[HIGH COURT OF AUSTRALIA.]

THOMSON AND ANOTHER . . . . APPELLANTS;

AND

FEDERAL COMMISSIONER OF TAXATION . RESPONDENT.

H. C. OF A. 1949.

MELBOURNE, *Oct.* 18.

SYDNEY, *Dec.* 16.

Webb J.

Estate Duty (Cth.)—Assessment—Property "comprised in a settlement made by . . . deceased . . . under which he had any interest . . . for his life"—Beneficial interest of deceased which by a settlement made by him passed on his decease to another person—Money placed on fixed deposit in bank by deceased in joint names of himself and son—Complete control of money deposited retained by deceased during his lifetime—Capital on maturity transferred to, and until death of deceased remaining in, bank's matured fixed deposit account—Payment thereafter to son—Estate Duty Assessment Act 1914-1942 (*No.* 22 *of* 1914—*No.* 18 *of* 1942), *ss.* 3, 8 (4) (*c*), (*e*).

The deceased placed a sum of money on fixed deposit with a bank in the joint names of himself and his son. He told officers of the bank that he desired that after his death his son should get the benefit of the money but that he wanted to retain control of it during his life. The deposit was made in the manner provided by the rules of the bank for such a case, so that during his life the deceased retained complete control of the principal sum and all interest payable on it until its ultimate maturity was paid to him. The deposit came to maturity and was renewed on several occasions. Ultimately it was transferred to the bank's matured fixed deposit account (in which it did not bear interest), and the deceased allowed it to remain there until his death. Thereafter the principal sum was paid to the son.

Held that from the time of the first deposit a trust was created in respect of the sum deposited; although the trust property comprised a succession of choses in action, there was not a succession of trusts, and even after the transfer to the matured deposit account the deceased and his son held the chose in action on the same trusts as theretofore. The son had no beneficial interest during the life of the deceased; the beneficial interest passed to the son on the death of the deceased and was, therefore, deemed to be part of the estate of the deceased by reason of s. 8 (4) (*e*) of the *Estate Duty Assessment Act* 1914-1942. Alternatively, if the correct view was that the son had a

beneficial interest during the life of the deceased, subject to his power of revocation, the control retained by the deceased gave him an interest for life so as to bring the sum deposited within s. 8 (4) (*c*) of the Act.

The trusts and dispositions of a settlement need not be in writing to come within s. 8 (4) of the *Estate Duty Assessment Act* 1914-1942.

APPEAL under *Estate Duty Assessment Act*

This was an appeal by the executors of the will of Alexander William Thomson, deceased, from the assessment of the estate of the deceased to Federal estate duty. The facts appear in the judgment hereunder.

L. Voumard, for the appellants.

T. W. Smith K.C. and *H. A. Winneke*, for the respondent.

Cur. adv. vult.

WEBB J. delivered the following written judgment:— Dec. 16.

This is an appeal against an assessment of estate duty in the estate of the late Alexander William Thomson, a grazier, who died at Hamilton, Victoria on 6th June 1946, leaving property which was returned at £95,100 16s. 11d., but to which the respondent commissioner added two sums of £10,000 and £6,000 as liable to estate duty. Although these two sums were not returned the commissioner was informed by the executors of the facts concerning them, but also that the executors claimed that these two sums were not actually or notionally part of the deceased's estate. When the assessment to estate duty was issued it was accompanied by an alteration sheet showing that the two amounts were included as part of the estate. They were described in this sheet as "Settlements £16,000."

In May 1939 the deceased who then had a considerable credit in his current account with the National Bank of Australasia's branch at Hamilton told the relieving manager and the accountant of the branch that he wished to place money on fixed deposit in two amounts, one in his own name and that of his son, James Thomson, and another in his own name and that of his daughter, Kathleen Cameron, a married woman; that he wished the two children to get the benefit of the money; but that he wanted to retain control during his lifetime. Those bank officers read and explained to the deceased the bank's regulations relating to fixed deposits. The regulations provided that deposits for third parties might be

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accepted on the applicant signing a requisition slip, but that no interest on the deposit would be payable until the payees had first provided their signatures and proved their identity, and that these conditions should be made known to the applicant on his signing the requisition slip. The regulations further provided that deposits might also be accepted in joint names on the signature of one party only from persons desirous of retaining full control of the moneys during lifetime but thereafter benefiting a friend or relative, who need not have earlier knowledge of the matter. The bank regulations also provided that all fixed deposits, when due, should be transferred to Matured Fixed Deposit account.

When explaining the regulations to the deceased the accountant told him he would be able to do what he liked with the moneys during his lifetime; that if he died before the deposits matured they would be payable to the children at maturity; and that interest payments falling due during the deceased's lifetime would be payable to him, and if he died before they fell due they would be payable to the children. After these regulations were read and explained to the deceased he signed on 29th May 1939 two requisition forms, one for £10,000 in the names of himself and his son, and one for £6,000 in the names of himself and his daughter, and the moneys were then placed on fixed deposit. The deceased told the relieving manager and the accountant he did not want these moneys to form part of his estate. The requisition form was in each case as follows, omitting immaterial parts:—

> 26/9/1944.
>
> Lodged with THE NATIONAL BANK OF AUSTRALASIA LIMITED
>
> To be placed to the credit of myself Alexander William Thomson, Grazier, Hamilton, and Kathleen Mary Cameron (James Thomson) the sum of six thousand pounds (ten thousand pounds) as from 26.9.44 as a Fixed Deposit for six months bearing interest at the rate of $\frac{3}{4}\%$ per annum repayable to me whilst alive otherwise to the said Kathleen Mary Cameron (James Thomson) in terms and on the conditions specified in the Deposit Receipt issued to me/us this day. The deposit is not to be drawn against by cheque before or after its maturity except by prior arrangement with the Bank and upon lodgment of relative Receipt duly indorsed.
>
> The following appears on the back of the Deposit receipt:—
>
> The terms on which this Receipt is issued are as follow, viz:—
>
> It is not transferable. Payment will only be made to the Depositor whilst he is alive but after death it will be made to Kathleen Mary Cameron (James Thomson). It cannot be

renewed or payment of it made in whole or part without surrender of the Receipt to the Bank. Interest ceases at date of maturity indicated on the document.

The original deposit in each case was for two years. They were renewed as they matured or shortly thereafter and on each occasion a requisition slip was signed by the deceased. They finally matured on 6th March 1945 and were then transferred from the Fixed Deposit account to the Matured Fixed Deposit account. They were not renewed thereafter. After they matured the branch manager asked the deceased on three or four occasions his intention as to the renewal or discharge of the fixed deposits and told him that the deposits did not bear interest while they were lying in Matured Fixed Deposit; but on each occasion the deceased—who was then about eighty years of age and apparently found it difficult to make up his mind—deferred his decision. The moneys remained accordingly in the Matured Fixed Deposit account in the same names and on the same terms as when they were in Fixed Deposit account, and they were still there at the time of the death of the deceased on 6th June 1945. The interest on these two fixed deposits was, under the deceased's oral instructions confirmed by his signature on all the deposit receipts except the last, credited on the maturity of each deposit to the current account of the deceased, and was used for his own purposes. There was no express direction by the deceased as to the interest that had accrued on the last fixed deposit, viz., that which matured on the 6th March 1945. That interest was paid with the principal sums to his children after his death.

After the deceased had made these two deposits he told his brother-in-law he had been to the bank and "fixed" two sums of money, so much to the girl and so much to the boy; that it was for their benefit; that they were provided for; but that it was to be left in the bank during his lifetime, and if he wanted it he could use it. The deceased also told his son, James Thomson, he had put a large sum of money on fixed deposit for him and for his sister, without specifying the amount. He made a similar statement to his daughter, Kathleen Cameron. Both children were living with him when the deposits were made.

On 26th September the son James Thomson received £10,000 and six months' interest from the Bank on his request, after signing a discharge, and he used the money for his own purposes; and the daughter Kathleen Cameron received on her request £6,000 and six months' interest, signed a discharge, and used the money for her own purposes.

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Section 3 of the *Estate Duty Assessment Act* 1914-1942 provides *inter alia* :—" 'Settlement' means a . . . declaration of trust or other non-testamentary disposition of property . . . containing trusts or dispositions to take effect after the death of the settlor."

Section 8 (4) provides *inter alia* :—" Property—(*a*) which has passed from the deceased person by any gift *inter vivos* . . . or by a settlement made . . . within three years before his decease . . . (*c*) comprised in a settlement made by the deceased person under which he had any interest of any kind for his life . . . (*d*) being the beneficial interest held by the deceased person, immediately prior to his death, in a joint tenancy or joint ownership with other persons ; (*e*) being a beneficial interest in property which the deceased person had at the time of his decease, which beneficial interest, by virtue of a settlement or agreement made by him, passed or accrued on or after his decease to, or devolved on or after his decease upon, any other person . . . shall for the purposes of this Act be deemed to be part of the estate of the person so deceased."

As to the authorities Mr. *Voumard* referred to *McEvoy* v. *Belfast Banking Co.* (1) ; *Fadden* v. *Deputy Federal Commissioner of Taxation* (2) ; *Perpetual Trustee Co.* v. *Federal Commissioner of Taxation* (3). Mr. *Smith* referred to *Russell* v. *Scott* (4) ; *Craig* v. *Federal Commissioner of Taxation* (5) ; *Trustees Executors & Agency Co. Ltd.* v. *Federal Commissioner of Taxation* (6) ; *Metropolitan Asylums* v. *Kingham* (7).

Every fixed deposit constituted a separate contract with the bank on behalf of the deceased and his son, or of the deceased and his daughter, and each contract was discharged when the principal and interest were paid to the deceased. Under each the deceased and his son, or the deceased and his daughter, held the chose in action on the same trusts as theretofore, even after transfer to Matured Deposit Account in which the interests were in the same names and were held on the same terms. The deceased intended from the time he made the first deposits to hold the principal and interest for his children, but so that they would have no right to receive any part of the principal or interest from the bank during his life, while he would have the right during his life not merely to receive both principal and interest from the bank but also to use

(1) (1935) A.C. 24.
(2) (1943) 68 C.L.R. 76.
(3) (1926) A.L.R. 317.
(4) (1936) 55 C.L.R. 440, at pp. 454-456.
(5) (1945) 70 C.L.R. 441.
(6) (1944) 69 C.L.R. 270.
(7) (1890) 6 T.L.R. 218.

both for his own purposes. Actually he used the interest accrued up to September 1944 for his own purposes. He also received the principal as it became due or shortly after but on receiving it he immediately re-deposited it without any deduction. If the documents alone are looked at there would appear to have been as many trusts as choses in action and the last of these would have been created within three years of the deceased's death and have come within s. 8 (4) (*a*). But in my opinion the oral evidence warrants the conclusion that from the time of the first deposits of £10,000 and £6,000 a trust was created in respect of each sum and although the trust property comprised a succession of choses in action there was not a succession of trusts. However, as during the deceased's life neither the son nor the daughter was entitled to receive any principal or interest they cannot be said to have had any beneficial interest during his life. The beneficial interest passed or accrued to or devolved on them on his decease. In my opinion then both sums come within s. 8 (4) (*e*). But if the correct view is that the son and the daughter each had a beneficial interest during the deceased's life, subject to his power of revocation, then this power which he actually exercised as regards the interest up to September 1944 and which, as I have already stated, he could have exercised at any time up to his death in respect of the whole of the principal and interest, must I think be held to have given him an interest for his life so as to bring both sums within s. 8 (4) (*c*). I know of no reason why the trusts and dispositions of a settlement must be in writing to come within s. 8. Gifts within the meaning of s. 3 need not be in writing.

The appeal is dismissed and the assessment confirmed. The appellant will pay the respondent commissioner his costs of the appeal.

Appeal dismissed.

Solicitors for the appellants: *Melville & Walter*, Hamilton, by *Melville & McConkey*.

Solicitor for the respondent: *G. A. Watson*, Crown Solicitor for the Commonwealth.

E. F. H.