

1983 March 24

[A. Loizou J.]

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

PHANOS IONIDES AND MARIA ROSSIDOU,
AS ADMINISTRATORS OF THE ESTATE OF THE
DECEASED LOIZOS ROSSIDES, LATE OF STROVOLOS,
Applicants.

v.

THE REPUBLIC OF CYPRUS, THROUGH
THE COMMISSIONER OF ESTATE DUTY,
Respondent.

(Case No. 110/79).

Estate duty—Employee—Life Assurance Scheme—Contributions to the Scheme by employer and employee—Which were paid to Trustees—Latter taking assurance policies and paying from the contributions the premiums on the policies issued on the life of the employees—Amount payable under the scheme to the employee's legal representatives taxable under section 7(h) of the Estate Duty Law, 1962 (Law 67/62).

The deceased Loizos Rossides was the Chief Accountant of Dianellos and Vergopoulos Ltd., formerly the Ardath Tobacco Co. (Cyprus) Ltd. Whilst serving with the aforesaid Company, he joined the Company's Pension and Life Assurance Scheme which was an arrangement for the benefit of its qualified employees in Cyprus and assured by the Gresham Life Assurance Society Ltd. This scheme was introduced by a Trust Deed dated 15th March, 1953, and under it both the deceased and the Company were making contributions to a Provident Fund for the purpose of securing the benefits provided for by the scheme for the employees. These contributions were paid to the Trustees of the Fund who took out with the Gresham Assurance Co. Ltd. assurance policies and paid therefrom the premiums on the policies of assurance issued on the life of the employees. When the said Assurance Company transferred

its portofolio to the Universal Life Insurance Co. Ltd., the latter took over the policies issued for the members of the scheme by Gresham.

The deceased became a member of the scheme on the 1st January, 1962, and until the 31st December, 1974, the day preceding his death, the contributions were as follows: 5

By the deceased	£1,697.180 mils
By the Company	£4,711.160 mils.

Upon the death of the deceased a sum of £14,598.- became payable to his legal representatives according to the amended scheme which came into force on the same day. 10

The respondent Commissioner decided that the aforesaid sum attracted liability to estate duty and hence this recourse:

Held, that the policy in question was neither "effected" nor "kept up" by the deceased for the benefit of a donee and therefore section 7(g) of the Estate Duty Law, 1962 (Law 67 of 1962) is not applicable; that since the deceased contributed towards the cost of the benefit, the beneficiary had an enforceable right to it and the beneficial interest arose in favour of the beneficiary on the employee's death; that since this was a Policy provided by the deceased in concert or arrangement with another; and that since in any event what came to the beneficiary was property that the deceased was at the time of his death competent to dispose the amount in issue is taxable under section 7(h) of Law 67/62. 15 20 25

Application dismissed.

Observations with regard to the need of amendment of the relevant legislation.

Cases referred to:

Barclays Bank Ltd. v. The Attorney-General [1944] 2 All E.R.208; 30
Re J. Bibby & Sons Ltd., Pensions Trust Deed. Davies v. Inland Revenue Commissioners [1952] 2 All E.R.483;
Re Miller's Agreement [1947] 2 All E.R.78;
Attorney-General v. Quixley [1929] All E.R. (Rep.) 969;
Re Kilpatrick's Policies Trusts [1966] Ch. 730 at pp. 766-767. 35

Recourse.

Recourse against the decision of the respondent to assess the estate of the deceased Loizos Rossides at C£16,182.- for estate duty purposes.

5 *L. Papaphilippou*, for the applicants.

A. Evangelou, Senior Counsel of the Republic, for the respondent.

Cur. adv. vult.

10 *A. Loizou J.* read the following judgment. By the present recourse the applicants as administrators of the estate of the deceased Loizos Rossides, late of Strovolos, seek from the Court the following remedies:

15 “(A) A declaration of the Court that the act or decision of the respondent dated the 15th January, 1979, to assess the estate of the deceased Loizos Rossides at C£16,182.- for estate duty purposes, is null and void and of no legal effect whatsoever.

20 (B) A declaration that the omission or refusal of the respondent to reduce the amount of the proceeds from an insurance policy taken out on the life of the deceased Loizos Rossides by the Trustees of the Pension and Life Assurance Scheme of his employer from C£14,598.- to C£3,866.- ought not to have been made and that whatever has been omitted should have been performed.

25 (C) A declaration that the omission or refusal of the respondent to allow as a proper deduction from the value of the estate the sum of C£6,000.- which is the estimated amount of rents collected by the deceased Loizos Rossides over the years 1966-1974 from the renting of an upstairs flat of his wife, ought not to have been made and that whatever has been omitted should have been performed”.

30 The relevant facts which are simple and not in dispute are these: The deceased was the Chief Accountant of Dianellos and Vergopoulos Ltd., formerly the Ardath Tobacco Co. (Cyprus) Ltd. Whilst serving with the aforesaid Company, he joined the Company’s Pension and Life Assurance Scheme which was an arrangement for the benefit of its qualified employ-

ees in Cyprus and assured by the Gresham Life Assurance Society Ltd. The rules of this pension scheme have been attached to the application and are exhibits 1 and 2 before me. The original rules of the scheme were those in exhibit 1 which were later amended and replaced as from the 1st January, 1975, by exhibit 2 which happens to be also the date of the deceased's death which came about by a heart attack. This scheme was introduced by a Trust Deed dated 15th March, 1953, and under it both the deceased and the Company were making contributions to a Provident Fund for the purpose of securing the benefits provided for by the scheme for the employees. These contributions were paid to the Trustees of the Fund who took out with the Gresham Assurance Co. Ltd. assurance policies and paid therefrom the premiums on the policies of assurance issued on the life of the employees. When the said Assurance Company transferred its portofolio to the Universal Life Insurance Co. Ltd., the latter took over the policies issued for the members of the scheme by Gresham.

The deceased became a member of the scheme on the 1st January, 1962, and until the 31st December, 1974, the day preceding his death, the contributions were as follows:

By the deceased	C£1,697.180 mils
By the Company	C£4,711.160 mils.

Upon the death of the deceased a sum of C£14,598 became payable to his legal representatives according to the amended scheme which came into force on the same day. The issue which arises for determination now in this case is whether the aforesaid sum so paid to the estate of the deceased attracts liability to estate duty. The second question that was in issue in this recourse under relief (C) has been disposed of at the request of both sides in the recourse before reserving judgment upon statements made by both sides in relation thereto.

Counsel for the respondent conceded that in respect of the claim by the widow of the deceased for C£6,000.- which is the estimated amount of rents collected by the deceased there had not been a proper inquiry into the subject and that no reasoned decision had been given. Upon that statement being made, I was invited by counsel for the applicant to exercise my powers under Article 146 of the Constitution and annul that part of

the subject decision of the respondent which related to the facts so conceded. In annulling that part of the decision I had this to say: "As I have no reason to disagree with the statement made by counsel for both sides regarding the lack of due inquiry and the absence of proper reasoning regarding the widow's claim for C£6,000.- representing an alleged debt owed to her and as this stand is born out by the document already adduced in evidence, that part of the sub judice decision should be treated for all intents and purposes as null and void and the matter should be re-examined by the respondent Commissioner of Estate Duty. I have followed this course so that there will be no further delay in the examination of the matter but I shall have to refer to it in my judgment which will be delivered in due course".

The grounds of law relied upon on behalf of the applicant in respect of the sole issue left now for determination are as set out in the application (Schedule 'B') the following:-

1. The Respondent's act to include in the value of the estate liable to estate duty the whole amount paid on an insurance policy on the life of the deceased, the premiums on which were met partly out of the contributions of the deceased to the Pension and Life Assurance Scheme of his employer, and partly out of the contributions to the Scheme by the Employer, is ultra vires and contrary to the provisions of para. (g) of section 7 of the Estate Duty Laws, 1962-1976 and/or the Respondent acted under misconception of facts and/or of Law.
2. The inclusion in the assessable estate should have been limited to the proportion of the proceeds of the life policy which corresponds to the contributions of the deceased in the premiums paid.
3. _____
4. The Respondent acted under misconception of facts in that he did not take into consideration and/or disregarded and/or did not weigh properly the rules and regulations of the Pension Life Assurance Scheme as particularly stated in the facts hereof".

The statutory provisions invoked by the two sides in support

of their respective cases are paragraphs F, G, and H of section 7 of the Estate Duty Law 1962 (Law No. 67 of 1962) which Law has been amended by Law 3 of 1976 but with which amendments we are not concerned in this case. These provisions read as follows:

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“(στ) περιουσιακά στοιχεία περιερχόμενα εις άλλους δυνάμει συνεστηκότος ή μέλλοντος να συσταθῆ καταπιστεύματος γενομένου υπό του άποθανόντος δι’ έγγραφου μη έχοντος Ισχύη διαθήκης, δια του όποιου έπιφυλάττεται τῶ συστήσαντι τό καταπίστευμα (settlor), ρητῶς ή σιωπηρῶς, 10 συμφέρον τι, Ισοβίως ή δι’ έτέραν τινά χρονικήν περίοδον καθοριστέαν δι’ αναφορᾶς προς τόν θάνατον, επί τῶν τοιούτων στοιχείων ή επί τῶν έκ τῆς πωλήσεως τούτων προκυπτόντων χρημάτων, ή δια του όποιου ό συστήσας τό καταπίστευμα έπεφύλαξεν έαυτῶ τό δικαίωμα όπως, 15 δια τῆς άσκήσεως οίασδήποτε έξουσίας, άνακτήση ή άξιώση άπόλυτον συμφέρον επί τῆς τοιαύτης περιουσίας ή τῶν έκ τῆς πωλήσεως ταύτης προκυπτόντων χρημάτων:

Νοεΐται ότι δια τούς σκοπούς τῆς παρούσης παραγράφου, ό όρος ‘καταπίστευμα’ θα περιλαμβάνη τράστς 20 (trusts) πάσης φύσεως, γενόμενα έγγραφως ή μη συσταθέντα προς όφελος οίουδήποτε προσώπου, και έάν ταῦτα έμπεριέχωνται έν τῶ ιδρυτικῶ του καταπιστεύματος έγγραφῶ ανεξαρτήτως του ότι τό έγγραφον 25 έγέμετο επί άντιπαροχῆ ή είτε άνευ άντιπαροχῆς μεταξύ του συστήσαντος τό καταπίστευμα (settlor) και οίουδήποτε έτέρου προσώπου.

(ζ) χρήματα είσπραττόμενα δυνάμει άσφαλιστηρίου έγγραφου γενομένου υπό του άποθανόντος επί τῆς ζωῆς του 30 όταν τά άσφάλιστρα καταβάλλωνται καθ’ όλοκληρίαν υπό του άποθανόντος προς όφελος δωρεοδόχου τινός (άρχικου ή έκδοχέως), ή μέρος τῶν τοιούτων χρημάτων άνάλογον προς τά υπό του άποθανόντος καταβληθέντα 35 άσφάλιστρα εις περιπτώσεις καθ’ ός τά άσφάλιστρα καταβάλλονται μερικῶς υπό του άποθανόντος δια τό τοιούτον όφελος.

(η) έτησία παροχή ή έτερόν τι συμφέρον άγορασθέν ή συσταθέν υπό του άποθανόντος, είτε μόνου είτε τῆ συμπράξει

μεθ' ἑτέρου προσώπου, κατὰ τὴν ἕκτασιν τῆς ἀξίας τοῦ προκύπτοντος λόγῳ ἐπιβιώσεως ἢ ἄλλως ὀφέλους ἐπὶ τῷ θανάτῳ τοῦ ἀποθανόντος”.

And in English reads:

5 “(f) property passing under any past or future settlements made by the deceased by any instrument not taking effect as a will whereby an interest in such property or the proceeds of sale thereof for life or any other period determinable by reference to death is reserved, 10 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 or the proceeds of sale thereof:

15 Provided that in this paragraph the expression ‘settlement’ shall include any trust, whether expressed in writing or not, in favour of any person, and if contained in an instrument effecting the settlement, whether the instrument was made for valuable consideration or not as between the settlor and any other 20 person:

(g) money received under a policy of insurance effected by the deceased on his life where the policy is wholly kept up by him for the benefit of a donee, whether 25 nominee or assignee, or a part of such money in proportion to the premium paid by him, where the policy is partially kept up by the deceased for such benefit;

(h) any annuity or other interest purchased or provided 30 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”.

35 Para. (g) of the aforesaid section 7 corresponds to section 2(1)(c) of the English Finance Act 1894 incorporating the last paragraph of section 11(1) of the Customs & Inland Revenue Act, 1889.

The prerequisites of this section are that:

- (a) the policy of insurance must be "effected" by the deceased, that is, the insurance contract must have been made by him and it is immaterial who paid the first premium (see *Hanson's Death Duties*, 10th Ed., p. 261, para. 618). And, 5
- (b) the policy has to be "kept up" by him, which expression implies a continuous process.

In *Barclays Bank Ltd. v. The Attorney-General* [1944] 2 All E.R. 208, the deceased settled two policies on his life together with two trust funds, upon trust, inter alia, to pay the premiums on the policies out of the income of the trust funds. It was held that the trustees were not agents for the deceased but kept up the policies as principals. Moreover, since "keeping up" policies involves paying premiums as they fall due, the deceased could not be said to have kept up the policies merely because he had provided in advance the means to do so. 10 15

As commented in *Hanson's*, para. 617 (supra): "Liability under this subsection by itself attaches, therefore, only if the deceased paid the premiums himself, or employed an agent to pay them by means of sums provided or to be provided by him, e.g., a mandate to a banker to pay out of current balances". 20

The effect, however, of this decision was nullified by section 76 of the Finance Act, 1948, which imposed duty on the monies payable under a policy on the deceased's life kept up, under the terms of a settlement or agreement out of funds or income provided by him either directly or indirectly or out of funds provided by another under any reciprocal agreement by him (see *Hanson's* (supra), para. 1421, p. 963). 25

This amendment, however, introduced by section 76 of the Act of 1948 does not appear in our law and therefore the position should be examined as it existed in England before its introduction. 30

The nature, therefore, of the scheme under exhibit 1 has to be examined. In the first place this was contributory scheme and the legibility for membership is set out in rule 2 whereby all employees who at the date of commencement of the scheme 35

were within certain categories and who produced evidence of their date of birth to the satisfaction of the Assurance Society were eligible for membership of the Scheme.

5 It appears that the deceased was eligible for membership and so joined the Scheme. For employees who joined the service of the Company after the commencement of the Scheme it was a condition of their employment that they should become members of the Scheme. Rule 3 thereof is entitled "Contributions and Policies to be Effected" and each member is obliged
10 to contribute towards the cost of the Scheme by deduction from salary or otherwise in accordance with the scales set out therein. The Company having to contribute:

15 " in respect of each Member, such further amounts as may be necessary to secure the benefits provided by the Scheme for such Member.

The contributions from both Members and the Company shall be paid to the Trustees who will utilise them as premiums on the Policy of Assurance effected with the Assurance Society on the life of the Member in question.
20 Such Policy of assurance shall be of a type known as a Double Endowment Assurance (without the right to participate in the profits of the Assurance Society) and will be for such amount as shall be sufficient to provide the benefits of the Scheme in respect of the Member.

25 Whenever a Member receives an increment in Salary then as from the next or coincident Entry Date the contributions payable shall be increased and the benefits secured by the assurance on his life shall be increased accordingly by endorsement on the assurance policy.

30 Each Member will be given a Certificate showing the amount of the benefits secured by the assurance policy effected on his life. The actual policy will, however, be held by the Trustees".

Rule 4 provides for the Benefits.

35 "The following benefits will be provided for Members:

(a) *Pension*

Upon retirement at Normal Pension Date a Member shall be entitled to an annual pension of:

(i) In the case of Male Members, one-eightieth of Pensionable Salary for each complete year of Pensionable Service.

or

(ii) In the case of Female Members, one-seventieth of Pensionable Salary for each complete year of Pensionable Service. 5

Provided that if the annual amount of such pension would be less than £25, then a cash sum will be paid in lieu thereof.

The pension would be payable throughout the lifetime of the Member by monthly instalments in advance the first instalment falling due at Normal Pension Date. Should the Member die before sixty monthly instalments of the pension have been paid then the pension shall continue for the benefit of the estate of the Member, until the completion of such sixty instalments. 10 15

(b) *Life Assurance Benefit*

If a Member dies prior to Normal Pension Date, whilst still in the active service of the Company then the amount payable under the assurance policy on that Member's life in such circumstances shall be granted to the Member's legal personal representatives. The Trustees shall be entitled to require such evidence of title from the claimant as they, in their absolute discretion, may consider necessary". 20 25

From the various terms of the Scheme in question and taking into consideration what was stated in *Barclays Bank* case (*supra*) I have come to the conclusion that the Policy in question was neither "effected" nor "kept up" by the deceased for the benefit of a donee and therefore section 7(g) is not applicable. In other words, the contributions of the employers and the employees were given to the trustees for the purpose of securing pensions and other benefits and the trustees utilized this money which were the money of the employees and not of the employers to pay the premiums. This is clear from the fact that if an employee did not die prior to normal pension date the money paid both by employer and employee would come to the employee as being entitled to them as part of his salary and the 30 35

totality of his emoluments received by him in return of the services rendered.

5 Having found that para. (g) of section 7 of the Law does not apply, the further question arises whether this attracts an estate duty under the law.

10 It has been argued on behalf of the respondents that the amount of the insurance is taxable under sections 7(h) and possibly 7(f) of the Law. Section 7(h) corresponds to section 21(d) of the English Finance Act of 1894 which has been set out earlier in this judgment. In the case of *Re J. Bibby & Sons Ltd., Pensions Trust Deed. Davies v. Inland Revenue Commissioners* [1952] 2 All E.R., p. 483, the Company adopted a pension scheme which was created by an indenture made between the company and some of its directors who were designated trustees. 15 The scheme was non-contributory, and the pensions fund was to consist of £60,000 provided by the company and such further sums as the company should thereafter provide. The fund was vested in the trustees, and was stated to be "primarily established for the benefit of retired employees of the company and its predecessors in business whose character and length 20 of service may in the judgment of the trustees entitle them to claims upon it". The trustees were to have an absolute and uncontrolled discretion in the exercise of the powers conferred on them. The Crown claimed estate duty under the Finance Act, 1894, s.2(1)(d). It was held: on the true construction 25 of the deed of 1924 (as amended), the benefits were entirely in the discretion of the trustees, and, therefore, the pension was not "property" within s.2 of the Act of 1894; the widow had no "beneficial interest" within s.2(1)(d) since she had no enforceable right to the pension, nor was any interest "purchased or provided" 30 by A., the pension being a gratuitous provision by the company without any bargain or agreement between the company and A.; and, therefore, no estate duty was exigible. (*Re Miller's Agreement* [1947] 2 All E.R. 78), applied.

35 It is useful to quote here from the judgment of Harman, J. at p. 486:

"The Crown argues that the pension to which this widow is entitled subject to the discretion of the trustees to withdraw it in certain contingencies as, for instance, for misconduct,

is an item of property which accrued on the death of the deceased and she has a beneficial interest in it. Moreover, it is said, the annuity was provided by the deceased in the sense that, but for the fact that he was the workman of the company over his years of service, there would have been no pension for his widow. 5
 The taxpayer's answer to that is, first of all, that this is not property at all but a mere spes or hope of getting something. and secondly, even if it is a species of property, it is not provided by the deceased. The taxpayer says that the whole of the annuity is provided by the providers of the fund, and the 10
 deceased did not pay a penny. His work may have been the *causa sine qua non* of the granting of the pension, but not the *causa causans*. The essential provider is he who provides the money. The dead man provided nothing, nor did he bargain that anything should be provided because he had already fulfilled the necessary ten years before there ever was a pension 15
 scheme and there is no evidence that he or the company ever changed either of their positions on the strength of this voluntary offer which the company made. Thirdly, says the taxpayer, that which accrued on the death of the deceased to his widow 20
 was not a beneficial interest in property because it was nothing which the court would protect as such.

When I read the deed, 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 25
 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 30
 their views of 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 representation action, might come to the court for this much assistance, 35
 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 created by cl. 7 of the deed. The whole matter is there. It is not 'Who have claims upon it?' but 'Who in the judgment of the trustees have claims upon it?', and the 40
 added words about widows and children seem to me exactly

in pari materia for this purpose. 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 moneys 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".

10 If anything, the Scheme in our case is a contributory one and in no way discretionary in the trustees either to withhold or to give any money at all. They are bound in our case to pay over the pension or the insurance money if that eventuality arises and the employee and his beneficiaries have a claim in law and equity and they are entitled to them as having a legal right.

In Green's *Death Duties*, 7th Ed., p. 255, the position is summed up as follows:

20 "Among the cases falling under s. 2(1)(d) are—
an annuity or lump sum payable under a partnership agreement to the widow or dependant of a deceased partner—provided that the benefit can be said to arise on the deceased partner's death and that it is enforceable by the beneficiary;

25 a benefit payable under superannuation arrangements to the widow, dependant, or nominee of a deceased employee—but only if—

(a) the deceased contributed towards the cost of the benefit; and

30 (b) the beneficiary had an enforceable right to it; and

(c) a beneficial interest arises in favour of the beneficiary on the employee's death, a condition which is satisfied only if the identity of the beneficiary is not finally determined until the death".

35 As pointed out in *Halsbury's Statutes of England*, 2nd Ed., Vol. 9, p. 352: "The general purpose of this provision 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 re-appear in the form of a beneficial interest accruing or arising on his death" (per Lord Loreburn, L.C. in *Lethbridge v. A-G.*, [1907] A.C. 19, at p. 23).

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Even if, however, my approach was found to be wrong as regards the taxability of the amount in issue under section 7(h), yet on the authority of the *Attorney-General v. Quixley* [1929] All E.R. (Rep.), p. 696, I would hold that an estate duty is attracted under section 7(a) of the law which provides that property deemed to pass on the death of the deceased shall be deemed to include the property following, that is to say, a property not belonging to the deceased of which the deceased was at the time of his death competent to dispose.

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In *Quixley's* case a school-teacher died and her legal personal representative became entitled to receive a "death gratuity" under the School Teachers (Superannuation) Act, 1925, s.5(1). The gratuity was paid and an estate duty was claimed in respect of it. It was held by the Court of Appeal that the gratuity was property of which the teacher was "competent to dispose" within the meaning of the Finance Act 1894, s.22(2)(a) and therefore, estate duty was exigible in respect of it by virtue of s.2(1)(a) of that Act. Rowlatt, J., whose judgment was affirmed on appeal, had this to say at p. 698:

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"..... Under those circumstances is this property which passes on her death? Reference has been made to the Finance Act, 1894, s. 2(1)(a) and (d). Section 2(1)(d), which comprises the common case of provisions being made by insurance, does not very readily fit this case, because as annuity or other interest purchased or provided by the deceased does mean something which she has voluntarily purchased or provided, and if it is imposed on her, I feel very great difficulty in saying that she has provided it by herself. If she had been left to herself, it is the last thing in the world that she would have done. I cannot say that she has done anything by concert or arrangement with any other person when she has not had a chance of refusing or concerting, or arranging anything. But I do not think the difficulty arises, because I am in favour of

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the Crown on s. 2(1)(a), by virtue of the definition of competency to dispose. Reading sub-s. (1)(a) alone:

5 ‘property passing on the death of the deceased shall be deemed to include property of which the deceased was at the time of his death competent to dispose’.

10 I should not be prepared to hold that included property in the form of posthumous right to have money paid to her executors of which she could, of course, by will dispose prospectively after her death. I think that so far the mere words in para. (a) point to a disposition which a man can make at the time of his death in the sense of effectively while he is still alive and till the moment of death when the breath leaves his body—in other words, at his disposition *inter vivos*”.

15 Sankey, L.J., summed up the position as follows at p. 702:

20 “The question to be answered here is: had the deceased at the time of her death such an interest in property as enabled her to dispose of the property by will? In my view the answer must be—that, indeed, I gather was admitted by the defendant—in the affirmative. She had such an interest, and she had power to dispose of it by will, but counsel for the defendant took a point in limine which savours rather more of metaphysics than of law; he contended that, at the teacher’s death, no property in fact existed, but only a conditional right or interest which had not been ascertained or quantified. I think this is a fallacy”.

30 It is clear from the facts and circumstances of this case that the deceased contributed towards the cost of the benefit, the beneficiary had an enforceable right to it and the beneficial interest arose in favour of the beneficiary on the employee’s death and that this was a Policy provided by the deceased in concert or arrangement with another, and that in any event what came to the beneficiary was property that the deceased
35 was at the time of his death competent to dispose. Having reached this conclusion I need not deal with the applicability of section 7(f) of the Law.

 Before concluding, however, I must say that this case has

not been devoid of difficulty, particularly so in view of the constant changes of the law effected in England on which we have modelled our law, and which changes take note of the judicial interpretations of the various sections. I find, however, comfort in the words of Diplock L.J., who in *Re Kilpatrick's Policies Trusts* [1966] Ch. 730, had this to say at pp. 766-767: 5

“As in nearly all appeals about estate duty, I reach my decision without confidence. Were I a betting man I should lay the odds on its being right at 6 to 4 (i.e., 3 to 2) on—or against. If ever a branch of law called for reform in 1966, it is the law relating to estate duty. It ought to be certain: it ought to be sensible—it is neither. One cannot read even the score of cases which have been cited in the present case without realising that it has got into a mess from which I see no hope of the court’s rescuing it without drastic legislative assistance”. 10 15

I hope that the appropriate Authorities will consider a review of this legislation which no doubt has to be certain and sensible.

For all the above reasons this recourse is dismissed but in the circumstances I make no order as to costs. 20

Recourse dismissed with no order as to costs.