[HIGH COURT OF AUSTRALIA.]

CRAIG AND ANOTHER . . . . . APPELLANTS;

AND

THE FEDERAL COMMISSIONER OF TAXATION . . . . . RESPONDENT.

H. C. OF A. 1945.

MELBOURNE, *Mar.* 5, 6.

SYDNEY, *April* 6.

Latham C.J., Rich, Starke, Dixon, McTiernan and Williams JJ.

Estate Duty (Cth.)—Assessment—Property assessable—"Property . . . comprised in a settlement made by the deceased person under which he had any interest of any kind for his life"—Contingent interest—Settlement by husband—Trust to pay income of fund to wife and after death of either husband or wife to pay income to survivor for life—Estate Duty Assessment Act 1914-1942 (*No.* 22 *of* 1914—*No.* 18 *of* 1942), *s.* 8 (4) (*c*).

By two settlements, dated respectively 1st December 1934 and 1st August 1938, the settlor conveyed to trustees Treasury loan bonds of the face value of £20,000 on trust during the joint lives of himself and his wife to pay the income to his wife for her sole and separate use, and after the death of either of them to pay the income to the survivor for life. The settlor died in 1942 and was survived by his wife.

Held that the bonds were part of the settlor's dutiable estate, being property comprised in a settlement made by the deceased under which he had an interest for his life within the meaning of s. 8 (4) (*c*) of the *Estate Duty Assessment Act* 1914-1942. Section 8 (4) (*c*) is not limited to interests in possession or vested interests but extends to contingent interests.

CASE STATED.

On the hearing of an appeal to the High Court by William Charles Craig and Geoffrey Hugh Gair, as executors of the will of Alfred Thomas Craig, deceased, from an assessment for estate duty made upon them in that capacity by the Federal Commissioner of Taxation under the *Estate Duty Assessment Act* 1914-1942 in respect of the estate of the deceased, *Latham* C.J., pursuant to s. 28 of the above Act and s. 18 of the *Judiciary Act* 1903-1940, stated for the opinion and consideration of the Full Court a case which was substantially as follows:—

1. Alfred Thomas Craig late of Power Street Hawthorn in the State of Victoria gentleman died on 11th May 1942. The deceased was at the time of his death domiciled in Australia.

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2. The deceased left a will bearing date 28th April 1942 and he thereby appointed the above-named appellants and Arthur Alexander Brahe to be executors and trustees thereof.

3. On 27th July 1942, probate of the will was granted by the Supreme Court of Victoria to the appellant Geoffrey Hugh Gair, leave being reserved to the appellant William Charles Craig and Arthur Alexander Brahe to come in and prove the will.

4. In pursuance of the said leave, probate of the will was on 30th November 1943 granted by the Supreme Court of Victoria to the appellant William Charles Craig.

5. By an indenture made on 1st December 1934 between the said Alfred Thomas Craig deceased of the one part and Geoffrey Hugh Gair and one Charles Jenkin Coles of the other part (therein called "the Trustees") the deceased declared that the trustees should thenceforth be entitled to the Australian Consolidated Treasury Loan Bonds specified in the schedule to the indenture and any investments substituted therefor (all of which are therein called "the Trust Fund") and to the income therefrom upon the trusts following namely:—During the joint lives of the deceased and his wife (Fanny Craig) to pay the income to the wife of the deceased for her sole and separate use and after the death of either of them the deceased and his wife to pay the income to the survivor of them during his or her life. And on the death of the survivor to pay the trust fund to the trustees for the time being of the will of the deceased to the intent that the same should form part of the residuary estate of the deceased and be dealt with by such last-mentioned trustees as provided in the indenture.

6. At the time of the execution of the indenture, the Treasury loan bonds therein mentioned (which were of the face value of £10,000) were delivered by the deceased to the trustees named in the indenture.

7. From the date of the indenture, the bonds have been held upon the trusts declared by the indenture and the whole of the net income therefrom has been paid to Fanny Craig for her sole and separate use.

8. By a further indenture made on 1st August 1938 between the said Alfred Thomas Craig deceased of the one part and Geoffrey Hugh Gair and one Charles Jenkin Coles of the other part (therein called "the Trustees") the deceased declared that the trustees should thenceforth be entitled to the Australian Consolidated Treasury Loan Bonds specified in the schedule to the indenture and any investments substituted therefor (all of which are therein called "the Trust Fund") and to the income therefrom upon the trusts

following namely :—During the joint lives of the deceased and his wife (Fanny Craig) to pay the income to the wife of the deceased for her sole and separate use and after the death of either of them the deceased and his wife to pay the income to the survivor of them during his or her life. And on the death of the survivor to pay the trust fund to the trustees for the time being of the will of the deceased to the intent that the same should form part of the residuary estate of the deceased and be divided by such last-mentioned trustees amongst the persons specified in the indenture.

9. At the time of the execution of the indenture, the Treasury loan bonds therein mentioned (which were of the face value of £10,000) were delivered by the deceased to the trustees named in the indenture.

10. From the date of the indenture the bonds have been held upon the trusts declared by the indenture and the whole of the net income therefrom has been paid to Fanny Craig for her sole and separate use.

11. Alfred Thomas Craig was survived by his widow Fanny Craig who is still alive.

12. On 14th July 1942 the appellant Geoffrey Hugh Gair as one of the executors of the will of the above-named deceased and one of the persons liable under the *Estate Duty Assessment Act* 1914-1942 to make a return of the estate of the deceased duly made such return.

13. The value of the real and personal estate of the deceased as set forth in the return was £74,243 6s. 8d., the liabilities were £4,800 7s. 9d. and the balance for duty was £69,422 18s. 11d.

14. The interests of the deceased under the respective indentures aforesaid and under a third indenture of settlement made on 1st December 1914 by the deceased in favour of himself and his daughter Elizabeth Fanny were included in the return as assets comprised in his estate and were therein valued at the sum of £7,543 10s.

15. The sum of £7,543 10s. was made up of the items set out in Schedule 10 of the return above mentioned and the mode of calculation of the items therein appears—

The sum comprised two separate items, namely :—

Valuation of deceased's reversionary interest under the indentures referred to in pars. 5 and 8 hereof immediately prior to his death	£7,408
Value of deceased's interest under the third indenture referred to in par. 14 hereof being interest accrued due to date of death ..	135 10s.
	£7,543 10s.

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16. For the purpose of the assessment of estate duty under the *Estate Duty Assessment Act* 1914-1942, the respondent valued the estate of the deceased at the sum of £117,679 and by a notice of assessment dated 8th April 1943 assessed the duty payable thereon at the sum of £30,031 13s. 7d.

17. The alterations made by the respondent in the assessable value of the estate for the purpose aforesaid were set forth in a "Federal Estate Duty Alteration Sheet" which was forwarded to the appellants with the notice of assessment.

18. Included in the alterations was an increase in the value of the estate to the extent of £18,338, which sum represents the difference between the total market value (at the date of the death of the deceased) of the bonds comprised in the three indentures of settlement hereinbefore mentioned (namely £25,881 10s.) and the aforesaid sum of £7,543 10s.

19. By a notice of objection dated 12th April 1943, the appellant Geoffrey Hugh Gair objected to the assessment upon two grounds: firstly, as to an increase made by the respondent in the value of certain shares; and, secondly, as to the inclusion by the respondent in the assessment of the property mentioned in the indentures referred to in pars. 5, 8, and 14 hereof.

20. By letter dated 4th November 1943, the respondent informed the appellant Geoffrey Hugh Gair that he had allowed the objection only to the extent of the first ground thereof.

21. By a notice in writing dated 3rd December 1943 the appellants requested the respondent to treat as an appeal the objection in the notice of objection (excepting thereout the aforesaid settlement made by the deceased in favour of himself and his daughter Elizabeth Fanny).

The following question was stated for the opinion and consideration of the Full Court:—

For the purpose of the *Estate Duty Assessment Act* 1914-1942 are the Australian Consolidated Treasury Loan Bonds referred to in pars. 5 and 8 respectively to be deemed part of the estate of the said deceased as property comprised in a settlement made by the deceased under which he had an interest of some kind for his life?

Fullagar K.C. and *Spicer*, for the appellants.

P. D. Phillips, for the respondent.

Cur. adv. vult.

The following written judgments were delivered :—

LATHAM C.J. The *Estate Duty Assessment Act* 1914-1942, s. 8, provides for the levying of estate duty upon the value of the estates of deceased persons. Section 8 (3) provides that, for the purposes of the Act, the estate of a deceased person comprises certain property which actually belonged to that person ; and s. 8 (4) provides that certain property shall for the purposes of the Act be deemed part of the estate of the deceased person. Sub-section 4, in pars. (*b*), (*d*) and (*e*), deals with certain interests held by the deceased person in property. Paragraphs (*a*) and (*c*) relate to property with which the deceased person had dealt by way of gift *inter vivos* or settlement. The question in the present case depends upon the interpretation of s. 8 (4) (*c*), which is in the following terms : " Property . . . (*c*) comprised in a settlement made by the deceased person under which he had any interest of any kind for his life whether or not that interest was surrendered by him at any time before his decease . . . shall for the purposes of this Act be deemed to be part of the estate of the person so deceased."

The facts stated show that Alfred Thomas Craig, who died on 11th May 1942, made two settlements, one in 1934 and another in 1938. In each case, he settled Treasury loan bonds of the face value of £10,000 upon trust during the joint lives of the settlor and his wife to pay the income thereof to his wife " and after the death of either of them the said Settlor and his said wife to pay the said income to the survivor of them during his or her life," with a gift over on the death of the survivor.

It is contended for the respondent, the Commissioner of Taxation, that the bonds which were settled are property comprised in a settlement made by the deceased person, that under that settlement he had an interest for his life, namely a contingent interest, the contingency depending upon him surviving his wife. Accordingly, it is said that the property comprised in the settlement falls within the description contained in s. 8 (4) (*c*), and is therefore to be deemed part of A. T. Craig's estate.

On the other hand, it is argued for the appellants, the administrators of A. T. Craig's estate, that the phrase " settlement made by the deceased person under which he had any interest of any kind for his life " covers only an interest in possession, or, alternatively, a vested interest. The point taken is that it is an interest which he must actually have *had*, as distinct from an interest to which he might have become entitled if a certain contingency (in this case surviving his wife) had occurred.

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It has frequently been held in relation to various taxing Acts that the word " interest " is not necessarily to be taken as a technical term, and that it is frequently used in such Acts in a popular sense: See, for example, *Skinner* v. *Attorney-General* (1), where an annuitant was held to have " an interest " within the meaning of s. 2 (1) (*b*) of the *Finance Act* 1894 (Imp.) in the various items of the estate out of which the annuity was payable, though the annuitant had no proprietary interest in any of those items (2). Also see *Attorney-General* v. *Heywood* (3), approved in *Attorney-General* v. *Farrell* (4), where the prospect of an object of a discretionary trust sharing in income the subject matter of the discretionary trust was held to be an interest of a person in the property from which the income was derived. See also in this Court *Hoysted* v. *Federal Commissioner of Taxation* (5), where it was pointed out that " interest " is not a technical word, and in relation to taxation of land it was held that it included a contingent interest.

Thus there are more or less analogous instances of the use of the word " interest " in taxation Acts where the term has been construed in a very general sense. But decisions upon other Acts cannot be relied upon in the construction of a particular Act where the context is different. In the present case, however, there is, in my opinion, no context which deprives the words " any interest of any kind for his life " of their natural meaning. The words " of any kind " are plainly inserted for the purpose of giving a wide generality to the description contained in the legislative provision. " A contingent interest for life " is an interest of a kind recognized by the law, and it falls within these general words.

In the case of *Attorney-General* v. *Wood* (6), a provision which is indistinguishable in the relevant particulars from the material terms of the settlements in the present case was considered by the court. In that case, property was settled upon trust to pay the income to a wife during the joint lives of her husband and herself, and after the death of such one of them as should first die to pay the income to the survivor during his or her life with a final gift absolutely to the wife if the wife should survive her husband. Thus the trusts during the joint lives of the husband and the wife and after the death of one of them in favour of the survivor were identical with the trusts in the settlements now under consideration. The decision related to a provision in the *Finance Act* which provided that property passing on the death of the deceased should be deemed to include

(1) (1940) A.C. 350.
(2) (1940) A.C., at pp. 358, 359.
(3) (1887) 19 Q.B.D. 326.
(4) (1931) 1 K.B. 81.
(5) (1920) 27 C.L.R. 400, at p. 409.
(6) (1897) 2 Q.B.D. 102.

inter alia certain property to a certain specified extent " in which the deceased . . . had an interest ceasing on the death of the deceased." *Vaughan Williams* J. said in his judgment that the words which I have quoted " seem clearly wide enough to include the present case, because the £85,000 fund was property in which the deceased (Mr. Vaughan) had an interest (it is true not an interest in possession) which ceased on his death " &c. (1). In the present case, the two funds of £10,000 each were property in which the deceased (Mr. Craig) had an interest (it is true not an interest in possession).

Reference was made to the case of *Rabett* v. *Commissioner of Stamp Duties* (2), in which the Judicial Committee of the Privy Council considered a section of the New South Wales *Stamp Duties Act* 1920-1924, which imposed a duty upon property passing under settlements, &c. " by which an interest in . . . that property . . . is reserved either expressly or by implication to the deceased for his life " &c. The limitation in question in that case was to be found in a marriage settlement where the trusts were to pay the income to the settlor's wife for life and after her death to the settlor for life with further gifts after the death of the survivor. It was held that the settlement reserved " an interest " to the settlor. The interest, however, was a vested interest for life, whereas in the present case the interest is contingent, and in *Rabett's Case* (2) no reference was made to the question whether the result would have been the same if the interest in that case had been a contingent interest. The case therefore does not appear to me to be an authority upon the point which arises in this case.

Consideration of the history of s. 8 does not appear to me to assist the appellant. Section 8 (4) is directed towards including in the estate of a deceased person for purposes of estate duty property which is not in truth part of the estate of the deceased, but which has been dealt with in such a way, by settlement, or gift, or creation of a joint tenancy or joint ownership, or has otherwise been so disposed of, that there is involved what the legislature regards as something equivalent to a disposition by will or upon intestacy. Thus the paragraphs of sub-s. 4 describe separate cases the only common characteristic of which is that which has been mentioned. They are separate cases with which the legislature has chosen to deal and the meaning of the words used to describe one case provide no assistance, so far as I can see, for ascertaining the meaning of the words selected for the purpose of describing another case. In particular, sub-s. 4 (*c*) was apparently introduced in 1928 for the

(1) (1897) 2 Q.B., at p. 105. (2) (1929) A.C. 444.

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purpose of enacting, in the case of settlements made by the deceased person himself, a provision which, as applied to all settlements, whether made by the deceased or by another person, was referred to by this Court in *Osborne* v. *Federal Commissioner of Taxation* (1), as bringing about an absurd result. In the case of a settlement made by the deceased person himself to which s. 8 (4) (*c*) now applies, the property comprised in the settlement is taxed : but where he had (and surrendered within three years before his decease) an interest for life under a settlement made by another person it is only *his interest*, not the whole property comprised in the settlement, which can be taxed under s. 8 (4) (*b*) under the amendments made in 1928. These amendments avoid the absurd consequence to which attention was called in *Osborne* v. *Federal Commissioner of Taxation* (1). Thus consideration of the history of s. 8 (4) (*c*) shows that it was enacted for the purpose of filling a particular gap which had been discovered. The other provisions of s. 8 (4) are also separate provisions dealing with separate cases, none of them, in my opinion as at present advised, being useful for the purpose of interpreting any other.

There is no decision upon the particular provision which the Court is required to construe. The decisions to which I have referred and others cited in the course of argument are decisions upon more or less similar words in more or less similar Acts. They cannot be regarded as authorities upon the section now in question. There is in them, however, nothing which, in my opinion, prevents the Court from giving effect to what I regard as the plain words of the section. The question which is asked is as follows :—" For the purposes of the *Estate Duty Assessment Act* 1914-1942 are the Australian Consolidated Treasury Loan Bonds referred to in paragraphs 5 and 8 respectively of this Case to be deemed part of the estate of the said deceased as property comprised in a settlement made by the deceased under which he had an interest of some kind for his life ? "

In my opinion, the question should be answered : Yes.

RICH J. The question raised by the case stated turns upon the proper construction of a provision of the *Estate Duty Assessment Act* 1914-1942. The Act provides by s. 8 that estate duty shall be levied and paid upon the value, as assessed under the Act, of the estates of persons dying after the commencement of the Act, and by sub-s. 4 (*c*) that for the purposes of the Act property comprised in a settlement made by a deceased person under which he had any

(1) (1921) 29 C.L.R. 169.

interest of any kind for his life whether or not that interest was surrendered by him at any time before his decease shall be deemed to be part of the estate of the person so deceased.

The deceased, whose estate is now in question, by an instrument operating *inter vivos*, settled certain property upon the terms that the trustees during the joint lives of himself and his wife were to pay the income to her and after the death of either to pay the income to the survivor during his or her life and on the death of the survivor to pay the trust fund to the trustees of the will of the deceased to form part of his residuary estate and be dealt with by the trustees of the will as provided in the settlement. The settlor predeceased his wife.

Upon the execution of the settlement, the wife acquired a life interest in possession in the trust fund, and the husband acquired a life interest in remainder contingent upon his surviving his wife. Thus, under the settlement, the husband had an interest of a well-known kind for his life, namely a contingent life interest in remainder. Section 8 (1) and (4) (*c*) provides that, for estate duty purposes, property comprised in a settlement made by a deceased person is comprised in his estate if under the settlement he had *any* interest of *any* kind for his life. It is impossible to regard the use of the word "had" as showing an intention to restrict the operation of the clause to interests in possession, as contrasted with interests in remainder. A contingent remainder is a possibility coupled with an interest, and "a possibility coupled with an interest is more than a possibility—it is a present interest": *In re Parsons*; *Stockley* v. *Parsons* (1). I can see no justification for holding that the clause does not mean what it says; and, if it does, the trust property must clearly be treated as comprised in the estate.

I do not think that any light is thrown on the meaning of the clause by any of the other clauses or by the general provisions of the Act, still less do I think that any assistance is derived, in arriving at its meaning, by considering the meaning which has been ascribed to somewhat similar but different phraseology in other contexts in other statutes. Obviously the decision of this Court in *Osborne* v. *Federal Commissioner of Taxation* (2) is of no assistance. The section has since been remodelled, and it is impossible to control plain language by a supposed scheme which can be discovered only if plain language be disregarded.

For these reasons, I am of opinion that the question asked should be answered: Yes.

(1) (1890) 45 Ch. D. 51, at p. 57. (2) (1921) 29 C.L.R. 169.

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Starke J.

STARKE J. The *Estate Duty Assessment Act* 1914-1942 provides that property comprised in a settlement made by a deceased person under which he had any interest of any kind for his life whether or not that interest was surrendered by him at any time before his decease shall for the purposes of the Act be deemed to be part of the estate of the person so deceased.

Craig, who died in May of 1942, made a settlement of Treasury bonds whereby he provided that after the death of either of them the settlor and his wife the income therefrom should be paid to the survivor of them during his or her life. The settlor's wife survived him and is still alive.

The provision in favour of the settlor is, it is said, but a contingent interest which the Act does not bring to charge for the purposes of estate duty. But the words of the Act " any interest of any kind " are not technical and do not in themselves appear to be inapplicable to contingent interests: See *Attorney-General* v. *Farrell* (1). The purpose of the section is to bring to charge property comprised in settlements which passed from settlors before their death but under which they had, that is, took, under and by force of the settlement, any interest of any kind.

Interests, whether vested or contingent, belong to the category of expectant interests, and there is no reason in any of the other provisions of the Act for limiting the operation of the sub-section in question in this case to vested interests, or, in other words, to interests that are not contingent on the happening of some future and uncertain event.

The question stated should be answered in the affirmative.

DIXON J. Unless the wide application of which the words of par. (*c*) of s. 8 (4) of the *Estate Duty Assessment Act* 1914-1942 are capable is modified by a process of interpretation, it appears to me that the limitations contained in the settlement made by the deceased must bring the settled property within its terms. The subject of the settlement was personalty and it was vested in trustees. During the joint lives of the settlor and his wife the income was limited to the latter. After the death of either of them, it was to be paid to the survivor during his or her life. Upon the death of the survivor, the trust fund was to be paid over to the trustee of the settlor's will to form part of his residuary estate. The settlor died leaving his wife him surviving.

Under the foregoing limitations, during his life he was entitled in expectancy, upon the death of his wife, to the income of the

(1) (1931) 1 K.B. 81, at pp. 96, 101, 103.

settled property for his life, contingently upon his surviving his wife. He had, therefore, a future contingent life interest in the trust property.

The material words of par. (*c*) are "property comprised in a settlement made by the deceased person under which he had any interest of any kind for his life." The question is whether these words are satisfied by the future contingent interest to which the deceased was entitled. That upon their literal meaning the words of the paragraph are capable of including, in their application, such an interest, can, I think, hardly be disputed. For the limitation to the survivor of the husband and wife clearly created an interest in each of them, although future and contingent. It is an interest that would correctly be described as an interest for life.

But the contention of the appellants is that, properly interpreted, the provision has a less extensive application. The true scope of the paragraph is said to appear from a general examination of the statute and particularly of the other paragraphs of s. 8 (4) and from a consideration of the history of that sub-section. According to the argument, from these sources it sufficiently appears that par. (*c*) was directed to the case of a deceased who at the time of his death either had, or, but for his having surrendered it, would have had, the enjoyment in possession of a life interest in property which, by reason of the cesser of that interest at his death, passed, or would have passed, thereupon to someone else. Reliance was placed upon the context supplied by the other paragraphs of s. 8 (4). As to pars. (*a*) and (*b*), significance was found in the fact that they relate to dispositions by a deceased *inter vivos* within a short specified time before his death, dispositions that would deplete his dutiable estate and are made by an instrument which, according to the definition of settlement (s. 3), must contain trusts or dispositions to take effect after the settlor's death, or that of some other person.

A further matter in par. (*b*) to which the appellant attached importance is the nature of the proviso. Some ground was found in the proviso for the inference that the words "an interest of any kind of the deceased person for his life" there occurring contemplate an interest in possession. Accordingly, it was said that substantially the same words should be understood as having no wider application in par. (*c*). Next, it was pointed out that pars. (*d*) and (*e*) relate to the passing of the enjoyment of property upon a deceased's death. Then, the manner in which s. 8 (4) was expressed in its earliest form, that is, in Act No. 22 of 1914, was referred to as showing the general policy of the enactment, a policy which the

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subsequent rewriting of the provision was said only to amplify and carry out more effectively. Finally, ss. 35, 35A and 36 were invoked as tending to show that the passing of property from the deceased, or at his death, was the basal conception upon which the enactment revolved. In par. (*c*) itself, the word "had" was emphasized as suggesting title in possession.

The considerations furnished by these matters do not seem to me sufficiently cogent to warrant our giving a restricted meaning to par. (*c*) and denying their full application to the rather strong words it contains. I say strong because I think the words "of any kind" do add strength to the word "interest," a word itself of very comprehensive meaning.

As to the other paragraphs of s. 8 (4), I think that no more can be based upon them than an inference of a very limited kind with respect to the general policy of the enactment. All that can be inferred is that at least it extends to the inclusion in the dutiable estate, on the one hand, of property which, within a limited time before his death, had passed from the deceased by gift or settlement as mentioned in par. (*a*), or, in the case of an interest for life in property settled by some one else, by surrender as mentioned in par. (*b*), and, on the other hand, of beneficial interests which, in the circumstances mentioned in pars. (*d*) and (*e*) passed or accrued to others on his death. There is not enough to show that s. 8 (4) is concerned exclusively with transfers, transmissions or devolutions of property or enjoyment of a definite description. No intention can be spelt out to confine the scope of s. 8 (4) to transactions possessing some common characteristic so as to require or authorize a restrictive interpretation of par. (*c*) of the sub-section.

There is more weight in the argument based upon the proviso to par. (*b*). But the meaning of the proviso is not certain. The interpretation which I am inclined to place upon it is that a calculation is to be made of what the deceased, if he had not surrendered it, would have received from his life interest from the date of the surrender to the date of his death. Under this interpretation, the word "expectation," in the bracketted expression, is treated as describing, not the average expectation of life, but what in the light of after events in fact was the actual expectation or remaining years of the deceased himself. It is true that, upon this interpretation, it may be said that the calculation is directed to life interests in possession and at least leaves future contingent interests, that have been surrendered, without a dutiable value for the purpose of par. (*b*). The function, however, of a proviso is to qualify or reduce the operation of the main clause to which it is attached and it appears to me

to be going a very long way to base upon the proviso an implication restricting the meaning of the words occurring in the main clause wherever the same expression may be found repeated in the enactment.

The word " had " in par. (*c*) itself seems neutral. The provisions of s. 35 do not, I think, give any assistance. No doubt the terms in which s. 35A is expressed suggest that all cases falling under sub-s. 4 of s. 8 involve a passing at some time or another from the deceased. But it is at least enough if there is a passing at the time of and by means of the gift *inter vivos* or settlement as distinguished from under the limitations contained in the settlement. And, in any view of par. (*c*), such a passing is involved in the cases it covers. Section 36 certainly limits the request it mentions to persons to whom an estate has passed at the death of another person, but on no view of s. 8 (4) could this limited description suffice to cover all the cases falling within the operation of the six paragraphs of that sub-section.

In my opinion, an examination of the statute leaves the application of par. (*c*) of s. 8 (4) dependent upon the natural meaning of the language in which it is itself expressed. I am prepared to concede that, in order to restrict the meaning of words like " had any interest " to interest in possession or vested interests, any context would suffice reasonably indicating that it was so intended. But I do not think that in the *Estate Duty Assessment Act* enough is to be found to displace the prima facie meaning of the expression.

I do not regard decisions upon other statutes dealing with death duties as of much assistance in the interpretation of the particular clause now in question. But I have been influenced in some degree by that part of the judgment of *Vaughan Williams* J. in *Attorney-General* v. *Wood* (1) which deals with the application to a similar limitation of par. (*b*) of s. 2 (1) of the *Finance Act* 1894. No doubt, as the appellant's counsel pointed out, there are grounds for the learned judge's conclusion that do not exist in the present case and the decision is not in every respect against his contention, but *Vaughan Williams* J. felt no doubt about the natural meaning of the expression " an interest ceasing on the death of the deceased, to the extent to which a benefit accrues or arises by the cesser of such interest ", which occurs in s. 2 (1) (*b*) of the *Finance Act*. He treated the natural meaning as certainly including a case like the present and he regarded the cesser of the husband's contingent interest for life as accompanied by a corresponding accrual of benefit to the wife's posterior interest which then took effect in possession. This fact and his Lordship's observations upon the arguments for " cutting

(1) (1897) 76 L.T. 654, at pp. 656-657 ; (1897) 2 Q.B. 102, at pp. 105-107.

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down" the natural meaning do, I think, give some confirmation to the view I have taken.

For these reasons, I am of opinion that the question in the case stated should be answered: Yes.

McTIERNAN J. In my opinion, the question should be answered: Yes.

The decision of this case turns upon the meaning of the words "had any interest of any kind for his life" in s. 8 (4) (*c*) of the *Estate Duty Assessment Act* 1914-1942.

The argument for the appellant does not deny that the word "interest" may include a contingent interest: what is urged on the appellant's behalf is that in the present context the word "interest" does not include an interest of that kind. It is argued that it is necessary to limit the meaning of the word "interest" in that way to give s. 8 (4) (*c*) a construction which is consistent with the scheme of the Act and the machinery provisions contained in ss. 35, 35A and 36.

The word "interest" is not a technical term: the law does not give the word the same specific application in all contexts in which it is used. In *Attorney-General* v. *Heywood* (1), it was said that "the word 'interest' is capable of different meanings, according to the context in which it is used or the subject-matter to which it is applied." No decision was cited showing that in precisely the same context as s. 8 (4) (*c*) a contingent interest comes within the meaning of the word "interest." In its ordinary or popular sense, the word "interest" as applied to property may include a contingent interest. In *Sweet's Dictionary of English Law*, (1882), p. 442, the author writes: "Interest as applied to property is used in a wide sense to include estates (legal and equitable) . . . and generally every right in respect of property which entitles or may in future entitle the holder to make use of it in some way, as opposed to *bare*" (the italics are mine) "possibilities, expectations . . . Hence 'interest' is used in conveyances &c. to denote every beneficial right in the property conveyed." A contingent interest is "merely the prospect or possibility of a future estate": *Jarman, Wills*, 7th ed. (1930), vol. 2, p. 1325: and every contingent interest is not transmissible: *In re Cresswell*; *Parkin* v. *Cresswell* (2). But a contingent "interest" may be within the category which is above contrasted with that of bare possibilities and expectations. The word "interest" in s. 8 (4) (*c*) is used in its ordinary popular sense and, in that sense, is capable of including any such contingent interest.

(1) (1887) 19 Q.B.D. 326, at p. 331. (2) (1883) 24 Ch. D. 102, at p. 107.

The question then is whether s. 8 (4) (*c*) or the Act taken as a whole exhibits an intention that the word is used in the present context with a meaning not extending to a contingent interest.

It is appropriate to say of an interest which is contingent that the deceased " had " it. In *Attorney-General* v. *Farrell* (1), *Greer* L.J. made an analogous use of the word " had " in this statement : " He had no legal right to force the trustees to give him anything : at the same time he *had* " (the italics are mine) " in a colloquial sense an interest in the estate because it was an estate out of which something might be allotted to him in the discretion of the trustees."

I do not agree with the argument that the meaning of the word " interest " must be limited by excluding an interest which is contingent in order to make s. 8 (4) (*c*) consistent with the scheme of the Act. The scheme of the Act, it is true, is to impose an estate duty in the true sense : not a succession duty : the duty is imposed on property which passed from the deceased at his death and upon property which he disposed of in his lifetime in circumstances which, in the view of the legislature, indicate that the purpose of the disposition is to avoid the duty which the property would bear if it passed from the deceased at his death : *Jackson* v. *Federal Commissioner of Taxation* (2) ; *Osborne's Case* (3).

The legislative supposition underlying s. 8 (4) (*c*) is that property comprised in a settlement made by the deceased under which he had a life interest of any kind for life was disposed of for the above-named purpose : the provision draws the whole of the property into the dutiable estate. In the present case, the deceased had from the time the settlements came into force down to his death a contingent interest in the bonds comprised in them respectively. He had merely the possibility or prospect of a future interest for his life and this possibility or prospect was liable to be defeated by his death in his wife's lifetime : he predeceased her. But the bonds comprised in each settlement passed, subject to its limitations, from the deceased when the settlement came into operation. Each contingent interest which he limited to himself terminated at his death : this would also have been the case if he had limited to himself a vested interest for his life. A vested interest for life is clearly within the words of s. 8 (4) (*c*) unless the word " interest " should be read as meaning a right in the property other than a vested or contingent interest. It is not argued that the meaning of the word " interest " should be limited in that way, and there is no reason for imposing such a limitation on the ordinary meaning of the word. Where by a settlement made by the deceased he had carved out for himself a vested

(1) (1931) 1 K.B. 81, at p. 101 (2) (1920) 27 C.L.R. 503.
(3) (1921) 29 C.L.R. 169.

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interest for his life in the property comprised in the settlement, it is consistent with the scheme of the Act to draw the property into the dutiable estate. It may appear more drastic to draw the property into the dutiable estate when the deceased had carved out of the property for himself merely a contingent interest for his life. But the operation of the provisions in that way, where the interest for life is contingent, is no less consistent with the scheme of the Act than where the interest is vested. The machinery provisions, ss. 35, 35A and 36, do not afford any reason for holding that the word "interest" in s. 8 (4) (*c*) does not extend to an interest which is contingent.

The deceased had a contingent interest for life at the time of his death, and it is unnecessary to decide whether, if, otherwise than by surrender, he had transferred his interest, s. 8 (4) (*c*) would operate to draw the bonds into the dutiable estate.

WILLIAMS J. The question is whether, by virtue of s. 8 (4) (*c*) of the *Estate Duty Assessment Act* 1914-1942, which provides that property comprised in a settlement made by a deceased person under which he had any interest of any kind for his life whether or not that interest was surrendered by him at any time before his decease, shall for the purposes of the Act be deemed to be part of the estate of the person so deceased, the property comprised in two settlements made on 1st December 1934 and 1st August 1938 by Alfred Thomas Craig, who died on 11th May 1942, became part of his dutiable estate for the purposes of Federal estate duty.

The material trusts, which are the same in both settlements, are a trust to pay the income of the settled property to the wife of the settlor during their joint lives and after the death of either of them to pay the said income to the survivor of them during his or her life.

The settlements comprise trusts to take effect after the death of the deceased so that they are settlements within the meaning of the sub-section, but the appellants contend that the sub-section only applies where a settlor had during his lifetime become entitled in possession to an interest for his life, so that the deceased, who predeceased his wife, never had an interest for his life within the meaning of the sub-section.

In support of the contention, a great deal was said about the policy of the Act, and attempts were made to construe the sub-section in the light of other provisions of the Act and even of other Acts imposing death duties, and particularly the English *Finance Act* 1894. But the policy of an Act must be solved on a consideration of the

scope and operation of that Act itself and little help can in general be derived from other Acts: *Admiralty Commissioners* v. *Valverda* (1); *Lieberman* v. *Morris* (2). I have already expressed the opinion in *Trustees Executors and Agency Co. Ltd.* v. *Commissioner of Taxation* (*Milne's Case*) (3) that the *Estate Duty Assessment Act* is different in its structure and operation to the *Finance Act*, and no real light can, in my opinion, be thrown upon the true construction of the sub-section by a consideration of the provisions of the *Finance Act* or of other provisions of the *Estate Duty Assessment Act*.

The word "interest", which has a popular rather than a technical meaning (*Attorney-General* v. *Watson* (4); *Attorney-General* v. *Farrell* (5); *In re White*; *Skinner* v. *Attorney-General* (6) (affirmed (7))), is a word of wide import and includes contingent as well as vested interests: *Attorney-General* v. *Pearson* (8); *Tennant* v. *Lord Advocate* (9); *Hoysted* v. *Federal Commissioner of Taxation* (10), and cf. *British American Tobacco Co.* v. *Inland Revenue Commissioners* (11); *Jenkins Productions Ltd.* v. *Inland Revenue Commissioners* (12); *Barclays Bank Ltd.* v. *Attorney-General* (13).

The fact, therefore, that the interests given to the deceased by the settlements were and remained contingent and never became vested or fell into possession is not sufficient, in my opinion, to place them outside the operation of the sub-section. The appellants are really asking the Court to read the words "in possession" or other words to the same effect into the sub-section. It is urged that the reference in the sub-section to the surrender of interests indicates that the sub-section is dealing with interests in possession because they would be the only kind of interests which a settlor could surrender. That may have been once the common law with respect to the surrender of life estates in realty although it is now usually provided by statute that a surrender of a legal estate in land must be made by deed. But the sub-section is dealing with equitable interests for life created under settlements in real and personal property and I am unable to see why both equitable contingent and vested interests should not be surrendered before they fall into possession to those entitled in remainder.

Estate duty is imposed upon the value of the corpus of the settled property at the date of the death of the settlor: *Trustees Executors*

(1) (1938) A.C. 173, at p. 185.
(2) (1944) 69 C.L.R. 69.
(3) (1944) A.L.R. 315, at p. 324.
(4) (1917) 2 K.B. 427, at p. 431.
(5) (1931) 1 K.B. 81, at p. 101.
(6) (1939) Ch. 131, at p. 140.
(7) (1940) A.C. 350.
(8) (1924) 2 K.B. 375, at p. 388.
(9) (1939) A.C. 207, at p. 213.
(10) (1920) 27 C.L.R. 400, at p. 409.
(11) (1943) A.C. 335, at p. 339.
(12) (1944) 60 T.L.R. 546.
(13) (1944) 60 T.L.R. 531.

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and Agency Co. Ltd. v. *Federal Commissioner of Taxation* (*Teare's Case*) (1); *Milne's Case* (2). The provision relating to surrender would appear to have been inserted in the sub-section to make it quite clear that, although the duty is imposed at the date of death, the property originally comprised in the settlement, so far as it can then be traced, is still within the sub-section if the settlement contained an interest of any kind for the life of the settlor at the date of its execution, although that interest had been surrendered during his lifetime.

If authority is needed, I can see no material distinction between the present sub-section and the trusts of the present settlements and s. 102 (2) (*c*) of the New South Wales *Stamp Duties Act* 1920-1924 and the trusts of the settlement which came before the Privy Council in *Rabett* v. *Commissioner of Stamp Duties* (3). There the property was settled upon trust to pay the income to the settlor's wife for life, and after her death to the settlor for life. The settlor predeceased his wife, but the Privy Council said that there could be no doubt that in the settlement there was a life interest reserved to him. The life estate in that case was vested, but it was an estate which never fell into possession. Where there are a series of life estates, each estate after the first must, in an untechnical sense, be contingent upon the life tenant surviving his predecessor. In the settlement in *Rabett's Case* (3), as in the settlements in the present case, the husband could only enjoy the life estate if he survived his wife. In each case, it never fell into possession.

In my opinion, s. 8 (4) (*c*) operates whenever there is in a settlement made by the deceased a beneficial interest for his life of any kind, whether it is vested or contingent and whether it has become an estate in possession prior to his death or not. In each case, the deceased had the interest during his lifetime under the trusts of the settlement. The sub-section does not require that he should have enjoyed it.

For these reasons, I would answer the question asked in the case stated in the affirmative.

Question answered: *Yes. Costs of case to be costs in the appeal. Case remitted to Chief Justice.*

Solicitors for the appellant, *Gair & Brahe.*

Solicitor for the respondent, *H. F. E. Whitlam*, Crown Solicitor for the Commonwealth.

D. G. B.

(1) (1941) 65 C.L.R. 134.
(2) (1944) A.L.R. 315, at p. 325.
(3) (1929) A.C. 444.