[HIGH COURT OF AUSTRALIA.]

THE COMMISSIONER OF STAMP DUTIES (NEW SOUTH WALES) . . . . . APPELLANT;

RESPONDENT,

AND

PERMANENT TRUSTEE COMPANY OF NEW SOUTH WALES LIMITED AND ANOTHER RESPONDENTS.

APPELLANTS,

(HILL'S CASE.)

ON APPEAL FROM THE SUPREME COURT OF NEW SOUTH WALES.

H. C. OF A. 1933.

SYDNEY, *April* 19; *May* 15.

Rich, Starke, Dixon, Evatt and McTiernan JJ.

Death Duty—Final balance of estate—Allowances—Annuity—"Debts actually due and owing"—Deed of separation—"Full consideration in money or money's worth"—Stamp Duties Act 1920-1931 (*N.S.W.*) (*No.* 47 *of* 1920—*No.* 13 *of* 1931), *secs.* 105*, 107*.

A husband covenanted with his wife that he, his executors or administrators would pay her an annuity during her life. The husband predeceased the wife.

Held that, in computing the final balance of the husband's estate for the purposes of death duty under the *Stamp Duties Act* 1920-1931 (N.S.W.), no

* The *Stamp Duties Act* 1920-1931 (N.S.W.) provides:—By sec. 105:—"(1) The final balance of the estate of a deceased person shall be computed as being the total value of his dutiable estate after making such allowances as are hereinafter authorized in respect of the debts of the deceased. (2) Save as in this Act expressly provided, the value of the property included in his dutiable estate shall be estimated as at the date of the death of the deceased." By sec. 107:—"(1) In computing the final balance of the estate of a deceased person an allowance shall, subject to the provisions of this Act, be made for all debts actually due and owing by him at the time of his death. (2) No such allowance shall be made—(*a*) for debts incurred by the deceased otherwise than for full consideration in money or money's worth wholly for his own use and benefit; or . . . (*d*) for contingent debts or any other debts the amount of which is in the opinion of the Commissioner incapable of estimation. (3) If any debt for which by reason of the provisions of paragraph (*d*) of this section an allowance has not been made becomes at any time within three years after the death of the deceased actually payable, or, in the opinion of the Commissioner, capable of estimation, an allowance shall be made therefor, and a refund of any death duty paid in excess shall be made to the person entitled thereto, but no action for the recovery of any such refund shall be commenced except within three years after the payment of the duty so paid in excess."

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allowance could be made under sec. 107 (1) of the Act in respect of the annuity so far as it might accrue due and become payable after the death of the husband.

Per Rich and *Dixon* JJ.: *Quære* whether an agreement by a wife expressed in a deed of separation to live apart from her husband and not to molest or interfere with him in any way amounted to "full consideration in money or money's worth wholly for his own use and benefit" within the meaning of sec. 107 (2) (*a*) of the *Stamp Duties Act* 1920-1931 (N.S.W.).

Decision of the Supreme Court of New South Wales (Full Court): *Permanent Trustee Co. of N.S.W. Ltd.* v. *Commissioner of Stamp Duties*, (1932) 32 S.R. (N.S.W.) 642, reversed.

CASE STATED.

By a deed of separation executed in July 1924, the deceased, Frank Hill, covenanted with his wife that he, his executors or administrators would yearly during her life, and so long as she should continue to observe and perform the covenants and conditions contained in the deed, pay or cause to be paid to her an annuity of £312 by equal monthly paym ents in advance of £26. The deceased died on 1st June 1931. His wife survived him and at the date of his death the covenant was in full force and effect, and all payments due under it up to that date had been made.

The executors of the deceased, Permanent Trustee Co. of New South Wales Ltd. and Francis Paul Couch Morris, claimed that in computing the final balance of the estate under the *Stamp Duties Act* 1920-1931 (N.S.W.), the Commissioner should make an allowance of the capitalized value of the annuity falling due after the death of the deceased. The Commissioner refused to accede to the executors' claim and stated that no allowance could be made other than the allowance provided for in sub-sec. 3 of sec. 107 of the Act, if and when that sub-section became applicable. The executors paid under protest the death duty as assessed by the Commissioner who, at the request of the executors, stated a case for the opinion of the Supreme Court.

The material question (described in the judgments hereunder as the first question) in the case was:

> Should any allowance (other than the allowance provided for in sub-sec. 3 of sec. 107 of the *Stamp Duties Act* 1920-1931, if and when that section becomes applicable) be made in

computing the final balance of the estate of the deceased for death duty for the said annuity so far as the same may accrue due and be payable after the date of the deceased's death, and, if so, what is the amount of such allowance?

The Supreme Court answered the question: Yes, the capitalized value of the annuity as at the date of the deceased's death according to actuarial calculations: *Permanent Trustee Co. of N.S.W. Ltd.* v. *Commissioner of Stamp Duties* (1).

From this decision the Commissioner now appealed to the High Court.

E. M. Mitchell K.C. (with him *Williams*), for the appellant. A debt "which is in the opinion of the Commissioner incapable of estimation" within the meaning of that phrase in sec. 107 (2) (*d*) of the *Stamp Duties Act* is a debt which in the opinion of the Commissioner is of such a character that it is impossible for him to find materials on which to establish its certainty or quantum. A contingent debt is a debt which is not actually due and owing. That class of debt is, in certain events, provided for in sub-sec. 3 of sec. 107. The capitalized value of an annuity is not a debt which is "actually due and owing." Although the value of an annuity at a given time is capable of being estimated (*Ex parte Neal*; *In re Batey* (2); *Weldon* v. *Union Trustee Co. of Australia* (3)), such debt is not a debt "actually due and owing" within the meaning of sec. 107 (1) (*In re Robertson* (4)).

[EVATT J. referred to *Mack* v. *Commissioner of Stamp Duties* (*N.S.W.*) (5).]

The important distinction between debts "due and owing" and debts "due and payable" is pointed out in that case. The liability to pay an annuity is a contingent liability or debt (*In re Hargreaves*; *Dicks* v. *Hare* (6)). The decision in *In the Will of Kininmonth* (7) cannot be applied to this case. The words there dealt with were "debts due," here the words are "debts actually due and owing." The amount which represents the actuarial calculation cannot be

(1) (1932) 32 S.R. (N.S.W.) 642.
(2) (1880) 14 Ch. D. 579.
(3) (1925) 36 C.L.R. 165.
(4) (1897) 18 N.S.W.L.R. 239.
(5) (1920) 28 C.L.R. 373.
(6) (1890) 44 Ch. D. 236, at pp. 241, 243.
(7) (1897) 23 V.L.R. 134; 19 A.L.T. 17.

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said to be a debt which is "due and owing." The amount actually paid by way of annuity depends, among other things, upon the life of the annuitant, and as that is incapable of estimation it necessarily follows that the amount which will eventually be paid, that is, the debt, also is incapable of estimation. A contingent debt may never become a debt, as the contingency upon which it depends may fail to eventuate. As to contingent debts, see *Clayton* v. *Gosling* (1), and *Ex parte Ruffle*; *In re Dummelow* (2). Sec. 107 (2) (*d*) operates as a disallowance of all contingent debts, whether ascertainable or not, and in addition to contingent debts it also disallows debts which in the opinion of the Commissioner are incapable of estimation.

Teece K.C. (with him *D. Wilson*), for the respondents. An allowance for the capitalized value of the annuity as at the date of the death of the deceased should be made in computing the final balance of his estate. The liability constituted a debt due and owing as at that date as regards the future instalments although they were not then payable (*Mack* v. *Commissioner of Stamp Duties* (*N.S.W.*) (3)). Provisions similar to those now contained in sub-secs. 2 and 3 of sec. 107 of the *Stamp Duties Act* were not in force at the time *In re Robertson* (4) was decided; therefore, that case is not of much assistance to the Court. The words "debts due and owing" should be interpreted in the wider sense as was done in *In the Will of Kininmonth* (5). The word "other" in sec. 107 (2) (*d*) makes it clear that the phrase "incapable of estimation" in that sub-section refers to contingent debts as well as to other debts. A covenant made during the lifetime of a person for good consideration or under seal is an obligation existing at his death. By expressly excepting a class of contingent debts the Legislature has impliedly permitted the inclusion of all other debts in that class. When the Legislature, in sec. 107 (2) (*d*), referred to "debts incapable of estimation" it must have had in mind the sum which has always been taken as representing the amount of the liability, that is, the actuarial calculation, and the general practice of the Courts and of persons

(1) (1826) 5 B. & C. 360; 108 E.R. 134.
(2) (1873) 8 Ch. App. 997.
(3) (1920) 28 C.L.R. 373.
(4) (1897) 18 N.S.W.L.R. 239.
(5) (1897) 23 V.L.R. 134; 19 A.L.T. 17.

engaged in commerce in making such calculations (*In re Pink*; *Elvin* v. *Nightingale* (1)).

E. M. Mitchell K.C., in reply.

Cur. adv. vult.

The following written judgments were delivered :—

RICH J. This is an appeal by the Commissioner of Stamp Duties from a decision of the Full Court of the Supreme Court of New South Wales by which it was declared that an allowance should be made in computing the final balance of the estate of Frank Hill deceased for death duty in respect of an annuity payable to his widow, so far as such annuity has accrued or may accrue due or be or become payable after the date of his death, and further ordering that the amount of the allowance to be made is the capitalized amount of the annuity as at the date of his death according to actuarial calculation. The annuity was secured by the deceased's personal covenant only. The covenant is contained in a deed of separation made between him and his wife sometime before his death. The consideration given by the wife for the annuity which is payable for her life consisted in a covenant on her part with her husband to indemnify him against liabilities which she might thereafter contract, not to molest him or proceed against him for restitution of conjugal rights or for alimony or maintenance or for other matrimonial relief, to the intent that he might in all things live as if he were unmarried without her interference. In computing the final balance of the estate for duty the Commissioner declined to make any deduction from the gross value of the assets in respect of future payments of the annuity. Sec. 105 (1) of the New South Wales *Stamp Duties Act* 1920-1931 defines the final balance of the estate of a deceased person as the total value of the dutiable estate after "making such allowances as are hereinafter authorized in respect of the debts of the deceased." The relevant "authority" is to be found in sec. 107, sub-sec. 1 and sub-sec. 2 (*a*) and (*d*). These provisions are as follows :—"(1) In computing the final balance of the estate of a deceased person an allowance shall, subject to the

(1) (1927) 1 Ch. 237.

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provisions of this Act, be made for all debts actually due and owing by him at the time of his death. (2) No such allowance shall be made—(*a*) for debts incurred by the deceased otherwise than for full consideration in money or money's worth wholly for his own use and benefit; or . . . (*d*) for contingent debts or any other debts the amount of which is in the opinion of the Commissioner incapable of estimation." Sub-sec. 3 of sec. 107 enables a refund of death duty to be made if any debt excluded under sub-sec. 2 (*d*) becomes, within three years of the death, actually payable or capable of estimation. It does not appear to have been doubted by their Honors in the Supreme Court that, if sec. 107 (1) stood alone, the liability of the deceased which descended to his executors to pay the annuity during the life of his widow could not be brought within the prima facie meaning of the words "debts actually due and owing by him at the time of his death," but the executors contended that the presence of sub-sec. 2 (*d*) in the section operated to bring about a different result. It was conceded by both parties that the liability to future payments of the annuity was contingent upon the continuance of the widow's life and therefore could be described as a contingent debt. The Commissioner contended that the amount was incapable of estimation, because the duration of the life was unknown and an actuarial valuation of the annuity did not show what the executors would have to pay to the widow but what the annuity could be bought for. The executors on the other hand contended that the expression "amount of a contingent debt capable of estimation" pointed to the value of the contingent liability and included the valuation of a life annuity. The Full Court accepted the view of the executors. I think the cardinal consideration upon which the judgments turned was the construction of sub-sec. 2 (*d*). The learned Judges construed it as forbidding an allowance of contingent debts which were in the opinion of the Commissioner incapable of estimation. They considered the qualification contained in the relative clause showed that contingent debts the amount of which was capable of estimation were allowable. I find great difficulty in drawing this last inference from the positive prohibition contained in sub-sec. 2 (*d*). It may be that the relative clause does qualify the expression "contingent debts" as well as

"any other debts", but I do not think that the whole paragraph means to say that the deduction of contingent debts should be disallowed only when they cannot be estimated. The idea at the root of the paragraph seems to be that contingent debts must be disallowed whenever the Commissioner thinks they are incapable of estimation notwithstanding that the contingency is of such a character that the debt falls within the expression "actually due and owing." I cannot agree with the view that sub-sec. 2 (*d*) implies any enlargement of the meaning of the phrase "debts actually due and owing" in sub-sec. 1 or shows any intention to authorize an allowance outside that phrase. For these reasons I cannot agree with the decision under appeal. But in any event I should have great difficulty in arriving at the conclusion that an allowance was not forbidden by par. (*a*) of sub-sec. 2. Strangely enough this point was not taken by the Commissioner, and in response to questions from the Bench it appeared that it had not been considered. In the view I have taken it is unnecessary to deal with the question, and as it has not been argued before us it is undesirable to express any decided opinion upon it, but I must not be understood as intending to lend support to the view that the consideration given by the wife to the husband in the deed of separation amounted to "full consideration in money or money's worth wholly for his own use and benefit."

The appeal should be allowed. The order appealed from should be discharged and the first question in the special case should be answered: No.

STARKE AND EVATT JJ. The *Stamp Duties Act* 1920-1931 of New South Wales, by sec. 105, provides that the final balance of the estate of a deceased person shall be computed as being the total value of his dutiable estate after making such allowances as are thereinafter authorized in respect of the debts of the deceased. Then sec. 107, sub-sec. 1, provides that in computing the final balance of the estate of a deceased person an allowance shall, subject to the provisions of the Act, be made for all debts actually due and owing by him at the time of his death, and sub-sec. 2 (*d*), that no such allowance shall be made for contingent debts or any other debts

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Starke J. Evatt J.

the amount of which is in the opinion of the Commissioner incapable of estimation.

Frank Hill died in June 1931. By a deed of separation executed in July 1924, he covenanted with his wife that he, his executors or administrators would yearly during her life and so long as she should continue to observe and perform the covenants and conditions in the deed contained pay or cause to be paid to her an annuity of £312 by equal monthly payments in advance of £26. The executors of Hill claim that in computing the final balance of his estate under the *Stamp Duties Act* the Commissioner should make an allowance of the capitalized value of the annuity falling due after his death, according to actuarial calculation. The Supreme Court of New South Wales agreed with this view, and the Commissioner now appeals.

The debts of a deceased in the ordinary course of administration include all liabilities which his estate would be liable to discharge—present, future, contingent or unascertained (see *Commissioner of Stamps (W.A.)* v. *West Australian Trustee, Executor and Agency Co.* (1)). The deduction of such liabilities for the purposes of Acts relating to probate duties necessarily depends upon the precise terms of the Acts themselves (cf. *In the Will of Kininmonth* (2)). Sec. 107 of the New South Wales Act, in the first sub-section, only permits a deduction of debts "actually due and owing by" the deceased "at the time of his death." Such a phrase includes, no doubt, debts *debita in præsenti solvenda in futuro*, but it would not include money payable on the happening of a contingency or some future event (*O'Driscoll* v. *Manchester Insurance Committee* (3); *Mack* v. *Commissioner of Stamp Duties (N.S.W.)* (4)). The future liability to pay an annuity is not a debt actually due and owing (*In re Robertson* (5)); the annuitant could not sue for it, and the right to each payment depends upon the continuance of his life. But sub-sec. 2 (*d*) of sec. 107, it is said, permits, as a necessary implication, the allowance of contingent debts that are capable of estimation. In terms, however, the sub-section does not so provide, and the suggested construction would, quite contrary to the provisions

(1) (1925) 36 C.L.R. 98, at p. 115, per *Higgins* J.
(2) (1897) 23 V.L.R. 134; 19 A.L.T. 17.
(3) (1915) 3 K.B. 499, at pp. 516-517.
(4) (1920) 28 C.L.R. 373.
(5) (1897) 18 N.S.W.L.R. 239.

of sub-sec. 1, turn the prohibition of an allowance into the permission of an allowance; in other words, would not construe the Act at all but would alter it, and indeed would warrant, we would think, the conclusion that all debts not within the prohibition of sub-sec. 2 may be treated as debts actually due and owing for the purposes of sub-sec. 1. But to our mind the obvious purpose of sub-sec. 2 (*d*) is not to enlarge sub-sec. 1 but to reinforce it and illustrate its meaning. We do not at all dissent from the view that sub-sec. 2 (*d*) treats contingent debts as specifically of a character incapable of estimation and then proceeds to cover generally other debts which in the opinion of the Commissioner are incapable of estimation. But we prefer to rest our opinion upon a more general view of the meaning of the whole section.

The appeal should be allowed.

DIXON J. The question for decision is whether, in computing the final balance of the dutiable estate of a deceased person for the purpose of death duty under Part IV. of the *Stamp Duties Act* 1920-1931 of New South Wales, a deduction is allowable on account of future payments of an annuity which the deceased covenanted to pay during the life of the annuitant. The annuitant is the deceased's widow and the annuity is payable to her under a deed of separation made between herself and her husband.

Sec. 107 (2) (*a*) prohibits any deduction of debts incurred by the deceased otherwise than for full consideration in money or money's worth wholly for his own use and benefit. It is open to doubt whether the deceased received a consideration for the annuity which answers the description; but, in disallowing the deduction sought in respect of future payments of the annuity, the Commissioner of Stamps proceeded upon other grounds, and in support of his present appeal no reliance has been placed upon the provisions of par. (*a*) of sec. 107 (2). The contention on his behalf is that the liability devolving upon a legal personal representative under a covenant of the deceased to pay an annuity during the life of a person who survives him cannot be made the subject of a deduction in ascertaining the final balance of the dutiable estate. Amounts which have become payable before the deceased's death

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are deductible as debts, and amounts which become payable within three years after his death may be the ground of a refund of duty under sec. 107 (3), but the Commissioner maintains that no further allowance is authorized by the statute in respect of such a liability. In my opinion this contention is correct. Sec. 105 (1) provides that "the final balance of the estate of a deceased person shall be computed as being the total value of his dutiable estate after making such allowances as are" thereinafter "authorized in respect of the debts of the deceased." Sec. 107 (1) then provides that "in computing the final balance of the estate of a deceased person an allowance shall, subject to the provisions of this Act, be made for all debts actually due and owing by him at the time of his death." It may be conceded that the expression "actually due and owing" is not restricted in its application to liabilities which are presently payable and are finally ascertained in amount (cf. *Mack* v. *Commissioner of Stamp Duties (N.S.W.)* (1) and *Commissioner of Stamps (W.A.)* v. *West Australian Trustee, Executor and Agency Co.* (2)). But, unless some secondary meaning is given to the expression, it appears to me impossible to bring within it future payments which will accrue due and payable only if the payee so long live. It is even more difficult to apply the description "actually due and owing" to the capital sum calculated as the value or equivalent of the annuity by a computation made by reference to the actuarial probability of the duration of the life. But sub-sec. 1 of sec. 107 is qualified by the provisions of sub-sec. 2, par. (*d*) of which prescribes that no such allowance shall be made for contingent debts or any other debts the amount of which is, in the opinion of the Commissioner, incapable of estimation. In this provision the Supreme Court of New South Wales found a legislative intention to authorize the deduction of contingent debts the amount of which might be estimated, a class which, the Court considered, includes an annuity. *Street* C.J. said "Contingent debts, therefore, as I interpret the language of par. (*d*) of sec. 107 (2) are to be allowed in calculating the final balance of a testator's estate, unless, in the opinion of the Commissioner, they are incapable of estimation" (3).

(1) (1920) 28 C.L.R. 373. (2) (1925) 36 C.L.R. 98.
(3) (1932) 32 S.R. (N.S.W.), at p. 647.

If par. (*d*) means to express a conditional prohibition of the allowance of contingent debts and to say that, if the amount of such a debt is incapable of estimation, then it shall not be allowed there might, perhaps, be some ground for attributing to the statute the meaning that a contingent debt is to be allowed whenever its amount is capable of estimation. But I do not think par. (*d*) in fact discloses or imports any legislative intention that a contingent debt shall be allowed as a deduction whenever its amount is in the Commissioner's opinion capable of estimation. Its language seems to me to show no more than that the statute intended to forbid the deduction of debts the amount of which could not be estimated, and that it treated contingent debts as the chief example. Whether the capital value of a life annuity ascertained actuarially can properly be described as the "amount of a contingent debt" need not, in this view, be considered. But it was because the Commissioner took the view that it could not be so described that he formed the opinion that the amount of the liability was incapable of estimation.

In my opinion the appeal should be allowed; the judgment of the Supreme Court should be discharged; the first question in the special case should be answered: No.

McTiernan J. The facts and the questions for decision are set forth in the special case stated by the appellant for the opinion of the Supreme Court pursuant to sec. 124 of the *Stamp Duties Act* 1920-1931. The Act provides that the final balance of the estate of a deceased person, upon which duty is to be assessed and paid, shall be computed as the total value of the dutiable estate after making the allowances authorized in respect of the debts of the deceased (secs. 101, 105). The debts in respect of which an allowance may be made in computing such final balance are all debts actually due and owing by the deceased at the time of his death (sec. 107 (1)). But sec. 107 (2) provides that no allowance shall be made, *inter alia*, "for contingent debts or any other debts the amount of which is in the opinion of the Commissioner incapable of estimation" (sec. 107 (2) (*d*)).

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It was not disputed that the liability in question may fairly be described as a contingent debt. The learned Chief Justice of New South Wales in the course of his judgment said :—" When a testator in his lifetime has granted an annuity to some person for life there is, at the death of the grantor, no debt due and owing except in respect of any arrears of payment that there may be, but there is a future liability contingent upon the continuation of the life of the annuitant. A liability of that kind may fairly be described as a contingent debt. This was not disputed at the Bar, nor was it disputed that the matter of the ascertainment by actuarial calculation of the value of a life annuity, such as that in question, is a matter of common practice in business circles and for business purposes " (1).

The appeal turns upon the meaning of the words " debts actually due and owing by " the deceased " at the time of his death " in sec. 107 (1), and the effect of sec. 107 (2) (*d*). In *In re Robertson* (2), where the executors sought to deduct the amount of the future contingent liability in respect of an annuity capitalized according to an actuarial valuation, it was held that the sum in question was not a debt " due and owing " within the meaning of sec. 3 of 57 Vict. No. 20 of New South Wales. Sub-sec. 1 of that section provided that, where the deceased was not at the time of his death domiciled in New South Wales, the only debts deductible should be, *inter alia*, debts due and owing to persons resident in the Colony. But the words " debts actually due and owing " in sec. 107 of the present Act are not to be read as " debts actually due and payable " (*Mack* v. *Commissioner of Stamp Duties* (*N.S.W.*) (3)).

The future contingent liability in respect of the annuity in the present case, which by the indenture falls upon the executors, capitalized according to an actuarial valuation, is not, in my opinion, a debt " actually due and owing by the deceased at the time of his death." But, whatever be the scope of those words in sec. 107 (1), no allowance may be made for any debt which is specially excluded from the computation of the final balance of the estate by sec. 107 (2) (*d*).

For the respondent it was contended that the contingent liability in question in this case should not be excluded, because it is not a

(1) (1932) 32 S.R. (N.S.W.), at p. 646. (2) (1897) 18 N.S.W.L.R. 239.
(3) (1920) 28 C.L.R. 373.

debt which is incapable of estimation, and that, as it is for that reason not specially disallowed by sec. 107 (2) (*d*), such liability should be held to be an allowable deduction. But, if the effect of sec. 107 (2) (*d*) is to disallow only such contingent debts as are incapable of estimation, the respondent is confronted with the difficulty of saying that the estimated amount of the future liability of the deceased at the time of his death, arrived at by actuarial calculation, was a debt actually due and owing by him at the time of his death.

The contention of the respondent as to the effect of sec. 107 (2) (*d*) proceeds upon the view that the Legislature considered contingent debts in two classes, namely, contingent debts the amount of which is incapable of estimation, and contingent debts capable of estimation, and inferentially allowed a deduction in respect of the latter class. In my opinion, the Legislature disallowed all debts the amount of which is incapable of estimation. This characteristic is common to all contingent debts. These and any other debts which have this characteristic are, in my opinion, the subject of sec. 107 (2) (*d*). The amount of such debts, not being capable of estimation, cannot be subtracted from the dutiable estate of the deceased in order to arrive at the final balance upon which duty is to be paid. But the Legislature has, by sec. 107 (3), made some provision for relief against the operation of sec. 107 (2) (*d*).

The first question in the special case should, in my opinion, be answered: No, and the appeal allowed.

Appeal allowed with costs. Judgment of the Supreme Court discharged. First question in special case answered: No. Respondent to pay costs of Supreme Court proceedings.

Solicitor for the appellant, *J. E. Clark*, Crown Solicitor for New South Wales.

Solicitors for the respondents, *W. P. McElhone & Co.*

J. B.