last retiring trustee, or where there are two or more classes of trustees of the instrument creating the trust, then for the surviving or continuing trustees or trustee of the class in which any such vacancy or disqualification shall occur (and for this purpose any refusing or retiring trustee shall, if willing to act in the execution of the power, be considered a continuing trustee), by writing to appoint any other person or persons to be a trustee or trustees in the place of the trustee or trustees so dying, or being absent from India, or desiring to be discharged, or refusing or becoming unfit or incapable to act as aforesaid.

So often as any new trustee or trustees shall be so appointed as aforesaid, all the trust-property (if any) which for the time being shall be vested in the surviving or continuing trustees or trustee, or in the heirs, executors or administrators of any trustee, shall with all convenient speed be conveyed and transferred so that the same may be legally and effectually vested in such new trustee or trustees, either solely or jointly with the surviving or continuing trustees or trustee, as the case may require.

Every new trustee to be appointed as aforesaid, as well before as after such conveyance or transfer as aforesaid, and also every trustee appointed by any High Court, either before or after the passing of this Act, shall have the same powers, authorities and discretions, and shall in all respects act as if he had been originally nominated a trustee by the deed, will or other instrument (if any) creating the trust.

The Official Trustee may with his consent, and by the order of the High Court, be appointed under this section in any case in which only one trustee is to be appointed and such trustee is to be the sole trustee.

35. The power of appointing new trustees hereinbefore contained may be exercised in cases where a trustee nominated in a will has died in the lifetime of the testator.

36. The receipts in writing of any trustees or trustee for any money payable to them or him by reason, or in the exercise, of any trusts or powers reposed or vested in them or him, shall be sufficient discharges for the money therein expressed to be received, and shall effectually exonerate the persons paying such money from seeing to the application thereof, or from being answerable for any loss or misapplication thereof.

37. Every deed, will or other instrument creating a trust, either expressly or by implication, shall, without prejudice to the clauses actually contained therein, be deemed to contain a clause in the words or to the effect following, that is to say,—

"that the trustees or trustee for the time being of the said deed, will or other instrument shall be respectively chargeable only for such moneys, stocks, funds and securities as they shall respectively actually receive, notwithstanding their respectively signing any receipt for the sake of conformity, and shall be answerable and accountable only for their own acts, receipts, neglects or defaults, and not for those of each other, nor for any banker, broker or other person with whom any trust-moneys or securities may be deposited, nor for the insufficiency or deficiency of any stocks, funds or securities, nor for any other loss, unless the same shall happen through their own wilful default respectively ; and also that it shall be lawful for the trustees or trustee for the time being of the said deed, will or other instrument, to reimburse themselves

or himself, or pay or discharge out of the trust-premises all expenses incurred in or about the execution of the trusts or powers of the said deed, will or other instrument."

38. It shall be lawful for any executors to pay any debts or claims upon any evidence that they may think sufficient, and to accept any composition, or any security for any debts due to the deceased, and to allow any time for payment of any such debts as they shall think fit, and also to compromise, compound or submit to arbitration all debts, accounts, claims and things whatsoever relating to the estate of the deceased, and for any of the purposes aforesaid to enter into, give and execute such agreements, instruments of composition, releases and other things as they shall think expedient, without being responsible for any loss to be occasioned thereby.

39. (Trustee, etc., making payment under power-of-attorney, not liable by reason of death of party giving power.) Repealed by the Powers-of-Attorney Act, (VII of 1882), section 6.

40. Where an executor or administrator liable as such to the rents, covenants or agreements contained in any lease or agreement for a lease granted or assigned, whether before or after the passing of this Act, to the testator or intestate whose estate is being administered, shall have satisfied all such liabilities under the said lease, or agreement for a lease, as may have accrued due and been claimed up to the time of the assignment hereinafter mentioned, and shall have set apart a sufficient fund to answer any future claim that may be made in respect of any fixed and ascertained sum covenanted or agreed by the lessee to be laid out on the property demised or agreed to be demised, although the period for laying out the same may not have arrived, and shall have assigned the lease or agreement for a lease to a purchaser thereof, he shall be at liberty to distribute the residuary estate of the deceased to and amongst the parties entitled thereto, respectively, without appropriating any part, or any further part (as the case may be), of the estate of the deceased to meet any future liability under the said lease or agreement for a lease.

The executor or administrator so distributing the residuary estate shall not, after having assigned the said lease or agreement for a lease, and having, where necessary, set apart such sufficient fund as aforesaid, be personally liable in respect of any subsequent claim under the said lease or agreement for a lease.

Nothing herein contained shall prejudice the right of the lessor or those claiming under him to follow the assets of the deceased into the hands of the person or persons to or amongst whom the said assets may have been distributed.

41. In like manner, where an executor or administrator liable as such to the rent, covenants or agreements contained in any conveyance on chief rent or rent-charge (whether any such rent be by limitation of use, grant or reservation), or agreement for such conveyance, granted or assigned to or made and entered into with the testator or intestate whose estate is being administered, shall have satisfied all such liabilities under the said conveyance or agreement for a conveyance, as may have accrued due and been claimed up to the time of the conveyance hereinafter mentioned, and shall have set apart a sufficient fund to answer any future claim that may be made in respect of any fixed and ascertained sum covenanted or agreed by the grantee to be laid out on the property conveyed, or agreed to be conveyed, although the period for laying out the same may not have arrived, and shall have conveyed such property or assigned the said agreement for such conveyance as aforesaid, to a purchaser thereof, he shall be at liberty to distribute the residuary

estate of the deceased to and amongst the parties entitled thereto, respectively without appropriating any part or any further part (as the case may be) of such estate to meet any future liability under the said conveyance or agreement for a conveyance.

The executor or administrator so distributing the residuary estate shall not, after having made or executed such conveyance or assignment, and having where necessary, set apart such sufficient fund as aforesaid, be personally liable in respect of any subsequent claim under the said conveyance or agreement for conveyance.

Nothing herein contained shall prejudice the right of the grantor, or those claiming under him, to follow the assets of the deceased into the hands of the person or persons to or among whom the said assets may have been distributed.

42. Where an executor or administrator shall have given such or the like notices as in the opinion of the Court in which such executor or administrator is sought to be charged would have been given by the High Court in an administration suit, for creditors and others to send in to the executor or administrator their claim against the estate of the testator or intestate, such executor or administrator shall, at the expiration of the time named in the said notices or the last of the said notices, for sending in such claims, be at liberty to distribute the assets of the testator or intestate, or any part thereof, amongst the parties entitled thereto, having regard to the claims of which such executor or administrator has then notice, and shall not be liable for the assets or any part thereof so distributed to any person of whose claim such executor or administrator shall not have had notice at the time of distribution of the said assets, or a part thereof, as the case may be.

Nothing in the present Act contained shall prejudice the right of any creditor or claimant to follow the assets, or any part thereof, into the hands of the person or persons who may have received the same respectively.

43. Any (trustee), executor or administrator shall be at liberty, without the institution of a suit, to apply by petition to any Judge of the High Court for the opinion, advice or direction of such Judge on any question respecting the (management or) administration of the (trust property or) the assets of any testator or intestate.

Such application shall be served upon, or the hearing thereof shall be attended by, all persons interested in such application, or such of them as the said Judge shall think expedient.

The (trustee), executor or administrator acting upon the opinion, advice or direction given by the said Judge shall be deemed, so far as regards his own responsibility, to have discharged his duty as such (trustee), executor or administrator in the subject-matter of the said application :

Provided nevertheless, that this Act shall not extend to idemnify any (trustee), executor or administrator, in respect of any act done in accordance with such opinion, advice or direction as aforesaid, if such (trustee), executor or administrator shall have been guilty of any fraud or wilful concealment or misrepresentation in obtaining such opinion, advice or direction ; and the costs of such application as aforesaid shall be in the discretion of the Judge to whom the said application shall be made.

General Provisions.

44. For the purposes of this Act a person shall be deemed to be entitled to the possession or to the receipt of the rents and income of immovable or movable property, although his estate may be charged or encumbered, either by himself or by any former owner, or otherwise howsoever to any extent: but

the estates or interests of the parties to any such charge or incumbrance shall not be affected by the acts of the person entitled to the possession or to the receipt of the rents and income as aforesaid, unless they shall concur therein.

45. The provisions contained in this Act shall, except as hereinbefore otherwise provided, extend only to persons entitled or acting under a deed, will, codicil, or other instrument executed after this Act comes into operation or under a will or codicil confirmed or revived by a codicil executed after that date, and only to property in India and to cases to which English law is applicable.

46. This Act may be called *The Trustees' and Mortgagee' Powers Act*, 1866.

THE INDIAN TRUSTS ACT, 1882

* * * * * *

Short title, Commencement. Local extent.

1. This Act may be called the Indian Trusts Act, 1882; and it shall come into force on the first day of March, 1882.

It extends to the whole of India except the State of Jammu and Kashmir.

Savings.

But nothing herein contained affects the rules of Muhammadan Law as to *waqf*, or the mutual relations of the members of an undivided family as determined by any customary or personal law, or applies to public or private religious or charitable endowments, or to trusts to distribute prizes taken in war among the captors; and nothing in the second chapter of this Act applies to trust created before the said day.

* * * * * *

Interpretation clause—"trust."

3. A "trust" is an obligation annexed to the ownership of property, and arising out of a confidence reposed in and accepted by the owner, or declared and accepted by him, for the benefit of another, or of another and the owner:

the person who reposes or declares the confidence is called "the author of the trust": the person who accepts the confidence is called the "trustee": the person for whose benefit the confidence is accepted is called the beneficiary:

"Author of the trust" "trustee": "beneficiary" "trust property": "beneficial interest" "instrument of trust":

the subject-matter of the trust is called "trust property" or "trust-money": the beneficial interest or "interest" of the beneficiary is his right against the trustee as owner of the trust-property; and the instrument, if any, by which the trust is declared is called the instrument of trust:

"breach of trust"

a breach of any duty imposed on a trustee, as such, by any law for the time being in force is called a "breach of trust".

and in this Act, unless there be something repugnant in the subject or context, "registered" means registered under the law for the registration of documents for the time being in force; a person is said to have "notice" of a fact either when he

"registered": "notice"

actually knows that fact, or when, but for wilful abstention from inquiry or gross negligence, he would have known it, or when information of the fact is given to or obtained by his agent, under the circumstances mentioned in the Indian Contract Act, 1872, section 229; and all expressions used herein and defined in the Indian Contract Act, 1872 shall be deemed to have the meanings respectively attributed to them by that Act.

Expressions defined in Act IX of 1872.

CHAPTER II

OF THE CREATION OF TRUSTS

4. A trust may be created for any lawful purpose. The purpose of a trust is lawful unless it is (*a*) forbidden by law, or (*b*) is of such a nature that, if permitted, it would defeat the provisions of any law, or (*c*) is fraudulent, or (*d*) involves or implies injury to the person or property of another, or (*e*) the Court regards it as immoral or opposed to public policy.

Lawful purpose.

Every trust of which the purpose is unlawful is void, and where a trust is created for two purposes, of which one is lawful and the other unlawful, and the two purposes cannot be separated, the whole trust is void.

Explanation.—In this section the expression "law" includes, where the trust property is immovable and situate in a foreign country, the law of such country.

Illustrations.

(a) A conveys property to B in trust to apply the profits to the nurture of female foundlings to be trained as prostitutes. The trust is void.

(b) A bequeaths property to B in trust to employ it in carrying on a smuggling business and out of the profits thereof to support A's children. The trust is void.

(c) A, while in insolvent circumstances, transfers property to B in trust for A during his life, and after his death to B. A is declared an insolvent. The trust for A is invalid as against his creditors.

5. No trust in relation to immovable property is valid, unless declared by non-testamentary instrument in writing signed by the author of the trust or the trustee and registered, or by the will of the author of the trust or of the trustee.

Trust of immovable property.

No trust in relation to movable property is valid unless declared as aforesaid, or unless the ownership of the property is transferred to the trustee.

Trust of movable property.

The rules do not apply where they would operate so as to effectuate a fraud.

6. Subject to the provisions of section 5, a trust is created when the author of the trust indicates with reasonable certainty by any words or acts (*a*) an intention on his part to create thereby a trust, (*b*) the purpose of the trust, (*c*) the beneficiary, and (*d*) the trust property, and (unless the trust is declared by will or the author of the trust is himself to be the trustee) transfers the trust property to the trustee.

Creation of trust.

Illustrations.

(a) A bequeaths certain property to B, "having the fullest confidence that he will dispose of it for the benefit of C." This creates a trust so far as regards A and C.

(b) A bequeaths certain property to B, "hoping he will continue it in the family." This does not create a trust, as the beneficiary is not indicated with reasonable certainty.

(c) A bequeaths certain property to B, requesting him to distribute it amongst such members of C's family as B should think most deserving. This does not create a trust, for the beneficiaries are not indicated with reasonable certainty.

(d) A bequeaths certain property to B, desiring him to divide the bulk of it among C's children. This does not create a trust, for the trust property, is not indicated with sufficient certainty.

(e) A bequeaths a shop and stock-in-trade to B, on condition that he pays A's debts and a legacy to C. This is a condition, not a trust for A's creditors and C.

Who may create trusts.

7. A trust may be created—

(*a*) By every person competent to contract, and,

(*b*) with the permission of a principal Civil Court of original jurisdiction, by or on behalf of a minor ;

but subject in each case to the law for the time being in force as to the circumstances and extent in and to which the author of the trust may dispose of the trust property.

Subject of trust.

8. The subject-matter of a trust must be property transferable to the beneficiary.

It must not be merely beneficial interest under a subsisting trust.

Who may be beneficiary.

9. Every person capable of holding property may be a beneficiary.

Disclaimer by beneficiary.

A proposed beneficiary may renounce his interest under the trust by disclaimer addressed to the trustee, or by setting up, with notice of the trust, a claim inconsistent therewith.

Who may be trustee.

10. Every person capable of holding property may be a trustee ; but, where the trust involves the exercise of discretion, he cannot execute it unless he is competent to contract.

No one bound to accept trusts.

No one is bound to accept a trust.

A trust is accepted by any words or acts of the trustee indicating with reasonable certainty such acceptance.

Disclaimer of trust.

Instead of accepting a trust, the intended trustee may, within a reasonable period, disclaim it, and such disclaimer shall prevent the trust property from vesting in him.

A disclaimer by one of two or more co-trustees vests the trust property in the other or others, and makes him or them sole trustee or trustees from the date of the creation of the trust.

Illustrations.

(a) A bequeaths certain property to B and C, his executors, as trustees for D. B and C prove A's will. This is in itself an acceptance of the trust and B and C hold the property in trust for D.

(b) A transfers certain property to B in trust to sell it and to pay out of the proceeds A's debts. B accepts the trusts and sells the property. So far as regards B a trust of the proceeds is created for A's creditors.

(c) A bequeaths a lakh of rupees to B upon certain trusts and appoints him his executor. B severs the lakh from the general assets and appropriates it to the specific purpose. This is an acceptance of the trust.

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CHAPTER VI

OF THE RIGHTS AND LIABILITIES OF THE BENEFICIARY

Rights to rent and profits.

55. The beneficiary has, subject to the provisions of the instrument of the trust, a right to the rents and profits of the trust property.

Rights to specific execution.

56. The beneficiary is entitled to have the intention of the author of the trust specifically executed to the extent of the beneficiary's interest;

Rights to transfer of possession.

and, where there is only one beneficiary and he is competent to contract, or where there are several beneficiaries and they are competent to contract and all of one mind, he or they may require the trustee to transfer the trust property to him or them, or to such person as he or they may direct.

When property has been transferred or bequeathed, for the benefit of a married woman, so that she shall not have power to deprive herself of her beneficial interest, nothing in the 2nd clause of this section applies to such property during her marriage.

Illustrations.

(a) Certain Government securities are given to trustees upon trust to accumulate the interest until **A** attains the age of 24, and then to transfer the gross amount to him. **A** on attaining majority may, as the person exclusively interested in the trust property, require the trustees to transfer it immediately to him.

(b) **A** bequeaths rupees ten thousand to trustees upon trust to purchase an annuity for **B**, who has attained his majority and is otherwise competent to contract. **B** may claim the rupees ten thousand.

(c) **A** transfers certain property to **B** and directs him to sell or invest it for the benefit of **C** who is competent to contract. **C** may elect to take the property in its original character.

Right to inspect and take copies of instrument of trust, accounts, etc.

57. The beneficiary has a right, as against the trustee and all persons claiming under him with notice of the trust, to inspect and take copies of the instrument of trust, the documents of title relating solely to the trust property, the accounts of the trust property and the vouchers (if any) by which they are supported and the cases submitted and opinions taken by the trustee for his guidance in the discharge of his duty.

Right to transfer beneficial interest.

58. The beneficiary, if competent to contract, may transfer his interest but subject to the law for the time being in force as to the circumstances and extent in and to which he may dispose of such interest:

Provided that when property is transferred or bequeathed for the benefit of a married woman, so that she shall not have power to deprive herself of her beneficial interest, nothing in this section shall authorise her to transfer such interest during her marriage.

Right to sue for execution of trust.

59. Where no trustees are appointed or all the trustees die, disclaim, or are discharged, or where for any other reason the execution of a trust by the trustee is or becomes impracticable, the beneficiary may institute a suit for the execution of the trust, and the trust shall, so far as may be possible, be executed by the Court until the appointment of a trustee or new trustee.

Right to proper trustees.

60. The beneficiary has a right (subject to the provisions of the instrument of trust) that the trust property shall be properly protected and held and administered by proper persons and by a proper number of such persons.

Explanation I.—The following are not proper persons within the meaning of this section :—

A person domiciled abroad ; an alien enemy : a person having an interest inconsistent with that of the beneficiary : a person in insolvent circumstances ; and, unless the personal law of the beneficiary allows otherwise, a married woman and a minor.

Explanation II.—When the administration of the trust involves the receipt and custody of money, the number of trustees should be two at least.

Illustrations.

(a) A, one of several beneficiaries, proves that B, the trustee, has improperly disposed of part of the trust property or that the property is in danger from B's being in insolvent circumstances, or that he is incapacitated form acting as trustee. A may obtain a receiver of the trust property.

(b) A bequeaths certain jewels to B in trust for C. B dies during A's lifetime ; then A dies. C is entitled to have the property conveyed to a trustee for him.

(c) A conveys certain property to four trustees in trust for B. Three of the trustees die. B may institute a suit to have three new trustees appointed in the place of the deceased trustees.

(d) A conveys certain property to three trustees in trust for B. All the trustees disclaim. B may institute a suit to have three trustees appointed in place of the trustees so disclaiming.

(e) A, a trustee for B, refuses to act, or goes to reside permanently out of India, or is declared an insolvent, or compounds with his creditors or suffers a co-trustee to commit a breach of trust. B may institute a suit to have A removed and a new trustee appointed in his room.

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CHAPTER IX

Of Certain Obligations in the Nature of Trusts

Where obligation in nature of trust is created.

80. An obligation in the nature of a trust is created in the following cases.

Where it does not appear that transferor intended to dispose of beneficial interest.

81. Where the owner of property transfers or bequeaths it and it cannot be inferred consistently with the attendant circumstances that he intended to dispose of the beneficial interest therein, the transferee or legatee must hold such property for the benefit of the owner or his legal representative.

Illustrations.

(a) A conveys land to B without consideration and declares no trust of any part. It cannot, consistently with the circumstances under which the transfer is made, be inferred that A intended to transfer the beneficial interest in the land. B holds the land for the benefit of A.

(b) A conveys to B two fields, Y and Z, and declares a trust of Y, but says nothing about Z. It cannot, consistently with the circumstances under which the transferor is made, be inferred that A intended to transfer the beneficial interest in Z. B holds Z for the benefit of A.

(c) A transfers certain stock belonging to him into the joint names of himself and B. It cannot, consistently with the circumstances under which the transfer is made, be inferred that A intended to transfer the beneficial interest in the stock during his life. A and B hold the stock for the benefit of A during his life.

(d) A makes a gift of certain land to his wife B. She takes the beneficial interest in the land free from any trust in favour of A, for it may be inferred from the circumstances that the gift was for B's benefit.

ESTATE DUTY RULES

1. *Short title and Commencement.*—(1) These rules may be called the Estate Duty (Controlled Companies) Rules, 1953.

(2) They shall come into force from the 15th October, 1953.

2. *Definitions.*—In these rules, unless the context otherwise requires—

(1) " the Act " means the Estate Duty Act, 1953 ;

(2) " Assets " includes goodwill ;

(3) " Associated operations " has the same meaning as in clause (iv) of sub-section (7) of section 27 of the Act ;

(4) " Average rate " means, in relation to a company, a rate per cent per annum, the percentage being ascertained by—

(*a*) computing the aggregate amount of the net income of the company for the relevant accounting years (a deduction being made, where the company sustained a loss in any of those years, of the amount of the loss) ;

(*b*) dividing that amount by the number of those years ; and

(*c*) comparing the result with the principal value of the assets of the company passing on the death of the deceased by virtue of section 17 of the Act after making the allowances to be made under rule 10 of these rules.

(5) " Debenture " means, in relation to a company any obligation of the company in respect of any loan capital issued by the company otherwise than as consideration for a loan made to it in the ordinary course of a banking business, or in respect of any debt incurred by the company—

(*a*) for any money borrowed by the company, otherwise than by way of temporary loan made in the ordinary course of a banking business ;

(*b*) for any transfer of capital assets made to the company by any person, unless the obligation is one resulting from a dealing with a person who transferred such assets to the company in, and on terms consistent with, the ordinary course of a business carried on by him ;

(*c*) without consideration, or for consideration the value of which to the company at the time when the debt was incurred was substantially less than the value at that time of the debt (including any premium thereon) ; or

(*d*) where the debt was of such a nature that it would, in the ordinary course of business and apart from some special arrangement, have carried interest, if the debt did not carry interest or carried interest at a rate which was either unreasonably high or unreasonably low.

(6) " Disposition " includes any trust, covenant, agreement or arrangement, whether made by a single operation or by associated operations, and also, in relation to shares in or debentures of a company, the extinguishment or any alteration of rights attaching thereto, whether effected by a single operation or by associated operations ;

(7) " Distributed assets " means, in relation to a company, assets of the company to which sub-section (3) of section 17 of the Act applies which were disposed of or distributed by the company as mentioned in that sub-section, and " value of the distribution " means, in relation to any distri-

buted assets, the value thereof or, if partial consideration (other than the extinguishment, or an alteration, of rights attaching to shares in or debentures of a company to which that section applies) was given for the distribution in money or money's worth received by the company for its own use and benefit, the value thereof less the value of the consideration given ;

(8) " Dividend " includes any sum which would be treated as dividend for the purposes of the Indian Income-tax Act, 1922 ;

(9) " Member " means, in relation to a company, a holder in his own right of any share in or debenture of the company, and a person interested in any share in or debenture of the company held, whether by himself or another, otherwise than in the holder's own right ;

(10) " Payment " includes a transfer of property and a set-off or release of an obligation and references to the amount of a payment include, in relation to property transferred or to an obligation set-off or released, references to the value thereof ;

(11) " Power " includes any right or power exercisable by virtue of the holding of shares in or debentures of a company, and any right or power to procure an issue of shares in or debentures of a company.

3. *Interpretation.*—(1) For the purposes of these rules—

A person shall be deemed to have received or had any payment, income, enjoyment, assets, or interest, the receipt or having whereof by him is relevant for the purposes of these rules, if any of the following conditions have been satisfied in relation thereto, namely :—

(*a*) if the relevant payment or other matter has been applied in any manner for the benefit of that person, or has been dealt with by that or any other person in any manner calculated to cause it to inure for the benefit of that person at any time, whether in the form of income or not, or if any property which was or would be available for the purpose by reason of the effect or successive effects of any one or more of associated operations relating to the relevant payment or other matter has been so applied or dealt with ;

(*b*) if any advantages received or to be received at any time by that person have been provided out of that payment or other matter, or out of any such property as aforesaid ;

(*c*) if that person became able in any manner to control the application of the relevant payment or other matter, or of any such property as aforesaid, otherwise than in a fiduciary capacity ;

(*d*) if the relevant payment or other matter, or any such property as aforesaid, has been applied in any manner so as to increase the value to that person of any property in which he was beneficially interested ; or

(*e*) as respects such income as is mentioned in sub-rule (1) of rule 5 of these rules if the receipt by, or accrual to, the company of that income operated in any manner so as to increase the value to that person of any property in which that person was beneficially interested, so however that the amount of the income which that person is to be treated as having received by virtue of this paragraph shall be limited to the amount of the increase in value of the property in question ;

and references in these rules to the deceased's receiving or having, or being, or becoming entitled to receive or have, any such payment or other matter as aforesaid shall be construed accordingly.

(2) References in these rules to a disposition's being made by any person, to a power's being exercised or exercisable by any person, or to any other act's being done by any person, include references to its being made, or being exercised or exercisable, or being done, by him and another jointly or by another at his direction or by a company of which he had control within the meaning of sub-rule (3) of rule 15 of these rules whether with or without the consent of any other person ; references importing an omission on the part of any person in relation to any such matter as aforesaid shall be construed in like manner ; and references in relation to any such matter as aforesaid to its being made, or being exercised or exercisable, or being done or omitted, with the consent of any person include references to its being made, or being exercised or exercisable, or being done or omitted, at his request or with or subject to his acquiescence.

(3) References in these rules to a person having any power or control or doing any act in a fiduciary capacity shall be construed as references to his having that power or control or doing that act in a fiduciary capacity imposed on him otherwise than by a disposition made by him and in such a capacity only.

4. *Dispositions or operations deemed to be transfers.*—A person shall be deemed for the purposes of section 17 of the Act, to have made a transfer of property to a company if the property came to be included in the resources of the company by the effect of a disposition made by him or with his consent or of any associated operations of which such a disposition formed one.

5. *Benefits accruing to deceased from company.*—(1) The following shall be treated as benefits accruing to the deceased from the company, that is to say :—

(*a*) any income of the company, and any periodical payment out of the resources or at the expense of the company, which the deceased received for his own benefit whether directly or indirectly, and any enjoyment *in specie* of land or other property of the company or of a right thereover which the deceased had for his own benefit whether directly or indirectly ;

(*b*) any such income or payment or enjoyment which the deceased was entitled to receive or have as aforesaid ; and

(*c*) any such income or payment or enjoyment which the deceased could have become entitled to receive or have as aforesaid by an exercise in the three years ending with his death of any power exercisable by him or with his consent ;

and where the deceased could, by an exercise in the said three years of any such power as aforesaid, have become entitled to receive as aforesaid any payment out of the resources or at the expense of the company not being a periodical payment, but did not in fact receive or become entitled to receive that payment, there shall be treated as a benefit accruing to the deceased from the company interest on that payment at the average rate from the earliest date on which he could have become entitled to receive it.

(2) For the purposes of these rules, the expression " periodical payment " means a payment by way of dividend or interest, a payment by way of remuneration not being a single lump-sum payment, and any other payment being one of a series of payments, whether interconnected or not, whether of the same or of varying amounts, and whether payable at regular intervals or otherwise.

6. *Surrender of title to or of power to obtain benefits.*—(1) Subject to the provisions of sub-rule (3) of this rule if the deceased has made, whether for value or not, a surrender of his title to receive any such income or payment or

enjoyment as is mentioned in the last preceding rule, or of any such power as is therein mentioned, the last preceding rule shall have effect as if the surrender had not been made.

(2) The deceased shall be deemed to have made such a surrender as aforesaid, if a right which he had to receive any such income or payment or enjoyment as aforesaid, or if any such power as aforesaid, has been extinguished or suspended by the effect solely or partly of any disposition made by him or with his consent of shares in or debentures of a company or of any other property or right, or of the exercise or the leaving unexercised by him or with his consent of any power or right, or of the extinguishment or suspension by him or with his consent of any power or right, otherwise than in a fiduciary capacity, or if apart from such a disposition or other act or omission he would have become entitled to receive any such income or payment or enjoyment as aforesaid but by the effect solely or partly thereof, he did not become entitled to receive it.

(3) This rule shall not apply to a surrender made *bona fide* before the beginning of the two years ending with the death of the deceased (or if it was made for public charitable purposes, before the beginning of the six months ending with his death), if the deceased was at all times during those two years or during those six months, as the case may be, entirely excluded from receiving, or being entitled to receive, or having any capacity by an exercise of any power exercisable by him or with his consent to receive, any periodical payment by virtue of the surrender or of any associated operations of which the surrender was one.

7. *Determination of the amount of benefits.*—(1) The provisions of this rule shall have effect for the purpose of determining the amounts to be taken into account, for the purposes of sub-section (2) of section 17 of the Act, as the amounts of benefits accruing to the deceased from the company.

(2) No amount shall be taken into account more than once.

(3) Where an amount is taken into account by reference to the deceased's having been entitled to a benefit which he did not in fact receive, or by reference to a power which was not in fact exercised or was surrendered, due regard shall be had to the effect that his receiving the benefit, or the power's being exercised, would have had in relation to other benefits.

(4) The amounts that are to be taken into account by reference to the deceased's having been entitled to a benefit which he did not in fact receive, or by reference to a power which was not in fact exercised or was surrendered, shall be such as would have fallen to be taken into account as benefits received by the deceased if he had acted in relation to the claiming of benefits and the exercise of powers during the three years ending with his death to his greatest financial advantage, due regard being had to any consideration which he would have had to give in respect of a claim to any benefit or the exercise of any power.

(5) In making for the purposes of the last preceding sub-rule a computation of any diminution of income which the deceased would have sustained by giving any such consideration as is therein mentioned, or of any increase of income which the company would have obtained from any such consideration to be given to the company, it shall be assumed that the consideration would have yielded income equal to interest at the average rate on the amount or value thereof.

(6) The amounts to be taken into account shall include any income-tax or super-tax which the deceased paid or bore in respect of the benefits in question.

(7) The amount to be taken into account in respect of a benefit consisting of any enjoyment *in specie* of land or other property of the company or of a

right thereover shall be the value of the enjoyment thereof for the period during which the benefit subsisted.

8. *Time of accrual of benefits.*—(1) The provisions of this rule shall have effect for the purpose of determining—

(*a*) whether a benefit accruing to the deceased from the company is to be treated as having accrued to him during the three years ending with his death, or during a particular accounting year, or at any other relevant time, and

(*b*) the period during which a benefit consisting of any enjoyment *in specie* of land or other property of the company or of a right thereover is to be treated as having subsisted.

(2) A benefit consisting of income of the company or a periodical payment which the deceased received, or became entitled to (but did not in fact) receive, shall be treated as having accrued to him at the earliest time at which he could have obtained receipt thereof.

(3) A benefit consisting of income of the company or a periodical payment which the deceased could have become entitled to receive by an exercise in the three years ending with his death of a power which was not in fact exercised or was surrendered shall be treated as having accrued to him at the earliest time at which he could have obtained receipt thereof if he had acted as mentioned in sub-rule (4) of the last preceding rule.

(4) A benefit consisting of interest on such a payment other than a periodical payment as is mentioned in rule 5 which the deceased could have become entitled to receive shall be treated as having accrued to him in any accounting year, to the extent to which the period during which the interest is to be treated as accruing fell within that year.

(5) A benefit consisting of any such enjoyment *in specie* as aforesaid shall be treated as having accrued to the deceased in the said three years if any part of the period during which it subsisted fell within those years, and shall be treated as having accrued to him in any accounting year to the extent to which the period during which it subsisted fell within that year.

(6) A benefit consisting of any such enjoyment *in specie* as aforesaid shall be treated as having subsisted during the following period, that is to say :—

(*a*) in the case of enjoyment that the deceased had, during the period for which he had it ;

(*b*) in the case of enjoyment which he became entitled to (but did not in fact) have, during the period for which he could have had it ;

(*c*) in the case of enjoyment which he could have become entitled to have by an exercise in the three years ending with the death of a power which was not in fact exercised or was surrendered, during the period for which he could have had it if he had acted as mentioned in sub-rule (4) of rule 7.

9. *Determination of net income or loss of company.*—(1) The income of the company for any accounting year, or for the period between the end of the last accounting year and the death of the deceased, shall, subject to sub-rules (2) and (3) of this rule, be determined by computing the aggregate income of the company from its various sources in accordance with the provisions of the Indian Income-tax Act, 1922, except for agricultural income which shall be computed separately according to sub-rule (4), provided that there shall be excluded from the computation of the income of the company any income thereof which was neither *bona fide* earned in the ordinary course of business nor the produce of income yielding assets held by it.

(2) The computation shall always be made by reference to the income for that year or period and not by reference to the income of any other period, notwithstanding anything in the Indian Income-tax Act, 1922, to the contrary.

(3) In making the computation, no deduction from the income of the company shall be made in respect of—

(*a*) the amount of any loss sustained before the beginning of that year or period, which is admissible under the provisions of sub-section (2) of section 24 of the Income-tax Act, 1922 ;

(*b*) the amount of any deduction admissible on account of depreciation under proviso (*b*) of clause (vi) of sub-section (2) of section 10 of the Indian Income-tax Act, 1922 ; or

(*c*) any dividend on shares of or interest on debentures in the company and liabilities incurred otherwise than for the purposes of the business of the company wholly and exclusively.

(4) The agricultural income of a company shall be computed in the manner provided in sub-section (2) of section 12 of the Indian Income-tax Act, 1922.

(5) There shall be deducted in arriving at the amount of the income any annual charge or interest not being interest on debentures, which would have been deducted irrespective of whether tax were recovered from it or not.

(6) Sub-rules (1), (2) and (3) shall apply with the necessary adaptations, to the determination of any loss sustained by a company as they apply to the determination of the net income of a company.

10. *Determination of value of assets of company.*—(1) In determining the value of the estate for the purpose of estate duty, the provisions of section 44 of the Act as to making allowance for debts and incumbrances shall not have effect as respects any debt or incumbrance to which assets of the company passing on the death by virtue of section 17 of the Act were liable, but the Controller shall make an allowance from the principal value of those assets for all liabilities of the company (computed, as regards liabilities which have not matured at the date of the death, by reference to the value thereof at that date, and, as regards contingent liabilities, by reference to such estimation as appears to the Controller to be reasonable) other than—

(*a*) liabilities in respect of shares in or debentures of the company ; and

(*b*) liabilities incurred otherwise than for the purposes of the business of the company wholly and exclusively.

(2) In estimating the principal value of the said assets the Controller shall fix the price thereof on the basis of a sale of the business of the company as a going concern.

(3) Where the said assets include any distributed assets, if partial consideration (other than the extinguishment, or an alteration, of rights attaching to shares in or debentures of a company to which section 17 of the Act applies) was given for the distribution in money or money's worth received by the company for its own use and benefit, a further allowance shall be made, in addition to the allowances specified in sub-rule (1) of this rule, of an amount equal to the value of the consideration given.

(4) For the purpose of the estimation of the principal value of any distributed assets section 36 of the Act shall have effect with the substitution for the reference therein to the time of the death of the deceased of a reference to the time of the distribution, and effect shall be given to the proviso to the said section 36 (which relates to depreciation by reason of the death of the deceased) as at the time of the distribution only, due regard being had to the expectation of life of the deceased at that time.

11. *Limitation on and prevention of duplication of charge.*—(1) If it is shown to satisfaction of the Controller that—

(*a*) the value of all such property as is mentioned in sub-section (1) of section 17 of the Act of which the deceased made a transfer

to the company, together with an amount equal to any excess of interest at the average rate on the value thereof from the date or respective dates of transfer to the death of the deceased over the aggregate amount of the benefit received by the deceased by virtue of the transfer, is less than—

(*b*) the value on which estate duty would be chargeable on the death under the said section if all benefits accruing to him from the company other than the benefits received by him by virtue of the transfer were disregarded,

an amount equal to the deficiency shall be deducted from the proportion of the value of the company's assets that corresponds to the benefits received by him by virtue of the transfer.

References in this sub-rule to benefits received by the deceased by virtue of a transfer shall be construed as references to benefits accruing to him from the company which he received or had as consideration for the transfer, or in consequence of his having received as consideration therefor shares or debentures or other property which produced any of those benefits.

(2) Where the following conditions are satisfied, that is to say, that the deceased has, within three years before his death, disposed of any shares in or debentures of the company for consideration in money or money's worth paid to him for his own use or benefit, and that any benefits accrued to the deceased from the company by virtue of those shares or debentures or by virtue of a power's having been exercisable by him or with his consent in relation to those shares or debentures, then—

(*a*) if the value of the said consideration is equal to or greater than the proportion of the value of the company's assets that corresponds to the benefit that so accrued to him, or if the Controller is satisfied that the said proportion would not, if fully ascertained, be found to be substantially in excess of the value of the said consideration, duty on the said proportion shall not be payable ;

(*b*) in any other case, the amount on which duty is to be charged in respect of the said proportion shall be reduced by the amount of the value of the said consideration ;

Provided that, in the case of any shares or debentures—

(i) this sub-rule shall not apply where estate duty is payable on the death on their value or any part thereof or would be so payable but for an exemption from estate duty ; and

(ii) for the purpose of determining to what extent, if any, the disposition of them satisfies the conditions, of this sub-rule, rule 16 of these Rules (which relates to transaction through the medium of a company) shall apply as it applies for the purposes of section 26 of the Act.

(3) Where the following conditions are satisfied, that is to say, that any benefits accrued to the deceased from the company by virtue of any interest that he at any time had in shares in or debentures of the company, or by virtue of a power's having at any time been exercisable by him or with his consent in relation to shares in or debentures of the company, and apart from this sub-rule estate duty would be payable on the death both on the value of those shares or debentures by virtue of any provisions other than section 17 of the Act, and on the proportion of the value of the company's assets that corresponds to the benefits that so accrued to him by virtue of that section then—

(*a*) if the value of the shares or debentures is equal to or greater than, the said proportion, or if the Controller is satisfied that the said proportion would not, if fully ascertained, be found to

be substantially in excess of the value of the shares or debentures, duty on the said proportion shall not be payable ;

(*b*) in any other case, the amount on which duty is to be charged in respect of the said proportion shall be reduced by the amount of the value of the shares or debentures.

(4) Where the conditions set out in the last preceding sub-rule would be satisfied but for the fact that, by reason of an exemption from estate duty (not being an exemption on the ground that the deceased or other person having an interest in the shares or debentures ceasing on the death of the deceased had only an interest as the holder of an office) estate duty is not payable on the value of the shares or debentures, paragraphs (*a*) and (*b*) of that sub-rule shall apply as if that exemption did not operate and as if the duty had been payable on the value of the shares and debentures accordingly :

Provided that where—

(*a*) the exemption in question depends on a payment of any duty on an earlier death, or does not depend on such a payment but depends wholly or partly on any dispositions having been made ; and

(*b*) since the date of that death or disposition, as the case may be, the shares or debentures have been substantially increased in value by reason of a transfer or property to any company by any person or by any reason of the extinguishment of, or any alteration of the rights attaching to, shares in or debentures of any company,

then, unless the exemption takes the form of a deduction from the value of the shares or debentures of a fixed amount which is independent of the value of the shares or debentures, the references in paragraphs (*a*) and (*b*) of the last preceding sub-rule to the value of the shares or debentures therein mentioned shall have effect as if they were references to the value thereof reduced to the extent to which, in the opinion of the Controller, that value is attributable to the transfer, extinguishment or alteration.

(5) Where, by reason of an exemption from estate duty, that duty is payable on part only of the value of the shares or debentures, sub-rule (3) of this rule shall, with the necessary adaptations, be applied to the part of the value of the shares or debentures on which duty is payable and sub-rule (4) of this rule shall be applied to the part of the value of the shares or debentures affected by the exemption ; and, where there are two or more exemptions from estate duty each of which operates on part only of the value of the shares or debentures and the exemptions are such that the said sub-rule (4) would operate differently in relation to them, then, whether or not there is any part of the value of the shares or debentures on which estate duty is payable, the said sub-rule (4) shall, with the necessary adaptations, be applied separately in relation to the parts of the value of the shares or debentures affected by each exemption.

(6) In this rule the expression " exemption from estate duty " includes any exemption conferred by any provision of the Act which has the effect of exempting property, in whole or in part, from the duty, whether that provision takes the form that the property is not to be deemed to pass, or the form that a deduction is to be made from the value of the property, or any other form ; and the reference in paragraph (*b*) of the proviso to sub-rule (4) of this rule to an increase in the value of shares or debentures includes, where those shares or debentures have been acquired in substitution for any other property, any increase in the value of any property which those shares or debentures directly or indirectly represent.

(7) References in this rule to the proportion of the value of the company's assets that corresponds to any particular benefits shall be construed as references to so much of the value on which estate duty is chargeable on the death by virtue of section 17 of the Act as is chargeable by reason of the bringing of those benefits into the computation made under sub-section (2) of that section.

(8) So much of any income or periodical payment or enjoyment of a kind mentioned in rule 3 of these rules as is shown to the satisfaction of the Controller to have represented, or to have been such that it would if received have represented, reasonable remuneration to the deceased for any services rendered by him as the holder of an office under the company shall, notwithstanding anything in that rule not be treated for the purposes of these rules as a benefit accruing to the deceased from the company ; and any liability of the company in respect of the remuneration of any person as the holder of an office under the company shall be treated for the purposes of these rules as incurred for the purposes of the business of the company wholly and exclusively to the extent to which it is shown to the satisfaction of the Controller that the amount thereof was reasonable and to that extent only.

(9) For the purposes of sub-rule (3) of this rule where the benefits that accrued to the deceased from the company in the relevant accounting years included benefits that accrued to him otherwise than as mentioned in that sub-rule but the deceased had at any time an interest in, or a power was at any time exercisable in relation to, shares in or debentures of the company in respect of which estate duty would be payable on his death apart from anything in that sub-rule and by virtue of that interest or power benefits accrued to the deceased from the company in those years, or would so have accrued to him if any payments had been made by virtue of rights attached to those shares or debentures, then—

(*a*) if the first mentioned benefits consisted to any extent of payments made out of moneys which, if not so applied, could have been applied in increasing the last mentioned benefits, or as payments which would have constituted such benefits ; or

(*b*) if the first mentioned benefits are brought into the computation made under sub-section (2) of section 17 of the Act to the exclusion to any extent of the last mentioned benefits ;

the first mentioned benefits shall to that extent be treated as if they had accrued to the deceased by virtue of his interest in, or of the power exercisable in relation to, the said shares or debentures.

12. *Adjustments as to distributed assets.*—(1) Where the assets of the company passing on the death of the deceased by virtue of section 17 of the Act include any distributed assets, or by reason of the company's having been wound up or dissolved before the death, consist of distributed assets, the following provisions of this rule shall have effect.

(2) The net income of the company shall be determined as if the income of the company had included, or the company had had income equal to, interest on a sum equal to the value of each distribution at the average rate from the date thereof.

(3) If on any distribution the deceased received beneficially an interest in any of the distributed assets, the benefits accruing to the deceased from the company shall be ascertained as if the amount brought into the income of the company under the last preceding sub-rule by reference to the value of the distribution of those assets had been income of the company which the deceased was entitled to receive immediately on its accrual to the company, or, where the interest in those assets which the deceased received was less than an absolute interest, had been such income to an extent corresponding

to the proportion which the value of the interest in those assets received by him bore to the value of those assets.

(4) Where sub-rule (3) of this rule has effect :—

(*a*) the value on which, apart from this provision, estate duty would be payable on the death of the deceased by virtue of section 17 of the Act shall be reduced by an amount equal to the value of the distribution of the assets in question, or, where the interest in those assets which the deceased received was less than an absolute interest, by an amount equal to the proportion aforesaid of that value ; and

(*b*) any amount which is treated as a benefit accruing to the deceased from the company by virtue of that sub-rule shall be treated for the purposes of sub-rule (1) of rule 11 of these Rules, as a benefit received by him.

13. *Adjustments as to additions to assets.*—(1) Where the principal value of the assets of the company passing on the death of the deceased by virtue of section 17 of the Act is increased by reason of an addition's having been made to the assets of the company, otherwise than by way of receipts representing income in respect of which the company was liable to pay or bear income-tax or super-tax between the beginning of the first of the relevant accounting years and the death of the deceased, either :—

(*a*) in consideration of an issue of shares in or debentures of the company, or

(*b*) otherwise, howsoever, except by way of purchase for full consideration in money or money's worth given by the company,

the following provisions of this rule shall have effect in relation to the added assets.

(2) The net income of the company shall be determined as if the income of the company had included interest on a sum equal to the value of the addition at the average rate from the beginning of the first of the relevant accounting years to the date of the addition.

(3) If a transfer of any of the added assets or of any interest in any of them was made to the company by the deceased, the benefits accruing to the deceased from the company shall be ascertained as if the amount brought into the income of the company under the last preceding sub-rule by reference to the value of the addition of those assets had been income of the company which the decreased was entitled to receive immediately on its accrual to the company, or had been such income to an extent corresponding to the proportion which the value of the interest transferred bore to the value of those assets, as the case may be.

(4) Where sub-rule (3) of this rule has effect, if the deceased received as consideration for the addition of the assets in question an interest in any shares in or debentures of the company in respect of which estate duty would be payable on his death apart from anything in sub-rule (3) of rule 11 of these Rules any amount which is treated as a benefit accruing to him from the company by virtue of that sub-rule shall be treated for the purposes of the said sub-rule (3) as a benefit accruing to him by virtue of his interest in those shares or debentures.

(5) In this rule the expression " value of the addition " means, in relation to any added assets, the value thereof or, if partial consideration (other than an issue of, or an alteration of rights attaching to, shares in or debentures of the company) was given therefor in money or money's worth out of the resources or at the expense of the company, the value thereof less the value of the consideration given.

14. *Accounting year.*—(1) The expression "accounting year" means if the company has, before the death of the deceased, made up accounts for a period of twelve months ending in the last year of his life, that period and each previous period of twelve months or other period ending on the date corresponding to that to which the accounts were made up, or, if not, a period of twelve months or other period ending on such date in the last year of his life as the Controller may determine and each previous period of twelve months or other period ending on the date corresponding to the date determined.

(2) The expression "relevant accounting years" means the accounting years by reference to which the extent of the passing of the assets of the company is to be determined under section 17 of the Act.

(3) Where an accounting year does not coincide with a period for which accounts of the company were made up, the Controller may, for the purpose of determining the net income of the company for that accounting year, divide any such period and make such apportionments and aggregations of the income of the company as may be necessary, so, however, that any apportionments so made shall be made in proportion to the number of months or fractions of months in the respective periods for which the apportionment is made.

15. *Valuation for estate duty of shares and debentures of certain companies.*—(1) Where for the purposes of estate duty there pass, on the death of a person shares in or debentures of a controlled company then if—

(*a*) the deceased had the control of the company at any time during the three years ending with his death ; or

(*b*) dividends which were declared by the company for any period falling wholly or partly within these three years, or which, not having been declared for any particular period, were declared at a time within those three years together with any amounts which accrued due during any period falling wholly or partly within those three years for interest on debentures of the company, are, as to amounts forming in the aggregate more than one-half of the total amount of such dividends and interest to be treated by virtue of any of the provisions of rules 5 and 6 of these Rules as benefits accruing to the deceased from the company, or would have fallen to be so treated if the deceased had made a transfer of property to the company ; or

(*c*) the deceased had at any time during those three years a beneficial interest in possession in shares in or debentures of the company, or in both, of an aggregate nominal amount representing one-half or more of the aggregate nominal amount of the shares in and debentures of the company then issued and outstanding, and no one other person had at that time the control of the company ;

the principal value of the shares or debentures, in lieu of being estimated in accordance with the provisions of sub-section (1) of section 36 of the Act shall be estimated by reference to the net value of the assets of the company in accordance with the provisions of the next succeeding sub-rule.

(2) For the purposes of such ascertainment as aforesaid :—

(*a*) the net value of the assets of the company shall be taken to be the principal value thereof estimated in accordance with sub-section (1) of section 36 of the Act less the like allowance for liabilities of the company as is provided by sub-rule (1) of rule 10 of these Rules in relation to the assets of a company

passing on a death by virtue of section 17 of the Act but subject to the modification that allowance shall be made for such a liability as is mentioned in paragraph (*b*) of that sub-rule unless it also falls within paragraph (*a*) thereof;

(*b*) the aggregate value of all the shares and debentures of the company issued and outstanding at the death of the deceased shall be taken to be the same as the net value of the assets of the company;

(*c*) in a case in which there are both shares in and debentures of the company issued and outstanding at the death, or different classes of either, the net value of the assets of the company shall be apportioned between them with due regard to the rights attaching thereto respectively; and

(*d*) the value of any share, or of any debenture, or of a share or debenture of any class, shall be a rateable proportion, ascertained by reference to nominal amount, of the net value of the assets of the company as determined under paragraph (*a*) of this sub-rule or, in the case mentioned in paragraph (*c*) of this sub-rule of the part thereof apportioned under that paragraph to the shares of the company, or to its debentures, or to that class thereof, as the case may be.

(3) For the purposes of this rule a person shall be deemed to have had control of a company at any time if he then had—

(*a*) the control of powers of voting on all questions or on any particular question, affecting the company as a whole which if exercised would have yielded a majority of the votes capable of being exercised thereon; or

(*b*) the capacity to exercise, or to control the exercise, of any of the following powers that is to say, the powers of a board of directors or of a governing director of the company, power to nominate a majority of directors or a governing director thereof, power to veto the appointment of a director thereof, or powers of a like nature;

or if he could have obtained such control or capacity by an exercise at that time of a power exercisable by him or with his consent.

(4) This rule shall not apply to the valuation of shares or debentures of a class as to which permission to deal has been granted by a recognised stock exchange and dealings in the ordinary course of business on that stock exchange have been recorded during the year ending with the death of the deceased, and, in making an opportionment under paragraph (*c*) of sub-rule (2) of this rule in the case of a company having shares or debentures of such a class, the part of the value of the assets of the company to be apportioned to shares or debentures of that class shall be determined by reference to the prices recorded on such dealings.

(5) Control of a company which a person had in a fiduciary capacity shall be disregarded for the purposes of this rule.

(6) In this rule references to the assets of a company shall be construed as references to the assets that it had at the death of the deceased.

16. *Limitation of exceptions for consideration, and for exclusion of deceased, where company concerned.*—(1) For the purposes of section 26 of the Act (which relates to exceptions for transactions for money consideration), if a controlled company was concerned in a transaction in relation to which it is claimed that the provisions of that section have effect, or in any one or more of associated operations of which that transaction formed one, those provisions shall have effect in relation thereto if and only, if, and to the extent only to which, the Controller is satisfied that those provisions would have had effect in the follow-

ing circumstances, namely, if the assets of the company had been held by it on trust for the members thereof and any other person to whom it is under any liability incurred otherwise than for the purposes of the business of the company wholly and exclusively, in accordance with the rights attaching to the shares in and debentures of the company and the terms on which any such liability was incurred and if the company had acted in the capacity of a trustee only with power to carry on the business of the company and to employ the assets of the company therein.

(2) Where a controlled company was concerned in the disposition or determination of an interest limited to cease on a death effected or suffered as mentioned in sub-section (2) of section 11 of the Act, or in a surrender made as mentioned in sub-rule (3) of rule 6 of these Rules or was concerned in any one or more of associated operations of which the disposition or determination or surrender formed one, the conditions as to the entire exclusion of the person who had the interest or of the deceased, and of any benefit to him, specified in the said sub-section (2) or in the said sub-rule (3) as the case may be, shall be treated as having been satisfied if and only if they would have been so treated in the circumstances aforesaid.

17. *What is Investment Company.*—For the purpose of clause (iv) of sub-section (4) of section 17 of the Act a company is an investment company if its income is derived mainly from investments in stocks, shares, bonds and debentures, that is to say, the income is of a nature which, if the company were an individual, would not be earned income as defined in clause (6AA) of section 2 of Indian Income-tax Act, 1922, provided that any income apportioned to the company under section 23-A of the Indian Income-tax Act, 1922, shall be deemed to be income of the company and to be its income from investment.

[No. 2-ED.]

R. K. DAS,

Secretary, Central Board of Revenue.

S.R.O. 1937.—The following draft of certain rules which the Central Board of Revenue proposes to make in exercise of the powers conferred by section 85 of the Estate Duty Act, 1953 (XXXIV of 1953) is published as required by sub-section (1) of that section for the information of all persons likely to be affected thereby, and notice is hereby given that the said draft will be taken into consideration on or after the 20th November, 1953.

2. Any objection or suggestion which may be received from any person with respect to the said draft before the date specified will be considered by the said Board.

DRAFT RULES

1. *Short title and commencement.*—(1) These rules may be called the Estate Duty Rules, 1953.

(2) They shall come into force from the 15th October, 1953.

PART I—PRELIMINARY

2. *Definitions and Interpretation.*—In these Rules unless the context otherwise requires—

(*a*) "the Act" means the Estate Duty Act, 1953.

(*b*) "accountable person" means any person accountable for the delivery of an account or payment of duty under the provisions of the Act.

(*c*) " duty " means estate duty leviable under the Act.

(*d*) " Income-tax Act " means the Indian Income-tax Act, 1922 (XI of 1922).

(*e*) " India " means the territories of India excluding the State of Jammu and Kashmir.

PART II—JURISDICTION OF CONTROLLERS

[Section 4 (2)]

3. The officers for the time being exercising the functions of

(i) the Commissioner of Income-tax,

(ii) the Inspecting Assistant Commissioner of Income-tax, and

(iii) the Income-tax Officer,

under the Income-tax Act shall be Controllers of Estate Duty, Deputy Controllers of Estate Duty and Assistant Controllers of Estate Duty (hereinafter in these rules referred to respectively as the Controller, Deputy Controller and the Assistant Controller) under the Act and shall, subject to rules 4 to 6, exercise the powers conferred on the Controller by the Act.

4. (1) Save as otherwise provided in these rules—

(i) every Assistant Controller, who is Income-tax Officer of Class II Service, shall exercise the functions of a Controller in respect of the estate of a deceased person where the principal value of the estate, as ascertained under the Act, does not exceed rupees one and a half lakh, if in respect of the assessment under the Income-tax Act of the deceased immediately before his death, he was exercising or would have exercised, had the deceased derived any taxable income, the functions of the Income-tax Officer under the Income-tax Act, or if the case of the deceased, whether before or after his death, is transferred to him for the purposes of assessment under the Income-tax Act ;

(ii) every Assistant Controller, who is Income-tax Officer of Class I Service, shall exercise the functions of a Controller in respect of the estate of a deceased person where the principal value of the estate, as ascertained under the Act, does not exceed rupees five lakhs, if in respect of the assessment under the Income-tax Act of the deceased immediately before his death, he was exercising or would have exercised, had the deceased derived any taxable income, the functions of the Income-tax Officer under the Income-tax Act, or if the case of the deceased, whether before or after his death, is transferred to him for the purposes of assessment under the Income-tax Act ;

(iii) every Deputy Controller shall exercise the functions of a Controller in respect of the estate of a deceased person where the principal value of the estate, as ascertained under the Act, exceeds rupees five lakhs but does not exceed rupees ten lakhs, if, in respect of the assessment under the Income-tax Act of the deceased immediately before his death, he was exercising or would have exercised, had the deceased derived any taxable income, the functions of the Inspecting Assistant Commissioner under the Income-tax Act, but if in respect of the case of the deceased he is or was himself exercising the functions of the Income-tax Officer under the Income-tax Act, he shall exercise the functions of the Controller, even if the principal value of the estate does not exceed rupees five lakhs ;

(iv) every Controller shall exercise his functions in respect of the estate of a deceased person where the principal value of the estate, as

ascertained under the Act, exceeds rupees ten lakhs, if, in respect of the assessment under the Income-tax Act of the deceased immediately before his death, he was exercising or would have exercised, had the deceased derived any taxable income, the functions of the Commissioner under the Income-tax Act.

(2) (i) Where an Assistant Controller who is Income-tax Officer of Class II Service, finds that the principal value of the estate exceeds rupees one and a half lakh, he shall transfer the case to the Assistant Controller who is Income-tax Officer of Class I Service, if there be one in the same station, and if there be no such Assistant Controller in the same station, he shall transfer the case to such Assistant Controller in the nearest station (within the jurisdiction of the Deputy Controller to whom the case would have been transferred under clause (ii) of this sub-rule).

(ii) Where an Assistant Controller finds that the principal value of the estate exceeds rupees five lakhs, he shall transfer the case to the Deputy Controller having jurisdiction under clause (iii) of sub-rule (1).

(iii) Where a Deputy Controller finds that the principal value of the estate exceeds rupees ten lakhs, he shall transfer the case to the Controller having jurisdiction under clause (iv) of sub-rule (1).

(3) (*a*) The Controller, the Deputy Controller or the Assistant Controller (who is Income-tax Officer of Class I Service) to whom the case of an estate has been transferred, shall take up the proceedings from the stage at which they stood immediately before such transfer, unless in his opinion a reconsideration of the proceedings taken before such transfer is necessary, and in any such case, he shall give the person accountable a reasonable opportunity of being heard.

(*b*) The aforesaid Controller, Deputy Controller, and the Assistant Controller, as the case may be, shall, after giving a hearing or re-hearing to the person accountable, if so demanded by that person, assess the duty payable.

(4) Where any proceeding under the Act has been commenced by an Assistant Controller, a Deputy Controller or a Controller, his jurisdiction in respect of such proceeding shall not be called into question by reason only of the fact that the principal value of the estate, as finally ascertained, happens to be more or less than the value specified in clauses (i) to (iv) of sub-rule (1).

5. Nothing in rule 4 shall be deemed to prevent an Assistant Controller, a Deputy Controller or a Controller who is not exercising the functions of the Income-tax Officer, the Inspecting Assistant Commissioner or the Commissioner, as the case may be, in respect of the assessment under the Income-tax Act of a deceased person, from exercising the functions of the Controller in respect of the estate of the deceased if the case relating to the estate is specifically assigned to him under the second proviso to sub-section (2) of section 4 of the Act.

6. (1) The Board may, at any stage of the proceedings relating to a case, transfer it from one Controller to another, and thereupon the provisions of sub-rule (3) of rule 4 shall, so far as may be, apply.

(2) Whenever a Controller ceases to exercise jurisdiction in respect of any proceeding under the Act and is succeeded by another Controller, who has and who exercises such jurisdiction, the Controller so succeeding may continue the proceeding from the stage at which it was left by his predecessor :

Provided that the person accountable may, when the succeeding Controller commences to exercise jurisdiction, demand that the previous proceeding or any part thereof taken before his predecessor be re-commenced or that before any order imposing the duty is passed, he be re-heard.

7. It shall be sufficient if the account required to be delivered in pursuance of the provisions of section 53 by a person accountable for estate duty, is delivered by him to the Assistant Controller, the Deputy Controller or the Controller, having jurisdiction under rule 4 or 5, as the case may be, in respect of the estate concerned.

8. A company or person under an obligation to give information to the Controller by virtue of sub-section (2) of section 18, or a company required to furnish particulars to the Controller by virtue of sub-section (1) of section 84 shall be deemed to have complied with the provisions of sub-section (2) of section 18 or of said sub-section (1) of section 84, as the case may be, if the information or particulars are furnished to the Assistant Controller or Deputy Controller who is exercising the functions of the Income-tax Officer in the case of the company.

PART III—DETERMINATION OF NATURE AND LOCALITY OF ASSETS

[Section 21 (2)]

9. *Determination of nature of property.*—The nature of assets which for the purpose of estate duty form or are deemed to form part of the property passing on death shall be determined in accordance with the following clauses, namely :—

(*a*) Immovable property includes land, water covering the land, buildings, rights to ways, lights, ferries or fisheries or any other benefit to arise out of land (other than the forms of benefit for which specific provision is made in these rules) and things attached to the earth or permanently fastened to anything which is attached to the earth, but does not include standing, growing trees, crops and grass.

Explanation.—Attached to the earth means—

(i) rooted in the earth, as in the case of trees and shrubs ;

(ii) imbedded in the earth, as in the case of walls or buildings ; or

(iii) attached to what is so imbedded for the permanent beneficial enjoyment of that to which it is attached.

(*b*) The interest of a mortgagee in immovable property other than a mortgagee who is entitled to possession of the property under the terms of the mortgage and is actually in possession of the property, is movable property.

(*c*) The share of a partner in a partnership shall be treated as an indivisible asset for the purpose of determination of its nature and locality. The share of a partner in a partnership is movable property, notwithstanding that the firm owns immovable property.

(*d*) The share or other interest of any member in a company is movable property, notwithstanding that the company owns immovable property.

(*e*) A debt or periodical payment secured by a charge on immovable property is movable property.

(*f*) The interest of a beneficiary in an unadministered estate is movable property.

(*g*) Movable property shall mean property of every description except property which is immovable under these rules.

10. *Location of movable property.*—The locality of movable assets which for the purpose of estate duty form or are deemed to form part of the property passing on death shall be determined in accordance with the following clauses, namely :—

(*a*) Rights or interests (otherwise than by way of security) in or over immovable property shall be deemed to be situated at the place where such property is situated;

(*b*) Rights or interests (otherwise than by way of security) in or over tangible movable property, other than such property for which specific provision is made herein and in or over bank or currency notes, other forms of currency recognised as legal tender in the place of issue, negotiable bills of exchange and negotiable promissory notes, shall be deemed to be situated at the place where such property, notes, currency or documents are situated at the time of death, or, if *in transitu*, at the place of destination ;

( ) Debts, secured or unsecured and whether under seal or not, excluding the forms of indebtedness for which specific provision is made in this rule, shall be deemed to be situated at the place where the debtor was resident at the time of death; provided that if the interest on such debt would be chargeable to income-tax under the Income-tax Act, it shall be deemed to be situated in India ;

(*d*) Bank accounts shall be deemed to be situated at the branch at which the account was kept ;

(*e*) Securities issued by any government, municipality or local authority shall be deemed, if in bearer form, to be situated at the place where they are situated at the time of death and, if inscribed or registered, to be situated at the place of inscription or registration ;

(*f*) Shares, stock, debentures or debenture stock in a company (including any such property held by a nominee, whether the beneficial ownership is evidenced by scrip certificates or otherwise) shall be deemed to be situated at the place where the company was incorporated ; except shares in a company liable to estate duty by virtue of sub-section (1) of section 84 of the Act ;

(*g*) Monies payable under a policy of assurance or insurance, whether under seal or not, shall be deemed to be situated at the place where the policy provided that the monies shall be payable or in the absence of any such provision, at the head office of the company ;

(*h*) Shares in a partnership shall be deemed to be situated at the place where the business is *principally* carried on ;

(*i*) Ships and aircraft and shares thereof shall be deemed to be situated at the place of registration of the ship or aircraft ;

(*j*) Goodwill as a trade, business or professional asset shall be deemed to be situated at the place where the trade, business or profession to which it pertains is carried on ;

(*k*) Patents, trade marks and designs shall be deemed to be situated at the place where they are registered ;

(*l*) Copyright, franchises, and rights or licences to use any copyrighted material, patent, trade mark or design shall be deemed to be situated at the place where the rights arising therefrom are exercisable ;

(*m*) Rights or causes of action *ex-delicto* surviving for the benefit of an estate of a deceased person shall be deemed to be situated at the place where such rights or causes of action arose.

11. *Location of immovable property.*—The locality of immovable assets which for the purpose of estate duty form or are deemed to form part of the property passing on death shall be determined in accordance with the following clauses, namely :—

(*a*) Tangible immovable property shall be deemed to be situated in India, if the property actually lies in India.

(*b*) Rights or interests in immovable property or benefits to arise out of immovable property, which are immovable property within the meaning of these rules, are situate in India, if the property to which the rights are attached or out of which the benefits arise, actually lies in India.

PART IV—PURCHASE OF ANNUITIES FROM RELATIVES

[Section 27]

12. *Purchase of annuities from relatives.*—(1) Subject to the provisions of this rule, the relief specified hereunder shall be granted where any estate duty becomes, or would but for this rule become, payable by virtue of section 27 of the Act.

(2) The sum on which estate duty would be payable apart from this rule on the death in respect of the property which was the subject-matter of the disposition or in respect of the property liable to a debt or encumbrance created by the deceased which was the subject-matter of the disposition, as the case may be shall first be computed and, subject to such limitations provided for by sub-rule (3) of this rule, there shall then be allowed as a deduction from that sum—

(*a*) the amount, if any, by which the aggregate of the payments which have been made on account of the annuity or other interest for the period from the date when the annuity or other interest began to accrue in favour of the deceased until his death, exceeds the aggregate of the income derived from the deceased by virtue of the disposition for the period from the date of the disposition until his death ; and

(*b*) simple interest on so much, if any, of the amount aforesaid and for such period, as, in the opinion of the Controller, is in all the circumstances just, at the rates from time to time payable during that period on estate duty in arrear.

The expression " aggregate of the income derived from the deceased by virtue of the disposition " means—

(i) in relation to so much of the property which was the subject-matter of the disposition as did not consist of a debt or encumbrance created by the deceased, such amount as, in the opinion of the Controller, is in all the circumstances equal to a reasonable return from the property ; and

(ii) in relation to so much of the property which was the subject-matter of the disposition as did consist of a debt or encumbrance created by the deceased, the aggregate amount of the interest paid or payable by the deceased in respect of that debt or encumbrance.

(3) The amount to be allowed as a deduction under sub-rule (2) of this rule shall in the circumstances mentioned hereunder be limited to the extent specified in this sub-rule. Further, the provisions of sub-section (1) of section 46 of the Act shall in the manner specified in this sub-rule have effect in relation to the computation of the amount allowed—

(*a*) Where, if

(i) the annuity payments had formed the consideration for a debt created by the deceased equal to the total amount of those payments ; and

(ii) section 44 of the Act (which provides for an allowance for debts in computing the amount on which the estate duty is payable) were applied to that debt,

the full amount of that debt would not, having regard to the operation of sub-section (1) of section 46 of the Act, have been allowable under section 44, the annuity payments shall, for the purpose of ascertaining the amount allowed, be reduced, so as not to exceed the amount, if any, which would have been allowable in the circumstances aforesaid under section 44 of the Act.

Provided that in applying the said section 46 for the purpose of this rule, property which is the subject-matter of the disposition shall not be treated as property derived from the deceased.

(*b*) Where, if section 27 had not been enacted and section 26 had been applied to the property which was the subject-matter of the disposition, a deduction would have been allowable under sub-section (2) of section 26 for partial consideration, the amount allowed shall not exceed the amount of that deduction.

(*c*) Where the amount allowed is allowed as a deduction from the value of property liable to a debt or encumbrance created by the deceased, it shall not exceed the amount, if any, which would be allowed under section 44 if section 27 had not been enacted.

(*d*) In this rule the expression " the annuity payments " means the payments specified in clause (*a*) of sub-rule (2) of this rule and the expression " the amount allowed " means the amount to be allowed as a deduction under this rule.

PART V—OBJECTS OF NATIONAL, SCIENTIFIC AND HISTORIC INTEREST OR OTHER DRAWINGS, PAINTINGS, ETC. RETAINED IN THE FAMILY

[Section 33 (1) (*i*) and (*j*)]

13. *Conditions for exemption.*—(1) Objects of national, scientific or historic interest or other drawings, paintings, etc. specified in clauses (*i*) and (*j*) of sub-section (1) of section 33 of the Act which are retained in the family of the deceased shall be exempt from the duty on an undertaking being given by such person as the Central Board of Revenue may think appropriate in the circumstances of the case that, until the objects again pass on a death or are sold—

(*a*) the objects will be kept permanently in India and will not leave it temporarily except for a purpose and a period approved by the Central Board of Revenue ; and

(*b*) reasonable steps will be taken for the preservation of the objects ; and

(*c*) reasonable facilities for examining the objects for the purpose of seeing the steps taken for their preservation, or for purposes of research or report will be allowed to officers of the National Museum, National Art Gallery, Department of Archaeology and the National Archives or to any person authorised by the Central Board of Revenue so to examine them ; and

(*d*) the objects will be dealt with or disposed of in accordance with the directions of the Central Government.

(2) In the event of the sale of any objects to which this rule applies estate duty shall, subject to as hereinafter provided, become payable on the proceeds of sale in respect of last death on which the objects passed at the rate appropriate to the principal value of the estate passing on that death and the persons by whom or for whose benefits the objects were sold shall be accountable for the duty and shall deliver an account for the purpose thereof within one month after the sale.

Provided that the duty shall not become payable as aforesaid if the sale is to Government or to any University or other public institution in India.

14. *Exceptions to undertaking.*—If on a claim for exemption under clauses (*i*) and (*j*) of sub-section (1) of section 33 of the Act it is made to appear to the Central Board of Revenue that any documents for which the exemption is claimed contain information which for person or other reason ought to be treated as confidential, the Central Board of Revenue may exclude those documents either altogether or to such extent as they think fit from any undertaking under sub-rule (1) of rule 13 so far as an undertaking relates to the examination of the documents for purposes of research.

15. *Effect of default in complying with the undertaking.*—(1) Where any objects are exempted from estate duty in pursuance of an undertaking under sub-rule (1) of rule 13 and the Central Board of Revenue are satisfied that at any time during the period for which the undertaking was given it has not been observed in material respect, then estate duty shall become payable on the value at that time of those objects in respect of the death on which the exemption was given and at the rate appropriate to the principal value of the estate passing on that death upon which estate duty would have been payable if they had not been objects to which clauses (*i*) and (*j*) of sub-section (1) of section 33 applies ; and any person who, if the objects were sold when the duty becomes payable, would be entitled to receive (whether for his own benefit or not) the proceeds of sale or any income arising therefrom shall be accountable for the duty.

(2) Where any objects are sold after becoming liable to estate duty under sub-rule (1) of this rule in respect of any death, the proceeds of the sale shall not be liable to estate duty in respect of the same death under sub-rule (2) of rule 13.

PART VI—VALUATION AND INSPECTION OF PROPERTY

[Section 41]

16. *Valuation.*—(1) Controller may accept the valuation as shown in the account delivered by the accountable person or may, if he is not satisfied with the valuation shown therein, either himself place a valuation thereon on his own estimate or appoint a person to appraise such properties and to set the valuation thereon. The cost of any such professional assistance shall be defrayed by the Government.

(2) The price or value at which a testator may have given by his will to a particular person the option to acquire a property will not be considered as a test of its market value.

(3) When a property has actually been sold within a short time after the death of the deceased under open market conditions, the gross sum realised shall be taken as the principal value and no deduction shall be made for the expenses of the sale.

(4) If the property is part of an unadministered estate or a share of property subject to a trust already in operation which involves conversion or if the property consists of certified chattels of national, historic or scientific

interest, a reasonable deduction for cost of sale may be allowed by the Controller in determining the value thereof.

(5) If the property consists of land containing minerals a separate value should be placed on the latter on the basis of a certificate by a qualified Mining Engineer.

(6) In the case of any agricultural land the principal value shall not ordinarily exceed twenty times of the annual value as assessed for the purpose of land revenue.

(7) In arriving at the market value of interests in expectancy, the following conditions shall be taken into account :—

(*a*) The age and state of health of the life the tenant, the contingency effecting the duration and effect of his interests and the possible cost of covering as interest by insurance.

(*b*) The estate duty and costs of realization and distribution payable when the interests fall into possession.

(*c*) The character of the assets and the possibilities of their appreciation or depreciation in value.

(*d*) The rate of interest, and officially recognised tables of mortality.

(8) Value of the dutiable property abroad should be calculated at the rate of interest on the date of death.

17. *Inspection.*—(1) Controller may by written order signed by him authorise any person to enter upon or inspect any property for the purpose of the Act.

(2) The person or persons having the custody or possession of the property shall permit the person so authorised to enter upon and inspect it on any day excluding Sundays and holidays under the Negotiable Instruments Act, 1881, at any time between 6 a.m. and 6 p.m.

PART VII—ALLOWANCE FOR DUTY PAID IN A NON-RECIPROCATING COUNTRY

[Section 49]

18. *Amount of allowance.*—Where any property liable to estate duty in India under the Act has been subjected to estate duty in any other country with which no arrangement has been made for avoidance or relief of double taxation with respect of estate duty, the amount to be allowed by the Controller under section 49 of the Act as a deduction from the value of the property shall be—

(*a*) the full amount of duty paid in the other country if the law in the other country relating to the determination of the situs of the property concerned for the purpose of imposition of the duty is the same as in India.

(*b*) Such amount as the Board may direct, in other cases.

PART VIII—PAYMENT OF DUTY

19. *Calculation and adjustment of duty.*—Duty shall, in the first instance, be calculated at the proper rate according to the principal value of the estate as set forth in the account delivered under section 53 or clause (*a*) of section 57 or prepared under sub-section (2) of section 61 of the Act but if, afterwards it is found that for any reason too little duty has been paid, the additional duty shall be payable and be treated as duty in arrear subject to the conditions specified in sub-section (2) of section 62.

20. *Method of paying duty.*—(1) Duty may be paid—

(*a*) by delivery of a cheque on a scheduled bank at the office of the Controller ;

(*b*) by delivery of a bank draft issued by a scheduled bank at the office of the Controller ;

(*c*) by depositing the amount of the duty to the credit of the Central Government at any Government treasury or sub-treasury, or at any branch of the Reserve Bank of India, or at any branch of the Imperial Bank of India or at any of its agency conducting Government treasury business or at any other bank authorised by the Central Government in this behalf.

[NOTE.—Where an amount is deposited under clause (*c*) above it should be accompanied by the appropriate treasury chalan of which the receipted portion will be returned to the tenderer.]

(2) The cheques and bank overdrafts shall be drawn in favour of the Reserve Bank of India and shall be crossed.

(3) Where a cheque has been delivered to the Controller the duty shall not, notwithstanding any receipt given therefor, be deemed to have been paid until the amount for which the cheque is drawn has been collected.

(4) Receipts for payment of duty shall be issued only by such persons as the Controller may authorise.

21. *Payment on account in respect of duty.*—A sum may be paid on account of duty at any time in the manner provided in the preceding rule, the cheque or the bank draft being accompanied by a letter stating the name and date of death of the deceased person and if known, the official reference No. of his estate. Similar letter shall be sent where the sum is deposited to the credit of the Central Government.

PART IX—DELIVERY AND PREPARATION OF ACCOUNTS

[Sections 53, 57, 61 and 72]

22. *Form of account.*—(1) The account required to be delivered under sub-section (3) of section 53 of the Act shall be in Form ED 1 appended to these rules, and the supplementary account mentioned in sub-section (4) of the said section shall be in the same form duly adapted to suit the requirements of the items included therein.

(2) The account to be annexed to the affidavit of valuation mentioned in clause (*a*) of section 57 of the Act shall also be in Form ED 1.

(3) The account mentioned in sub-section (2) of section 61 of the Act shall be in Form ED 1.

(4) All such accounts shall show the principal value of each item of property comprised in the estate with full details together with the basis of valuation. Such valuation may be ascertained by the accountable person either by estimating it himself or if ascertained with professional assistance, the certificate of the qualified valuer shall be appended.

(5) The Controller may at his discretion accept the Form of account substantially similar to the prescribed Form.

23. *Beneficiaries to account.*—Where the property of the deceased liable to duty has been distributed, each of the persons to whom the property has been distributed shall furnish a full and complete account of all the property received by him from the deceased.

24. *Copy of the will to accompany account.*—The accountable person shall furnish with the original account to be delivered under sub-rule (1) or (2) of rule 22 of these Rules, a certified copy of the will, if any, of the deceased and of codicils thereto.

25. *Account to be in duplicate.*—An account required to be delivered under any of the foregoing rules shall be in duplicate.

26. *Production of account.*—The accountable person shall produce or cause to be produced at the office of the Controller having jurisdiction over the

estate of the deceased, any book of account or document which may by a notice in writing be required by the Controller in connection with an account delivered under the provisions of the Act or these rules or for the purposes of assessment of the duty.

27. *Account when deemed to be duly delivered.*—An account shall be deemed to have been duly delivered to the Controller when—

(*a*) the prescribed Form signed by the accountable person and containing a full, true and complete statement of all matters and things required to be stated therein by the Act, these rules, the Controller and the form itself, and

(*b*) all documents and copies of which, by the Act, these rules, or the Controller are required to be furnished with the account,

have been received by the Controller or by an officer authorised by the Controller to receive them, and not otherwise.

PART X—MISCELLANEOUS

Certificate of Payment of Duty.

[Sections 60, 67 and 69]

28. *Form of application and certificate.*—(1) An application for a certificate under sub-section (5) of section 67 of the Act shall be in Form ED 2.

(2) A certificate under section 60 of the Act shall be in Form ED 3.

(3) A certificate under sub-sections (1), (2) and (3) of section 67 and under section 69 of the Act shall be in Form ED 4.

Recovery of Duty.

[Section 73]

29. *Duty to be recovered under certificate.*—(1) For the purpose of recovery of duty under section 73 of the Act, the Controller shall issue a certificate in writing to the effect that—

(*a*) the person named in the certificate is the executor or other person accountable or liable under the Act to pay the duty ;

(*b*) the amount of duty stated in the certificate includes duty payable in respect of the property mentioned in the certificate ;

(*c*) notice of the duty payable was duly served on the person named in the certificate ;

(*d*) the sum named in the certificate was, at the date of the certificate, due to the Government of India in respect of duty.

(2) In this rule the expression " duty " includes any interest or penalty payable under the Act.

Particulars to be Furnished by a Company Regarding a Deceased Member.

[Section 84]

30. *Particulars to be furnished by a foreign company.* For the purposes of section 84 of the Act, a company to which that section applies shall furnish to the Controller a statement showing the following particulars :—

(1) Name of the deceased member.

(2) Last known address.

(3) Date of death.

(4) Date of lodgment or notification of probate or letters of administration or of notice of death.

(5) Description of the shares and/or stocks held in the company by the member at the time of his death.

(6) No. of such shares and/or stocks with distinctive No. of stock or share certificates.

(7) Nominal value of the shares and stocks.

(8) Market value per share or stock at date of death.

(9) Basis of valuation.

(10) Total value of holding.

(11) Names and addresses of trustees, administrators or any other legal representatives.

31. *Particulars to be furnished by an Indian company.*—Where a company formed and registered under the Indian Companies Act, 1913 (VII of 1913) has come to know through any of its principal officers, of the death of any of its members, it shall within one month of the receipt of such knowledge, furnish the following particulars to the Assistant Controller or the Deputy Controller, who is exercising the functions of the Income-tax Officer in the case of the company—

A. *Where any transfer of a part or whole of the stocks and shares standing in the name of the deceased has been registered by the company because it was satisfied that the transferee had acquired such shares for valuable consideration—*

(i) name and address of the deceased member in whose name the shares stood ;

(ii) name and address of the transferee ;

(iii) description of the shares transferred (with distinctive numbers) ;

(iv) nominal value of the shares transferred ;

(v) amount of consideration paid by the transferee ;

(vi) name and address of the seller to whom or of the broker through whom, the consideration was paid ;

(vii) description of any other shares still standing in the name of the deceased on the date of furnishing the particulars.

B. *Where no transfer of any shares standing in the name of the deceased has been registered on the date of furnishing the particulars—*

(i) name and address of the deceased member ;

(ii) description (with distinctive numbers) of stocks and shares standing in the name of the deceased ;

(iii) nominal value of the stocks and shares held ;

(iv) estimated market value thereof on the date of the death of the deceased ;

(v) name and address of the trustee, administrator or other legal representative of the deceased ;

(vi) whether any application has been received from any person for the transfer of such shares ;

(vii) if so, name and address of the person who has applied for transfer.

FORMS

E.D.—1 ESTATE DUTY

[See rule 22]

GOVERNMENT OF INDIA

In the Office of the Controller of Estate Duty, Range/Circle.....

NOTE.—Form IE issued herewith contains the notes to which reference is made in this Form by numbers or letters enclosed in brackets.

In the estate of.....deceased.

I/We(1).....make oath/affirm and declare as follows :—

1. I am/we are the person/persons liable under the Estate Duty Act, 1953, to deliver an account of the estate of the above-mentioned deceased and to pay the duty thereon under the said Act.

2. That the deceased died on the.....day of.....19..... at.....and was aged.....years. He/She was at the time of death domiciled in(2).....

3. The First Part of the ACCOUNT No. 1, hereto annexed, is a true account of the particulars and value, as at the date of the deceased's death, so far as I/we have been able to ascertain the same, of all the movable property of the deceased, whether in possession or reversion, within the States of India except Jammu and Kashmir, exclusive of what the deceased may have been possessed of or entitled to as a trustee and not beneficially, but including any such movable property over which the deceased had and exercised by will a general power of appointment.

The gross value thereof, as at the date of the deceased's death, was Rs..... as per Account No. 1 (First Part).

4. The Second Part of the ACCOUNT No. 1, hereto annexed, is a true account of the particulars and value, as at the date of the deceased's death, so far as I/we have been able to ascertain the same, of all the immovable property, situate in the States of India except Jammu and Kashmir, to which the deceased was entitled for an interest not ceasing on his/her death, including any immovable property over which the deceased exercised by will a general power of appointment, but exclusive of property which the deceased may have been possessed of or entitled to as a trustee and not beneficially.

The gross value thereof, as at the date of the deceased's death, was Rs.....as per Account No. 1 (Second Part).

5. The Third Part of the ACCOUNT No. 1 hereto annexed is a true account of the particulars and value as at the date of the deceased's death, so far as I/we have been able to ascertain the same, of all agricultural lands situate in the States of India except Jammu and Kashmir, to which the deceased was entitled for an interest not ceasing on his/her death including any agricultural lands over which the deceased exercised by will a general power of appointment but exclusive of agricultural lands which the deceased may have been possessed of or entitled to as a trustee and not beneficially.

6. The Fourth Part of the ACCOUNT No. 1 hereto annexed is a true account of the particulars and value as at the date of the deceased's death, so far as I/we have been able to ascertain the same, of cesser of interest in joint property of a Hindu family governed by Mitakshara, Marumakkattayam or Aliyasantana law situate in the States of India except Jammu and Kashmir.

7. The ACCOUNT No. 2(3) hereto annexed, is a true account of the particulars and gross value, as at the date of the deceased's death, so far as I/we have been able to ascertain the same, of all the movable property of the deceased, whether in possession or reversion, situate out of the States of India except Jammu and Kashmir, exclusive of what the deceased may have been movable property over to as a trustee and not beneficially, but including any such movable property over which the deceased had and exercised by will a general power of appointment.

8. There was(4).....other movable property of which the deceased was at the time of his/her death competent to dispose within the meaning of sub-section (1) of section 3. The particulars and value thereof, as at the date of the deceased's death, so far as I/we have been able to ascertain the same, are truly set forth in the ACCOUNT No. 3 (*a*) hereto annexed.

9. The deceased had(5).....general power..... .....to charge money on immovable property. The particulars of such power are set forth in the ACCOUNT No. 3 (*b*) hereto annexed.

10. (6) I/We have not been able to ascertain the precise amount or value of the movable property referred to in Exhibit.....annexed to ACCOUNTS Nos. 1, 2, 3 (*a*) and 3 (*b*), although I/we have made the fullest

possible enquiries, but so far as the amount and value can now be estimated, they are stated in the ACCOUNT(S) No.(s).....by reference to the said Exhibit, which contains all the particulars of such property known to me/us. I/We undertake, as soon as the amount and value are fully ascertained, to bring in a full account thereof and to pay both the additional duty (if any) payable thereon for which I/we am/are or may be liable, and any further duty, payable by reason thereof, for which I/we am/are or may be liable on the other property mentioned in this declaration.

11. The First Part of the SCHEDULE No. 1, hereto annexed, contains a true and particular list of the debts due and owing from the deceased at the time of his/her death to persons resident within the States of India except Jammu and Kashmir, or due to persons resident out of the said States, but contracted to be paid in any such State or charged on property situate within any such State, with the names and addresses of the several persons to whom the same are respectively due, and the descriptions and amounts of such debts.

The Second Part of the said Schedule contains a true and particular statement of the allowances under section 44, on account of debts by way of dower, payable out of the estate of the deceased.

The Third Part of the same Schedule contains true account of the funeral expenses of the deceased.

12. The SCHEDULE No. 2([3]) hereto annexed contains a true and particular list of the debts due and owing from the deceased at the time of his/her death to persons resident out of the State of India except Jammu and Kashmir (other than debts contracted to be paid in any such States, or charged on property situate within any such States, which have been entered in the SCHEDULE No. (1) with the names and addresses of the several persons to whom the same are respectively due, and the descriptions and the amount of such debts. The SCHEDULE No. 2 contains also a true statement of the amount of any duty payable in any foreign country by reason of the deceased's death in respect of property situate in that foreign country, and included in the ACCOUNT No. 2.

13. The said debts in the said SCHEDULES Nos. 1 and 2 are payable by law out of property comprised in the said ACCOUNTS Nos. 1 and 2 respectively. They were incurred by the deceased *bona fide* for full consideration([7]) in money or money's worth wholly for the deceased's own use and benefit. They are not, nor are any of them, debts which are primarily payable out of any immovable property([8]) or debts in respect whereof there is a right to reimbursement from any other property or person([9]).

14. The SCHEDULE No. 3, hereto annexed, contains a true and particular list of the debts and encumbrances which were subsisting charges at the deceased's death on the immovable property except agricultural land comprised in the said ACCOUNT No. 1 or on some part or parts thereof, with the particulars of the instruments by which the debts and encumbrances were secured or created, and the names and addresses of the several persons to or in whom the said debts and encumbrances are now due or vested.

The said debts and encumbrances were incurred or created by the deceased, or by some one or more of his/her predecessors in title. In so far as they were incurred by the deceased, or were created by a disposition made by him/her, they were incurred or created *bona fide* for full consideration in money or money's worth, wholly for the deceased's own use and benefit, and they take effect out of his/her interest. The said debts and encumbrances are not, nor are any of them, primarily chargeable upon any other property, and they are not debts or encumbrances in respect whereof there is a right to reimbursement from any other property or person([9]).

15. Schedule No. 4 hereto annexed contains a true and particular list of the debts and encumbrances which were subsisting charges at the deceased's death on the agricultural lands comprised in the said ACCOUNT No. 1 or on some part or parts thereof, with the particulars of the instruments by which debts and encumbrances were secured or created and the names and addresses of the several persons to or in whom the said debts and encumbrances are now due or vested.

The said debts and encumbrances were incurred or created by the deceased, or by some one or more of his/her predecessor in title. In so far as they were incurred by the deceased or were created by a disposition made by him/her they were incurred or created *bona fide* for full consideration in money or money's worth, wholly for the deceased's own use and benefit, and they take effect out of his/her interest. The said debts and encumbrances are not, nor are any of them, primarily chargeable upon any other property and they are not debts or encumbrances in respect whereof there is a right to re-imbursement from any other property or person.

16. That the deceased made no gifts in contemplation of death,(10) save those described and valued in Exhibit.....which have been entered in ACCOUNT No.....

17. That the deceased made no disposition of property within two years of his death purporting to operate as an immediate gift *inter vivos* whether by way of transfer, delivery, declaration of trust, settlement upon persons in succession, or otherwise, save (10) those prescribed and valued in Exhibit..... .....which have been entered in ACCOUNT(S) No.(s).....

18. That the deceased made no disposition of property at any time in respect of which the donee did not assume *bona fide* possession to the immediate and entire exclusion of the donor, or where a benefit was reserved or secured to the deceased by contract or otherwise save those described and valued in Exhibit....., which have been entered in ACCOUNT(S) No.(s).....

19. That there is no other property falling under the following descriptions(10) save those described and valued in Exhibit....., which have been entered in the appropriate accounts as indicated in Exhibit.....

(*a*) Property in which the deceased or some other person had an interest which ceased on the death of the deceased.

(*b*) Property which the deceased had enjoyment of or interest in for life, or for some period determinable by reference to his death, under an expressed or implied trust in a settlement made by himself.

(*c*) Property which the deceased caused to be vested in himself and some other person jointly either by disposition, or purchase, so that the other person takes by survivorship.

(*d*) The deceased's severable share of property of which he was a joint tenant or joint owner with another or others.

(*e*) Policies which the deceased effected on his life, and kept up wholly or partly for the benefit of a donee, whether nominee or assignee.

(*f*) Annuities or other interests which the deceased either alone or by arrangement with any person purchased or provided, including annuities purchased or provided wholly or partially by some person who was at any time entitled to any property derived from the deceased.

(*g*) Gifts by way of creation of a burden or release of a right.

20. That to the best of my/our knowledge and belief there is no other property under any title whatsoever in respect of which duty is chargeable on the death of the deceased.

I/We(11).....swear/affirm that the statements in paragraphs.....are true, and that the statements in paragraphs..... .....are made upon information received by me/us and solemnly and sincerely believed to be true.

Signed.....

Signed.....

Declared on oath on affirmation

before me this .....day of.....19....
at (place) by the above named.....who is/are personally known to me.
identified by

*Signed.....

Designation.....

* This may be sworn or affirmed before any Magistrate or other Court, or before a person having by law authority to receive evidence. The designation of the Magistrate, Court or person should be added below the signature.

ACCOUNT No. 1—(FIRST PART)

Movable Property situate in the States of India except Jammu and Kashmir

	Nominal value of Securities	Market price of Securities at the date of death	Gross principal value at the date of death
	Rs.	Rs.	Rs.
Stocks, Bonds or Funds (including Treasury Bills) of the Central Government or State Governments, as per Form 1A annexed.			
Stocks, or other Securities of local authorities in India, as per Form 1A annexed.			
Stocks, Bonds, Funds, etc., of other Governments or Foreign countries, and Stocks, Debentures, or Bonds of Municipal or other Corporations, or Public Authorities, etc., in Foreign countries, as per Form 1A.			
Stocks, Shares, Bonds, or Debentures, of Companies, as per Form 1A annexed (A). (The denomination of each share or stock unit should be stated).			

Uncashed dividends and interests, dividends declared, and interest accrued due, in respect of the above investments, to date of death, as per statement annexed (B).

	Gross principal value at the date of death. Rs.
Money in hand or house	
Money in Bank (C) { (1) On current account, including accrued interest } as per statement annexed	
{ (2) on deposit, including accrued interest ... ... }	
Money at the Post Office or other Savings Bank ; Building of Co-operative Society, etc., as per statement annexed.	
Money out on mortgage, and interest thereon to date of death, as per statement annexed.	
Money out on bonds, bills, promissory notes and other securities, and interest thereon to date of death, as per statement annexed.	
Book debts, as per statement annexed. Other debts, as per statement annexed.	
Unpaid purchase money of movable and leasehold property contracted in lifetime of the deceased to be sold, as per statement annexed.	
Deceased's interests in proceeds of sale of immovable property subject to a trust for sale, whether actually sold or not, as per statement annexed (D).	
Property over which the deceased had and exercised by will a general power of appointment, as per statement annexed (D).	
Property over which the deceased had, but did not exercise, a general power of appointment; and which, by default of exercise of the power of appointment, belonged to the deceased absolutely, as per statement annexed (D).	
Policies of insurance and bonuses (if any) thereon, on the life of the deceased, as per statement annexed.	
Household goods, furniture, books, plate, any wearing apparels including any precious or semiprecious stones or ornaments sewn into the wearing apparel, etc. (E). { If sold, realised gross Rs. ... / If unsold, estimated at Rs. ...	
Jewellery, watches, trinkets, etc.(E). { If sold, realised gross Rs. ... / If unsold, estimated at Rs. ...	
Motor cars, carriages, horses, harness saddlery, etc.(E). { If sold, realised gross Rs. ... / If unsold, estimated at Rs. ...	
Stock in trade, live and dead farming stock, implements for agricultural purposes, etc. { If sold, realised gross Rs. ... / If unsold, estimated at Rs. ...	
Goodwill of business { If taken over at a price Rs. ... / If valued according to custom of trade. Rs. ... / If neither, estimated at Rs. ...	
Profits of business from..... 19.....to date of death ...	
Ships and shares of ships registered at ports in India, as per statement annexed (F).	
Profits of same to date of death, (G) estimated at	
The deceased's share in movable and immovable property as a partner in the firm of..... as per balance sheet annexed, signed by the surviving partners. ...	
If a balance sheet is not available, estimated at	
Leasehold property for years, as per form 1B. { If sold, realised gross Rs. ... / If unsold, estimated at Rs. ...	
(Mortgages on the leasehold property should be deducted by inclusion in Schedule No. 1)	
Rents of the deceased's own immovable and leasehold property due prior to the death, but not received by the deceased, (G) estimated at	Rs.
Apportionment of the rents of the deceased's immovable and leasehold property to date of death, (G) estimated at	Rs.
Income accrued due, but not received prior to the death, arising from immovable and movable property in which the deceased had a life or other limited interest, *viz.*, (D).	Rs.
Apportionment of income from such source to date of death	Rs.
Any other income apportioned where necessary, to which the deceased was entitled at his death (*e.g.* pensions, annuities, director's fees, etc.), as per statement annexed	Rs.
Any interests in expectancy, as per statement annexed (J)	Rs.
Other movable property not comprised under the foregoing heads, *viz.* ...	Rs.
Gross Movable Property ...	
Carried to item 1 of the summary.	

ACCOUNT No. 1 (SECOND PART)

Immovable Property except agricultural lands situate in the States of India except Jammu and Kashmir.

Each item of property should be listed and particulars should be given in Form 1B in respect of lands and any interest in expectancy in immovable property should also be stated (K).	Gross annual value at the date of death	Gross principal value at the date of death
	Rs.	Rs.
Gross Value		Carried to item XI of the summary.

To be signed by the person(s) making oath or affirmation.

ACCOUNT No. 1 (THIRD PART)

Agricultural lands situate in the States of India except Jammu and Kashmir.

Each item of agricultural lands shall be listed and particulars should be given in Form 1C, in respect of agricultural lands and any interest in expectancy in agricultural lands should also be stated.	Gross annual value at the date of death	Gross principal value at the date of death
	Rs.	Rs.
Gross Value		Carried to item XIV of the summary.

To be signed by the person(s) making oath or affirmation.

ACCOUNT No. 1 (FOURTH PART)

Cessor of interest in joint family property of a Hindu family governed by Mitakshara/Marumakkattayam/or Aliyasantana law

Principal value of the family property (Each item of the property should be listed and particulars should be given in Form 1D in respect of all properties belonging to the joint family with details of any gifts, transfers, settlements or trusts, etc., made by the family within 2 years of the death of the deceased)	Deceased's interest therein	Value of the deceased's interest ceasing. (Carried to item No. IX of the summary)
1	2	3

Name of the karta of the family	Names of the members of the family who would be entitled to a share if partition took place immediately before death of the deceased and their share	Age of the deceased	If the deceased was below 18 years of age, whether a lineal male ascendant of the deceased was a co-parcener in the family
4	5	6	7

To be signed by the person(s) making oath or affirmation.

ACCOUNT No. 2

Movable Property situate outside the States of India except Jammu and Kashmir, which is not saleable or transferable in any such States.

Note.—Property saleable or transferable in such States should be included in Account No. 1.

Particulars of the Property	Local situation	Principal value at date of death
		Rs.
	Gross Value	Carried to item VI of the summary

To be signed by the person(s) making oath or affirmation.

ACCOUNTS Nos. 3(*a*) and 3(*b*)

3(*a*).—An account of the movable property other than that in Accounts Nos. 1 and 2, of which the deceased at the time of death was competent to dispose within the meaning of section 3 (1).

3(*b*).—An account of money which the deceased had, at the time of death, a general power to charge on immovable property whether the power was exercised by will or not.

Short material particulars of disposition conferring the power	Particulars of Full particulars leaseholds for should be	Property. of any years separately stated	Principal value at date of death
			Rs.
3(*a*)			
	Gross Value		
Deduct—Debts and encumbrances upon leaseholds, as per statement annexed.			
	Net Value		
3(*b*).—(i) Where the power was exercised (as per statement annexed) ...			
(ii) Where the power was not exercised (as per statement annexed) ...			
	TOTAL of 3(*a*) and 3(*b*) carried to item VIII of the summary.		

To be signed by the person(s) making oath or affirmation.

SCHEDULE No. 1 (FIRST PART)

An Account of the debts (including mortgage debts secured on leasehold property) due and owing from the deceased to persons resident within the States of India except Jammu and Kashmir or due to persons resident out of the said States but contracted to be paid in any such State, or charged on property situate within any such State.

(Where the debts on the deceased's movable property exceed the value thereof, and the deficiency is a proper deduction for Estate Duty purposes against the deceased's immovable property, deduction of such deficiency may be taken in Schedule No. 3.)

Name and address of creditor	Description of debt (including date and short particulars of any security for the debt)	Amount
(1)	(2)	(3)
Read Notes (H) and (L)		Rs.
	Total, First Part	

SCHEDULE No. 1 (SECOND PART)

A statement of the allowances claimed under clause (*d*) of section 44 on account of debt by way of dower.

	Amount
	Rs.

SCHEDULE No. 1 (THIRD PART)

An account of the funeral expenses of the deceased.

	Amount (actual or Rs. 1000 whichever is less.)
	Rs.
Total First, Second and Third Parts.	

To be signed by the person(s) making oath or affirmation.

SCHEDULE No. 2

An account of the debts due and owing from the deceased to persons resident out of the States of India except Jammu and Kashmir, other than debts contracted to be paid in any such State, or charged on property situate within any such State, which have been entered in the Schedule No. 1.

Name and address of creditor (1)	Description of debt (including date and short particulars of any security for the debt) (2)	Amount (3)
Read Note (M)		Rs.
	TOTAL...	

To be signed by the person(s) making oath or affirmation.

SCHEDULE No. 3

*An account of the debts and encumbrances upon the immovable property in Account No. 1.

(Where the debts on the deceased's immovable property exceed the value thereof, and the deficiency is a proper deduction for Estate Duty purposes against the deceased's movable property, deduction of such deficiency may be taken in Schedule No. 1).

Nature of debt or encumbrance and by whom created Rs. (1)	Short material particulars of security with date of, and names of parties to, any deed (2)	Short particulars of property charged to identify it in above account (3)	Names and addresses of persons to or in whom the debt or encumbrances is now due or vested (4)	Amount of debt or encumbrances (5)

*Read Notes (H) and (L).
To be signed by the person(s) making oath or affirmation.

SCHEDULE No. 4

An account of the debts and encumbrances upon agricultural lands in Account No. 1.
(Where the debts on the deceased's agricultural lands exceed the value thereof, the deficiency is a proper deduction for Estate Duty purposes against the deceased's other immovable or movable properties, deduction of such deficiency may be taken in appropriate Schedule).

Nature of debt or encumbrances and by whom created (1)	Short material particulars of security with date or and names of the parties to, any deed (2)	Short particulars of the agricultural lands charged to identify it in the above account (3)	Names and addresses of persons to or in whom the debt or encumbrances is now due or vested (4)	Amount of debts or encumbrances (5)
			TOTAL...	

To be signed by the person(s) making oath or affirmation.

SUMMARY

		Rs.	Rs.	Rs.
I.	Gross movable property in Account No. 1 (First Part).			
II.	*Deduct.*—Total of Schedule I			
III.	Net movable property in Account No. 1			
IV.	Gross movable property in Account No. 2			
V.	*Deduct.*—Total of Schedule No. 2 ...			
VI.	Net movable property in Account No. 2			
VII.	Net movable property in Account Nos. 1 and 2 (Total of III and VI) ...			
VIII.	Net movable property in Account Nos. 3 (*a*) and 3 (*b*)			
IX.	Co-parcenary interest in HUF ceasing Account No. 1 (Fourth Part) ...			
X.	Net movable property in Account Nos. 1, 2, 3(*a*) and 3(*b*) (Total of VII and VIII)			
XI.	Gross immovable property except agricultural land in Account No. 1 (Second Part)			
XII.	*Deduct.*—Total of Schedule No. 3 ...			
XIII.	Net immovable property in Account No. 1			
XIV.	Gross agricultural land in Account No. 1 (Third Part)			
XV.	*Deduct.*—Total of Schedule No. 4 ...			
XVI.	Net agricultural land in Account No. 1...			
XVII.	Net movable and immovable property (Total of X, XIII and XVI) ...			
	Exemptions claimed (N).			

FORM 1-A. ESTATE DUTY

E.D.-1.

Statement of Stocks and Shares to accompany the Estate Duty Account.

Amount of stock or No. of shares	Name of company, followed by full description of holding	Nominal value of holding	Market price at date of death	Principal value at date of death
1	2	3	4	5

To be signed by the person(s) making oath or affirmation.

FORM 1 B ESTATE DUTY

E.D.-1.

Statement of Immovable (and/or, Leasehold Property excluding agricultural lands.)

Identification No.	Description of property including situation (If the property is leasehold for years, the unexpired term, as at the date of death of the deceased, should be stated.) NOTE.—The description and situation of the property should be such as to enable it and its boundaries to be clearly identified.	Rental if let Rs.	If unlet, the gross annual value Rs.
1	2	3	4

Nature of deductions from gross annual value	Amount of annual deductions Rs.	Net annual value Rs.	Estimated principal value as at date of death, and, if since sold, gross amount realised and date of completion of sale. Rs.
5	6	7	8

To be signed by the person(s) making oath or affirmation.

FORM 1 C ESTATE DUTY

E.D.-1.

Statement of Agricultural lands in the State of India except Jammu and Kashmir.

NOTE.—(1) Several allotments of land forming one property or managed as one estate should be entered as one item.

(2) If lands are distributed over different States, the aggregate of such lands in each State should be shown separately.

Description and situation					Deceased's share	Nature of the crop (paddy, jute, etc.)	Total acreage
Name of the State	Name of the District	Name of the Police station	Touzi No. or Name of Pargana	Identification No. or No. of Plots under settlements records			
1	2	3	4	5	6	7	8

Crop for 1 year to date of death	Rental if let	If unlet the gross annual value	Annual deduction if any	Net annual value	Land revenue payable	Estimated principal value as at date of death and if since sold, gross amount realised and date of sale	Basis of valuation
9	10	11	12	13	14	15	16

To be signed by the person(s) making oath or affirmation.

FORM 1 D ESTATE DUTY

E.D.-1.

Statement of the property of the Hindu undivided family governed by Mitakshara, Marumakkattayam or Aliyasantana law of which the deceased was a co-parcener, as at the date of death.

Details of			
Movable property		Immovable property situated in India	Gross value of the estate
situated in India	situated outside India		
1			2

Gifts or dispositions *bona fide* made by the Family within 2 years of the death of the deceased purporting to operate as an immediate gift *inter vivos* whether by way of transfer, delivery, declaration of trust, settlement upon persons in succession, or otherwise.	Details of debts and encumbrances	Net value
3	4	5

To be signed by the person(s) making oath or affirmation.

E.D.-1. FORM 1 E

Notes to which reference is made in Form E.D.-1 by numbers or letters enclosed in brackets.

(1) Insert the name, full address and description of each person who joins in the declaration.

(2) Where it is claimed that the deceased was domiciled outside the States of India except Jammu and Kashmir at the time of his death, insert the name of the country or the State in which he is considered to have been domiciled. The circumstances relied upon to establish such domicile should be set out in a statement attached to the declaration. The domicile of origin should always be given.

(3) Where the deceased died domiciled out of India, the Account No. 2 and Schedule No. 2 should not be filled in.

(4) Insert " no " if the fact is so, and strike out all words after " section 3 ".

(5) Insert " a " or " no " or add " s " to " power ", as the fact may require, and if " no ", strike out all remainder of paragraph after " property ". The paragraph does not refer to the deceased's power in right of ownership to charge money on his own immovable property.

(6) Strike out paragraph if inappropriate.

(7) Where the consideration for the debt, either consisted of property derived from the deceased, or was given by any person who was at any time entitled to, or amongst whose resources there was at any time included, any property derived from the deceased, particulars should be furnished.

(8) A mortgage debt not created by the deceased himself but charged on immovable property which was acquired by the deceased subject to the mortgage is primarily payable out of such immovable property.

(9) If there is a right to reimbursement but it cannot be obtained, adapt the paragraph. A debt for payment of which the deceased was surety only must not be deducted, unless the amount guaranteed has ripened from a mere liability into a debt and is actually recoverable from his estate.

(10) Adapt as the circumstances require.

(11) Insert the name of each deponent.

(A) Where securities have been valued according to the official list of a recognized stock exchange, a copy of that list should be attached, but where there is no official market quotation the estimate of principal value should be supported by other published quotations or brokers' certificates, or letters from the secretaries of the companies.

Any such certificate or letter should show either the date, price and amount of recent sales in the open market, or particulars of the last three years' divideds ; no apportionment of the dividend is necessary ; where they are " ex-divided", the valuation.

If there have been no such recent sales, the date, price and amount of the last sale in the open market should be given.

If any bonus has been distributed, the fact should also be stated.

(B) Where the securities are " cum dividend " on the day of the deceased's death, no apportionment of the dividend is necessary ; where they are " ex-divided ", the whole of the dividend valued as on that day should be included.

(C) The name or names of the banks should be stated.

(D) If the interest or power was derived under a will or intestacy, state name and date of death of the testator or intestate, but, if under a deed, state the date, together with names and addresses of the trustees, and if the deed has been already produced give the official reference appearing upon it.

(E) A valuation should normally be annexed ; details and individual values of items valued at Rs. 500 and upwards should be given.

(F) A valuation must be annexed.

(G) These words to be struck out where the amount is actually ascertained.

(H) No mortgage debt created by the deceased himself is to be deducted unless such debt was created *bona fide* for full consideration in money or money's worth wholly for the deceased's own use and benefit.

(J) Particulars should be stated of all interests in expectancy and movable property whether vested or contingent.

(K) Particulars should be stated of all interests in expectancy in immovable property.

(L) A Statement of any debts payable by law out of the property in Account No. 1, but which cannot be deducted for the purpose of estate duty, should be annexed to the Schedule, for information.

Where a debt is claimed to be due to the husband or wife, or any other member of the deceased's family a full explanation should be given, and evidence of the debt should be annexed.

A mortgage debt not created by the deceased himself but charged on immovable property which was acquired by the deceased subject to the mortgage is primarily payable out of such immovable property and must not be deducted against the movable property.

Where the debt is for " money lent " or " over draft " to a bank the date of the loan and particulars of the security if any, given, or if none, the facts relied on as showing that the debt is legally recoverable should be stated.

(M) Deduction may be here claimed (*a*) of any duty payable in any foreign country by reason of the deceased's death in respect of property situate in that foreign country and included in the Account No. 2, and (*b*) of an amount not exceeding 5 per cent. of the value of any property in the Account No. 2 representing additional expense incurred in administering or realising such property by reason of its being situate out of the States of India except Jammu and Kashmir : see also note (L) above.

(N) Under section 34 of the Act the following properties are not to be included in the principal value of the estate :

(1) Property in which the deceased had never any interest.

(2) Household goods, including tools of artisans, agricultural implements or any other tools or implements as were necessary to the deceased to enable him to earn his livelihood, to the extent of rupees two thousand and five hundred in value.

(3) Books not intended for sale.

(4) Wearing apparel, but not including any precious or semi-precious stones or ornaments worked or sewn into the wearing apparel.

(5) Drawings, paintings, prints, manuscripts, works of art or archaeological or scientific collections which are of national, scientific or historical interest and which are retained in the family of the deceased and dealt with or disposed of in accordance with such conditions as the Board may prescribe, or which are given absolutely or bequeathed to Government or to any University or other public institution.

(6) Drawings, paintings, photographs, prints, manuscripts and any other heir-loom, not falling within Item (5) above, which are retained in the family of the deceased and are dealt with or disposed of in accordance with such conditions as the Board may prescribe and are not intended for sale.

The following kinds of property are to be included in the principal value of the estate for the purpose of rate but under section 33 of the Act no duty shall be payable in respect of such properties to the extent specified against each of them :—

(*a*) Gifts for public charitable purpose made within six months of death to the extent of Rs. 2,500.

(*b*) Gifts, for any other purpose within 2 years of death, to the extent of Rs. 1,500.

(*c*) Proceeds of insurance policy for the purpose of paying estate duty and assigned to the Government to the extent of duty payable but not exceeding Rs. 50,000.

(*d*) Moneys deposited with the Government for the purpose of paying estate duty to the extent of duty payable but not exceeding Rs. 50,000.

(*e*) Insurance proceeds on the life of the deceased to the extent of Rs. 5,000.

(*f*) Moneys earmarked under a policy of insurance or under a declaration of trusts or settlement for the marriage of any of the female relative dependent on the deceased for necessaries of life to the extent of Rs. 5,000, for each of such relatives.

If exemption is claimed on any of these items a separate list of such items with full details should be attached.

E.D.-2. ESTATE DUTY

GOVERNMENT OF INDIA

In the Office of the Controller of Estate Duty.

Circle....., the 19

APPLICATION UNDER THE PROVISIONS OF SUB-SECTION (5) OF SECTION 67.

[*See* rule 28]

In the ESTATE of..... Official Reference No. E.D./File.....19 .

Application is hereby made to the Controller of Estate Duty to determine the estate duty payable in respect of the property described hereinafter for which I am (we are) accountable as passing on the death of.....late of.....who died on the.....day of.....19

The Property hereinbefore referred to—

2. I (We) hereby attach and deliver in Form E.D.-1 a full statement to the best of my (our) knowledge and belief of all property passing on the death of the aforesaid.....

3. The persons entitled on the death of the deceased to the property described in paragraph 1 of this application are as follows :—

1. .....

2. .....

4. The persons entitled on the death of the deceased to the other property specified and described in the statement attached are as follows :—

5. I (We) confirm all the particulars which have already been stated by me (us) or on my (our) behalf, and declare that to the best of my (our) knowledge and belief there are no further particulars, which ought to be disclosed.

Signature of applicant(s)..... Date.....19

E.D.-3. ESTATE DUTY

GOVERNMENT OF INDIA

Controller of Estate Duty, Circle No.....

The.....19

CERTIFICATE UNDER SECTION 60

[*See* rule 28]

In the ESTATE of..... Official Reference No. E.D./File.....19 .

It is hereby certified that the full estate duty has been paid or will be paid or that none is due in respect of the property hereinafter described as passing on the death of..... ..... late of ..... who died on the.....day of.....19

The property was accounted for in the Account(s) No.(s).....annexed to the Estate Duty Account, dated.....19 , which was delivered with reference to the death of the deceased.

The property hereinbefore referred to.

Seal of Controller of Estate Duty

Controller of Estate Duty.

E.D.-4. ESTATE DUTY

GOVERNMENT OF INDIA

Controller of Estate Duty, Circle No.....

The.....19

CERTIFICATE UNDER SECTION 67 OR 69

[*See* rule 28]

In the ESTATE of.....Official Reference No. E.D./File.....19 .

It is hereby certified that the full estate duty has been paid in respect of the property hereinafter described as passing on the death of..... .....late of.....who died on the ..... day of..... 19

The property hereinbefore referred to.

Seal of Office.

Controller of Estate Duty,
Secretary, Central Board of Revenue.

[No. 3-E.D.]

R. K. DAS,
Secretary, Central Board of Revenue.

MINISTRY OF FINANCE (REVENUE DIVISION)

NOTIFICATION

ESTATE DUTY

New Delhi, the 15th October, 1953

S.R.O. 1938.—In exercise of the powers conferred by sub-section (2) of section 4 of the Estate Duty Act, 1953 (XXXIV of 1953), the Central Government hereby appoints every Commissioner of Income-tax, every Inspecting Assistant Commissioner of Income-tax and every Income-tax Officer for the time being functioning as such to be respectively a Controller of Estate Duty, a Deputy Controller of Estate Duty and an Assistant Controller of Estate Duty.

[No. 4-E.D.]

R. K. DAS, Dy. Secy.

ESTATE DUTY ACT, 1950

PAKISTAN

(Came into force with effect from 1-4-1950)

Whereas it is expedient to provide for the levy and collection of an estate duty in the provinces of Pakistan and the Capital of the Federation ;

It is hereby enacted as follows :—

1. *Short title, extent and commencement.*—(1) This Act may be called the Estate Duty Act, 1950.

(2) It extends to all the provinces of Pakistan and the Capital of the Federation.

(3) It shall come into force on such date as the Central Government may by notification in the Official Gazette, appoint in this behalf.

2. *Definition.*—In this Act, unless there is anything repugnant in the subject of context,

(1) "affidavit of valuation" means the affidavit of valuation made under section 19-I of the Court-fees Act, 1870 (VII of 1870) in connection with an application for the grant of representation ;

(2) "associated operations" means any two or more operations of any kind being :

(*a*) operations which affect the same property, or one of which affect some property and the other or others of which affect property which represents, whether directly or indirectly, that property, or income arising from that property, or any property representing accumulations of any such income ; or

(*b*) any two operations of which one is effected with reference to the other or with a view to enabling it to be effected or to facilitating its being effected, and any third operation having a like relation to either of these two, and any fourth operation having a like relation to any of those three, and so on ; whether those operations are effected by the same person or by different persons, whether they are connected otherwise than as aforesaid or not, and whether they are contemporaneous or any of them proceeds or follows any other ;

(3) the "Board" means the Central Board of Revenue constituted under the Central Board of Revenue Act, 1924, and if in respect of any matter the Central Government has empowered any officer or authority to discharge the functions of the Board, includes that officer or authority in respect of that matter :

(4) "company" includes any body corporate wheresoever incorporated ;

(5) "controlled company" means a company as defined in section 17 ;

(6) "deceased person" and "the deceased" mean a person dying after the commencement of this Act ;

(7) "estate duty" means estate duty under this Act ;

(8) "executor" means the executor or administrator of a deceased person and includes, as regards any obligation under this Act, any person who takes possession of, or intermeddles with the estate of a deceased.

(9) "general power" includes every power or authority enabling the donee or other holder thereof to appoint or dispose of property as he thinks fit,

whether exercisable by instrument *inter vivos* or by will or both, but exclusive of any power exercisable in a fiduciary capacity under a disposition not made by himself or exercisable as mortgagee ;

(10) "incumbrances" includes mortgages and terminable charges ;

(11) "interest in expectancy" includes an estate in remainder or reversion and every other future interest whether vested or contingent, but does not include reversions expectant upon the determination of leases ;

(12) "power to appoint property" means power to determine the disposition of property of which the person invested with the power is not the owner ;

(13) "prescribed" means prescribed by rules made under this Act ;

(14) "property" includes any interest in property, movable or immovable, the proceeds of sale thereof and any money or investment for the time being representing the proceeds of sale.

Explanation 1.—The creation by a person or with his consent of a debt or other right enforceable against him personally or against property which he was or might become competent to dispose of, or to charge or burden for his own benefit, shall be deemed to have been a disposition made by that person, and in relation to such a disposition the expression "property" shall include the debt or right created.

Explanation 2.—The extinguishment at the expense of the deceased of a debt or other right shall be deemed to have been a disposition made by the deceased in favour of the person for whose benefit the debt or right was extinguished, and in relation to such a disposition the expression "property" shall include the benefit conferred by the extinguishment of the debt or right ;

(15) "property passing on the death" includes "property passing either immediately on the death or after any interval, either certainly or contingently, and either originally or by way of substitutive limitation" and "on the death" includes "at a period ascertainable only by reference to the death."

(16) "representation" means probate of a will or letters of administration ;

(17) "settled property" means property which stands limited to, or in trust for, any persons, natural or juridical, by way of succession, whether the settlement took effect before or after the commencement of this Act ; and "settlement", means any disposition, including a dedication or endowment, whereby property is settled ;

3. *Interpretation.*—(1) For the purposes of this Act—

(*a*) a person shall be deemed competent to dispose of property if he has such an estate or interest therein or such general power as would, if he were *sui juris,* enable him to dispose of the property ;

(*b*) a person shall be deemed to dispose of property to which he has acquired title even if he has acquired title to it in one form and disposes of it in another ;

(*c*) a disposition taking effect out of the interest of the deceased shall be deemed to have been made by him, whether the concurrence of any other person was or was not required ;

(*d*) money which a person has a general power to charge on the property of another person shall be deemed to be an interest in that property of which the former has power to dispose ;

(*e*) the domicile of a person shall be determined as if the provisions of the Indian Succession Act, 1925 (XXXIX of 1925), on the subject applied to him.

(2) In Parts II and III of this Act, any reference to any interest disposed of, policy of insurance effected, annuity or other interest purchased or pro-

vided or to any gift, settlement, disposition or transfer of property made, shall be construed as including any such interest, policy, annuity, gift, settlement, or disposition, as the case may be, whether it was disposed of, effected, purchased or provided, or made before or after the commencement of this Act.

4. *Levy of estate duty.*—In the case of every person dying after the commencement of this Act, there shall, as hereinafter expressly provided, be levied and paid upon the principal value ascertained as hereinafter provided, of all property settled or not settled, which passes on the death of such a person, a duty called "estate duty" at the graduated rights hereinafter mentioned.

5. Subject to the provisions of section 9, nothing in this Act, shall apply to property dedicated by way of *waqf* or by way of endowment for a purpose which relates exclusively to religious teaching or worship.

6. *Property within disposing capacity.*—Property which the deceased was at the time of his death competent to dispose of shall be deemed to pass on his death.

7. Property in which the deceased or any other person had an interest ceasing on the deceased's death shall be deemed to pass on his death to the extent to which a benefit accrues or arises by the cesser of such interest, including in particular, a coparcenary interest in the joint family property of a Hindu family governed by the Mitakshara school of law, but exclusive of property in which the deceased or other person had an interest only as holder of an office or recipient of the benefits of a charity.

8. *Gifts mortis causa.*—Property taken as a gift in contemplation of death shall be deemed to pass on the donor's death.

9. Property taken under or disposition made by the deceased purporting to operate as an immediate gift *inter vivos* whether by way of transfer, delivery, declaration of trust, settlement upon persons in succession, or otherwise, which shall have not been *bona fide* made one year or more before the death of the deceased shall be deemed to pass on the death :

Provided that in the case of gifts made for public or for any charitable purpose within the meaning of section 2 of the Charitable Endowments Act, 1890, the period shall be three months and not one year.

10. Property taken under any gift, whenever made, shall be deemed to pass on the donor's death if *bona fide* possession and enjoyment of it was not immediately assured by the donee and thenceforward retained to the entire exclusion of the donor or of any benefit to him by contract or otherwise :

Provided that the property shall not be deemed to pass by reason only that it was not, as from the date of the gift, exclusively retained as aforesaid, if by means of the surrender of the reserved benefit or otherwise, it is subsequently enjoyed to the entire exclusion of the donor or of any benefit to him for at least one year before the death :

Provided further, and subject to the foregoing proviso, that in the case of property dedicated by way of *waqf*, where the person making the dedication has reserved any benefit to himself the property which shall be deemed so to pass is the value of the benefit and not the value of the property as a whole.

11. *Limited interests disposed of within a certain period before death.*—(1) Subject to the provisions of this section, where an interest limited to cease on a death has been disposed of or has determined, whether by surrender, assurance, divesting, forfeiture or in any other manner (except by the expiration of a fixed period at the expiration of which the interest was limited to cease), whether wholly or partly, and whether for value or not, after becoming an interest in possession,

(*a*) if apart from the disposition or determination the property in which the interest subsisted would have passed on the death under section 4, that property shall be deemed by virtue of this section to be included as to the whole thereof, in the property passing on the death; or

(*b*) if apart from the disposition or determination the property in which the interest subsisted would have been deemed by virtue of section 7 to be included to a particular extent in the property passing on the death, the property in which the interest subsisted shall be deemed by virtue of this section to be included to that extent in the property passing on the death.

(2) Where the relevant disposition or determination was *bona fide* effected or suffered not less than one year before the death or, if it was effected or suffered for public or charitable purposes, within the meaning of section 2 of the Charitable Endowments Act, 1890, not less than three months before the death, the preceding subsection shall not have effect;

(*a*) if *bona fide* possession and enjoyment of the property in which the interest subsisted was assumed immediately thereafter by the person becoming entitled by virtue of or upon the disposition or determination and thenceforward retained to the entire exclusion of the person who had the interest and of any benefit to him by contract or otherwise; or

(*b*) in the case of a partial determination, if the conditions specified in the preceding clause were not satisfied by reason only of the retention or enjoyment by the deceased of possession of some part of the property, or of some benefit, by virtue of the provisions of the instrument under which he had the interest:

Provided that nothing in this subsection shall be construed as affecting any charge of estate duty arising otherwise than by virtue of the provisions of the preceding subsection.

(3) In the application of subsection (1) to a case in which an incumbrance on the property in which the interest in question subsisted has been created by associated operations which included a disposition of that interest, references to that property shall be construed as references to that property free from the incumbrance, except in a case in which the incumbrance was created for consideration in money's worth which was applied for purposes calculated to maintain or increase the value of that property and, in that case, shall be construed as references to that property subject to the incumbrance to the extent to which the consideration was so applied.

12. *Settlements with reservation.*—Property passing under any settlement made by the deceased by deed or any other instrument not taking effect as a will whereby an interest in such property for life or any other period determinable by reference to death is reserved either expressly or by implication to the settlor or whereby the settlor may have reserved to himself the right by the exercise of any power, to restore to himself or to reclaim the absolute interest in such property shall be deemed to pass on the settlor's death.

Explanation.—A settlor reserving an interest in the property for the maintenance of any of his relatives (as defined in section 30) or of himself and any of his relatives shall be deemed to reserve an interest for himself within the meaning of this section.

13. Property which a person, having been absolutely entitled thereto, has caused to be transferred to or vested in himself and any other person jointly, whether by disposition or otherwise, including any purchase or invest-

ment effected by the person who was absolutely entitled to the property, either by himself alone, or in concert, or by arrangement, with any other person, so that the beneficial interest in the property or in some part of it, passes or accrues by survivorship on his death to the other person, shall be deemed to pass on the death.

14. *Policies kept up for a donee.*—(1) Money received under a policy of insurance effected by any person on his life, where the policy is wholly kept up by him for the benefit of a donee, whether nominee or assignee, or a part of such money in proportion to the premiums paid by him, where the policy is partially kept up by him for such benefit, shall be deemed to pass on the death of assured.

Explanation.—A policy of insurance on the life of deceased person effected by virtue or in consequence of a settlement made by the deceased shall be treated as having been effected by the deceased.

(2) For the purpose of subsection (1), so much of the premiums paid on any policy of insurance as was by virtue or in consequence of a settlement made by the deceased, paid out of property, whether or not provided by the deceased, comprised in the settlement or out of income, whether or not provided by the deceased, arising under the settlement, shall be treated as having been paid by the deceased:

Provided that any payments which were not made either out of property directly or indirectly by the deceased for the purposes of the settlement, or out of property representing that property, or out of income provided directly or indirectly by the deceased whether arising from such property or otherwise, shall not be treated as having been made by the deceased if the Controller is satisfied that those payments were not made as part of any reciprocal arrangements between the deceased and any other person.

(3) For the purposes of this section—

(*a*) the expression "settlement" includes any disposition, trust, covenant, agreement or arrangement; and

(*b*) a person shall be deemed to have made a settlement if he has made or entered into the settlement directly or indirectly, and in particular (but without prejudice to the generality of the foregoing words of this clause) if he has provided or undertaken to provide funds directly or indirectly for the purposes of the settlement, or has made with any other person a reciprocal arrangement for that other person to make or enter into the settlement.

15. *Annuity or other interest including moneys payable under policy of life assurance purchased or provided by the deceased.*—Any annuity or other interest including moneys payable under policy of life assurance, purchased or provided by the deceased, either by himself alone or in concert or by arrangement with any other person shall be deemed to pass on his death to the extent of the beneficial interest accruing or arising, by survivorship or otherwise, on his death.

Explanation.—The extent of the beneficial interest must be ascertained without regard to any interest in expectancy which the beneficiary may have had therein before the death.

16. *Annuity or other interest purchased or provided out of property derived from the deceased.*—(1) Section 15 shall have effect in relation to any annuity or other interest that was purchased or provided wholly or in part by any person who was at any time entitled to or amongst whose resources there was at any time included, any property derived from the deceased, as if that annuity or other interest had been provided by the deceased, or, if

it is proved to the satisfaction of the Controller that the application of all the property derived from the deceased would have been insufficient to provide the whole of that annuity or other interest, as if a similar annuity or interest of an amount reduced to an extent proportionate to the insufficiency proved had been provided by the deceased:

Provided that for the purpose of determining whether there would have been any such insufficiency as aforesaid, and the extent thereof, there shall be excluded from the property derived from the deceased any part thereof as to which it, or the property which it represented, was the subject-matter, was not made with reference to, or with a view to enabling or facilitating, the purchase or provision of the annuity or other interest, or the recoupment in any manner of the cost thereof.

(2) In this section the following expressions have the meanings hereby assigned to them respectively, namely,—

(*a*) "property derived from the deceased" shall include any property which was the subject-matter of a disposition, made by the deceased, either by himself alone or in concert or by arrangement with any other person, notwithstanding that the disposition was made for full consideration in money or money's worth paid to the deceased for his own use or benefit, or which represented any of the subject-matter of such a disposition, whether directly or indirectly, and whether by virtue of one or more intermediate dispositions and whether any such intermediate disposition was or was not for full or partial consideration:

Provided that where the first-mentioned disposition was for full consideration in money or money's worth paid to the deceased for his own use or benefit and it is proved to the satisfaction of the Controller that the disposition was not part of associated operations which included—

(*a*) a disposition by the deceased, either by himself alone or in concert or by arrangement with any other person, otherwise than for full consideration in money or money's worth paid to the deceased for his own use or benefit; or

(*b*) a disposition by any other person operating to reduce the value of property of the deceased;

then, in considering whether estate duty should be charged the said first mentioned disposition shall be left out of account as if this provision did not apply in relation to it;

(*b*) "disposition" includes any trust, covenant, agreement or arrangement; and

(*c*) "subject-matter" includes, in relation to any disposition, any annual or periodical payment made or payable under or by virtue of the disposition.

(3) For the purposes of section 32 the deceased shall be deemed to have had an interest in any property included by virtue of this section in the property passing on the death of the deceased.

17. *Property transferred to a controlled company.*—(1) Where the deceased has made to a company to which this section applies a transfer of any property (other than an interest limited to cease on his death or property which he transferred in a fiduciary capacity), and any benefits accruing to the deceased from the company accrued to him in the three years ending with his death, the assets of the company shall be deemed for the purposes of estate duty to be included in the property passing on his death to an extent determined in accordance with subsection (2).

(2) The extent to which the assets of the company are to be deemed to be included as aforesaid shall be the proportion ascertained by comparing the aggregate amount of the benefits accruing to the deceased from the company in the last three accounting years with the aggregate amount of the net income of the company for the said years:

Provided that—

(*a*) where, in any of the said accounting years, the company sustained a loss, the amount of that loss shall be deducted in ascertaining the said aggregate net income of the company;

(*b*) where the company came into existence in the last year but one, or in the last, of the said accounting years, the references in this subsection to the said accounting years shall be construed as references to the last two, or, as the case may be, the last, of those years.

(3) The assets of the company which are deemed to be included in the property passing on the death of the deceased by virtue of this section shall include any assets thereof which have been disposed of or distributed by the company at any time between the beginning of the first of the accounting years aforesaid and the death of the deceased either—

(*a*) in or towards satisfaction of rights attaching to shares in or debentures of the company; or

(*b*) otherwise howsoever except as follows, that is to say, by way of sale for full consideration in money or money's worth received by the company for its own use and benefit, or in or towards discharge of taxes or rates or other liability imposed by or under an enactment, or in or towards discharge of a fine or penalty or a liability for tort incurred without collusion with the injured party, including assets which have been so disposed of or distributed in a winding up, whether continuing at or completed before the death:

Provided that this subsection shall not apply to assets disposed of or distributed by way of payments from which income tax was deductible, or which were assessable to income tax, of amounts not exceeding in the aggregate, as respects payments made in any accounting year or in the period between the end of the last accounting year and the death of the deceased, the amount of the income of the company for that year or period.

[3-*a*] (*i*) A company to which this section applies is any company which at any relevant time, was or would, if these provisions had always been in force, have been deemed to be under the control of not more than five persons and which is not a subsidiary company or a company in which the public are substantially interested.

Explanation.—For the purposes of this subsection,—

(*a*) A company shall be deemed to be a subsidiary company, if, by reason of the beneficial ownership of shares therein, the control of the company is in the hands of a company not being a company to which the provisions of this subsection apply, or of two or more companies none of which is a company to which the aforesaid provisions apply;

(*b*) A company shall be deemed to be a company in which the public are substantially interested if shares of the company (not be shares entitled to a fixed rate of dividend, whether with or without a further right to participitate in profits) carrying not less than twenty-five per cent of the voting power have been allotted unconditionally by, and are at the end of the year or

other period for which the accounts of the company have been made up beneficially held by the public (not including a company to which the provisions of this subsection apply) and any such shares have, in the course of such year or other period, been the subject of dealings on a recognised stock exchange or are in fact freely transferable by the holders to other members of the public.

(*ii*) A company shall be deemed to be under the control of not more than five persons—

(*a*) if any five or fewer persons together exercise, or are able to exercise or are entitled to acquire, control, whether direct or indirect, over the company's affairs, and in particular, but without prejudice to the generality of the foregoing words, if any five or fewer persons together possess, or are entitled to acquire, the greater part of the share capital or voting power of the company ; or

(*b*) if any five or fewer persons together possess, or are entitled to acquire, either the greater part of the issued share capital of the company, or such part of that capital as would, if the whole of the income of the company were in fact distributed to the members, entitled them to receive the greater part of the amount so distributed ; or

(*c*) if,

(*i*) on the assumption that the company to which this subsection applies ; or

(*ii*) on the assumption that the company or companies to which the said subsection applies,

more than one half of the income of the company (including any income which has been apportioned to it, for the purposes of the said subsection) could be apportioned for those purposes among not more than five persons.

(*iii*) in determining whether a company is or is not under the control of not more than five persons, persons who are relatives of one another, persons who are nominees of any other persons together with that other person, persons in partnership, and persons interested in any shares or obligations of the company which are subject to any trust or are part of the estate of a deceased person, shall respectively be treated as a single person.

Explanation.—For the purpose of this clause,—

(*a*) the expression "relative" means a husband, wife, ancestor, lineal descendant, brother or sister ;

(*b*) A person shall be deemed to be the nominee of another person, if whether directly or indirectly, he possesses on behalf of that other person, or may be required to exercise on the direction of or on behalf of that other person, any right or power which, by virtue of any of the provisions of this subsection, is material in determining whether company is or is not to be under the control of not more than five persons.

(*iv*) An investment company shall be deemed to be under the control of not more than five persons if any five or fewer persons would, if the company were wound up, be entitled as members or loan creditors of the company to receive more than half of the assets of the company which would be available for distribution to members and loan creditors.

(*v*) Notwithstanding anything contained in clause (*i*), a company which is deemed for the purposes of that clause to be under the control of not more

than five persons shall not be deemed to be a subsidiary company, unless it can be deemed to be under the control of not more than five persons only by including among the persons mentioned in sub-clauses (*a*), (*b*) or (*c*) of clause (*ii*) or in clause (*iv*) a company to which the provisions of the said clause (*i*) do not apply and which is not the nominee of any other person.

(*vi*) The expression "relevant time" in this subsection means any time during the period ending with the death of the deceased and beginning at the date of the disposition, transfer or other transaction or event relevant for the purposes of this Act, or, if that disposition, transfer or other transaction or event was one of associated operations, at the date of the earliest of those operations.

(4) The Board may make rules—

(*a*) defining the class of dispositions or operations which shall be deemed to be transfers of property ;

(*b*) defining the matters to be treated as benefits accruing to the deceased from the company ;

(*c*) prescribing the manner in which the amounts to be taken into account in respect of such benefits are to be determined, and the times at which they are to be treated as having accrued to the deceased ;

(*d*) prescribing the manner in which the accounting year of the company is to be sanctioned ;

(*e*) prescribing the manner in which the net income of the company or any loss sustained by the company, in relation to any accounting year or other relevant period, is to be determined;

(*f*) prescribing the manner in which the value of the assets of the company is to be determined;

(*g*) limiting the charge of duty by reference to the value of the property transferred by the deceased to the company ;

(*h*) providing for the avoidance of duplication of charge in respect of the deceased's holding of shares or debentures in the company ; and

(*i*) generally to regulate such other matters as may be ancillary and necessary to the effective carrying out of the provisions of this section.

(5) For the purposes of section 32 the deceased shall be deemed to have had an interest in the property deemed by virtue of this section to be included in the property passing on his death.

18. *Valuation for estate duty of shares and debentures of certain companies.*—Where for the purposes of estate duty there pass, on the death of a person, shares in or debentures of a company to which this section applies, then if—

(*a*) the deceased had the control of the company at any time during the three years ending with his death; or

(*b*) dividends which were declared by the company for any period falling wholly or partly within those three years, or which, not having been declared for any particular period, were declared at a time within those three years, together with any amounts which accrued during any period wholly or partly within those three years for interest on debentures of the company, are as to amounts forming in the aggregate more than one half of the total amount of such dividends and interest, to be treated as benefits accruing to the deceased from the company for the purpose of section 16, or would have fallen to be so treated if the deceased had made a transfer of property to the company; or

(*c*) the deceased had at any time during those three years a beneficial interest in possession in shares in or debentures of the company, or in both, of an aggregate nominal amount of the shares in and debentures of the company then issued and outstanding, and no one other person had at that time the control of the company;

the principal value of the shares of debentures, in lieu of being estimated in accordance with the provisions of section 34, shall be estimated by reference to the net value of the assets of the company in accordance with the provisions of the next succeeding subsection.

(2) For the purposes of such ascertainment as aforesaid:

(*a*) The net value of the assets of the company shall be taken to be the principal value thereof estimated in accordance with the said section 34, less the like allowance for liabilities of the company as may be provided in the case of the assets of a company passing on a death by virtue of section 17 subject to such modification as may be prescribed ;

(*b*) the aggregate value of all the shares and debentures of the company issued and outstanding at the death of the deceased shall be taken to be the same as the net value of the assets of the company;

(*c*) in a case in which there are both shares in and debentures of the company issued and outstanding at the death, or different classes of either, the net value of the assets of the company shall be appointed between them with due regard to the rights attaching thereto respectively ; and

(*d*) the value of any share, or of any debenture, or of a share or debenture of any class, shall be a rateable proportion, ascertained by reference to nominal amount, of the net value of the assets of the company as determined under clause (*a*) of this subsection, or, in the case mentioned in clause (*c*) of this subsection, of the part thereof apportioned under that clause to the shares of the company, or to its debentures, or to that class thereof, as the case may be.

(3) Subject to such conditions as may be prescribed, this section shall not apply to the valuation of shares or debentures of a class as to which there have been *bona fide* dealings on any recognised stock exchange during the year ending with the death of the deceased, and, in making an apportionment under clause (*c*) of subsection (2) of this section in the case of a company having shares or debentures of such a class, the part of the value of the assets of the company to be apportioned to shares or debentures of that class shall be determined by reference to the prices recorded on such dealings.

(4) In this section references to the assets of a company shall be construed as reference to the assets that it had at the death of the deceased.

(4-*a*) A company to which this section applies is any company which at any time during the period ending with the death of the deceased and beginning three years before his death, was a company within the description of subsection (3-*a*) of section 17.

(5) The Board may make rules—

(*a*) defining the circumstances in which a person shall be deemed to have had control of the company ;

(*b*) prescribing the conditions under which any class of shares or debentures shall be excluded from the effect of this section; and

(*c*) regulating any other matter necessary for the effective working of this section.

19. *Duty of company and officers of company to give information to Board on death of transfer.*—(1) Where the deceased has made a transfer of property to a controlled company, the company shall be under obligation to inform the Board within one month from the date of the death of the deceased, of the death, of the fact that the deceased made a transfer of property to the company, and of the fact that benefits accrued to the deceased from the company, and every person who was an officer of the company at that date, or if the company has been wound up and dissolved before that date, who was an officer of the company at any time shall be under the like obligation as respects such of the facts aforesaid as are within his knowledge, unless he knows, or has reasonable cause for believing, that the information in question has already been given to the Board by the company or some other person.

(2) If the company or any such person as aforesaid who is under obligation by virtue of the preceding subsection to give any information to the Board makes default in the performance of that obligation, the Board may impose upon the defaulter a penalty not exceeding one thousand rupees.

20. *Collection and incidence of duty under section* 17.—(1) The following persons shall be accountable for the duty payable on the death of the deceased by virtue of section 17, namely:—

(*a*) the company;

(*b*) any person (other than a *bona fide* purchaser for full consideration in money or money's worth received by the company for its own use and benefit) who receives, whether directly from the company or otherwise, or disposes of, any assets which the company had, whether as capital or as income, at the death or at any time thereafter;

(*c*) any person who received any distributed assets of company on their distribution;

Provided that a person shall not,—

(*i*) by virtue of clause (*b*), be accountable in respect of any assets for any duty in excess of the value of those assets, or

(*ii*) by virtue of clause (*c*), be accountable in respect of any assets for more than a part of the duty bearing to the whole thereof, the same proportion as the value of the distribution of those assets bears to the principal value of the assets of the company passing on the death by virtue of section 17.

Explanation.—For the purposes of this subsection, the expressions "distributed assets" and "assets of the company passing on the death" do not include any distributed assets of the company which the deceased received on their distribution; and a person who, having received any distributed assets of the company, has died before the deceased shall be deemed to have been a person accountable by virtue of clause (*c*).

(2) Where a company incorporated outside the territories to which this Act extends is accountable for any duty by virtue of the preceding subsection or of this subsection, every person who is a member of that company at the death shall also be accountable for a rateable part of that duty in proportion to the value of his interest in that company.

(3) A person accountable for any duty by virtue of this section shall, for the purpose of raising and paying the duty, have all the powers conferred on accountable parties.

(4) On a winding up of the company, subsection (1) of section 230 of the Indian Companies Act, 1913 (VII of 1913), shall have effect as if there was included in clause (*a*) of that subsection a reference to any duty payable in respect of assets of the company passing on a death by virtue of section 16 of this Act, and section 129 of the Indian Companies Act, 1913, shall have effect accordingly.

(5) The duty payable on the death of the deceased by virtue of section 17 shall be a first charge by way of floating security on the assets which the company had at the death or has at any time thereafter, and any part of the duty for which by virtue of clause (*c*) of subsection (1) any person is accountable in respect of any distributed assets shall be a first charge also on those assets :

Provided that nothing in this sub-section shall operate to make any property chargeable as against a *bona fide* purchaser thereof for valuable consideration without notice.

(6) Where any duty has been—

(*a*) paid by a person accountable therefor by virtue only of clause (*c*) of sub-section (1) ; or

(*b*) raised by virtue of subsection (5) out of any distributed assets charged therewith ;

that person or, as the case may be, the person who was entitled to those that assets subject to the charge, may (without prejudice to any right of contribution or indemnity which he may have apart from this subsection) recover the amount of the duty so paid or raised as aforesaid from any person who is accountable therefor otherwise than by virtue of the said clause (*c*).

(7) No part of the duty paid by the company shall be recoverable by it from any person on the ground only that he is entitled to any interest in, or to any sum charged on the assets which the company had, at the death of the deceased.

(8) The provisions of subsection (1) and (3) of section 49 shall not have effect in relation to the duty payable by virtue of section 17.

21. (1) Immovable property situated outside the provinces of Pakistan and the Capital of the Federation shall be excluded from the property passing on the death of the deceased.

(2) Movable property situated outside the provinces of Pakistan and the Capital of the Federation shall likewise be excluded from the property passing on the death of the deceased unless—

(*i*) in the case of movable property being settled property of which the deceased was a life tenant, the settlor was domiciled in any province of Pakistan or in the Capital of the Federation at the time of his death.

(3) The Board may make rules prescribing the manner in which the *situs* of movable property shall be determined for the purposes of this section.

22. Property passing on the death of the deceased shall not be deemed to include property held by the deceased as trustee for another person under a disposition not made by the deceased or under a disposition made by the deceased more than one year before his death where possession and enjoyment of the property was *bona fide* assumed by the beneficiary immediately upon the creation of the trust and thenceforward retained to the entire exclusion of the deceased or of any benefit to him by contract or otherwise :

Provided that the property shall not be deemed to pass by reason only that it was not as from the date of the disposition, exclusively retained as aforesaid if by means of the surrender of the benefit reserved or otherwise it is subsequently enjoyed to the entire exclusion of the donor or of any benefit to him for at least one year before his death.

* * * * * *

26. *Interest failing before becoming an interest in possession.*—In the case of settled property where the interest of any person under the settlement fails or determines by reason of his death before it becomes an interest in possession, and one or more subsequent limitations under the settlement continue to subsist, the property shall not be deemed to pass on his death by reason only of the failure or determination of that interest.

27. (1) Where by a disposition of any property an interest is conferred on any person other than the disponer for the life of such person or determinable on his death, and such person enters into possession of the interest and thenceforward retains possession thereof to the entire exclusion of the disponer or of any benefit to him by contract or otherwise and the only benefit which the disponer retains in the said property is subject to such life or determinable interest and no other interest is created by the said disposition, then, on the death of such person after the commencement of this part of this Act, the property shall not be deemed for the purpose of the principal Act to pass by reason only of its reverter to the disponer in his life-time.

(2) Where by a disposition of any property any such interest as above in this section mentioned is conferred on two or more persons, either severally or jointly, or in succession, this section shall apply in like manner as where the interest is conferred on one person.

(3) Provided that the foregoing subsections shall not apply where such person or persons taking the said life or determinable interest had at any time prior to the disposition been himself or themselves competent to dispose of the said property.

28. *Property passing by reason of a bona fide purchase for full or partial consideration in money.*—(1) Subject to the provisions of section 30 and section 47 estate duty shall not be payable in respect of property passing on the death of the deceased by reason only of a *bona fide* purchase from the person under whose disposition the property passes, nor in respect of the falling into possession of the reversion on any lease for lives, nor in respect of the determination of any annuity for lives, where such purchase was made, or such lease or annuity granted, for full consideration in money or money's worth paid to the vendor or grantor for his own use or benefit, or in the case of a lease for the use or benefit, of any person for whom the grantor was a trustee.

(2) Where any such purchase was made, or lease or annuity granted, for partial consideration in money or money's worth paid to the vendor or grantor for his own use or benefit, or in the case of a lease for the use or benefit of any person for whom the grantor was a trustee, the value of the consideration shall be allowed as a deduction from the value of the property for the purpose of estate duty.

* * * * *

30. (1) Where the deceased has made a disposition of property in favour of a relative of his, the creation or disposition in favour of the deceased of an annuity or other interest limited to cease on the death of the deceased or of any other person shall not be treated for the purposes of this section as consideration for the disposition made by the deceased.

(2) If the deceased has made in favour of a company a disposition which, if it had been made in favour of a relative of his, would have

fallen within subsection (1), this section shall have effect in like manner as if the disposition had been made in favour of a relative of his, unless it is shown to the satisfaction of the Board that no relative of the deceased was, at the time of disposition or subsequently during the life of the deceased, a member of the company.

Explanation.—For the purposes of this subsection a person who is, or is deemed by virtue of this provision to be, a member of a company to which this section applies which is a member of another such company shall be deemed to be a member of that other company.

(3) Where there have been associated operations effected with reference to the receiving by the deceased of any payment in respect of such an annuity or other interest as is mentioned in subsection (1), or effected with a view to enabling him to receive or to facilitating the receipt by him of any such payment, this section shall have effect in relation to each of those associated operations as it has effect in relation to the creation or disposition in favour of the deceased of such an annuity or other interest.

(4) In this section—

(*i*) "relative" means, in relation to the deceased,—

(*a*) the wife or husband of the deceased,

(*b*) the father, mother, children, uncles and aunts of the deceased, and

(*c*) any issue of any person falling within either of the preceding sub-clauses and the other party to a marriage with any such person or issue ;

(*ii*) reference to "children" and "issue" include reference to illegitimate children and to adopted children ;

(*iii*) "annuity" includes any series of payments, whether interconnected or not, whether of the same or of varying amounts, and whether payable at regular intervals or otherwise, and payments of dividends or interests on shares in or debentures of a company shall be treated for the purposes of this section as a series of payments constituting an annuity limited to cease on a death if the payments are liable to cease on the death, or the amounts thereof are liable to be reduced on the death, by reason directly of the extinguishment of any alteration of rights attaching to, or of the issue of any shares in or debentures of a company.

* * * * *

32. *Effect of new or increased rates of duty on certain prior sales and mortgages.*—Where an interest in expectancy in any property has, whether before or after the commencement of this Act, been *bona fide* sold or mortgaged for full consideration in money or money's worth, and the rates of estate duty in force in the case of a person dying when the interest falls into possession are higher than the rates in force, if any, in the case of a person dying at the time of the sale or mortgage, then—

(*a*) no other duty on that property shall be payable by the purchaser or mortgagee when the interest falls into possession than the duty, if any, which would have been payable if the rates of estate duty applicable had been the rates in force, if any, in the case of a person dying at the time of the sale, or mortgage, and

(*b*) in the case of a mortgage, any higher duty payable by the mortgagor shall rank as a charge subsequent to that of the mortgagee.

33. (1) If the Central Government by notification in the official gazette declares that arrangements specified in the notification have been made with

the Government of any territory outside the provinces of Pakistan and the Capital of the Federation with a view to affording relief from double taxation in relation to estate duty payable under this Act, and any duty of a similar character imposed under the laws of that territory, the arrangements shall, notwithstanding anything in this Act, have effect so far as they provide for relief from estate duty, or for determining the place where any property is to be treated as being situated for the purposes of estate duty.

(2) Where arrangements have effect by virtue of this section, section 46 shall not have effect in relation to duty to which the arrangements apply chargeable under the laws of the territory concerned.

(3) Any arrangements to which effect is given under this section may include provision for relief from duty in the case of deaths occurring before the making of the arrangements and the provision of this section shall have effect accordingly.

34. *Allowance for quick succession to property.*—Where the Commissioners of Inland Revenue are satisfied that estate duty has become payable on any property consisting of land or a business (not being a business carried on by a company) or any interest in land or such a business, passing upon the death of any person, and that subsequently within five years estate duty has again become payable on the same property or any part thereof passing on the death of the person to whom the property passed on the first death, the amount of estate duty payable on the second death (if that death occurs after the passing of this Act) in respect of the property so passing shall be reduced as follows:—

Where the second death occurs within one year of the first death, by fifty per cent ;

Where the second death occurs within two years of the first death, by forty per cent;

Where the second death occurs within three years of the first death, by thirty per cent ;

Where the second death occurs within four years of the first death, by twenty per cent ;

Where the second death occurs within five years of the first death, by ten per cent ;

Provided that where the value on which the duty is payable of the property on the second death exceeds the value on which the duty was payable of the property on the first death, the latter shall be substituted for the former for the purpose of calculating the amount of duty on which the reduction under this section is to be calculated.

35. Notwithstanding any exemption granted by this Act the Central Government may by notification in the official Gazette make any other exemption, reduction in rate or other modification in respect of estate duty in favour of any class of property or the whole or any part of the property of any class of persons.

36. (1) For determining the rate of estate duty to be paid on any property passing on the death of the deceased, all property so passing in respect of which estate duty is leviable shall be aggregated so as to form an estate and the duty shall be levied at the proper graduated rate on the principal value thereof:

Provided that any property so passing, in which the deceased never had an interest, not being a debt or right or benefit that is treated as property by virtue of the Explanation to clause (14) of section 2, shall not be aggregated with any other property, but shall be an estate by itself and the estate

duty shall be leviable at the proper graduated rate on the principal value thereof.

(2) Every estate shall include all income accrued upon the property included therein down to and outstanding at the date of the death of the deceased.

(3) Property passing on any death shall not be aggregated more than once, nor shall estate duty in respect thereof be levied more than once on the same death.

37. The rates of estate duty shall be according to such scale as may be fixed by an Act of the Central Legislature:

Provided—

(*a*) that no such duty shall be levied upon estates whose principal value does not exceed one hundred thousand rupees;

(*b*) that, by way of marginal adjustment the amount of estate duty payable on an estate at the rate applicable thereto under the scale of rates of duty shall where necessary be reduced so as not to exclude highest amount of duty which would be payable at the next lower rate with the addition of the amount by which the value of the estate exceeds the value on which the highest amount of duty would be so payable at the lower rate.

38. *Principal value how to be estimated.*—(1) The principal value of any property shall be estimated to be the price which, in the opinion of the Board, it would fetch if sold in the open market at the time of the deceased's death.

(2) In estimating the principal value under this section, the Board shall fix the price of the property according to the market price at the time of the deceased's death and shall not make any reduction in the estimate on account of the estimate being made on the assumption that the whole property is to be placed on the market at one and the same time:

Provided that where it is proved to the satisfaction of the Board that the value of the property has depreciated by reason of the death of the deceased, the depreciation shall be taken into account in fixing the price.

39. *Valuation of shares in a private company where alienation is restricted.*—Where the articles of association of a private company contain restrictive provisions as to the alienation of shares, the value of the shares, if not ascertainable by reference to the value of the total assets of the company, shall be estimated to be what they would fetch if they could be sold in the open market on the terms of the purchaser being entitled to be registered as holder subject to the articles, but the fact that a special buyer would for his own special reasons give a higher price than the price in the open market shall be disregarded.

40. *Valuation of interests in expectancy.*—Where an estate includes an interest in expectancy, estate duty in respect of that interest shall be paid, at the option of the person accountable for the duty, either with the duty in respect of the rest of estate or when the interest falls into possession, and if the duty is not paid with the estate duty in respect of the rest of the estate, then,—

(*a*) for the purpose of determining the rate of estate duty in respect of the rest of the estate, the value of the interest shall be its value at the death of the deceased; and

(*b*) the rate of estate duty in respect of the interest when it falls into possession shall be calculated according to its value when it falls into possession, together with the value of the rest of the estate as previously ascertained.

41. *Valuation of benefits from interests ceasing on death.*—The value of the benefit accruing or arising from the cesser of an interest ceasing on the death of the deceased shall—

(*a*) if the interest extended to the whole income of the property, be the principal value of that property ; and

(*b*) if the interest extended to less than the whole income of the property, be the principal value of an addition to the property equal to the income to which the interest extended.

42. *Valuation to be made by the Board.*—Subject to the provisions of this Act, the value of any property for the purpose of estate duty shall be ascertained by the Board in such manner and by such means as they think fit and if the Board authorise a person to inspect any property and to report the value thereof for the purposes of this Act, that person may enter upon the property and inspect it at such reasonable times as the Board consider necessary.

43. *Costs of valuation.*—Where the Board require any person to report on the value of any property for the purposes of this Act, the reasonable costs of such valuation shall be defrayed by the Board.

44. *Board may accept and certify valuation when convenient.*—The Board on application from a person accountable for the duty on any property forming part of an estate shall, where they consider that it can conveniently be done, certify the amount of the valuation accepted by them for any class or description of property forming part of such estate.

45. (1) In determining the value of an estate for the purpose of estate duty, allowance shall be made for reasonable funeral expenses and for debts and incumbrances; but an allowance shall not be made—

(*a*) for debts incurred by the deceased, or incumbrances created by a disposition made by the deceased, unless, subject to the provisions of section 30, such debts or incumbrances were incurred or created *bona fide* for full consideration in money or money's worth wholly for the deceased's own use and benefit and take effect out of his interest, nor,

(*b*) for any debt in respect whereof there is a right to reimbursement from any other estate or person, unless such reimbursement cannot be obtained, nor,

(*c*) more than once for the same debt or incumbrance charged upon different portions of the estate; and any debt or incumbrance for which an allowance is made shall be deducted from the value of the property liable thereto.

(2) In determining the value as aforesaid—

(*i*) allowance shall also be made, in the case of a Muslim, for dower payable out of the estate to his widow, and, in the case of a Hindu, for marriage expenses payable out of his estate, but only to the extent that such dower or marriage expenses are reasonable ; and 'reasonable' means, in the case of dower, not inconsistent with the income and mode of life of the spouses at the time of the marriage to which the dower relates, irrespective of the amount stated as dower in the marriage Registration deed, if any, and, in the case of marriage expenses, not inconsistent with the value of the estate, after making allowance for the funeral expenses, debts and incumbrances for which allowance is made as provided in sub-section (1), and having regard to the income and mode of life of the family before and after the death of the deceased ; and

(*ii*) allowance shall also be made as follows, in the case of a Hindu, for maintenance payable out of the estate to any person who is entitled to maintenance thereout for life, namely allowance of the capital value of the maintenance calculated in the prescribed manner.

46. *Limitations on debts deductible.*—Where a debt or incumbrance has been incurred or created in whole or in part for the purpose of or in consideration for the purchase or acquisition or extinction, whether by operation of law or otherwise of any interest in expectancy in any property passing or deemed to pass on the death of the deceased and any person whose interest in expectancy is so purchased, acquired, or extinguished becomes (under any disposition made by or through devolution of law from, or under the intestacy of, the deceased) entitled to any interest in that property, then in determining the value of the estate of the deceased for the purpose of estate duty no allowance shall be made in respect of such debt or incumbrance, and any property charged with any such debt or incumbrance shall be deemed to pass freed from that debt or incumbrance:

Provided that—

(*a*) if part only of such debt or incumbrance was incurred or created for such purpose or as such consideration as aforesaid, this provision shall apply to that part of such debt or incumbrance only; and

(*b*) if a person whose interest in expectancy in the property so purchased, acquired or extinguished becomes entitled to an interest in part only of that property, this provision shall apply only to such part of the debt or incumbrance as bears the same proportion to the whole debt or incumbrance as the value of the part of the property to an interest in which he becomes entitled bears to the value of the whole of that property.

47. *Further limitations.*—(1) Any allowance which, but for this provision, would be made under section 44 for a debt incurred by the deceased as mentioned in clause (*a*) of that section, or for an incumbrance created by a disposition made by the deceased as therein mentioned, shall be subject to abatement to an extent proportionate to the value of any of the consideration given therefor which consisted of—

(*a*) property derived from the deceased ; or

(*b*) consideration not being such property as aforesaid, but given by any person who was at any time entitled to, or amongst whose resources there was at any time included, any property derived from the deceased;

Provided that if, where the whole or a part of the consideration given consisted of such consideration as is mentioned in clause (*b*) of this subsection it is proved to the satisfaction of the Board that the value of the consideration given, or of that part thereof, as the case may be, exceed that which could have been rendered available by application of all the property derived from the deceased other than such (if any) of that property as is included in the consideration given or as to which the like facts are proved in relation to the giving of the consideration as are mentioned in the proviso to subsection (1) of section 16 in relation to the purchase or provision of an annuity or other interest, no abatement shall be made in respect of the excess.

(2) Money or money's worth paid or applied by the deceased in or towards satisfaction or discharge of a debt or incumbrance in the case of which, subsection (1) would have had effect on his death if the debt or incumbrance in the case of which that subsection has effect on his death, shall, unless

so paid or applied one year before the death, be treated as property deemed to be included in the property passing on the death and estate duty shall, notwithstanding anything in section 24, be payable in respect thereof accordingly.

(3) The provisions of subsection (2) of section 16 shall have effect for the purpose of this section as they have effect for the purpose of that section.

48. *Debts to persons resident in foreign country not to be deducted in first instance except from duty-paid property in that country.*—An allowance shall not be made in the first instance for debts due from the deceased to persons resident out of the territories to which this Act extends (unless contracted to be paid in the said territories or charged on properties situate within the said territories), except out of the value of any property of the deceased situate out of the territories in respect of which estate duty is paid ; and there shall be no repayment of estate duty in respect of any such debts, except to the extent to which it is shown to the satisfaction of the Board that the property of the deceased situate in the foreign country in which the person to whom such debts are due resides is insufficient for their payment.

49. *Cost of realising or administering foreign property may be allowed for within certain limits.*—Where the Board is satisfied that any additional expense in administering property has been incurred by reason of the property being situate out of the territories to which this Act extends, he may make an allowance from the value of the property on account of such expense not exceeding in any case five per cent on the value of the property.

50. Where any property passing on the death of the deceased is situated in a foreign country, and the Board are satisfied that by reason of such death any duty is payable in that foreign country in respect of that property, they shall make an allowance of the amount of that duty from the value of the property.

51. Estate duty may be collected by stamps or such other means as the Board may prescribe.

52. *Payment of duty may be accepted in prescribed Government securities.*—The Board may prescribe that Government securities shall be accepted in payment of estate duty on such terms as it thinks fit.

53. (1) Where any property passes on the death of the deceased, every person to whom such property so passes for any beneficial interest in possession, and also, to the extent of the property actually received or disposed of by him, every executor, trustee, guardian, committee or other person in whom any interest in the property so passing or the management thereof is at any time vested, and every person in whom the same is vested in possession by alienation or other derivative title, shall be accountable for the whole of the estate duty on the property passing on the death :

Provided that nothing in this section shall render a person accountable for duty who acts merely as agent or bailiff for another person in the management of property.

(2) Nothing in this section shall render liable to or accountable for duty a *bona fide* purchaser for valuable consideration without notice.

(3) Every person accountable for estate duty under the provisions of this section shall, within six months of the death of the deceased or such later time as the Board may allow, deliver to the Board and verify to the best of his knowledge and belief, an account of all the property in respect of which estate duty is payable.

(4) Where the person accountable knows of any property which he has not included in his account because he does not know its amount or value, he may state that such property exists, but he does not know the amount or

value thereof and that he undertakes, as soon as the amount and value are ascertained, to bring a supplementary account thereof and to pay both the duty for which he may be liable in respect of such property and any further duty payable by reason thereof for which he may be liable in respect of the property mentioned in the original account.

(5) Where two or more persons are accountable, either in the same capacity or in different capacities, for estate duty in respect of the same property, their liability is concurrent.

54. *Every person believed to be in possession to deliver statement of particulars of property as required by Board.*—Every person accountable for estate duty, every company to which, in the opinion of the Board, a transfer of property has been made by the deceased as mentioned in section 17, every person who is or was at any time an officer or auditor of such a company, and every person whom the Board believes to have taken possession of or administered any part of the estate in respect of which duty is leviable on the death of the deceased, or the income of any part of such estate shall, if required by the Board, deliver to him and verify, to the best of his knowledge and belief, a statement of such particulars with such accounts, documents, evidence or information as the Board may require relating to any property which he has reason to believe to form part of an estate in respect of which estate duty is leviable on the death of the deceased.

55. A person who wilfully fails to comply with any of the provisions of sections 53 or 54 shall be liable to pay a penalty of one thousand rupees or a sum equal to double the amount of the estate duty, if any, remaining unpaid for which he is accountable, according as the Board may elect :

Provided that the Board shall have power to reduce the penalty in any particular case.

56. *Executor to specify all chargeable property with affidavit of valuation.*—In all cases in which a grant of representation is applied for within six months of the death of the deceased—

(*a*) the executor of the deceased shall, to the best of his knowledge and belief, specify in an appropriate account annexed to the affidavit of valuation filed in court under section 19-I of the Court-fees Act, 1870 (VII of 1870), all the property in respect of which estate duty is payable upon the death of the deceased and shall deliver a copy of the affidavit with the account to the Board, and

(*b*) no order entitled the applicant to the grant of representation shall be made upon his application until he has delivered the account prescribed in clause (*d*) and has produced a certificate from the Board under section 60 or section 67, that the estate duty payable in respect of the property included in the account has been or will be paid, or that none is due, as the case may be.

57. Estate duty shall be due from the date of the death of the deceased and shall be collected upon the account delivered under section 53 or section 56 or prepared under subsection (3) of section 59, and amended or modified where necessary as provided in subsection (1) or subsection (5) of section 59 ; and interest at the rate of 3 per cent per annum shall be paid on the duty from the date of the death up to the date of the delivery of the account or the expiration of twelve months after the death, whichever happens first.

58. *Duty to be paid or security for payment furnished on delivery of account and certificate to be granted thereupon.*—Upon delivery of the account under section 53 or section 56, the person delivering it shall pay to the Board, or furnish security to the satisfaction of the Board for the payment of, the

estate duty, if any, payable in respect of the property included in the account, and the Board shall thereupon grant him a certificate that such duty has been or will be paid, or that none is due, as the case may be.

59. (1) If the Board is of the opinion that the person delivering the account has under-estimated the value of the property in respect of which estate duty is payable (whether by placing too low a value on the property included in the account or by omitting to include therein property that ought to have been included), the Board may inquire into the matter in such manner and by such means as it thinks fit and, if still of opinion that the value of the property has been under-estimated, may require him to amend the valuation.

(2) If such person does not amend the valuation to the satisfaction of the Board, the Board may move the High Court to hold an inquiry into the true value of the property :

Provided that no such motion shall be made after the expiration of one year from the date of delivery of the account under section 53 or section 56.

(3) In any case where no account has been delivered as required by section 53 or section 56, the Board may cause an account of the property passing upon the death of the deceased to be prepared in such manner and by such means as it thinks fit and may call upon any person who in its opinion is accountable for the payment of the estate duty in respect of the property to accept such account.

(4) If such person disputes his accountability or the correctness of the account, the Board may move the High Court to hold an inquiry into the matter.

(5) The High Court when moved under subsection (2) or subsection (4) shall hold or cause to be held an inquiry accordingly and shall record a finding on the matters on issue. The Board shall be deemed to be party to the inquiry.

(6) Any person authorized by the High Court to hold the inquiry may take such evidence on oath as he considers necessary and shall submit to the Court a report of the result of the inquiry together with the evidence taken by him and such report and the evidence so taken shall be evidence in the proceeding.

(7) The Central Government shall, within eighteen months after the commencement of this Act, and may thereafter from time to time, appoint a sufficient number of qualified persons to act as valuers for the purposes of this Act and shall fix a scale of charges for the remuneration of such persons and the High Court may refer any question of disputed value under this section to the arbitration of any person so appointed ; and the costs of any such arbitration shall be part of the costs in the case.

(8) An appeal shall lie to the Federal Court from any judgment of the High Court delivered on a motion made under this section in any case which the High Court certifies to be a fit case for appeal to the Federal Court.

Explanation.—"High Court" in this section means the High Court to which, or to a Court subordinate to which, an application for a grant of representation has been made, or where no such application has been made, the High Court which would have jurisdiction to entertain such an application, and in relation to the state of Bahawalpur, the High Court of Judicature at Lahore.

60. Where any grant for representation has been applied for it shall not be delayed by reason of any motion made by Board under section 59.

61. *Certificate of payment of duty, and penalty, for non-payment.*—(1) Where the valuation is amended by the person accountable upon the Board's requisition under subsection (1) of section 59 or is enhanced by the

High Court upon the Board's motion under subsection (2) of section 59 and in any case where the original valuation has been discovered to be too low, such person shall, within three months of the amendment or enhancement or discovery, pay the deficit duty which is payable in respect of the property upon the amended or enhanced or full valuation and the Board shall thereupon grant him a certificate accordingly.

(2) Where the valuation is reduced by the High Court on the Board's motion under subsection (2) of section 59, the Board shall refund to the person accountable any excess duty paid by him and shall grant to him a certificate that the full duty payable in respect of the property has been paid.

(3) In any case where no account has been delivered as required by section 53 or section 56, the person who is called upon to accept the account prepared by the Board under subsection (3) of section 59 shall within three months of his acceptance or, as the case may be, of the final disposal of the motion made under subsection (4) of section 59, pay the full duty payable in respect of the property and the Board shall thereupon grant him a certificate accordingly.

(4) If the person accountable does not pay the amount of duty due from him under subsection (1) or subsection (3) within the period specified therein, he shall be liable to a penalty of one thousand rupees or a sum equal to five times the amount due according as the Board may elect :

Provided that the Board may in any particular case reduce the penalty.

(5) Where a person accountable for the estate duty in respect of any property passing on a death applies to the Board at any time and delivers and verifies a full statement to the best of his knowledge and belief of all property passing on such death and the several persons entitled thereto, the Board may determine the estate duty payable in respect of the property and on payment of that duty, the Board shall give him a certificate accordingly.

62. *Commutation of duty in respect of interest in expectancy.*—The Board in their discretion may, upon application by a person entitled to an interest in expectancy, commute the estate duty which would or might, but for the commutation, become payable in respect of such interest for a certain sum to be presently paid and, for determining that sum, shall cause a present value to be set upon such duty, regard being had to the contingencies affecting the liability to and rate and amount of such duty, and interest being reckoned at three per cent ; and on receipt of such sum the Board shall give a certificate accordingly.

63. *Assessment in complicated cases.*—Where by reason of the number of deaths upon which property has passed or of the complicated nature of the interests of different persons in property which has passed on the death, or from any other cause, it is difficult to ascertain exactly the amount of estate duty payable in respect of any property or any interest therein or so to ascertain the same without undue expense in proportion to the value of the property or interest, the Board, on the application of any person accountable for the duty and upon his giving to the Board all the information in his power respecting the amount of the property and the several interests therein and other circumstances of the case, may by way of composition for all or any of the duties payable in respect of the property or interest and the various interests therein or any of them, assess such sum on the value of the property or interest, as having regard to the circumstances appears, and may accept payment of the sum so assessed in full payment of all claims for estate duty in respect of such property or interest, and shall give a certificate accordingly.

64. *Board may allow postponement of payment on terms.*—Where the Board is satisfied that the estate duty leviable in respect of any property

cannot, without excessive sacrifice, be raised at once, he may allow payment to be postponed for such period, to such extent, and on payment of such interest not exceeding four per cent or any higher interest yielded by the property, and on such other terms as they may think fit.

65. *Boards may remit duty and interest outstanding after twenty years from death.*—If after the expiration of twenty years from a death upon which estate duty became leviable any such duty remains unpaid the Board may, if it thinks fit, on the application of any person accountable or liable for such duty or interested in the property, remit the payment of such duty or any part thereof or any interest therein.

66. *Forms.*—All affidavits, accounts, certificates, statements and forms used for the purposes of this Part of this Act shall be in such form and contain such particulars as may be prescribed by the Board and, if so required by the Board, shall be in duplicate and accounts and statements shall be delivered and verified on oath and by production of books and documents in the manner prescribed by the Board and any person who wilfully fails to comply with the provisions of this section shall be liable to the penalty mentioned in section 56.

67. (1) Notwithstanding anything contained in any other law for the time being in force any estate duty or deficit duty and any interest or penalty payable under this Act may, on the certificate of the Board, be recovered from the person accountable

(*a*) by the Collector as if it were an arrear of land revenue, or

(*b*) by a receiver appointed by the Board, or

(*c*) by sale under the order of the Board.

(2) A receiver appointed under subsection (1) shall have such powers and duties and receive such remuneration and the performance of his duties may be enforced in such manner as may be prescribed.

68. Subject to the provisions of section 20, estate duty shall be a first charge on the property in respect of which it is leviable after the debts and incumbrances allowable under Part VI of this Act.

69. From and after the death of the deceased, any private transfer or delivery of any property passing upon the death by any person to whom it so passes shall be void against any claim in respect of estate duty enforceable under this Act.

70. *Discharge from estate duty in certain cases.*—A certificate granted by the Board under section 61, or by the Board under section 63, shall discharge the property included therein and the grantee so far as regards that property from any further claim for estate duty, but shall not discharge any person or property from estate duty in case of fraud or failure to disclose material facts and shall not affect the duty payable in respect of any property afterwards shown to have passed on the death nor any further duty payable by reason thereof in respect of the property included in the certificate :

Provided nevertheless that a certificate purporting to be a discharge of the whole estate duty payable in respect of any property included in the certificate shall exonerate a *bona fide* purchaser for valuable consideration without notice from the duty notwithstanding any such fraud or failure.

71. *Person accountable to be repaid by trustees and owners in certain cases.*—If a person accountable under section 53 pays any part of the estate duty in respect of any property not passing to him, it shall, where occasion requires be repaid to him by the trustees or owners of the property.

72. *Facilities for paying duty or raising amount already paid.*—(1) A person authorised or required to pay estate duty in respect of any property shall, for the purposes of paying the duty, or raising the amount of the duty when already paid, have power whether the property is or is not vested in him, to raise the amount of such duty and any interest and expenses properly paid or incurred by him in respect thereof, by the sale or mortgage of or a terminable charge on that property or any part thereof :

Provided that any sum payable under any such sale, mortgage or terminable charge may be paid (to the extent to which such sum or part thereof represents the estate duty payable), not to the person raising the sum but to the Board at the option of the person from whom the sum is being raised.

(2) A person having an interest in any property who pays the estate duty in respect of that property, shall be entitled to the like charge, as if the estate duty in respect of that property had been raised by means of a mortgage to him.

(3) Any money arising from the sale of property comprised in a settlement or held upon trust to lay out upon the trusts of a settlement may be expended in paying any estate duty in respect of property comprised in the settlement and held upon the same trusts.

73. Save as provided in this Act, nothing done or in good faith purporting to be done by the Board under this Act shall be called in question in any Court.

74. (1) The Central Government may by notification in Official Gazette empower any officer or authority to discharge the functions of the Board under this Act or the rules made under this Act in respect of any specified matter.

(2) Where under this Act or the rules made under this Act, the opinion, belief or state of mind of the Board is relevant in any matter, the opinion, belief or state of mind of the officer or authority empowered in respect of such matter under subsection (1) shall be deemed to be that of the Board.

75. Subject to the condition of previous publication, the Board may make rules not inconsistent with this Act prescribing all matters which by this Act are required or permitted to be prescribed or which are necessary or convenient to be prescribed for carrying out the purposes of or giving effect to this Act.

READY RECKONER TABLES

A. Between 50,001 and 1,00,000

Amount			Duty			Amount			Duty		
Rs.	a.	p.	Rs.	a.	p.	Rs.	a.	p.	Rs.	a.	p.
10	0	0	0	8	0	68,000	0	0	900	0	0
20	0	0	1	0	0	69,000	0	0	950	0	0
30	0	0	1	8	0	70,000	0	0	1000	0	0
40	0	0	2	0	0	71,000	0	0	1,050	0	0
50	0	0	2	8	0	72,000	0	0	1,100	0	0
60	0	0	3	0	0	73,000	0	0	1,150	0	0
70	0	0	3	8	0	74,000	0	0	1,200	0	0
80	0	0	4	0	0	75,000	0	0	1,250	0	0
90	0	0	4	8	0	76,000	0	0	1,300	0	0
100	0	0	5	0	0	77,000	0	0	1,350	0	0
200	0	0	10	0	0	78,000	0	0	1,400	0	0
300	0	0	15	0	0	79,000	0	0	1,450	0	0
400	0	0	20	0	0	80,000	0	0	1,500	0	0
500	0	0	25	0	0	81,000	0	0	1,550	0	0
600	0	0	30	0	0	82,000	0	0	1,600	0	0
700	0	0	35	0	0	83,000	0	0	1,650	0	0
800	0	0	40	0	0	84,000	0	0	1,700	0	0
900	0	0	45	0	0	85,000	0	0	1,750	0	0
52,000	0	0	100	0	0	86,000	0	0	1,800	0	0
53,000	0	0	150	0	0	87,000	0	0	1,850	0	0
54,000	0	0	200	0	0	88,000	0	0	1,900	0	0
55,000	0	0	250	0	0	89,000	0	0	1,950	0	0
56,000	0	0	300	0	0	90,000	0	0	2,000	0	0
57,000	0	0	350	0	0	91,000	0	0	2,050	0	0
58,000	0	0	400	0	0	92,000	0	0	2,100	0	0
59,000	0	0	450	0	0	93,000	0	0	2,150	0	0
60,000	0	0	500	0	0	94,000	0	0	2,200	0	0
61,000	0	0	550	0	0	95,000	0	0	2,250	0	0
62,000	0	0	600	0	0	96,000	0	0	2,300	0	0
63,000	0	0	650	0	0	97,000	0	0	2,350	0	0
64,000	0	0	700	0	0	98,000	0	0	2,400	0	0
65,000	0	0	750	0	0	99,000	0	0	2,450	0	0
66,000	0	0	800	0	0	1,00,000	0	0	2,500	0	0
67,000	0	0	850	0	0						

B. Between 1,00,001 and 1,50,000

Amount	Duty Part I and Part II Rates
Rs. a. p.	Rs. a. p.
10 0 0	0 12 0
20 0 0	1 8 0
30 0 0	2 4 0
40 0 0	3 0 0
50 0 0	3 12 0
60 0 0	4 8 0
70 0 0	5 4 0
80 0 0	6 0 0
90 0 0	6 12 0
100 0 0	7 8 0
200 0 0	15 0 0
300 0 0	22 8 0
400 0 0	30 0 0
500 0 0	37 8 0
600 0 0	45 0 0
700 0 0	52 8 0
800 0 0	60 0 0
900 0 0	67 8 0
1,000 0 0	75 0 0
2,000 0 0	150 0 0
3,000 0 0	225 0 0
4,000 0 0	300 0 0

	Duty Part I only	Duty Part II
1,01,000 0 0	2,575 0 0	75 0 0
1,05,000 0 0	2,875 0 0	375 0 0
1,10,000 0 0	3,250 0 0	750 0 0
1,15,000 0 0	3,625 0 0	1,125 0 0
1,20,000 0 0	4,000 0 0	1,500 0 0
1,25,000 0 0	4,375 0 0	1,875 0 0
1,30,000 0 0	4,750 0 0	2,250 0 0
1,35,000 0 0	5,125 0 0	2,625 0 0
1,40,000 0 0	5,500 0 0	3,000 0 0
1,45,000 0 0	5,875 0 0	3,375 0 0
1,50,000 0 0	6,250 0 0	3,750 0 0

C. Between 1,50,001 and 2,00,000

Amount	Duty Part I and Part II Rates
Rs. a. p.	Rs. a. p.
10 0 0	1 0 0
20 0 0	2 0 0
30 0 0	3 0 0
40 0 0	4 0 0
50 0 0	5 0 0
60 0 0	6 0 0
70 0 0	7 0 0
80 0 0	8 0 0
90 0 0	9 0 0
100 0 0	10 0 0
200 0 0	20 0 0
300 0 0	30 0 0
400 0 0	40 0 0
500 0 0	50 0 0
600 0 0	60 0 0
700 0 0	70 0 0
800 0 0	80 0 0
900 0 0	90 0 0
1,000 0 0	100 0 0
2,000 0 0	200 0 0
3,000 0 0	300 0 0
4,000 0 0	400 0 0

	Duty Part I only	Duty Part II
1,51,000 0 0	6,350 0 0	3,850 0 0
1,55,000 0 0	6,750 0 0	4,250 0 0
1,60,000 0 0	7,250 0 0	4,750 0 0
1,65,000 0 0	7,750 0 0	5,250 0 0
1,70,000 0 0	8,250 0 0	5,750 0 0
1,75,000 0 0	8,750 0 0	6,250 0 0
1,80,000 0 0	9,250 0 0	6,750 0 0
1,85,000 0 0	9,750 0 0	7,250 0 0
1,90,000 0 0	10,250 0 0	7,750 0 0
1,95,000 0 0	10,750 0 0	8,250 0 0
2,00,000 0 0	11,250 0 0	8,750 0 0

D. Between 2,00,001 and 3,00,000

Amount	Duty Part I and Part II Rates.
Rs. a. p.	Rs. a. p.
10 0 0	1 4 0
20 0 0	2 8 0
30 0 0	3 12 0
40 0 0	5 0 0
50 0 0	6 4 0
60 0 0	7 8 0
70 0	8 12 0
80 0	10 0 0
90 0	11 4 0
100 0	12 8 0
200 0	25 0 0
300 0	37 8 0
400 0	50 0 0
500 0 0	62 8 0
600 0 0	75 0 0
700 0 0	87 8 0
800 0 0	100 0 0
900 0 0	112 8 0
1,000 0 0	125 0 0
2,000 0 0	250 0 0
3,000 0 0	375 0 0
4,000 0 0	500 0 0

	Duty Part I	Duty Part II
2,01,000 0 0	11,375 0 0	8,875 0 0
2,05,000 0 0	11,875 0 0	9,375 0 0
2,10,000 0 0	12,500 0 0	10,000 0 0
2,15,000 0 0	13,125 0 0	10,625 0 0
2,20,000 0 0	13,750 0 0	11,250 0 0
2,25,000 0 0	14,375 0 0	11,875 0 0
2,30,000 0 0	15,000 0 0	12,500 0 0
2,35,000 0 0	15,625 0 0	13,125 0 0
2,40,000 0 0	16,250 0 0	13,750 0 0
2,45,000 0 0	16,875 0 0	14,375 0 0
2,50,000 0 0	17,500 0 0	15,000 0 0
2,55,000 0 0	18,125 0 0	15,625 0 0
2,60,000 0 0	18,750 0 0	16,250 0 0
2,65,000 0 0	19,375 0 0	16,875 0 0
2,70,000 0 0	20,000 0 0	17,500 0 0
2,75,000 0 0	20,625 0 0	18,125 0 0
2,80,000 0 0	21,250 0 0	18,750 0 0
2,85,000 0 0	21,875 0 0	19,375 0 0
2,90,000 0 0	22,500 0 0	20,000 0 0
2,95,000 0 0	23,125 0 0	20,625 0 0
3,00,000 0 0	23,750 0 0	21,250 0 0

Note.—For amount of duty payable on Property under Part II of the Second Schedule of the Act, deduct Rs. 2,500 in each case from the amount shown in the tables E to J.

E. Between 3,00,001 and 5,00,000

Amount	Duty	Amount	Duty
Rs. a. p.	Rs. a. p.	Rs. a. p.	Rs. a. p.
10 0 0	1 8 0	7,000 0 0	1,050 0 0
20 0 0	3 0 0	8,000 0 0	1,200 0 0
30 0 0	4 8 0	9,000 0 0	1,350 0 0
40 0 0	6 0 0	3,10,000 0 0	25,250 0 0
50 0 0	7 8 0	3,20,000 0 0	26,750 0 0
60 0 0	9 0 0	3,30,000 0 0	28,250 0 0
70 0 0	10 8 0	3,40,000 0 0	29,750 0 0
80 0 0	12 0 0	3,50,000 0 0	31,250 0 0
90 0 0	13 8 0	3,60,000 0 0	32,750 0 0
100 0 0	15 0 0	3,70,000 0 0	34,250 0 0
200 0 0	30 0 0	3,80,000 0 0	35,750 0 0
300 0 0	45 0 0	3,90,000 0 0	37,250 0 0
400 0 0	60 0 0	4,00,000 0 0	38,750 0 0
500 0 0	75 0 0	4,10,000 0 0	40,250 0 0
600 0 0	90 0 0	4,20,000 0 0	41,750 0 0
700 0 0	105 0 0	4,30,000 0 0	43,250 0 0
800 0 0	120 0 0	4,40,000 0 0	44,750 0 0
900 0 0	135 0 0	4,50,000 0 0	46,250 0 0
1,000 0 0	150 0 0	4,60,000 0 0	47,750 0 0
2,000 0 0	300 0 0	4,70,000 0 0	49,250 0 0
3,000 0 0	450 0 0	4,80,000 0 0	50,750 0 0
4,000 0 0	600 0 0	4,90,000 0 0	52,250 0 0
5,000 0 0	750 0 0	5,00,000 0 0	53,750 0 0
6,000 0 0	900 0 0		

F. Between 5,00,001 and 10,00,000

Amount	Duty	Amount	Duty
Rs. a. p.	Rs. a. p.	Rs. a. p.	Rs. a. p.
100 0 0	20 0 0	9,000 0 0	1,800 0 0
200 0 0	40 0 0	10,000 0 0	2,000 0 0
300 0 0	60 0 0	20,000 0 0	4,000 0 0
400 0 0	80 0 0	30,000 0 0	6,000 0 0
500 0 0	100 0 0	40,000 0 0	8,000 0 0
600 0 0	120 0 0	5,10,000 0 0	55,750 0 0
700 0 0	140 0 0	5,50,000 0 0	63,750 0 0
800 0 0	160 0 0	6,00,000 0 0	73,750 0 0
900 0 0	180 0 0	6,50,000 0 0	83,750 0 0
1,000 0 0	200 0 0	7,00,000 0 0	93,750 0 0
2,000 0 0	400 0 0	7,50,000 0 0	1,03,750 0 0
3,000 0 0	600 0 0	8,00,000 0 0	1,13,750 0 0
4,000 0 0	800 0 0	8,50,000 0 0	1,23,750 0 0
5,000 0 0	1,000 0 0	9,00,000 0 0	1,33,750 0 0
6,000 0 0	1,200 0 0	9,50,000 0 0	1,43,750 0 0
7,000 0 0	1,400 0 0	10,00,000 0 0	1,53,750 0 0
8,000 0 0	1,600 0 0		

G. Between 10,00,001 and 20,00,000

Amount			Duty			Amount			Duty		
Rs.	a.	p.	Rs.	a.	p.	Rs.	a.	p.	Rs.	a.	p.
100	0	0	25	0	0	10,10,000	0	0	1,56,250	0	0
200	0	0	50	0	0	10,50,000	0	0	1,66,250	0	0
300	0	0	75	0	0	11,00,000	0	0	1,78,750	0	0
400	0	0	100	0	0	11,50,000	0	0	1,91,250	0	0
500	0	0	125	0	0	12,00,000	0	0	2,03,750	0	0
600	0	0	150	0	0	12,50,000	0	0	2,16,250	0	0
700	0	0	175	0	0	13,00,000	0	0	2,28,750	0	0
800	0	0	200	0	0	13,50,000	0	0	2,41,250	0	0
900	0	0	225	0	0	14,00,000	0	0	2,53,750	0	0
1,000	0	0	250	0	0	14,50,000	0	0	2,66,250	0	0
2,000	0	0	500	0	0	15,00,000	0	0	2,78,750	0	0
3,000	0	0	750	0	0	15,50,000	0	0	2,91,250	0	0
4,000	0	0	1,000	0	0	16,00,000	0	0	3,03,750	0	0
5,000	0	0	1,250	0	0	16,50,000	0	0	3,16,250	0	0
6,000	0	0	1,500	0	0	17,00,000	0	0	3,28,750	0	0
7,000	0	0	1,750	0	0	17,50,000	0	0	3,41,250	0	0
8,000	0	0	2,000	0	0	18,00,000	0	0	3,53,750	0	0
9,000	0	0	2,250	0	0	18,50,000	0	0	3,66,250	0	0
10,000	0	0	2,500	0	0	19,00,000	0	0	3,78,750	0	0
20,000	0	0	5,000	0	0	19,50,000	0	0	3,91,250	0	0
30,000	0	0	7,500	0	0	20,00,000	0	0	4,03,750	0	0
40,000	0	0	10,000	0	0						

H. Between 20,00,001 and 30,00,000

Part I

Amount			Duty			Amount			Duty		
Rs.	a.	p.	Rs.	a.	p.	Rs.	a.	p.	Rs.	a.	p.
100	0	0	30	0	0	20,10,000	0	0	4,06,750	0	0
200	0	0	60	0	0	20,50,000	0	0	4,18,750	0	0
300	0	0	90	0	0	21,00,000	0	0	4,33,750	0	0
400	0	0	120	0	0	21,50,000	0	0	4,48,750	0	0
500	0	0	150	0	0	22,00,000	0	0	4,63,750	0	0
600	0	0	180	0	0	22,50,000	0	0	4,78,750	0	0
700	0	0	210	0	0	23,00,000	0	0	4,93,750	0	0
800	0	0	240	0	0	23,50,000	0	0	5,08,750	0	0
900	0	0	270	0	0	24,00,000	0	0	5,23,750	0	0
1,000	0	0	300	0	0	24,50,000	0	0	5,38,750	0	0
2,000	0	0	600	0	0	25,00,000	0	0	5,53,750	0	0
3,000	0	0	900	0	0	25,50,000	0	0	5,68,750	0	0
4,000	0	0	1,200	0	0	26,00,000	0	0	5,83,750	0	0
5,000	0	0	1,500	0	0	26,50,000	0	0	5,98,750	0	0
6,000	0	0	1,800	0	0	27,00,000	0	0	6,13,750	0	0
7,000	0	0	2,100	0	0	27,50,000	0	0	6,28,750	0	0
8,000	0	0	2,400	0	0	28,00,000	0	0	6,43,750	0	0
9,000	0	0	2,700	0	0	28,50,000	0	0	6,58,750	0	0
10,000	0	0	3,000	0	0	29,00,000	0	0	6,73,750	0	0
20,000	0	0	6,000	0	0	29,50,000	0	0	6,88,750	0	0
30,000	0	0	9,000	0	0	30,00,000	0	0	7,03,750	0	0
40,000	0	0	12,000	0	0						

I. Between 30,00,001 and 50,00,000

Amount			Duty			Amount			Duty		
Rs.	a.	p.	Rs.	a.	p.	Rs.	a.	p.	Rs.	a.	p.
100	0	0	35	0	0	34,50,000	0	0	8,61,250	0	0
200	0	0	70	0	0	35,00,000	0	0	8,78,750	0	0
300	0	0	105	0	0	35,50,000	0	0	8,96,250	0	0
400	0	0	140	0	0	36,00,000	0	0	9,13,750	0	0
500	0	0	175	0	0	36,50,000	0	0	9,31,250	0	0
600	0	0	210	0	0	37,00,000	0	0	9,48,750	0	0
700	0	0	245	0	0	37,50,000	0	0	9,66,250	0	0
800	0	0	280	0	0	38,00,000	0	0	9,83,750	0	0
900	0	0	315	0	0	38,50,000	0	0	10,01,250	0	0
1,000	0	0	350	0	0	39,00,000	0	0	10,18,750	0	0
2,000	0	0	700	0	0	39,50,000	0	0	10,36,250	0	0
3,000	0	0	1,050	0	0	40,00,000	0	0	10,53,750	0	0
4,000	0	0	1,400	0	0	40,50,000	0	0	10,71,250	0	0
5,000	0	0	1,750	0	0	41,00,000	0	0	10,88,750	0	0
6,000	0	0	2,100	0	0	41,50,000	0	0	11,06,250	0	0
7,000	0	0	2,450	0	0	42,00,000	0	0	11,23,750	0	0
8,000	0	0	2,800	0	0	42,50,000	0	0	11,41,250	0	0
9,000	0	0	3,150	0	0	43,00,000	0	0	11,58,750	0	0
10,000	0	0	3,500	0	0	43,50,000	0	0	11,76,250	0	0
20,000	0	0	7,000	0	0	44,00,000	0	0	11,93,750	0	0
30,000	0	0	10,500	0	0	44,50,000	0	0	12,11,250	0	0
40,000	0	0	14,000	0	0	45,00,000	0	0	12,28,750	0	0
						45,50,000	0	0	12,46,250	0	0
30,10,000	0	0	7,07,250	0	0	46,00,000	0	0	12,63,750	0	0
30,50,000	0	0	7,21,250	0	0	46,50,000	0	0	12,81,250	0	0
31,00,000	0	0	7,38,750	0	0	47,00,000	0	0	12,98,750	0	0
31,50,000	0	0	7,56,250	0	0	47,50,000	0	0	13,16,250	0	0
32,00,000	0	0	7,73,750	0	0	48,00,000	0	0	13,33,750	0	0
32,50,000	0	0	7,91,250	0	0	48,50,000	0	0	13,51,250	0	0
33,00,000	0	0	8,08,750	0	0	49,00,000	0	0	13,68,750	0	0
33,50,000	0	0	8,26,250	0	0	49,50,000	0	0	13,86,250	0	0
34,00,000	0	0	8,43,750	0	0	50,00,000	0	0	14,03,750	0	0

J. Between 50,00,001 and over

Amount			Duty			Amount			Duty		
Rs.	a.	p.	Rs.	a.	p.	Rs.	a.	p.	Rs.	a.	p.
100	0	0	40	0	0	61,50,000	0	0	18,63,750	0	0
200	0	0	80	0	0	62,00,000	0	0	18,83,750	0	0
300	0	0	120	0	0	62,50,000	0	0	19,03,750	0	0
400	0	0	160	0	0	63,00,000	0	0	19,23,750	0	0
500	0	0	200	0	0	63,50,000	0	0	19,43,750	0	0
600	0	0	240	0	0	64,00,000	0	0	19,63,750	0	0
700	0	0	280	0	0	64,50,000	0	0	19,83,750	0	0
800	0	0	320	0	0	65,00,000	0	0	20,03,750	0	0
900	0	0	360	0	0	65,50,000	0	0	20,23,750	0	0
1,000	0	0	400	0	0	66,00,000	0	0	20,43,750	0	0
2,000	0	0	800	0	0	66,50,000	0	0	20,63,750	0	0
3,000	0	0	1,200	0	0	67,00,000	0	0	20,83,750	0	0
4,000	0	0	1,600	0	0	67,50,000	0	0	21,03,750	0	0
5,000	0	0	2,000	0	0	68,00,000	0	0	21,23,750	0	0
6,000	0	0	2,400	0	0	68,50,000	0	0	21,43,750	0	0
7,000	0	0	2,800	0	0	69,00,000	0	0	21,63,750	0	0
8,000	0	0	3,200	0	0	69,50,000	0	0	21,83,750	0	0
9,000	0	0	3,600	0	0	70,00,000	0	0	22,03,750	0	0
10,000	0	0	4,000	0	0	70,50,000	0	0	22,23,750	0	0
20,000	0	0	8,000	0	0	71,00,000	0	0	22,43,750	0	0
30,000	0	0	12,000	0	0	71,50,000	0	0	22,63,750	0	0
40,000	0	0	16,000	0	0	72,00,000	0	0	22,83,750	0	0
50,10,000	0	0	14,07,750	0	0	72,50,000	0	0	23,03,750	0	0
50,50,000	0	0	14,23,750	0	0	73,00,000	0	0	23,23,750	0	0
51,00,000	0	0	14,43,750	0	0	73,50,000	0	0	23,43,750	0	0
51,50,000	0	0	14,63,750	0	0	74,00,000	0	0	23,63,750	0	0
52,00,000	0	0	14,83,750	0	0	74,50,000	0	0	23,83,750	0	0
52,50,000	0	0	15,03,750	0	0	75,00,000	0	0	24,03,750	0	0
53,00,000	0	0	15,23,750	0	0	75,50,000	0	0	24,23,750	0	0
53,50,000	0	0	15,43,750	0	0	76,00,000	0	0	24,43,750	0	0
54,00,000	0	0	15,63,750	0	0	76,50,000	0	0	24,63,750	0	0
54,50,000	0	0	15,83,750	0	0	77,00,000	0	0	24,83,750	0	0
55,00,000	0	0	16,03,750	0	0	77,50,000	0	0	25,03,750	0	0
55,50,000	0	0	16,23,750	0	0	78,00,000	0	0	25,23,750	0	0
56,00,000	0	0	16,43,750	0	0	78,50,000	0	0	25,43,750	0	0
56,50,000	0	0	16,63,750	0	0	79,00,000	0	0	25,63,750	0	0
57,00,000	0	0	16,83,750	0	0	79,50,000	0	0	25,83,750	0	0
57,50,000	0	0	17,03,750	0	0	80,00,000	0	0	26,03,750	0	0
58,00,000	0	0	17,23,750	0	0	80,50,000	0	0	26,23,750	0	0
58,50,000	0	0	17,43,750	0	0	81,00,000	0	0	26,43,750	0	0
59,00,000	0	0	17,63,750	0	0	81,50,000	0	0	26,63,750	0	0
59,50,000	0	0	17,83,750	0	0	82,00,000	0	0	26,83,750	0	0
60,00,000	0	0	18,03,750	0	0	82,50,000	0	0	27,03,750	0	0
60,50,000	0	0	18,23,750	0	0						
61,00,000	0	0	18,43,750	0	0						

Between 50,00,001 and over—*Contd.*

Amount			Duty			Amount			Duty		
Rs.	a.	p.	Rs.	a.	p.	Rs.	a.	p.	Rs.	a.	p.
83,00,000	0	0	27,23,750	0	0	92,50,000	0	0	31,03,750	0	0
83,50,000	0	0	27,43,750	0	0	93,00,000	0	0	31,23,750	0	0
84,00,000	0	0	27,63,750	0	0	93,50,000	0	0	31,43,750	0	0
84,50,000	0	0	27,83,750	0	0	94,00,000	0	0	31,63,750	0	0
85,00,000	0	0	28,03,750	0	0	94,50,000	0	0	31,83,750	0	0
85,50,000	0	0	28,23,750	0	0	95,00,000	0	0	32,03,750	0	0
86,00,000	0	0	28,43,750	0	0	95,50,000	0	0	32,23,750	0	0
86,50,000	0	0	28,63,750	0	0	96,00,000	0	0	32,43,750	0	0
87,00,000	0	0	28,83,750	0	0	96,50,000	0	0	32,63,750	0	0
87,50,000	0	0	29,03,750	0	0	97,00,000	0	0	32,83,750	0	0
88,00,000	0	0	29,23,750	0	0	97,50,000	0	0	33,03,750	0	0
88,50,000	0	0	29,43,750	0	0	98,00,000	0	0	33,23,750	0	0
89,00,000	0	0	29,63,750	0	0	98,50,000	0	0	33,43,750	0	0
89,50,000	0	0	29,83,750	0	0	99,00,000	0	0	33,63,750	0	0
90,00,000	0	0	30,03,750	0	0	99,50,000	0	0	33,83,750	0	0
90,50,000	0	0	30,23,750	0	0	1,00,00,000	0	0	34,03,750	0	0
91,00,000	0	0	30,43,750	0	0	2,00,00,000	0	0	68,07,500	0	0
91,50,000	0	0	30,63,750	0	0	3,00,00,000	0	0	1,02,11,250	0	0
92,00,000	0	0	30,83,750	0	0						

Illustrations as to how to use the Ready Reckoner Tables

Illustration I

In the case of property which consists of an interest in the joint family governed by the Mitakshara, Marumakkattayam or Aliyansantana law:

Total Value of the Estate: Rs. 96,780

On 96,000	as per Table A	...	2,300
700	,,	...	35
80	,,	....	4
		Rs.	2,339

Illustration II

Value of Estate : Rs. 1,48,450

		Duty payable if property is of an interest in Hindu family governed by Mitakshara, Marumakkattayam or Aliyasantana law	Property of any other kind
On 1,45,000	as per Table B	5,875 0	3,375 0
3,000	,,	225 0	225 0
400	,,	30 0	30 0
50	,,	3 12	3 12
	Rs.	6,133 12	3,633 12

Illustration III

Total value of Property : Rs. 1,98,670.

		Duty payable if property is of an interest in Hindu family governed by the Mitakshara, Marumakkattayam or Aliyasantana law	Property of any other kind
On 1,95,000	as per Table C	10,750	8,250
3,000	,,	300	300
600	,,	60	60
70	,,	7	7
	Rs.	11,117	8,617

Illustration IV

Total value of property: Rs. 3,55,660.

		Duty payable if property is of an interest in Hindu family governed by the Mitakshara, Marumakkattayam or Aliyasantana law
On 3,50,000	as per Table E	31,250
5,000	,,	750
600	,,	90
60	,,	9
		32,099

If the estate consisted wholly of property other than joint family property governed by Mitakshara, Marumakkattayam the duty payable will be

Rs.	32,099
Less	2,500
Rs.	30,599

Note. The difference of Rs. 2,500 is on account of the fact that in the case of Hindu family the exemption limit is 50,000 and in other cases it is higher by 50,000 (*i.e.*, 5 per cent on 50,000=2,500).

ACCOUNT FORM FILLED UP

ACCOUNT No. 1—(FIRST PART)

Movable Property situate in the States of India except Jammu and Kashmir

	Nominal value of Securities	Market price of Securities at the date of death	Gross principal value at the date of death
	Rs.	Rs.	Rs. A. P.
Stocks, Bonds or Funds (including Treasury Bills) of the Central Government or State Governments, as per Form 1A annexed.			
3% State Loans ...	1,00,000	94-15	94,937 8 0
Stocks, or other Securities of local authorities in India, as per Form 1A annexed.			
4% Port Trust Debentures ...	75,000	100	75,000 0 0
Stocks, Bonds, Funds, etc., of other Governments or Foreign countries, and Stocks, Debentures, or Bonds of Municipal or other Corporations, or Public Authorities, etc., in Foreign countries, as per Form 1A.			
3% Ceylon Govt. Stock ...	20,000	100	20,000 0 0
Stocks, Shares, Bonds, or Debentures, of Companies, as per Form 1A annexed (A). (The denomination of each share or stock unit should be stated).			
1,000 Ordinary shares of Rs. 10 in India Ship Ltd. ...	10,000	7-13 *cd.*	7,812 8 0
Uncashed dividends and interests, dividends declared, and interest accrued due, in respect of the above investments, to date of death, as per statement annexed (B).			
Interest due for one month on item 1 ...			250 0 0

		Gross principal value at the date of death. Rs.
Money in hand or house		2,000 0 0
Money in Bank (C) (1) On current account, including accrued interest 2,000		
(2) On deposit, including accrued interest 10,000		12,000 0 0
Money at the Post Office or other Savings Bank ; Building of Co-operative Society, etc., as per statement annexed.		
Money out on mortgage, and interest thereon to date of death, as per statement annexed.		
Interest at 5 % due for six months 25,000		25,625 0 0
Money out on bonds, bills, promissory notes and other securities, and interest thereon to date of death, as per statement annexed. ... 625		
Book debts, as per statement annexed. Other debts, as per statement annexed.		
Unpaid purchase money of movable and leasehold property contracted in life-time of the deceased to be sold, as per statement annexed.		
Deceased's interests in proceeds of sale of immovable property subject to a trust for sale, whether actually sold or not, as per statement annexed (D).		
Property over which the deceased had and exercised by will a general power of appointment, as per statement annexed (D).		
Property over which the deceased had, but did not exercise, a general power of appointment, and which, by default of exercise of the power of appointment, belonged to the deceased absolutely, as per statement annexed (D).		
Policies of insurance and bonuses (if any) thereon, on the life of the deceased, as per statement annexed.		1,00,000 0 0
Household goods, furniture, books, plate, any wearing apparels including any precious or semiprecious stones or ornaments sewn into the wearing apparel, etc. (E).	If sold, realised gross Rs. 7500 Less Exempt Rs. 2500 If unsold, estimated at Rs. ...	5,000 0 0
Jewellery, watches, trinkets, etc.(E).	If sold, realised gross Rs. ... If unsold, estimated at Rs. ...	20,000 0 0
Motor cars, carriages, horses, harness saddlery, etc.(E).	If sold, realised gross Rs. ... If unsold, estimated at Rs. ...	15,000 0 0
Stock in trade, live and dead farming stock, implements for agricultural purposes, etc.	If sold, realised gross Rs. ... If unsold, estimated at Rs. ...	
Goodwill of business at 8 years purchase of weighted average of profit.	If taken over at a price Rs. ... If valued according to custom of trade. Rs. ... If neither, estimated at Rs. ...	8,000 0 0
Capital in business including profit to date of death.....		25,000 0 0
Ships and shares of ships registered at ports in India, as per statement annexed (F).		
Profits of same to date of death, (G) estimated at		
The deceased's share in movable and immovable property as a partner in the firm of.....		
as per balance sheet annexed, signed by the surviving partners. ...		
If a balance sheet is not available, estimated at		
Leasehold property for years, as per form 1B.	If sold, realised gross Rs. 5,000 Less Mortgage 2,000 If unsold, estimated at Rs.	3,000 0 0
(Mortgages on the leasehold property should be deducted by inclusion in Schedule No. 1) Less Mortgage.		
Rents of the deceased's own immovable and leasehold property due prior to the death, but not received by the deceased, (G) estimated at		100 0 0
Apportionment of the rents of the deceased's immovable and leasehold property to date of death, (G) estimated at		
Income accrued due, but not received prior to the death, arising from immovable and movable property in which the deceased had a life or other limited interest, *viz.*, (D).		
Apportionment of income from such source to date of death		
Any other income apportioned where necessary, to which the deceased was entitled at his death (*e.g.* pensions, annuities, director's fees, etc.), as per statement annexed		
Any interests in expectancy, as per statement annexed (J)		
Other movable property not comprised under the foregoing heads, *viz.* ...		
Gross Movable Property		4,13,725 0 0

Carried to item 1 of the summary.

ACCOUNT No. 1 (SECOND PART)

Immovable Property except agricultural lands situate in the States of India except Jammu and Kashmir.

Each item of property should be listed and particulars should be given in Form 1B in respect of lands and any interest in expectancy in immovable property should also be stated (K).	Gross annual value at the date of death	Gross principal value at the date of death
	Rs.	Rs.
House property		1,15,000 0 0
Gross Value		Carried to item XI of the summary.

To be signed by the person(s) making oath or affirmation.

ACCOUNT No. 1 (THIRD PART)

Agricultural lands situate in the States of India except Jammu and Kashmir.

Each item of agricultural lands shall be listed and particulars should be given in Form 1C, in respect of agricultural lands and any interest in expectancy in agricultural lands should also be stated.	Gross annual value at the date of death	Gross principal value at the date of death
	Rs.	Rs.
		Nil.
Gross Value	Carried to item XIV of the summary.	

To be signed by the person(s) making oath or affirmation.

ACCOUNT No. 1 (FOURTH PART)

Cessor of interest in joint family property of a Hindu family governed by Mitakshara/Marumakkattayam/or Aliyasantana law

Principal value of the family property (Each item of the property should be listed and particulars should be given in Form 1D in respect of all properties belonging to the joint family with details of any gifts, transfers, settlements or trusts, etc., made by the family within 2 years of the death of the deceased) 1	Deceased's interest therein 2	Value of the deceased's interest ceasing. (Carried to item No. IX of the summary) 3
Rs. 5,00,000	1/5	1,00,000

Name of the karta of the family 4	Names of the members of the family who would be entitled to a share if partition took place immediately before death of the deceased and their share 5	Age of the deceased 6	If the deceased was below 18 years of age, whether a lineal male ascendant of the deceased was a co-parcener in the family 7

To be signed by the person(s) making oath or affirmation.

ACCOUNT No. 2

Movable Property situate outside the States of India except Jammu and Kashmir, which is not saleable or transferable in any such States.

Note.—Property saleable or transferable in such States should be included in Account No. 1.

Particulars of the Property	Local situation	Principal value at date of death
Loan to A.B.C. Ltd.	Singapore	Rs. 10,000
	Gross Value	Carried to item VI of the summary

To be signed by the person(s) making oath or affirmation.

ACCOUNTS Nos. 3(*a*) and 3(*b*)

3(*a*).—An account of the movable property other than that in Accounts Nos. 1 and 2, of which the deceased at the time of death was competent to dispose within the meaning of section 3 (1).

3(*b*).—An account of money which the deceased had, at the time of death, a general power to charge on immovable property whether the power was exercised by will or not.

Short material particulars of disposition conferring the power	Particulars of Full particulars leaseholds for should be	Property. of any years separately stated	Principal value at date of death
			Rs.
3(*a*)			
	Gross Value		
Deduct—Debts and encumbrances upon leaseholds, as per statement annexed.			
	Net Value		
3(*b*).—(i) Where the power was exercised (as per statement annexed) ...			
(ii) Where the power was not exercised (as per statement annexed) ...			
	TOTAL of 3(*a*) and 3(*b*) carried to item VIII of the summary.		

To be signed by the person(s) making oath or affirmation.

SCHEDULE No. 1 (FIRST PART)

An Account of the debts (including mortgage debts secured on leasehold property) due and owing from the deceased to persons resident within the States of India except Jammu and Kashmir or due to persons resident out of the said States but contracted to be paid in any such State, or charged on property situate within any such State.

(Where the debts on the deceased's movable property exceed the value thereof, and the deficiency is a proper deduction for Estate Duty purposes against the deceased's immovable property, deduction of such deficiency may be taken in Schedule No. 3.)

Name and address of creditor	Description of debt (including date and short particulars of any security for the debt)	Amount
(1)	(2)	(3)
Read Notes (H) and (L)		Rs.
Dr. Cureall,	Medical attendence	400 0 0
Provision Merchant	Provisions	200 0 0
Income-tax		5,400 0 0
	Total, First Part	6,000 0 0

SCHEDULE No. 1 (SECOND PART)

A statement of the allowances claimed under clause (*d*) of section 44 on account of debt by way of dower.

	Amount
	Rs.

SCHEDULE No. 1 (THIRD PART)

An account of the funeral expenses of the deceased.

	Amount (actual or whichever is less.) Rs. 1000
	Rs.
Funeral expenses	600 0 0
Total First, Second and Third Parts.	6,600 0 0

To be signed by the person(s) making oath or affirmation.

SCHEDULE No. 2

An account of the debts due and owing from the deceased to persons resident out of the States of India except Jammu and Kashmir, other than debts contracted to be paid in any such State, or charged on property situate within any such State, which have been entered in the Schedule No. 1.

Name and address of creditor (1)	Description of debt (including date and short particulars of any security for the debt) (2)	Amount (3)
Read Note (M)	Estimated expenses of realising the debt in Singapore	Rs.
	TOTAL...	1,000 0 0

To be signed by the person(s) making oath or affirmation.

SCHEDULE No. 3

*An account of the debts and encumbrances upon the immovable property in Account No. 1.

(Where the debts on the deceased's immovable property exceed the value thereof, and the deficiency is a proper deduction for Estate Duty purposes against the deceased's movable property, deduction of such deficiency may be taken in Schedule No. 1).

Nature of debt or encumbrance and by whom created Rs. (1)	Short material particulars of security with date of, and names of parties to, any deed (2)	Short particulars of property charged to identify it in above account (3)	Names and addresses of persons to or in whom the debt or encumbrances is now due or vested (4)	Amount of debt or encumbrances (5)
Mortgage by deceased on House property				50,000 0 0

*Read Notes (H) and (L).
To be signed by the person(s) making oath or affirmation.

SCHEDULE No. 4

An account of the debts and encumbrances upon agricultural lands in Account No. 1.
(Where the debts on the deceased's agricultural lands exceed the value thereof, the deficiency is a proper deduction for Estate Duty purposes against the deceased's other immovable or movable properties, deduction of such deficiency may be taken in appropriate Schedule).

Nature of debt or encumbrances and by whom created (1)	Short material particulars of security with date or and names of the parties to, any deed (2)	Short particulars of the agricultural lands charged to identify it in the above account (3)	Names and addresses of persons to or in whom the debt or encumbrances is now due or vested (4)	Amount of debts or encumbrances (5)
			TOTAL...	

To be signed by the person(s) making oath or affirmation.

SUMMARY

		Rs.	Rs.	Rs.
I.	Gross movable property in Account No. 1 (First Part), ...	4,13,725		
II.	*Deduct.*—Total of Schedule I	6,600		
III.	Net movable property in Account No. 1	4,07,125		
IV.	Gross movable property in Account No. 2	10,000		
V.	*Deduct.*—Total of Schedule No. 2 ...	1,000		
VI.	Net movable property in Account No. 2	9,000		
VII.	Net movable property in Account Nos. 1 and 2 (Total of III and VI) ...			4,16,125
VIII.	Net movable property in Account Nos. 3 (*a*) and 3 (*b*)			
IX.	Co-parcenary interest in HUF ceasing Account No. 1 (Fourth Part) ...			1,00,000
X.	Net movable property in Account Nos. 1, 2, 3(*a*) and 3(*b*) (Total of VII and VIII)			5,16,125
XI.	Gross immovable property except agricultural land in Account No. 1 (Second Part)	1,15,000		
XII.	*Deduct.*—Total of Schedule No. 3 ...	50,000		
XIII.	Net immovable property in Account No. 1	65,000		65,000
XIV.	Gross agricultural land in Account No. 1 (Third Part)			
XV.	*Deduct.*—Total of Schedule No. 4 ...			
XVI.	Net agricultural land in Account No. 1...			
XVII.	Net movable and immovable property (Total of X, XIII and XVI) ...			5,81,125
	Exemptions claimed (N).	5,000		

FORM 1-A. ESTATE DUTY

E.D.-1.

Statement of Stocks and Shares to accompany the Estate Duty Account.

Amount of stock or No. of shares	Name of company, followed by full description of holding	Nominal value of holding	Market price at date of death	Principal value at date of death
1	2	3	4	5

To be signed by the person(s) making oath or affirmation.

FORM 1 B ESTATE DUTY

E.D.-I.

Statement of Immovable (and/or, Leasehold Property excluding agricultural lands.)

Identification No.	Description of property including situation (If the property is leasehold for years, the unexpired term, as at the date of death of the deceased, should be stated.) NOTE.—The description and situation of the property should be such as to enable it and its boundaries to be clearly identified.	Rental if let Rs.	If unlet, the gross annual value Rs.
1	2	3	4

Nature of deductions from gross annual value	Amount of annual deductions Rs.	Net annual value Rs.	Estimated principal value as at date of death, and, if since sold, gross amount realised and date of completion of sale. Rs.
5	6	7	8

To be signed by the person(s) making oath or affirmation.

E.D.-1. FORM 1 C ESTATE DUTY

Statement of Agricultural lands in the State of India except Jammu and Kashmir.

NOTE.—(1) Several allotments of land forming one property or managed as one estate should be entered as one item.
(2) If lands are distributed over different States, the aggregate of such lands in each State should be shown separately.

Description and situation					Deceased's share	Nature of the crop (paddy, jute, etc.)	Total acreage
Name of the State	Name of the District	Name of the Police station	Touzi No. or Name of Pargana	Idenification No. or No. of Plots under settlements records			
1	2	3	4	5	6	7	8

Crop for 1 year to date of death	Rental if let	If unlet the gross annual value	Annual deduction if any	Net annual value	Land revenue payable	Estimated principal value as at date of death and if since sold, gross amount realised and date of sale	Basis of valuation
9	10	11	12	13	14	15	16

To be signed by the person(s) making oath or affirmation.

ILLUSTRATIONS

SECTION 7

A, B, C and *D* constituted members (co-parceners in) of a Joint Hindu family. The family's estate is of the value of Rs. 4,00,000.

On *A*'s death, there is a cesser of interest and 1/4 of the value of the property at his death is deemed to pass. The extent of the benefit which accrued or arose on *A*'s death was 1/4 of the income which the deceased had enjoyed. *B, C* and *D* would be benefited to the extent of the share of the income enjoyed by the deceased. Another way of putting the matter is the estate (property) which hitherto bore four burdens of life estates has been released from one of the four burdens, the cesser of *A*'s burden has given rise to a benefit to *B, C* and *D* who will be entitled to enjoy the income of the estate in three shares; the income of each of *B, C* and *D* increases. *A*'s interest in the estate during his life was only 1/4th which was less than the whole. 'Slice' principle in section 40 will apply for purposes of calculation of benefit.

		Rs.
e.g.	Total income of the Estate	.. 1,00,000
	Interest of *A* in the total income	.. 10,000
	Value of the property at his death	.. 4,00,000

The Interest ceasing on his death $\frac{10,000}{1,00,000}$ = 1/10th of the value of the property, i.e., 1/10th of Rs. 4,00,000 — Rs. 40,000

SECTION 11

Example 1

A, before her marriage settled her property upon a trust whereunder the Trustees of the settlement were to pay to her Rs. 400 annually from the income of the settled property and to pay the balance to her husband. The Trustees were further directed to pay the income of the settled property to the survivor of *A* and *B* during his or her life, subject to the above-stated limitations. The trustees were to dispose of the remainder after the death of the survivor of *A* and *B* in favour of the children of the marriage absolutely. *B* died, leaving *A* surviving him and two children of full age. In this case the whole of the settled property passed on the death of *B*; nevertheless in paying estate duty, a deduction of the amount of the actuarial valuation of *A*'s annuity is made.

Example 2

A is entitled to an annuity of Rs. 4,000 on a property, the total income from which is Rs. 12,000. He disposes of his interest before his death. If the value of the property is taken to be Rs. 3,00,000, on *A*'s death, there is a cesser of interest to the extent of Rs. 4,000. This has to be valued under section 40. Here the interest does not extend to the whole income, hence a proportionate part of the value of the property in which the annuity subsisted has to be calculated.

$$\frac{\text{Extent of the interest of the annuitant}}{\text{Total Income from the property}} \times \text{Value of property}:$$

i.e., $\frac{4,000}{12,000} \times 3,00,000 = 1,00,000.$

Illustration to subsection (2) of section 11

A, in the foregoing example 2 disposed of his limited interest outside the statutory period and there was no retention of any benefit by him by contract or otherwise. The possession of the property was *bona fide* assumed and thereafter enjoyed by the disponee to the entire exclusion of the disponer. All the conditions of subsection (2) of section 11 are complied with, and there is no estate duty payable in this case on the death of *A*.

Illustration to subsection (3) of section 11

A, who has a life interest in an estate borrowed Rs. 2,000 on the security of his interest in the estate and spent the money on himself. Thereafter he disposed of his life interest, subject to the incumbrance created by him in favour of *B*. On the death of *A*, estate duty is payable on the whole interest without deduction for the incumbrance created by *A* of Rs. 2,000 on his interest.

If, on the other hand, the amount of Rs. 2,000 borrowed by him had been utilised for maintenance or improvement of the estate, this amount can be deducted from the value of the estate in determining the estate duty payable.

Illustration to subsections (4) and (5) of section 11

Suppose *A*, in the foregoing Example 2, transfers his interest in favour of a relative of his or even to a stranger for full consideration in money or money's worth. The transferee transfers subsequently the interest to a controlled company in which *A* is the Managing Director, who receives a remuneration from the company. On *A*'s death, estate duty is payable on the full value of his interest without any deduction.

SECTION 12

Settlements with Reservation.

Illustration.

(1) *A* made a settlement of his house and garden adjoining it in favour of *B*.

(*a*) *A* reserved a right to himself and his guests to use the garden on certain stated festive occasions; or,

(*b*) *A* stiputed with *B* for payment to him of an annuity for his life; or,

(*c*) *A* entered into a collateral agreement with *B* that *B* should advance moneys for the education of *A*'s son.

Since benefits were reserved to the settlor, on the settlor's death estate duty would be payable in respect of the principal value of the house and garden.

If the benefits reserved (*a*), (*b*) and (*c*) had been surrendered by the deceased at least two years before his death, no estate duty would be payable.

(2) If *A* settled his house and a specific portion in the garden reserving to himself the rest of the garden, on his death estate duty would not become payable (*i*) if the settlor survived the settlement for not less than two years (*ii*) except on the principal value of the portion of the garden which he had reserved to himself as property passing on his death: (the settlement is a valid settlement as there was no reservation in what he had given; what he did not give under the settlement he was entitled to keep for himself).

SECTION 14

Under section 14, the ascertainment of the amount chargeable to duty in the case of moneys received under a policy kept up by the deceased for the benefit of a donee is the proportionate amount based on the amount of premiums paid by the deceased after the transfer to the donee or the creation of a donee to the total premia. The facts in *Lord Advocate* v. *Inzievar Estate* 1938, p. 402 illustrate the principle.

S effected a policy on his life and paid premia for 14 years. Thereafter the policy was transferred by him gratuitously to another. 4 premia were paid by the deceased after the transfer. Till his death the total number of premia paid was 25.

The number of premia paid by the deceased	.. 14
The number of premia paid by the deceased after the transfer	.. 4
The number of premia from the date of transfer to date of death of *S* (the assured)	.. 7

So the total number of premia after the transfer is 11, out of which 4 were paid by the deceased. The policy amount was held liable to the extent 4/11. the House of Lords has held that the proportion is to be determined by events which took place after the assignment. The proportion must be taken on the shares which the donor and donee respectively had taken in keeping up the policy after the date of assignment viz. 4/11 and not 4/25 of the policy amount.

SECTION 15

Illustration 1

A settled his property on trustees to accumulate the income therefrom during his life. The trustees are to hold the property after his death in trust for his children. *A* reserved to himself power of disposition over the capital and income of the settled property in favour of his children. *A* purchased annuities from the trustees of the settlement for his children. On *A*'s death, estate duty will be payable in respect of the annuities so purchased by *A*. The fact that the children under the settlement have a beneficial interest in the trust properties including the annuities purchased by *A* from the trustees will be disregarded.

Illustration 2

A, a partner in a firm which consisted of three other partners dies. The firm pays to *A*'s widow or child an annuity. The annuity even though given by the firm will be regarded as an annuity provided by the deceased *A*. The deceased would be regarded as the person, who had by himself alone (under the articles of partnership) or in concert or by arrangement with other persons (his partners) provided the annuity.

SECTION 23

Interest failing before becoming an interest in possession.

Illustration

A settles property on himself for life, then to *B* for life, then to *C* for life and, afterwards to *A* absolutely. *B* dies first and *C* dies also afterwards while *A* is in enjoyment of his life estate in the property. On their deaths, no estate duty is payable. On the death of *C*, *A*'s life interest is enlarged into an absolute estate. Explanation 1 states that notwithstanding this fact estate duty is not payable.

A, by his will or under a settlement made by him confers a limited interest on *B*, viz., to be paid Rs. 2,000 from the residuary estate of *A*. *A* dies. The administration of *A*'s estate continues for so long that *B* dies before the administration is completed, and the residuary estate is ascertained. Estate duty is payable in respect of *B*'s death even though he has died before coming into possession of Rs. 2,000. Explanation 2 states that *B*'s interest in such an event (case) shall be deemed to have become an interest in possession on the date as from which the income from the residue or part of the residue would have been attributable to that interest if the residue had been ascertained immediately after the death of the testator or intestate.

SECTION 24

Reverter to Disponer.

Example 1

A house or land belonging to *A* is settled by him on *B*, *C*, *D* and *E* in succession for their lives severally or jointly for their lives and the life of the last survivor, and then absolutely on *A* himself.

On the death of *B*, or of *C*, or of *D*, or of *E*, no estate duty is payable on the house or land provided that *A* is alive on the death of the last one among *B*, *C*, *D* and *E* to die. On the last but one death estate duty is collected according to English practice, and it is returned after the last death if *A*, the settlor survives the last death.

Severally (in succession).

Example 2

Property settled by *X* on *A* for life, remainder to *B*, remainder to *C* and remainder to *D* and after *D* absolutely to *X*.

B and *C* die even during *A*'s lifetime. On their deaths no estate duty is payable. After the death of *A*, *D* succeeds to his life interest. After the death of *D* the property reverts to *X*, the settlor. On the death of *D* also no estate duty is payable.

Jointly (in succession).

Example 3

X, the wife in consideration of her marriage with *Y* (the husband) settled on trust her property by a trust deed on terms that the income from the property should be paid by the trustees of the settlement to her during the joint lives of *X* and *Y*, and after the death of such one of them as should die first the income should be paid to the survivor for life, and if *X* should survive *Y* and there should be no children of the marriage, then in trust for her (*X*) absolutely. *X* survived *Y* and there were no children of the marriage. On the death of *Y* subsequent limitations under the settlement subsisted viz., the life estate in *X* and the absolute estate of *X*. The life estate of *X* on events which happened became merged in her absolute estate. The absolute estate of *X* was an estate created by the settlement which would not come to an end until the death of *X*. No estate duty was payable on the death of *Y* (the husband). See *Attorney-General* v. *Wood* [(1897) 2 Q.B. 102].

The proviso to this section will come into play when the settlor reserved to himself (or herself) a power of revocation. *X*, prior to the disposition (settlement) was competent to dispose of the property as the latter was her own property. She disposed it of by way of settlement and as long as any limitations subsist under the settlement on the determination of the prior limited interest on death no estate duty is payable.

SECTION 31

Quick Succession.

Illustration 1

Value of the estate at *A*'s death .. Rs. 1,00,000

The estate then passes on to *B* who dies (say) within two years of *A*'s death.

Value of the estate at *B*'s death .. Rs. 2,00,000

How to calculate the amount of allowance.

Here, the value of the estate on the second death is greater than the value of the estate on the first death. Therefore, the latter value is to be substituted for the purpose of calculating the amount of the allowance.

Thus,

Value of the estate at the death of *A* .. Rs. 1,00,000 (*X*)

Value of the estate at the death of *B* (who dies within 2 years of *A*'s death) .. Rs. 2,00,000 (*Y*)

Estate duty payable thereon .. Rs. 11,250

Therefore the average rate is $\frac{11,250 \times 100}{2,00,000} = 5.625\%$

The allowance is not 40% of Rs. 11,250 (5.625% of Rs. 2,00,000) but 40% of 5.625% of Rs. 1,00,000.

$= 40\%$ of $\frac{1,00,000 \times 5.625}{100}$

$= 40\%$ of Rs. 5,625

$= \frac{5,625 \times 40}{100}$

= Rs. 2,250

Therefore the amount of allowance is Rs. 2,250.

Amount of estate duty payable on *B*'s death is—

Duty	Rs. 11,250
Allowance	Rs. 2,250
Net amount	Rs. 9,000

Value of the original estate *X*.

Value of the estate at the 2nd death *Y*.

Average rate on the value of the estate on 2nd death *Z*%.

Therefore net amount payable is :—

Z% of *Y* *minus* (50%, 40%, 30%, 20% and 10%, as the case may be) of *Z*% of *X*.

Where on Second death property decreases in value.

Illustration 2

Value of the estate at the death of *A*	..	Rs. 2,00,000
Estate duty payable thereon	..	Rs. 11,250
Value of the estate at the death of *B* (second death which occurred within 2 years)	..	Rs. 1,00,000
Estate duty payable thereon	..	Rs. 2,500

Average rate $\frac{2,500}{1,00,000} \times 100 = 2.5\%$

The allowance is not 40% of 11,250 but 40% of 2,500.

i.e., $\frac{40}{100} \times \frac{100,000 \times 2.5}{100}$

i.e., $\frac{40}{100} \times 2,500$

i.e., $\frac{2,500 \times 40}{100} = 1,000$

Therefore, the amount of allowance is Rs. 1,000.

Therefore, the amount of estate duty payable on *B*'s death is—

Duty	Rs. 11,250
Allowance	Rs. 1,000
Net payable	Rs. 10,250

SECTION 38

Valuation of Interests in Expectancy.

Illustration

Working shown.

Valuation of outstanding reversionary interest	..	Rs. 75,000
Value of rest of the estate	..	Rs. 1,25,000
Total value	..	Rs. 2,00,000

(1) If the duty on reversionary interest is opted to be paid now, the total duty will be (at the scheduled rate of 10%) .. Rs. 11,250

Therefore, the average rate is $\frac{11,250 \times 100}{2,00,000} = 5.625\%$

If the duty is not commuted, the duty payable at the deceased's death is at 5.625% on the rest of the estate, i.e.,

$\frac{1.25,000 \times 5.625}{100}$ = Rs. 7,031 4 0

(2) Let the value of the interest when it fell into possession be .. Rs. 95,000

Value of the rest of the estate .. Rs. 1,25,000

Total value .. Rs. 2,20,000

Amount of estate duty payable now according to the rate applicable .. Rs. 13,750

The average rate is $\frac{13,750 \times 100}{2,20,000} = 6.25\%$

Duty on interest is at 6.25%.

Duty on interest i.e., 95,000 at 6.25% is

$\frac{95,000 \times 6.25}{100}$ = Rs. 5,937 8 0

Duty when commuted .. Rs. 11,250 0 0

Duty when not commuted is Rs. 7,031 4 0 (duty paid at the deceased's death)

+ Rs. 5,937 8 0 (duty payable when interest fell into possession).

Total Rs. 12,968 12 0

It will be observed that a higher amount of duty is leviable when the payment is postponed to the date when the interest falls into possession.

SECTION 40

Calculation of "Slice"

Illustration

A is the owner of property, the value of which is Rs. 4,00,000

A gave to *B* an annuity of Rs. 500 charged on the property.

The total income of the property is .. Rs. 40,000

B dies. On his death there is a cesser of his interest. This interest extended to less than the whole income of the property. In calculating the value of benefit accruing or arising from the cesser of this interest, the principal value of an addition to the property equal to the income to which the interest extended must be ascertained.

To ascertain this principal value (to calculate the "Slice").

$\frac{500}{40,000} \times 4,00,000 = \text{Rs. } 5,000$

Formula

"Slice" of the property (the principal value of an addition to the property) equal to the income (interest) which the deceased had enjoyed is .. *X*

Annuity or interest of the deceased .. *Y*

Total income of the property in which the interest subsisted .. *Z*

Value of the entire property in which the interest subsisted .. *W*

$$X = \frac{Y}{Z} \times W$$

SECTION 45

Limitations on debts deductible.

Illustration

Property is settled on *A* for life with remainder to his only son *B*. *A*, when in failing health, purchases *B*'s remainder at a fair price, which in the circumstances is nearly the full value of the property giving a promissory note or mortgage for the amount. Upon *A*'s death, the property goes to *B* as his only heir. But for the present section, the amount of the debt would fall to be deducted under section 44, although the property would have devolved upon *B* even without the purchase. By virtue of the present section, however, no such deduction is permissible.

SECTION 45 Proviso (*a*)

If in the above example, it is assumed that "*A*" borrowed Rs. 1,25,000 out of which 1,00,000 was used to purchase the interest of the remainder man *B* a deduction is allowed of the balance namely, Rs. 25,000 only.

SECTION 45 (*b*)

Let it be assumed that *A* borrowed Rs. 1,25,000 by mortgaging his property and out of the proceeds, he utilises Rs. 10,000 to purchase the interest of the remainder man *B* whose interest in the property was valued at Rs. 10,000 and that the value of the whole property is Rs. 2,00,000. The proportion of the debt that is disallowed is

$$\frac{\text{Interest of the remainder man } B}{\text{Value of the whole property}}$$

$$= \frac{\text{Rs. } 10{,}000}{\text{Rs. } 2{,}00{,}000} \times \text{debt Rs. } 1{,}25{,}000 = \text{Rs. } 6{,}250$$

SECTION 46

Further Limitations.

Example 1

A's estate is valued at Rs. 5,00,000. He had created an encumbrance on the property in favour of *B* for Rs. 50,000 for his own use and benefit. Normally the whole debt is deductible under section 44 (*i*) but it was found that *A* had sometimes previously given *B* a sum of Rs. 10,000. Under section 46 (*i*) the deduction will be subject to an abatement to this extent viz., Rs. 50,000 *minus* Rs. 10,000. Hence the amount deductible is Rs. 40,000 instead of Rs. 50,000.

See also worked out example under section 16 "where insufficiency is proved" at p. 198.

Example 2

A gave his children Rs. 10,000 with which they acquired shares in a private company. The company then lends *A* Rs. 25,000 on the security of his estate. On *A*'s death the estate is valued at Rs. 1,00,000. Under section 44 the debt due to the company of Rs. 25,000 is deductible from the value of the property; but as it is found that in this sum of Rs. 25,000 Rs. 10,000 was derived from the deceased, the deduction is subject to an abatement of Rs. 10,000. Hence the debt that is deductible is Rs. 25,000 *minus* Rs. 10,000 = Rs. 15,000.

MORTALITY TABLES

SUCCESSION DUTY ACT, 1853

TABLE I

THE VALUES OF AN ANNUITY OF £100 PER ANNUM HELD ON A SINGLE LIF

Years of Age	*Values*			*Years of Age*	*Values*	
	£	*s.*	*d.*		£	*s.*
Birth	1,892	8	6	48	1,300	9
1	1,906	13	0	49	1,271	19
½	1,919	2	0	50	1,242	19
3	1,926	8	0	51	1,213	17
½	1,928	16	0	52	1,185	14
5	1,926	19	6	53	1,157	17
6	1,921	12	0	54	1,130	13
7	1,913	4	6	55	1,103	18
8	1,902	16	6	56	1,077	10
9	1,890	19	6	57	1,051	10
10	1,878	3	0	58	1,025	10
11	1,864	7	0	59	999	1
12	1,849	12	0	60	972	1
13	1,833	18	6	61	943	15
14	1,817	7	6	62	914	2
15	1,800	8	6	63	883	6
16	1,783	13	0	64	852	9
17	1,767	16	0	65	821	12
18	1,753	5	6	66	790	15
19	1,740	11	0	67	761	9
20	1,729	9	6	68	733	8
21	1,719	17	0	69	705	4
22	1,713	1	0	70	677	9
23	1,706	16	6	71	650	8
24	1,700	11	6	72	623	19
25	1,694	0	0	73	597	7
26	1,686	14	6	74	569	13
27	1,677	5	6	75	541	0
28	1,667	1	0	76	511	9
29	1,656	1	0	77	477	17
30	1,644	7	6	78	444	9
31	1,632	0	0	79	412	9
32	1,619	0	6	80	381	3
33	1,605	4	0	81	350	14
34	1,590	9	6	82	321	14
35	1,574	17	6	83	292	10
36	1,558	9	6	84	263	2
37	1,541	10	6	85	234	18
38	1,524	0	0	86	207	16
39	1,506	1	6	87	184	11
40	1,487	10	0	88	164	17
41	1,468	4	0	89	148	7
42	1,447	11	6	90	133	9
43	1,426	2	0	91	122	16
44	1,403	10	0	92	107	7
45	1,379	14	6	93	93	3
46	1,354	16	6	94	79	8
47	1,328	2	6	95	64	11

TABLE II

The Values of an Annuity of £100 per Annum for any Number of Years not exceeding Ninety-Five

Years	Values £	s.	d.	Years	Values £	s.	d.
1	96	3	0	49	2,134	2	6
2	188	12	0	50	2,148	4	0
3	277	10	0	51	2,161	14	6
4	362	19	6	52	2,174	15	0
5	445	3	6	53	2,187	5	0
6	524	4	0	54	2,199	5	6
7	600	4	0	55	2,210	17	0
8	673	5	0	56	2,221	19	6
9	743	10	6	57	2,232	13	0
10	811	1	6	58	2,242	19	0
11	876	0	6	59	2,252	16	6
12	938	10	0	60	2,262	6	6
13	998	11	0	61	2,271	9	6
14	1,056	6	0	62	2,280	5	6
15	1,111	16	6	63	2,288	14	6
16	1,165	4	6	64	2,296	17	0
17	1,216	11	0	65	2,304	13	0
18	1,265	18	6	66	2,312	3	6
19	1,313	7	6	67	2,319	8	0
20	1,359	0	6	68	2,326	7	0
21	1,402	18	0	69	2,333	0	6
22	1,445	2	0	70	2,339	9	0
23	1,485	13	6	71	2,345	12	6
24	1,524	13	6	72	2,351	11	0
25	1,562	4	0	73	2,357	5	0
26	1,598	5	6	74	2,362	15	0
27	1,632	19	0	75	2,368	0	6
28	1,666	6	0	76	2,373	2	0
29	1,698	7	0	77	2,377	19	6
30	1,729	4	0	78	2,382	13	6
31	1,758	16	6	79	2,387	4	0
32	1,787	7	0	80	2,391	10	6
33	1,814	15	0	81	2,395	14	0
34	1,841	2	0	82	2,399	14	0
35	1,866	9	0	83	2,403	11	6
36	1,890	16	6	84	2,407	5	6
37	1,914	5	0	85	2,410	17	0
38	1,936	15	6	86	2,414	5	6
39	1,958	8	6	87	2,417	11	6
40	1,979	5	6	88	2,420	14	6
41	1,999	6	0	89	2,423	15	6
42	2,018	11	0	90	2,426	14	6
43	2,037	1	6	91	2,429	10	6
44	2,054	17	6	92	2,432	5	0
45	2,072	0	0	93	2,434	17	0
46	2,088	9	0	94	2,437	7	0
47	2,104	5	6	95	2,439	15	6
48	2,119	10	0				

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