

60,1937

In the Privy Council.

No. 64 of 1936.

**ON APPEAL FROM THE SUPREME COURT OF HONG KONG  
(APPELLATE JURISDICTION)**

Between **HAROLD JOHN ARMSTRONG, & MICHAEL HOWARD TURNER** Appellants

and

**THE ESTATE DUTY COMMISSIONER**

Respondent

**RECORD OF PROCEEDINGS**

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I Certify that the following merely formal document has been omitted from this Transcript of the Record viz:—

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No.	DESCRIPTION OF DOCUMENT	DATE
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# **PART I**

**OF THE RECORD OF PROCEEDINGS.**

In the Privy Council.

**ON APPEAL FROM THE SUPREME COURT OF HONG KONG.  
(APPELLATE JURISDICTION.)**

Between **HAROLD JOHN ARMSTRONG** and *Appellants*  
**MICHAEL HOWARD TURNER**

and

**THE ESTATE DUTY COMMISSIONER.** *Respondent*

**RECORD OF PROCEEDINGS.**

*No. 1. Account for the Commissioner.*

**ACCOUNT FOR THE COMMISSIONER.**

ESTATE DUTY ORDINANCE No. 3 OF 1932.

IN THE MATTER OF SIR CATCHICK  
PAUL CHATER, Knight, c.m.g., late of  
Victoria in the Colony of Hong Kong, Financier,  
deceased.

We, SIR WILLIAM EDWARD LEONARD SHENTON, Knight, and  
MICHAEL HOWARD TURNER, both of Victoria in the Colony of  
Hongkong, Solicitors, make oath and say as follows:—

20 1. We are the present Trustees of the Will of the above deceased dated  
the 17th day of April 1925 and two Codicils thereto both dated the 25th day of  
May 1926, all of which were duly proved in the Supreme Court of Hongkong  
in its Probate Jurisdiction on the 9th day of September 1926. The above  
deceased died at No. 1, Conduit Road, Victoria aforesaid on the 27th day of  
May 1926. The said Will and Codicils were proved by the said Sir William  
Edward Leonard Shenton, Reginald Frederick Mattingly and the deceased's  
widow Lady Maria Christine Chater.

2. The said Reginald Frederick Mattingly died on the 29th day of  
December 1926 and the said Lady Maria Christine Chater died on the 11th  
day of March 1935.

No. 1.  
Account  
for the Com-  
missioner  
4th April,  
1935.

No. 1.  
Account  
for the Com-  
missioner  
4th April,  
1935.  
(Continued)

3. The said Michael Howard Turner was appointed a Trustee of the said Will and Codicils on the 11th day of March 1927.

4. By Clause five of the said Will of the above deceased bequeathed an annuity of £10,000 sterling clear of all death duties and income tax to his widow the said Lady Maria Christine Chater.

5. Estate Duty was paid on the whole of the above deceased's Estate when the aforesaid Probate was obtained.

6. No fund was set aside to meet the said annuity but the same was paid out of the general income as and when the same became due.

7. The said Sir William Edward Leonard Shenton and the said Michael Howard Turner are uncertain whether or not a claim for Estate Duty has arisen by reason of the cesser of the said annuity of £10,000 per annum on the date of the death of the said Lady Maria Christine Chater. 10

8. In the event of a claim for Estate Duty having arisen then if such claim attaches by virtue of Section 9 (b) of Ordinance No. 3 of 1932 the capital sum necessary to produce £10,000 per annum calculated at the rate of Eight per cent per annum (being the Court rate of interest) amounts to £125,000. £125,000 converted into Hongkong Dollars at the rate of 1/11 $\frac{3}{4}$  being the rate prevailing on the 11th day of March 1935 amounts to \$1,263,157.90.

9. The said Sir William Edward Leonard Shenton and Michael Howard Turner contend that by virtue of Section 25 of Ordinance No. 3 of 1932 no Estate Duty is now payable. 20

10. The said Sir William Edward Leonard Shenton and Michael Howard Turner also contend that if Estate Duty is payable by reason of the circumstances which have happened then such Estate Duty should be calculated in accordance with the Third Schedule of Ordinance No. 3 of 1932 but having regard to the fact that Section 13 (5) of Ordinance No. 16 of 1915 and the explanatory clause of the Third Schedule of Ordinance No. 16 of 1915 has not been incorporated in Ordinance No. 3 of 1932 such duty is impossible to calculate and is therefore not payable. 30

SWORN at the Supreme Court of  
Hongkong, this 4th day of April  
1935.

Sd/ W. E. L. SHENTON.  
,, M. H. TURNER.

Before me,

Sd/ T. M. HAZLERIGG,

A Commissioner for Oaths.

*No. 2. Letter from Respondent to Appellants Solicitors.*

No. 2.  
Letter from  
Respondent  
to Appellants  
Solicitors  
20th May  
1935.

ESTATE DUTY OFFICE,  
THE TREASURY,

III

E.D. No. 131 /1935.

Hongkong, 20th May, 1935.

Gentlemen,

*Re: SIR C. P. CHATER, DECEASED.  
& LADY M. C. CHATER, DECEASED.*

With reference to the claim by this Department to Estate Duty by reason of the cesser of the annuity, I have the honour to inform you that I am advised  
10 by Counsel that your contentions that duty is not payable by virtue of Section 25, or that, if payable, it should be calculated in accordance with the Third Schedule of Ordinance 3 of 1932 cannot be accepted. Duty is accordingly claimed under Section 5 (1) (b), calculation to be made in accordance with the method described in Section 9 (6) (b). I accept your figure \$1,263,157.90 as the value of the benefit accruing or arising from the cesser of the interest and attach an assessment memorandum showing the duty payable. You will note that the rate is 12% as the result of aggregation, as I hold that for the purpose of ascertaining the rate at which estate duty is payable on each subject of property the principal values of the different subjects of property must be added together  
20 (vide Hanson Death Duties 8th Edition pages 11 & 102).

I have the honour to be,

Gentlemen,

Your obedient servant,

Sd/ J. S. MACLAREN

p. Estate Duty Commissioner.

Messrs. Deacons.

*No. 3. Assessment Memorandum.*

No. 3.  
Assessment  
Memoran-  
dum  
20th May  
1935.

ESTATE DUTY OFFICE,  
TREASURY,

II

30 E.D. 131 /1935.

Hongkong, 20th May, 1935.

ASSESSMENT MEMORANDUM.

Gentlemen,

*Re: LADY MARIA C. CHATER, DECEASED.*

I have to notify you that the Commissioner has now assessed the value of the above estate and will, on payment of the sum set out below, deliver to you





STATEMENT OF GROUNDS OF APPEAL.

No. 4.  
Statement of  
Grounds of  
Appeal 27th  
May 1935.  
(Continued)

1. The Honourable Sir William Edward Leonard Shenton Knight Bachelor and Michael Howard Turner both of Victoria in the Colony of Hongkong Solicitors (hereinafter called "the Trustees") are the present Trustees of the Will of the above named deceased dated the 17th day of April 1925 and two Codicils thereto dated the 25th day of May 1926 all of which were duly proved in the Supreme Court of Hongkong in its Probate Jurisdiction on the 9th day of September 1926.
2. By clause 5 of the said Will of the above named deceased he  
10 bequeathed an annuity of £10,000 sterling clear of all death duties and income tax to his widow Lady Maria Christine Chater.
3. Estate Duty was paid on the whole of the above deceased's Estate when the aforesaid Probate was obtained.
4. No fund was set aside to meet the said annuity but the same was paid out of the general income of the Estate as and when the annuity became due.
5. The said Lady Maria Christine Chater died on the 11th day of March 1935.
6. On the 4th day of April 1935 the Trustees filed an Account for the Commissioner of Estate Duty in which the foregoing facts were set out.
- 20 7. The Trustees contended (in paragraph 9 of the said Account) that by virtue of Section 25 of Ordinance No. 3 of 1932 no estate duty was then payable.
8. The Trustees further contended (in paragraph 10 of the said Account) that if estate duty were payable by reason of the circumstances which had happened such estate duty should be calculated in accordance with the Third Schedule of Ordinance No. 3 of 1932 but that having regard to the fact that Section 13 (5) of Ordinance No. 16 of 1915 and the explanatory clause of the Third Schedule of Ordinance No. 16 of 1915 had not been incorporated in Ordinance No. 3 of 1932 such duty was impossible to calculate and was therefore not payable.
- 30 9. On the 20th day of May 1935 the Estate Duty Commissioner by a letter of that date addressed to the Trustees' Solicitors rejected the contentions put forward by the Trustees in paragraphs 9 and 10 of their Account respectively. He claimed duty under Section 5 (1) (b) of the Estate Duty Ordinance No. 3 of 1932. He further claimed that the duty should be calculated in accordance with the method described in Section 9 (6) (b) thereof.
10. By reason of the facts hereinbefore stated the Trustees are persons aggrieved within the meaning of Section 17 of the Estate Duty Ordinance 1932.
11. The grounds for appeal are that the Estate Duty Commissioner has wrongly rejected the two separate contentions (or one of them) put forward by

No. 4. the Trustees in paragraphs 9 and 10 of their Account respectively. These  
Statement of contentions the Trustees now repeat.  
Grounds of Appeal 27th  
May 1935.  
(Continued)

Filed by  
this 27th day of May, 1935.  
Solicitors for the Trustees.

Sd/ DEACONS,

To the Estate Duty Commissioner.

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*No. 5. Determination of Commissioner to Maintain Decision.*

No. 5.  
Determination of Com-  
missioner to Maintain  
Decision  
7th June  
1935.

To the Appellants,  
and to Messrs. Deacons, their Solicitors.

10

TAKE NOTICE that I, the undersigned, the Estate Duty Commissioner, have determined to maintain, in whole, the decision appealed against in this matter.

Dated this Seventh day of June, 1935.

Sd/ EDWIN TAYLOR,

Estate Duty Commissioner.

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*No. 6. Petition.*

No. 6.  
Petition  
7th June  
1935.

TO HIS MAJESTY'S JUDGES OF THE SUPREME COURT  
OF HONGKONG.

THE HUMBLE PETITION of The Honourable 20  
Sir William Edward Leonard Shenton, Knight  
and Michael Howard Turner.

SHEWETH as follows :—

- (a) Your Petitioners are the present Trustees of the Will (and of two Codicils thereto) of the above named deceased who died on the 27th day of May 1926.

(b) On the 20th day of May 1935 the Estate Duty Commissioner issued his Certificate deciding that Estate Duty was payable by the estate of the said deceased upon the death of Lady Maria Christine Chater the widow of, and an annuitant under the Will of, the above named deceased on the 11th day of March 1935. No. 6.  
Petition  
7th June  
1935.  
(Continued)

(c) On the 27th day of May 1935 your Petitioners being aggrieved by the said decision filed in the Registry of this Honourable Court and delivered to the said Commissioner a written statement of the grounds upon which they desired to appeal.

10 (d) On the 7th day of June 1935 the said Commissioner notified your Petitioners that he, the said Commissioner, had determined to maintain, in whole, his aforesaid decision.

(e) Your Petitioners desire to proceed with their appeal before this Honourable Court on the following grounds :—

(1) That by virtue of Section 25 of the Estate Duty Ordinance, No. 3 of 1932 no Estate Duty is now payable.

20 (2) Further, or in the alternative, that if Estate Duty is payable by reason of the circumstances which have happened then such Estate Duty should be calculated in accordance with the Third Schedule of Ordinance No. 3 of 1932 but having regard to the fact that Section 13 (5) of Ordinance No. 16 of 1915 and the explanatory clause of the Third Schedule of Ordinance No. 16 of 1915 have not been incorporated in Ordinance No. 3 of 1932 such duty is impossible to calculate and is therefore not payable.

AND YOUR PETITIONERS will ever pray  
as in duty bound.

Dated this 7th day of June, 1935.

Sd/ DEACONS,

Solicitors for the Petitioners.

30 *No. 7. Application to Set Petition down for hearing.*

To

The Crown Solicitor as representing the Estate Duty Commissioner.

Application on the part of the Petitioners that the Petition in the above matter be set down for hearing.

No. 7.  
Application  
to Set  
Petition  
down for  
hearing.  
8th June,  
1935.

Dated this 8th day of June, 1935.

(L.S.)

Sd/ L. R. ANDREWES,

Registrar.

No. 7.  
Application  
to Set  
Petition  
down for  
hearing.  
8th June,  
1935.  
(Continued)

This Summons was taken out by Deacons, of No. 1 Des Voeux Road Central, Victoria, Hongkong, Solicitors for the Petitioners.

Sd/ DEACONS.

No. 8.  
Order  
Setting  
Petition  
down for  
hearing.  
8th June,  
1935.

*No. 8. Order Setting Petition down for hearing.*

Upon the application of the Petitioners and upon hearing the Solicitors for the Petitioners the Crown Solicitor on behalf of the Estate Duty Commissioner and by consent IT IS ORDERED that the Petition in the above matter be set down for hearing.

Dated the 8th day of June 1935.

(L.S.)

Sd/ L. R. ANDREWES, 10

Deputy Registrar.

No. 9.  
Notes of  
the Chief  
Justice on  
the hearing  
of the  
Petition.  
13th June,  
1935.

*No. 9. Notes of the Chief Justice on the hearing of the Petition.*

Thursday, 13th June, 1935.

ESTATE DUTY APPEAL.

M.P. No. 31/1935.

Macnamara (Armstrong) for person aggrieved.

Potter, K.C. (Hazlerigg, Crown Solicitor) for E. D. Commr

Macnamara:—

- (1) Chater's Will, Clause 5.  
Annuity of £10,000 a year.  
Ordinance of 1932, s. 25.  
Estate duty has already been paid.  
Lady Chater not competent to dispose of property.  
Only point is— is this a settlement.  
Subsection 2. — definition of settlement.  
Dymond on Death Duties, p. 29, 6th Ed.  
Dymond on Death Duties, p. 244  
Will Clause 8.  
Annuity is equitable charge on whole estate.

Will Clause 13.

This discretionary power never used.

Hanson's Death Duties, 8th Ed., 105.

A.G. v. Owen (1899) 2 Q.B. 253 at 256, 263.

Re Campbell (1902) 1 K.B. 113 at 115, 116, 120, 123.

"Particular fund" on p. 123 means determinable fund.

Residuary fund is definite fund.

Re Waller (1916) 1 Ch. 158.

A.G. v. Watson (1917) 2 K.B. 427 at 430, 431.

No. 9.  
Notes of  
the Chief  
Justice on  
the hearing  
of the  
Petition.  
13th June,  
1935.  
(Continued)

- 10 (2) Ordinance No. 16 of 1915, Third Schedule. s. 13 (5)  
Ordinance No. 3 of 1932, Third Schedule.  
Impossible to calculate duty therefore no duty payable.

Potter, k.c., for E. D. Commr.

- (1) Is there settlement and settled property?  
s. 25 (2) "stands for the time being limited to &c."  
No settlement because no succession.  
Gift of annuity by will without direction to set aside property does  
not create settlement.

- 20 No such direction here though power given to trustees.  
Harman's Finance Acts., 4th Ed., 79.  
Hanson, 8th Ed., 105.  
Snell, 19th Ed., 269.  
13 Halsbury, 184, s. 217.  
A.G. v. Owen (1899) 2 Q.B., 253 at 254, 255, 263, 265.  
Re Campbell (1902) 1 K.B. 113 at 116.  
In re Waller (1916) 1 Ch. 153 at 158, 159.  
A.G. v. Watson (1917) 2 K.B. 427.  
In re Earl of Carnarvon (1927) 1 Ch. 138 at 147, 155.  
In re Lord Alington (1927) 2 Ch. 253 at 261.

- 30 (2) Schedule 3 has no application.  
Ordinance of 1932, s. 9 (6) (b).  
Ordinance of 1932, s. 9 (7).  
Halsbury's Statutes 8 p. 130.  
Schedule 3 refers to reversionary interests only.

Macnamara in reply :—

Ordinance 3 of 1932 s. 5 (1) (b).  
Will Clause 8.

Appeal dismissed with costs.

Sd/ A. D. A. MACGREGOR,  
C.J. 13. 6. 1935.

No. 10.  
Judgment  
of the  
Chief  
Justice  
on the  
Petition.  
27th June,  
1935.

*No. 10. Judgment of the Chief Justice on the Petition.*

This is an appeal by the trustees of the Will of Sir Catchick Paul Chater deceased against a decision of the Estate Duty Commissioner.

The material provisions of the will of the deceased are as follows :—

(5) I bequeath the following annuities all clear of death duties and income tax payable to the respective parties hereinafter enumerated commencing from my death by equal quarterly payments the first payment in each case to be made at the expiration of three months from my death. (a) to my wife during her life the annual sum of ten thousand pounds sterling. 10

(8) Subject to the payment of my funeral and testamentary expenses and debts and any legacies bequeathed by this my will or by any codicil hereto and the duty (if any) upon legacies and annuities bequeathed free of duty and subject to making provision for the payment of any annuities bequeathed by this my will or by any codicil hereto my trustees shall invest.

(13) I declare that my trustees shall be at liberty if they so think fit to appropriate and set apart out of my residuary estate investments representing such a capital fund as shall at the time of appropriation be sufficient to produce annual sums directed to be paid by clause five of this my will with such a liberal margin for contingencies as in the opinion of 20 my trustees shall be sufficient.

Estate duty was paid on the whole of the estate of the deceased when probate was granted in 1926.

No fund was set aside by the trustees to meet the annuity to the widow of the deceased, which was paid out of the general income of the estate as and when each payment became due.

The annuitant, Lady Maria Christine Chater, died on 11th March, 1935, in these circumstances the trustees contend that no estate duty is payable by reason of the cesser of the annuity, and they base their contention on the provisions of section 25 of the Estate Duty Ordinance, 1932, which reads as 30 follows:—

25. (1) If estate duty has already been paid in respect of any settled property since the date of the settlement, upon the death of one of the parties to a marriage, no estate duty shall be payable on the death of the other party to the marriage unless such person was at the time of his or her death or had been at any time during the continuance of the settlement competent to dispose of such property.

(2) For the purposes of this section, the term settlement means any deed, will, agreement for, a settlement, or other instrument, or any number of instruments, whether made before or after or partly before and 40 partly after the commencement of this Ordinance, under or by virtue of

which instrument or instruments any property, or any estate or any interest in any property, stands for the time being limited to or in trust for any persons by way of succession, and the term settled property means the property comprised in a settlement.

No. 10.  
Judgment  
of the  
Chief  
Justice  
on the  
Petition.  
27th June,  
1935.  
(Continued)

The short point which I have to decide is whether on the facts of this case there is or is not a settlement as defined in sub-section (2) of that section.

Mr. Macnamara for the appellants relies on the decisions in *A. G. v. Owen* (1899) 2 Q.B. p. 253 *re: Campbell* (1902) 1 K.B. p. 113, *re: Waller* (1916) 1 Ch. p. 153 and *A. G. v. Watson* (1917) 2 K.B. p. 427.

10 In these cases the facts in the first three are clearly distinguishable from those with which we are here concerned. In each of these cases the testator had by express direction instructed his trustees to set aside out of the residuary estate a fund sufficient to meet the payment of the annuities. In each of these cases it was held that the fund so set aside was property settled by the testator's will, or to put it in another way, that by the will property, or an estate or interest in property, stood for the time being limited to or in trust for a person or persons by way of succession. It was with these facts, and these facts alone, that the Court in each of these cases was concerned, but an examination of the judgments shows how careful the learned judges were to make it clear that their  
20 reasoning did not extend to the case of the simple gift of an annuity.

Thus in *re: Campbell, Asquith k.c.*, and *Pollard* for the appellants, arguendo, state :

“ The case contemplated by the Settled Land Act 1882, s.2, is the ordinary case of settlements in which a life estate or some such limited estate is followed by interests in remainder. A gift of an annuity is not a gift of such a life estate. An annuity is only a pecuniary legacy payable by instalments” and Sir R. B. Finlay *A. G. and Vaughan Hawkins for the Crown* argue thus “ It is not necessary for the purposes of this case to consider how the matter would stand if there were merely the gift of an annuity by will in general terms, and no  
30 provision for appropriation of any special fund to provide for it. Possibly such an annuity might be regarded merely on the footing of a pecuniary legacy payable by instalments”. Stirling L. J. ends his judgment in these words “ I only wish to add that it was admitted in argument that this decision does not conclude the case of a simple gift of an annuity in general terms where there is no such trust for payment of the annuity out of a particular fund as in the present case. I desire in giving judgment in this case to leave that case entirely untouched.”

In *re: Waller, Sargant L.J.* goes further “ The gift of the annuity simpliciter would not, in my opinion, at any rate I am not aware of any decision  
40 to that effect, have rendered any part of the testator's estate a settled fund or have subjected the annuity to the payment of settlement estate duty—that is to say the principal gift of the annuity would not have rendered it liable to settlement estate duty at all.

No. 10.  
Judgment  
of the  
Chief  
Justice  
on the  
Petition.  
27th June,  
1935.  
(Continued)

The case of *A. G. v. Watson* decided no more than this : that an annuitant whose annuity was to be paid out of the residuary estate, as in the present case, without any provision for setting aside a fund to meet the annuity payments had an interest in the testator's residuary estate within the meaning of the relevant sections of the Finance Act 1894, and that upon the annuitant's death estate duty became payable in respect of the benefit which accrued to the residuary estate upon the death of the annuitant by the cesser of the annuity. Were that principle not accepted the appellants in this case would not have been driven to rely on the provisions of section 25 of the Ordinance, but I can find nothing in the report of that case which in any way supports Mr. Macnamara's contention regarding the correct interpretation of that section. 10

Mr. Potter has drawn my attention to the cases of *Re: Earl of Carnarvon's Estates* (1927) 1 Ch. p. 138 and *Re: Lord Alington and the London County Council's Contract* (1927) 2 Ch. p. 253. With these authorities I do not propose to deal at length: I shall confine myself to one passage from the judgment of Russell J. in *Lord Alington's* case :

In *re Campbell* was not cited to *Romer J.* but when that case is looked at all that is decided was that where a fund was set aside out of a mixed residue to provide by the income thereof certain annuities, upon the cesser of which the persons entitled to residue would be entitled to the fund, settlement estate duty was payable on so much of the residue as had been set aside. It was held that the fund was limited in trust for persons by way of succession. That decision does not justify the proposition that the existence of a jointure charged on an estate vested in an owner in fee made, under the old law, the estate a settled estate. If it did the whole of the residuary estate would have been subject to settlement estate duty. I must further point out that *Stirling L.J.* carefully confines the decision to the case of a fund being set aside to provide an annuity, and keeps open the case of a simple gift of an annuity where there is no trust for its payment out of a particular fund. 20 30

It is possibly the fear that a successful argument might render the whole of the residuary estate subject to settlement estate duty that has restrained persons in the position of the appellants from advancing in the High Court of Judicature such an argument as I have listened to in this case.

In my opinion the appeal fails so far as this ground of appeal is concerned. The appellants in their statement of grounds of appeal further contend :

- (8) The trustees further contended (in paragraph 10 of the said Account) that if estate duty were payable by reason of the circumstances which had happened such estate duty should be calculated in accordance with the Third Schedule of Ordinance No. 3 of 1932 but that having regard to the fact that section 13 (5) of Ordinance No. 16 of 1915 and the explanatory clause of the Third Schedule of Ordinance No. 16 of 1915 had not been incorporated in Ordinance No. 3 of 1932 such duty was impossible to calculate and was therefore not payable. 40



This submission has not been seriously argued, nor is Mr. Macnamara's diffidence in this matter difficult to understand. The contention is in my judgment entirely without foundation. The Ordinance of 1932 provides in section 9 (6) a simple machinery for the calculation of duty in such cases as this, and the fact that the Ordinance also contains a schedule for use where applicable, in the calculation of reversionary interests is entirely beside the point.

No. 10.  
Judgment  
of the  
Chief  
Justice  
on the  
Petition.  
27th June  
1935.  
(Continued)

This appeal is dismissed with costs.

Sd/ A. D. A. MACGREGOR,  
Chief Justice,

10

27th June, 1935.

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*No. 11. Motion for leave to appeal to the Full Court.*

**In the Supreme Court of Hong Kong**

**APPELLATE JURISDICTION**

ESTATE DUTY APPEAL

MISC. PROC. NO. 31 OF 1935.

APPEAL NO. 14 OF 1935.

IN THE MATTER OF SIR CATCHICK  
PAUL CHATER, KT., C.M.G., late of Victoria  
in the Colony of Hongkong, Financier, deceased.

and

IN THE MATTER of the Estate Duty Or-  
dinances 1915 and 1932.

and

IN THE MATTER of the Interpretation  
Ordinance 1911.

No. 11.  
Motion for  
leave to  
appeal to the  
Full Court.  
2nd Novem-  
ber, 1935.

20

TAKE NOTICE that the Court will be moved at 10 o'clock on Tuesday, the 3rd day of December 1935, or so soon thereafter as Counsel can be heard by Counsel for the Honourable Sir William Edward Leonard Shenton, Kt., and

No. 11.  
Motion for  
leave to  
appeal to the  
Full Court.  
2nd Novem-  
ber, 1935.  
(Continued)

Michael Howard Turner the present Trustees of the Will of Sir Catchick Paul Chater, Kt., c.m.g., for leave under Section 17 (2) of Ordinance No. 3 of 1932 that the said Trustees be allowed to appeal from the Judgment of His Honour the Chief Justice Sir Atholl MacGregor, Kt., dated the 13th day of June 1935, that the said Judgment be set aside and that Judgment be entered for the said Trustees with costs and for an Order that the Estate Duty Commissioner do refund the Estate Duty paid in pursuance of such Judgment together with interest thereon at the rate of 8% per annum from the date of payment to the date of refunding and also do pay the costs of the said Trustees of and incidental to this Appeal.

Dated this 2nd day of November, 1935.

10

Sd/ DEACONS.

To

The Registrar of the Supreme Court and  
To the Estate Duty Commissioner and to his Solicitor.

No. 12.  
Order giving  
leave to  
appeal to the  
Full Court.  
10th Decem-  
ber, 1935.

*No. 12. Order giving leave to appeal to the Full Court.*

Upon hearing Counsel for the Appellants Ex parte IT IS ORDERED that the Appellants the Honourable Sir William Edward Leonard Shenton, Kt., and Michael Howard Turner the present Trustees of the will of Sir Catchick Paul Chater, Kt., c.m.g., have leave under Section 17 (2) of Ordinance No. 3 of 1932 to appeal to the Full Court from the Judgment of His Honour the Chief Justice Sir Atholl MacGregor, Kt., dated the 13th day of June 1935.

Dated this 10th day of December, 1935.

(L.S.)

Sd/ L. R. ANDREWES,  
Registrar.

No. 13.  
Motion to  
the Full  
Court to Set  
aside the  
Judgment of  
of the Chief  
Justice on  
the Petition  
appealing  
from the  
decision  
of the Com-  
missioner.  
10th Decem-  
ber, 1935.

*No. 13. Motion to the Full Court to Set aside the Judgment of the Chief Justice on the Petition appealing from the decision of the Commissioner.*

## In the Supreme Court of Hongkong

### APPELLATE JURISDICTION ESTATE DUTY APPEAL

MISC. PROC. No. 31 OF 1935.

APPEAL No. 14 OF 1935.

30

IN THE MATTER of the Estate of SIR  
CATCHICK PAUL CHATER, Kt., c.m.g.,  
late of Victoria in the Colony of Hongkong,  
Financier, deceased.

and

IN THE MATTER of the Estate Duty  
Ordinances 1915 and 1932.

and

IN THE MATTER of the Interpretation  
Ordinance, 1911.

No. 13.  
Motion to  
the Full  
Court to Set  
aside the  
Judgment of  
of the Chief  
Justice on  
the Petition  
appealing  
from the  
decision  
of the Com-  
missioner.  
10th Decem-  
ber, 1935.  
(Continued)

10

Between

THE HONOURABLE SIR WILLIAM EDWARD  
LEONARD SHENTON, Kt, AND MICHAEL  
HOWARD TURNER.

Appellants.

and

THE ESTATE DUTY COMMISSIONER.

Respondent.

TAKE NOTICE that the Full Court will be moved at 10 o'clock in the fore-noon on Wednesday the 8th day of January 1936 or so soon thereafter as Counsel can be heard by Mr. H. C. Macnamara as Counsel for the above Appellants for an Order that the Judgment of His Honour the Chief Justice Sir Atholl MacGregor, Kt., dated the 13th day of June 1935 be set aside and that Judgment be entered for the Appellants with costs and for an Order that the Estate Duty Commissioner do refund the estate duty paid in pursuance of such Judgment together with interest thereon at the rate of 8% per annum from the date of payment to the date of refunding and also do pay the costs of the Appellants of and incidental to this Appeal.

Dated the 10th day of December, 1935.

Sd/ DEACONS.

To

The Registrar of the Supreme Court,  
The Estate Duty Commissioner, and  
The Crown Solicitor.

30

No. 14.  
Notes of the  
Chief Justice  
on the  
Appeal  
to the  
Full Court.  
8th January  
1936.

*No. 14. Notes of the Chief Justice on the Appeal to the Full Court.*

In Court 10 a.m. — Full Court.

Coram — Self — and Hayden J.

Macnamara (Deacons) for appellant.

Potter, K.C. (Crown Sol) for Respondent.

*Macnamara:*

Facts entirely agreed.

Judgment challenged in law.

? was there a settlement.

Omission from judgment below of distinction between property and 10 interest therein.

*Will:* Clause 8. Charges annuities on general surplus and creates certain trusts,

of which (d) is ultimate one — i.e. residuary.

Though annuitant dies his interest in fund may survive.

Ordinance 5 (1) (b)

Clearly covers estate for life and (says Crown) annuity also qua interest, unless 'settlement'

s. 25 (1) and (2).

Meaning of "settlement"

20

"Will under which interest in property stands limited in trust for someone by way of succession (i. e. here to Lady C. for life and then to others).

*Two Points:*

I. No need to set aside specific fund.

II. Equity regards as done what ought to have been done.

Here Church could have come in and required fund to be set aside.

I. "Interest" in s. 5 (2) and s. 25 must bear same meaning.

Annuitant has interest in residuary property.

13 Halsbury 229 para 304.

Direction to set aside can hardly be distinguished from request to set 30 aside and cases in foot note (b)

Here annuity is charged on general residue.

*Cases:*

*A. G. v. Watson* 1917 2 K.B. 427 — annuitant had interest in residuary estate.

How distinguish interest in s.s. 5 and 25 —  
Accretion and succession.

*By H.*

Do appellants maintain all property settled?

*Mac.*

No, Lady C. got undivided share settled.

Annuity *not* legacy payable by instalments but definite interest in estate  
which passes on death.

So judgment of Lush J.

10 *So A. G. v. Owen* 1899 2 Q B. 253.

Direction to set aside property creates settlement.

Judgment of Grantham J. at p. 263.

What difference even if no property set aside?

*In re Campbell* (1902) 1 K.B. 113.

Even in case of settlement proper.

Annuitant has recourse to whole corpus (*Carmichael v. Gee*).

Interest for life in fund which passes to subsidiary legatee

Interest not fund passes.

Particular fund need mean no more than easily determinable fund.

20 *Re Waller* (1916) 1 Ch. 158.

Sargant J.'s opinion on point is "obiter"

On point "no settlement because no succession.

*Re A.G. v. Robertson* (1893) 1 Q.B. 293.

II. In any case court will proceed on maxim that that will be done which  
ought to have been done.

13 Halsbury p. 82.

Here residuary legatee could have required part of estate to be set aside  
to satisfy annuitant and annuitant can't resist.

30 See *Harbin v. Masterman*, (1896) 1 Ch. 351 p. 360 Judgment of L. J.  
Lindley.

Adjourned to 2.30 p.m.

*Resumed 2.30 p.m.*

Macnamara continues :

Re equitable doctrine—it is fair construction of whole Will to say that it  
includes instructions to set aside funds for annuities.

No. 14.  
Notes of the  
Chief Justice  
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(Continued)

Clause 8 — residual gift — “subject to making provision for payment of annuities”

implies instructions to set aside funds.

Clause 8 is thus operative

and Clause 13 merely mechanical

Clause 14 shows intention to make settlements.

*By self:* What of words “if they so think fit” at beginning of 13?

*Macnamara:* They have same effect as postponement of conversion etc.

*Carmichael & Gee.* 1880 A.C. 588.

p. 593 — 4 — clauses of administration and management.

10

595 — postponement of conversion won't be allowed to defeat any rights.

Annuitant can resort to any part of estate.

“Settlement” or “no settlement” depends on terms of Will.

*As to judgment of Court below.*

Property can equally well be described by reference to income as by reference to capital.

Here testator could equally well have directed setting aside of income from £ X of property in which case settlement would be complete.

Annuity = interest on so much property.

Property, estate and interest not to be lumped together.

20

Here “interest” alone is involved.

Gift of annuity is gift of life *interest*.

Re Campbell and Re Waller preceded Watson's case.

Watson's case established that annuity included *interest* in residue.

In Carnarvon's and Alington's cases

Point was whether whole estates were “settled” under Settled Land Act.

Never suggested here the whole estate became “settled”.

Re Trafford's Estates (1915) 1 Ch. 9

Throws some doubt on correctness of Carnarvon's and Alington's cases.

*If judgment correct.*

30

Appropriation is vital and necessary part of settlement.

Appropriation plus Will necessary.

but s. 25 (2) requires no more than Will or other instrument.

Appropriation could be effected by book-entry or letter to bank.

Clauses 8 and 13 together effect settlement.  
How can settlement be dependent on act of trustees.  
Adjourned to 10 a.m. tomorrow.  
In Court—10 a.m. Appeal 14/35—resumed.  
Counsel as before.

No. 14.  
Notes of the  
Chief Justice  
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8th January  
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(Continued)

*Potter, K.C.*

? Did Lady C.'s annuity create settlement.  
We say mere grant without setting aside does not create settlement.  
I (A) Will—Clause 5—grants annuity simpliciter

10 Clause 8—object one and only is to provide for distribution  
of residuary estate.

“Subject to making provision for annuities” is  
recognition that this must be done before  
residuary legatees can be paid—

No direction whatever to appropriate.

Clause 13—Does *not* merely postpone appropriation—it gives  
trustees complete liberty to do what they  
think fit—

appropriation = entirely discretionary.

20 No mention of postponement.

No duty in trustees to appropriate

No reason here why they should

Sterling annuities = £14,500 p.a.

needing high sum to cover.

(B) Granting simpliciter can't create settlement

Hanson's Death Duties

105—especial reference to Watson's case

Harman's Finance Act. 79.—

Test of life interest passing at death.

30 In case of life interest, tenant has *estate*—is c. q. t. of fund which  
passes on death to remaindermen.

Annuitant simple has no estate, but mere charge on property.

So in *A.G. v. Watson* held merely that annuitant has interest in  
property which brought case within provisions of s. 2(1) of Act.

Had annuities simple been previously deemed settlements what need for  
new legislation?

No. 14.  
Notes of the  
Chief Justice  
on the  
Appeal  
to the  
Full Court.  
8th January  
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(Continued)

Judgment of Lush J. p. 430

“Annuitant had no estate in residuary estate”—therefore no settlement.

Other cases merely decide that in order to create settlement specific fund  
must be allocated to payment of annuity.

So *Owen's* case.

Why never argued that annuity simple created settlement?

Kennedy J. at p. 266.

What fund here was ever enjoyed by Lady C. ?

So re *Campbell*.

Fund set aside is one to be enjoyed by c.q.t.

10

Either whole estate was settled or no part.

*Re Waller*.

Annuity was charged on whole residuary fund.

Dictum of Sargant J. on p.158 was not obiter.

p.159—under original gift no settlement estate duty payable.

*Re Earl of Carnarvon estates* (1927) 1 Ch. 139.

Did jointure charged on property effect a settlement ?

Romer J. 148, 155 says “No.”

No distinction between jointure and annuity.

In *Re Lord Alington's estates* (1927) 2 Ch. 253, decides much same point. 20

Russell J. p. 261.

Effect of these two cases is to establish by analogy that simple annuity  
can't create settlement.

But note conflicting decision

In re *Trafford's Estates* 1915 1 Ch. 9.

II. Equity looks on that as done which should have been done.

Can't apply here—without express direction.

13 Halsbury 73 Foot note (h).

Ashburner's Equity 252

Snell (19th Edit.) 186

30

Clause 13 gives absolute discretion—no direction.

Direction must be imperative and definitive

*Twopenny's Settlement* (1924) 1 Ch. 522 at p. 529 and 533 and 537.

*Harbin v. Masterman* (1895) 1 Ch. 351.



merely gives certain rights to remaindermen.

—allows residuary legatee in proper case to come in and get something by distribution despite annuity charges.

*Macnamara* (in reply)

Unreasonable anyway that accident of setting aside or non-setting aside should make all the difference.

Will—Clause 8—is operative both re setting aside (making provision for annuities) and re final trusts.

10 *As to Harbin v. Masterman* residuary legatee has rights which trustees might obtain for them.

*Watson's case*. Substitute “interest” for “estate” limited by way of succession and you get position here.

Lady C. had share, though undivided, yet determined as to size in residuary estate.

Can jointure be charged on part of estate?

C.A.V.

init. R.E.L.

9. 1. 36.

17.2.36. In Court—10 a.m.

Appeal No. 14 of 1935.

20

Full Court—Coram Self and Hayden P.J.

Written judgments delivered dismissing appeal with costs.

(Signed) R. E. LINDSELL,

Chief Justice.

*No. 15. Notes of the Puisne Judge on the Appeal to the Full Court.*

8.1.36 In Ct.

10 a.m.

*Macnamara* (Sir W. Shenton) for Appellants.

Potter, k.c., (Hazlerigg, Cr. Soltr.) for Respondent.

*Macnamara*:—

30

Refers to Chater's will—beginning of Clause 8—ultimate trust (8) (d)

Ord. 3 of 1932 s. 5 (1) (b) covers an annuity.

s. 25 (1) & (2) relieves from duty in the case of this annuity.

No. 14.  
Notes of the  
Chief Justice  
on the  
Appeal  
to the  
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(Continued)

No. 15.  
Notes of  
the Puisne  
Judge on  
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the Puisne  
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8th January,  
1936.  
(Continued)

Does not matter whether the funds were set aside or not.

Court will act on the maxim that equity regards as done that which ought to have been done.

The word "interest" is used in ss. 5 and 25. Annuitant had an "interest" in the residuary property.

13 Halsbury p. 229 s. 304.

A. G. v. Watson (1917) 2 K. B. 427—Held that the annuitant had an "interest" in the testator's residuary estate.

A. G. v. Owen (1899) 2 Q. B. 253 at p. 256 and at 261, 263 from "We may be obliged.....to the residuary legatee", also at 265 and 266. 10

Re Campbell (1902) 1 K. B. 113 at 115, 116, 117, 118, 120, 121, 122.

Particular fund means a determinable fund.

Re Waller (1916) 1 Ch. at 158.

A. G. v. Robinson (1893) 1 Q. B. 293, re meaning of succession—see p. 298 also 301.

Passes to equitable maxim above referred to in 13 Halsbury p. 73 s. 82

Harbin v. Masterman (1896) 1 Ch. 351 at 360.

Adjourned to 2.30 p.m.

2.30 p.m. Same counsel and solicitors.

Macnamara continues.

20

Can read into the Will a direction that a fund shall be set aside—refers to Clause 8 "subject to making provision for the payment of any annuities" etc. Also to Clause 13 which is merely administrative.

Carmichael v. Gee (1879-80) 5 Appeal Cases 588 headnote and at 593 (end of), at 545.

Will Clause 14 points to settled property.

Refers to judgment in this case of Sir Atholl MacGregor C. J.—last para. of p. 47. An annuity is the interest on so much property—it does not matter whether you designate it by its capital or by its income. P. 48—in the case of the present Will there is a provision for appropriation. In re Waller (supra) the passage from the judgment of Sargant J. is only a dictum. 30

Also p. 49. We only contend that a part sufficient to pay the annuities.

I am not going to argue the 2nd ground of appeal.

In land cases it is a settlement of all the land or nothing but this is not the case in the case of money.

In re Trafford's Settled Estates (1915) 1 Ch. 9.

In re Carnarvon (1927) 1 Ch. 138, Lord Alington (1927) 2 Ch. 253 and In re Trafford's Estate are in fact not relevant to this case. From the C. J. 's judgment in order that the Will should be a settlement there would have to be appropriation and that must be wrong, as Will must be either a settlement or not.

No. 15.  
Notes of  
the Puisne  
Judge on the  
Appeal to  
the Full  
Court.  
8th January,  
1936.  
(Continued)

The Will amounts to a settlement of sufficient money to pay an annuity of £10,000 per annum.

Adjourned to 10 a.m. on 9.1.36.

init. J.J.H.

10 9.1.36

10 a.m. Same counsel and solicitors.

Potter, K.C.:—

Point does the bequest of an annuity to Lady Chater constitute a settlement. Will Clause 5 grants an annuity simpliciter.

Will Clause 8 sole object is to provide for the distribution of the residuary estate. Before the residuary legatees can get anything provision must be made for payment of legacies etc

No direction to appropriate property for payment of annuities.

20 Will Clause 13 gives trustees complete liberty to appropriate or not a fund for the payment of annuities as they think fit.

Hanson on Death Duties 8th Ed. 105.

Harman Finance Act, 1894, 4th Ed. p. 79 "An annuity charged on corpus with power to set aside a fund to answer the annuity, is not, it is submitted, settled property". An annuity granted simpliciter gives no charge on a specific fund.

A.G. v. Watson (1917) 2. K.B. 427 merely directed that if there is a simple annuity the case is brought within the scope of the Act for the purpose of payment of duty as the annuitant has an "interest" but it does not decide that that "interest" is settled property.

30 Refers to passage in judgment of Lush J. at end of p. 430.

Refers to passage in judgment of Lush J. p. 431—"and I think ..... look for the payment of her annuity".

A.G. v. Owen (1899) 2 Q.B. 253, at p. 263, at 265, also at 265.

What property or what fund has ever been enjoyed by Lady Chater?

Re Campbell (1902) 1 K.B. 113 at 119, at 120, at 122.

It is the fund which is directed to be set aside to secure the annuity which is settled—no direction in this case.

Re Waller (1916) 1 Ch. 153 at 154, at 156, at 158. The passage referred to in the judgment of Sargant J. by Mr. Macnamara is not dictum

No. 15.  
Notes of  
the Puisne  
Judge on the  
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8th January,  
1936  
(Continued)

but an express decision as will appear from the wording of the summons in that case.

In re Earl of Carnarvon (1927) 1 Ch. 138 at 148, at 155—If a jointure charged on land does not create a settlement how can a charge on the entire residue create one?

In re Lord Alington (1927) 2 Ch. 253 at 261.

Jointure is on same footing as an annuity.

Re Mr. Macnamara's 2nd point—Equity regards as done that which ought to have been done—does not apply.

13 Halsbury p.73 n.h.—maxim of very limited application.

10

Ashburner on Equity 252.

In re Twopenny's Settlement (1924) 1 Ch. 522 at 529. No imperative direction in Will in present case, therefore maxim does not apply.

Harbin v. Masterman (1896) 1 Ch. 351—merely gives jurisdiction to Court to set apart a sufficient sum to answer the annuity.

Carmichael v. Gee (1879-80) 5 A.C. 588.

Submit that unless there is in this Will a direction to set aside then the authorities are against appellants.

Macnamara in reply.

Clause 8 of Will is operative and creates the trusts whereas Clause 13 is merely administrative. Under Clause 8 suitable provision for the payment of the annuities have to be made before the trusts mentioned in (a) (b) and (c) of that Clause could be given effect to.

Jointure is charged on all the land and the land holder cannot as a profit have any part of this land released therefrom whereas a residuary legatee can from part of the residue set aside to pay an annuity.

Asks to reverse decision of Court below.

C.A.V.

Sd. JAMES J. HAYDEN,

9. 1. 36.

17. 2. 36.

30

Appeal No. 14 of 1935.

Trustees of the Will of Sir C. P. Chater,

Appellants

v.

Estate Duty Commissioner,

Respondent

Sir William Shenton for Appellants.

Potter, K.C., instructed by Prentis Asst. C. Soltr. for respondent.

Judgments delivered dismissing appeal with costs.

17. 2. 36.

Sd. JAMES J. HAYDEN.

No. 16. *Letter from Appellants Solicitor to The Registrar  
of the Supreme Court Hongkong.*

Hongkong, 6th February, 1936.

Sir,

re SIR C. P. CHATER, DECEASED.

ESTATE DUTY APPEAL.

MISC. PROC. NO. 31 OF 1935.

No. 16.  
Letter from  
the  
Appellants  
Solicitor  
to the  
Registrar  
of the  
Supreme  
Court  
Hongkong.  
6th Febru-  
ary 1936.

Since the hearing of this Appeal the Trustees of the Chater estate have found another case which they contend supports their argument and to which  
10 they desire to draw the attention of the Court.

They have approached the legal advisers for the Estate Duty Commissioner, namely, the Crown Solicitor and Mr. Eldon Potter, K.C., who have agreed that this letter, which has been approved by them in draft, shall be placed before the members of the Full Court, subject of course to their Lordships' approval.

The case in question is *re Booth*, (1916) 1 Ch. 349, 114 Law Times Reports, 498 and the contentions of the Trustees thereon are as follows :—

It appears that in that case the Testator by his Will and a Codicil thereto gave his estate to his Executors upon trust to pay an annuity of £150. It was admitted throughout the proceedings in that case by all parties, both the Plaintiff  
20 and the Defendant and by the Judge that the notional or actual fund which would produce this annuity was liable to payment of settlement estate duty; this of course would be correct only if the disposition effected by the testator amounted to a settlement. The Trustees maintain that it makes no difference whether the trust for the residuary fund is imposed by the actual words of the Will or by implication of law as they have argued in the present case.

On the other hand the legal advisers of the Estate Duty Commissioner contend as follows :—

This case is clearly one of a Settlement.

The effect of the testator's Will and Codicil (which must be read as one)  
30 was that the whole of the residuary estate was given to the executors upon trust for Elizabeth Booth for life, with a gift over after the death of E.B. to four persons and that there was grafted onto this disposition, *which effected a settlement of the whole of the residuary estate*, the requirements (a) by the codicil, that an annuity of £150 should be paid to Charlotte Pleace for life (commencing from the testator's death) and (b) by the will, that an annuity of £150 should be paid to Charlotte Pleace for life, if she should survive Elizabeth Booth.

In neither case could the annuity be dissociated from the settlement of the entire residuary estate, nor could either of the "notional or actual funds" which would produce the annuity be at any time regarded as taken out of the settlement

No. 16.  
Letter from  
the  
Appellants  
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of the whole of the residue. In the case of the conditional annuity (*i.e.*, that conditioned on survivorship) the “notional or actual fund” necessarily remained subject to the settlement because the tenant for life, Elizabeth Booth, was entitled to the income thereof during her life as income of a part of the settled residue; while in the case of the annuity to commence immediately on the testator’s death the “notional or actual fund” remained subject to the trusts of the settlement because the tenant for life was at once entitled to the income thereof (as income of a part of the entire settled residue) if the annuitant should predecease her.

The Court did not draw any distinction, for the purposes of Settlement Estate Duty, between the natures of the “notional or actual funds” for the immediate and the conditional annuities as parts of the entire settled residuary estate, and gave no indication whatsoever that it was otherwise than as parts of such entire settled residuary estate that either of the “notional or actual funds” would attract Settlement Estate Duty. 10

The position was that there was no specific property set aside by the direction of the testator for the purpose of meeting the annuities (whereby a settlement would per se have been created of such property), but the trustees were empowered *out of property already subjected to a settlement* to set aside a slice to meet the annuities and such slice had accordingly to bear its due proportion of the duty. 20

In the following words which appear in the judgment (p. 356) there appears to be a clear recognition of the fact that Settlement Estate Duty had been paid on the “notional or actual fund” not as a fund set aside to meet the annuity given by the will or codicil but as a fund forming a part of an entire settled residuary estate :—

“He asserts that no settlement estate duty has ever in fact been paid in “respect of the plaintiff’s reversionary annuity. I agree that it was not so paid “in name; but the plaintiff’s reversionary annuity was at the testator’s death “part of the residue, and settlement estate duty was, in my opinion, as truly “paid in respect of it under that description as was settlement estate duty paid 30 “on the plaintiff’s immediate annuity under the same description”.

We shall be much obliged therefore if you will be good enough to transmit this letter, of which we enclose three copies for your use, to their Lordships the Members of the Full Court in order that, subject to their approval, they may give this case consideration and include it in the record.

We have the honour to be,

Sir,

Your obedient servants,

Sd/ DEACONS,

The Registrar,

Supreme Court.

*No. 17. Judgment of the Chief Justice on the Appeal to the Full Court.*

No. 17.  
Judgment of  
the Chief  
Justice on  
the Appeal  
to the Full  
Court.  
17th Febru-  
ary 1936.

This is an appeal against the judgment of Sir Atholl MacGregor, C.J. dismissing an appeal by the present appellants, the Trustees of the Will of Sir Catchick Paul Chater, deceased, against a decision of the Estate Duty Commissioner, the present Respondent, requiring payment of estate duty on the cesser of an annuity bequeathed by the Will to the deceased's wife Lady Chater, now also deceased.

As in the Court below the only question involved is a short, though not a simple one, namely—whether or no the gift of the said annuity was “a settle-  
10 ment of property, or of an interest or estate in property, limited by way of succession” so as to enable the appellants to take advantage of the provisions of section 25 of the Estate Duty Ordinance, 1932. Counsel for the appellants has made two submissions in support of his contention that such a settlement was effected; firstly that in the Will itself can be found such a direction to appropriate part of the estate to answer the annuity as constituted a settlement, and that therefore, although no appropriation was in fact made by the trustees, equity will regard that as done which ought to have been; and secondly, that the gift of an annuity simpliciter charged upon the residue of the estate was  
20 just as much a settlement as if the annuity had been charged upon a definite portion of the estate.

As regards the first of these submissions, the material provisions of the Will are as follows :—

(5) “I bequeath the following annuities etc., etc.,

(a) To my wife during her life the sum of ten thousand pounds sterling.

(8) Subject to the payment of my funeral and testamentary expenses etc., and subject to making provision for any annuities bequeathed by this my Will or by any Codicil thereto my Trustees shall invest etc.

(13) I declare that my Trustees shall be at liberty if they so think fit to  
30 appropriate and set apart out of my residuary estate investments representing such a capital fund as shall at the time of appropriation be sufficient to produce the annual sums directed to be paid by Clause Five of this my Will with such a liberal margin for contingencies as in the opinion of my Trustees shall be sufficient And I declare that when such appropriation has been made the said annual sums shall be wholly charged on the investments so appropriated in exoneration of the rest of my estate but that the capital of such appropriated investments may be resorted to in case at any time the income thereof is insufficient to pay any such annual sum or sums And I further declare that on  
40 the cesser of any of such annual sums such part of the appropriated investments as shall not in the opinion of my Trustees be required for the payment of the other annual sum or sums for the time being payable under the trusts of this my Will shall revert to and form part of my residuary estate and that any surplus

No. 17.  
Judgment of  
the Chief  
Justice on  
the Appeal  
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Court.  
17th Febru-  
ary, 1936.  
(Continued)

income arising from the appropriated investments shall be applied as income of my residuary estate.”

The trustees never made the appropriation allowed by Clause (13). Had they done so it may be that a settlement as defined by s. 25 (2) of the Estate Duty Ordinance, 1932, would have been effected and no estate duty would have been leviable on the cesser of Lady Chater's annuity.

Mr. Macnamara however contends that the words in Clause (8) of the Will “subject to making provision for any annuities bequeathed by this my Will” are per se operative to require the Trustees to make an appropriation to answer Lady Chater's and the other annuities, and that the provisions of Clause (13) are mere machinery allowing postponement of appropriation in the discretion of the trustees. 10

He then proceeds to argue that despite the failure of the trustees to appropriate and set aside any part of the estate, equity will come to their rescue and that of the residuary legatees by deeming that to have been done which ought to have been done. He also relies on *Harbin v. Masterman*, (1896) 1 Ch. 351, as showing that a residuary legatee has the right to have part of the deceased's estate appropriated and set aside to answer an annuity given by the Will.

In support of his second submission, Mr. Macnamara contends that, even 20 if no appropriation was made or deemed in equity to have been made, yet the bequest of Lady Chater's annuity was a settlement as defined by s. 25 (2) of the Estate Duty Ordinance in that it gave her an “interest in property which stood for the time being limited to her by way of succession.” He does not contend that her interest extended to the whole of the residuary estate but merely to an undivided share thereof large enough to answer her annuity and therefore sufficiently ascertainable to become settled property.

He has drawn our attention to a number of authorities, all of which he cited in the Court below, and in particular to *A. G. v. Watson*, (1917) 2 K. B. 42, and argues that although those cases do not specifically establish that the gift of an annuity simpliciter is a settlement, yet they leave the point open, the remarks thereon of Sargant J. in *In re Waller* (1916) 1 Ch. 153 at p. 158 being merely obiter; and that the judgment of Lush J. in *A. G. v. Watson* decides that an annuity is not at any rate a legacy payable by instalments but an interest in the estate which passes on the annuitant's death to others, i.e. such an interest as is within the meaning of s. 25 (2) as of s. 5 (2) of the Ordinance. 30

With the first of these submissions I am not in agreement.

I can find no direction whatever in the words “subject to making provision for any annuities bequeathed by this my will” in Clause (8) of the Will requiring the trustees to set aside any part of the residuary estate to answer the annuities. The whole object of this clause is to provide for the distribution of the testator's residuary estate, and the words quoted are no more 40



than a recognition that this cannot be effected by the trustees without their first estimating what proportion of the estate will be sufficient to answer the annuities. Furthermore I find it impossible to read into Clause 13 of the Will anything resembling a declaration of the trustees' right to postpone appropriation. The words "my Trustees shall be at liberty, if they so think fit, to appropriate, etc." give the trustees absolute discretion to appropriate or not to appropriate, and the fact that they have exercised that discretion in a way that may now cause loss to the residuary estate cannot entitle them to call equity to their aid and ask this Court to say that what might have been done to the advantage of the estate should be deemed to have been done. Nor again does the case of *Harbin v. Masterman* (supra) help the appellants since that case decided no more than that in proper circumstances the Court will allow a remainderman's claim for the distribution of the residuary estate by requiring the trustees to set aside a sufficient portion of the estate to answer annuities given by the Will. It does not decide that any residuary legatee has the absolute right to come in at any time and claim such setting aside and distribution, and even if it did, I fail to see how it could help the appellants who are the trustees of the Will, and not the residuary legatees.

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Judgment of  
the Chief  
Justice on  
the Appeal  
to the Full  
Court.  
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ary, 1936.  
(Continued)

Nor am I in agreement with the second submission made for the appellants.

20 I agree with the judgment on this point of Sir Atholl MacGregor, C.J. in the Court below. Apart from the case of *A. G. v. Watson* (supra) the other judgments relied on, *A. G. v. Owen* (1899) 2 Q. B. 253; *In re Campbell*, (1902) 1 K.B. 113; *In re Waller* (1916) 1 Ch. 153; established no more than that where a testator's will directs the setting aside out of his estate of a fund to answer annuities, such a fund becomes settled property, and were most carefully worded to make clear that this principle should not necessarily be interpreted "to conclude the case of a simple gift of an annuity in general terms where there is no trust for payment of the annuity out of a particular fund" (per Stirling L.J. in *re Campbell* (supra)). It is true that the decision in *A. G. v. Watson* (supra) goes

30 a step further in holding that the gift of an annuity simpliciter does give the annuitant an interest in the testator's residuary estate, but this decision and that in the later case of *A. G. v. Cook* (1921) 3 K. B. 607, where an annual payment was charged on four fifths of the residuary estate, go no further than to say that the interest of the annuitant in such a case is such an interest as, though it does not actually pass to any other person on the annuitant's death, yet is deemed so to pass in accordance with the provisions of sec. 2 (1) of the Finance Act, 1894 (57 and 58 Vict. c. 30). That sub-section is the source of s.s.2 of s.5 of the Estate Duty Ordinance, 1932, and it seems clear therefore that Lady Chater had an interest, ceasing on the death, in her husband's

40 residuary estate which must be deemed to have passed on her death and to have therefore attracted estate duty to the extent to which a benefit accrued or arose by virtue of the cesser of such interest. Were that not so, the appellants need not have called the provisions of s.25 of the Ordinance to their aid.

I do not, however, think there is substance in Mr. Macnamara's argument that because the Will gave Lady Chater this interest in her husband's residuary estate it follows that her interest was itself in the nature of settled property.

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the Chief  
Justice on  
the Appeal  
to the Full  
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17th Febru-  
ary, 1936.  
(Continued)

Section 25 of the Estate Duty Ordinance, 1932, reads as follows :—

- (1) If estate duty has already been paid in respect of any settled property since the date of the settlement, upon the death of one of the parties to a marriage, no estate duty shall be payable on the death of the other party to the marriage unless such person was at the time of his or her death or had been at any time during the continuance of the settlement competent to dispose of such property.
- (2) For the purposes of this section, the term settlement means any deed, will, agreement for a settlement or other instrument, or any number of instruments, whether made before or after or partly before and partly after the commencement of this Ordinance, under or by virtue of which instrument or instruments any property, or any estate or interest in any property, stands for the time being limited to or in trust for any persons by way of succession, and the term settled property means the property comprised in a settlement. 10

In my view s.s. (2) must be read to mean that a Will or other instrument is a settlement only if it directs the appropriation of certain specific property, or an estate or interest in certain specific property, to, or in trust for, any person for life. Here the Will directed no such appropriation.

This view is supported by statements in Hanson's Death Duties (8th Edition) at p. 105 "an annuity simpliciter would not apparently be settled property," in Harman's Finance Act (4th Edition) at p. 79 "an annuity charged on corpus with power to set aside a fund to answer the annuity is not, it is submitted, settled property. The test seems to be whether the annuity is equivalent to a life interest, *i.e.* is to be paid only out of the income from a fund directed to be set aside for the purpose which goes over on the cesser of the annuity"; and also by the cases cited by Mr. Potter for the Respondent, *In re Earl of Carnarvon's Settled Estates*, (1927) 1 Ch. 139, and *re Lord Alington and the London County Councils Contract*, (1927) 2 Ch. 253, which decided that the existence of a rent charge or jointure, charged on an estate in an owner in fee, had not made the estate a settled estate. 20 30

Since the above judgment was written my attention has been drawn by the legal advisers of the appellants, with the consent of those of the respondent, to a further case—*Re Booth, Pleace v. Booth* (1916) 1 Ch. 349. In that case the testator had by his will settled his residuary estate upon his executors for A for life and then for other persons subject to the payment to B out of the income of an annuity commencing on A's death, and had by a codicil given also an immediate annuity to B payable out of the same income. It was agreed that B had to bear her proportionate share of the settlement estate duty paid in respect of the whole settled residue on the testator's death, and it was further held by the Court that she must also bear her proportionate share of the estate duty payable on the death of A, she being regarded as enjoying the income from an actual or notional part of the settled estate. In my view, however, this decision does not help the appellants since the reason for B's liability to pay a proportionate share 40

of the duty was not that her interest in the estate was in itself settled property or that her notional or actual slice of the estate was property settled upon herself, but that her slice being itself part and parcel of the settled residue has accordingly to bear its share of the duty.

For these reasons I am of opinion that this appeal fails and must be dismissed with costs.

Sd/ R. E. LINDSELL,  
Chief Justice,  
17.2.36.

No. 17.  
Judgment of  
the Chief  
Justice on  
the Appeal  
to the Full  
Court.  
17th Febru-  
ary, 1936.  
(Continued)

10 *No. 18. Judgment of Puisne Judge on the appeal to the Full Court.*

I concur. I have had the privilege of reading the Judgment of the President of the Court which has just been delivered and as I am in agreement with the views therein expressed including his views as to the reason for the decision in *Re Booth* (1916) 1 Ch. 349, to which our attention was drawn after the hearing of this Appeal, I shall not deal in detail with the cases referred to by Appellants' Counsel but confine myself to a consideration of the two grounds on which Mr. Macnamara submits this appeal should be allowed.

No. 18.  
Judgment of  
the Puisne  
Judge on the  
Appeal to  
the Full  
Court.  
17th Febru-  
ary 1936.

As regards the first ground I consider before the equitable maxim can be applied in the present case the will of the testator must contain a clear and imperative direction to set apart a fund to pay the annuity in question. This would appear to be the view taken by the learned Judges of the Court of Appeal in *Re Twopenny's Settlement* (1924) 1 Ch. 522 as Pollock M. R. in his Judgment said at p. 529;

“The words quoted above—‘imperatively and definitely’—must be found appropriate to describe the effect of the instrument”.

Warrington L.J. stated at pp. 532–533;

30 “The doctrine that in equity land may be converted into money and money into land at the will of a settlor depends upon the principle that a Court of equity will not permit the default of a trustee to perform a duty imposed upon him to affect the nature of the interests conferred upon the beneficiaries, and therefore treats as actually done that which ought to have been done. Accordingly, if money is directed to be invested in the purchase of land to be settled upon certain uses that money, though not actually so invested, will devolve according to the provisions of the settlement exactly as the land would have devolved had it been purchased therewith.

It is obvious that, having regard to the principle upon which the doctrine of conversion is founded, there must be a paramount obligation binding the trustees to invest in the purchase of land, and therefore if

No. 18.  
Judgment of  
the Puisne  
Judge on the  
Appeal to  
the Full  
Court.  
17th Febru-  
ary, 1936.  
(Continued)

such investment is optional only, so that the trustees may completely perform their duty by investing in some form of personal security, there would be no conversion, and the rights of the parties would depend on the actual nature of the property at the material time”.

Sargant L.J. said at p. 537;

“ But in order that an equitable conversion of money into land may be effected, it is necessary that the trust for conversion should be definite and imperative. It will not do, for instance, if the trust is permissive only, or if there is an alternative to invest either in real estate or in leaseholds”.

The Will in this case does not, to my mind, disclose any paramount obligation upon the trustees to set apart out of the residue a fund sufficient to pay the annuity of £10,000 to Lady Chater as Clause 13 clearly gives the trustees a discretion to do so or not “if they so think fit.” Accordingly I am of opinion that equity cannot be invoked in support of this appeal. 10

Now coming to the second submission of Appellants’ Counsel, I consider the annuity to Lady Chater as the gift of an annuity simpliciter, there being, as stated, no direction in the Will to set aside a fund out of which it was to be paid. The cases referred to by Mr. Macnamara do not support the view that the gift of an annuity simpliciter would constitute any portion of testator’s estate as settled, indeed in one of them (*Re Waller* (1916) 1 Ch. 153) Sargant J. at p. 158 expresses an opinion to the contrary. This, it is true, is merely obiter as the question did not arise directly for decision. Mr. Macnamara’s submission is that the annuity in question was an interest in property which interest stood “limited to or in trust” for Lady Chater for life and passed on her death to the residuary legatees the Armenian Holy Church of Nazareth. Lady Chater’s interest was not an interest in any specific part of the residue, she had merely an interest in the entire residue (admittedly unsettled) which interest was limited to ensuring the payment of her annuity of £10,000. I fail to see how such an interest can be regarded as a settled interest in property. The cases to which we have been referred do not support this view and both Hanson and Harman, to which Mr. Potter has referred, are against it. 20 30

Mr. Macnamara’s contention is that the gift of the annuity was the gift of a life interest. A life interest in what? His answer is that it was a life interest in an undivided share of the residuary estate easily ascertainable by an arithmetical calculation. But the amount of capital necessary to secure the payment of £10,000 a year would vary from time to time depending upon the productivity of the investments at any given period. I do not consider that an interest in such a fluctuating capital can be regarded as a settled interest in property limited to persons by way of succession within the meaning of s. 25 (2) of the Estate Duty Ordinance, 1932, and therefore agree that this appeal should be dismissed with costs. 40

Sd/ J. J. HAYDEN,

PUISNE JUDGE,

February 1936.

*No. 19. Motion for leave to appeal to His Majesty the King in Council.*

No. 19.  
Motion for  
leave to  
appeal  
to His  
Majesty the  
King in  
Council.  
25th Feb-  
ruary, 1936.

TAKE NOTICE that this Honourable Court will be moved on Thursday, the 5th day of March 1936 at 10 o'clock in the forenoon or so soon thereafter as Counsel can be heard by Mr. Leo D'Almada e Castro or other of Counsel as Counsel for and on behalf of the above named Appellants for an Order that the proceedings herein be continued between Harold John Armstrong (as the Trustee appointed in place and stead of Sir William Edward Leonard Shenton Knight upon his retirement from the trusteeship) jointly with Michael Howard Turner Trustees of the Estate of Sir Catchick Paul Chater Knight, c.m.g., deceased  
10 Appellants and the Respondent the Estate Duty Commissioner for the Colony of Hongkong in like manner as such proceedings might have been continued by the said Sir William Edward Leonard Shenton and Michael Howard Turner if the said Sir William Edward Leonard Shenton had not retired from the said trusteeship and for leave to appeal to His Majesty The King in Council from the Judgment of this Honourable Court delivered in these proceedings on the 17th day of February 1936 affirming the Judgment of His Honour The Chief Justice dated the 13th day of June 1935 the Appellants undertaking to comply with the provisions of the Rules and Instructions concerning Appeals to His Majesty The King in His Privy Council.

20 Dated at Hongkong this 25th day of February, 1936.

Sd/ DEACONS,

Solicitors for the Appellants.

To The Registrar of the Supreme Court and to the Respondent and to the Crown Solicitor his Solicitor.

*No. 20. Affidavit of Ralph Archibald Wadeson in Support of Motion.*

No. 20.  
Affidavit  
of Ralph  
Archibald  
Wadeson  
in support  
of Motion.  
25th  
February  
1936.

I, RALPH ARCHIBALD WADESON, of No. 1 Des Voeux Road Central, Victoria in the Colony of Hongkong, Solicitor, make oath and say as follows:—

1. I am a partner in the firm of Messrs. Deacons, the Solicitors for the  
30 abovenamed Appellants and as such have the conduct and management of these proceedings.

2. Since the commencement of these proceedings i.e., on or about the 31st day of December 1935, the abovenamed Sir William Edward Leonard Shenton, Kt., retired from the said trust and Harold John Armstrong of No. 1 Des Voeux Road Central, Hongkong, was appointed in his place jointly with the abovenamed Michael Howard Turner. The said Harold John Armstrong has informed

No. 20.  
Affidavit  
of Ralph  
Archibald  
Wadeson  
in support  
of Motion  
25th  
February,  
1936.  
(Continued)

me that he is desirous of and consents to being substituted as an Appellant in these proceedings in the place of the said Sir William Edward Leonard Shenton, Kt.

3. On the 20th day of May 1935 the Estate Duty Commissioner issued his Certificate deciding that Estate Duty was payable by the Estate of the said deceased upon the death of the Widow Lady Maria Christine Chater an Annuitant under the Will who died on the 11th day of March 1935.

4. Being aggrieved by the decision contained in the said Certificate the above-named Appellants filed in the Registry of this Honourable Court and delivered to the Estate Duty Commissioner a written Statement of the grounds upon which they desired to appeal against the said decision and on the 7th day of June 1935 the said Commissioner notified the abovenamed Appellants that he had determined to maintain in whole his aforesaid decision whereupon the above-named Appellants lodged with this Honourable Court a Petition giving the grounds upon which and asking that the said decision should be set aside. 10

5. The said Petition came on for hearing before His Honour The Chief Justice Sir Atholl MacGregor, Kt., on the 13th day of June 1935, at which the Appellants and the Respondent were represented.

6. At the conclusion of the hearing of the said Petition on the 13th day of June 1935, His Honour Sir Atholl MacGregor, Kt., dismissed the said Appeal with costs and on the 27th day of June 1935 delivered a written Judgment accordingly. 20

7. On the 10th day of December 1935 the above-named Appellants filed a Notice of Motion that this Honourable Court would be moved on the 8th day of January 1936 at 10 o'clock in the forenoon or so soon thereafter as Counsel could be heard by Counsel on behalf of the above-named Appellants that the whole of the decision of His Honour Sir Atholl MacGregor, Kt., should be reversed and that Judgment should be entered for the above-named Appellants and for an Order that the Respondent should refund the Estate Duty paid in pursuance of such Judgment together with interest at 8% per annum from the date of payment to the date of refunding and that the costs of the above-named Appellants of the proceedings in the first instance and of the Appeal should be paid by the Respondent. 30

8. The said Motion was heard before this Honourable Court consisting of Their Honours Mr. Justice R. E. Lindsell and Mr. Justice J. J. Hayden sitting together on the 8th and 9th days of January 1936.

9. On the 17th day of February 1936 the Appeal was unanimously dismissed with costs.

10. The above-named Appellants feel themselves aggrieved by the said Judgment of this Honourable Court delivered on the 17th day of February 1936 affirming the said Judgment of His Honour Sir Atholl MacGregor, Kt., delivered on the 13th day of June 1935 and desire to appeal therefrom. 40

11. The said Judgment is for and in respect of a sum or matter at issue above the amount and value of \$5,000.

SWORN at the Courts of Justice, Victoria, Hongkong, this 25th day of February 1936. )

Sd. R. A. WADESON,

No. 20.  
Affidavit  
of Ralph  
Archibald  
Wadson  
in support  
of Motion.  
25th  
February,  
1936.  
(Continued)

Before me,

Sd. L. R. ANDREWES,

A Commissioner for Oaths.

*No. 21. Order granting provisional leave to appeal to the Privy Council.*

No. 21.  
Order  
granting  
provisional  
leave to  
appeal to  
the Privy  
Council.  
9th March,  
1936.

10 UPON the Motion of above named Appellants Sir William Edward Leonard Shenton, Kt., and Michael Howard Turner filed on the 25th day of February 1936 praying for leave to appeal to His Majesty in His Privy Council from the judgment of the Full Court dated 17th day of February 1936 affirming the judgment of His Honour The Chief Justice dated the 13th day of June 1935 and upon reading the Notice of Motion and the Affidavit of Ralph Archibald Wadson filed herein on the 25th day of February 1936 and upon hearing what was alleged by Mr. Leo D'Almada e Castro of Counsel for the Appellants and by Mr. Ernest Hillas Williams of Counsel for the Respondent it doth appear to this Honourable Court that this is a proper case in which to allow such  
20 appeal THIS COURT DOTH ORDER that the name of Harold John Armstrong be substituted for the name of Sir William Edward Leonard Shenton, Kt., jointly with the above named Michael Howard Turner as an Appellant and that these proceedings continue in that name AND THIS COURT DOTH FURTHER ORDER that subject to the performance by the said Appellants of the orders of this Court by them to be performed hereinafter contained or hereinafter made and subject to the final Order of this Court to be made and upon the due performance thereof leave to appeal to His Majesty in His Privy Council against the said judgment of this Honourable Court approving the said judgment of His Honour the Chief Justice be granted  
30 to the said Appellants AND THIS COURT DOTH ORDER that the said Appellants do within three months from the date of the hearing of the said Motion for leave to appeal enter into good and sufficient security to the satisfaction of the Registrar of this Court in the sum \$5,000.00 by paying the same to the Registrar of the said Court for the due prosecution of the appeal and for the payment of all such costs as may become payable to the Respondent in the event of the Appellants not obtaining an Order granting them final leave to appeal or of the appeal being dismissed for non-prosecution or of His Majesty in Council ordering the Appellants to pay the Respondent the costs of the appeal AND THIS COURT DOTH FURTHER ORDER that the  
40 Appellants do within three months from the date of the hearing of the said

No. 21.  
Order  
granting  
provisional  
leave to  
appeal to  
the Privy  
Council  
9th March  
1936.  
(Continued)

Motion for leave to appeal take the necessary steps for the purpose of procuring the preparation of the record and the despatch thereof to England AND THIS COURT DOETH FURTHER ORDER that in the event of the said Appellants failing to enter into such security and to take the aforesaid steps within the said period of three months the said Motion for leave to appeal do stand dismissed with costs to be taxed and paid by the Appellants to the said Respondent and that either of the said parties hath liberty to apply.

Dated this 9th day of March, 1936.

(L.S.)

Sd/ L. R. ANDREWES,  
Registrar.

10

No. 22.  
Certificate  
of the  
Registrar as  
to due com-  
pliance by  
Appellants  
of forma-  
lities  
connected  
with the  
appeal to  
Privy  
Council.  
8th April  
1936.

*No. 22. Certificate of the Registrar as to due compliance by Appellants of formalities connected with the Appeal to the Privy Council.*

In pursuance of the Order made herein dated the 9th day of March 1936 I have been attended by the Solicitors for the Appellants and for the Respondent and I find as follows :

1. That the Appellants have given security pursuant to the said Order by paying into Court the sum of \$5,000 Hongkong currency for the prosecution of the appeal to His Majesty in his Privy Council of the said Appellants from the judgment of this Honourable Court pronounced by the Full Court on the 17th day of February 1936 affirming the judgment of His Honour the Chief Justice dated the 13th day of June 1935 and for payment of such costs as may be awarded by His Majesty His Heirs and Successors or by the Judicial Committee of the Privy Council of the said Respondent on such Appeal. 20

2. That the said Appellants have up to the date hereof taken all necessary appointments and done all acts for the purpose of settling the transcript record of such appeal and enabling me to certify that the said transcript record has been settled and that the provisions of the said Order on the part of the said Appellants have been complied with.

All of which I humbly certify to this Honourable Court.

Dated the 8th day of April, 1936.

30

(L.S.)

Sd/ E. P. H. LANG,  
Registrar.



No. 23. *Inter Partes Summons for final leave to appeal to the Privy Council.*

To the Respondent and to the Crown Solicitor, his Solicitor.

You are hereby summoned to appear before the Full Court in Chambers at the Supreme Court at 10 o'clock in the forenoon on Thursday the 16th day of April, 1936, on the hearing of an application on the part of the Appellants that an Order be made granting the Appellants final leave to appeal as prayed by the Motion filed in this Action of the 25th day of February 1936.

And you are to take notice that if you do not appear the Court may consider and deal with the application in a summary way.

10 Dated the 14th day of April 1936.

(L.S.)

Sd/ E. P. H. LANG,

Deputy Registrar.

This Summons was taken out by Deacons of Prince's Building, Des Voeux Road Central, Victoria, Hongkong, Solicitors for the Appellants.

No. 23.  
Inter Partes  
Summons for  
final leave  
to appeal  
to Privy  
Council.  
14th April  
1936.

No. 24. *Order granting final leave to appeal to the Privy Council.*

Before the Full Court in Chambers.

20 Upon the Motion of the Appellants, Harold John Armstrong and Michael Howard Turner filed herein on the 25th day of February 1936, for leave to appeal to His Majesty in his Privy Council from the judgment of this Honourable Court dated the 17th day of February 1936, affirming the judgment of His Honour the Chief Justice dated the 13th day of June 1935, coming on to be further heard this day before the Full Court in Chambers and upon reading the Order herein dated the 9th day of March 1936 made on the said Motion and the Certificate of the Registrar of this Court dated the eighth day of April 1936, of due compliance with the said Order and upon hearing the Solicitors for the Appellants THIS COURT DOTH ORDER that the final leave to appeal prayed for be granted.

Dated the 16th day of April 1936.

(L.S.)

Sd/ E. P. H. LANG,

Registrar.

No. 24.  
Order grant-  
ing final  
leave to  
appeal to  
Privy  
Council.  
16th April  
1936.

*No. 25. Certificate of Registrar as to Transcript of Record.*

No. 25.  
Certificate  
of Registrar  
as to tran-  
script of  
Record 16th  
April 1936.

I, ERNEST PHILIP HENRY LANG, of Victoria in the Colony of Hongkong, Registrar of the Supreme Court of Hongkong, do hereby certify that the printed sheets hereunto annexed comprising 55 pages contain a true copy of the Motion for leave to appeal by the above named Appellants to His Majesty in His Privy Council from the judgment of the Full Court dated the 17th day of February 1936, affirming the judgment of His Honour the Chief Justice dated the 13th day of June 1935 and also a true and correct copy of all the various proceedings, decrees and orders had or made in these proceedings so far as the same have relation to the matters of the said appeal together with a true copy of the reasons of His Honour Mr. Justice Lindsell, Chief Justice, and His Honour Mr. Justice Hayden for the said judgment, and an Index of all the papers and documents in the said proceedings, (except documents of merely formal character otherwise immaterial for the purpose of the said appeal) transmitted to the Registrar of the Privy Council pursuant to the Judicial Committee Rules 1925. 10

In faith and testimony whereof I have to this sheet affixed the seal of the said Supreme Court of Hongkong this 16th day of April 1936.

(L.S.)

Sd/ E. P. H. LANG,  
Registrar.

20

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*No. 26. Certificate of the Chief Justice verifying Registrar's Certificate.*

No. 26.  
Certificate  
of the Chief  
Justice  
verifying  
Registrar's  
Certificate.  
16th April  
1936.

I, ROGER EDWARD LINDSELL, acting Chief Justice of the Supreme Court of Hongkong, do hereby certify that Ernest Philip Henry Lang who has signed the Certificate above written is the Registrar of the Supreme Court and that he has the custody of the records of the said Supreme Court.

In faith and testimony whereof I have hereunto set my hand and caused the seal of the said Supreme Court to be affixed this 16th day of April 1936.

(L.S.)

Sd/ R. E. LINDSELL,  
Chief Justice.

## **PART II**

**OF THE RECORD OF PROCEEDINGS.**

*Probate of the Will and Codicils of Sir Catchick Paul Chater, deceased.*

IN THE SUPREME COURT OF HONGKONG

**PROBATE JURISDICTION**

Probate of  
The Will and  
Codicils of  
Sir Catchick  
Paul Chater,  
deceased.

Estate Duty  
&  
Interest  
\$405,660.45

Be it known that on the 9th day of September in the year One thousand nine hundred and twenty-six the last Will and Testament and two Codicils thereto (a copy whereof is hereunto annexed) of Sir CATCHICK PAUL CHATER, Knight, C.M.G., late of Victoria in the Colony of Hongkong, Financier, deceased who died on the 27th day of May 1926, at No. 1 Conduit Road Victoria aforesaid was proved and registered in the said Supreme Court of Hongkong, Probate Jurisdiction, and that administration of all and singular the personal estate and effects of the said deceased was granted by the aforesaid Court to WILLIAM EDWARD LEONARD SHENTON of Victoria aforesaid Solicitor, one of the Executors named in the said last Will he having been sworn well and faithfully to administer the same by paying the just debts of the deceased and the legacies contained in the Will and two Codicils thereto and to exhibit a true and perfect Inventory of all and singular the said estate and effects and to render a just and true account thereof whenever required by law so to do Power being reserved of making the like grant to MARIA CHRISTINE CHATER and REGINALD FREDERICK MATTINGLY the Executrix and

10 of Hongkong, Probate Jurisdiction, and that administration of all and singular the personal estate and effects of the said deceased was granted by the aforesaid Court to WILLIAM EDWARD LEONARD SHENTON of Victoria aforesaid Solicitor, one of the Executors named in the said last Will he having been sworn well and faithfully to administer the same by paying the just debts of the deceased and the legacies contained in the Will and two Codicils thereto and to exhibit a true and perfect Inventory of all and singular the said estate and effects and to render a just and true account thereof whenever required by law so to do Power being reserved of making the like grant to MARIA CHRISTINE CHATER and REGINALD FREDERICK MATTINGLY the Executrix and

20 Executor named in the said Will ARTHUR HOWARD BARLOW the fourth Executor in the said Will has renounced all his right and title to the Probate of the Will of the said deceased. A schedule of property in the Colony stated to be owned by the deceased is annexed hereto.

Sworn under  
\$5,003 500.

(Sd.) HUGH A. NISBET,  
*Registrar.*

**This** IS THE LAST WILL AND TESTAMENT of me CATCHICK PAUL CHATER of Victoria in the Colony of Hongkong Knight, C.M.G., a Member of the Executive Council of that Colony WHEREBY I revoke all former Wills and Testamentary Dispositions made by me and declare this to be my last Will.

1. I APPOINT my Wife MARIA CHRISTINE CHATER, WILLIAM EDWARD LEONARD SHENTON of Victoria aforesaid Solicitor REGINALD FREDERICK MATTINGLY of Victoria aforesaid Solicitor and ARTHUR HOWARD BARLOW of Victoria aforesaid the Chief Manager of the Hongkong and Shanghai Banking Corporation Executors and Trustees of this my Will (hereinafter called "my Trustees") And I declare that all the powers authorities and discretions hereby expressed to be vested in or

Extracted by DEACONS, Proctors, &c.

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given to the Trustees of this my Will by that or any other description shall be vested in and exercisable by the said Trustees hereby appointed and the survivors or survivor of them or other the Trustees or Trustee for the time being of this my Will and that a sole Trustee for the time being shall be competent to act for all purposes Provided always and it is my wish that the number of the Trustees of this my Will shall at all times be kept up to not less than two and that in the event of the number becoming at any time by death or otherwise reduced below that number the vacancy or vacancies shall as soon as circumstances will conveniently admit be filled up so as to restore at least that number but nevertheless any acts or proceedings of the Trustee for the time being in the interval before the filling up of such vacancy or vacancies shall not be invalidated by reason of the same not having been done And I express the desire that the senior active member of the firm of Messieurs Deacons Solicitors of this Colony shall always be one of my Trustees. 10

2. I DESIRE that I may be buried in Hongkong next to my brother Joseph Theophilus Chater and that should I die outside Hongkong I may be brought there for burial. I further desire that on her death my wife be buried beside me.

3. I BEQUEATH to my wife (free of all death duties) all my wearing apparel personal ornaments trinkets and jewels furniture plate plated goods linen glass china books manuscripts pictures prints statuary musical instruments porcelain and pottery and all other articles of personal use or ornament and all my wines liquors consumable stores and provisions and all my motor cars and garage furniture and all my plants and garden tools and implements and if she shall predecease me I declare that the same shall fall into my residuary estate Provided always that my collection of procelain and pottery and my collection of prints and pictures of Hongkong and the Far East (of which a book has recently been published by James Orange) shall not be deemed to be included in this bequest but shall form part of my residuary estate And I declare that my Trustees shall determine and be the sole Judges of the items which form part of the said collections. 20 30

4. I BEQUEATH the following pecuniary legacies all free of all death duties :—

- (a) To my wife the sum of Five thousand Pounds Sterling to be paid to her as soon as possible after my death and in priority to all other legacies hereby or by any Codicil hereto bequeathed.
- (b) To my sister Sophia Matilda Gunn the wife of William Gunn the sum of Two thousand five hundred Pounds Sterling to be paid to her as soon as possible after my death and in priority to all other legacies (save the legacy bequeathed by Clause (a) hereof) hereby or by any Codicil hereto bequeathed. 40
- (c) To the said William Edward Leonard Shenton the sum of Five thousand Dollars Hongkong Currency to the said Reginald Frederick Mattingly the sum of Five thousand Dollars Hongkong Currency

and to the said Arthur Howard Barlow the sum of Ten thousand Dollars Hongkong Currency each legacy to be upon the condition that the Donee proves my Will and accepts the Trusteeship thereof AND SHOULD one only of the said William Edward Leonard Shenton and Reginald Frederick Mattingly prove my Will and accept the Trusteeship thereof I bequeath to that one the sum of Ten thousand Dollars Hongkong Currency in lieu of the said bequest of Five thousand Dollars Hongkong Currency.

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10 (d) To the Hongkong Jockey Club or its successor the sum of Fifty thousand Dollars Hongkong Currency And I express the hope that it will out of the income thereof annually provide a Cup to be called "the Chater Cup."

5. I BEQUEATH the following annuities all clear of all death duties and income tax payable to the respective persons hereinafter enumerated commencing from my death by equal quarterly payments the first payment in each case to be made at the expiration of Three months from my death :—

- (a) To my wife during her life the annual sum of Ten thousand Pounds Sterling.
- 20 (b) To my said sister Sophia Matilda Gunn during her life the annual sum of Two thousand five hundred Pounds Sterling.
- (c) To Mrs. Annie Macpherson the wife of Reverend Macpherson during her life the annual sum of Five hundred Pounds Sterling.
- (d) To Helen Jordan the widow of my nephew the late Paul Jordan during her life the annual sum of Fifteen hundred Pounds Sterling.
- (e) To my grand-nephew Percy Manuk at present of Patna in the Empire of India Barrister at-law the sum of Rupees Two hundred thousand (Indian Currency).
- 30 (f) To each of my Trustees (other than my wife) who shall take an active share in the administration of the trusts of this my Will and any Codicil thereto the annual sum of Two thousand Dollars Hongkong Currency during such period as he shall take such active share in such administration as aforesaid Provided always that if and during such period as the said William Edward Leonard Shenton and Reginald Frederick Mattingly shall both take an active share in such administration as aforesaid each shall be paid the annual sum of One thousand Dollars Hongkong Currency and not the said annual sum of Two thousand Dollars Hongkong Currency.

40 6. I GIVE devise bequeath and appoint all my real estate of every tenure and all my personal estate and effects whatsoever and wheresoever not hereby

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or by any Codicil or Codicils hereto otherwise disposed of unto and to the use of my Trustees and I direct my Trustees subject as hereinafter stated to sell call in collect and convert into money all such parts of my residuary estate as shall not consist of investments of the nature hereinafter authorised at such time or times and in such manner as my Trustees shall think fit (but as to reversionary property not until it falls into possession unless it shall appear to my Trustees that an earlier sale would be beneficial).

7. MY TRUSTEES may postpone the sale calling in and conversion of any part of my real and personal estate for such period as they may in their absolute discretion think fit notwithstanding that it may be of a wasting speculative or reversionary nature and all the net rents profits and income arising from my estate real or personal until the sale calling in and conversion thereof in whatsoever condition or state of investment the same may be and whether consisting of investments of an authorised character or not (including leaseholds or other property of a terminable or wearing out nature) shall for all the purposes of this my Will and as between all persons interested hereunder and as well during the first year after my death as afterwards be applied as if the same were income arising from the proceeds of such sale calling in or conversion or the investments of such proceeds no part thereof being liable to be retained as capital and on the other hand on such sale calling in or conversion or on the falling in of any reversionary property no part of the proceeds of such sale calling in and conversion or of any such property shall be paid or applied as past income. 10 20

8. SUBJECT TO the payment of my funeral and testamentary expenses and debts and any legacies bequeathed by this my Will or by any Codicil hereto and the duty (if any) upon legacies and annuities bequeathed free of duty and subject to making provision for the payment of any annuities bequeathed by this my Will or by any Codicil hereto my Trustees shall invest in manner hereinafter authorised the proceeds of the said sale calling in and conversion and stand possessed of such investments and of such parts of my residuary estate as shall at my death consist of such investments as are hereinafter authorised (which said net proceeds and investments and any investments substituted therefor are herein collectively referred to as "my residuary estate") upon the following trusts viz. :— 30

- (a) Upon trust to set apart and invest separately the sum of Four hundred thousand Dollars Hongkong Currency free of all death duties and to pay the income thereof to my nephew Chater Paul Chater during his life and from and after his death to hold the capital and future income thereof in trust for all or such one or more exclusive of the others or other of the children of the said Chater Paul Chater at such age or time or respective ages or times if more than one in such shares and manner in all respects as the said Chater Paul Chater shall by any deed or deeds revocable or irrevocable or by Will appoint And in default of and subject to any such appointment my Trustees shall stand possessed of the said capital and the future income thereof in trust for all or any the 40

children or child of the said Chater Paul Chater who being a son or sons shall attain the age of Twenth-one years or being a daughter or daughters shall attain that age or marry (with the consent of her or their Guardian or Guardians) and if more than one in equal shares.

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10 (b) Upon trust to set apart and invest separately the sum of Three hundred thousand Dollars Hongkong Currency free of all death duties and to pay the income thereof to my nephew John Theophilus Bagram during his life and from and after his death to hold the capital and future income thereof in trust for all or such one or more exclusive of the others or other of the children of the said John Theophilus Bagram at such age or time or respective ages or times if more than one in such shares and manner in all respects as the said John Theophilus Bagram shall by any deed or deeds revocable or irrevocable or by Will appoint And in default of and subject to any such appointment my Trustees shall stand possessed of the said capital and the future income thereof in trust for all or any the children or child of the said John Theophilus Bagram who being a son or sons shall attain the age of Twenty-one years or being a daughter or daughters shall attain that age or marry (with the consent of her or their Guardian or Guardians) and if more than one in equal shares.

20 (c) Upon trust to set apart and invest separately the sum of Two hundred thousand Dollars Hongkong Currency free of all death duties and to pay the income thereof to my nephew Jack Chater during his life and from and after his death to hold the capital and future income thereof in trust for all or such one or more exclusive of the others or other of the children of the said Jack Chater at such age or time or respective ages or times if more than one in such shares and manner in all respects as the said Jack Chater shall by any deed or deeds revocable or irrevocable or by Will appoint And in default of and subject to any such appointment my Trustees shall stand possessed of the said capital and the future income thereof in trust for all or any the children or child of the said Jack Chater who being a son or sons shall attain the age of Twenty-one years or being a daughter or daughters shall attain that age or marry (with the consent of her or their Guardian or Guardians) and if more than one in equal shares.

30 PROVIDED ALWAYS that if my estate shall not be sufficient to provide in full for the bequests made by this my will and any Codicil hereto the funds created by Sub-clauses (a), (b) and (c) of this Clause shall abate proportionately.

40 (d) Upon trust to pay the balance of my residuary estate (including therein any of the funds created by Sub-clauses (a), (b) and (c) of this Clause the purposes whereof shall have wholly or partially failed) to the Armenian Holy Church of Nazareth Calcutta in the Empire of India.



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9. NO child who shall take any part of the property hereby settled under an appointment by virtue of the powers hereinbefore contained shall in default of appointment to the contrary be entitled to any share of the unappointed part thereof without bringing the share or shares appointed to him or her into hotch pot and accounting for the same accordingly.

10. I DECLARE that my Trustees may (after the determination or failure of every prior life or other interest or interests if any) apply the whole or any part at their discretion of the income of the expectant contingent presumptive or vested share or legacy of any person who shall be under the age of Twenty-one years and being a female a spinster under any of the trusts or dispositions contained in this my Will or any Codicil hereto for or towards his or her maintenance education or benefit and may either themselves so apply the same or may pay the same to the parent or Guardians or Guardian of such person for the purpose aforesaid without seeing to the application thereof AND SHALL during the minority of any such person being male and minority and spinsterhood of any such person being a female accumulate the surplus if any of such income at compound interest by investing the same and the resulting income thereof in any of the investments hereby authorised in augmentation and so as to follow the destination of the share or legacy from which the same shall have proceeded but with power to apply any such accumulations in any subsequent year for or towards the maintenance education or benefit of the child for the time being presumptively entitled as aforesaid in the same manner as such accumulations might have been applied had they been income arising from the said share or legacy in the then current year.

11. I AUTHORISE my Trustees after the determination or failure of every prior life or other interest or interests if any or previously thereto with the consent in writing of every person in existence for the time being entitled to any such prior interest or interests whether vested or contingent to raise any part or parts of the then expectant contingent presumptive or vested share portion or legacy of any person under any of the trusts or dispositions of this my Will or any Codicil hereto and to pay or apply the same for his or her advancement or benefit as my Trustees shall think fit.

12. I DECLARE that notwithstanding the trust for sale hereinbefore contained my Trustees may appropriate any real or personal property forming part of my residuary estate to or towards any legacy bequeathed by this my Will or any Codicil hereto or to or towards any of the funds created by Clause Eight (a), (b), (c) or (d) of this my Will or which may hereafter be created by any Codicil hereto and for the purposes aforesaid may fix the value of such real or personal property so appropriated or set apart as they shall think fit and every such appropriation setting apart and valuation shall be binding upon all persons interested under this my Will Provided always that as regards any of the said funds the capital of which has not become distributable among the beneficiaries my Trustees may continue after such appropriation to exercise the power of sale investment and varying investments and other powers hereby or by law given to them.

13. I DECLARE that my Trustees shall be at liberty if they so think fit to appropriate and set apart out of my residuary estate investments representing such a capital fund as shall at the time of appropriation be sufficient to produce the annual sums directed to be paid by Clause Five of this my Will with such a liberal margin for contingencies as in the opinion of my Trustees shall be sufficient And I declare that when such appropriation has been made the said annual sums shall be wholly charged on the investments so appropriated in exoneration of the rest of my estate but that the capital of such appropriated investments may be resorted to in case at any time the income thereof is insufficient to pay any such annual sum or sums And I further declare that on the cesser of any of such annual sums such part of the appropriated investments as shall not in the opinion of my Trustees be required for the payment of the other annual sum or sums for the time being payable under the trusts of this my Will shall revert to and form part of my residuary estate and that any surplus income arising from the appropriated investments shall be applied as income of my residuary estate.

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14. ANY annuity hereby or by any Codicil hereto given to a female shall be for her separate use without power of anticipation during any coverture.

15. IF any of the said annuitants shall commit permit or suffer any act default or process whereby but for this present provision the said annuity hereinbefore bequeathed to such annuitant or any part thereof would become vested in or payable to any other person or persons then such annuity shall immediately thereupon absolutely cease and determine as if such annuitant were dead.

16. NOTWITHSTANDING any rule of law or equity to the contrary my funeral and testamentary expenses and debts inclusive of the interest on such debts which may have accrued due from me at the date of my death shall be paid out of the corpus or capital of my estate to the exclusion of any rents profits or income accruing from or in respect of my estate from and after my death and no part of the rents profits or income of my estate accruing from and after my death shall be applied in payment of my funeral or testamentary expenses or debts or the interest thereof except any interest accruing due from my estate from and after my death nevertheless I empower my Trustees in case it should be deemed proper or expedient so to do whether for convenience in making out the accounts of my estate or otherwise to modify the rule lastly hereinbefore laid down by me to any extent and in any manner they may think fit.

17. MY TRUSTEES shall have the following powers without any restriction and without responsibility for loss :—

(a) To let or agree to let for such rent and period and upon such terms and conditions as they may think fit or cultivate any real or leasehold property forming part of my residuary estate and to accept surrenders of leases or tenancies and generally manage the property according to their absolute discretion.

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- (b) To apply any part of my residuary estate or to raise money by the sale or mortgage of my residuary estate or any part thereof and to apply the same in the payment of my funeral and testamentary expenses and debts and legacies or in the protection improvement development or enhancement of the value of my residuary estate or any part thereof or for any of the purposes of this my Will Provided always that no Mortgagee advancing money on a Mortgage purporting to be made under this present power shall be concerned to see that such money is wanted or that no more than is wanted is raised And I declare that if my Trustees shall raise more moneys by any such Mortgage than may be required for the purposes aforesaid they shall hold the surplus upon the same trusts as if the same had arisen from a sale of part of my residuary real and personal estate. 10
- (c) To dispose of any part of my residuary estate for shares paid up or partly paid up or otherwise.
- (d) To refrain from taking proceedings to collect any debt due to me and to defer the calling in of any debts.
- (e) To exchange or surrender any part of my residuary estate on such terms as they think fit.
- (f) If after my death any call shall be made upon any shares for the time being forming part of my residuary estate shares or any new issue bonus or preferential right to take or subscribe for any new or other shares in any corporation shall be made given or offered to my Trustees in respect of any shares for the time being forming part of my residuary estate (which involves the making of a payment to the said corporation) to apply any part of my residuary estate in or towards the satisfaction of any such call or payment or to raise the monies required for satisfying such call or payment by mortgaging or charging any portion of my residuary estate including such new issue bonus or preferential right. 20 30

18. I DECLARE that if any difference of opinion exists between my Trustees in relation to the doing or forbearing to do anything or otherwise howsoever in the execution of the trusts of this my Will or any Codicil hereto the opinion of the majority of such Trustees shall prevail notwithstanding that any one or more of my Trustees may be personally interested or concerned in the matter in dispute.

19. MY TRUSTEES may exercise or concur in exercising all powers and discretions hereby or by law given to them notwithstanding that they or any of them may have a direct or other personal interest in the mode or result of exercising any such power or discretion but any of my Trustees shall nevertheless be at liberty to abstain from acting except as a merely formal party in any matter in which he may be so personally interested and to allow his Co-trustees or Co-trustee to act alone in the exercise of the powers and discretions aforesaid in relation to such matter. 40

20. ALL monies liable to be invested by my Trustees may be invested in all or any of the investments following that is to say in or upon any of the Public Stocks or Funds or Government Securities of the United Kingdom or India or of any British Colony or Dependency of the United Kingdom or any Foreign Government or in the purchase or upon Mortgage of any freehold leasehold or chattel real securities in the United Kingdom or in any Colony or Dependency of the United Kingdom or in any Foreign Country or in or upon the stocks or funds or securities of any corporation municipal local or otherwise in the United Kingdom or in any Colony or Dependency, of the United Kingdom or in any Foreign Country or in or upon the debentures debenture stock bonds mortgages preference shares preference stock ordinary stock of any Railway Tramway Canal Dock Harbour Gas Water Electric Lighting or any other company incorporated in or carrying on business in the United Kingdom or in any British Colony or Dependency or in any Foreign Country with liberty for my Trustees at their absolute discretion to vary and transpose all or any such investments from time to time.

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21. IN every case in which any legacy or share of my residuary estate is by this my Will or any Codicil thereto bequeathed to any Club Church School or other Association or body such legacy or share may be paid by my Trustees at their option and in their absolute discretion to the Committee of Management Church Body Finance Committee Treasurer or other Appropriate Officer of such Club Church School or other Association or Body whose receipt shall be a complete discharge for the same and exonerate my Trustees from all further concern or responsibility in relation thereto.

22. MY wife shall be entitled to live rent free in my residence at Victoria aforesaid known as "Marble Hall" if she desires to do so and in such event the said residence and the furniture fixtures and household effects in about or belonging to the same other than my collection of China referred to in Clause Twenty-five hereof shall not be disposed of by my Trustees until my wife shall cease to live in such residence And I further direct that if my wife shall elect to reside in such residence she shall do so upon the condition that she shall pay the Crown rent rates taxes and outgoings for the time being payable in respect of the said residence and keep the same properly insured against fire and in good repair and duly observe and perform all the Lessee's covenants and conditions contained in the Crown Lease under which the said residence is held and shall also keep the said furniture and other effects insured and in a proper state of preservation.

23. MY TRUSTEES may in their absolute and uncontrolled discretion instead of acting personally employ and pay a Solicitor or any other person to transact any business or do any act of whatever nature required to be done in connection with the administration of the trusts of my Will or anything arising thereunder including the receipt and payment of money and any Executor or Trustee of my Will who may be a Solicitor or other person engaged in any profession or business may be so employed or act and shall be entitled to charge

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and be paid all usual professional charges for any business done by him or his firm in the ordinary course of his profession in relation to my estate or the trusts of my Will in the same manner as if he were not an Executor or Trustee of my Will.

24. THE China and Curios in my wife's sitting room in my said house are her own property and do not belong to me.

25. I RECOMMEND my Executors and Trustees not to dispose of my collection of porcelain and pottery without fully satisfying themselves that they are not selling it beneath its real value for I believe it to be very valuable and overtures have been made to me for the purchase of it at a very large sum. 10

26. I DECLARE that the place of my domicile is the Colony of Hongkong where it is my present intention to reside permanently.

IN WITNESS whereof I have to this sheet and the seven preceding sheets of paper containing this my Will set my hand this Seventeenth day of April One thousand nine hundred and twenty-five.

SIGNED and ACKNOWLEDGED by  
the Testator as and for his last Will and  
Testament in the presence of us both being  
present at the same time who at his request  
in his presence and in the presence of each  
other have hereunto subscribed our names as  
witnesses :—

(Sd.) C. P. CHATER.

20

(Sd.) H. J. ARMSTRONG,

*Solicitor,*

Hongkong.

(Sd.) C. A. P. XAVIER,

*Cashier to Messrs. Deacons,*

*Solicitors,*

Hongkong.

I, SIR CATCHICK PAUL CHATER, of Victoria in the Colony of Hongkong Knight, c.m.g., a member of the Executive Council of that Colony declare this to be a First Codicil to my Will which bears date the Seventeenth day of April One thousand nine hundred and twenty-five (hereinafter referred to as "my said Will").

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1. WHEREAS by Clause Four of my said Will I have (*inter alia*) bequeathed to my Wife the sum of Five thousand Pounds Sterling as therein set out AND WHEREAS I am now desirous of increasing the said sum from Five thousand Pounds Sterling to Ten thousand Pounds Sterling NOW THERE-  
10 FORE I bequeath to my Wife the sum of Ten thousand Pounds Sterling (free of all death duties) to be paid to her as soon as possible after my death and in priority to all other legacies by my said Will bequeathed.

2. I BEQUEATH to Dr. John Cecil McGown who has been attending me during my present illness the sum of Five thousand Pounds Sterling to be paid to him free of all death duties.

3. I DIRECT my Trustees to pay double the fees that would in the ordinary course be paid to the nurses and doctors who have attended me during this present illness it being left to my Trustees' entire discretion to decide what fees shall be paid.

20 4. WHEREAS by Clause Twenty-two of my said Will I have declared that my Wife shall be entitled to live rent free in my residence at Victoria aforesaid known as "Marble Hall" if she desires to do so and in such event the said residence and the furniture fixtures and household effects in about or belonging to the same other than my collection of china referred to in Clause Twenty-five of my said Will shall not be disposed of by Trustees until my Wife shall cease to live in such residence NOW I HEREBY DECLARE that upon my Wife ceasing to reside at "Marble Hall" aforesaid or dying THEN AND  
30 IN THAT EVENT I GIVE DEVISE AND BEQUEATH the said "Marble Hall" and the furniture fixtures and household effects (but not including the china and curios referred to in Clause Twenty-four of my said Will) together with all my racing cups and the whole of my collection of porcelain and pottery in the said "Marble Hall" (but not including the China and Curios referred to in Clause Twenty-four of my said Will) to the Government of Hongkong absolutely.

40 5. WHEREAS by the Memorandum of Association of the Hongkong Land Investment and Agency Company Limited a Company registered according to the Laws of Hongkong IT IS PROVIDED that on my death the senior representative in the Colony of Hongkong for the time being of any firm or corporation (so long as such firm or corporation carry on business and have an office in the said Colony) nominated and appointed by writing under my hand and during my life or by my Will or Codicil shall together with the senior representative therein referred to of Messieurs Jardine Matheson & Co., Limited be Permanent and Managing Director of the Hongkong Land Investment and Agency Company Limited NOW THEREFORE I HEREBY NOMINATE

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AND APPOINT the senior representative in the Colony of Hongkong for the time being of Messieurs E. D. Sassoon and Company Limited to be such Permanent and Managing Director provided but provided only Messieurs E. D. Sassoon and Company Limited or their said senior representatives in Hongkong shall before accepting such Permanent or Managing Directorship pay to my estate the sum of Eight hundred thousand Dollars my hope being that Sir Victor Sassoon Baronet will as far as possible fulfil such Permanent and Managing Directorship and should Messieurs E. D. Sassoon and Company Limited or their said senior representative not pay to my estate the aforesaid sum of Eight hundred thousand Dollars I (if I legally can do so) NOMINATE AND APPOINT Sir Robert Ho Tung also of Victoria aforesaid to be such Permanent and Managing Director as aforesaid of the said Company Provided Sir Robert Ho Tung shall before accepting such Permanent or Managing Directorship pay to my estate the aforesaid sum of Eight hundred thousand Dollars AND should neither the said Messieurs E. D. Sassoon and Company Limited or their said senior representatives in Hongkong or Sir Robert Ho Tung be prepared to pay to my estate the aforesaid sum of Eight hundred thousand Dollars then and in that event I (if I legally can do so) NOMINATE AND APPOINT my nephew JOHN THEOPHILUS BAGRAM to be such Permanent and Managing Director but all benefits of whatsoever nature derivable therefrom shall from time to time be paid into my residuary estate and form part thereof.

IN WITNESS whereof I have hereunto set my hand this Twenty-fifth day of May One thousand nine hundred and twenty-six.

SIGNED by the said Honourable Sir Catchick Paul Chater (by making his mark he being incapable through illness of writing his name after the nature of this Codicil had been fully explained to him and he appeared perfectly to understand the same) as a Codicil to his Will which bears date the Seventeenth day of April One thousand nine hundred and twenty-five in the presence of us both being present at the same time who at his request in his presence and in the presence of each other have hereunto subscribed our names as witnesses :—

THE HON. SIR CATCHICK  
PAUL CHATER.

His mark.

30

Sd. H. J. ARMSTRONG,  
*Solicitor,*  
Hongkong.

Sd. C. A. P. XAVIER,  
*Cashier to Messrs. Deacons,*  
*Solicitors,*  
Hongkong.

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This is a Second Codicil to the last Will and Testament of me THE HONOURABLE SIR CATCHICK PAUL CHATER, C.M.G., which Will bears date the Seventeenth day of April 1925 (hereinafter referred to as my said Will).

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Paul Chater,  
deceased.  
(Continued)

1. I bequeath to my wife all the blackwood furniture in "Marble Hall."
2. I bequeath to my clerk E. Sadick the sum of Fifty thousand Dollars free of all death duties.
3. I bequeath to Dr. Fred. Kew the sum of Twenty-five thousand Dollars free of all death duties.
- 10 4. I bequeath to my office boy One hundred Dollars free of all death duties.
5. Whereas by Clause 8 (b) of my said Will I bequeathed Three hundred thousand Dollars Upon trust for my nephew John Theophilus Bagram and his children And whereas it is my desire to increase such sum of Three hundred thousand Dollars to Seven hundred thousand Dollars. Now therefore I direct my Trustees to hold the sum of Seven hundred thousand Dollars Upon trust for my said nephew John Theophilus Bagram and his children as set out in the said Clause 8 (b) of my said Will.

IN WITNESS whereof I have hereunto set my hand this 25th day of  
20 May 1926.

SIGNED by the said Honourable Sir Catchick Paul Chater (by making his mark he being incapable through illness of writing his name after the nature of this Codicil had been fully explained to him and he appeared perfectly to understand the same) as a Second Codicil to his Will which bears date the 17th day of April 1925 in the presence of us both being present at the same time who at his request in his  
30 presence and in the presence of each other have hereunto subscribed our names as witnesses :—

THE HON. SIR CATCHICK

PAUL CHATER.

His mark.

Sd. H. J. ARMSTRONG,  
*Solicitor,*  
Hongkong.

Sd. C. A. P. XAVIER,  
*Cashier to Messrs. Deacons,*  
*Solicitors, Hongkong.*