

[HIGH COURT OF AUSTRALIA.]

LLOYD . . . . . APPELLANT;  
APPLICANT,

AND

PUBLIC TRUSTEE (NEW SOUTH WALES) . RESPONDENT.  
RESPONDENT,

ON APPEAL FROM THE COURT OF BANKRUPTCY, DISTRICT OF  
NEW SOUTH WALES AND THE TERRITORY FOR THE SEAT  
OF GOVERNMENT.

H. C. OF A. *Bankruptcy—Deceased debtor's estate administered in bankruptcy—"Property of the*  
1930. *bankrupt"—Proceeds of life assurance policies—Not "divisible amongst*  
*creditors"—Payable to personal representatives—Premiums unpaid for two years*  
SYDNEY, *preceding death—Deducted by insurer from bonus additions—Not "premiums*  
Nov. 12, 24. *paid on the policies"—Charge—Bankruptcy Act 1924-1930 (No. 37 of 1924*  
*—No. 17 of 1930), secs. 91 (b), 105 (i), 155 (4), (5), 156.*

Isaacs C.J.,  
Gavan Duffy,  
Rich, Starke  
and Dixon JJ.

A deceased debtor's estate was being administered in bankruptcy under  
secs. 155 and 156 of the *Bankruptcy Act 1924-1930*.

*Held*, that proceeds of policies of life assurance held by the deceased at the  
time of his death were, by the operation of secs. 91 (b) and 155 (4) of the Act,  
not divisible amongst the creditors but should be paid to the personal  
representatives of the deceased.

The premiums in respect of such policies of life assurance had not been  
paid by the debtor during the two years preceding his death, but had been  
deducted by the insurer from bonus additions to the policies.

*Held*, that such deductions did not constitute payment of premiums within  
the meaning of sec. 91 (b) of the *Bankruptcy Act 1924-1930*.

Decision of the Court of Bankruptcy (Judge *Lukin*) affirmed.

APPEAL from the Court of Bankruptcy, District of New South Wales  
and the Territory for the Seat of Government.

Alfred Gordon Thompson died on 28th September 1928 leaving  
a will, dated 11th November 1915, whereby he appointed his wife,



Nellie Vera Thompson, sole executrix and gave her all his property. The deceased left him surviving his widow and two infant children. The will contained no provision as to the payment of debts. In January 1912 the deceased, under a policy, assured his life with the Australian Mutual Provident Society in the sum of £500; and at the date of his death the bonus additions thereon, after deducting loans advanced by the Society and unpaid premiums, amounted to £39 11s. 3d., making in all £539 11s. 3d. In May 1923 the deceased further assured his life under a second policy with the same Society in the sum of £1,500, the bonus additions thereon at date of his death and after allowing for loans and unpaid premiums amounting to £55 4s. 3d., making in all £1,555 4s. 3d. The grand total under both policies thus amounted to £2,094 15s. 6d. The premiums for the two years immediately preceding his death were not paid by the deceased on either of the policies, but the premiums due thereon were deducted from the bonus additions on each policy. The widow renounced probate, and letters of administration with the will annexed were granted to the Public Trustee. The debts of the deceased amounted to £9,107 4s. 11d.; and the assets, including the policy moneys, amounted to £5,253 13s. 2d. On 10th March 1930, on the petition of the Public Trustee, an order was made under sec. 156 of the *Bankruptcy Act* 1924-1929 that the estate of the deceased "be administered in bankruptcy" and that the Official Receiver, Charles Fairfax Waterloo Lloyd, be the trustee thereof. Thereupon the sum of £2,094 15s. 6d., the net proceeds of the policies referred to above, was handed over by the Public Trustee as such administrator to the Official Receiver as trustee. The trustee was in doubt as to whether such moneys were part of the estate to be administered by him, and, by notice of motion under sec. 105 (i) of the *Bankruptcy Act* 1924-1930, sought the direction and determination by the above-mentioned Court of Bankruptcy, and the necessary consequential orders, in regard to the following questions: (1) Whether, in the circumstances set out above, the said sum of £2,094 15s. 6d., or any and if so what part thereof, according to State and/or Federal law is divisible amongst the creditors of the deceased in the administration of his estate in bankruptcy or is payable to his personal representatives; and (2) whether the Official Receiver is entitled under sec. 91 (b) of the

H. C. OF A.  
1930.  
}  
LLOYD  
v.  
PUBLIC  
TRUSTEE  
(N.S.W.).  
—



H. C. OF A.  
 1930.  
 {  
 LLOYD  
 v.  
 PUBLIC  
 TRUSTEE  
 (N.S.W.).  
 —

*Bankruptcy Act* to a charge on such moneys in respect of the amount of the premiums during the two years preceding the date of the order of administration or the date of death which though payable by the debtor as insurer were not in fact so paid but were deducted from the bonus additions by the Society as such premiums became due. His Honor Judge *Lukin* held that the said sum of £2,094 15s. 6d., the proceeds of the policies, was not divisible amongst the creditors, but was payable to the debtor's personal representatives; and that, as in his opinion the deductions by the Society for unpaid premiums did not constitute payment and, therefore, there were "no premiums paid on the policies during the two years next preceding the date of the order of administration in bankruptcy" within the meaning of sec. 91 (b), the Court was empowered by sec. 25 to do complete justice in the matter by directing the delivery over of the moneys in question to the person entitled, that is, to the Public Trustee as administrator *cum testamento annexo*.

From this decision Charles Fairfax Waterloo Lloyd, the trustee in bankruptcy, now appealed to the High Court.

*Teece* K.C. (with him *Lloyd*), for the appellant. The order for the administration in bankruptcy of the deceased's estate was made under sec. 156 of the *Bankruptcy Act*. Under such an order the estate is administered in accordance with the provisions of sec. 155. By sec. 155 (5) the property of the debtor vests in the Official Receiver who must realize and distribute the same in accordance with the provisions of the Act. Sec. 155 (4) provides that, with certain modifications, the provisions of the Act relating to the administration of the property of a bankrupt shall, so far as applicable, apply to the case of an order for the administration of a deceased's estate. Similar sections in the English *Bankruptcy Act* 1883 were interpreted by the Court of Appeal in *Ex parte Official Receiver*; *In re Gould* (1), and *Hasluck v. Clark* (2). According to the law as there laid down sec. 155 (5) deals with the subject matter of administration, that is, the assets to be administered, while sec. 155 (4) deals with the mode of administration. The question, therefore, is whether sec. 91 (b) is or is not a section dealing with

(1) (1887) 19 Q.B.D. 92.

(2) (1899) 1 Q.B. 699.



the mode of administration. The section does not deal with the mode of administration, but is a section defining the assets which vest in the Official Receiver on bankruptcy and therefore deals not with the mode of administration but with the subject matter of administration.

[ISAACS C.J. Sec. 91 enacts what property is to be and what property is not to be distributable among the creditors: Is it not therefore a section which deals with the mode of administration?

[STARKE J. May not sec. 91 deal both with the subject matter and the mode of administration?]

No. Sec. 91 deals only with the subject matter of administration because it says that certain assets will not vest in the Official Receiver, and the Official Receiver does not administer any assets which do not vest in him.

*E. F. McDonald*, for the respondent, referred to sec. 84 of the *Bankruptcy Act 1924-1930* and to *Capital and Counties Bank v. Gordon* (1).

*Cur. adv. vult.*

The COURT delivered the following written judgment:—

Nov. 24.

On 28th September 1928 Alfred Gordon Thompson died. His widow and two children survived him. He left a will giving all his property to his widow, and appointing her sole executrix. She renounced probate, and the Supreme Court of New South Wales granted to the Public Trustee letters of administration with the will annexed.

It was found that the estate was insolvent, the debts amounting to £9,107 4s. 11d. and the assets only to £5,253 13s. 2d. The Public Trustee, in these circumstances, presented a bankruptcy petition to the Bankruptcy Court under sec. 156 of the *Bankruptcy Act 1924-1928* for the administration in bankruptcy of the deceased's estate. This was granted, and the Public Trustee accordingly forwarded to the present appellant as Official Receiver the assets in his hands. Included in those assets was the sum of £2,094 15s. 6d., which represented the proceeds of two policies of life assurance held by

H. C. OF A.  
1930.  
LLOYD  
v.  
PUBLIC  
TRUSTEE  
(N.S.W.).



H. C. OF A. 1930.  
 }  
 LLOYD  
 v.  
 PUBLIC  
 TRUSTEE  
 (N.S.W.).

the deceased at the time of his death. The deceased had not paid any premiums during two years before his death, and the insurers deducted from the sums otherwise payable by them the amounts of all premiums payable but unpaid. The sum of £2,094 15s. 6d. was, therefore, the net amount which, had all premiums been paid and if the deceased had become a bankrupt immediately before his death, would have been excluded from his property divisible amongst his creditors.

Isaacs C.J.  
 Gavan Duffy J.  
 Rich J.  
 Starke J.  
 Dixon J.

The appellant as Official Receiver, and therefore trustee, applied under sec. 105 (i) for directions as to whether (1) the sum of £2,094 15s. 6d. was divisible among creditors or was payable to the deceased's personal representatives, and (2) there was a charge on that sum for the amount of two years' premiums. The Official Receiver was not a neutral trustee. He appeared by counsel and contended that the creditors were entitled to the full sum, and alternatively to the amount of the premiums. The Public Trustee, on behalf of the family, disputed both contentions. His Honor Judge *Lukin* decided in favour of the family. The present appellant appealed to this Court on behalf of the creditors, and his appearance is representative of them alone. The whole matter rests on the operation of sec. 155 (4) in relation to sec. 91 (b). Sec. 156 incorporates for its own purposes all the operative provisions of sec. 155. Of these, all that need to be mentioned are sub-secs. 4 and 5. It is convenient to take the latter sub-section first. It says: "(5) Upon an order being made for the administration of a deceased debtor's estate the property of the debtor shall vest in the official receiver as trustee thereof, and he shall proceed forthwith to realize and distribute the same in accordance with the provisions of this Act." What vests in the Official Receiver in such a case is "the property of the debtor," that is to say, in the words of *Chitty* L.J. (with whom Lord *Halsbury* L.C. agreed) in *Hasluck v. Clark* (1), "the estate of the deceased debtor in the sense in which that term is invariably used, namely, the property to which he was entitled at the time of his death so far as it has not been lawfully dealt with since his death, before the order for administration is made." "The estate of the debtor" in this case included the policies of



assurance, and the fact that they had been honoured by the insurers and transmuted into cash imports a mere substitution of money paid for money payable. Now, what is the statutory duty of the Official Receiver in respect of the £2,094 15s. 6d. ? That is defined by sub-sec. 4 of sec. 155, which says : “ (4) With the modifications mentioned in this section, all the provisions of this Act relating to the administration of the property of a bankrupt and to trustees shall, so far as they are applicable, apply to the case of an order for administration under this section in like manner as to a sequestration order.”

H. C. OF A.  
1930.  
LLOYD  
v.  
PUBLIC  
TRUSTEE  
(N.S.W.).

Isaacs C.J.  
Gavan Duffy J.  
Rich J.  
Starke J.  
Dixon J.

We think that one of “ the provisions of this Act relating to the administration of the property of the bankrupt,” and applicable to an administrative order under sec. 155, is, sec. 91 (b). That section provides that the property of a bankrupt divisible amongst his creditors shall not include policies of life assurance except to the extent of a charge in respect of the premiums paid on the policies during the two years next preceding the date of the sequestration. It is said in opposition to this view that the judicial interpretation of the British provisions upon which those of the Commonwealth Act are modelled has established a distinction between “ the provisions of the Act relating to the administration of the property of a bankrupt ” and those provisions which define and determine what shall be the property of a bankrupt so to be administered, and that sec. 91 belongs to the latter and not to the former class, because it prescribes what shall and what shall not be included in that description. It is no doubt true that sec. 91 does define and determine the property of a bankrupt, and further, that it does so for purposes which at least include the vesting of that property in the Official Receiver under sec. 60, a thing which in the case of a deceased debtor’s estate is done by sec. 155 (5). But we think that it does not follow that sec. 91 does not also fall within the description of “ provisions relating to the administration of the property.” On the contrary, we think the words “ divisible among the creditors ” contain an expression of legislative intention that in administering assets those enumerated shall or shall not be so divisible, as the case may be. The inevitable consequence of this view is that for the purpose of divisibility among creditors



H. C. OF A.

1930.

LLOYD

v.

PUBLIC

TRUSTEE

(N.S.W.).

Isaacs C.J.  
 Gavan Duffy J.  
 Rich J.  
 Starke J.  
 Dixon J.

the sum of £2,094 15s. 6d. is excluded, and the Official Receiver should pay it to the Public Trustee as administrator with the will annexed of the testator.

The contention that the deduction of premiums was in respect of an advance from which the last two years' premiums were paid, fails upon the facts proved in evidence. No circumstances which would support a plea of payment were deposed to, and the conclusion is clear that there was no payment of premiums for the relevant period, and certainly no such premiums are included in the amount paid in respect of the policies.

The appeal should be dismissed. The appellant, an entirely adverse trustee, and representing creditors only, should pay the costs of the respondent of this appeal, and be at liberty to indemnify himself out of such portion of the deceased debtor's estate as is divisible amongst creditors.

*Appeal dismissed. Appellant to pay respondent's costs of this appeal, with liberty to indemnify himself out of such portion of the deceased debtor's estate as is divisible among creditors.*

Solicitors for the appellant, *Perkins, Stevenson & Co.*

Solicitors for the respondent, *McIntosh, Browning & Stephen, Bathurst*, by *Barry, Norris & Wildes.*

J. B.