

## [HIGH COURT OF AUSTRALIA.]

## PERPETUAL TRUSTEE COMPANY (LIMITED) APPELLANT;

AND

## THE COMMISSIONER OF STAMP DUTIES OF NEW SOUTH WALES

## ON APPEAL FROM THE SUPREME COURT OF NEW SOUTH WALES.

H. C. OF A. 1941. SYDNEY, April 1: May 1.

Rich A.C.J., Starke, Dixon and McTiernan JJ. Death Duty (N.S.W.)—Property comprised in gift—Bona-fide possession and enjoyment-Entire exclusion of deceased-Settlement by deceased-Deceased a trustee of settlement—Resulting trust in favour of deceased—Stamp Duties Act 1920-1933 (N.S.W.) (No. 47 of 1920—No. 12 of 1933), sec. 102 (2) (d).

Sec. 102 (2) (d) of the Stamp Duties Act 1920-1933 (N.S.W.) provides for the inclusion for the purposes of death duty as part of a deceased person's estate of "any property comprised in any gift made by the deceased at any time . . . of which bona-fide possession and enjoyment has not been assumed by the donee immediately upon the gift and thenceforth retained to the entire exclusion of the deceased, or of any benefit to him of whatsoever kind . . . whether enforceable at law or in equity or not." Gift is defined by sec. 100 of the Act to mean any disposition of property (which includes the creation of a trust) without full consideration in money or money's worth.

Held that the subject matter of a settlement made by a deceased person is not included in the deceased person's estate under sec. 102 (2) (d) merely because the deceased person was one of the trustees of the settlement and thus retained a legal interest in the subject matter of the settlement or because the trusts declared did not necessarily exhaust the entire beneficial interest, so that in certain contingencies which did not happen there would have been a resulting trust in favour of the deceased person.

Decision of the Supreme Court of New South Wales (Full Court): Perpetual Trustee Co. (Ltd.) v. Commissioner for Stamp Duties, (1940) 40 S.R. (N.S.W.) 571; 57 W.N. (N.S.W.) 210, reversed.

APPEAL from the Supreme Court of New South Wales.

A case for the opinion of the Supreme Court stated under sec. 124 of the Stamp Duties Act 1920-1933 (N.S.W.) by the Commissioner of Stamp Duties of New South Wales was substantially as follows:—

1. Before and at the time of the making of the indenture of settlement hereinafter mentioned, John Richard Hall was the registered holder of and beneficially entitled to eight hundred and fifty fully paid shares of one pound each in R. Hall & Son Ltd., a company duly incorporated under the *Companies Act* 1899 (N.S.W.) as a company limited by shares.

2. On 7th December 1917 a certain indenture of settlement was made between John Richard Hall (thereinafter and hereinafter called the settlor) of the one part and one James Watson, one Thomas Daniel O'Sullivan, one David Henry Mulholland, the said John Richard Hall and Perpetual Trustee Co. (Ltd.) (thereinafter

and hereinafter called the trustees) of the other part.

3. By the said indenture of settlement, after reciting that the settlor was the registered owner of the said shares and was desirous of the said shares being held by the trustees upon the trusts and in the manner thereinafter declared, and that the trustees had agreed to the said shares being transferred into their joint names and to hold the same upon the trusts and in the manner thereinafter appearing, it was witnessed that in order to effectuate his desire and in consideration of the natural love and affection which the settlor bore for his infant son John Stuart Hall and for all other good causes and considerations him thereto moving, the settlor declared that the trustees should hold the said shares upon certain trusts therein set forth, including the following, namely: (1) To pay and apply the whole or such part or parts as the trustees shall think fit of the income and dividends received from the shares and the investments hereinafter referred to from time to time towards the maintenance advancement benefit and education of John Stuart Hall during his minority. (2) To invest any surplus income from time to time in any one or more of the investments hereinafter authorized with full power to vary the same from time to time for another or others of a like nature but so that such accumulations shall always be liable to be applied for the purposes aforesaid as if the same were income arising in the then current year. (3) During the minority of John Stuart Hall to apply the income and/or any accumulations thereof as aforesaid and/or any proceeds of sale of the shares or any part or parts thereof as the trustees shall think fit and/or any sum or sums which the trustees may think fit to raise by way of mortgage on the shares or any part or parts thereof for the maintenance education

H. C. OF A.

1941.

PERPETUAL
TRUSTEE
CO. (LTD.)

v.
COMMISSIONER OF
STAMP
DUTIES
(N.S.W.).

H. C. OF A.

1941.

PERPETUAL
TRUSTEE
CO. (LTD.)
v.
COMMISSIONER OF
STAMP
DUTIES
(N.S.W.).

advancement or benefit of John Stuart Hall . . . (5) Any moneys paid by the trustees for the maintenance education advancement or benefit of John Stuart Hall may be paid to the natural or other guardian or guardians for the time being of John Stuart Hall by the trustees without the necessity of the trustees seeing to the application thereof or compelling the said guardian or guardians to account for the same or any part thereof Provided the trustees are satisfied that John Stuart Hall is being properly maintained and educated and that his advancement is not being neglected. (7) Any trustee of this settlement may from time to time with the consent of any other trustee or trustees of this settlement delegate to such other trustee or trustees all or any duty or duties and/or power or powers and/or discretion or discretions by writing under his hand only and without the necessity of it being under seal with full power to revoke the same from time to time . . . (10) Upon John Stuart Hall attaining the age of twenty-one years to transfer to him as his absolute property all the income and all investments held by the trustees under the trusts of this indenture.

4. At or about the date of the said indenture of settlement the settlor executed a transfer of the said shares to the five trustees (including himself) named in the indenture, and procured the registration of the transfer in the books of R. Hall & Son Ltd. The shares thenceforth and until and after the death of the settlor stood registered in those books in the joint names of the five trustees, in the following order, namely: John Richard Hall, Perpetual Trustee Co. (Ltd.), James Watson, Thomas Daniel O'Sullivan, David Henry Mulholland. From the time of such transfer as aforesaid the settlor did not ever exercise any voting power in respect of the shares.

5. The articles of association of R. Hall & Son Ltd. at all material times contained, inter alia, the following provisions:—(2) The primary and paramount object for which this company is established is to enable Mr. John Richard Hall, his executors or administrators, or testamentary nominees, to carry on with limited liability the business of commission and general merchants or any other business which the company is authorized to carry on by its memorandum and all the provisions hereinafter contained shall so far as the law permits be regarded as subordinate and ancillary to such object. (4) Subject and without prejudice to the provisions of the said agreement and to the other provisions of these presents the shares of the company shall be under the control of the directors, who may issue and allot them either as one class or several classes and at such time or times and in such manner in all respects as the directors shall think fit, and the directors may attach to the shares comprised

in any class any preference or guaranteed right to any dividend not exceeding ten pounds per cent per annum either cumulative or payable out of the profits of any particular year or years. (5) Every member shall be entitled to a certificate under the common seal of the company specifying the share or shares held by him and the amount paid up thereon. If two or more persons are registered as joint holders of any share the certificate of any such share shall be delivered to the person first named upon the register unless all such joint holders shall otherwise direct in writing. (25) John Richard Hall, the vendor of the company, shall be entitled at any time or times during his life to purchase all or any of the shares held by any member or members of the company at a price equal to the sum paid up or credited as paid up thereon (together with ten pounds per cent of such sum) and upon the tender of such price to any member for the shares held by him such member shall execute a transfer of the shares to John Richard Hall or to such other person as he shall nominate who shall thereupon be duly registered as a member but the member so transferring his shares shall be entitled to receive all dividends at any time declared upon such shares for the period up to the next succeeding 30th June. (53) John Richard Hall shall be the managing director of the company until he resigns the office or dies and whilst he retains the office he shall have the general management and control of the business of the company and shall have authority to exercise all the powers authorities and discretions by these presents expressed to be vested in the directors generally and all the other directors (if any) for the time being of the company shall be under his control and shall be bound to conform to his directions in regard to the company's business. (104) All notices shall, with respect to any registered shares to which persons are jointly entitled, be given to whichever of such persons is named first in the register and notice so given shall be sufficient notice to all the holders of such shares. (108) Any notice or document delivered or sent by post to or left at the registered address of any member in pursuance of these presents shall notwithstanding such member be then deceased and whether or not the company have notice of his decease be deemed to have been duly served in respect of any registered shares whether held solely or jointly with other persons by such member until some other person be registered in his stead as the holder or joint holder thereof and such service shall for all purposes of these presents be deemed a sufficient service of such notice or document on his heirs executors or administrators and all persons (if any) jointly interested with him in any such share.

H. C. OF A.

1941.

PERPETUAL
TRUSTEE
CO. (LTD.)
v.
COMMISSIONER OF
STAMP
DUTIES

(N.S.W.).

H. C. of A.
1941.
PERPETUAL
TRUSTEE
Co. (LTD.)
v.
COMMIS-

SIONER OF

STAMP DUTIES (N.S.W.). 6. The settlor was managing director of the company from the formation thereof until his death.

7. From the date of the indenture of settlement until the death of the settlor, the settlor always continued to be one of the trustees of the indenture and as such he jointly with his co-trustees received dividends paid by R. Hall & Son Ltd. in respect of the shares. Particulars of those dividends are as follows:—

Date of receipt by the		Amount.		
trustees.				
23rd July 1919		£106	5	0
27th August 1920		85	0	0
31st March 1921		85	0	0
		£276	5	0

- 8. The trustees invested the dividends and derived income from the investments thereof.
- 9. Shortly after the date of the indenture of settlement the trustees took out a policy of life assurance for the sum of £10,000 with the Australian Mutual Provident Society on the life of John Stuart Hall and from time to time thereafter paid the premiums in respect of such policy out of the dividends and income received by them as such trustees.
- 10. With the exception of the said premiums, the trustees did not at any time during the minority of John Stuart Hall pay or apply any of the dividends or income towards the maintenance, advancement, benefit or education of John Stuart Hall, either by payment to the settlor as the natural guardian of John Stuart Hall or otherwise.
- 11. Out of the dividends and income received by them, the trustees from time to time paid, in addition to the said premiums, the income tax payable by them as trustees of the indenture of settlement and the trustee company's commission, and the balance thereof was accumulated and invested.
- 12. The settlor's son, John Stuart Hall, was born on 27th November 1910 and survived the settlor. Upon the attainment of the age of twenty-one years by John Stuart Hall the assets comprised in the settlement were transferred to him.
- 13. The settlor died on 27th June 1921 leaving a will probate whereof was duly granted by the Supreme Court of New South Wales in its Probate Jurisdiction on 27th August 1921 to Perpetual Trustee Co. (Ltd.), one John Paton and one David Mulholland, the executors in the will named.

14. The shares were at the death of the settlor of the value of £1,069 11s. 8d.

PERPETUAL TRUSTEE Co. (LTD.) v. COMMIS-SIONER OF STAMP

DUTTES

(N.S.W.).

H. C. of A. 1941.

15. The settlement of the shares by the settlor as hereinbefore set forth was not disclosed by the executors to the Commissioner of Stamp Duties at the time of the application for probate, and the final balance of the settlor's estate, excluding the said shares, was valued for purposes of death duty at £101,136, upon which sum death duty was assessed at the rate of fifteen and one-half per cent, amounting to £15,676 ls. 7d. The duty was duly paid.

16. The making of the settlement was recently disclosed to the commissioner, who thereupon claimed that the shares formed part of the dutiable estate of the settlor and assessed additional death duty in respect thereof at the sum of £165 17s.

17. Perpetual Trustee Co. (Ltd.), as executor of the will of the settlor, its above-mentioned co-executors having died, claimed that the shares did not form part of the dutiable estate, and, having under protest paid the additional death duty and the sum of £20 as security for costs, called upon the commissioner to state this case.

The questions reserved for the decision of the court were :-

- 1. Did the shares form part of the dutiable estate of the abovenamed John Richard Hall deceased?
- 2. What was the death duty payable in respect of the estate?
- 3. How are the costs of this case to be borne and paid?

The case was heard by the Full Court, which made an order that the first question should be answered in the affirmative, and that the second question should be answered—£167 17s.: Perpetual Trustee Co. Ltd. v. Commissioner for Stamp Duties (1).

From that decision Perpetual Trustee Co. (Ltd.) appealed to the High Court.

Maughan K.C. (with him Street), for the appellant. A comparison of par. c of sec. 102 (2) of the Stamp Duties Act 1920-1933 (N.S.W.) with par. d thereof shows that they were enacted in respect of entirely different conceptions. Par. c deals with the creation and reservation of benefits or other dispositions in the settlement itself and those rights may be in praesenti or in futuro. Par. d centres around the de-facto possession and enjoyment of the asset. It does not refer to the settlement, trust or other disposition of property, but simply to any property comprised in any gift of which possession and enjoyment is not assumed and retained to the exclusion of the settlor, or any benefit to him. Provisions corresponding to par. c first appeared in sec. 38 (2) (c) of the Customs and Inland Revenue Act

<sup>(1) (1940) 40</sup> S.R. (N.S.W.) 571; 57 W.N. (N.S.W.) 210.

H. C. OF A.

1941,

PERPETUAL

TRUSTEE

CO. (LTD.)

v.

COMMISSIONER OF

STAMP

DUTIES

(N.S.W.).

1881 (44 & 45 Vict. c. 12), and to par. d in sec. 38 as amended by sec. 11 of the Customs and Inland Revenue Act 1889 (52 Vict. c. 7). Those provisions were introduced into the Stamp Duties Act of 1880 (NSW) by the Stamp Duties Acts Further Amendment Act of 1894 (N.S.W.) The definitions which appear in sec. 100 of the Stamp Duties Act. 1920-1933 of the words "disposition of property" and of the word "gift" have no bearing upon the issues which arise in this case The only questions which arise are: (a) Assuming that there has been a gift, was bona-fide possession and enjoyment assumed by the settlee immediately on the gift to the entire exclusion of the settler. or of any benefit to him? or (b) Was such possession and enjoyment retained by the settlor? "Possession and enjoyment" means the beneficial possession and enjoyment of the thing given. Whatsoever may have been reserved was not given. Par. d is limited to the events which happened between the date of the settlement and the date of the death of the settlor. During that period the dividends on the shares were collected by the trustees on the settlee's behalf: they were used merely on his behalf by taking out a policy of insurance, otherwise they accumulated, and during that period the settlor was excluded from any enjoyment of, or benefit in, that property. Future interests which may or may not come into existence after the death of the settlor are quite irrelevant under par. d. The gift. and the only gift, from the settler to the settlee consisted of two items, namely, (a) a vested interest in income and accumulations of income for the purpose of maintaining the settlee until he attained the age of twenty-one years, and (b) a contingent interest in the whole of the assets on his attaining that age. The settlor did not give the ultimate interest in the income, accumulations of income and corpus, assuming the settlee died before attaining the age of twenty-one years, that is, he did not give away the contingent interest on the settlee dving under the age of twenty-one years. What the settlor so retained was not part of the gift, it remained vested in himself (In re Cochrane (1); Thomson v. Commissioner of Stamp Duties (2)). Neither the resulting trust nor the fact that the settlor was one of the trustees named in the settlement brings the matter within the scope of par. d (In re Adams; Adams v. Commissioner of Stamp Duties (3) )—See also Commissioner of Stamp Duties (N.S.W.) v. Thomson (4); Thomson v. Commissioner of Stamp Duties (5); Mackay v. Commissioner for Stamps (6); and

<sup>(1) (1905) 2</sup> I.R. 626, at pp. 633, 639, 643; (1906) 2 I.R. 200, at pp. 201, 202, 204.

<sup>(2) (1927) 28</sup> S.R. (N.S.W.) 195, at p. 203.

<sup>(3) (1932)</sup> N.Z.L.R. 741.

<sup>(4) (1927) 40</sup> C.L.R. 394, at pp. 417 et seq. (5) (1927) 28 S.R. (N.S.W.), at pp.

<sup>W.) 195, at (5) (1927) 28 S.R. (N.S.W.), at pp. 200, 201.
(6) (1911) 11 S.R. (N.S.W.) 286.</sup> 

Attorney-General v. Munby (1). The retention by a donor of a measure of control and possession does not necessarily interfere with the donee's possession and enjoyment of the gift (Munro v. Commissioner of Stamp Duties (2) ).

Weston K.C. (with him Kitto), for the respondent. The operation of par. d of sec. 102 (2) of the Stamp Duties Act 1920-1933 is not restricted to cases of beneficial possession and enjoyment (Attorney-General of Alberta v. Cowan (3)). There was not any change in the legal position of the settlor: he did not go out of legal possession nor definitely and permanently divorce himself from the subject of the gift (Lang v. Webb (4)). The definition of the word "gift" as it appears in the Act was intended to resolve the difference of opinion between the members of the court in Mackay v. Commissioner for Stamps (5). Par. d may fairly be read as referring to "any property comprised in the voluntary disposition of the legal and/or equitable estate." Under that paragraph the whole possession and the whole enjoyment, legal or equitable, has to be assumed by the donee and retained to the entire exclusion of the donor: the donor must be entirely excluded from any possession or any enjoyment, legal or equitable. The second limb of par. d not only means that the donor must be excluded from the possession and enjoyment, he must also be excluded from any benefit of whatsoever kind or in any way whatsoever (Attorney-General v. Worrall (6); Attorney-General v. Seccombe (7) )—See also Rudd v. Commissioner of Stamp Duties (8). In re Cochrane (9) is inconsistent with Attorney-General v. Worrall (6), Attorney-General of Alberta v. Cowan (10) and other cases (Attorney-General v. Sandwich (Earl) (11); Green on Death Duties, p. 659). Assuming that In re Cochrane (9) was rightly decided on the statute there under consideration, the definitions of "gift" and "disposition" are rendered inapplicable, and that case, therefore, is not a decision on the second limb of the paragraph. The effect of the definitions is to have regard to the whole transaction.

Maughan K.C., in reply. In re Cochrane (9) has been regarded as correctly laying down the law with regard to statutory provisions similar to those now under consideration (Attorney-General v. Glossop (12)). The judgments in Lang v. Webb (13) should be read

- (1) (1816) 1 Mer. 327 [35 E.R. 695].
- (2) (1934) A.C. 61, at pp. 66-68. (3) (1926) 1 D.L.R. 29; (1925) 2
- D.L.R. 647, at p. 653. (4) (1912) 13 C.L.R. 503, at p. 511.
- (5) (1911) 11 S.R. (N.S.W.) 286.
- (6) (1895) 1 Q.B. 99. (7) (1911) 2 K.B. 688.

- (8) (1937) 37 S.R. (N.S.W.) 366, at p.
- (9) (1905) 2 I.R. 626; (1906) 2 I.R. 200.
- (10) (1926) 1 D.L.R. 29.
- (11) (1922) 2 K.B. 500, at p. 514.
- (12) (1907) 1 K.B. 163. (13) (1912) 13 C.L.R. 503.

1941. PERPETUAL TRUSTEE Co. (LTD.) COMMIS-

H. C. OF A.

SIONER OF STAMP DUTIES (N.S.W.).

H. C. OF A.

1941.

PERPETUAL
TRUSTEE
CO. (LTD.)
v.
COMMISSIONER OF
STAMP
DUTIES
(N.S.W.).

May 1.

in the light of the facts in that case. The definitions do not affect the construction of the paragraph. A gift is what is given and not what is retained and not given. "Possession" should be construed as meaning beneficial possession.

Cur. adv. vult.

The following written judgments were delivered:

RICH A.C.J. This matter in the first instance came before the Supreme Court of New South Wales on a case stated under sec. 124 of the Stamp Duties Act 1920 (N.S.W.).

The first question asked in the case involves the construction of that part of sec. 102 (2) (d) of the Act which provides that, for the purposes of the assessment and payment of death duty, the estate of a deceased person shall be deemed to include and consist of "any property comprised in any gift made by the deceased at any time, whether before or after the passing of this Act, of which bonafide possession and enjoyment has not been assumed by the donee immediately upon the gift and thenceforth retained to the entire exclusion of the deceased, or of any benefit to him of whatsoever kind or in any way whatsoever whether enforceable at law or in equity or not and whenever the deceased died." And the question emerges from the trusts of a gift and disposition of eight hundred and fifty shares in a limited company registered in the name of J. R. Hall, since deceased, and settled by him by means of an indenture of settlement and transfer of the shares to trustees. of whom he was one. The material clauses of the indenture are clauses 1, 3 and 10, which constitute trusts during the minority of the settlor's son to pay the whole or any part of the income, accumulations of income or the corpus of the shares as the trustees should think fit for the maintenance, advancement and education of the son, and upon the son attaining the age of twenty-one to transfer to him as his absolute property all the property and assets whatsoever, including the accumulations and all investments held by the trustees under the trusts of the indenture. The gift in this case was a gift to the son by the creation of a trust of the beneficial interest in the shares. That is one of the methods of disposition recognized by sec. 100 of the Act, and was necessarily adopted in this case so that the settlor's son, being an infant, might immediately obtain complete "possession and enjoyment" of that character of which the subject matter of the gift was capable. The phrase "possession and enjoyment" is a composite one, and means in this case beneficial possession and enjoyment: Cf. In re Cochrane (1), per Palles C.B. But it was contended that the settlor was not entirely excluded from possession by reason of his being one of the trustees under the settlement. And the Supreme Court answered in the affirmative the question submitted, holding that the settlor was not after the date of the gift, excluded from possession of the property, inasmuch as, being a trustee, he joined with his co-trustees in receiving and applying for his son's benefit the dividends which were paid in respect of the shares. Another reason given in the judgment under appeal is that the settlor was not, after the date of the gift, entirely excluded from the enjoyment of the property given and from any benefit of whatsoever kind whether enforceable at law or in equity, because in the event of the son dving under twentyone there would arise a resulting trust in favour of the settlor. With great respect I am unable to agree with either of these reasons. I am of opinion, notwithstanding the decision in the Canadian case. Attorney-General of Alberta v. Cowan (1), may be to the contrary, that the transfer of the legal interest in the shares to the settlor as one of the trustees of the settlement does not come within the scope of the section. His possession then was merely incidental and was attached to him in his capacity as trustee and not as beneficial owner: Cf. Manson v. Commissioner of Stamp Duties (2). The phrase in sec. 102 (2) (d) is "any property comprised in any gift." It is, therefore, the possession and enjoyment of the proprietary interest given which the donee must immediately assume and thenceforth retain to the entire exclusion of the donor. Any interest in property, absolute or limited, legal or equitable, may be given. If such an interest is equitable, the donor may remain a trustee of the legal estate so long as he is completely excluded from the beneficial interest. If the interest is legal, the donee must go into possession and enjoyment of the legal estate and exclude the donor from the possession and enjoyment thereof.

The gift may be of an equitable interest for a certain period followed by a legal estate, as in the present case. In such a case the donee must completely exclude the donor from the possession and enjoyment of the equitable interest during the first period and from the legal estate during the second period. Exclusion from the legal estate would include, of course, exclusion from all benefits arising from the possession of such an estate.

In other words, there must be that ostensible transfer of possession and enjoyment to the donee of which the gift is capable: Cf. O'Connor v. Commissioner of Succession Duties (S.A.) (3). In the present case the gift during the son's minority was necessarily of an

29. (2) (1930) Q.S.R. 295. (3) (1932) 47 C.L.R. 601, at p. 614. (1) (1926) 1 D.L.R. 29.

VOL. LXIV.

H. C. OF A. 1941. PERPETUAL TRUSTEE Co. (LTD.) COMMIS-SIONER OF STAMP DUTIES

(N.S.W.). Rich A.C.J.

33

H. C. of A.

1941.

PERPETUAL
TRUSTEE
Co. (LTD.)
v.
COMMISSIONER OF
STAMP
DUTIES
(N.S.W.).

Rich A.C.J.

equitable interest, because an infant cannot be registered as a shareholder, so that the only proprietary possession and enjoyment of which the gift was then capable was the right on the part of the son to have the dividends applied in accordance with the trusts of the settlement and to have the trustees exercise their voting powers in respect of the shares for his benefit.

The alternative construction is that the property means the whole asset out of which the gift is carved. This construction would mean that a donor could not give a limited interest in property without infringing the sub-section. It would be necessary for him completely to exclude every possibility of a resulting trust, however remote. Every settlement would have to contain an ultimate trust of an indefeasibly vested interest in favour of a beneficiary other than himself. But the other sub-sections dealing with the notional estate show that the limited interests which are struck at are those which arise by reference to the death of the deceased person and are therefore substitutes for wills. The present sub-section does not strike at limited interests which do not arise by reference to the death of the settlor, but at transactions which could be collusive. There is no reason why a gift during the life of the donee or of a term of years, or of an annuity charged on property of the donor, which gift the donee immediately possessed and enjoyed to the exclusion of the donor, should infringe the sub-section. The settlor did not, therefore, in my opinion, retain any benefit or reserve for himself any interest in the gift inconsistent with the full enjoyment of the subject of the gift by the son as beneficiary. Three cases decided under the Mortmain Act (9 Geo. II., c. 36, sec. 1), which contains somewhat similar words to those in the sub-section under consideration, support this view. In Attorney-General v. Munby (1) it was held by Sir William Grant M.R. that a grant of premises in trust for the rectors of a parish was not invalidated by the fact that at the date of the grant the grantor was himself rector. The object of the Statute of Mortmain was to prevent a reservation under colour of a charitable use of some substantial benefit to the donor himself (Doe d. Thompson v. Pitcher (2)). That statute required, as does sec. 102 (2) (d), an "out and out" gift over which the settlor retained no power of disposition (Girdlestone v. Creed (3)). After the execution of the documents in this case the complete beneficial interest in the shares thereby created vested in the son. "A gift is a gift whether it be given directly or given through the medium

<sup>(1) (1816) 1</sup> Mer. 327 [35 E.R. 695].

<sup>(2) (1815) 3</sup> M. & S. 407, at p. 410 [105 E.R. 663, at p. 665].

<sup>(3) (1853) 10</sup> Ha. 480, at p. 485 [68 E.R. 1016, at p. 1018].

of a trust. What the donor keeps back is no gift" (Wheeler v. Humphreys (1)). The settlor in this case kept back nothing. "In order to ascertain what is the 'gift,' we must see what is given. Does the donor give what he does not part with? I think he does not give what he reserves or retains; and, if it was not included in the gift he made, then there was an entire exclusion of the donor from the property taken under the gift, and what was given was exclusively possessed and enjoyed by the donee" (In re Cochrane (2)). It is true that in the event of the death of the son before attaining twenty-one there remained a mere contingency, which did not happen, in which a resulting trust might arise. But nothing was reserved out of the interest given. The possibility of a benefit accruing to the donor does not affect or impair in any way "the gift " to the son and does not fall within the scope of the Act. Accordingly. I consider that possession of the legal interest in the property comprised in the gift by the settlor as one of the trustees and not in his capacity as beneficial owner was not the possession aimed at by the sub-section and that, the settlor having made a gift complete in itself without any reservation or power of disposition over what was the subject of the gift, he was entirely excluded from the enjoyment of the property given and from any benefit of whatsoever kind whether enforceable at law or in equity.

The appeal should be allowed. Order of the Supreme Court set aside. First question in case stated answered: No. Commissioner

to pay the costs of such case and of this appeal.

STARKE J. Appeal from the judgment of the Supreme Court of New South Wales upon a case stated pursuant to the provisions of

the Stamp Duties Act 1920-1933 (N.S.W.).

John Richard Hall, whom I shall call "the donor," was possessed of eight hundred and fifty fully paid-up shares in R. Hall & Son Ltd., a company incorporated in New South Wales. In 1917 he executed an indenture of gift which he and four other parties (called "trustees") executed. It recited that the donor was desirous of the shares being held by the trustees and that it had been agreed that the shares should be transferred into their names as joint tenants to hold upon the trusts thereinafter declared. About the same time the shares were accordingly transferred and registered in the names of the trustees. The trusts declared, so far as material, were to pay and apply the whole or such part or parts as the trustees should think fit of the income and dividends received and the investments thereinafter

PERPETUAL TRUSTEE CO. (LTD.)
v.
COMMISSIONER OF STAMP
DUTIES (N.S.W.).

H. C. of A.

Rich A.C.J.

H. C. of A.

1941,

PERPETUAL

TRUSTEE
CO. (LTD.)
v.

COMMISSIONER OF

STAMP

DUTIES
(N.S.W.).

Starke J.

mentioned towards the maintenance, advancement, benefit and education of his son J. S. Hall during his minority, and to invest the surplus income so that the accumulation should be available for the same purposes as the current income, and upon his son J. S. Hall attaining the age of twenty-one years to transfer to him as his absolute property all the property. The donor died in 1921; his son, who was born in 1910, survived him and attained the age of twenty-one years, when the property comprised in the indenture of gift was transferred to him.

The question is whether this property forms part of the estate of the donor for the purpose of assessment and payment of death duty It depends upon the following provisions in the Stamp Duties Act 1920-1933, sec. 102 (2): "For the purposes of the assessment and payment of death duty . . . the estate of a deceased person shall be deemed to include and consist of the following classes of property . . . (d) any property comprised in any gift made by the deceased at any time . . . of which bona-fide possession and enjoyment has not been assumed by the donee immediately upon the gift and thenceforth retained to the entire exclusion of the deceased, or of any benefit to him of whatsoever kind or in any way whatsoever whether enforceable at law or in equity or not and whenever the deceased died." The words "whether enforceable at law or in equity or not and whenever the deceased died" were inserted in the section by the Act 1931 No. 13, sec. 6 (b) (iv), and are inapplicable to the present case. "Gift" means any disposition of property made otherwise than by will, whether with or without an instrument in writing, without full consideration in money or money's worth, and "disposition of property" means, inter alia, any conveyance, transfer or assignment. mortgage, delivery, payment or other alienation of property whether at law or in equity and the creation of any trust.

By force of the English Finance Act 1894, estate duty was payable upon "property taken under any gift, whenever made, of which property bona-fide possession and enjoyment shall not have been assumed by the donee immediately upon the gift, and thenceforward retained to the entire exclusion of the donor or of any benefit to him by contract or otherwise." Attorney-General v. Seccombe (1) was decided under this section. Hamilton J., as he then was, held that the property upon which duty was payable was the entire corpus conveyed by the gift and that the words should be construed thus: "Property taken under any gift, whenever made, of which property bona-fide possession and enjoyment shall not have been

assumed by the donee immediately upon the gift, and of which property bona-fide possession and enjoyment shall not have been thenceforward retained by the donee to the entire exclusion of the donor from such possession and enjoyment, or of any benefit to him by contract or otherwise" (1). The word "exclusion" refers to the bona-fide possession and enjoyment of the property just as the word "assumed" does.

It was common ground that the indenture and transfer constituted a gift within the provisions of the Stamp Duties Act 1920-1933, and the commissioner did not, as I understood the argument, dispute that bona-fide possession and enjoyment had been assumed by the donee, whether the trustees be regarded as the donees of the settlement, or the son of the donor. But he insisted that the donor was not after the date of the gift entirely excluded from possession of the property comprised in the gift and of any benefit to him. learned judges of the Supreme Court held that the property comprised in the gift was the eight hundred and fifty shares. But, with deference. I think that "property comprised in the gift" is the subject given or the interests in the property created or limited by the act of disposition of the property. That was the view taken under the English Act in In re Cochrane (2). And, though the Stamp Duties Act 1920-1933 is not identical in terms, the same construction appears to be the natural and ordinary signification of the words used.

But it was said that the donor was not entirely excluded from the possession and enjoyment of the property or of any benefit to him, because the shares in law were vested in him jointly with the other trustees, and that he received and applied jointly with them the income from the trust property for the benefit of the son. The possession, enjoyment and benefit referred to in the section looks. in my opinion, to something tangible and real, not to mere technicalities of the law of possession. Thus, in Commissioner of Stamp Duties (N.S.W.) v. Thomson (3) Higgins J., referring to the question there in question, said: "I take it, therefore, that the 'benefit' referred to means a tangible benefit from the property, a commercial benefit—not necessarily vendible, perhaps, but not a mere sentimental benefit such as may be incident to the honour of being a trustee, or a person who has to be consulted in the administration of property for the benefit of others"—See also Attorney-General v. Seccombe (4). O'Connor v. Commissioner of Succession Duties (S.A.) (5) illustrates the matter. There the donor transferred securities to

H. C. OF A.

1941.

PERPETUAL
TRUSTEE
Co. (Ltd.)
v.
COMMISSIONER OF
STAMP
DUTIES
(N.S.W.).

Starke J.

<sup>(1) (1911) 2</sup> K.B., at p. 699. (2) (1905) 2 I.R. 626; (1906) 2 I.R. 200.

<sup>(3) (1927) 40</sup> C.L.R., at p. 418. (4) (1911) 2 K.B., at p. 701.

<sup>(5) (1932) 47</sup> C.L.R. 601.

1941. PERPETITAL. TRUSTEE Co. (LTD.) 92. COMMIS-SIONER OF STAMP DUTIES (N.S.W.). Starke J.

H. C. OF A. his son, who thus had the possession in law of the securities, but he allowed the donor to receive the income from the securities and to deal with it as his own. And so does the Canadian case. Attorney-General of Alberta v. Cowan (1). The donor in that case declared a trust of negotiable securities, but he remained in possession of those securities, the title to which passed on delivery, just as did the currency of the country. "In point of law," said Duff J., as he then was, "Thomson's possession was the possession of the cestuis que trustent: but the real question is whether this possession of theirs, which was only theirs by virtue of the declaration of trust. was 'possession' of the character contemplated by the Succession Duties Act. R.S.A. 1922, c. 28, sec. 6." And it was held that possession was in substance the possession of the donor and should not be attributed to the beneficiaries in point of law, solely by force of the instrument under which the title of the beneficiaries was created.

These cases do not, I think, establish any principle, but they show that possession in the technical sense, whether legal or equitable, will not always displace or attract the provisions of sec. 102 (2) (d) of the Act: See also Commissioner of Stamp Duties (N.S.W.) v. Thomson (2).

In the present case, the donor was not himself in actual receipt or control of the income of the property comprised in the gift: he was only one of five trustees, and he was not in a position in which he could, either under the indenture or in fact, apply the income for his own purposes. In reality, whoever had possession of the property comprised in the gift in the technical sense, the donor was not in possession of the property in the sense contemplated by the Act, that is, possession beneficial to himself, nor had he personally the enjoyment of that property nor of the income therefrom. He was entirely excluded by the terms of the deed and in fact from possession of the property in the sense indicated and from the enjoyment thereof and of any benefit whatsoever to him.

In my opinion, therefore, the property comprised in the gift cannot, on the ground above mentioned and on the facts disclosed in this case, be brought into the estate of the donor for the purposes of death duty. The contention on the part of the commissioner that sec. 102 (2) (d) is necessarily attracted whenever the donor appoints himself or himself and others a trustee or trustees of the property comprised in the gift appears to me to be too absolute, as is also the opposite proposition that the section is necessarily excluded whenever the donor appoints himself or himself and others a trustee or trustees of the property comprised in the gift if he does not

receive or derive any benefit from the property given. The circumstances of each particular case must be considered. It is for this reason that I prefer to decide the question whether the donor was or was not excluded entirely from the possession and enjoyment of the property and of any benefit whatsoever to him upon its own facts and leave other cases to be decided upon their facts as and when such cases arise.

The commissioner next submitted that there was a resulting trust of the property comprised in his gift if his son did not attain the age of twenty-one years, and consequently that the donor was not entirely excluded from the enjoyment of the property comprised in the gift and from any benefit whatsoever. To attract death duty. it is true that the benefit to the donor need not be by way of reservation out of the subject matter of the gift: it may be purely collateral (Attorney-General v. Worrall (1); Attorney-General v. Seccombe (2); Attorney-General v. Sandwich (Earl) (3); Grey (Earl) v. Attorney-General (4): Commissioner of Stamp Duties (N.S.W.) v. Thomson (5), per Higgins J.). But this section is not attracted merely because the donor has some interest in the property mentioned in the gifts: he must retain some benefit out of the property he affected to give or obtain some collateral benefit thereby. The donor did not affect to give to anyone the interest which resulted to him in the event of his son not attaining the age of twenty-one years. The interest resulting to the donor was not given to him: it was not comprised in the gift. And, as Palles C.B. said in In re Cochrane (6), "if it was not given, it was not included in the gift; and if it was not included in the gift, there was 'an entire exclusion of the donor' from the property taken under the disposition by way of gift "-And see the report on appeal (7). The words "property comprised in any gift" in the Stamp Duties Act, and "property taken under any gift" in the English Acts, do not lead to a different interpretation, and the closing words "any benefit to him of whatsoever kind or in any way whatsoever," "or of any benefit to him by contract or otherwise," both relate to the property the donor affected to give. No collateral benefit whatever accrued to the donor, in the present case, from or under or in reference to the gift which he affected to make.

Two minor matters may be noticed. The indenture of gift authorized the trustees to pay to the guardian of the son-the father—the donor—the income provided for the maintenance,

H. C. OF A. 1941.

PERPETUAL TRUSTEE Co. (LTD.) COMMIS-SIONER OF STAMP

DUTIES

(N.S.W.). Starke J.

<sup>(1) (1895) 1</sup> Q.B. 99.

<sup>(2) (1911) 2</sup> K.B., at pp. 699, 700. (3) (1922) 2 K.B. 500.

<sup>(4) (1900)</sup> A.C. 124. (5) (1927) 40 C.L.R., at pp. 423, 424.

<sup>(6) (1905) 2</sup> I.R., at p. 637.

<sup>(7) (1906) 2</sup> I.R. 200.

H. C. OF A.

1941.

PERPETUAL
TRUSTEE
CO. (LTD.)
v.
COMMISSIONER OF
STAMP
DUTIES
(N.S.W.).

Starke J.

education and advancement of the son without seeing to the application of such moneys or compelling any account thereof; provided the trustees were satisfied that the son was being properly maintained and educated. It was said that the donor might obtain some benefit for himself out of this provision, and that he was not therefore entirely excluded from any benefit whatsoever in the property comprised in the gift. But he got nothing from the gift: all that can be said is that the trustees were not bound to require an account of the donor's expenditure of his son's income.

Again, under an article of association of the company (article 25) the donor has an option to purchase all or any shares held by any member of the company. But this article was not seriously relied upon in support of the contention that the donor was not entirely excluded from any benefit whatsoever of the property comprised in the gift. This option was not included in the gift, and for the reasons given in *In re Cochrane* (1) does not attract the provisions of sec. 102 (2) (d). Moreover, it is open to question whether the donor could exercise this option in derogation of his gift.

The appeal should be allowed, and the question whether the shares in R. Hall & Son Ltd. form part of the dutiable estate of John Richard Hall deceased should be answered in the negative.

DIXON J. The question for our determination upon this appeal is whether some eight hundred and fifty shares in the capital of a limited company formed part of the dutiable estate of the deceased upon which death duty should have been assessed. At the time of his death, which occurred on 27th June 1921, the shares stood registered in the names of five persons, of whom the deceased was one. These persons were the trustees of a settlement made 7th December 1917 by which the deceased had settled the shares upon trusts in favour of his son, a boy at that date aged seven years. The trusts of the settlement were simple; until the cestui que trust reached full age the trustees were to apply so much of the income as they thought fit for his maintenance, advancement, benefit and education and to accumulate the balance; they were authorized to use the accumulations, and also to make advances of capital, for the same purposes; on his attaining full age they were to transfer to him absolutely the shares and all investments under the settlement. The deceased duly transferred the shares into the names of himself and the other trustees:

Two points should be noticed with respect to the settlement. The first is that, because the deceased was one of the trustees, some

legal, as opposed to beneficial, interest in the shares resided in him. The second is that, if the son had failed to attain his majority, there would have been a resulting trust in favour of his father as settlor. In fact the son survived his father and attained twenty-one years.

But the commissioner claims that, in these two points, two independent reasons exist for regarding the shares as part of the dutiable estate of the settlor, and this view has been accepted by the Supreme Court in the judgment under appeal. Under the provisions contained in sec. 102 (2) (d) of the Stamp Duties Act 1920-1933 (N.S.W.) the estate of a deceased person includes any property comprised in any gift made by the deceased at any time of which bona-fide possession and enjoyment has (sic) not been assumed by the donee immediately upon the gift and thenceforth retained to the entire exclusion of the deceased, or of any benefit to him of whatever kind and in any way. It is said that neither the position of the settlor as a co-trustee of the shares nor the possibility, during his son's infancy, of a trust resulting in his favour is consistent with fulfilment of the requirement that his son as donee should have assumed possession and enjoyment to the entire exclusion of the settlor, the deceased

In adopting this conclusion Jordan C.J., who delivered the judgment of the Supreme Court, was guided in no small degree by the view that the subject matter of the gift, the thing given, was the eight hundred and fifty shares and not the equitable interests therein limited by the settlement in favour of the son as donee. This view he founded, not on the nature of the instrument, but upon the definitions, considered in combination, of the words "gift" and "disposition of property" which are contained in sec. 100. "Gift" is defined as any disposition of property made without full consideration in money or money's worth. "Disposition of property" is defined to mean among other things any transfer assignment or other alienation of property, whether at law or in equity, and the creation of any trust. Applying these definitions, his Honour treated the transfer of the shares by the settlor to himself and the other trustees as a disposition of property (scil., of the shares) amounting to a gift, and he regarded the legal proprietary rights of the settlor as a co-trustee as incompatible with an assumption of possession and enjoyment to his exclusion and the possibility of a resulting trust as involving a benefit to him out of the shares.

In my opinion this forces the definitions too far. In the definition of "gift" the word "property" is of the most comprehensive nature. The point of the definition doubtless is found in the words "without full consideration in money or money's worth." But I

H. C. of A.
1941.

PERPETUAL
TRUSTEE
CO. (LTD.)
v.
COMMISSIONEE OF
STAMP
DUTIES
(N.S.W.).
Dixon J.

H. C. OF A.

1941.

PERPETUAL
TRUSTEE
Co. (LTD.)
v.
COMMISSIONER OF
STAMP
DUTIES
(N.S.W.)

Dixon J

should take the definition, not as dealing with assurances of the dry legal estate or interest, but as directed to beneficial dispositions. It is immaterial whether the word "property" or the word "disposition" should be understood as qualified by the notion that the "gift" operates beneficially. The definition of "disposition of property" consists in an enumeration of possible assurances, any of which would suffice. In the present case it may be said that the most appropriate is not "transfer," but "creation of a trust."

[1941]

The provision which stands as sec. 102 (2) (d) is based upon the language of sec. 38 (2) of the British Customs and Inland Revenue Act 1881, as amended or affected by sec. 11 of the Customs and Inland Revenue Act 1889 and sec. 2 of the Finance Act 1894; language also transferred to the Finance Act 1896, sec. 15 (1), upon which Attorney-General v. Sandwich (Earl) (1) was decided. Similar words occur in the legislation of other States: Cf. Administration and Probate Act 1928 (Vict.), sec. 173 (b); Succession Duties Act 1929-1936 (S.A.), sec. 35 (3); Deceased Persons' Estates Duties Act 1931 (Tas.), sec. 5 (2) (III)—and compare Succession and Probate Duties Act 1892 (Q.), sec. 9. Though the provision has been the subject of a number of judicial decisions, both in the United Kingdom and here, none of them I think settles either of the two precise questions raised by the present case, and I shall confine my observations strictly to these questions.

The first is whether a settlor or donor who names himself as one of the trustees of the settlement by doing so necessarily brings the gift within the provision. In my opinion, by naming himself as a trustee the donor does not necessarily produce this result. I think that the words "possession and enjoyment" mean beneficial possession and enjoyment, as distinguished from possession and enjoyment in a representative or fiduciary capacity. Apart from general considerations of justice and probability, there are I think two or three reasons for this conclusion that appear on the face of the enactment. In the first place the singular verb "has" shows that the draftsman wrote "possession and enjoyment" to express one idea, not two. It is a compound notion, meaning that, according to the nature of the interest given, the donee must have entered upon the enjoyment of such benefits as the grant of the interest could or did confer. In the second place, both in the original British provision and, as I think, in the definitions in sec. 100 declarations of trust are contemplated.

It is to be noticed that it is not the mere positive assumption and retention of possession and enjoyment which the provision requires.

It is such an assumption and retention of possession and enjoyment as will effect an exclusion of the donor. For instance, if a gift by delivery were made to a donee who took full possession and enjoyment of the chattel, it could hardly matter that through the subsequent sale or loss or destruction of the chattel the donee ceased to retain possession and enjoyment. The provision appears to contemplate the assurance by way of gift of any recognized estate or interest. whether legal or equitable, and whether present, future or contingent, and to require that according to its nature the estate or interest should pass into the donee's enjoyment unimpaired by any reservation in fact or in law in favour of the donor. It may go even further. but the provision does not I think insist that the donor shall occupy no representative or fiduciary position in relation to the subject of a trust amounting to or involving a gift. I am unable to agree in the decision of the Supreme Court of Canada in Attorney-General of Alberta v. Cowan (1), reversing the decision of the Alberta Court of Appeal (2).

The second question is whether the fact that the trusts declared did not exhaust the entire beneficial interest in the shares in all contingencies meant that there was not an exclusion of every benefit

to the settlor, the deceased.

In my opinion it does not have this consequence. There is no reservation out of any estate or interest given by the donor. In strictness there was no resulting trust. A contingent possibility of a resulting trust existed until the deceased's son attained twenty-one years. But that meant no more than that the interest given, "the property comprised in the gift," did not exhaust, in all possible events, the property of which the deceased had been able to dispose. The settlement contained nothing defeating, revoking or destroying any interest given. It contained no reservation out of the interest given and no recompense or benefit in reference to the interest given. All it did was to leave unprovided against the contingency of the donee proving unqualified to take the interest given. That contingency did not occur. In my opinion the failure to provide for it and the consequent possibility for a time of a resulting trust arising does not amount to a benefit to the donor inconsistent with the donee's full enjoyment of the interest given.

I think that the appeal should be allowed, the order of the Supreme Court discharged, and in lieu thereof the first question in the case stated should be answered: No. The commissioner should

pay the costs of the case stated and of this appeal.

H. C. OF A. 1941 PERPETUAL. TRUSTEE Co. (LTD.)

> COMMIS-SIONER OF STAMP DUTIES (N.S.W.).

Dixon J.

<sup>(1) (1926) 1</sup> D.L.R. 29.
(2) (1925) 2 D.L.R. 647, where the enactment is set out.

H. C. of A.

1941.

PERPETUAL
TRUSTEE
Co. (LTD.)
v.
COMMISSIONER OF
STAMP
DUTIES
(N.S.W.).

McTiernan J. In my opinion the appeal should be allowed. The first inquiry is: What was the gift? The deceased, who was the legal and beneficial owner of the shares, disposed of them by executing two voluntary instruments, the indenture of settlement and the transfer. The indenture declared the trusts upon which he and the other trustees of the settlement agreed to hold the shares. The trusts were, briefly, during the minority of his son, who was then seven years of age, to apply the whole or any part of the income or corpus as the trustees should think fit for the maintenance or benefit of the son, and upon his attaining the age of twenty-one years to transfer to him as his absolute property all the assets and property whatever, including accumulations of income. The declaration of these trusts was perfected by the transfer by which the deceased's legal interest in the shares was vested in him and the other trustees jointly.

A declaration of trust, which is "the equitable equivalent of a gift", is one of the modes by which a gift inter vivos can be perfectly made (Halsbury's Laws of England, 2nd ed., vol. 15, p. 708). Besides, sec. 100 of the Act includes within the definition of gift a disposition of property other than a will made by the creation of a trust. The gift in this case was that made by the indenture of settlement. The property comprised in that gift was the equitable interest in the shares which passed to the son under the settlement. The deceased obviously had the power to give this interest in the shares to his son. It is this interest of which the inquiry whether bona-fide possession and enjoyment had been assumed and retained at the time and in the manner required by sec. 102 (2) (d) is to be made.

One reason advanced to justify the conclusion that the son did not immediately assume and retain to the entire exclusion of the deceased bona-fide possession and enjoyment of the property comprised in the gift is that the deceased held the shares as a trustee. This reason cannot be a good one unless the words "possession and enjoyment" mean, at least, legal possession, and the words "entire exclusion" preclude the donor from ever standing in a fiduciary relationship to the donee's interest. The Act, however, expressly recognizes that a gift may be made by a declaration of trust (sec. 100). It is hardly reasonable to suppose that it was the intention of the Act that property comprised in a declaration could never escape from the provisions of sec. 102 (2) (d) if the settlor constituted himself a trustee. The conclusion that bona-fide possession and enjoyment "has" not been assumed and retained to the entire exclusion of the donor is one that cannot be reached regardless of the nature of the interest that passed to the done by the gift. If the interest is equitable, the mere fact that the donor becomes a trustee will not be enough in the absence of other material upon which to base the conclusion. In the present case the son assumed and retained the full and complete "possession and enjoyment" of which the limited interest he took in the shares was capable, to the entire exclusion of the donor except as a trustee. As there is no dispute that he did this, the fact that the deceased was a trustee did not make sec. 102 (2) (d) operate to sweep the shares into the deceased's estate. The possession and enjoyment of the interest passing to the son which he took and retained was sufficient to satisfy the requirements of the provisions now in question.

The trusts which were declared would not exhaust the beneficial disposition of the shares in the event of the son's death before attaining the age of twenty-one years. For this reason it is contended that bona-fide possession and enjoyment had not been assumed by the son and retained to the entire exclusion of any benefit to the deceased of whatever kind or in any way whatsoever. The answer is that by the settlement he divested himself of the whole of the limited beneficial interest which he gave to his son, and this was none the less true even if the contingency of his son dying under the age of twenty-one years happened and the entire beneficial interest in the shares then resulted to his estate by operation of law.

Appeal allowed. Order of Supreme Court set aside. Question answered: No.

Solicitors for the appellant, Fisher & Macansh.
Solicitor for the respondent, A. H. O'Connor, Crown Solicitor for
New South Wales

J. B.

H. C. of A.

1941.

PERPETUAL
TRUSTEE
Co. (LTD.)
v.
COMMISSIONER OF

STAMP

DUTIES (N.S W.).

McTiernan J.