[HIGH COURT OF AUSTRALIA.]

WILLIAMS AND OTHERS . . . APPELLANTS;

AND

FEDERAL COMMISSIONER OF TAXATION RESPONDENT.

H. C. OF A. 1950.

SYDNEY, *May* 12.

BRISBANE, *June* 21.

Latham C.J., McTiernan, Williams, Webb and Fullagar JJ.

Estate Duty (Cth.)—Assessment—Life assurance—Premiums paid by assured—"Beneficiary in trust"—Widow of assured—Executrix of and sole beneficiary under assured's will—Moneys payable under policy—Liability to duty—Quaere, personal property of assured, or moneys payable to widow—Estate Duty Assessment Act 1914-1942 (*No.* 22 *of* 1914—*No.* 18 *of* 1942), *s.* 8 (3) (*b*), (4) (*f*), (4A).*

The testator, C., insured his life for £5,000 with the State Government Insurance Office, Queensland, on 2nd February 1923, and died on 12th November 1944. The policy bore an indorsement signed by the Insurance Commissioner that it was agreed that the policy was issued in terms of an appointment of beneficiary of trust form dated 25th January 1923, signed by C. and delivered to the commissioner appointing C.'s wife, M., beneficiary in trust under the policy, and it was further agreed that in the event of the

*Section 8 (3) provides that for the purposes of the Act the estate of a person comprises (*inter alia*):—"(*b*) his personal property, wherever situate (including personal property over which he had a general power of appointment, exercised by his will), if the deceased was, at the time of his death, domiciled in Australia."

Section 8 (4) provides that:—"Property— . . . (*f*) being money payable to, or to any person in trust for, the widow, widower, children, grandchildren, parents, brothers, sisters, nephews or nieces of the deceased under a policy of assurance on the life of the deceased where the whole of the premiums has been paid by or on behalf of the deceased, or, where part only of the premiums has been paid by or on behalf of the deceased, such portion of any money so payable as bears to the whole of that money the same proportion as the part of the premiums paid by or on behalf of the deceased bears to the total premiums paid, shall for the purposes of this Act be deemed to be part of the estate of the person so deceased."

Section 8 (4A) is in the following terms:—"Where a policy of assurance on the life of the deceased was in existence at the commencement of paragraph (*f*) of the last preceding sub-section, in ascertaining the money payable under that policy for the purposes of that paragraph there shall be deducted from the money actually payable an amount equal to the amount which, if invested at the date of that commencement and accumulated at three per centum per annum compound interest with yearly rests, would have produced, as at the date of death, an amount equal to the money actually payable."

H. C. OF A. 1950.

WILLIAMS v. FEDERAL COMMISSIONER OF TAXATION.

death of M. the sum assured under the policy should revert to C. The trust form was a deed executed by C. and M. but not by the commissioner and by its terms M. was appointed as beneficiary under the policy. It provided that the beneficiary should obtain payment of the policy moneys and should hold them upon trust, after paying thereout costs and expenses, to pay duties payable on or with respect to C.'s estate, and that the residue should be held upon trust and fall into and form part of C.'s residuary personal estate and should be paid to his legal representative. There was a proviso that C. might at any time revoke the deed and that thereupon M. should transfer the policy to C. free from all trusts. M. consented to be nominated as such beneficiary and acknowledged that she had not any beneficial interest in the policy and the moneys thereby assured. C. paid all the premiums on the policy. Upon his death the policy moneys were paid by the Insurance Office to M., C.'s executrix and sole beneficiary under his will. The amount which if invested on 3rd June 1942—the date on which par. (*f*) of s. 8 (4) of the *Estate Duty Assessment Act* 1914-1942 commenced—and accumulated at three per cent. per annum compound interest with yearly rests would have produced as at the date of C.'s death the sum of £5,000, was the sum of £4,652.

Held, that the policy and the policy moneys when paid were part of the personal property of C. within the meaning of s. 8 (3) of the Act; that those moneys were not payable to the widow under the policy; that s. 8 (4) (f) and s. 8 (4A) of the Act therefore were not applicable and that the inclusion in the dutiable value of C.'s estate for the purpose of the Act of the sum of £5,000 in respect of the policy without deducting from that sum the amount of £4,652, was correct.

CASE STATED.

Cora Ann Williams, Alfred Barclay Cleland and Alec Lloyd Bradshaw Johnson, as executrix and executors respectively of the will of Minnie Dora Craig, who was the sole beneficiary under and sole executrix of the will of her deceased husband, Richard Babington Edgar Craig, appealed to the High Court against the assessment of his estate for purposes of duty under the *Estate Duty Assessment Act* 1914-1942 by the Federal Commissioner of Taxation.

At the request of both parties and pursuant to s. 28 of that Act, *Webb* J. stated for the consideration of the Full Court a case which was substantially as follows:—

1. Richard Babington Edgar Craig, hereinafter referred to as the deceased, died on 12th November 1944, domiciled in New South Wales and leaving real and personal property situate in Australia.

2. By his last will and testament dated 5th November 1928, the deceased appointed his wife, Minnie Dora Craig, sole executrix and sole beneficiary of his said will. Probate of that will was

duly granted to Minnie Dora Craig by the Supreme Court of New South Wales in its Probate Jurisdiction on 11th April, 1945. The will was re-executed on 13th May, 1942.

3. In accordance with the provisions of the *Estate Duty Assessment Act* 1914-1942 Minnie Dora Craig lodged a return with the respondent in respect of the estate of the deceased. The respondent duly assessed the value of that estate in the sum of £30,594. A notice of assessment dated 21st August 1945, claiming payment of duty in the sum of £2,478 2s. 3d. in respect of the estate, was duly issued by the respondent and, on 21st August 1945, payment of that sum of £2,478 2s. 3d. was duly made by Minnie Dora Craig.

4. The assessment referred to in par. 3 hereof was later amended by the respondent to allow certain income taxes as debts and the assessed value of the estate was thereby reduced to £28,965. The duty payable on the estate was thereby reduced to £2,253 9s. 6d. Notice of the amended assessment, dated 16th October 1946, was issued by the respondent and on that date the amount of £224 12s. 9d. was refunded by him to Minnie Dora Craig.

5. On or about 20th August, 1948, the respondent further amended the assessment to include as an asset in the estate of the deceased a life policy No. 618394 on the life of the deceased issued for £5,000 by the State Government Insurance Office of Queensland at a value of £5,000 and to allow as a debt the sum of £729 Queensland probate and succession duty thereon. The assessed value of the estate was thereby increased to £33,236 and the duty payable was increased to £2,871 11s. 10d. Notice of this amended assessment, dated 20th August 1948, was duly issued to Minnie Dora Craig within the period prescribed by s. 20 of the Act. Minnie Dora Craig duly paid to the respondent the additional duty amounting to £618 2s. 4d. on 16th September, 1948.

6. On 25th August, 1948, Messrs. J. A. Thompson & Johnson, solicitors for Minnie Dora Craig, lodged with the respondent a notice of objection to the amended assessment, whereby they claimed a deduction from the proceeds of the life policy of an amount calculated under s. 8 (4A) of the *Estate Duty Assessment Act* 1914-1942. On 14th September, 1948, the respondent forwarded to Minnie Dora Craig a notice disallowing the objection. On the same date the respondent forwarded to the solicitors for Minnie Dora Craig a letter in the following terms :—" I desire to advise that, in view of the terms of the Trust Deed, dated 25th January, 1923, which provided that the proceeds of Policy No. 618394 were to be held on trust to pay all Probate, Succession, Legacy and other

H. C. OF A. 1950.

WILLIAMS v. FEDERAL COMMISSIONER OF TAXATION.

duties, the amount then remaining to fall into and form part of the deceased's residuary estate, such proceeds are wholly assessable as assets in the estate as the provisions of section 8 (4A) are not considered to be applicable under the circumstances."

7. On 23rd September, 1948, Minnie Dora Craig requested that that objection be treated as an appeal and forwarded to this Honourable Court.

8. Life Policy No. 618394 referred to in par. 5 hereof was issued by the Insurance Commissioner of the State Government Insurance Office, Queensland, on 2nd February, 1923, pursuant to and upon the basis of an application and personal statement of the deceased, dated 25th January, 1923. A provision in the policy was substantially as follows :—

(iii) In consideration of the payments of premium (namely, £233 19s. 2d. per annum) and of proof to the satisfaction of the commissioner of the happening of the contingency insured against (namely, the death of the insured) and also of the insured's age and of the claimant's title the commissioner shall subject to the conditions (if any) set forth in the schedule and upon delivery of this policy duly discharged immediately pay to the claimant the amount named in the schedule (namely, £5,000).

An indorsement on the policy was as follows :—" It is hereby agreed that this policy is issued in terms of Appointment of Beneficiary of Trust Form dated the Twenty-fifth day of January, 1923, and signed by the Insured and delivered to the Insurance Commissioner appointing Minnie Dora Craig ' Beneficiary in Trust ' under this policy, and it is further agreed that in the event of the death of the said ' Beneficiary in Trust ' the sum insured under this policy shall revert to the insured."

9. At all material times the policy was of full force and effect and the whole of the premiums payable in respect thereof were paid by the deceased.

10. The Appointment of Beneficiary of Trust Form referred to in the indorsement on the life policy was duly executed by the deceased and by Minnie Dora Craig on 25th January, 1923 in the following form :—

" Know all men by these presents that I Richard Babington Edgar Craig, of Kalandra, Stamford, N.Q., the Insured named and described in a certain Policy of Insurance bearing the date the first day of May 1922 and numbered 618394 issued by the Insurance Commissioner (therein and hereinafter referred to as ' the Commissioner ') under which said Policy the sum of £5,000 is

payable as therein provided subject to the payment of the premiums and to the observance and performance of the provisions and conditions contained in the said Policy do hereby appoint Minnie Dora Craig, my wife (hereinafter referred to as 'the Beneficiary') as and to be the Beneficiary thereunder.

The Beneficiary shall without unnecessary delay after the same shall have become payable apply for and obtain and give valid receipts and discharges for all moneys payable under the said Policy and shall hold and stand possessed thereof as and when received upon trust after payment thereout of all costs and expenses of and incidental to obtaining such payment to pay to the Master in Equity or other proper officer direct or through the Solicitors and Proctors for the time being to the Executors of me the said Insured or otherwise apply such net proceeds so far as the same will extend in payment of all probate succession legacy and other duties payable on or with respect to the estate of me the said Insured.

And subject thereto the residue (if any) of such moneys shall be held upon trust for and fall into and form part of the residuary personal estate of me the said Insured and be paid without unnecessary delay to my Legal Representatives accordingly.

It is hereby agreed and declared that the Beneficiary shall not be concerned to see or enquire whether such Policy or any other Policy in substitution therefor or in addition thereto is kept on foot and subsisting nor shall the Beneficiary be liable or responsible in any way or manner whatsoever or howsoever if such Policy or Policies shall not be kept on foot and subsisting or be allowed to lapse.

Provided always and I hereby declare that I may at any time by deed revoke these presents and thereupon the Beneficiary shall transfer the said Policy to me absolutely and beneficially freed and discharged from all Trusts herein declared.

And the Beneficiary hereby consents to be nominated and act as such Beneficiary as aforesaid and doth hereby acknowledge declare and agree as to his own respective acts omissions and defaults only that he the Beneficiary has not any beneficial interest in the said Policy and the moneys thereby assured or any of them And further shall and will without unnecessary delay take all steps and do all acts and things necessary to receive and obtain payment of all such moneys when payable and shall and will as and when received by him as such Beneficiary hold and stand possessed of the said moneys upon the foregoing trusts and to and for the foregoing ends intents and purposes only.

H. C. OF A. 1950.

WILLIAMS v. FEDERAL COMMISSIONER OF TAXATION.

In Witness whereof we have hereunto set our hands and seals this Twenty-fifth day of January 1923.

Signed Sealed and Delivered by the said Insured in the presence of: W. H. KNOWLES, Jnr. } RICHARD BABINGTON EDGAR CRAIG

Signed Sealed and Delivered by the said Beneficiary in the presence of: } MINNIE DORA CRAIG "

11. Richard Babington Edgar Craig referred to in the life policy and in the Appointment of Beneficiary of Trust is identical with the above-named deceased, and Minnie Dora Craig referred to in the Appointment of Beneficiary of Trust is identical with the Minnie Dora Craig referred to in par. 2 hereof. From the time of the execution of the Appointment of Beneficiary of Trust until the death of the deceased Minnie Dora Craig was his wife.

12. The Appointment of Beneficiary of Trust was not revoked by the deceased nor was it in any way varied.

13. The moneys payable under the life policy namely the sum of £5,000 were paid by the Insurance Commissioner to Minnie Dora Craig on 21st May, 1945, and were thereupon paid by her to the credit of her private account with the Bank of New South Wales.

14. The amount of death duties assessed in respect of the estate of the deceased (other than the moneys payable under the life policy) by the Commissioner of Stamp Duties for the State of New South Wales for the purposes of the *Stamp Duties Act* 1920-1940, was the sum of £4,073 9s. 10d., and this sum was duly paid to the Commissioner of Stamp Duties by Minnie Dora Craig on 11th May, 1945, out of moneys standing to the credit of a banking account in the name of Minnie Dora Craig as executrix of the will of the deceased.

15. The appellant contends and the respondent denies that the facts set out in pars. 13 and 14 hereof are relevant to the determination of the issues raised in this case.

16. Minnie Dora Craig died on 7th July, 1949, and by her will dated 6th May, 1946, appointed Cora Ann Williams of St. Mary's in the State of New South Wales, married woman, Alfred Barclay Cleland of Sydney in that State, chartered accountant, and Alec Lloyd Bradshaw Johnson of Sydney aforesaid solicitor as the executors thereof. Probate of the will was duly granted to Cora Ann Williams, Alfred Barclay Cleland and Alec Lloyd Bradshaw Johnson by the Supreme Court of New South Wales in its Probate Jurisdiction on 5th January, 1950.

17. The amount which if invested on 3rd June, 1942, and accumulated at three per cent. per annum compound interest with yearly rests would have produced as at 12th November, 1944, the sum of £5,000, is the sum of £4,652.

The following question was set out for the opinion of the Full High Court :—

Whether on the facts stated above the respondent is correct in including in the dutiable value of the estate for the purposes of the *Estate Duty Assessment Act* 1914-1942 the sum of £5,000 in respect of Life Policy No. 618394 issued by the State Government Insurance Office of Queensland without deducting from that sum the amount of £4,652.

The relevant statutory provisions are sufficiently set forth in the judgment of the Chief Justice hereunder.

G. P. Stuckey K.C. (with him *R. M. Hope*), for the appellant. The proceeds of the policy were payable to the widow. Having appointed his wife his sole beneficiary all the deceased's property went to her; that property included policy moneys. Paragraph (*f*) of sub-s. (4) of s. 8 of the *Estate Duty Assessment Act* 1914-1942 and sub-s. (4A) of that section constitute special provisions, and the matter coming within par. (*f*) the Commissioner should have made the deduction provided for in sub-s. (4A). *Cleaver* v. *Mutual Reserve Fund Life Association* (1) has no bearing whatever on the matters at issue in this case. A sole beneficiary who is also sole executrix takes the estate beneficially from the death. The election by the widow to prove the will meant, in effect, that she assented to the dispositions of the will from the moment of death. Her entitlement to the money had accrued before the matters referred to in clause (iii.) of the policy were established. That related back to the moment of death and the money then became payable to her, the widow of the deceased. She took the money beneficially from the moment she received it. Where there is a sole beneficiary under a will who is also the sole executor then he or she takes the whole estate beneficially (*Hayes* v. *Sturges* (2)). If moneys under the proceeds of a policy are at the time the liability of the insurer to pay, and are payable to one of the main persons, then par. (*f*) of s. 8 (4) applies. The moneys fall within par. (*f*) as being moneys payable to a widow under a policy of insurance. "Payable under a policy of insurance" should be read as meaning a description of the moneys, and not as meaning payable to the widow by reason

(1) (1892) 1 Q.B. 147.

(2) (1816) 7 Taunt. 217, at p. 221 [129 E.R. 87, at p. 89].

H. C. OF A. 1950.

WILLIAMS v. FEDERAL COMMISSIONER OF TAXATION.

of the terms of the policy. If the moneys fall within par. (*f*) it is a special provision exclusively applying to them and it is immaterial that if par. (*f*) did not exist they would have fallen under some other paragraph of sub-s. (4). Notwithstanding there has not been any assent an estate can be disposed of so as to give a purchaser a good title from the beneficiary before the assent of the executor. The executor has a power of sale over all the assets which are vested in him by virtue of his office. But that does not prevent the vesting of a beneficial interest in the legatees from the moment of death under the will if the will be proved. All that the assent of the executor does is to vest the legal estate in the beneficiary as from the death. The value of the policy at the death of the deceased was not part of his estate, but it would have come within s. 8 (3) (*b*) (*Attorney-General* v. *Robinson* (1)). The assurance contract was the property of the estate, but the moneys payable under that contract were not part of the estate, they went as the contract provided, and the widow became the person entitled by reason of the gift of everything to her. Under this assurance contract the moneys were payable only after death and after the insurance company was satisfied of three other things. Although called beneficiary in trust, actually the widow declared herself that she would receive the moneys as trustee, so she took no beneficial interest at all either by the policy or the appointment as beneficiary alone. The moneys became payable to her beneficially when the insurance company was bound to pay, that is, after death and on satisfaction of those conditions. She was then the person beneficially entitled to the moneys. It was not the assurance policy, but the moneys paid to the widow under a policy of assurance on the life of the deceased. The words "money payable," being general, cover the case of a gift of the proceeds of a policy by a testator to his widow; the moneys are payable after death. There is a distinction between the chose in action which exists at the moment of death and the moneys payable under a policy which was under par. (*f*) of s. 8 (4) (*Attorney-General* v. *Robinson* (2), *Grubb* v. *Commissioner of Taxes* (*Tas.*) (3)). By reason of the beneficial gift of all his property to his widow, at the moment when the insurance company became liable to pay, she was the person beneficially entitled to those moneys. The sole beneficiary under a will is beneficially entitled to all the property of the testator irrespective of the stage reached in the administration of the estate. Section 46A (2) of the *Wills, Probate and Administration*

(1) (1901) 2 Ir. R. Q.B. 67, at pp. 88, 90.
(2) (1901) 2 Ir. R. Q.B. 67.
(3) (1949) 79 C.L.R. 412.

Act 1898-1947 (N.S.W.) indicates that the legislature itself recognized that the beneficial interest in the property of a deceased person can be disposed of by the beneficiary and no creditor could get back that asset. The history of the legislation dealing with the effect of making assets liable for payment of debts was dealt with in *In re Atkinson* (1). Under s. 44 of the last-mentioned Act the whole of the estate vests in the executor, and s. 46A (1) makes all those assets assets for the payment of debts. There is not anything in sub-s. (2) of s. 46A which says it shall be construed otherwise than as from the death. That shows an indication that there is some interest in the beneficiary, notwithstanding the appointment of an executor. After assent there would not be any need for such a provision, assent vests the legal title in the beneficiary as from the death. Where there is a sole beneficiary who is executrix the doctrine in *Sudeley* v. *Attorney-General* (2) does not apply. That doctrine was dealt with in *McCaughey* v. *Commissioner of Stamp Duties (N.S.W.)* (3); *Horton* v. *Jones* (4); *Blake* v. *Bayne* (5); *Vanneck* v. *Benham* (6); *Molloy* v. *Federal Commissioner of Land Tax* (7) and *Re Kellner's Will Trust* (8). In *Sudeley's Case* (9) itself there was not anything which precluded a distinction being drawn between the case of a sole beneficiary who was also sole executrix. On the death of the deceased only his widow had any interest in the money and, in the circumstances, the conditions of the policy having been satisfied, the company paid the money under that policy to the widow of the deceased.

[LATHAM C.J. referred to *Pagels* v. *MacDonald* (10).]

The grant of probate does not affect the relation back of the beneficial interest. It is the assent of the executor which makes the beneficial interest relate back to the date of death. Paragraph (*f*) should not be read so as to exclude from the benefits of sub-s. (4A) of s. 8 any direction by the testator in his will that the proceeds of a policy are payable to the persons named by him. All that passed under the will was the right to enforce the contract with the insurer. A person other than the widow would not have taken beneficially and there would have been a resulting trust for the estate in possession such as in *In re Engelbach's Estate* (11). There is not anything in par. (*f*) which restricts the meaning of "money payable" to "money payable under a policy of insurance." The

(1) (1908) 2 Ch. 307, at p. 311.
(2) (1897) A.C. 11.
(3) (1945) 46 S.R. (N.S.W.) 192, at pp. 202, 203, 205; 62 W.N. 230.
(4) (1935) 53 C.L.R. 475.
(5) (1908) A.C. 371, at p. 384.
(6) (1917) 1 Ch. 60, at p. 76.
(7) (1937) 58 C.L.R. 352, at p. 359.
(8) (1950) 1 Ch. 46
(9) (1897) A.C., at pp. 18-20.
(10) (1936) 54 C.L.R. 519, at pp. 524, 526.
(11) (1924) 2 Ch. 348.

H. C. OF A. 1950. WILLIAMS v. FEDERAL COMMISSIONER OF TAXATION.

testator had a general power of appointment with respect to the proceeds of the policy, that is, to decide what would become of the beneficial interest in the money, when that was received (*Re Estate of Spencer Isles* (1)). As to the moneys payable, the moneys are a different thing from the policy (*Attorney-General* v. *Robinson* (2)). Those moneys were never part of the testator's estate. They were disposed of beneficially under the power he had to make a will ; that was a general power of appointment, and therefore they were notional properties.

[LATHAM C.J. referred to sub-s. (3) (*b*) of s. 8].

A power of appointment is not property (*O'Grady* v. *Wilmott* (3)). The principle applicable to the interpretation of par. (*f*) is that it should be construed favourably towards the subject and not towards the Crown (*Hennell* v. *Inland Revenue Commissioners* (4)). For the purposes of par. (*f*) " money payable " includes money payable to the sole beneficiary also the executor. The fact that she was a sole beneficiary gave her complete control of the estate and therefore a beneficial interest in the money when she received it. If the matter comes within par. (*f*), that being a particular provision dealing with a particular subject, the appellants are entitled to the benefits of sub-s. (4A) of s. 8 notwithstanding that the estate might be taxable under other provisions of the Act (*Dryden* v. *Overseers of Putney* (5)).

F. G. Myers K.C. (with him *W. B. Perrignon*), for the respondent. The policy was an actual asset in the estate of the deceased and, being an actual asset taxable under sub-s. (3) of s. 8, could not be a notional asset taxable under sub-s. (4) of that section. It is only when one finds an asset that is not, in fact, part of the estate that the provisions of sub-s. (4) apply at all (*Rabett* v. *Commissioner of Stamp Duties* (6)). If it be conceded by the appellants that the matter comes within both sub-sections then they are out of court because the commissioner is entitled to tax under whichever provision he pleases (*Speyer Brothers* v. *Inland Revenue Commissioners* (7)). The commissioner has taxed the policy itself and not the moneys payable under it. It was part of the estate and taxable under sub-s. (3) (*b*) and the deduction allowable by sub-s. (4A) is not allowable. The foregoing submissions are based on the assumptions that the documents created a trust or some interest in the

(1) (1946) 47 S.R. (N.S.W.) 33, at p. 39 ; 63 W.N. 33.
(2) (1901) 2 Ir. R. Q.B. 67.
(3) (1916) 2 A.C. 231.
(4) (1933) 1 K.B. 415.
(5) (1876) 1 Ex. D. 223, at pp. 231, 232.
(6) (1929) A.C. 444, at p. 447.
(7) (1908) A.C. 92, at pp. 95, 96.

widow—gave her a right to the moneys. Even if the widow had a right to receive the moneys under the policy, nevertheless the beneficial interest always remained in the deceased and that is what has been taxed. But, in fact, neither the policy nor the deed nor both together gave the widow any rights as against the company or as against the executrix to receive the moneys. So far as the deed or policy purported to confer a legal right on the widow they were ineffective; so far as they made her an agent to receive they were revoked by the death of deceased (*In re Engelbach's Estate* (1)). *The Life Assurance Companies Act of* 1901 (Q.), by ss. 19 and 41, provides methods of transferring or assigning policies at law which were not followed in this case. The fact that moneys are expressed to be payable to a third person does not confer any rights on that third person (*In re Engelbach's Estate* (1)). The deed could only be a trust if there were an assignment of the policy moneys. There was not any such assignment because it was a voluntary deed and therefore the deceased must have assigned by the method prescribed for assigning a legal interest. An insurance policy cannot be assigned except for value. There was not any vesting of the legal interest in the widow and the deed was not in its terms a declaration of trust with the deceased himself as trustee. Both the indorsement and the deed were agreements between the deceased and the insurance company and did not confer any rights on the widow: *In re Engelbach's Estate* (2); *In re Sinclair's Life Policy* (3); *Cleaver* v. *Mutual Reserve Fund Life Association* (4). In *In re Gordon* (5) and in *In re Webb* (6) the court treated the decision in *In re Engelbach's Estate* (1) as good law but distinguished each case then under consideration on the facts. The widow acknowledged that she did not have any beneficial interest in the policy or the moneys payable under it. In their essence the facts in *Re Young* (7) are really identical with the facts in this case. In that case the question of the creation of a trust, the arrangement which may have been made on the face of the documents and the reliance the parties may have placed on them, were considered (8). If the arguments submitted on behalf of the appellants that some expenditure gave the widow an interest in the policy or moneys under the policy, be accepted then the deed was a testamentary instrument because it created an interest arising from the death and was revocable. If there had been any interest transferred to the widow

(1) (1924) 2 Ch. 348.
(2) (1924) 2 Ch., at pp. 353, 354.
(3) (1938) 1 Ch. 799.
(4) (1892) 1 Q.B. 147.
(5) (1940) Ch. 851.
(6) (1941) 1 Ch. 225.
(7) (1924) S.A.S.R. 187.
(8) (1924) S.A.S.R., at p. 197.

H. C. OF A. 1950. WILLIAMS v. FEDERAL COMMISSIONER OF TAXATION.

it was an interest which was voluntarily transmitted to her (*Russell* v. *Scott* (1)). The words of the deed contradict the proposition that there was an assignment in equity. If that be not accepted, then this was an interest acquired for performing acts after the death of the assured—the testator—and it was revocable at any time during the life of the assured; no beneficial interest of any kind was given to the wife. She could not acquire under the document unless and until the assured died. The deed could not confer any interest on the wife, beneficial or otherwise, because it was not an assignment in the form provided by the Act; it was not an assignment for value and it was not a declaration of trust by the assured.

[McTIERNAN J. referred to *Bird* v. *Perpetual Executors and Trustees Association of Australia Ltd.* (2).]

There was not any money payable to the widow. Whatever happened, the money was payable only to the executrix. These were trusts, if at all, of a testamentary character, therefore the assessment was correct (*Re Young* (3)).

G. P. Stuckey K.C., in reply. In his letter, dated 14th September 1948, the respondent said that s. 8 (4A) was not applicable to the proceeds of the policy and it was on that that the objection was filed. *In re Engelbach's Estate* (4) and the other cases referred to on behalf of the respondent depend on their own facts. The decisions in those cases were criticized in *Hanbury* on *Modern Equity*, 4th ed. (1946), pp. 154, 174-176. Those cases have no bearing whatever on the problem. It was shown in *In re Schebsman* (5) that there may be money payable to a person although he was not a party to the contract. In this case there was a beneficiary in trust; the indorsement on the policy was part of the policy; the deed was also part of the dealing between the company and the third person. Therefore, if money was paid in accordance with the deed, it was paid under the policy even though paid to a non-contracting party. Every insurance policy is a contract to be performed after death but it becomes operative at once. The contract now under consideration became operative at once and so did the appointment of the beneficiary in trust. They became operative documents upon their execution and delivery and the fact that they were to be performed after death did not make them in any sense testamentary documents.

(1) (1936) 55 C.L.R. 440, at p. 454.
(2) (1946) 73 C.L.R. 104.
(3) (1924) S.A.S.R. 187.
(4) (1924) 2 Ch. 348.
(5) (1944) Ch. 83, at pp. 95-98, 100, 106.

The policy had some operation before the death. The assured could have surrendered the policy and received the surrender value for it.

F. G. Myers K.C., by leave, referred to *Re William Phillips Insurance* (1).

Cur. adv. vult.

June 21.

The following written judgments were delivered :—

LATHAM C.J. This is a case stated under the *Estate Duty Assessment Act* 1914-1942, s. 28. The question which is raised by the case is whether certain moneys which were paid under an insurance policy on the life of R. B. E. Craig deceased or the policy itself should be taxed under s. 8 (3) (*b*) of the Act as being personal property of the deceased or under s. 8 (4) (*f*) as being money payable to his widow under a policy of assurance on his life upon which policy he had paid the whole of the premiums. His widow was his executrix and was the sole beneficiary under his will. The appellants, as the personal representatives of the widow, are his personal representatives and they have appealed to the High Court from an assessment of his estate under the Act.

Section 8 (3) provides that for the purposes of the Act the estate of a person comprises (*inter alia*) :—" (*b*) his personal property, wherever situate (including personal property over which he had a general power of appointment, exercised by his will), if the deceased was, at the time of his death, domiciled in Australia."

Section 8 (4) provides that :—" Property— . . . (*f*) being money payable to, or to any person in trust for, the widow, widower, children, grand-children, parents, brothers, sisters, nephews or nieces of the deceased under a policy of assurance on the life of the deceased where the whole of the premiums has been paid by or on behalf of the deceased, or, where part only of the premiums has been paid by or on behalf of the deceased, such portion of any money so payable as bears to the whole of that money the same proportion as the part of the premiums paid by or on behalf of the deceased bears to the total premiums paid, shall for the purposes of this Act be deemed to be part of the estate of the person so deceased."

Section 8 (4A) is in the following terms :—" Where a policy of assurance on the life of the deceased was in existence at the commencement of paragraph (*f*) of the last preceding sub-section, in ascertaining the money payable under that policy for the purposes of that paragraph there shall be deducted from the money

(1) (1883) 23 Ch.D. 235, at p. 247.

H. C. OF A. 1950.

WILLIAMS v. FEDERAL COMMISSIONER OF TAXATION.

Latham C.J.

actually payable an amount equal to the amount which, if invested at the date of that commencement and accumulated at three per centum per annum compound interest with yearly rests, would have produced, as at the date of death, an amount equal to the money actually payable."

The case states that:—"The amount which if invested on 3rd June, 1942, and accumulated at three per centum per annum compound interest with yearly rests would have produced as at 12th November, 1944, the sum of Five thousand pounds (£5,000) is the sum of Four thousand six hundred and fifty two pounds (£4,652)."

If s. 8 (4) (*f*) is applicable this amount of £4,652 should be deducted from the sum of £5,000 so that only the balance would be dutiable under the Act.

The testator R. B. E. Craig insured his life for £5,000 with the State Government Insurance Office, Queensland, on 2nd February, 1923. Paragraph (*f*) of s. 8 (4) commenced on 3rd June, 1942, so that the policy was in existence at the commencement of that paragraph. The testator died on 12th November, 1944. The policy moneys were payable upon proof of the happening of the contingency insured against (namely the death of the insured), of age (which was admitted), of the claimant's title and upon delivery of the policy duly discharged. The policy bore an indorsement signed by the Insurance Commissioner that it was agreed that the policy was issued "in terms of Appointment of Beneficiary of Trust Form dated the Twenty-fifth day of January, 1923, and signed by the Insured and delivered to the Insurance Commissioner appointing Minnie Dora Craig 'Beneficiary in Trust' under this Policy," and it was further agreed that "in the event of the death of the said 'Beneficiary in Trust' the sum insured under this Policy shall revert to the Insured."

The beneficiary of trust deed was a deed executed by the insurer and his wife, but not by the Insurance Commissioner, whereby his wife was appointed as the beneficiary under the policy. It provided that the beneficiary should obtain payment of the policy moneys and should hold them upon trust, after payment thereout of all costs and expenses of and incidental to obtaining the payment, to pay to the proper officer the proceeds thereof so far as they would extend in payment of probate, succession, legacy and other duties payable on or with respect to the estate of the insured. It was also provided that subject thereto the residue, if any, of such policy should be held upon trust for and fall into and form part of the residuary personal estate of the insured and should be paid

to his legal representatives. There was a proviso that the insured might at any time by deed revoke the trust deed and that thereupon the beneficiary should transfer the policy to him (the insured) free from all trusts. Finally the beneficiary consented to be nominated as such beneficiary and acknowledged that she had not any beneficial interest in the policy and the moneys thereby assured. Thus the policy was not " expressed to be for the benefit of his wife " and therefore *The Life Assurance Companies Act of* 1901 (Q.), s. 19, corresponding to the *Life, Fire and Marine Insurance Act* 1902 (N.S.W.), s. 8, did not apply so as to create a trust in her favour.

The deceased paid all the premiums on the policy.

The policy moneys were paid by the Insurance Office to the widow, executrix of the insured, and sole beneficiary under his will.

The terms of the beneficiary of trust deed as to the payment of the policy moneys are part of the contract of insurance between the insured and the Insurance Commissioner, though the commissioner was not a party to the deed. The indorsement on the policy contains an agreement by the commissioner that the policy was issued in terms of that trust deed. Accordingly the Insurance Commissioner agreed with the insured that he would pay the policy moneys to the widow in accordance with the deed. She agreed with the insured that she would hold the moneys on trust in accordance with the terms of the deed, but also that she had no beneficial interest therein. The result is that the policy moneys actually came into the estate of the deceased R. B. E. Craig by reason of the terms of the trust deed as incorporated in the policy. Where an insurance policy is taken out in the name of one person but the policy moneys are expressed to be payable to another person, there is no contract between the insurer and that other person and, apart from such statutory provisions as those contained in the *Life, Fire and Marine Insurance Act* 1902, s. 8, already mentioned, no trust is constituted in favour of that other person (*Cleaver* v. *Mutual Reserve Fund Association* (1); *In re Engelbach's Estate* (2)). In the present case a contract was made by the terms of the policy and the indorsement thereon and the deed thereby incorporated that the policy moneys would be paid to the widow. But that was a contract between the Insurance Commissioner and the insured. It was not a contract between the commissioner and the widow. The commissioner was not a party to the deed appointing the widow as trust beneficiary and therefore she had

(1) (1892) 1 Q.B. 147.

(2) (1924) 2 Ch. 348.

H. C. OF A. 1950.

WILLIAMS v. FEDERAL COMMISSIONER OF TAXATION.

Latham C.J.

no right to sue upon the policy. But the provisions of s. 8 (4) (*f*) apply wherever money is payable to a widow "under a policy of assurance on the life of the deceased." In this case it was expressly agreed that the moneys should be payable to the widow under the policy, although she had no right of action under the policy to require such payment. It would therefore appear that one of the conditions specified in par. (*f*) of s. 8 (4) was satisfied, namely, that the money was payable to the widow under the policy. When she received the money, however, she could not treat it as her own by virtue of the policy and the beneficiary of trust deed. She was bound to treat it as part of the residuary estate of her husband.

The provisions of par (*f*) apply only where money is payable to, or to any person in trust for, *inter alios*, the widow of the deceased under a policy of insurance. This provision in my opinion contemplates money being payable to, e.g., a widow for her own benefit or to a person in trust for her, that is to say, it applies only where the money is payable in such a way as to constitute the person to whom the moneys are payable the beneficial owner of the moneys. This provision was not intended to apply to the common case where a husband makes his wife his executrix and she as such executrix collects moneys payable under policies of insurance. In that case she would deal with the moneys as executrix and the moneys would not come within the provision of par. (*f*) as being moneys payable to her or to be held in trust for her benefit by virtue of the terms of the policy.

In the present case the moneys were paid to the widow. The trust deed expressly excluded the creation of any beneficial interest of the widow in the moneys though it entitled her to receive them. When she received the moneys she was bound to apply them in accordance with the terms of the deed and was therefore bound to pay the balance, after paying certain expenses and death duties, to the personal representative of her husband. She was that personal representative and accordingly she became bound to hold the balance in accordance with the terms of his will. The trust deed provided that the money should form part of her husband's residuary estate. The will gave that residuary estate to the widow and she was the sole beneficiary so that she became entitled to what remained of those moneys after a due course of administration, that is, after payment of funeral and testamentary expenses, debts and death duties (*Sudeley* v. *Attorney-General* (1) ; *Pagels* v. *MacDonald* (2)). She therefore ultimately received the moneys, or the balance of the moneys, beneficially, but not by

(1) (1897) A.C. 11.

(2) (1936) 54 C.L.R. 519.

virtue of the policy. She received that beneficial interest entirely by virtue of the terms of the will. Accordingly in my opinion the policy moneys became dutiable under s. 8 (3) (*b*) as part of the actual estate of the testator.

Section 8 (4) relates to what is often called notional property, that is to property which, for the purposes of the Act, is deemed to be part of the estate of the deceased person but which is not so in fact. If any property is in fact part of the estate of the deceased person it is made dutiable by s. 8 (3) and not by s. 8 (4). In *Attorney-General* v. *Robinson* (1), *Palles* C.B., referring to corresponding statutory provisions, said:—"In an Act of this class, one of the very objects of the property made liable to taxation being described under various heads is that some subject-matter which may escape inclusion under one head may be captured by another. There is no object in any particular property being included under more than one head. If . . . it be intended to draw a distinction between 'property' which 'passes' within the meaning of section 1, and property 'deemed' to pass under section 2, I agree in it. But the whole question here arises upon section 2. Property within any of the descriptions in that section is by the operation of section 2 brought into section 1, and rendered liable to the duty, although, but for section 2, it could not be deemed to be included in the property passing on the death of the deceased."

In my opinion par. (*f*) of s. 8 (4) is effectual to impose duty in respect of moneys paid under a policy of insurance in a case where a policy serves the same purpose as a will, namely the giving of a benefit to certain relatives of a deceased person upon the death of the person who has paid (in whole or in part) for the policy. That person might have kept the policy in his own name and have left the policy money specifically to one of his relatives mentioned in par. (*f*). In such a case duty would have been payable under s. 8 (3) (*b*) and not under s. 8 (4) (*f*). Such a person might have made no specific provision in his will relating to such a policy, but have left it to be dealt with as part of his estate under provisions not specifically referring to it. In such a case it would be treated as part of his estate and would be dutiable under s. 8 (3) (*b*) and not under s. 8 (4) (*f*)—whoever his beneficiaries might be. If, however, he took out a policy and paid the premiums in whole or in part but procured the policy to be put in the name of, e.g., his wife, in such a way that the money was payable under the policy to his widow for her own benefit or in trust for her, then the same result would be achieved as if he had given the

(1) (1901) 2 Ir. R., at p. 88.

H. C. OF A. 1950.

WILLIAMS v. FEDERAL COMMISSIONER OF TAXATION.

Latham C.J.

policy to the widow by his will. In that case the money would not be part of his personal property so as to be dutiable under s. 8 (3) (*b*), but would be " deemed to be " part of his estate under s. 8 (4) (*f*) and would be dutiable accordingly.

Here, however, the result of what was done is that the policy moneys formed part of the residue of the testator's estate, that the widow took her interest in the policy moneys under the will and not under the policy, and therefore that par. (*f*) of s. 8 (4) is not applicable.

I do not find it necessary to consider in detail an argument submitted for the commissioner that the power of revocation contained in the trust deed made it a testamentary document which was invalid because it was not executed as required by the *Wills, Probate and Administration Act* 1898-1947, s. 7. That deed did not give any interest to the widow. It gave her only a revocable authority.

The question which is submitted by the case is " Whether on the facts stated above the respondent is correct in including in the dutiable value of the estate for the purposes of the *Estate Duty Assessment Act* 1914-1942 the sum of Five thousand pounds (£5,000) in respect of Life Policy No. 618394 issued by the State Government Insurance Office of Queensland without deducting from that sum the amount of Four thousand six hundred and fifty two pounds (£4,652)."

In my opinion, for the reasons which I have stated, this question should be answered: " Yes."

McTIERNAN J. I am of the opinion the question should be answered : " Yes."

Section 8 (4) (*f*) of the *Estate Duty Assessment Act* 1914-1942 brings within the estate which is leviable with estate duty money payable to the widow and other relatives of the deceased under a policy of assurance on the life of the deceased : the conditions upon which the provision applies and the proportion of the proceeds of the policy brought within the estate are set out in the provision. Any policy which was in existence when clause (*f*) was enacted is entitled to a concession under s. 8 (4A). Clause (*f*) and s. 8 (4A) apply to the present policy.

Estate duty has been levied on the money payable upon the maturity of the policy but no abatement has been allowed under s. 8 (4A).

The question set out in the case stated is thus raised. The question is whether the respondent is correct in including in the

dutiable estate the proceeds of the policy without giving the estate the benefit of the abatement for which s. 8 (4A) provides. According to its terms the question is not whether the respondent is correct in including the money payable under the policy at all: it is whether he is correct in doing so without applying the abatement.

It is argued for the appellants that if the proceeds of the policy are within clause (*f*) the respondent is bound to deal with them under that clause rather than to treat them as if they were brought within the ambit of estate duty by some other provision in s. 8.

The ground for this claim is that the presumption of legislative intention is that the concession given by s. 8 (4A) was intended to apply to every case within its terms and the moneys in question should be levied under clause (*f*) in order that the estate should receive the benefit of the concession. Paradoxically, if this argument prevailed, clause (*f*), which is intended to subject money, otherwise not leviable, to estate duty, would turn out to be somehow a benefit to this estate.

In my opinion the argument for the appellants fails. The money which clause (*f*) subjects to estate duty is money payable to the widow or other relative of the deceased under a policy of life assurance. The policy with which the case is concerned is of the required description. The money, however, is not. The money was payable and paid by the insurance office to the estate of the deceased. It was payable to his widow under the will, not under the policy. The money is not leviable under clause (*f*) as money payable under the policy to the widow of the deceased.

WILLIAMS J. This is a case stated under s. 28 of the *Estate Duty Assessment Act* 1914-1942 which asks the question whether the respondent is correct in including in the dutiable value of the estate for the purposes of the Act the sum of £5,000 in respect of life policy No. 618394 issued by the State Government Insurance Office of Queensland without deducting from that sum the amount of £4,652. The estate in question is that of Richard Babington Edgar Craig, who died on 12th November 1944. By his will dated 5th November 1928 Craig appointed his wife Minnie Dora Craig sole executrix and gave, devised and bequeathed to her his whole estate both real and personal. On 23rd January 1923 Craig had taken out a policy of life insurance with the State Government Insurance Office, Queensland, for £5,000 payable on his death. During his life Craig paid the whole of the premiums on this policy. Instead, however, of the policy providing for the payment of the policy moneys to Craig's personal representatives on his death,

H. C. OF A. 1950.

WILLIAMS v. FEDERAL COMMISSIONER OF TAXATION.

Williams J.

it stated that the policy was issued in terms of an appointment of beneficiary of trust form dated 25th January 1923 and signed by the insured and delivered to the Insurance Commissioner appointing Minnie Dora Craig beneficiary in trust under the policy and that in the event of her death the sum insured under the policy should revert to the insured. The policy provided, *inter alia*, that in consideration of the due payment of the premiums, and of proof to the satisfaction of the commissioner of the happening of the contingency insured against, and also of the age of the insured and of the claimant's title the commissioner upon delivery of the policy duly discharged would immediately pay the insurance moneys to the claimant.

By the deed called an appointment of beneficiary in trust, executed by Craig and his wife, Craig appointed his wife the beneficiary in trust. But his wife did not acquire any beneficial interest in the policy moneys. On the contrary she agreed to collect the policy moneys from the Insurance Office when they became payable on his death, and to hold the net proceeds upon trust to pay them to the Master in Equity or other proper officer direct or through the solicitors for the time being to the executors of the insured or otherwise apply the net proceeds in payment of probate duties, &c., payable on the estate of the insured and subject thereto to hold the residue upon trust for and so as to form part of the residuary estate of the insured and to pay this residue to his legal representatives. The deed provided that Craig might at any time by deed revoke these presents and thereupon the beneficiary should transfer the said policy to him absolutely and beneficially freed and discharged from all trusts therein declared.

Shortly stated, the effect of these documents appears to be that the parties to the contract of insurance were Craig and the Insurance Office, but it was agreed between them that if the deed of appointment of beneficiary in trust remained unrevoked at his death and his wife survived him, she should be the person to claim the moneys from the Insurance Office and the person to whom they were to be paid. The deed of appointment is an agreement between Craig and his wife, and by it she agreed on receipt of the moneys to dispose of them as therein provided. On Craig's death the Insurance Office paid the policy moneys to his widow. She died on 7th July 1949 and the appellants are her personal representatives. They claim that the insurance moneys are not part of the actual personal estate of the deceased within the meaning of s. 8 (3) (*b*) of the *Estate Duty Assessment Act* but notional estate within the meaning of s. 8 (4) (*f*) of the Act as being moneys payable to his widow

under a policy of assurance on the life of the deceased where the whole of the premiums had been paid by the deceased. If this claim is correct a deduction can be claimed under s. 8 (4A) of the Act, and this deduction is the sum of £4,652 mentioned in the question.

It is contended for the appellants that since Craig by his will appointed his widow sole executrix and gave her his whole estate, she, immediately on his death, became beneficially entitled in possession to the whole of his assets subject to the payment thereout of any other assets of his death duties, funeral and testamentary expenses. Accordingly, she acquired under the will an immediate beneficial interest in the insurance moneys on payment as well as a legal interest under the deed and she was under no obligation to pay them to herself as executrix but entitled to retain them for her own use and benefit. The moneys therefore never became part of the actual personal estate of the deceased. On the other hand it is contended for the respondent that Craig was the complete legal and beneficial owner of the policy at the time of his death, that the deed of appointment was a mere revocable mandate to collect the moneys which was revoked by Craig's death, and that if it gave the widow any rights it was testamentary in character and void because it had not been executed as a will.

The simplest way to dispose of these contentions will be to state shortly what I conceive to be the true legal position. In my opinion the deed is not a mere mandate for the widow to receive the moneys which was revoked by Craig's death, and is not of a testamentary character. The authority for the widow to claim the moneys when they became payable on Craig's death is part of the contract made between the Insurance Office and Craig, and this part of the contract could like any other part be varied only by the mutual consent of the parties. Mrs. Craig survived her husband, and he did not revoke the deed in his lifetime, so that under this contract she was the proper payee of the moneys. Further the deed is not a testamentary document for it is no objection to the validity of a deed that the death of a person is the event upon which an obligation is to be fulfilled. The promises which it contains are covenants by the wife to collect the insurance moneys on Craig's death and apply them as therein provided. Such covenants are not testaments (*Bird* v. *Perpetual Executors and Trustees Association of Australia Ltd.* (1)). It follows that in my opinion the insurance moneys were lawfully paid to the widow by the Insurance Office. The widow was not a party to the contract of insurance and could

(1) (1946) 73 C.L.R. 140, at pp. 143, 146, 153.

H. C. OF A. 1950.

WILLIAMS v. FEDERAL COMMISSIONER OF TAXATION.

Williams J.

not enforce it, but it was enforceable either by Craig and his personal representatives or by the Insurance Office, and the Insurance Office was entitled to insist on its contractual right to pay the moneys to the widow and to no one else. On payment the widow became the legal owner of the moneys and, if the deed had not provided for their disposition, the question would then have arisen as to the beneficial ownership (*In re Schebsman* (1); *In re Miller's Agreement* (2)).

But I am unable to accept the contention that the fact that the widow was the sole executrix and beneficiary under her husband's will affects the beneficial disposition of the moneys. On payment the widow became the legal owner of the moneys, but she was bound to apply them in accordance with the deed and the deed required her to pay the moneys to Craig's legal representatives so as to become part of his actual personal estate. It was contended that the rule laid down in *Sudeley* v. *Attorney-General* (3) that, until the residue is ascertained in due course of administration, the residuary beneficiaries have no title to any part of residue, does not apply in the case of a sole beneficiary. But the rule was applied by this Full Court in *Robertson* v. *Deputy Federal Commissioner of Land* (4), where there was a sole residuary beneficiary, and by *Roper* C.J. in Eq. in *MacKinnon* v. *Campbell* (5), and I can see no reason in principle why the rule should not apply in such a case. The beneficial interest in the policy moneys was part of the personal estate of the deceased. The moneys had first to be paid by the widow in accordance with the deed to herself as executrix of the will and not beneficially and to be applied so far as necessary in payment of death duties, funeral and testamentary expenses and debts. It was only after the widow had completed the administration of the estate that she would have acquired a beneficial interest in any of the moneys then left, and then only under the provisions of the will, and because the moneys were part of the actual personal estate of the deceased. Even if the rule in *Sudeley* v. *Attorney-General* (3) be inapplicable, the widow would still have to depend on the will to obtain a beneficial interest in the moneys or, in other words, she could only obtain such an interest not under the deed but because the beneficial interest forms part of the actual personal estate of the deceased. Craig had never parted with the beneficial interest in the policy moneys. Immediately before his death, in the words of *Palles*

(1) (1944) 1 Ch., at pp. 90, 100, 102.
(2) (1947) 1 Ch. 615, at p. 619.
(3) (1897) A.C. 11.
(4) (1941) 65 C.L.R. 338.
(5) (1944) 45 S.R. (N.S.W.) 140; 62 W.N. 26.

C.B. in *Attorney-General* v. *Robinson* (1), his property in the policy consisted of a contingent right to sue at a future period upon a contract which, at that time, had not been broken. Upon his death the moneys became part of his estate except to the extent to which he had disposed of them in his lifetime (*In re William Phillips Insurance* (2)). He had never disposed of them except to the extent that the widow was to become the legal owner of them on his death. He had never parted with the beneficial interest, for the widow on receipt of the moneys was bound to apply them for the benefit of his estate. In *Perpetual Executors and Trustees Association of Australia Ltd.* v. *Federal Commissioner of Taxation* (*Thomson's Case*) (3) *Dixon* J. said in reference to the expression " his personal property " in s. 8 (3) (*b*) of the *Estate Duty Assessment Act* " no doubt this expression is of the widest character and covers every form of personal property recognized at law or in equity, every possible interest including all choses in action." The whole beneficial interest in the chose in action, that is the policy of insurance, was vested in Craig at the date of his death. The value of the policy moneys therefore formed part of his actual personal estate within the meaning of s. 8 (3) (*b*).

In my opinion s. 8 (4) (*f*) is confined to insurance moneys which are only deemed to be part of an estate for the purpose of estate duty and for no other purpose. The sub-section would apply for instance to moneys payable to the widow &c. of the deceased under a policy of insurance on his life where he had created an effective trust in favour of the widow &c. or where the policy on his life had been taken out not by him but by his widow &c. It has nothing to do with policy moneys forming part of the actual personal estate.

For these reasons I would answer the question in the affirmative.

WEBB J. I would answer the question in the case in the affirmative.

The policy was issued by the Queensland State Government Insurance Office in February 1923. The policy-holder, Richard Babington Edgar Craig, made his wife, Minnie Dora Craig, the " Beneficiary in Trust " under the policy. The terms of the trust provided that the " Beneficiary in Trust " was not to have any beneficial interest, but was to receive the policy moneys upon trust to pay the probate, succession, legacy and other duties, and, subject thereto, the residue if any of such moneys was to be held upon trust for and fall into and form part of the

(1) (1901) 2 Ir. R., at p. 89.
(2) (1883) 23 Ch. D., at p. 247.
(3) (1948) 77 C.L.R. 1, at p. 26.

H. C. OF A. 1950.

WILLIAMS v. FEDERAL COMMISSIONER OF TAXATION.

Webb J.

residuary personal estate of the policy-holder and be paid to his legal representatives. In November 1944 the policy-holder died leaving a will appointing as his sole executrix and sole beneficiary his widow, who, as already stated, was the "Beneficiary in Trust" under the policy. Probate of the will was granted by the Supreme Court of New South Wales in April 1945. Treating the policy as fully effective, it provided that the "Beneficiary in Trust" should apply for and give valid discharges for the policy moneys. In May 1945 the policy moneys were paid to Mrs. Craig as such "Beneficiary in Trust" and thereupon she paid them into her private banking account and paid the probate and other duties out of a banking account which she held as executrix. But she was not entitled to receive, and did not receive, payment of the policy moneys from the Insurance Office in her capacity as executrix or beneficiary under the will. If she had not been made sole executrix and sole beneficiary, she would still have been entitled to receive them as "Beneficiary in Trust." They were paid to her by the Insurance Office as "Beneficiary in Trust," to be held by her as executrix in trust for the residuary personal estate of the policy-holder. At that point the operation of the policy ceased. But the residue of personal estate into which the policy moneys fell became payable to her as sole beneficiary under the will. By the operation of the will, and the will alone, they became payable to Mrs. Craig or the testator's widow. This being the position, I do not think it can be correctly said that the policy moneys were "payable to the widow . . . under a policy" and so within s. 8 (4) and (4A) of the *Estate Duty Assessment Act* 1914-1942.

So far I have assumed that the policy and the trusts it created were fully effective. But it may be that, as counsel for the commissioner submitted, the policy with its trust provisions—more particularly the power of revocation—made it testamentary; that it gave no right to Mrs. Craig to enforce payment as "Beneficiary in Trust," as she was not a party to the contract; and that the policy-holder's death revoked any agency it might have created. In any such event not merely the policy itself but the policy moneys also would have become part of the estate of the policy-holder and dutiable to the full amount under s. 8 (3), and not merely notional property within s. 8 (4) and so only partly liable to duty under s. 8 (4A). However it becomes unnecessary to decide those questions and undesirable to do so, as there may be others more concerned about their determination than the commissioner now is.

FULLAGAR J. I agree that the question asked by this case stated must be answered: "Yes."

The policy moneys were, according to the terms of the contract between the deceased and the Insurance Office, "payable to" his widow, who is one of the persons mentioned in s. 8 (4) (*f*) of the Act. It was conceded, however, that the words "payable to" contemplated only cases in which the recipient was beneficially entitled to the policy moneys. It seems clear to me that that concession was rightly made by counsel for the appellant, but it seems to me also that it is the end of the appellant's case. For the widow here was not, according to the terms of the contract, beneficially entitled to the policy moneys. It is impossible, in my opinion, to maintain that the position is in any way affected by the fact that she was sole executrix and sole beneficiary under the will of the deceased. The applicability of s. 8 (4) (*f*) must depend entirely on the contract of insurance and cannot depend at all on whether the deceased died testate or intestate or, if he died testate, on the terms of his will.

The question whether, if the case fell outside s. 8 (4) (*f*), the asset represented by the policy was part of the dutiable estate of the deceased at all was not, I think, covered by the notice of objection. At any rate it was not argued. And I think it reasonably clear that it was part of his personal property and therefore part of his estate by virtue of s. 8 (3) (*b*) of the Act. I do not think that it is necessary, for the purposes of this case, to consider *In re Engelbach's Estate* (1), and the cases in which the decision of *Romer* J. in that case has been followed and applied. Here the policy moneys are expressly made applicable for the benefit of the testator's estate by way of payment of death duties, and any balance remaining after payment of duties is payable to his personal representatives. Until the moment of his death no person other than the deceased had any interest in the chose in action represented by the policy and after his death no person other than his personal representatives had any interest in that chose in action as such. The case is not really different from a case in which a man takes out a whole-life policy on his own life, and by his will directs that death duties are to be paid out of the proceeds of the policy and that any balance remaining is to form part of his residuary estate.

Question answered: *Yes.*

Solicitors for the appellants, *J. A. Thompson & Johnson.*

Solicitor for the respondent, *K. C. Waugh*, Crown Solicitor for the Commonwealth.

J. B.

(1) (1924) 2 Ch. 348.