For these reasons I am of opinion that the coins are liable to be forfeited under sec. 229 (*e*). It follows that the appellant's claim fails.

The appeal should be dismissed.

Appeal dismissed with costs.

Solicitors for the appellant, *Abram Landa & Co.*

Solicitor for the respondent, *W. H. Sharwood*, Crown Solicitor for t the Commonwealth.

H. D. W.

Followed 1980 2 NSWLR 41

[HIGH COURT OF AUSTRALIA.]

ANDERSON . . . . . APPELLANT;

AND

THE COMMISSIONER OF TAXES (VICTORIA) RESPONDENT.

ON APPEAL FROM THE SUPREME COURT OF VICTORIA.

Probate Duty (Vict.)—Purchase of real and personal property—Money contributed by both purchasers—Death of one joint owner—Interest of deceased joint owner not subject to duty—"Voluntarily"—Administration and Probate Act 1928 (*Vict.*) (*No.* 3632), *sec.* 174.

Sec. 174 of the *Administration and Probate Act* 1928 (Vict.) provides: "All property of any kind whatsoever which a person having been absolutely entitled thereto has voluntarily caused or may cause to be transferred to or vested in himself and any other person jointly whether by disposition or otherwise (including 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 so that a beneficial interest therein or in some part thereof passes or accrues by survivorship on his death to such other

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person, shall on the death of such person be deemed to the extent of such beneficial interest to form part of his estate for the purpose of estimating the duty payable under this Act and shall be chargeable with duty thereon accordingly."

Two sisters joined in the purchase of real and personal property, each contributing half the purchase money. They became registered proprietors as joint tenants in fee simple of land so purchased, and became joint owners of personal chattels. They also advanced in equal shares a sum of money upon a joint account.

Held that the beneficial interest which, on the death of one sister, accrued by survivorship to the other was not chargeable with duty under sec. 174.

The meaning of the word "voluntarily" in sec. 174 considered.

Attorney-General v. *Ellis*, (1895) 2 Q.B. 466, not followed.

Decision of the Supreme Court of Victoria (Full Court): *In re Anderson*, (1937) V.L.R. 130, reversed.

CASE STATED.

Upon the assessment for probate duty of the estate of Ellen Anderson deceased under the *Administration and Probate Act* 1928 (Vict.) a case, which was substantially as follows, was stated for the opinion of the Supreme Court of Victoria :—

1. The above-named Ellen Anderson deceased made her last will dated 17th June 1922 and died on 28th April 1936.

2. Florence Anderson, of 11 Ridgeway Avenue, Kew, a sister of the deceased, is the executrix of and sole beneficiary under the said will.

3. The testatrix during her lifetime joined with her sister, Florence Anderson, in purchasing certain freehold lands. Each of them provided one half share of the purchase money and both became registered proprietors of the land as joint tenants in fee simple and were so registered at date of death of testatrix.

4. The lands at date of death of testatrix were of the value of £12,836 5s. 10d.

5. Testatrix during her lifetime joined with Florence Anderson in purchasing certain furniture and a motor car. Each provided half of the purchase money and they became and remained until the death of testatrix joint owners of the furniture and motor car.

6. At death of testatrix the furniture was of the value of £70 and the motor car of the value of £200.

7. During the lifetime of the testatrix, the testatrix and Florence Anderson advanced in equal shares a sum of £3,000 to one Alfred Anderson on a joint account. The sum of £3,000 was still owing at date of the death of the testatrix.

8. The beneficial interest of the testatrix in the lands, furniture, motor car and loan of £3,000 passed and accrued by survivorship on the death of the testatrix to Florence Anderson.

9. The commissioner contends, and the executrix denies, that the beneficial interest of the testatrix at the date of her death in the lands, furniture, motor car and sum of £3,000 is chargeable with duty under sec. 173 and/or sec. 174 of the *Administration and Probate Act* 1928.

The question for the opinion of the court was :—

Is any and what interest in the lands, furniture, motor car and loan of £3,000 chargeable with duty under sec. 173 or sec. 174 of the *Administration and Probate Act* 1928 ?

The Full Court of the Supreme Court answered the question by deciding that one-half of the value of each of the items of property was chargeable with duty under sec. 174 of the *Administration and Probate Act* 1928: *In re Anderson* (1).

From this decision Florence Anderson appealed to the High Court.

It was not contended in the High Court that the case fell within sec. 173 of the Act.

Walker, for the appellant. Sec. 174 of the *Administration and Probate Act* 1928 has no application to this case, and the Full Court was wrong in deciding that it was covered by that section. The parties held the realty and personalty as joint tenants and when one died the other continued her ownership. Sec. 174 was introduced into Victoria in 1903. Under that section the whole or nothing is to be taxed. The beneficial interest is that in the whole property, namely, what the absolute owner had before the transaction. [He referred to the Commonwealth *Estate Duty Assessment Act* 1914-1926, sec. 8 (4) (*b*) ; *Customs and Inland Revenue Act* 1881 (44 Vict. c. 12), secs. 38 (2) (*a*), (*b*) and (*c*) ; *Customs and Inland Revenue Act* 1889 (52 Vict. c. 7), sec. 11 ; *Finance Act* 1894 (57 &

(1) (1937) V.L.R. 130.

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58 Vict. c. 30), sec. 2 (1) (*c*).] *Attorney-General* v. *Smyth* (1) should be followed. *Attorney-General* v. *Ellis* (2) follows the decision of the Court of Appeal in *Art Union of London* v. *Overseers of Savoy* (3), which was reversed in the House of Lords (4), and should not be followed. The *Customs and Inland Revenue Act* 1889 uses the word "volunteer" in the artificial sense. [On this point he was stopped.] There must be a volunteer and a settlor to bring the matter within sec. 174, and the transferor must have been the absolute owner of the whole property transferred to the joint tenants.

Fullagar K.C. (with him *Adam*), for the respondent. There are three steps in sec. 174. The first part of the section goes down to the bracket. Then there are the words in brackets. Those words mean that a purchase or investment in the joint names of himself and another by a person absolutely entitled to money or other property shall be deemed to be a transferring or vesting of that property within the meaning of the foregoing expression. The third step is that the transferring or purchasing or investing may be effective either by a person entitled alone or in concert with the other person. On any view of this section it must be treated untechnically, and it must be treated as departing from the strict conceptions of the common law. The section should not be construed in a narrow way (*Rosenthal* v. *Rosenthal* (5); *Thomson* v. *Commissioner of Stamp Duties* (*N.S.W.*) (6)). This is a voluntary transaction within the meaning of sec. 174. The purpose and effect of the present transaction was to give a benefit of survivorship, and it conferred a contingent benefit (*Attorney-General* v. *Ellis* (2); *Crossman* v. *The Queen* (7)). It is necessary to look at the real substance of the transaction, and, if someone is retaining an interest for life which passes on death to another, there is a "voluntary" disposition (*Attorney-General* v. *Worrall* (8); *Attorney-General* v. *Johnson* (9); *Attorney-General* v. *Holden* (10)). *Attorney-General* v. *Ellis* (2) has not been overruled, and the Victorian decision of *In re Boyle* (11) was

(1) (1905) 2 I.R. 553.
(2) (1895) 2 Q.B. 466.
(3) (1894) 2 Q.B. 609.
(4) (1896) A.C. 296.
(5) (1910) 11 C.L.R. 87, at pp. 92, 94.
(6) (1929) 42 C.L.R. 139, at pp. 143, 144.
(7) (1886) 18 Q.B.D. 256.
(8) (1895) 1 Q.B. 99.
(9) (1903) 1 K.B. 617, at pp. 623, 624, 627.
(10) (1903) 1 K.B. 832, at pp. 836, 837.
(11) (1921) V.L.R. 394, at p. 399; 43 A.L.T. 24, at p. 26.

correctly decided. In this case each party is conferring a contingent interest on the other party.

Walker, in reply. The word "voluntary" governs the whole section. If you cannot find a volunteer, the section does not apply.

Cur. adv. vult.

May 31.

The following written judgments were delivered :—

LATHAM C.J. Two sisters joined in the purchase of certain lands and other property. They each provided one-half of the purchase money. In the case of the land they became registered as joint tenants in fee simple. They became joint owners of certain personal chattels and they advanced in equal shares a sum of money upon a joint account. One of the sisters died, and the other sister by survivorship became entitled to the whole interest in all the property mentioned. The Commissioner of Taxes for Victoria contends that the beneficial interest in this property, which passed to the surviving sister is chargeable with duty under the *Administration and Probate Act* 1928 as part of the estate of the deceased sister. The Full Court of the Supreme Court of Victoria held that sec. 174 of the Act had in a clumsy way expressed an intention to tax property which, by concert or arrangement between two persons, had become vested in them jointly, and that the benefit passing to the surviving sister was taxable. The question which arises upon this appeal is whether the words of sec. 174 can bear this interpretation.

Reference is made in the case stated to sec. 173 of the Act, but it was not argued before this court that this section applied. The argument turned upon sec. 174, which is in the following terms :—

"All property of any kind whatsoever which a person having been absolutely entitled thereto has voluntarily caused or may cause to be transferred to or vested in himself and any other person jointly whether by disposition or otherwise (including 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 so that a beneficial interest therein or in some part thereof passes or accrues by survivorship on his death

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Latham C.J.

to such other person, shall on the death of such person be deemed to the extent of such beneficial interest to form part of his estate for the purpose of estimating the duty payable under this Act and shall be chargeable with duty thereon accordingly."

This section imposes taxation only in respect of property to which a person who has died has been absolutely entitled. The tax is imposed if the person who has been absolutely entitled voluntarily brings about the vesting of that property in himself and another person so that a beneficial interest therein accrues by survivorship on his death. The section therefore requires for its application—(1) A person absolutely entitled to certain property; (2) the vesting of that property in that person and another person jointly; (3) an accrual of a beneficial interest in that property to the other person by survivorship.

In the present case neither of the joint owners became entitled to any interest in the land and other property until that property was vested in them as joint owners. It cannot be said of either of the joint owners that, before such vesting, she had been entitled absolutely to the property. Therefore the section does not apply in this case.

It is contended, however, that the words in sec. 174 which are placed in brackets bring the property in this case within the taxable category. These words are: "including any purchase or investment effected by the person who was absolutely entitled to the property." There are difficulties in interpreting these words and in fitting them into the rest of the section. They were evidently taken from the English *Customs and Inland Revenue Act* 1889, sec. 11 (1), which amended the *Customs and Inland Revenue Act* 1881, sec. 38 (2). The English amendment is difficult enough to understand, and, in my opinion, no help can be obtained from the English legislation towards construing the Victorian provisions. It has been suggested that a mistake has been made in drafting the section, and that the bracket should be placed after the words "any other person" instead of after the words "entitled to the property," but, wherever the brackets are placed, there is room for argument as to whether the words are intended to extend the meaning of the word "disposition" or to extend the meaning of the word "property" where

that word first appears in the section. In either case, however, the purchase or investment mentioned is a purchase or investment by a person " who was absolutely entitled to the property " a beneficial interest in which it is sought to tax under the section. As already stated, the property sought to be taxed in this case is property to which neither sister had ever been absolutely entitled. Thus the beneficial interest which passed or accrued by survivorship on the death of one sister to the other sister cannot be deemed to form part of the estate of the deceased sister.

The principle to be applied in the determination of this case has been referred to by Lord *Russell of Killowen* in the following words in *Inland Revenue Commissioners* v. *Westminster (Duke)* (1) :—" I confess that I view with disfavour the doctrine that in taxation cases the subject is to be taxed if, in accordance with a court's views 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 circumstances of his case. As Lord *Cairns* said many years ago in *Partington* v. *Attorney-General* (2), ' 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.' " It cannot be said that the words of sec. 174 are very " plain," but it is, I think, at least plain that the words do not apply to the facts of the present case.

Other questions were argued upon this appeal, in particular the question whether the word " voluntarily " in sec. 174 means " without compulsion " or " gratuitously." Argument was also directed to the meaning of the words " either by himself alone or in concert or by arrangement with any other person." As I am of opinion that no property can be taxed under the section unless the deceased

(1) (1936) A.C. 1, at pp. 24, 25. (2) (1869) L.R. 4 H.L. 100, at p. 122.

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person has been absolutely entitled to the property before it became vested in himself and another person, it is not necessary for me to consider these questions.

For these reasons the appeal should, in my opinion, be allowed, and the question asked by the case stated should be answered in the negative.

RICH AND DIXON JJ. Two sisters jointly owned certain real and personal property. One died, and her undivided half interest accrued to the surviving sister. The question for decision is whether the undivided interest so accruing should be included in the property of the deceased chargeable with duty under the *Administration and Probate Act* 1928 of Victoria. During her lifetime the deceased joined with her sister in purchasing the real property in question. Each contributed half the purchase money, and they caused themselves to be registered as proprietors of an estate in fee simple as joint tenants. The personal property consists in certain chattels personal and a debt. The sisters bought the chattels personal jointly, each providing half the purchase money. The debt arose from an advance which they made on joint account. Each provided half the sum of money lent.

On the deceased's death the surviving sister became, in virtue of her *jus accrescendi*, entitled beneficially to the entirety in all this property. Sec. 174 of the Act is the foundation of the attempt to include in the estate of the deceased for the purpose of estimating duty the undivided interest so accruing. The manner in which that provision is drawn gives rise to many difficulties, and to make intelligible the reasons for our decision it is necessary to set out the section in full. It is expressed as follows: "All property of any kind whatsoever which a person having been absolutely entitled thereto has voluntarily caused or may cause to be transferred to or vested in himself and any other person jointly whether by disposition or otherwise (including 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 so that a beneficial interest therein or in some part thereof passes or accrues by survivorship on his death to such other person, shall on the death

of such person be deemed to the extent of such beneficial interest to form part of his estate for the purpose of estimating the duty payable under this Act and shall be chargeable with duty thereon accordingly."

The interpretation of the section which is relied upon in answer to the claim of the Crown may be stated very simply. On behalf of the executors, who are the appellants, it is said that the section has no application where the joint owners contribute the purchase money by which the property has been acquired. For this view two reasons are given which arise upon the very words of the section. In the first place, the person on whose death the duty is claimed must have caused the property to be transferred to or vested in himself and the survivor, " having been absolutely entitled thereto " or, in the language of the parenthesis enclosed within the brackets, being a " person who was absolutely entitled to the property." In the second place, he must have caused the transfer or vesting " voluntarily." It is said that this plainly means that the survivor shall have acquired his interest as joint tenant as a volunteer and that, when persons agree to contribute the purchase money for property which they buy jointly and cause to be transferred to themselves as joint tenants, neither of them is a volunteer. In denying this interpretation of the provision, the Crown relies principally upon the parenthesis and upon the words " in concert or by arrangement with any other person."

The materials from which the section has been composed are found in sec. 38 (2) of the British *Customs and Inland Revenue Act* 1881 and in an amendment of that sub-section made by sec. 11 (1) of the *Customs and Inland Revenue Act* 1889, and it is said that an examination of these sub-sections lends support to the Crown's contention. As it originally stood in sec. 38 (2) of the Act of 1881 the provision formed one of a number of clauses describing classes of property or interests to be included in an account upon the balance of which duty was to be levied. In substance, the description contained in the clause was the same as would result if from sec. 174 of the Victorian Act there were omitted the words in brackets and the words following them, namely, the words " (including any purchase or investment effected by the person who was absolutely entitled to

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the property) either by himself alone or in concert or by arrangement with any other person." The British Act of 1889 then provided that the description of the property contained in the clause should be construed as if the expression " to be transferred to or vested in himself and any other person " included also any purchase or investment by the person who was absolutely entitled to the property either by himself alone, or in concert, or by arrangement, with any other person. This curious form of amendment might make it necessary to treat the clause amended as no longer restricted to cases where the deceased was absolutely entitled to the property vested in himself and the survivor. If so, it is because it is an amendment effecting a partial repeal of the provision amended and because the reference to purchase or investment makes it necessary to modify the condition, originally expressed, that the deceased should have been absolutely entitled to the property. But in view of the inclusion in the amending provision of the words " who was absolutely entitled to the property " such reasoning appears open to doubt.

A further step which it is said must be taken is to qualify the meaning of the word " voluntarily " by including within the provision cases where mutual advantages are given and taken between the two co-owners which would otherwise be regarded as affording the mutual consideration for the action of each in joining in the joint purchase. Otherwise, it is contended, there would be no reason in introducing the words " either by himself alone or in concert or by arrangement with any other person." This view of the English provisions is supported by a decision of the Divisional Court (*Attorney-General* v. *Ellis* (1)). The decision, indeed, goes much further. For the learned judges, Lord *Russell of Killowen* C.J. and *Charles* J., construed the word " voluntarily " as meaning not " without consideration " but " freely " or " under no obligation." They said : " If ' voluntarily ' means ' without consideration,' it is difficult to give effect to the words . . . ' in concert or by arrangement with '—words which would appear to point to the existence of some contractual obligation " (2). Having regard to these considerations, it is contended that sec. 174 of the Victorian

(1) (1895) 2 Q.B. 466.

(2) (1895) 2 Q.B., at p. 470.

Act should be interpreted to include cases in which the deceased has during his lifetime applied money to which he was absolutely entitled to the acquisition of property transferred to or vested in himself and another person jointly, although that person also provided part of the purchase money. On this view the deceased's money in a changed form becomes property vested in himself and the survivor, so that a beneficial interest therein accrues by survivorship on his death.

We are unable to accept this interpretation of the section. It appears to us to violate the principles of statutory construction. In *Brunton* v. *Commissioner of Stamp Duties* (1), Lord *Parker of Waddington*, speaking for the Privy Council, says: "The intention to impose a tax or duty, or to increase a tax or duty already imposed, must be shown by clear and unambiguous language and cannot be inferred from ambiguous words." This rule he again emphasized in *Attorney-General* v. *Milne* (2), where he said, in the House of Lords: "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." In *Ormond Investment Co.* v. *Betts* (3), Lord *Buckmaster*, although differing from the majority of their Lordships and holding that in the particular case the Crown had satisfied the burden lying upon it, described the rule as a "cardinal principle . . . a principle well known to the common law that has not been and ought not to be weakened—namely, that the imposition of a tax must be in plain terms." He added: "The subject ought not to be involved in these liabilities by an elaborate process of hair-splitting arguments." Lord *Atkinson*, who agreed in the decision of the House, expressed the rule as follows: "It is well established that one is bound, in construing Revenue Acts, to give a fair and reasonable construction to their language without leaning to one side or the other, that no tax can be imposed on a subject by an Act of Parliament without words in it clearly showing an intention to lay the burden upon him, that the words of the statute must be adhered to, and that so-called equitable constructions of them are not permissible" (4).

(1) (1913) A.C. 747, at p. 760.
(2) (1914) A.C. 765, at p. 781.
(3) (1928) A.C. 143, at p. 151.
(4) (1928) A.C., at p. 162.

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In the present case there are perfectly clear and definite words describing a condition of liability. The condition is that the deceased shall have been absolutely entitled to the property which he has caused to be vested in himself and the survivor and in which the beneficial interest accrues by survivorship. This condition is twice described, once at the beginning of the section, and again in the bracketed words. It is repeated in language substantially identical. The property which accrues by survivorship is that which is vested in them jointly and not the money which was paid for that property. The condition has plainly not been satisfied, if the words bear their ordinary meaning. They are unambiguous and definite. The claim of the Crown can be made out only by adding to their ordinary meaning a secondary or extended meaning which as a matter of English they are incapable of bearing. It may be true that the bracketed words are neither easily understood nor explained, and that the purpose of the words immediately following is not very clear. But to base upon them an implication destroying the effect of a clearly expressed condition of liability appears to us to be placing a liability upon the subject by means of uncertain inferences drawn from obscure language occurring in a context which in clear terms limits the liability actually imposed, to the exclusion of the particular case. The words relied upon occur in the Victorian enactment as part of the original text and can be used for purposes of construction only. Their English analogue is a subsequent statute intended to vary the original text and operating by way of amendment. Moreover, it is expressed as an enlargement of the area of liability. But even so, we do not think that the decision in *Attorney-General* v. *Ellis* (1) can be supported. The word "voluntarily," when used in relation to such a subject matter, must have its ordinary legal meaning. It is difficult to suppose that it means anything else but that the other person should take as a volunteer. The decision was influenced by the decision of the Court of Appeal in *Art Union of London* v. *Overseers of Savoy* (2), which afterwards was reversed in the House of Lords (3). *Palles* C.B., in *Attorney-General* v. *Smyth* (4), has said that *Attorney-General* v. *Ellis* (1) has been deprived

(1) (1895) 2 Q.B. 466.
(2) (1894) 2 Q.B. 609.
(3) (1896) A.C. 296.
(4) (1905) 2 I.R. 553.

of all authority. For ourselves we do not feel that the reference to any purchase or investment effected by the person who dies or to his acting in concert or by arrangement with any other person does raise any inference that the legislature intended to include the purchase by two persons as joint tenants of property for which they both paid in equal shares, or for that matter, in unequal shares. The words may have been intended to refer to a case in which a person who provides the purchase money takes a transfer of property bought in the name of himself and another who is a volunteer, and to extend the application of the provision to such a case, even although there is some preconcert between them, or an arrangement, not removing the other person from the category of a volunteer. But, in our opinion, the intention of the legislature did not go further. Why should it treat the case of A and B contributing in equal proportions the purchase money for the acquisition from C, a stranger, of an estate in fee simple as joint tenants any differently from the case of A buying from B, the owner of an estate in fee simple, for a full consideration in money, an undivided share as joint tenant with B ? Yet the latter case appears to us to be clearly outside the section. The words referring to purchase and investment may be satisfied by a case in which the person dying becomes contractually entitled to property, which he causes to be transferred to or vested in himself and the person surviving. They are sufficiently explained on this footing, and whatever may be the actual reason animating the draftsman, it is, in our opinion, an unwarranted course to use them for the purpose of rewriting the section.

In our opinion the appeal should be allowed with costs. The order of the Supreme Court should be discharged. The question in the special case should be answered : None.

Sec. 154 of the *Administration and Probate Act* 1928, under which the case was stated, does not contain any express power to deal with the costs of a special case, but there is nothing expressly excluding the power given by sec. 32 of the *Supreme Court Act* 1928, which was, no doubt, adopted in Victoria in pursuance of the suggestion made by *Cussen* J. in *Re Duff* (1) ; cf. *Morse* v. *Australasian Steam Navigation Co.* (2) and *Re Auto Import Co. (Australia) Ltd.* (3).

(1) (1918) V.L.R. 426, at p. 429 ; 40 A.L.T. 21, at p. 22.
(2) (1870) 9 S.C.R. (N.S.W.) (L.) 81.
(3) (1925) 25 S.R. (N.S.W.) 587 ; 42 W.N. (N.S.W.) 156.

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McTIERNAN J. Where the result of the creation by any person of a joint tenancy in any of the ways set out in sec. 174 of the *Administration and Probate Act* 1928 is that a beneficial interest in the whole or part of the property subject to the joint tenancy accrues or passes by survivorship to the other joint tenant on the death of the person creating the joint tenancy, the section provides that the property should be included in the dutiable estate of the deceased to the extent of such beneficial interest. But the legislature has not plainly defined the ways in which it intended that a joint tenancy should have been created before this result followed.

In the first place the section is expressed to apply to "all property of any kind whatsoever which a person having been absolutely entitled thereto has voluntarily caused or may cause to be transferred to or vested in himself and any other person jointly whether by disposition or otherwise." Immediately after the word "otherwise" the following words are added: "(including 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." These words bring within the purview of the section property which is the subject of a disposition, voluntarily made by a person absolutely entitled thereto and taking the form of a purchase or investment effected by himself alone or in concert or by arrangement with any other person.

If the section were limited to the case where such purchase or investment was effected alone by the person absolutely entitled, there would be no difficulty in reading the word "voluntarily" as meaning that the property represented by the purchase or investment had been transferred to or vested in the person making such purchase or investment, jointly with a volunteer. But it is said that because the section includes the case where the disposition of the property has taken the form of a purchase or investment made "in concert" or "by arrangement" with another, words which import mutual promises and a transaction founded on valuable consideration, the word "voluntarily" should be read to mean "freely."

But there should not be any difficulty in understanding that a purchase or investment could be effected in concert or by arrangement with another so as to make that other a joint tenant, even

though he is a volunteer. Moreover, the beneficial interest which becomes dutiable may under the section be in part only of the property represented by the purchase or investment, and it is clear that a concert or arrangement with the volunteer may be necessary to limit the beneficial interest which would accrue or pass on death to part only of the property. There is no reason therefore why the word " voluntarily " should not receive its ordinary meaning, that is, " without consideration." The strength of the view that " voluntarily " should be read as " freely " is derived from *Attorney-General* v. *Ellis* (1), but since the decision in *Overseers &c. of the Savoy* v. *Art Union of London* (2), that case can no longer be regarded as authoritative.

The survivor here contributed one-half of the purchase price of the property which has accrued to her. She is not a volunteer, and therefore does not come within the section.

The question in the special case should be answered : None, and the appeal should be allowed.

Appeal allowed with costs. Question in case answered : No interest in the said property is chargeable with duty under sec. 174 *of the Administration and Probate Act* 1928. *Appellant to have costs of case stated.*

Solicitors for the appellant, *William S. Cook & McCallum.*

Solicitor for the respondent, *F. G. Menzies*, Crown Solicitor for Victoria.

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(1) (1895) 2 Q.B. 466.

(2) (1896) A.C. 296.