Judgment

5 1956

In the Privy Council.

No. 8 of 1955.

ON APPEAL FROM THE COURT OF APPEAL OF NEW ZEALAND

BETWEEN

THE COMMISSIONER OF STAMP DUTIES ... ... *Appellant*

AND

THE NEW ZEALAND INSURANCE COMPANY LIMITED ... ... *Respondent.*

RECORD OF PROCEEDINGS

INDEX OF REFERENCE.

LIST OF DOCUMENTS TRANSMITTED TO THE PRIVY COUNCIL AND NOT PRINTED.

Description of Document	Date
Certificate of Registrar of Court of Appeal of New Zealand as to accuracy of Record	3rd February 1955

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No. 8 of 1955.

ON APPEAL FROM THE COURT OF APPEAL OF NEW ZEALAND

BETWEEN

THE COMMISSIONER OF STAMP DUTIES ... ... *Appellant*

AND

THE NEW ZEALAND INSURANCE COMPANY LIMITED ... ... *Respondent.*

RECORD OF PROCEEDINGS

No. 1.

Case Stated and Exhibit " A " thereto.

In the Supreme Court.

No. 1. Case Stated, 23rd May 1952, and Exhibit " A " thereto.

IN THE SUPREME COURT OF NEW ZEALAND.
CANTERBURY DISTRICT.
TIMARU REGISTRY.

Between

THE NEW ZEALAND INSURANCE COMPANY LIMITED, an incorporated company having its registered office at Queen Street, Auckland, as Administrator of the Estate of Francis Joseph Rolleston late of Timaru Solicitor deceased ... ... *Appellant*

and

THE COMMISSIONER OF STAMP DUTIES ... ... *Respondent.*

PURSUANT to the provisions of Section 62 of the Death Duties Act, 1921 (hereinafter referred to as " the said Act ").

1.—Francis Joseph Rolleston late of Timaru Solicitor deceased (hereinafter referred to as " the deceased ") died at Timaru on the 8th day of September, 1946, and Probate of his last Will was granted by this Honourable Court at Timaru on the 12th day of November, 1946, to the Appellant.

In the Supreme Court.

No. 1. Case Stated, 23rd May 1952, and Exhibit "A" thereto—*continued.*

2.—By a Deed dated the 16th day of April, 1941, and made between Rosamond Mary Teschemaker, Lancelot William Rolleston, John Christopher Rolleston and the deceased of the first part and their sister Helen Mary Rolleston of the second part the said parties of the first part jointly and severally agreed to remit to the said Helen Mary Rolleston in London or in such other place as she shall from time to time direct during her lifetime the sum of £31 5s. 0d. in New Zealand currency on the first day of each and every calendar month, the first of such payments having been made on the 1st day of July, 1940, and in consideration therefor the said Helen Mary Rolleston assigned to the said parties of the first part absolutely in equal shares as tenants in common a legacy of £2,000 given to her under the will of her late mother Elizabeth Mary Rolleston and all her one-seventh share and interest under the said Will in the residuary estate of the said Elizabeth Mary Rolleston. A true copy of the said Deed is annexed hereto and marked " A."

3.—It is common ground between the parties hereto that the disposition made by the said Helen Mary Rolleston under the said Deed was made for fully adequate consideration in money or money's worth and therefore did not attract gift duty.

4.—As at the date of death of the deceased the proportion of the said monthly payments of £31 5s. 0d. accrued due to the said Helen Mary Rolleston was £7 5s. 8d., of which the deceased was liable for a one-fourth share amounting to £1 16s. 5d.

5.—In the statement furnished to the Respondent by the Appellant pursuant to Section 33 of the said Act and the Regulations made thereunder the Appellant claimed that the debts owing by the deceased at his death for which it claimed an allowance under Section 9 of the said Act include in addition to the said sum of £1 16s. 5d. the sum of £1,052 9s. 0d. as representing the deceased's proportion of what it claims to be the amount owing at deceased's death in respect of the said monthly sum of £31 5s. 0d. payable to the said Helen Mary Rolleston during her lifetime.

6.—In so far as the property the deceased acquired under the said Deed was property of the deceased situated in New Zealand at his death and to which any person became entitled under the Will of the deceased that property was pursuant to Section 5 (1) (a) of the said Act included in computing the final balance of the deceased's estate.

7.—In computing the final balance of the deceased's estate the Respondent :—

(a) pursuant to Section 9 (1) of the said Act made allowance for the said sum of £1 16s. 5d. ;

(b) pursuant to Section 9 (2) (d) of the said Act made no allowance for the said sum of £1,052 9s. 0d., but

(c) pursuant to Section 9 (3) of the said Act made allowance for the sum of £281 5s. 0d., which represents the deceased's share of the said monthly payments of £31 5s. 0d. which became actually payable within three years after the date of death of the deceased ; and the Respondent assessed the estate duty accordingly.

8.—The Appellant objected to the said assessment of estate duty in so far as no allowance was made for the said sum of £1,052 9s. 0d. other than the allowance stated in paragraph 7 (c) hereof and required the Respondent to state this case.

9.—If it is material the Respondent is of opinion that the liability of the deceased under the said Deed as from his death is incapable of estimation.

10.—The Appellant contends that the said sum of £1,052 9s. 0d. is the allowance that should be made under Section 9 (1) of the said Act for the debt owing by the deceased at his death to the said Helen Mary Rolleston under the said Deed and that such debt is not a contingent debt or other debt the amount of which is incapable of estimation.

11.—The Respondent contends

(1) That the said sum of £1,052 9s. 0d. does not constitute a debt owing by the deceased at his death.

(2) That an allowance in respect of the liability of the deceased under the said Deed as from his death is prohibited by Section 9 (2) (d) of the said Act except to the extent to which an allowance is authorized by Section 9 (3) of the said Act.

(3) That in respect of the liability of the deceased under the said Deed as from his death the Appellant is not entitled to any allowance in excess of the £281 5s. 0d. allowed by the Respondent under Section 9 (3) of the said Act.

12.—The question for the determination of this Honourable Court is whether in computing the final balance of the estate of the deceased the Appellant is entitled to an allowance in excess of the said sum of £281 5s. 0d. in respect of the liability of the deceased under the said Deed allowed pursuant to Section 9 (3) of the said Act, and if so what is the allowance to which the Appellant is entitled.

Dated at Wellington this 23rd day of May, 1952.

F. R. MACKEN,
Deputy Commissioner of Stamp Duties.

In the Supreme Court.

No. 1. Case Stated, 23rd May 1952, and Exhibit "A" thereto—*continued.*

Stamp Duties Dept.
21 Jl. 41
Canterbury
£13.9.6

THIS DEED made the sixteenth day of April One thousand nine hundred and forty-one Between ROSAMOND MARY TESCHEMAKER of Christchurch in the Dominion of New Zealand, Widow, LANCELOT WILLIAM ROLLESTON of London in England, Retired Medical Superintendent, FRANCIS JOSEPH ROLLESTON of Timaru in New Zealand, Solicitor, JOHN CHRISTOPHER ROLLESTON of Takapau, Hawkes Bay in the Dominion of New Zealand but now residing in England (hereinafter called "the beneficiaries") of the one part and HELEN MARY ROLLESTON of London in England, Spinster of the other part: WHEREAS

1. ELIZABETH MARY ROLLESTON late of Christchurch, Widow, during her lifetime had for more than twenty years remitted every calendar month to the said Helen Mary Rolleston in London the necessary funds to provide for the said Helen Mary Rolleston a sum of TWENTY FIVE POUNDS (£25) in English currency such remittance being for the maintenance and support of the said Helen Mary Rolleston and the amount in New Zealand currency remitted to England for that purpose immediately prior to the death of the said Elizabeth Mary Rolleston being Thirty-one pounds five shillings every calendar month.

2. THE said Elizabeth Mary Rolleston died at Christchurch in New Zealand on the Fourth day of June One thousand nine hundred and forty having first made her Will and testament dated the First day of December One thousand nine hundred and thirty-five which Will was duly proved in the Supreme Court at Christchurch on the First day of July One thousand nine hundred and forty and by her said Will the said Elizabeth Mary Rolleston bequeathed to the said Helen Mary Rolleston a pecuniary legacy of Two thousand pounds together with an equal one seventh share in the residue of her estate.

3. THE beneficiaries are satisfied:

(a) That it was the intention of the said Elizabeth Mary Rolleston that the provision made in her Will should be sufficient to maintain the said Helen Mary Rolleston in the same standard of living as she had enjoyed during the lifetime of the said Elizabeth Mary Rolleston but owing to various causes operating since the date of the said Will such as the reduction in the rate of interest, increase in Death Duties and taxes, and other causes the estate of the said Elizabeth Mary Rolleston and consequently the share to which the said Helen Mary Rolleston is entitled therein is of less value than at the date of the Will and owing to the uncertainty of present conditions may be further reduced in value.

(b) That such legacy and share will therefore not be sufficient for the maintenance of the said Helen Mary Rolleston in the same standard of living as she has hitherto enjoyed and in order to maintain that standard and to provide adequate maintenance for the said Helen Mary Rolleston the beneficiaries have agreed to continue the remittance to the said Helen Mary Rolleston of the said sum of Thirty-one pounds five shillings in New Zealand currency every calendar month on the terms hereinafter appearing.

NOW THIS DEED WITNESSETH that in pursuance of the premises and with a view of settling any claim that might legally be made by the said Helen Mary Rolleston for an increased allowance out of the said estate IT IS HEREBY AGREED AND DECLARED by and between the parties hereto as follows :—

1. SUBJECT to all necessary deductions for Income Tax and any other tax or charge imposed in the Dominion of New Zealand in respect of the income or share of the said Helen Mary Rolleston in the Estate of the said Elizabeth Mary Rolleston subject also to the necessary permission being obtained from the Reserve Bank of New Zealand or other authority controlling the remittance overseas of New Zealand funds the beneficiaries jointly and severally agree to remit to the said Helen Mary Rolleston in London or in such other place as she shall from time to time direct during her lifetime the sum of Thirtyone pounds five shillings in New Zealand currency on the first day of each and every calendar month, the first of such payments having been made on the First day of July one thousand nine hundred and forty. If at any time the necessary permission cannot be obtained to remit the said sum then the beneficiaries will hold the same to the credit of the said Helen Mary Rolleston in New Zealand to be dealt with as she may in writing direct.

2. FOR the consideration aforesaid the said Helen Mary Rolleston HEREBY ASSIGNS to the beneficiaries absolutely in equal shares as tenants in common the legacy of Two thousand pounds given to her under the Will of the said Elizabeth Mary Rolleston and all her share and interest under the said Will in the residue of the said Elizabeth Mary Rolleston and in the property thereby devised and bequeathed or the funds moneys or securities for the time being constituting or representing the same TOGETHER with all powers and remedies for recovering and obtaining payment of the said legacy and payment and transfer of the said share and interest and all the right title estate and interest of the said Helen Mary Rolleston therein and thereto.

3. AND for the consideration aforesaid the said Helen Mary Rolleston doth hereby irrevocably appoint the beneficiaries and each of them her attorney to ask demand sue to recover and receive from the person or persons liable to pay the same all sums of money now owing or payable or which shall be hereafter payable to her under the said Will of the said Elizabeth Mary Rolleston or in respect of the share or interest therein

In the Supreme Court.

No. 1. Case Stated, 23rd May 1952, and Exhibit "A" thereto—*continued.*

of the said Helen Mary Rolleston and on payment thereof or of any part thereof to give sign and execute receipts releases and other discharges for the same and on non-payment thereof to commence and carry on and prosecute any action or other proceeding whatsoever for recovery and compelling the payment thereof AND ALSO to compound settle and compromise all actions suits and proceedings which may have been commenced or may hereafter be commenced against any person or persons in respect of the said moneys payable or to become payable under the said Will or the share or interest therein of the said Helen Mary Rolleston in such manner in all respects as the beneficiaries shall think fit AND ALSO to appoint a substitute or substitutes to act for the beneficiaries for all or any of the purposes aforesaid and such substitute or substitutes at pleasure to remove and appoint another or others AND generally to do execute and perform any other act deed matter or thing whatsoever which ought to be done executed or performed in and about the premises as fully and effectually to all intents and purposes as the said Helen Mary Rolleston could do if personally present.

4. THE said Helen Mary Rolleston will whenever requested so to do by the beneficiaries do execute and perform all acts deeds matters and things necessary or which may be required to carry out the intention of the parties hereto.

5. THE agreements on the part of the beneficiaries contained in Clause 1 hereof shall be binding on their respective Personal Representatives.

IN WITNESS whereof the respective parties hereto have hereunto set their respective hands and seals the day and year first above written.

SIGNED SEALED AND DELIVERED by the said ROSAMOND MARY TESCHEMAKER in the presence of: } R. M. TESCHEMAKER Seal

M. R. GRIGG
Domestic Duties
Hororata N.Z.

SIGNED SEALED AND DELIVERED by the said LANCELOT WILLIAM ROLLESTON in the presence of } L. W. ROLLESTON Seal

H. E. FORD
193 Queens Gate
Kensington S.W.7
Hall Porter

In the Supreme Court.

No. 1. Case Stated, 23rd May 1952, and Exhibit "A" thereto—*continued.*

SIGNED SEALED AND DELIVERED by the said FRANCIS JOSEPH ROLLESTON in the presence of } F. J. ROLLESTON Seal

D. G. McNAB
Registered Accountant
Timaru New Zealand

SIGNED SEALED AND DELIVERED by the said JOHN CHRISTOPHER ROLLESTON in the presence of } J. C. ROLLESTON Seal

wife of Commander Kemball H.M.S. Royal Sovereign — (MRS.) JANET KEMBALL, The Mote House, Bearsted Kent

SIGNED SEALED AND DELIVERED by the said HELEN MARY ROLLESTON in the presence of } HELEN M. ROLLESTON Seal

GEOFFREY HEDLEY
Mulgrave Castle
Whitby
Independent.

No. 2.

Reasons for Judgment of Northcroft, J.

No. 2. Reasons for Judgment of Northcroft, J. 17th December 1952.

This is a case stated concerning the assessment of death duties made by the Respondent in the estate of the late F. J. Rolleston. The deceased with others entered into a deed whereby he and they bound themselves and their personal representatives to make monthly payments to a relative during her lifetime. The payments were to be made on the first day of each calendar month. The obligation to make the annuity payments was acknowledged by the Commissioner to have been made for fully adequate consideration in money or money's worth. At the death of the deceased

In the Supreme Court.

No. 2. Reasons for Judgment of Northcroft, J. 17th December 1952— *continued.*

the proportion of the monthly payment to be made by him was £1 16s. 5d. and the capitalised value of the portion of the annuity payable by him, calculated actuarially and having regard to the expectation of life of the annuitant, was £1,052 9s. 0d. This figure was allowed by the Respondent in arriving at the value of the shares of the estate receivable by the deceased's successors when assessing succession duty. In computing the final balance of the estate the Respondent pursuant to Section 9 (1) of the Death Duties Act, 1921, made allowance for the said sum of £1 16s. 5d. In reliance on Section 9 (2) (d) of the Act he declined to make an allowance for the said sum of £1,052 9s. 0d., but pursuant to Section 9 (3) of the Act did make an allowance of £281 5s. 0d. for the monthly sums which became payable within three years after the death of the deceased.

The question propounded by the case stated under Section 62 of the Act is " whether in computing the final balance of the estate of the deceased " the Appellant is entitled to an allowance in excess of the said sum of " £281 5s. 0d. in respect of the liability of the deceased under the said Deed " allowed pursuant to Section 9 (3) of the said Act, and if so what is the " allowance to which the Appellant is entitled."

Section 9 (1) of the Death Duties Act, 1921, provides that, in computing the final balance of the estate of a deceased person, an allowance shall, subject to the provisions of the Act, be made for all debts owing by him at the date of his death. Section 9 (2) then provides that no such allowance shall be made in respect of certain debts specified in different paragraphs, the only one of which is material to this case being paragraph (d). This provides that no allowance shall be made "for contingent debts or any other debts the amount of which is in the opinion of the Commissioner incapable of estimation." Section 9 (3) then provides that if any debt for which, by reason of the provisions of paragraph (d), an allowance has not been made, becomes, at any time within three years after the death of the deceased, actually payable or, in the opinion of the Commissioner, capable of estimation an allowance shall be made.

This same question in precisely similar circumstances came up for decision in the Australian Courts. In *Permanent Trustee Co. of New South Wales, Ltd.* v. *Commissioner of Stamp Duties* (1932 N.S.W. State Reports, 642) it was held that the Commissioner should make an allowance for the annuity indebtedness equal to the capitalised value of the annuity as at the date of the deceased's death according to actuarial calculation. This decision was based upon the view that the annuity debt although a contingent debt was not " incapable of estimation." This decision was taken to appeal before the High Court of Australia and there reversed (1933) 49 C.L.R., 293.

The Commissioner submits that this Court should follow the decision of the High Court of Australia. The Appellant does not, as I understand it, challenge that decision but claims that it is distinguishable upon the slightly different language of the New Zealand Statute. Counsel for the Appellant handed in the following convenient comparison of the relevant sections in the Australian and New Zealand Acts :—

NEW ZEALAND.	NEW SOUTH WALES.
Sec. 6 (1) Final Balance of Estate: The final balance of the estate of the deceased shall be computed as being the total value of his dutiable estate after making such allowances as are hereinafter authorised in respect of the debts of the deceased and in respect of other charges.	Sec. 105 (1): The final balance of the estate of a deceased person shall be computed as being the total value of his dutiable estate (except such part thereof as is the subject of a separate assessment under the next succeeding section) after making such allowances as are hereinafter authorised in respect of the debts of the deceased.
Sec. 9 (1): Allowances to be made for Debts. In computing the final balance of the estate of the deceased, allowance shall save so far as otherwise provided by this Act, be made for all debts owing by the deceased at his death.	Sec. 107 (1): In computing the final balance of the estate of a deceased person an allowance shall, subject to the provisions in this Act, be made for all debts actually due and owing by him at the time of his death.
Sec. 9 (2). No such allowance shall be made— (a) . . . . (b) . . . . (c) . . . . (d) For contingent debts or any other debts the amount of which is, in the opinion of the Commissioner, incapable of estimation.	Sec. 107 (2): (Identical)

My attention was also drawn to Section 2 of the New Zealand Act in which occurs among other definitions: "'Debt' includes any pecuniary liability, charge or encumbrance." It was urged upon me that Section 9 (1) of the New Zealand Act was mandatory and required an allowance to be made for all "debts owing by the deceased at his death," which by reference to the definition of "debts" meant "any pecuniary liability owing, etc." With this was contrasted Section 107 (1) of the Australian Act which provided for an allowance "for all debts actually due and owing by him at the time of his death." Had the matter rested there the distinction between the two Acts might have been significant. It is to be noted, however, that the decision in the Australian case in the High Court and in this one rests not upon the subsection authorising or directing the making of an allowance for debts but upon subsection (2) forbidding the making of an allowance "for "contingent debts or any other debts the amount of which is, in the opinion "of the Commissioner incapable of estimation." Under either Act a debt by way of annuity would be allowable were it not for the prohibition against contingent debts and other debts incapable of estimation.

In the Supreme Court.

No. 2. Reasons for Judgment of Northcroft, J. 17th December 1952— *continued.*

An annuity debt is a contingent debt in that it is dependent upon the contingency of the continued life of the annuitant. Inasmuch as the period of the annuitant's life is not capable of determination in advance an estimation of the quantum of the contingent indebtedness or " pecuniary liability " cannot be made. Even if this view be questioned the authoritative judgment of the High Court in the Australian case is still conclusive against the Appellant. In the High Court of Australia the members of the Court were Rich, Starke, Dixon, Evatt and McTiernan, JJ. The Court was unanimous and each of the Judges based his opinion upon the proper construction of Section 107 (2) (d) which is in precisely the same language as Section 9 (2) (d) of the New Zealand Act. Rich, J. said at page 298 :

" It was conceded by both parties that the liability to future " payments of the annuity was contingent upon the continuance " of the widow's life and therefore could be described as a " contingent debt. The Commissioner contended that the amount " was incapable of estimation, because the duration of the life " was unknown and an actuarial valuation of the annuity did not " show what the executors would have to pay to the widow but " what the annuity could be bought for. The executors on the " other hand contended that the expression ' amount of a " ' contingent debt capable of estimation ' pointed to the value " of the contingent liability and included the valuation of a life " annuity. The Full Court accepted the view of the executors. " I think the cardinal consideration upon which the judgments " turned was the construction of sub-Section (2) (d). The learned " Judges construed it as forbidding an allowance of contingent " debts which were in the opinion of the Commissioner incapable " of estimation. They considered the qualifications contained " in the relative clause showed that contingent debts the amount " of which was capable of estimation were allowable. I find " great difficulty in drawing this last inference from the positive " prohibition contained in sub-Section (2) (d). It may be that " the relative clause does qualify the expression 'contingent debts ' " as well as ' any other debts,' but I do not think that the whole " paragraph means to say that the deduction of contingent debts " should be disallowed only when they cannot be estimated. " The idea at the root of the paragraph seems to be that contingent " debts must be disallowed whenever the Commissioner thinks " they are incapable of estimation notwithstanding that the " contingency is of such a character that the debt falls within the " expression ' actually due and owing.' I cannot agree with the " view that Sub-Section 2 (d) implies any enlargement of the " meaning of the phrase ' debts actually due and owing ' in " Sub-Section 1 or shows any intention to authorize an allowance " outside that phrase. For these reasons I cannot agree with the " decision under appeal."

In their joint judgment Starke and Evatt, JJ. at page 300 said :

" The future liability to pay an annuity is not a debt actually " due and owing (*In re Robertson* (1897) 13 N.S.W.L.R. 239) " the annuitant could not sue for it, and the right to each payment " depends upon the continuance of his life. But Sub-Section 2 (d) " of Section 107, it is said, permits, as a necessary implication, " the allowance of contingent debts that are capable of estimation. " In terms, however, the Sub-Section does not so provide, and " the suggested construction would, quite contrary to the provisions " of Sub-Section 1, turn the prohibition of an allowance into the " permission of an allowance ; in other words, would not construe " the Act at all but would alter it, and indeed would warrant, " we would think, the conclusion that all debts not within the " prohibition of Sub-Section 2 may be treated as debts actually " due and owing for the purposes of Sub-Section 1. But to our " mind the obvious purpose of Sub-Section 2 (d) is not to enlarge " Sub-Section 1 but to reinforce it and illustrate its meaning. " We do not at all dissent from the view that Sub-Section 2 (d) " treats contingent debts as specifically of a character incapable of " estimation and then proceeds to cover generally other debts " which in the opinion of the Commissioner are incapable of " estimation. But we prefer to rest our opinion upon a more " general view of the meaning of the whole Section."

Dixon, J. at page 303 said :

" If Par. (d) means to express a conditional prohibition of the " allowance of contingent debts and to say that if the amount " of such a debt is incapable of estimation, then it shall not be " allowed there might, perhaps be some ground for attributing " to the statute the meaning that a contingent debt is to be " allowed whenever its amount is capable of estimation. But " I do not think par. (d) in fact discloses or imports any legislative " intention that a contingent debt shall be allowed as a deduction " whenever its amount is in the Commissioner's opinion capable " of estimation. Its language seems to me to show no more than " that the statute intended to forbid the deduction of debts the " amount of which could not be estimated and that it treated " contingent debts as the chief example."

McTiernan, J. at page 304, said :

" For the Respondent it was contended that the contingent " liability in question in this case should not be excluded, because " it is not a debt which is incapable of estimation, and that, as it " is for that reason not specially disallowed by Section 107 (2) (d), " such liability should be held to be an allowable deduction. " But, if the effect of Section 107 (2) (d) is to disallow only such " contingent debts as are incapable of estimation the Respondent

In the Supreme Court.

No. 2. Reasons for Judgment of Northcroft, J. 17th December 1952— *continued.*

" is confronted with the difficulty of saying that the estimated " amount of the future liability of the deceased at the time of his " death, arrived at by actuarial calculation, was a debt actually " due and owing by him at the time of his death.

" The contention of the Respondent as to the effect of " Section 107 (2) (d) proceeds upon the view that the Legislature " considered contingent debts in two classes, namely, contingent " debts the amount of which is incapable of estimation and " contingent debts capable of estimation, and inferentially allowed " a deduction in respect of the latter class. In my opinion, the " Legislature disallowed all debts the amount of which is incapable " of estimation. This characteristic is common to all contingent " debts. These and any other debts which have this characteristic " are, in my opinion, the subject of Section 107 (2) (d). The " amount of such debts, not being capable of estimation, cannot " be subtracted from the dutiable estate of the deceased in order " to arrive at the final balance upon which duty is to be paid."

I am strongly fortified in the opinion I have formed that the debt in question here comes fairly within the prohibition against allowance as is contained in Section 9 (2) (d). The appeal is dismissed and the question propounded in the Case Stated is answered in the negative. The Respondent is entitled to costs which I fix at thirty guineas.

Solicitors : Messrs. TRIPP & ROLLESTON, Timaru, for *Appellant.*
CROWN LAW OFFICE, for *Respondent.*

In the Supreme Court.

No. 3. Formal Judgment. 17th December 1952.

No. 3.

Formal Judgment.

Wednesday, the 17th day of December, 1952.

Before the Honourable Mr. Justice NORTHCROFT.

UPON READING the case stated filed herein AND UPON HEARING Mr. E. E. England of Counsel for the Appellant and Mr. W. D. Campbell of Counsel for the Respondent THIS COURT DOTH ORDER that the appeal be dismissed and that in computing the final balance of the estate of the deceased the Appellant is not entitled to an allowance in excess of the sum of £281 5s. 0d. in respect of the liability of the deceased under the Deed dated the 16th day of April 1941 allowed pursuant to Section 9 (3) of the Death Duties Act 1921 AND THIS COURT DOTH FURTHER ORDER that the Appellant pay to the Respondent Thirty one pounds ten shillings (£31 10s. 0d) costs.

By the Court,
J. D. O'BRIEN,
Registrar.

No. 4.

Notice of Motion on Appeal

In the Court of Appeal.

No. 4. Notice of Motion on Appeal. 13th August 1953.

IN THE COURT OF APPEAL IN NEW ZEALAND.

Between

THE NEW ZEALAND INSURANCE COMPANY LIMITED an incorporated Company having its registered office at Queen Street Auckland, as Administrator of the Estate of Francis Joseph Rolleston, late of Timaru, Solicitor, deceased ... ... *Appellant*

and

THE COMMISSIONER OF STAMP DUTIES ... ... *Respondent.*

TAKE NOTICE that this Honourable Court will be moved by Counsel for the Appellant at the sittings of this Court to be held on Monday the 7th day of September 1953 at 11 o'clock in the forenoon or so soon thereafter as Counsel can be heard on appeal from the whole of the Judgment of the Supreme Court of New Zealand given by the Honourable Mr. Justice Northcroft at Timaru on the 17th day of December 1952 in this action wherein the abovenamed Appellant was Appellant and the abovenamed Respondent Respondent.

Dated at Christchurch this 13th day of August 1953.

E. E. ENGLAND,
Solicitor for the Appellant.

To : The Registrar of the Court of Appeal of New Zealand.
To : The Registrar of the Supreme Court of New Zealand at Timaru.
And To : The abovenamed Respondent.

No. 5.

Reasons for Judgment.

No. 5. Reasons for Judgment. Fair, J. 18th December 1953

IN THE COURT OF APPEAL OF NEW ZEALAND.

(a) FAIR, J.

The facts in relation to this appeal are set out in the case stated and the judgment of the Supreme Court, and it is unnecessary for me to restate them. The decision of it depends on the meaning to be attached to

In the Court of Appeal.

No. 5. Reasons for Judgment. Fair, J. 18th December 1953— *continued.*

Section 9 (2) (d) of the Death Duties Act 1921. The question, which is in its essentials a narrow one, was fully argued by both counsel, and a large number of cases referred to. But, in approaching the matter, it is, I think, desirable to keep certain broad principles in mind. As was said by Lord Warrington *Barrell* v. *Fordree* (1932) A.C. 676 at 682 :—

> " the safer and more correct course of dealing with a question of " construction is to take the words themselves and arrive if " possible at their meaning without, in the first instance, reference " to cases. Of course, if a case is found which is in conflict with " the opinion so formed then it must be dealt with . . . "

I have examined all the cases cited, but I do not think it necessary to refer to the majority of them. Those decided upon cases under the Bankruptcy Act depend largely on the special provisions of the Act considered in them. Those dealing with administration, or similar types of actions are also rather remote from revenue Statutes. So far as the Australian cases are concerned, they again deal with an Act which is, in what appears to me material respects, different from our own, and they are not, in my view, authorities on the construction of Section 9 (2) (d) of our own Act.

The Death Duties Act 1921 is a taxing statute, but the provisions of 5 (j) of the Acts Interpretation Act, 1924 apply to it as to all other Statutes, although the nature of its application must necessarily be limited by the subject-matter to which it applies, and the words of the clause read *secundum subjectum materiam.* The words that more particularly apply here seem to be " shall receive such fair . . . construction and interpretation " as will best ensure the attainment of the object of the Act . . . according " to its true intent, meaning and spirit."

In approaching its construction the Court is, I think, entitled to assume that the Act did not intend to include in an estate subject to duty property that was not actually, or notionally, part of the estate, unless administrative considerations make that course imperative. It is, I think, entitled to assume, too, that its value was to be calculated fairly and justly. It is not to be assumed that the Act intended to levy taxation on a basis that would result in unfairness or injustice in a large number of cases. Of course, there may be instances where difficulties of administration make a rigid rule necessary, which operates harshly in specific cases. Discretionary powers are difficult to administer in the case of taxation of this kind, as in income-tax, and tend to subject the officers charged with its administration to intolerable pressure and difficulties. But I think the Court is entitled to approach the Act on the basis that where no such special conditions exist, its true intent is to levy duty on the actual value of the estate without, as I said, unfairness, or injustice.

Next I would say that decisions on other Statutes, even with much the same language, have to be applied with great caution because revenue Acts of general application are necessarily highly technical, and the whole of the provisions of the Act, and its interpretation over years have often

to be considered. Where the Statutes are in different language, even greater caution is required. Further, in considering such decisions, it has to be remembered, as Lord Halsbury said in the oft-quoted passage from *Quin* v. *Leatham* 1901 A.C. 495 that " a case is only authority for what it actually decides." Expressions used in the course of a judgment— particularly oral judgments—are often not intended as a precise or exclusive definition of the phrase used. They may often be used in a secondary sense where the more accurate sense is the correct one, or they may be sufficiently accurate having regard to the admissions in, and conduct of, the case.

With these principles in mind, it appears to me that the first question to be decided is as to what is the meaning of " contingent debts " in Section 9 (2) (d) of the Act. There seems no doubt that it has two meanings. In its strict and most correct sense it means a debt that may never become due. An example of such debt is a guarantee of a bank overdraft which, owing to the financial position of the principal debtor, is certain never to be required to be paid. It is not unreasonable to exempt such a debt from deduction from an estate because it may never become due and payable. No doubt there are many similar instances.

Where, however, there is an existing legal liability, and although the amount of it may be uncertain and depend, as in this case, on the duration of life, there does not seem to be any justification for refusing to allow its deduction unless it is incapable of reasonable estimation. The distinction is adverted to by Sir George Mellish, L.J., in Ex parte Ruffell 8 Ch. App. 997. He was there construing subsection 3 of Section 16 of the Bankruptcy Act, 1869, which reads :

> " A creditor shall not vote at the said meeting in respect of " any unliquidated or contingent debt, or any debt, the value of " which is not ascertained."

He said at p. 1001 :

> " The question really is, what is meant by an ' unliquidated " ' debt ' in the 3rd sub-section. The fair construction of the " clause seems to me this : ' a contingent debt ' refers to a case " where there is a doubt if there will be any debt at all : ' a debt, " ' the value of which is not ascertained,' means a debt the amount " of which cannot be estimated until the happening of some future " event ; and ' an unliquidated debt ' includes not only all cases " of damages to be ascertained by a jury, but beyond that, extends " to any debt where the creditor fairly admits that he cannot state " the amount."

In this case there is here an existing pecuniary obligation—not contingent but vested—although the amount of the liability may possibly be considered dependent on a contingency. Admittedly it was incurred for full consideration in money or money's worth, wholly for the deceased's own use and benefit. It, therefore, falls within the definition of a debt in Section 2 of the Act inasmuch as it is a pecuniary liability, and possibly a pecuniary charge.

It is to be noted, too, that the word " other " in the second half of Section 9 (2) (d) implies that the contingent debts referred to are to be such as are incapable of estimation. For these reasons I think that the words " contingent debt " in Section 9 (2) (d) must be confined to the narrower class of debts, although I am aware that in many of the cases it has been used with a wider meaning. In a revenue Statute, however, in a provision which is directed towards avoiding the deduction of a technical debt, or one the value of which it is impossible to estimate on any reasonable basis, the words, if ambiguous, should be construed in a sense favourable to the taxpayer. It is a well settled rule of law that all charges upon the subject must be imposed in clear unambiguous language. The subject is not to be taxed unless the language of the statute clearly imposes the obligation (Maxwell on the Interpretation of Statutes 9th Edn. 291).

Then Mr. Byrne on behalf of the Respondent argued that this annuity is a debt, the amount of which, in the opinion of the Commissioner, is incapable of estimation, and so on that ground no allowance can be made for it. But, it was common ground that annuities are commonly assessed for purposes of succession duty, and there is no difficulty in estimating their value on a commonly accepted actuarial basis. Special cases of ill health, or similar circumstances, may require some modification of that method, but that it is reasonably possible in a business sense is clear from the frequency with which it is done. There are several references in the Australian cases to the practice there, and it has been common in New Zealand for very many years past. But Mr. Byrne argues that in this case the word " estimation " means " accurate ascertainment." I can see no ground for so holding. The word " estimation " itself indicates in general some uncertainty. If the value of an annuity can be estimated, as it is for many other business purposes, I think it is impossible to hold that it is incapable of estimation here.

It is to be noted, too, that under Section 14 of this Act if the uncertain duration of life is regarded as a contingency there is an appeal under Section 14 to the Court which is governed by the provisions contained in Section 21. Section 21 (2) provides that an appeal shall lie to the Supreme Court from any decision of the Commissioner in the same manner as if that decision was a determination of a question of law. In my view, this gives the Supreme Court and the Court of Appeal the right to determine any questions of fact as if they were questions of law. It modifies the almost unfettered discretion ordinarily conferred by the words " in the opinion of " ; and it is unnecessary in order to reverse the opinion of the Commissioner that the Court should be satisfied that either it was not honest, or proceeded upon a wrong application of the principles to be applied.

If it were thought in the present case that the existence of one of these grounds was necessary to reverse or modify his decision, I should think that in this case he had misdirected himself by an erroneous interpretation of the words " incapable of estimation " in the Statute, and so his opinion was not a determination on the basis upon which he was required to determine it in the exercise of his powers under the clause. See on this point *Jensen* v. *Wellington Woollen Company* (1942) N.Z.L.R. 394.

With regard to the case relied on in the Court below, and which that Court thought was indistinguishable, the terms of the New South Wales Act are different from those in our Act. The most striking difference is the provision made in the section corresponding to Section 9 (1) of our act, for the deduction subject to the provisions of the Act of all debts actually due and owing by the deceased at the time of his death. The words I have italicised are not contained in our section. Obivously they make a vital and essential distinction. Moreover, as Mr. Wild pointed out, Section 2 of our Act defines " debt " as including " a pecuniary liability, charge or incumbrance." The majority of the *High Court of Australia in Permanent Trustee of N.S.W.* v. *The Commissioner of Stamp Duties* (1933) 49 C.L.R. 293 held that a provision corresponding to our Section 9 (2) (d) was an exception from the provisions of that corresponding to our Section 9 (1) and was governed by the meaning of the words " debts actually due " in the earlier subsection. That *ratio decidendi* does not apply here. The same reasons make the other decisions in Australia relied on by the Respondent, in my opinion, inapplicable to the construction of our Act. Moreover, it is to be noted that both in the Full Court of New South Wales and in the High Court of Australia the two meanings of " contingent debt " were not adverted to, and that the argument in that case proceeded on the assumption by both parties that the liability to pay an annuity was a contingent debt within the meaning of their section. That may be so having regard to the use of the words " actually due " but, in my view, it is no authority for adopting the same meaning in our Act. The Courts in Australia were not called upon to define the meaning of " contingent debt."

For the reasons I have indicated above I do not think it is necessary to discuss in detail the other cases cited.

For these reasons I think the appeal should be allowed, and the question in the case stated answered " Yes, and such allowance is to be estimated on the proper actuarial basis in respect of the valuation of such annuity." The Appellant is entitled to costs which should, I think be fixed in this Court at Seventy-five Guineas ; it will also be allowed costs in the Supreme Court Thirty Guineas together with costs of printing and the necessary disbursements in both cases.

Solicitors for Appellant : TRIPP & ROLLESTON, Timaru.
Solicitors for Respondent : CROWN LAW OFFICE, Wellington.

(b) STANTON, J.

In this case deceased had for full consideration and wholly for his own benefit entered into an undertaking to pay to his daughter an annuity during her life. The amount of the annual payment was fixed and the only uncertainty was as to the length of time during which those annual payments were to continue.

The Commissioner has held that the obligation to pay the annuity does not constitute a debt deductible from the value of deceased's estate and the learned Judge in the Court below has upheld that decision.

In the Court of Appeal.

No. 5. Reasons for Judgment. Stanton, J. 18th December 1953— *continued.*

The question depends on the proper interpretation of Section 9 (2) (d) of the Death Duties Act, 1921, which provides that in computing the final balance of a deceased estate no allowance shall be made " for contingent " debts or any other debts the amount of which is in the opinion of the " Commissioner incapable of estimation." Mr. Byrne, for the Commissioner, contends that " contingent debts " include not only debts where all liability is contingent, but also debts where liability is certain, but the ultimate amount that will be payable depends on a contingency. Consequently, he says, the second limb of the provision does not apply to contingent debts, but means some classes of debts which, though not contingent debts, are in the Commissioner's opinion incapable of estimation. If that be so, it is very difficult to see what debts could be included under the second limb which are not within the expression " contingent debts." I fail to see how there could be a debt incapable of estimation for any reason other than that either liability under it or the ultimate amount of liability was dependent on a contingency. If however, the expression " contingent debts " is confined to the strict meaning of that phrase, namely debts where all liability is contingent, and the second limb is considered as applying to debts where although some liability is certain, the ultimate amount of such liability is incapable of estimation, you would give significance and meaning to both limbs of the clause instead of reducing the second limb to a useless and redundant excrescence. An example of a contingent debt properly so called is the uncalled liability on shares or a claim which has been made against the deceased and repudiated by him. Liability under a guarantee might also be a contingent debt but such a liability is excluded by para. (b) of Section 9 (2).

Apart from authority, I would think there could be no doubt that Section 9 (2) (d) should be interpreted by giving to the phrase " contingent debts " the strict meaning I have indicated, and treating the second limb as not applying to " contingent debts " at all. The learned Judge in the Court below considered that the decision of the High Court of Australia in *Permanent Trustee of N.S.W.* v. *Commissioner of Stamp Duties* 49 C.L.R. 293 (*Hill's* case) was an authority against this view which he ought to follow. I think that case is distinguishable for the reasons elaborated by Fair, J. but even if it were not, this Court is not bound to follow it, and in my view should not do so.

In the instant case the liability of the deceased to pay the annuity is not therefore a " contingent debt " but it is suggested that even so, it is a debt which is properly " incapable of estimation." Mr. Byrne suggests that " estimation " means " accurate ascertainment," but with this I cannot agree. Estimation is in many respects the opposite of ascertainment; it is opposite to describe something which is arrived at on the basis of an informed opinion; something which is not a mere guess, but on the other hand is not mathematically or physically demonstrated. A distance may be estimated but if it is measured it is no longer estimated but ascertained.

The estimation of the amount or value of periodical payments during an uncertain period is a common practice, both in commercial and legal

transactions, and in each case the result obtained is not claimed to be the amount that will be payable or receivable in any particular case, but is an estimate which is recognised as fair. In cases under the Bankruptcy Acts, although the statutory definition of " debt " is different, it has been frequently laid down that the test of a provable debt in the case of a contract to make such periodical payments, is whether its amount can be fairly estimated. In *Ex parte Blakemore* 5 Ch. D. 372, the debt was an annuity given to a woman during her life or widowhood. The Court of Appeal held that the amount of the debt for purposes of proof was " capable of " being fairly estimated." The same result was achieved in *Ex parte Neal* 14 Ch. D. 579, although the separation deed there in question provided that the annual payments should cease if the annuitant did not lead a chaste life, or if the marriage should be dissolved, and the payments were to be proportionately reduced if she became entitled to other income. This latter case was followed by Chapman, J. in *In re Odlum* 1922 G.L.R. 488, where he held that payments due for maintenance of a wife and children under a separation deed could be valued and commuted for a lump sum payment.

In the instant case, complications such as existed in the cases cited do not occur ; the single contingency arising is the length of the annuitant's life, and it seems to me clear that the amount of the annuity can be fairly estimated by the usual actuarial calculation.

It is to be noted that the subsection refers to debts " in the opinion " of the Commissioner " incapable of estimation. It was not contended by Mr. Byrne that this provision entitled the Commissioner to disallow debts merely because he thought them to be incapable of estimation, and as was pointed out by North, J. in *Commissioner of Stamp Duties* v. *International Packers* (unreported), the decision of the Commissioner in such cases must be made in accordance with law. It seems to me that the right of appeal under Sections 14 and 21 of the Act would not apply to a decision of the Commissioner under Section 9 (2) (d), as those provisions seem to refer to contingencies affecting the value of interests in the estate of the deceased, and not to the determination of such a question as to whether or not a debt was capable of estimation. In the view I have expressed, the debt here in question is not a contingent debt at all, but a debt which is properly " capable of estimation " within the meaning of the section. The parties in this case have not proceeded by way of appeal, but have challenged the Commissioner's ruling by asking, under Section 62, for a case to be stated for the opinion of the Court as to the correctness of his assessment of duty.

I think therefore that the appeal should be allowed with the consequences stated in the judgment of Fair, J.

Solicitors : TRIPP & ROLLESTON, Timaru, for the *Appellant.*

CROWN LAW OFFICE, Wellington, for the *Respondent.*

In the Court of Appeal.

No. 5. Reasons for Judgment. Hay, J. 18th December 1953— *continued.*

(c) HAY, J.

As I am in agreement with the conclusion reached by each of the other members of the Court (whose respective judgments I have had the opportunity of considering), I do not propose writing on the matter at any length. At the hearing of the appeal I formed a strong view that the submissions of counsel for the Appellant were sound, and that view has been confirmed by my subsequent examination of the authorities relied on by both counsel respectively, after giving due weight to the submissions so ably made by counsel for the Respondent.

I respectfully adopt the cogent reasoning of Stanton, J. as to the proper meaning to be given to the language of Section 9 (2) (d) of the Act in the context in which it occurs. That meaning leads to the harmonious interpretation of all the relevant provisions of the Act, so as to make clear the intention of the Legislature. It is the primary duty of a Court of construction to ascertain that intention from the language of the statute itself.

I also respectfully agree with both my brethren that the liability of the deceased to pay or contribute towards the annuity cannot in the circumstances constitute it a debt the amount of which is incapable of estimation. It can in fact fairly be estimated according to the recognised and standard practice in such cases.

The debt in question accordingly not falling within the prohibitory provisions of Section 9 (2) (d), it has then to be considered whether it comes within the dominant words of Section 9 (1) as a debt owing by the deceased at his death. To my mind it plainly does, especially when regard is had to the wide meaning given to the term " debt " in Section 2. As stated by Kennedy, J. in *Perrott* v. *Newton King Ltd.* (1933 N.Z.L.R. 1131, 1159)—

> " The word ' owing ' applied to money expresses, in such a " context, the notion of money which a person is under an " obligation to pay either at once or at some future time—money " which someone has a right to have paid. It connotes undis- " charged obligation. It implies fitness or propriety in payment " which is the distinguishing characteristic of debt."

In my opinion the sense in which " owing " was there used is equally applicable in the present context, where, it is significant to notice, there is a complete absence of the word " due."

It was argued by Mr. Byrne that despite the absence of an extended definition of " debt " in the New South Wales statute which was under consideration in *Hill's* case (1933 49 C.L.R. 293), and the presence of the words " actually due and owing," that case would have reached the same conclusion on the basis of our own legislation. With that submission I completely disagree. It is evident from the judgments in that case that the presence of the words " actually due and owing " had a vital bearing upon the decision, and the case is clearly distinguishable on those grounds. I agree with Mr. Wild's submission that the learned Judge in

the Court below erred in regarding *Hill's* case as a decision in precisely similar circumstances to the present. The circumstances were in important respects dissimilar, and in so far as any view conflicting with that taken by this Court was expressed therein as to the interpretation to be given to the particular provision in the New South Wales Statute corresponding to our Section 9 (2) (d), I prefer with respect the interpretation which this Court has adopted.

In my opinion the appeal should be allowed, and the question in the case answered in the manner stated in the Judgment of Fair, J.

In the Court of Appeal.

No. 5. Reasons for Judgment. Hay, J. 18th December 1953— *continued.*

Solicitors : TRIPP and ROLLESTON, Timaru, for *Appellant.*
CROWN LAW OFFICE, Wellington, for *Respondent.*

No. 6.

Formal Judgment.

No. 6. Formal Judgment. 18th December 1953.

Before The Honourable Mr. Justice FAIR
The Honourable Mr. Justice STANTON, and
The Honourable Mr. Justice HAY.

Friday the 18th of December, 1953.

This Appeal coming on for hearing on the 21st September 1953 UPON HEARING Mr. Wild of Counsel for the Appellant and Mr. Byrne of Counsel for the Respondent IT IS ORDERED that the appeal herein be and the same is hereby allowed and that the Judgment of the Supreme Court of New Zealand dated the 17th of December 1952 in favour of the Respondent be wholly set aside and that the question in the case stated be answered : Yes, and that the allowance to which the Appellant is entitled for the liability of the deceased under the Deed dated the 16th April 1941 to Helen Mary Rolleston be estimated on the proper actuarial basis in respect of the valuation of the annuity payable thereunder to the said Helen Mary Rolleston and IT IS FURTHER ORDERED that the Respondent do pay to the Appellant costs as follows :

(a) In the Supreme Court £31 10s. 0d. and disbursements and

(b) £78 15s. 0d. and disbursements in this Court.

By the Court,

J. L. W. GERKIN,
Deputy Registrar.

In the Privy Council.

No. 7. Order-in-Council granting special leave to Appeal. 24th November 1954.

No. 7.

Order in Council granting Special Leave to Appeal.

(L.S.) AT THE COURT AT BUCKINGHAM PALACE.

The 24th day of November, 1954.

Present

THE QUEEN'S MOST EXCELLENT MAJESTY.

LORD PRESIDENT. SIR REGINALD MANNINGHAM-BULLER.
MR. SECRETARY HEAD. MR. LOW.

WHEREAS there was this day read at the Board a Report from the Judicial Committee of the Privy Council dated the 17th day of November, 1954, in the words following, viz. :—

" WHEREAS by virtue of His late Majesty King Edward the Seventh's Order in Council of the 18th day of October 1909 there was referred unto this Committee a humble Petition of the Commissioner of Stamp Duties in the matter of an Appeal from the Court of Appeal of New Zealand between the Petitioner Appellant and The New Zealand Insurance Company Limited an incorporated Company having its registered office at Queen Street Auckland as Administrator of the Estate of Francis Joseph Rolleston late of Timaru Solicitor deceased Respondent setting forth (amongst other matters) that the Petitioner desires to obtain special leave to appeal from a Judgment of the Court of Appeal dated the 18th December 1953 allowing the Appeal of the Respondent from a Judgment of the Supreme Court dated the 17th December 1952 ordering that the Respondent was not entitled to an allowance of a certain amount in arriving at the final balance of the deceased's estate for the assessment of Estate Duty : that by a Deed dated the 16th April, 1941 and made between Rosamond Mary Teschemaker Lancelot William Rolleston John Christopher Rolleston and the deceased of the first part and their sister Helen Mary Rolleston of the second part it was recited (amongst other matters) that Elizabeth Mary Rolleston late of Christchurch Widow who died on the 4th of June 1940 had been remitting £31 5s. 0d. a month to Helen Mary Rolleston for her maintenance and support ; that it was agreed and declared between the parties that the parties of the first part should jointly and severally agree " to remit to the said Helen Mary Rolleston " in London or in such other place as she shall from time to time direct " during her lifetime the sum of thirty-one pounds five shillings in New " Zealand currency on the first day of each and every calendar month, " the first of such payments having been made on the 1st day of July " 1940 " : that the deceased died on the 8th September 1946 and Probate of his last will was granted by the Supreme Court on the

12th November 1946 to the Respondents: that the deceased was survived by Helen Mary Rolleston: that the Appellant assessed the final balance of the deceased's dutiable estate at £44,739 14s. 3d. and in computing that final balance the Appellant refused in view of the provisions of Section 9 (2) (d) and (3) of the Death Duties Act 1921 to make any allowance for any amount accruing due after the death of the deceased in respect of the monthly sum except for the amount that became actually payable within three years after the death of the deceased which latter amount was in fact allowed in the assessment: that the Respondent pursuant to the provisions of the aforesaid Act required the Petitioner to state a Case and appealed to the Supreme Court which on the 17th December 1952 dismissed the Appeal against the Petitioner's assessment: that the Respondent appealed to the Court of Appeal which on the 18th December 1953 reversed the Judgment of the Supreme Court and ordered that the allowance for which the Respondent was entitled for the liability of the deceased under the Deed for the payments accruing due after the death of the deceased to Helen Mary Rolleston be estimated on the proper actuarial basis in respect of the valuation of the annuity thereunder payable: that the grounds upon which the Court of Appeal reversed the Judgment of the Supreme Court and ordered that allowance should be made as aforesaid were that the said liability of the deceased's estate was not a contingent debt within Section 9 (2) (d) of the Death Duties Act 1921 but was a debt within Section 9 (1) alternatively a debt the amount of which was capable of estimation within Section 9 (2) (d) and thus one for which allowance should be made: that the Petitioner applied to the Court of Appeal for conditional leave to appeal to Your Majesty in Council which Court on the 14th July 1954 dismissed the application: And humbly praying Your Majesty in Council to grant the Petitioner special leave to appeal from the Judgment of the Court of Appeal dated the 18th day of December 1953 or for such other order as to Your Majesty in Council may seem meet:

" THE LORDS OF THE COMMITTEE in obedience to His late Majesty's said Order in Council have taken the humble Petition into consideration and having heard Counsel in support thereof no one appearing at the Bar on behalf of the Respondent who had intimated that he consented to the prayer of this Petition being granted Their Lordships do this day agree humbly to report to Your Majesty as their opinion that leave ought to be granted to the Petitioner to enter and prosecute his Appeal against the Judgment of the Court of Appeal of New Zealand dated the 18th day of December 1953 upon the condition that the Petitioner shall pay the costs of the Respondent as between solicitor and client in any event:

" And Their Lordships do further report to Your Majesty that the proper officer of the said Court of Appeal ought to be directed to transmit to the Registrar of the Privy Council without delay an

In the Privy Council.

No. 7. Order-in-Council granting special leave to Appeal. 24th November 1954—*continued.*

authenticated copy under seal of the Record proper to be laid before Your Majesty on the hearing of the Appeal upon payment by the Petitioner of the usual fees for the same."

HER MAJESTY having taken the said Report into consideration was pleased by and with the advice of Her Privy Council to approve thereof and to order as it is hereby ordered that the same be punctually observed obeyed and carried into execution.

Whereof the Governor-General or Officer administering the Government of the Dominion of New Zealand and its Dependencies for the time being and all other persons whom it may concern are to take notice and govern themselves accordingly.

W. G. AGNEW.

In the Privy Council.

No. 8 of 1955.

ON APPEAL FROM THE COURT OF APPEAL OF NEW ZEALAND.

BETWEEN

THE COMMISSIONER OF STAMP DUTIES ... ... *Appellant*

AND

THE NEW ZEALAND INSURANCE COMPANY LIMITED ... *Respondent.*

RECORD OF PROCEEDINGS

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