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Present: Garvin and Drieberg JJ.

COMMISSIONER OF STAMPS *v.* DICKAPITIYA TEA AND RUBBER CO., LTD.

167, 167a—D. C. (Inty.) Colombo, 4,849.

Estate Duty—Property subject to a trust—Conversion to money—Property unconverted till death of beneficiary—Interest ceasing on death—Ordinance No. 8 of 1919, ss. 8 (1) (b) and 21 (4).

By his last will dated December 14, 1895, W. W. G. created a trust of his real and personal estate and directed the trustees to sell and convert into money such part thereof as did not consist of money and after the payment of debts and legacies, to stand possessed of the residuary fund in trust to pay the income thereof to his wife Augusta and after her death to the children of the testator. Augusta was the dominant trustee and was vested with an absolute discretion to postpone the conversion of any part of the residuary estate.

W. W. G. died on March 18, 1897, possessed of a half share of Dickapitiya estate. His estate in Ceylon was administered, and the administrator conveyed the said half share to the trustees.

The said property remained unconverted till the death of Augusta, when the trustees sold the same to Dickapitiya Tea and Rubber Company.

Held, that Augusta had an " interest ceasing on death " in Dickapitiya estate within the meaning of section 8 (1) (*b*) of Ordinance No. 8 of 1919, and that the property was liable in estate duty under the Ordinance.

Held, further, that the Company was not bound to furnish the Commissioner of Stamps with a statement under section 21 (4) of the Ordinance.

The liability to deliver a statement is not imposed on every person accountable for estate duty but only on persons to whom a beneficial interest in the property passes on the death.

APPEAL from an order made by the District Judge of Colombo on a citation issued under section 31 of the Estate Duty Ordinance, No. 8 of 1919, on the Dickapitiya Tea and Rubber Company, Ltd., on the application of the Commissioner of Stamps, who claimed that the half share of Dickapitiya estate, which was bought by the Company from the trustees appointed by the last will of W. W. Gascoyne was liable to estate duty as property passing on the death of Augusta, wife of W. W. Gascoyne.

Hayley, K.C. (with him *J. R. V. Ferdinands*), for Company, appellant in 167A and respondents in 167.—The District Judge has held that the Company was not liable to furnish a statement under section 21 (4) of the Ordinance. Having held with the Company on that point, no order for costs should have been made against the Company.

On the main question raised—whether Estate Duty is payable in respect of a half share of Dickapitiya estate—it is submitted that duty is not payable. Under the will, Augusta had only a right to certain income derived from the sale of the produce of the estate, she had no interest in Dickapitiya estate. Augusta's interest was only a chose in action (vide *Attorney-General v. Lord Sudeley*[1]; *In re Smyth, Leach v. Leach*[2]; *Attorney-General v. Johnson*[3]). Augusta died domiciled in England, and the surviving trustees of the will are domiciled and resident in England. In any event, duty is not payable in Ceylon; Augusta's interest, whatever the technical name given to it be, was not situated in Ceylon; it falls under the designation of movable property. The will directed the physical *corpus* to be sold and converted into money; the physical *corpus* must be treated as having been notionally converted into money under the equitable doctrine of conversion. The doctrine of conversion is applicable in Ceylon, *cf.* section 118 of the Trusts Ordinance, *Voet bk. I., tit. 8 (Buchanan's Translation, p. 129); 2 Burge, p. 32 (old edition)*. The Estate Duty Ordinance, section 2 (1), does not cover movable property of a person domiciled outside Ceylon.

Counsel cited section 17A of the Estate Duty Ordinance.

L. M. de Silva, Acting Deputy Solicitor-General (with *Mervyn Fonseka, C.C.*), for the Commissioner of Stamps, appellant in No. 167 and respondent in No. 167A.—Augusta Gascoyne was entitled to a life interest in a half share of Dickapitiya estate. That interest ceased on her death. Though the "cesser" was of a life-interest only, the "property," *i.e.*, a half share of Dickapitiya estate, must, for the purposes of section 8 (1) (*b*) of the Estate Duty Ordinance, be deemed to have passed on her death (*Attorney-General v. Watson*[4]).

As the interest which ceased extended to the whole income of the property, the value of the benefit arising from the cesser of such an interest is the value of the property, *i.e.*, of a half share of Dickapitiya estate. Section 17 (6) of Ordinance No. 8 of 1919.

The English cases cited show that duty may be payable in England. They do not show that duty is *not* payable in Ceylon. The Company does not under section 17 (2) claim a rebate on the footing that estate duty has been paid in England. If the contention of the Company is upheld, it may well be that the Company will not pay duty either in Ceylon or in England.

[1] *(1897) S. C. 11.*
[2] *(1898) 1 Ch. 89.*
[3] *(1907) 2 K. B. 885*
[4] *(1917) 2 K. B. 427*

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So long as the property is situate in Ceylon, it is liable to pay estate duty in Ceylon. See the definition of " property " in section 2. The distinction between " movable " and " immovable " property is not analogous to that between " personalty " and " realty " (*In re Berchtold*[1]).

As Dickapitiya estate is now vested in the Company by alienation, the Company is " accountable " for estate duty (section 19 (2)); and the *corpus* of Dickapitiya estate is subject to a charge until such duty is paid (section 18).

Even if the Company was not liable to make a declaration under section 21 (4), it is submitted that such a declaration could have been called for under section 25 of Ordinance No. 8 of 1919.

August 28, 1928. GARVIN J.—

There are two appeals before us. They are both taken from the judgment entered by the learned District Judge in a proceeding by the Commissioner of Stamps against the Dickapitiya Estate Co., Ltd., upon their refusal to furnish him with a statement under section 21 (4) of the Estate Duty Ordinance, No. 8 of 1919.

The claim of the Commissioner was resisted on two grounds :—

(*a*) That no estate duty is payable in Ceylon in respect of a half share of Dickapitiya estate as contended for by the Commissioner ; and

(*b*) That in any event the Company is not a person under a liability to deliver any such statement.

The learned District Judge held that estate duty is payable in Ceylon, but admitted the contention that the Company is under no liability to deliver a statement. For reasons given by him he awarded costs of the proceedings to the Commissioner.

The Commissioner of Stamps appeals from this judgment in so far as it holds that the Company is under no liability to deliver the statement, while the Company appeals from the order as to costs and contends that the District Judge was wrong in holding that estate duty is payable in Ceylon in respect of a half share of Dickapitiya estate.

Having heard lengthy arguments on all the points, it seems to me that the principal question for consideration is whether on the death of Augusta Gascoyne estate duty became payable under Ordinance No. 8 of 1919 in respect of a half share of certain premises situated in Ceylon and known as Dickapitiya estate. If this question be answered in favour of the Company it is decisive of these appeals. Augusta Gascoyne was not the owner of this half share nor had she any legal estate or interest in possession therein which formed part of her estate or actually passed at her

[1] (*1923*) *1 Ch. 192.*

death. It is necessary therefore in the first place to inquire whether Augusta Gascoyne had an " interest ceasing on her death " in this company within the meaning of section 8 (1) (*b*) of Ordinance No. 8 of 1919.

W. W. Gascoyne, who was at one time the owner of this half share of Dickapitiya estate, by his last will dated December 14, 1895, which was made in England devised all his real estate and the rest and residue of his personal estate to three trustees upon trust to sell and convert into money such part thereof as did not consist of money and after payment of funeral and testamentary expenses and all debts and legacies to stand possessed of the residuary trust money, and the investments thereof in trust to pay the income thereof to his wife Augusta Gascoyne.

Auguste Gascoyne, who was one of the three trustees, was vested with power to control the investment of the moneys realized on conversion and an absolute discretion to postpone the conversion of any part of the residue. It was also provided that the nett rents and profits and other income produced from any part of the trust estate previously to conversion were to be paid to the person or persons to whom and in the manner in which the income of the proceeds of such sale or conversion would for the time being be payable under the will if such conversion had been actually made.

Upon the death of Augusta Gascoyne the trustees were to continue to remain possessed of the residuary estate upon trust to pay a certain legacy to one of his sons and subject thereto in trust for all the children of the testator and the child or children of any child who may have predeceased the testator.

W. W. Gascoyne died on March 18, 1897, possessed *inter alia* of a half share of Dickapitiya estate. His estate in Ceylon was duly administered, and the administrator in Ceylon conveyed the said half share of Dickapitiya estate to the trustees. The property remained unconverted up to the death of Augusta Gascoyne, after which the trustees sold and conveyed the same to the Dickapitiya Tea and Rubber Co., Ltd., as on and from January 1, 1926.

The circumstance that Augusta Gascoyne was one of the trustees does not affect the question which is concerned with her only in her capacity as beneficiary.

It is evident that upon the death of her husband Augusta Gascoyne became entitled to receive the entirety of the nett rents and profits and income of the trust estate constituted by his last will. The position of the Commissioner of Stamps is that in respect of the half share of Dickapitiya estate, which was part of that trust estate, she had an interest ceasing on her death which extended to the whole of the income derivable therefrom.

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For the respondent it was urged relying on the cases of *In re Smyth, Leach v. Leach*[1] ; and *Attorney-General v. Lord Sudeley* [2] that the interest of Augusta Gascoyne was not an interest in Dickapitiya estate in specie but an English chose in action and as such not liable to estate duty in Ceylon. But both these were cases of probate and not estate duty. In each case the question arose in connection with the estate of a beneficiary under a trust who at the date of his death was vested with certain rights which undoubtedly formed part of his estate. The question in each case was whether these rights amounted to an interest in specie in certain foreign immovables which formed part of the property of the trust and as such free of the burden of probate duty. The determination in each case was that at the death of the deceased he had acquired no interest or estate in the foreign immovables; but that the right of the deceased and on his death the right of his executor, was to compel the trustee to execute the trust and pay the share which by the terms of the trust became payable to the beneficiary—this right, whatever its value may be, was an asset and inasmuch as it was an English chose in action, an English asset liable to probate duty.

But the interest of Augusta Gascoyne under this will which passed at her death to the other beneficiaries, however it may be described or defined, was for her life only and ceased at her death ; it was never an asset of her estate and could not therefore pass to her executors. She clearly had no right of property in Dickapitiya estate and in the strict terms of the common law her interest for life in this trust may be described as a chose in action. It does not by any means follow that she had no "interest" in the property of the trust of which Dickapitiya estate was a part within the meaning of section 8 (1) (*b*) of the Estate Duty Ordinance. The words "had an interest" as used in that section are not used in the restricted sense of an estate or right of property. They are used in a wider sense as in the English Act. An annuitant has an "interest" in the residuary estate of the testator where no property had been specially charged or set apart to answer the annuity (vide *Attorney-General v. Watson*[3] and *Attorney-General v. Cook*[4]). The rights conferred on Augusta Gascoyne by the last will of her husband are more comprehensive and bring her into much closer touch with the property.

The conclusion suggested by these considerations is that on the death of this lady estate duty became payable in Ceylon to the extent to which a benefit accrued or arose from the cesser of her interest in Dickapitiya. But it is said that the case of *Attorney-General v. Johnson*[5] and the application of the principles of the

[1] *(1898) 1 Ch. 89.*
[2] *(1895) 2 Ch. 526.*
[3] *(1917) 2 K. B. 427.*
[4] *(1921) 3 K. B. 607.*
[5] *(1907) 2 K. B. 885.*

judgment in that case lead to the opposite conclusion. The facts of that case are in all material respects identical with these with which we are concerned in this case. Estate duty was claimed in England upon the cesser by death of the interest of certain beneficiaries under a trust for conversion and the claim was resisted on the ground that the property of the trust consisted of immovable property in the Straits. The claim of the Commissioner was allowed.

But it is necessary to examine the decision with care before we can say whether it is applicable to the case before us. In the first place one must bear in mind that in England (Finance Act, section 2 (2)) " Property passing on the death of the deceased when situate out of the United Kingdom " is liable to estate duty " if under the law in force before the passing of the Act, legacy or succession duty is payable in respect thereof . . . . "

The estate in the Straits being foreign immovable property was *primâ facie* not liable. But inasmuch as it was subject to a trust for conversion the doctrine of equitable conversion enabled the Court to treat it as personalty. There was thus a succession under a settlement of personalty and the rule is well established that succession duty is payable in respect of personal property, situate out of the United Kingdom where the settlement under which the property passes is a British Settlement and the forum of administration a British Court. The liability to succession duty is decisive of the question of liability to estate duty—Finance Act, section 2 (2). There undoubtedly are in the judgment passages in which the property is referred to as being in England, but these passages must, I think, be understood in the sense that the succession is an English succession in as full a sense as if the property were situate in England.

The question whether the doctrine of equitable conversion applies in Ceylon in cases such as the one before us is one of some difficulty. The classification of property into realty and personalty has no place in our system. I do not, however, propose to express any opinion on the question since the application of that doctrine will not of itself suffice to give this property a locality elsewhere than in Ceylon.

Were Dickapitiya estate treated as equitably converted into personalty and even if it be possible for certain purposes to treat it as movable property, it seems to me that the situs of the property being Ceylon it is liable to estate duty here. But since the property was the subject of an English settlement and on the death of Augusta Gascoyne a succession occurred, the rule of the English law that succession duty is payable upon an English succession in respect of personal property, wherever the same may be, would apply to the case, and inasmuch as succession duty is payable estate duty would presumably become payable in England by virtue of

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section 2 (4) of the Finance Act. It is to be noted that the Succession Duty Act imposes a duty in respect of personal property whenever there is a " succession." A limitation upon the generality of the words of the Act was first imposed in the case of *Wallace v. Attorney-General*[1] by Lord Cranworth who confined their operation to persons who became entitled by virtue of the laws of England. Where a succession took place in regard to personal property subject to a trust upon the death of a beneficiary, it was held that Lord Cranworth's rule was satisfied " when the property is found to be legally vested in a person subject to the jurisdiction of the English Courts, and the title to the beneficial interest in that property is regulated and capable of being enforced by the laws of England . . . ." (*Attorney-General v. Jewish Colonization Association.*[2])

In short personalty situated abroad but subject to a trust is brought within the sphere of taxation of the Succession Duty Act as interpreted by Lord Cranworth in cases where the forum of administration of the settlement is England.

Liability to estate duty in Ceylon extends to movable and immovable property situate or being in Ceylon. That such property when subject to an English trust may in certain cases be made liable to estate duty in England by way of the Succession Duty Act does not alter the fact that it is situate in Ceylon.

If it is situate in Ceylon then it is within the sphere of taxation of the local Estate Duty Ordinance. The half share of Dickapitiya estate which formed part of the trust estate of W. W. Gascoyne whether it be treated as realty or personalty, immovable or movable, is situate in Ceylon and became chargeable with duty in Ceylon on the cesser of the interest of Augusta Gascoyne therein.

I also agree with the District Judge that the Dickapitiya Estate Company is under no liability to deliver the statement called for by the Commissioner. On the death of Augusta Gascoyne no beneficial interest in the property passed to the Company. They acquired the property by purchase from the trustees after her death and as such may as alienees be persons accountable under section 19 (2) of the Ordinance. But the liability to deliver a statement is not imposed on every person accountable for estate duty but only on persons to whom a beneficial interest in the property passes on the death.

For these reasons the judgment of the learned District Judge should in my opinion be affirmed, save in regard to the order as to costs. The parties invited the decision of the Court on two points and each succeeded on one point. Each party should bear his own costs in the Court below. I would make the same order in regard to the costs of the Company's appeal and the appeal entered by the Commissioner.

[1] (*1865-6*) *1 Ch. Ap. 1.*

[2] (*1901*) *1 K. B., p. 123 at p. 142.*

DRIEBERG J.—

These appeals are from an order made on a citation under section 31 of the Estate Duty Ordinance, No. 8 of 1919, on the Dickapitiya Tea and Rubber Company, Limited, on the application of the Commissioner of Stamps who claims that the half share of Dickapitiya estate, which was bought by the Company from the trustee appointed by the last will of W. W. Gascoyne, is liable to estate duty as property passing on the death of Augusta Gascoyne, the wife of W. W. Gascoyne. By his last will of June 17, 1897, executed in England, W. W. Gascoyne created a trust of the entirety of the residuary estate, the trustees being the executors of his will, viz., his wife and his sons, George Gascoyne and Edward Buckner Gascoyne. The will directed the trustees to sell, call in, and convert into money such part of the residuary estate as did not consist of money and invest the entirety subject to certain payments in authorized investments. The entire income of the trust fund was to be paid to Augusta Gascoyne and after her death the fund was to be held in trust for all his children and on certain conditions for the issue of deceased children. Augusta Gascoyne was the dominant trustee with considerable powers: she alone was given an absolute discretion to postpone the sale and conversion of any part of the residuary estate and in managing any real or leasehold property which remained unsold.

W. W. Gascoyne died in England in 1895, and sole testamentary jurisdiction to administer his estate was conferred on the District Court of Colombo. The three executors who had proved the will in England obtained in Ceylon a grant of letters with the will annexed, to their attorney, William Anderson, who by three deeds of January 13, 1898, September 8, 1898, and October 17, 1898, conveyed to the three trustees upon the trust created by the will W. W. Gascoyne's half share of Dickapitiya estate. Augusta Gascoyne died in England on November 24, 1924. We do not know whether she left a will or whether her estate was administered. On April 13, 1926, the surviving trustees, George Gascoyne and Edward Buckner Gascoyne, sold the half share to the Dickapitiya Tea and Rubber Company, Limited. The conveyance included a three-fourths share of three small allotments in extent 3 acres 1 rood and 46 perches and a similar share of an allotment of 12 acres 3 roods and 30 perches title to which was acquired or perfected by the trustees after the death W. W. Gascoyne. The price paid was Rs. 227,853·40. These proceedings are limited to W. W. Gascoyne's half share of what is almost the entirety of the estate.

On July 7, 1926, the Commissioner of Stamps issued a notice to the Company which stated that on the death of Augusta Gascoyne estate duty became payable to the Government of Ceylon on the cesser of her life interest in the half share of Dickapitiya estate

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to the extent to which a benefit had accrued or arisen by such cesser under the provisions of sections 8 (1) (*b*), 17 (6) (*a*) and the proviso thereto, of the Estate Duty Ordinance, that the duty so payable had not been paid by the heirs of the trust disposition of W. W. Gascoyne, and that the Company as the purchaser and as the party in possession of the half share was legally liable to furnish him with a declaration and a statement under the provisions of section 21 (1) and the definition of " executor " in section 2 (1) of the Ordinance and was liable to pay the estate duty under section 19 (2) in respect of the cesser of Augusta Gascoyne's life-interest. The Company did not admit liability and later, on the application of the Commissioner of Stamps, the District Court in these proceedings issued a citation under section 31 of the Ordinance commanding the Company to deliver or make the statement or declaration required by the Commissioner of Stamps.

The learned District Judge rightly held that though the Company was under section 19 (2) accountable for the estate duty on the property it could not be called upon to make the declaration of particulars under section 21 (4), for no beneficial interest in the property passed to the Company on the death of Augusta Gascoyne. It is not possible to regard the Company as liable under this section as an executor within the meaning of the word as defined in section 2 (1). This is an anomaly which is not present in the Finance Act of 1894 as will be seen from a comparison of section 8 (4) of that Act with sections 19 (2) and 21 (4) of our Ordinance.

It may, however, have been intended that of the many persons who are made accountable by section 19 (2) only the two classes referred to in section 21 (4) should be under the obligation, whether required to or not by the Commissioner of Stamps, of making the declaration within twelve months of the death of the deceased, and the others should only be liable to furnish information and produce documents if called upon to do so under section 25 (1).

This application however was made in reference to section 21 (4) and the declaration is in the form prescribed in the rule made under that section. The point is, however, now of no importance for the parties agreed that the main question at issue between them was whether Dickapitiya estate was liable to estate duty and that the proceedings should be regarded as following on a citation under section 32. On this point the trial Judge held that Augusta Gascoyne had an interest in a half share of Dickapitiya estate which ceased by reason of her death and that therefore under section 8 (1) that share of Dickapitiya estate was property which passed on her death and was liable to estate duty to the extent to which a benefit accrued or arose by the cesser of such interest. He held that though the citation had wrongly issued, the Company had the opportunity of a decision on the substantive question

and that the Commissioner of Stamps was entitled to costs. Both parties have appealed; the Commissioner of Stamps appeals against the finding that the citation had issued wrongly, the Company appeals against the finding that the half share of Dickapitiya estate is liable to duty and against the order as to costs.

It is clear that Augusta Gascoyne had in the trust property an interest which ceased on her death, but was it an interest in the half share of Dickapitiya estate and is that share when in the hands of a purchaser who has bought it from the trustees under a trust for sale liable to estate duty ?

Property is defined in the Estate Duty Ordinance as including movable or immovable property of any kind situate or being in the Colony and the proceeds of sale thereof respectively, and any money or investment for the time being representing the proceeds of sale.

It is therefore necessary to know what was the nature of Augusta Gascoyne's interest, in what property was it, and is that property " situate or being " in Ceylon.

It has been held that where there is a trust created in England with all the parties to it residing there, the trust property abroad, whether movable or immovable, must be regarded as an English asset and one not situated abroad.

In re Smyth, Leach v. Leach[1] was a case of an English trust the property of which consisted of a plantation in Jamaica. It was a case of probate duty and the question before the Court was whether the interest should be treated as an English asset or treated as foreign because the plantation was in Jamaica. The plantation was given to trustees for the benefit of certain persons for life and their issue, and upon the death of those persons and failure of issue the property was to be sold and the proceeds divided among certain persons referred to in the judgment as " legatees." One of the legatees died when the persons entitled for life were in existence and the question was whether probate duty was payable in England. The trust for sale had been carried out and the proceeds were available.

It was held that the interest was an English equitable chose in action recoverable in England and was an English and not a foreign asset, that the legatee was not entitled to the plantation itself or any specific part of it, and that his right was against the trustee to have the trust of the will administered, and whether this was an English or a foreign asset would depend on what was the proper forum for deciding the legatee's claim and this was in England as all the parties to the trust resided there.

1 *(1898) 1 Ch. 89.*

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Romer J. held that the case was governed by the principles which led to the decision of *Attorney-General v. Lord Sudeley*,[1] and said that the words of Lopes L.J. in the Court of Appeal " applied almost word to word to the case before me."

Attorney-General v. Lord Sudeley (*supra*) was a case of an English trust with the parties resident in England and the trust property consisted of mortgages of land in New Zealand and the question was whether these were liable to probate duty. Algernon Tollemache by his will left his residuary estate which comprised these New Zealand mortgages on trust, the income was left to certain persons including his wife Frances Tollemache during their joint lives and the life of the survivor and after their deaths one-fourth was bequeathed to his wife absolutely.

The claim was by the executor of Frances Tollemache who by the death of those entitled for life became absolutely entitled to a one-fourth share of the residue ; at the time of the application the residuary estate had not been distributed. The New Zealand mortgages were treated not as a specific tangible asset, in which case there would be no difficulty in determining its locality, but as a chose in action the locality of which, by reason of the parties being resident in England, was England.

The words of Lopes L.J. referred to by Romer J. *In re Smyth, Leach v. Leach* (*supra*) are these :—

> " It is to be observed that neither Frances nor her executors could claim any part of this estate *in specie*. The executors of her husband were hot trustees of the estate for her ; all she was entitled to was her proportion of the proceeds of her husband's estate after realization. Neither Frances nor her executors had any claim against the mortgager to recover the mortgage debt or any portion of it ; that was a claim enforceable only by the executors of Algernon."

This judgment was affirmed in the House of Lords. The words I have quoted are from the judgment in the Court of Appeal where the judgment of Lord Russell C.J. and Charles J. in the Queen's Bench Division was set aside. They had held that it was a foreign asset as the executors could not possess themselves of it without the intervention of the New Zealand Courts. It does not follow from these cases that August Gascoyne had no interest in Dickapitiya estate within the meaning of section 8 (1) (*b*) of the Ordinance which is the same as section 2 (1) (*b*) of the Finance Act of 1894.

In *Attorney-General v. Watson*[2] which was a case of an annuity to be paid out of a trust estate created by a will it was held that the annuitant had for the purposes of the Finance Act an interest

1 (*1895*) *11 Ch. 526 ; (1896) 1 Q. B. Court of Appeal 354.*
2 (*1917*) *2 K. B. 427.*

in the *corpus* of the estate which consisted of real property, that though the annuitant had no estate in it she had an interest in it because it was the source of the annuity bequeathed to her.

It is not necessary therefore that Augusta Gascoyne should have had an interest in Dickapitiya estate *in specie* : as the source of the income bequeathed to her she had an interest in it which rendered it liable to estate duty on her death.

A difficulty arises from the decision in *Attorney-General v. Johnson.*[1] The will there contained similar provisions. The trust, which was one for sale, was of the residue which included the Melong estate in Upper Assam. The parties to the trust were in England. The trustees had the power of postponing the sale as long as they thought desirable and were empowered to continue the business or trade of tea planting which the testator had carried out. The question arose on the death of Marie Graf and H. J. Reeves, the former of whom was given a fixed annuity out of the income and shared the balance with the latter and six others. The sale of Melong estate had been postponed by the trustees and it remained unsold at the death of these persons. By section 2 (2) of the Finance Act of 1894, property passing on the death of the deceased when situated out of the United Kingdom is not ordinarily liable to estate duty. It becomes so if it is subject to legacy or succession duty under certain circumstances. Bray J. stated that the main question was whether the property in each case was situated in the United Kingdom. The Crown claimed that it was situated in England and the trustees of the will contended that it was situated abroad. He said that it was conceded that it should be regarded as situated in England, for by a trust for sale realty may in equity be converted into personalty (*Fletcher v. Ashburner*[2]), and that if so treated in equity it should be so converted for fiscal purposes also (*Attorney-General v. Dodd*[3]) : but that reliance was placed on the clauses of the will which gave the trustees power to postpone indefinitely the sale and carry on the business with additional capital ; that the estate had not in fact been converted into money at the time of the death of these two persons and might never be converted. It was also contended that the rights of these persons depended on the law of Upper Assam and that the Courts in England would not entertain an action to administer the trusts of the will because it depended on that law. These objections were considered, but the Court followed the principle in *Attorney-General v. Lord Sudeley* (*supra*) and *In re Smyth, Leach v. Leach* (*supra*) and *In re Cigala's Settlements*[4] and held " that the property which passed on the death of these persons was not property situated out of the United Kingdom and therefore liable to estate duty and succession duty ."

[1] *(1907) 2 K. B. 885.*
[2] *1 White & Tudor's L. C., 7th ed., 327.*
[3] *(1894) 2 Q. B. 150.*
[4] *(1878) 7 Ch. Div. 351.*

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It was contended that the rule of equitable conversion has no place in our law.

The Trust Ordinance, No. 9 of 1917, is an endeavour to codify with adaptation to local conditions in such matters as charitable and religious trusts, the law of trusts as it exists in England. Section 118 of the Ordinance enacts that—

> "All matters with reference to any trust, or with reference to any obligation in the nature of a trust arising or resulting by the implication or construction of law, for which no specific provision is made in this or any other Ordinance, shall be determined by the principles of equity for the time being in force in the High Court of Justice in England."

There is no specific provision in the Ordinance on this point, but the distinction between real and personal property as it is understood in England does not exist in our law.

In *Attorney-General v. Johnson* (*supra*) it was held that the rule applied so as to allow real property abroad to be considered and dealt with as personal property in England in appropriate cases to compel the performance of trusts without regard to the law of the country where the property is situated.

For all the purposes of the administration of the trust the property in this case can be regarded as situated in England even before it was sold and therefore liable to estate duty there, but can this alter the character of immovable property which Dickapitiya estate has under our law ?

The Deputy Solicitor-General contended that it could not have this effect—that even though it was regarded as property situated in England for the purposes of the administration of the trusts, its essential character of immovable property remained unchanged and it was therefore liable to estate duty here. In my opinion this contention is right. He referred us in this connection to the case of Berchtold (*Berchtold v. Capron* [1]). Here there was a trust for sale comprising freehold in England. The beneficiary and his heirs died in Hungary where there were domiciled. The main question before the Court was whether intestate succession, so far as the freeholds in England which remained unsold were concerned, should be determined by the *lex loci rei sitae* or the *lex domicilii*, and this depended on whether they were immovable or movable property. Russell J. relied on the judgment of Lord Selbourne in *Freeke v. Lord Carberry* [2] where he said :

> "Domicil is allowed in this country to have the same influence as in other countries in determining the succession of movable estate ; but the maxim of the law of the civilized

[1] *(1923) 1 Ch. 192 and (1923) 92 Law Journal Rep. Ch. Div. 185.*
[2] *L. R. 16 Equity 461.*

world is *mobilia sequuntur personam*, and is founded on the nature of things. But land, whether held for a chattel interest or held for a freehold interest, is in nature, as a matter of fact, immovable, and not movable. The doctrine is inapplicable to it. If, as the law unquestionably is, an owner of land in Ireland, no matter what his domicile is, can only devise it by a will made in accordance with the law of Ireland, I am unable to hold that he can, if domiciled, say in Scotland, enable himself to dispose of it by a Scotch will, not in accordance with the law of Ireland, by previously vesting it in a trustee for sale, the trust being unperformed. It is still immovable property, in fact, and the disposition of it is a disposition of immovable property, and not of something else, namely, the money by which, if sold, it would be represented, but which before the sale does not, in fact, exist."

He dealt with the contention that the land should be considered as sold and converted into money in the following passage :—

". . . . it was argued that, according to English law, land directed to be sold and turned into money must be considered to be money ; and that on the principle that equity considers done what should be done, the Birmingham freeholds are in the eye of the law money. This argument, to be effective, must add the words 'for all purposes.' That the Birmingham freeholds are to be treated as money for some purposes no one doubts. Thus the interest of the taker is personal estate. But this equitable doctrine of conversion only arises and comes into play where the question for consideration arises as between real estate and personal estate. It has no relation to the question whether property is movable or immovable. The doctrine of conversion is that real estate is treated as personal estate, or personal estate is treated as real estate ; not that immovables are turned into movables, or movables into immovables."

It was held that the freeholds were immovable and that succession to them was to be determined by the law of England.

I am therefore of opinion that whatever be the nature of the rights of Augusta Gascoyne and the subject of those rights so far as the administration of the trust in England is concerned, Dickapitiya estate being immovable property, her interest in it, so long as it remained unsold, was an interest in immovable property for for the purposes of estate duty.

I agree with the order made by my brother Garvin.

Judgment varied.