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Judgment.  
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UNIVERSITY OF LONDON  
W.C. 1.

10 FEB 1957

INSTITUTE OF ADVANCED  
LEGAL STUDIES

No. 18 of 1955.

# In the Privy Council

## ON APPEAL FROM THE COURT OF APPEAL OF NEW ZEALAND

BETWEEN

FLORENCE EMMA WARD, RONALD STANLEY WARD  
and LIONEL MORAN WARD as Administrators in the  
Estate of CHARLES CAMERON WARD, deceased ... .. *Appellants*

AND

THE COMMISSIONER OF INLAND REVENUE ... .. *Respondent.*

## RECORD OF PROCEEDINGS

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INSTITUTE OF ADVANCED  
LEGAL STUDIES,  
25, RUSSELL SQUARE,  
LONDON,  
W.C.1.

In the Privy Council.

No. 18 of 1955.

15043

ON APPEAL FROM THE COURT OF APPEAL  
OF NEW ZEALAND

BETWEEN

FLORENCE EMMA WARD, RONALD STANLEY WARD  
and LIONEL MORAN WARD as Administrators in the  
Estate of CHARLES CAMERON WARD, deceased ... .. *Appellants*

AND

THE COMMISSIONER OF INLAND REVENUE ... *Respondent.*

RECORD OF PROCEEDINGS

No. 1.

Case Stated.

In the  
Supreme  
Court of  
New  
Zealand.

No. 1.  
Stated Case.  
24th March  
1953.

Pursuant to the Provisions of Section 62 of the  
Death Duties Act 1921.

1.—Charles Cameron Ward late of New Plymouth Draper deceased  
(hereinafter referred to as “deceased”) died on the 18th of April 1949  
aged 77 years and probate of his last Will was granted by this Honourable  
Court at New Plymouth on the 9th of June 1949 to the Appellants.

10 2.—On the 21st of June 1899 the deceased married Selina Stanley  
(hereinafter called Selina Ward) but separated from her in the year 1921.  
In May of 1932 he petitioned for a divorce and obtained a decree nisi which  
was duly made absolute on the 7th of November 1932.

3.—There were four sons of the said marriage namely the Appellant  
Ronald Stanley Ward, Mervyn Keith Ward, the Appellant Lionel Moran  
Ward, and Neal Aubrey Ward. The said sons all survived the deceased.

4.—Up to the 15th of June 1932 the deceased was the beneficial owner  
and registered proprietor of real property (hereinafter referred to as “the  
“Devon Street property”) in Devon Street New Plymouth containing

In the  
Supreme  
Court of  
New  
Zealand.

—  
No. 1.  
Stated Case.  
24th March  
1953—  
*continued.*

19.21 perches and being the whole of the land in Certificate of Title Volume 125 Folios 203, 204, 205 and 206 Taranaki Registry, subject as to part to Deed of Mortgage Number 50792 to Henry Herbert Ford under which there was then owing the sum of £3,000 and subject as to another part to Deed of Mortgage Number 48414 to the New Plymouth Savings Bank under which there was then owing the sum of £2,000. The Devon Street property was leased under a Memorandum of Lease Number 15193 to C. C. Ward Limited for a term of ten years from the 17th of February 1930 at a rental of £600 per annum.

5.—C. C. Ward Limited is a private company incorporated under the Companies Act 1908 and having a capital of £10,000 divided into 10,000 shares of £1 each. At all material times the deceased and his said sons were the legal and beneficial owners of the said shares. 10

6.—By a Memorandum of Transfer dated the 15th of June 1932 and registered on the 22nd of May 1933 as Number 58749 the deceased transferred the Devon Street Property (subject to the said mortgages and to the said Memorandum of Lease Number 15193) to his said sons as tenants in common in equal shares in consideration of the said sons executing a Memorandum of Mortgage securing to the deceased an annuity for the remainder of his life of the sum of £650 payable by weekly instalments of £12 10s. 0d. and 20 further securing after the death of the deceased a weekly payment of £6 as therein provided to the said Selina Ward, during the remainder of her life so long as she should remain unmarried. A copy of the said transfer is annexed hereto and marked "A."

7.—By a Memorandum of Mortgage dated the 15th of June 1932 and registered on the said 22nd of May 1933 as Number 65978 the said sons in consideration of the contemporaneous execution of the said Memorandum of Transfer covenanted to pay to the deceased during the remainder of his life an annuity of £650 payable by weekly instalments of £12 10s. 0d. as from the 25th August 1932 and, after his death, to pay to the said Selina 30 Ward for the remainder of her life and so long as she should not have remarried an annuity of £416 payable by weekly instalments of £8 if and while the youngest of the said sons should be a minor and thereafter an annuity of £312 payable by weekly instalments of £6 and for the better securing of the said annuities the said sons mortgaged to the deceased and the said Selina Ward all their estate and interest in the said property. A copy of the said mortgage is annexed hereto and marked "B." The youngest of the said sons attained the age of 21 years on the 15th day of May 1934.

8.—On the expiry of the said Memorandum of Lease Number 15193 40 and up to the date of death of the deceased C. C. Ward Limited continued to occupy the said property without further written lease paying therefor the annual rental of £600 until 1942 and £800 thereafter.

9.—The said sons paid the said annuity of £650 regularly to the deceased and at the date of his death had paid the said annuity of £650 up to the 17th of March 1949. The amount accrued for the period from that date to the date of the deceased's death has been duly accounted for as part of the assets of the deceased for death duty purposes.

In the  
Supreme  
Court of  
New  
Zealand.

10.—It is common ground between the parties hereto for the purposes of the case that :—

No. 1.  
Stated Case.  
24th March  
1953—  
*continued.*

- 10
- (a) The value of the Devon Street property at the time of the said transfer was £11,195.
  - (b) The amount owing under the said mortgages numbered 50792 and 48414 was £5,000 at the time of the said transfer.
  - (c) The value of the said annuities as assessed by the Commissioner of Stamp Duties at the time of the said transfer was £7,247.
  - (d) The said transfer did not constitute a gift within the meaning of the said Act.
  - (e) As at the date of death of the deceased the value of the Devon Street property was £22,265.

20 11.—In computing pursuant to the said Act the final balance of the dutiable estate of the deceased the Respondent, pursuant to section 5 (1) (j) of the said Act included the sum of £17,265 representing the value at the deceased's death of the Devon Street property less the amounts owing under the said Deeds of Mortgage Numbers 50792 and 48414 as at the said 15th of June 1932.

12.—The Appellants objected to the inclusion of the said sum of £17,265 in computing the final balance of the said estate and required the Respondent to state this case.

13.—The Appellants contend that the value of the said Devon Street property is wrongly included in computing the final balance of the dutiable estate of the deceased.

30 14.—The Respondent contends that the transfer of the Devon Street property subject to the said Mortgages Numbers 50792 and 48414 constituted a disposition of property for the purposes of section 5 (1) (j) of the said Act and in computing the final balance of the dutiable estate of the deceased that property falls to be included pursuant to section 5 (1) (j) of the said Act.

15.—The question for the determination of this Honourable Court is whether the Respondent in computing the final balance of the dutiable estate of the deceased is entitled pursuant to section 5 (1) (j) of the said Act to include the said sum of £17,265.

Dated at Wellington, this 24th day of March 1953.

40

F. R. MACKEN,  
*Deputy Commissioner of Inland Revenue.*

In the  
Supreme  
Court of  
New  
Zealand.

No. 1 "A,"  
Annexure,  
Memoran-  
dum of  
Transfer.  
15th June  
1932.

No. 1. " A " Annexure, Memorandum of Transfer.

Stamp Duty  
£134. 15. 0.  
Stamp Duties Office  
Auckland  
23 No. 32

Registration fee 16/-  
J. S. T.  
22/5/53.  
(New Zealand)

WHEREAS Charles Cameron Ward of New Plymouth Draper and Company Director, being registered as the proprietor of an estate in fee simple subject, however, to such encumbrances, liens, and interests as are notified by memoranda underwritten or endorsed hereon, in all those pieces of land situated in the Provincial District of Taranaki containing two decimal six two perches (Oa. Or. 2.62 p.) more or less being part of Section Numbered Nine hundred and seven (907) on the public map of the Town of New Plymouth and being the Western moiety of Allotment Numbered Nine hundred and seven D (907D) on Deeds Plan No. 8 and being all the land comprised in Certificate of Title Volume 125 Folio 203 (Taranaki Registry) Limited as to Parcels Together with and subject to Outstanding Grant of Party Wall Rights Number 49801 over part of the above described land and over part of the land in Limited Certificate of Title Volume 125 Folio 202 and subject also to Outstanding Deed of Mortgage Number 50792 to Henry Herbert Ford under which there is now owing the sum of three thousand pounds (£3,000) Subject also to Memorandum of Lease registered in the Land Transfer Office at New Plymouth under No. 15193. 10

Secondly All that piece of land situate as aforesaid containing five decimal one seven perches (Oa. Or. 5.17 p.) more or less being part of Section Nine hundred and seven (907) on the public map of the Town of New Plymouth and being the Allotment Numbered Nine hundred and seven C (907 C) on Deeds Plan No. 8 and being all the land comprised in Certificate of Title Volume 125 Folio 204 (Taranaki Registry) Limited as to Parcels Subject also to Memorandum of Lease registered in the Land Transfer Office at New Plymouth under No. 15193. 30

Thirdly All that piece of land situate as aforesaid containing five decimal nought eight perches (Oa. Or. 5.08 p.) more or less being part of Section Nine hundred and seven (907) on the public map of the Town of New Plymouth and being part of Allotment Nine hundred and seven E (907 E) on Deeds Plan No. 8 and being all the land comprised in Certificate of Title Volume 125 Folio 205 (Taranaki Registry) Limited as to Parcels Subject as to part coloured yellow on the diagram endorsed on the said Certificate of Title to the Rights of Way and other rights as created by Outstanding Deeds of Grant Registered Numbers 27027 and 27413 and appurtenant to the land in Certificate of Title Volume 43 Folio 83 Volume 43 Folio 84 Volume 103 Folio 72 Volume 86 Folio 240 and Volume 86 Folio 241 Subject also to Memorandum of Lease registered in the Land Transfer Office at New Plymouth under No. 15193. 40

Fourthly All that piece of land situate as aforesaid containing six decimal three four perches (Oa. Or. 6.34 p.) more or less being part of Section Nine hundred and seven (907) on the public map of the Town of New Plymouth and being part of Allotment Nine hundred and seven E (907 E) on Deeds Plan No. 8 and being all the land comprised in Certificate of Title Volume 125 Folio 206 (Taranaki Registry) Limited as to Parcels Subject as to part coloured yellow on the diagram endorsed on the said Certificate of Title to the Rights of Way and other rights as created by Outstanding Deed of Grant registered Numbers 27027 and 27413 and appurtenant to the land in Certificates of Title Volume 43 Folio 83 Volume 43 Folio 84 Volume 103 Folio 72 Volume 86 Folio 240 and Volume 86 Folio 241 respectively and subject also to Outstanding Deed of Mortgage Number 48414 to the New Plymouth Savings Bank under which there is now owing the sum of two thousand pounds (£2,000) Subject also to Memorandum of Lease registered in the Land Transfer Office at New Plymouth under No. 15193 And whereas the said Charles Cameron Ward has agreed to sell the said lands subject as aforesaid and RONALD STANLEY WARD, KEITH MERVYN WARD, LIONEL MORAN WARD, and NEAL AUBREY WARD all of New Plymouth in the said Provincial District of Taranaki Drapers (hereinafter called the Purchasers) to purchase the said lands subject as aforesaid for the consideration of the purchasers executing a Memorandum of Mortgage subject as aforesaid securing to the said Charles Cameron Ward an annuity for the remainder of his life of the sum of Six hundred and fifty pounds (£650) payable in instalments of Twelve pounds ten shillings (£12 10s. Od.) per week and further securing after the death of the said Charles Cameron Ward a weekly payment of Six pounds as therein provided to Selina Ward his wife during the remainder of her life so long as she remains unmarried. Now, therefore in pursuance of the agreement and in consideration of the premises this Memorandum of Transfer witnesseth that the said Charles Cameron Ward doth hereby transfer all his estate and interest in the said piece of land to the said Ronald Stanley Ward, Keith Mervyn Ward, Lionel Moran Ward and Neal Aubrey Ward but subject as aforesaid as tenants in common in equal shares And it is hereby declared for the purposes of the Stamp Duties Act 1923 that no Instrument or agreement in writing has been entered into between the parties hereto in respect of the foregoing transaction.

In Witness whereof these presents have been executed this 15th day of June One thousand nine hundred and thirty two.

In the  
Supreme  
Court of  
New  
Zealand.

—  
No. 1 "A."  
Annexure,  
Memoran-  
dum of  
Transfer.  
15th June  
1932—  
*continued.*

In the  
Supreme  
Court of  
New  
Zealand.  
— —  
No. 1 " B. " Taranaki  
Annexure,  
Memoran-  
dum of  
Mortgage.  
15th June  
1932.

No. 1 " B " Annexure, Memorandum of Mortgage.

Stamp Duty  
6s.  
23/11/1932  
Taranaki

Registration fee 17/-  
J. S. T.  
22/5/33

Whereas Ronald Stanley Ward, Keith Mervyn Ward, Lionel Moran Ward, and Neal Aubrey Ward of New Plymouth in the Provincial District of Taranaki Drapers (hereinafter called the mortgagors) being registered as proprietors of an estate in fee simple as tenants in common in equal shares

(Here follows the description of the land being the same as 10 that in Exhibit " A " commencing on page 4 of this Record.)

And whereas Charles Cameron Ward of New Plymouth in New Zealand Draper has contemporaneously herewith executed a transfer of the said lands to the mortgagors in consideration of the mortgagors executing these presents for the purpose of securing payment of the annuities hereinafter mentioned Now this instrument witnesseth that in pursuance of the premises and for the consideration aforesaid they the Mortgagors do and each of them doth hereby covenant

Firstly with the said Charles Cameron Ward that the mortgagors will duly and punctually pay to the said Charles Cameron Ward during the 20 remainder of his life an annuity of six hundred and fifty pounds (£650) payable by weekly payments of twelve pounds ten shillings (£12 10s. 0d.) on the Thursday of each and every week the first of such payments to be made on the 25th day of August 1932.

Secondly with Selina Ward the wife of the said Charles Cameron Ward that if the said Selina Ward shall survive the said Charles Cameron Ward and shall at the time of his death be his wife or though divorced from him shall not have re-married then the mortgagors will as from the death of the said Charles Cameron Ward pay to the said Selina Ward during the 30 remainder of her life and so long as she shall remain unmarried an annuity of four hundred and sixteen pounds (£416) if and while the youngest son of the said Charles Cameron Ward and Selina Ward shall be a minor and an annuity of three hundred and twelve pounds (£312) as from and after the attainment by such youngest son of his majority or his death previous thereto such annuity to be payable by successive weekly payments of eight pounds or six pounds as the case may be the first of such payments to be made one week after the death of the said Charles Cameron Ward.

Thirdly with the said Charles Cameron Ward and the said Selina Ward and each of them

- (a) That the mortgagors will at all times duly and punctually 40 pay or see paid all rates accounts charges and other outgoings in respect of the said premises
- (b) That the mortgagors will repair and keep in good and substantial repair and condition all the buildings and other



improvements erected upon the said lands as provided by the fifth schedule of the Land Transfer Act 1915

In the Supreme Court of New Zealand.

10

(c) That the mortgagors shall faithfully and punctually pay and observe and perform all and every obligation under any Memorandum of Mortgage touching or affecting the said lands or parts thereof and in case the mortgagors shall make default in the performance of this covenant it shall be lawful but not obligatory upon the said Charles Cameron Ward and or the said Selina Ward to make good such default and all moneys paid by them in so doing shall be repayable by the mortgagors upon demand with interest thereon at eight per centum per annum from the respective dates of payment thereof until repaid shall be recoverable in like manner as the annuities hereby secured

No. 1 " B." Annexure, Memorandum of Mortgage. 15th June 1932—*continued.*

20

(d) That if any of the said weekly payments shall not be paid upon the due dates thereof the mortgagors will pay to the person entitled to receive them upon demand interest on all such sums not so paid at the rate of eight pounds per centum per annum or computed from the due date or respective due dates thereof until payment but this covenant shall be without prejudice to the rights powers and remedies of the said Charles Cameron Ward and Selina Ward in respect of such non-payment.

Provided always and it is hereby agreed and declared :

30

1.—That in case default shall be made in payment of the weekly payments hereby covenanted to be paid by the said mortgagors for the space of thirty days after any of the days hereinafore appointed for the payment of the same as aforesaid or in case of neglect or failure in the performance or observance of any covenant or condition on the part of the mortgagors herein contained and implied then in either of such cases it shall be lawful for the said Charles Cameron Ward and Selina Ward or the survivor of them thereupon or at any time thereafter to exercise the power of sale and incidental powers vested in mortgagees by the Land Transfer Act 1915 as set out in clause 7 of the Fourth Schedule thereto in as full and ample a manner as if default and notice thereby required had been made and given and or to exercise any other rights powers and remedies to which they may by law be entitled.

40

And for the better securing to the said Charles Cameron Ward and Selina Ward of the payment of the annuities hereby covenanted to be paid to them respectively by the Mortgagors the mortgagors hereby mortgage to the said Charles Cameron Ward and Selina Ward all their estate and interest in the said pieces of land described above.

In Witness whereof these presents have been executed this 15th day of June One thousand nine hundred and thirty-two.

**No. 1 " C " Annexure, Affidavit of Selina Ward.**

In the  
Supreme  
Court of  
New  
Zealand.

I, SELINA WARD of the City of New Plymouth Widow make oath and say as follows :—

No. 1 " C. " Annexure, Affidavit of Selina Ward.  
18th June 1953.

1.—The above named Charles Cameron Ward was my husband. We separated in the year 1921 and from then until the date of his death I lived in Auckland and he in New Plymouth.

2.—The marriage between me and the said Charles Cameron Ward was dissolved by a Decree Absolute made in the Supreme Court at Auckland on the 7th day of November 1932 on the petition of the said Charles Cameron Ward based on the agreement for separation between us. 10

3.—Before the Petition for divorce was served on me I was interviewed by an Auckland solicitor acting on behalf of my said husband who wished to know whether I would oppose his obtaining a divorce.

4.—I made it plain to my husband's solicitor that in the event of a divorce I would require proper security for my future maintenance and would have to be satisfied that my four sons were protected against the possibility of the New Plymouth property being disposed of or becoming charged in favour of any other person in case my said husband should remarry. 20

5.—At that time my three oldest sons had acquired a majority of the shares in the private company known as C. C. Ward Limited which carried on its business in the New Plymouth property belonging to my said husband.

6.—I consulted solicitors in Auckland and it was ultimately arranged that my said husband would transfer the New Plymouth property to my four sons in return for a Memorandum of Mortgage securing an annuity of £650 in his favour for his life and an annuity of £416 in my favour after his death until my death or remarriage reducible to £312 on our youngest son attaining his majority. My said husband submortgaged the said Memorandum of Mortgage to me to secure the payment to me of £416 per annum during his life. 30

7.—I have not remarried and my sons are still paying the said annuity to me.

8.—By an Order for permanent maintenance made in my favour on the 19th day of June 1933 my said husband was ordered to pay to me during

my life or until I should remarry the net annual sum of £416. A copy of the said Order is annexed hereto and marked with the letter " A."

In the Supreme Court of New Zealand.

Sworn at New Plymouth this 18th day of June 1953 before me :— } SELINA WARD

B. J. O'MEAGHER, A Solicitor of the Supreme Court of New Zealand.

" A "

No. 81/32

No. 1 " C." Annexure, Affidavit of Selina Ward. 18th June 1953— continued.

10 IN THE SUPREME COURT OF NEW ZEALAND, NORTHERN DISTRICT.

In Divorce

Between

CHARLES CAMERON WARD of New Plymouth Draper ... *Petitioner*

and

SELINA WARD ... .. *Respondent.*

Before the Honourable Mr. Justice REED

Monday, the 19th day of June 1933.

20 UPON reading the Petition for permanent maintenance filed herein by the Respondent Selina Ward and the Consent filed by the Petitioner the said Charles Cameron Ward and after hearing Mr. Mackay of Counsel for the said Selina Ward it is ordered :

1.—The Petitioner Charles Cameron Ward shall pay or cause to be paid to the said Selina Ward during her life or until she shall re-marry the net annual sum of £416 such sum to be payable by successive weekly payments of £8 on the Thursday of each and every week as from the 25th day of August, 1932.

30 2.—That payment of the said annual sum of £416 referred to in the preceding paragraph of this Order is secured and shall during the continuance of this Order be secured by a Memorandum of Mortgage given by the said Charles Cameron Ward to the said Selina Ward dated the 15th day of June 1932 and registered in the Lands Registry Office at New Plymouth under No. 65979.

By the Court,

A. E. DOBBIE, Deputy Registrar.

This is the copy Order marked " A " mentioned and referred to in the annexed Affidavit of Selina Ward Sworn at New Plymouth this 18th day of June 1953 before me—B. J. O'Meagher a Solicitor of the Supreme Court of New Zealand.

In the  
Supreme  
Court of  
New  
Zealand.

**No. 1 " D " Annexure, Reasons for Judgment of Gresson, J.**

Case stated under Section 62 of the Death Duties Act 1921.

No. 1 " D. " Annexure, Reasons for Judgment of Gresson, J.

Charles Cameron Ward died on the 18th April 1949. He had married on the 21st June 1899, was separated from his wife in 1921 and in May 1932 petitioned for dissolution of the marriage. On the 7th November 1932 a decree absolute dissolving the marriage was pronounced. There are four sons of the marriage, all now adult. The deceased was the owner of a property in Devon Street, New Plymouth which was subject to mortgages of £3,000 and of £2,000. The property was leased to C. C. Ward, Limited, for a term of ten years from the 17th February 1930 at a rental of £600 per annum. The Company was a private company with a capital of £10,000; all the shares were held by the deceased and his sons. On the 15th June 1932 the deceased transferred to his sons as tenants in common in equal shares the property subject to the two mortgages. The transfer was expressed to be in consideration of the sons executing a mortgage securing to the deceased an annuity of £650 per annum payable at £12 10s. Od. per week and—after his death—an annual payment to his widow of £6 per week so long as she should remain unmarried. A Memorandum of Mortgage of even date with the transfer was executed by which there was secured on the property the sons' covenant to pay to the deceased during the remainder of his life an annuity of £650 and upon his death—if his wife Selina Ward should have survived him and should at the time of his death be his wife or if divorced should not have remarried—to pay to her during the remainder of her life so long as she should remain unmarried an annuity of £416 whilst the youngest son was a minor and thereafter of £312. When the divorce petition had been served upon Selina Ward early in 1932 the question of securing her future maintenance had been discussed and she had agreed to allow the petition to proceed undefended provided she was properly secured as regards her future maintenance and as well could feel assured that her four sons would be protected against the possibility of the deceased's property being disposed of or becoming charged in favour of any other person if he should re-marry. At that time the four sons held the majority of the shares in the company. The transfer of the property and the mortgage securing the annuity to the deceased and the payment to his widow were the outcome of negotiations between her solicitor and the deceased. Subsequent to the decree absolute being pronounced on the 7th November 1932, an Order was made for permanent maintenance in the terms agreed upon which Order provided that " payment of the said annual sum of £416 referred to in the preceding paragraph of this Order is secured and shall during the continuance of this Order be secured by a Memorandum of Mortgage given by the said Charles Cameron Ward to the said Selina Ward dated the fifteenth day of June 1932 and registered . . . under number 65979." By

10

20

30

40

Memorandum of Mortgage dated 15th June 1932 Charles Cameron Ward mortgaged to Selina Ward all his interest in and under Mortgage No. 65978 (the mortgage given by the sons previously referred to) to secure the covenants contained in such sub-mortgage for payment of the annuity of £416.

In the Supreme Court of New Zealand.

10 The value of the Devon Street property at the time of the transfer was £11,195. The two mortgages amounting in all to £5,000 then on the property have remained on the property. The value of the annuities as assessed at the time of the transfer was £7,247. At the date of the death of the deceased the value of the Devon Street property was £22,265. It was agreed that there was no element of gift or bounty in the transaction but the Respondent claimed under section 5 subsection (1) (j) of the Death Duties Act 1921 to include in the dutiable estate of the deceased £17,265 being the value at the death of the deceased of the Devon Street property less the amount owing in the two mortgages, £5,000.

No. 1 "D." Annexure, Reasons for Judgment of Gresson, J.—  
*continued.*

20 The question which has to be determined is whether on the true construction of section 5 (1) (j) of the Death Duties Act 1921 the property which was transferred by the deceased to his sons in 1932 is properly includable in the dutiable estate of the deceased. The introductory words of subsection (j) are "any property comprised in any settlement, trust, "or other disposition of property made by the deceased . . . and situate "in New Zealand at the date of the death of the deceased." The crucial question is whether there was here a "settlement, trust, or other disposition "of property." In this phrase there are conjoined words which have a limited meaning and a word which has a wide meaning. The word "disposition " is not a technical word but an ordinary English word of very wide meaning. It comprehends and exhausts every conceivable mode by which property can pass (*Duke of Northumberland v. Attorney-General* (1905) A.C. 406, 410).

30 It is well settled that where a general word follows one or more less general terms *ejusdem generis* the otherwise wide meaning of the word of general meaning may be restricted to what is comprehended by the earlier words, and will take its meaning from them unless there are adequate grounds to show that it has not been used in the limited order of ideas to which the preceding words belong (Maxwell on Statutes 9th Ed. 336-342). That in my opinion is the position here. I do not think the Legislature intended to bring within the dutiable estate any disposition of property whatever or of whatsoever kind in which there was present a reservation of some interest for the life of the transferor or was accompanied by some  
40 contract for the benefit of the transferor for his life. It would of course be competent for the Legislature so to enact but one would expect it to be done in language which left no doubt as to the intention of the Legislature. Some effect must be given to the coupling together of the words, "settlement, "trust, or other disposition of property." The Death Duties Act 1921 itself defines, in section 39, what "disposition of property " means; it is a definition which is extraordinarily comprehensive in its terms. It was argued that there must be attributed to the phrase "disposition of

In the  
Supreme  
Court of  
New  
Zealand.

No. 1 "D."  
Annexure,  
Reasons for  
Judgment  
of Gresson,  
J.—  
*continued.*

"property" as used in section 5 (1) (j) the extensive meanings enumerated in section 39. I do not think so. Even when there is a statutory interpretation in the widest language there may nevertheless be placed on the word a more restricted meaning, e.g., in the provisions for the avoidance of voluntary "settlements" in the Bankruptcy Act 1908, though the Act defines "settlement" as including "any conveyance or transfer of property" not every conveyance or transfer of property will be held to be a "settlement." (*O. A. of Braithwaite v. Braithwaite* (1923) N.Z.L.R. 1186 applying *Re Plummer* 1900 2 Q.B. 790.) What has to be determined is the meaning of the word in the particular section of the particular Act within the ambit of which it is sought to bring a particular transaction. I think that one is justified in assuming—in the absence of strong reason to the contrary—that when the Legislature in one section defines "disposition" in the widest possible terms, and then in another section uses the phrase "settlement, trust, or other disposition" it means not a disposition of the nature comprehended by the interpretation section, but a disposition of a different and more limited character. If the Legislature had intended that "disposition of property" as used in section 5 (1) (j) should comprehend all that is enumerated in section 39 it might very well have enacted those words and no more. It has not done so. Instead it has prefaced them by the words "settlement" and "trust." A transfer may be a disposition of property under Section 39 and yet not be within the ambit of subsection (1) (j) of section 5. In my opinion the meaning to be attributed to "disposition of property" in the section is controlled by the context. The disposition must be such as to have some resemblance to a trust or settlement or to be of such a nature as fairly to be includable in the genus or class of trusts and settlements. 10

There have been many cases in New Zealand in which the Court has been called upon to determine whether or not a particular transaction fell within the provisions of section 5 (1) (j). One of the earliest was *Riddiford v. Commissioner of Stamps* (1913) 32 N.Z.L.R. 929 which related to a Deed of Partnership between a father and his sons. The transaction was held to be a settlement of the kind contemplated by the section inasmuch as the sons had no property to bring into the partnership and the Deed was not such as would have been made between strangers. It was in effect a regulation of relations between the parties securing to the father dominance and at the same time making provision for the sons. There have been many other cases to which however it is not necessary to refer since the particular point arising in this case does not appear to have been considered. It has been authoritatively determined by the Court of Appeal (*Commissioner of Stamp Duties v. Paige* (1938) N.Z.L.R. 304) that section 5 (1) (j) is directed to the bringing back into the assets of a deceased person for the purpose of computing the final balance of his dutiable estate property of his own which he has parted with in any manner referred to in the section, and the whole question in this case is whether the manner of parting with the Devon Street property was such as is referred to in the section. The primary inquiry must be whether, taking the words of the subsection, and interpreting 40

them as it appears to me they should be interpreted to comprehend only such "other" dispositions of property as are of the same genus as a settlement or trust, and examining the nature of the transaction, it is to be regarded as within or without the ambit of the subsection.

I therefore pass to consider whether the particular transaction with which this case is concerned can fairly be included in the phrase "settlement of trust, or other disposition." When the circumstances and character of the transaction are examined it is to be seen that it is in essence a contract for the sale of land in consideration of a covenant to pay an annuity to the  
 10 vendor and after his death an annuity of a lesser amount to his former wife. It may be more than that but its essential character is the sale of a property, not for cash, nor for part cash and the execution of a mortgage securing the balance of purchase money, but for an annuity. There are these further characteristics. There is no element of gift or bounty. The value of the property less the mortgages was £6,195. The value of the annuity contracted for was £7,247. The sale was therefore advantageous to the vendor—the deceased—and correspondingly disadvantageous to the purchasers—the sons. It has never been decided whether a purely commercial transaction would be outside the scope of section 5 (1) (j).  
 20 That point need not be considered since it would be difficult to regard the transaction as a purely commercial transaction since it is between a father and his sons. But it was at least for a consideration more than adequate. The test has sometimes been expressed as to whether the transaction was such as would have been made between strangers (see per Smith J. in *Craven v. Commissioner of Stamp Duties* (1948) N.Z.L.R. 550, 563). It is well nigh impossible on a case stated to answer a question so phrased. There is certainly no apparent motive to benefit the sons. In fact they were benefited by securing the occupancy of the property and thus being  
 30 able to secure to the company in which they held the majority of the shares the use of the property, but they had given more than full value for their purchase. The testator had not sold it at an undervalue. With respect I think the question might be better phrased as to whether the terms of the transaction were such as would have been its terms if the transaction had been carried out between strangers. Applying that test I think the answer is in the affirmative. If the company in occupation of the land had been other than a family company and its directors or chief shareholders had sought to acquire the land from the deceased on terms of paying these annuities the terms of the transaction would have been appropriate. If that is so and there is an absence of intention to benefit the sons it is difficult  
 40 to regard the disposition as in the very least one in the nature of a settlement or trust. Upon the facts stated it would appear that the dominant purpose of the deceased was to secure for himself an annuity which he could charge in favour of his former wife to secure her maintenance and as well secure to her an annuity after his death. It was only on terms of making proper provision for her that she would allow his petition for dissolution of the marriage to proceed undefended. There was nothing voluntary in what he

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did ; he did it under pressure and he received more than the property was worth. I do not think the transaction has any of the characteristics of a settlement or trust except that it happens to be made with sons. That I think is fortuitous. The transaction might well have been carried out in the form in which it was had strangers held the majority of the shares in the company and been purchasers of the property.

As was said in *Lethbridge v. Attorney-General* (1907) A.C. 19, "The fact that the transaction was a family transaction is not inconsistent with its being also a purchase for full consideration in moneys or moneys' worth" (at page 24). In that case it was termed a family arrangement because it was necessitated by the father's pecuniary difficulties. In this case it was necessitated by the wife's insistence on a properly secured provision for her. It was said too (by Lord Atkinson at page 28) : "I utterly fail to see how a transaction which would be regarded as a purchase if it took place between strangers and would therefore be outside the Act is to be brought within the Act because the parties to it are members of the same family and the interest or honour of the family induced it or were prompted or protected by it." A family arrangement it may perhaps be but it has none of the characteristics of a settlement or trust. The transaction may have been induced by family considerations as was the case *In re Batemen* (1925) 2 K.B. 429 but nevertheless its terms are such as would have been likely and appropriate had it been made between strangers and not between members of the same family. It is sufficient in England under the statutes applicable there that there be a *bona fide* sale. There is no such exemption in the Death Duties Act 1921 but there is the necessity that it should have been akin to a trust or settlement. Had the transaction been carried out in this case as a matter of pure business it is to be expected that the terms would not have been otherwise. The property was handed over to the sons as purchasers for more than a full consideration given by them and on no other basis. The purchasers, the sons, obtained immediate possession and full dominium over the property with no other obligation to the vendor, their father, than the payment of an annuity to him and to their mother after his death. The property passed by reason only of the purchase and at a price in excess of its value. So far as the sons were concerned no other consideration operated with them save to acquire the property. So far as the father was concerned no other consideration actuated him but to have his purchase money in a form that was agreeable to him because it would enable him to satisfy the demands which his wife put forward as her condition of allowing his petition for dissolution of the marriage to proceed unopposed.

If the unrestricted interpretation of the subsection contended for by the Respondent were correct it would produce results which one hesitates to believe the Legislature could have intended. Upon the basis of such a wide interpretation if a man should expend his capital of say £5,000 in payment to an insurance company in the purchase of an annuity that sum would fall to be included as dutiable estate when he died. He might in fact have consumed the whole of his capital in this way yet at his death



be assessed as having a notional capital although in fact it had ceased to exist in any traceable form. There could be no "successor" within the meaning of section 16 in such a case for the insurance company would not "on the death of the deceased" have become "beneficially entitled" nor in this case did the sons "on the death of the deceased" become "beneficially entitled" to an interest in the property. It was theirs wholly and entirely, subject to the encumbrances, from the date of the registration of the transfer, and became so pursuant to a transaction which though affected between father and sons had all the characteristics of an ordinary commercial transaction and in which there was no element of gift or bounty at all.

In the Supreme Court of New Zealand.  
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No. 1 "D." Annexure Reasons for Judgment of Gresson, J.—  
*continued.*

Without attempting to determine how much element of "settlement" or "trust" the disposition of the property must have to be caught by the subsection, I hold that the transaction in this case was not a "settlement, "trust, or other disposition of property" within the meaning of section 5 (1) (j) of the Death Duties Act 1921. The question asked by the case—whether the Respondent in computing the final balance of the dutiable estate of the deceased was entitled pursuant to section 5 (1) (j) of the Death Duties Act 1921 to include the sum of £17,265—is accordingly answered "No." The Appellant is allowed thirty guineas costs.

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No. 1 " E " Annexure, Formal Judgment of the Supreme Court.

Before the Honourable Mr. Justice GRESSON.

Monday, the 7th day of September 1953.

Upon reading the Case Stated by the Respondent pursuant to the provisions of section 62 of the Death Duties Act 1921 filed herein And upon hearing Mr. Spratt and with him Mr. J. H. Sheat of Counsel for the Appellants and Mr. Byrne of Counsel for the Respondent, it is hereby ordered and declared that the Respondent in computing the final balance of the dutiable estate of the above-named Charles Cameron Ward deceased was not entitled pursuant to section 5 (1) (j) of the Death Duties Act 1921 to include the sum of seventeen thousand two hundred and sixty-five pounds (£17,265) representing the value at the date of the deceased's death of the land described in Certificates of Title Volume 125, Folios 203, 204, 205 and 206 Taranaki Registry, less the amounts owing under Deeds of Mortgage Numbers 48414 and 50792 as at the 15th day of June 1932.

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And it is further ordered that the Respondent do pay to the Appellants the sum of thirty-one pounds ten shillings (£31. 10s.) for costs.

By the Court :

(L.S.)

H. J. WORTHINGTON,  
*Deputy Registrar.*

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No. 2.  
Notice of Motion on Appeal.

IN THE COURT OF APPEAL OF NEW ZEALAND.

Between

THE COMMISSIONERS OF INLAND REVENUE ... .. *Appellant*  
and

FLORENCE EMMA WARD, of New Plymouth, Widow, RONALD  
STANLEY WARD, of Hawera, Draper and LIONEL MORAN  
WARD, of New Plymouth, Draper, as Administrators in  
the Estate of Charles Cameron Ward, late of New  
Plymouth, Draper, deceased ... .. *Respondents.*

10

Take notice that this Honourable Court will be moved by Counsel for the above-named Appellant at the first day of the first sitting to be held in the year 1954 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 delivered by the Honourable Mr. Justice Gresson at Wellington on the 7th day of September 1953 on a case stated under section 62 of the Death Duties Act 1921 wherein the above-named Appellant was Respondent and the above-named Respondents were Appellants upon the ground that such judgment is erroneous in law.

20

Dated at Wellington, this 23rd day of September 1953.

J. BYRNE,  
*Solicitor for the Appellant.*

To :

The Registrar of the Supreme Court of New Zealand at Wellington.  
The Registrar of the Court of Appeal of New Zealand.  
The Respondents and their solicitors, Messrs. Nicholson Kirby and Sheat.

No. 3.  
Reasons for  
Judgment  
of Court  
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No. 3.  
Reasons for Judgment of the Court of Appeal.

30

(a) BARROWCLOUGH, C.J.

(a) Barrow-  
clough, C.J.  
29th  
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In this case I have the misfortune to have arrived at a conclusion different in one respect from that which has been reached by my learned brethren. In my opinion, S. 5 (1) (j) of the Death Duties Act 1921 does not apply to a transaction such as that which gives rise to the present proceedings, and on that basis it is unnecessary for me to consider the

effect of the three sub-paragraphs of that paragraph. It is equally unnecessary for me to examine certain subsidiary arguments that were addressed to us by Mr. Spratt. In this judgment I propose to confine myself to the point on which I find myself unfortunately at variance with the other members of the Court and a statement of the reasons which have led me to a different opinion.

I accept the proposition that the transfer of the Devon Street property by the deceased to his sons was a "disposition of property" and that the mortgage securing the annuity was a "contract for a benefit to the deceased  
10 "for the term of his life." I accept also that the aforesaid disposition of property was "accompanied by the contract" within the meaning of that phrase in S. 5 (1) (j) (ii) of the Death Duties Act. At first sight it may appear that this is an acceptance of the Commissioner's contention that the Devon Street property ought to be included in the estate of the deceased. That, however, is not so; for it still remains to be determined whether the disposition of the property was, generally such a disposition as the legislature had in contemplation when it enacted paragraph (j). I think that vital question is concluded by authority and that the answer to the question is  
20 as was then in contemplation.

In *Lethbridge v. Attorney General* (1907) A.C. 19, the House of Lords had to interpret S. 2 (1) (d) of the (English) Finance Act 1894: The Lord Chancellor (Lord Loreburn) said

"The general purpose of this subsection is to prevent a man  
"escaping estate duty by subtracting from his means, during  
"life, money or money's worth, which, when he dies, are to  
"reappear in the form of a beneficial interest accruing or arising  
"on his death. Now it is not subtracting from his means if the  
"deceased has received a full equivalent in return for whatever  
30 "he has laid out."

Having thus stated the general purpose of the subsection the Lord Chancellor proceeded to interpret it in the light of that general purpose. I confess I do not fully understand just why the Lord Chancellor found it necessary to resort to the general purpose of the sub-section for aid in its interpretation, nor how he arrived at his conclusion that that general purpose was as he stated it. There may be difficulty in reconciling the procedure followed by Lord Loreburn with the following passage from the speech of a later Lord Chancellor in *Canadian Eagle Oil Co. Ltd. v. The King* (1946) A.C. 119. Viscount Simon L.C. said at pp. 139/140:

40 "But the opinions delivered by Lord Macnaghten and Lord  
"Davey in that well-known case proceed upon a meticulous  
"construction of those particular provisions and not upon the  
"supposition of any general principle underlying them, and  
"remaining unexpressed. No such supposition is legitimate.  
"In the words of the late Rowlatt J., whose outstanding knowledge

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“ of this subject was coupled with a happy conciseness of phrase,  
“ “ in a taxing Act one has to look merely at what is clearly said.  
“ “ There is no room for any intendment. There is no equity  
“ “ about a tax. There is no presumption as to a tax. Nothing  
“ “ is to be read in, nothing is to be implied. One can only look  
“ “ fairly at the language used.’ ”

The decision in the *Lethbridge* case, however, is authoritative and it has been followed by the Court of Appeal of New Zealand in *Commissioner of Stamp Duties v. Russell* 1948, N.Z.L.R. 520, and in *Craven v. Commissioner of Stamp Duties* 1948 N.Z.L.R. 550. In both those cases the Court of Appeal was considering para. (g) of S. 5 (1) of our Death Duties Act 1921— a paragraph which for all practical purposes is identical with para. (d) of S. 2 (1) of the English Act. 10

It is important to notice just what was decided in the *Lethbridge* case. The paragraph there under review made no express exception of transactions in respect of which full consideration in money or money's worth was given for that which was purchased or provided. The words in that paragraph were, in their ordinary meaning, wide enough to cover all annuities and other interests purchased or provided by the deceased whether for full consideration or not. Nevertheless, and notwithstanding the rule of construction which is so well stated in the passage I have quoted from the later case of *Canadian Eagle Oil Co. Ltd. v. The King*, Lord Loreburn clearly did read the paragraph with a gloss. He evidently thought something was intended “ to be read in ” or that something was intended “ to be implied.” In my understanding of His Lordship's speech, it is inescapable that he read the paragraph as if the words “ other than for full consideration in “ money or money's worth ” were written in after the words “ purchased or “ provided by the deceased.” He was at pains to say that his conclusion was arrived at independently of the provisions of S. 3 (1) of the (English) Finance Act 1894. Not one of the other members of the Court expressed his dissent from Lord Loreburn's reasoning. 20 30

Section 5 (1) (g) of our 1921 Act appeared for the first time in the Death Duties Act 1909, and as I have said it was in precisely the same terms. It was obviously copied from the section in the English Act of 1894. It is a fair inference that the decision in *Lethbridge's* case was known to the framers of our Act and that the intention was that it should have the same meaning as the meaning authoritatively given by the House of Lords just three years before to the same section in the English Act.

I turn now to S. 5 (1) (j) of our own Act. It has no counterpart in England. It first appeared in our Act in the year 1909—in the same section as the section 5 (1) (g) that has just been under discussion. If para. (g) was intended to be read with a gloss (and that I think is inescapable if the *Lethbridge* case is fully understood) then I am at a loss to understand, unless there were a marked and relevant change of language, why it should be assumed that Parliament had a different intention in regard to transactions mentioned in para. (j). Is there then any such change of language which would indicate a change of intention ? 40

By virtue of subsection (g) there is deemed to be included in a man's estate "any annuity or other interest purchased or provided by the deceased etc." Under subsection (j) there is similarly included "any property comprised in any settlement trust or other disposition made by the deceased etc." I venture to say that an annuity or other interest could be purchased or could be provided in two ways. It could be purchased or provided for something less than full consideration in money or money's worth: in which case it would appear to be within subsection (g). Alternatively it could be purchased or provided for full consideration: in

- 10 which case it is not within the subsection (*Lethbridge's case*; *Russell's case* and *Craven's case* already mentioned). In the same way a settlement trust or other disposition could be made for something less than full consideration or alternatively for full consideration. To me, the conclusion is inescapable that as regards the making of settlements trusts and other dispositions, as well as regards the purchasing or providing of annuities or other interests, Parliament must be presumed to have intended that the relevant paragraph would not apply where full consideration in money or money's worth was given.
- 20 It is suggested that there is a distinction between the words "purchased" or "provided" on the one hand and the word "made" on the other. Upon this point I have had the advantage of reading the judgment about to be delivered by Hutchison J. and in particular that passage of it in which he says that as he reads the opinions of their Lordships in the *Lethbridge* case they are that the word "provided" in S. 2 (1) (d) of the (English) Finance Act 1894 means "supplied without payment" or words to that effect. With the very greatest respect I venture to suggest that that overlooks the reasoning by which his Lordship arrived at his conclusion. If the Lord Chancellor had thought that the word "provided" in its ordinary connotation meant to furnish or supply gratuitously and if his
- 30 opinion was founded on that, he would, I think, have said so. The word "provide" is not a word which necessarily connotes furnishing or supplying at the cost of the furnisher or supplier. No dictionary that I have consulted suggests that it necessarily does so. It connotes a furnishing and supplying for a remuneration as well as a gratuitous furnishing and supplying. I suggest that an annuity or other interest can be provided with or without payment and for or without full consideration in money or money's worth. I think Lord Loreburn himself took that view and did not hold that the word "provide" necessarily meant "supply without payment." He appears to have recognised that, in its ordinary meaning, the word was wide enough
- 40 to include the provision of an annuity for or without adequate monetary consideration; but he was persuaded, from considerations outside the word itself, namely consideration of the general purpose of the section, that the section was not intended to apply to a transaction wherein that which was taken out of the estate was immediately replaced by something of equal monetary value. If that was not his line of reasoning, for what purpose did he find it necessary to allude to the general purpose of the section? When his Lordship went on to say that the father "purchased

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“ nothing and provided nothing ” that must be read in conjunction with the words which immediately follow and explain the phrase

“ What he originally expended in acquiring and maintaining the policies till their assignment was compensated, what he stipulated by the family arrangement to do in future years was also compensated.”

It is clear, I think, that when his Lordship said the father purchased nothing and provided nothing he meant and said that the father purchased nothing and provided nothing *which was not fully compensated*. The ratio of the decision is not in the ordinary meaning of the words “ purchased or provided ” but in the qualified meaning that they have been held to have in the paragraph. 10

And I think the same view was held by Lord Macnaghten. He does not say that the policies were not provided by the father. He says (p. 25) they were not provided by the father *within the meaning of that expression* in the Act (the italics are mine). In so saying he acknowledges that the word “ provided ” in its ordinary significance would include furnishing or supplying in return for full consideration ; but he says that that is not its meaning in the Act. It seems to me he follows precisely the Lord Chancellor’s reasoning. He certainly does not expressly dissent from it. 20 Nor does Lord Atkinson take a different view. When he proceeds straight away to the statement on p. 27 : “ the Appellant undoubtedly gave full value in money or money’s worth for all the benefits he received ” it seems to me that he too is expressing the opinion that, because of the general purpose of the paragraph, as stated by the Lord Chancellor, it referred only to those annuities or other interests which were purchased or provided other than for full consideration in money’s worth.

As I read the opinions of their Lordships I think that none of them are founded on any suggestion that the word “ provided ” would ordinarily mean furnished or supplied for other than full consideration, and that all their Lordships gave it that restricted meaning only because, from the general purpose attributed to the paragraph—a purpose not discernible in the word itself and still less in the word “ purchased ”—they were of opinion that a transaction for full consideration in money’s worth was not intended to be caught by the section. None of their Lordships sought refuge in the provisions of S. 3 of the 1894 Act. The general purpose attributed to the section was fair and reasonable. It was to prevent the subtraction from a man’s estate, with resultant avoidance of duty, of an asset that would reappear in the form of a beneficial interest arising on his death. There was no subtraction if the asset disposed of was replaced by something which was “ a full equivalent in return.” I cannot see how it can be denied that a similar general purpose must be attributed to S. 5 (1) (j). 30 The words in para. (g) are “ purchased or provided.” The word in paragraph (j) is “ made.” If without any essential element of gratuity in the word “ provided,” para. (g) should, on the authority of the *Lethbridge* case, be read with a gloss, then I think I am bound by the same authority to hold that para. (j) should be similarly read. 40

It is argued, however, that this question has already been decided the other way by this Court in *Craven v. Commissioner of Stamp Duties*, 1948 N.Z.L.R. 550. It is true that in that case this Court held that a settlement by the deceased of an insurance policy on his life in the manner there indicated was within S. 5 (1) (j) even though the deceased when he made the settlement received full consideration and indeed more than full consideration for what he brought into the settlement. But though leading counsel for the taxpayer is reported (p. 553) as having submitted that Lord Loreburn had enunciated in the *Lethbridge* case "a principle of general application which can exclude transactions from both para. (g) and para. (j) of Section 5," that particular point was not adverted to in any of the judgments. As regards the claim under S. 5 (1) (j), Mr. Justice Blair agreed with the reasoning and the conclusion of Mr. Justice Smith who had disposed of the matter in the following paragraph :

10 "The next question is whether S. 5 (1) (j) applies. Mr. Sim submitted that the transaction was a commercial one of bargain and sale, and, therefore, outside S. 5 (1) (j). I have dealt with the matter in my judgment in *Commissioner of Stamp Duties v. Russell*. It is sufficient here to say that I do not consider the settlement in the present case was a commercial transaction for value, and that it is not necessary to decide whether such a transaction is outside the scope of S. 5 (1) (j). In my opinion, the transaction in the present case is not such a transaction as would have been made between strangers. It was a settlement entered into because of the father's desire to make provision for a son who did not, and probably could not, give anything like full consideration for the benefits conferred upon him. The motive of the settlement was family regard, and there was nothing like adequate consideration for the provision made by the father as settlor. I think, therefore, that the settlement is within the class of settlements dealt with by para. (j)."

20  
30  
40 There is nothing in His Honour's judgment in *Commissioner of Stamp Duties v. Russell* which decides whether a disposition of property made for full consideration is or is not within para. (j). In that case, the settlement made by the deceased was not made for full consideration. In *Craven's* case it was ; but the strange thing is that His Honour did not found his judgment on that fact. He relied on the circumstance that the transaction was not such a transaction as would have been made between strangers, that the motive of the settlement was family regard, and that there was nothing like adequate consideration for the provision made by the father as settler (pp. 563/4) ; not, be it noted, that there was no adequate consideration for the provision made by the son -the deceased. The ratio of His Honour's decision was therefore that as the transaction was not one which would have been made between strangers, the operation of subsection (j) was not excluded.

In the Court of Appeal of New Zealand.

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(a) Barrow-crough, C.J. 29th October 1954—*continued.*

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Precisely the same reasoning was adopted by Kennedy J. He said at p. 566 :

“ The transactions evidenced obviously have their foundations  
“ in the father’s desire to provide for his children and are not of  
“ the kind which would take place between strangers. They are  
“ not in essence ordinary commercial transactions.”

What was decided in *Craven’s* case as regards the application of S. 5 (1) (j) was that the section included transactions of such a kind that it could be said of them that they would not have been made between strangers.

That test is authoritative and I accept it ; but the Court of Appeal did not, 10  
in my reading of the judgments, negative the argument that, if the settlement, trust or other disposition of property made by the deceased was one which could have been made between strangers and was also one in respect of which the deceased received full consideration in money or money’s worth, then the property concerned is not caught by para. (j).

In the present case it is common ground that the disposition of the property accompanied as it was by a contract for a benefit to the deceased for the term of his life was a transaction for which the deceased received full consideration in money’s worth. The consideration was substantially equal on both sides as nearly equal as could be expected on actuarial 20  
calculations. There was no element, as there was in *Craven’s* case, of a grossly over adequate consideration on one side. The transaction was one which might well have been made between strangers. The fact that it was also a family arrangement is not inconsistent with its being a purchase for full consideration in money or money’s worth ; *Lethbridge’s* case (*supra*) at p. 24.

If I felt there was anything in *Craven’s* case which negated my view that the general principle which Lord Loreburn and our Court of Appeal have held to be applicable to para. (g) is equally applicable to para. (j), then I should be bound to reject and I would reject that view. It seems to 30  
me, however, that in *Craven’s* case the point I have been considering was not decided but was overlooked.

I have stated that I feel bound by authority to hold that the general purpose of S. 5 (1) (j) of our Act is similar to the general purpose of S. 5 (1) (g) as that purpose was determined by this Court in the *Russell* case. That opinion of the general purpose of the para. (j) is not inconsistent with anything that was said in *Commissioner of Stamp Duties v. Page* ; 1938 N.Z.L.R. 304. It is true that Myers C.J. in delivering the judgment of the Court said (foot of p. 307) :

“ The scheme of S. 5 (1) (j) is directed, we think to the bringing 40  
“ back into the assets of a deceased person for the purpose of  
“ computing the final balance of his dutiable estate property of  
“ his own which he has parted with in any manner referred to in  
“ the section, and not to the inclusion in his estate of property  
“ of some third person which never became the property of the  
“ deceased and the dealing with which is caught within the meshes  
“ of other sections of the Act.”



The "other sections of the Act" to which the learned Chief Justice was referring were the sections relating to gift duty and need not be considered for the purposes of our present problem. Granting that the phrase "the scheme of S. 5 (1) (j)" is substantially equivalent to the phrase "the general purpose of S. 5 (1) (j)", nevertheless it is clear that Sir Michael Myers was considering the scheme or purpose of the enactment only in relation to its application to a settlement trust or other disposition of property made by the deceased in contradistinction to one made by a person other than the deceased. He was certainly not considering the scheme or purpose of that section in relation to a settlement, trust or other disposition made for fully adequate consideration as against one made for other than fully adequate consideration. That latter question did not and could not arise in *Page's* case. The definition therein by Myers C.J. of the scheme of para. (j) is therefore not in conflict with my statement of the general purpose of it.

I would have dismissed this appeal; but the judgment of the Court must be in accordance with the judgments about to be delivered by Hutchison and McGregor JJ.

(b) HUTCHISON J.

20 The answer to the question before the Court depends on the true construction of S. 5 (1) (j) of the Death Duties Act 1921, reading:—

"In computing for the purposes of this Act the final balance of the estate of a deceased person his estate shall be deemed to include and consist of the following classes of property:—

\* \* \* \* \*

"(j) Any property comprised in any settlement, trust, or other disposition of property made by the deceased, whether before or after the commencement of this Act, and situated in New Zealand at the death of the deceased,—

30 " (i) By which an interest in that property, or in the proceeds of the sale thereof, is reserved either expressly or by implication to the deceased for his life or for the life of any other person, or for any period determined by reference to the death of the deceased or of any other person; or

40 " (ii) Which is accompanied by the reservation or assurance of, or a contract for, any benefit to the deceased for the term of his life or of the life of any other person, or for any period determined by reference to the death of the deceased or of any other person; or

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“ (iii) By which the deceased has reserved to himself  
“ the right, by the exercise of any power, to restore to  
“ himself or to reclaim that property or the proceeds of  
“ the sale thereof.”

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The learned Judge in the Court below held the word “ disposition ”  
in the early part of paragraph (j) to mean a disposition *ejusdem generis*  
with “ settlement ” and “ trust,” and that, on that meaning of  
“ disposition,” the transaction in this case did not fall within the words  
“ settlement trust or other disposition ” substantially for the reason that 10  
it had all the characteristics of an ordinary commercial transaction and  
that there was not in it any element of gift or bounty. The argument for  
the Appellant in this Court was that the transaction in question was a  
“ settlement ” or alternatively that it was an “ other disposition ” of  
property within the words of paragraph (j) and that the facts bring the  
case within one or other or both of the sub-paragraphs (i) and (ii) of that  
paragraph. Mr. Spratt for the Respondent supported the view taken in  
the Court below that the transaction in question did not fall within the  
words “ settlement trust or other disposition of property,” and submitted  
alternatively that S. 5 (1) (j) does not apply to transactions of the nature 20  
of a sale for full consideration. Within the general scope of the arguments  
so summarised there were discussed a number of topics with which it will  
be necessary to deal.

It was common ground that a primary rule of construction of such  
a statutory provision as that with which we are concerned is that the  
intention of the Legislature should be sought but that that intention should  
be sought only from the words of the statute. Viscount Simon L.C. said  
in *Canadian Eagle Oil Company Ltd. v. The King* (1946) A.C. 119, 139 :

“ But the opinions delivered by Lord MacNaghten and  
“ Lord Davey in that well-known case proceed upon a meticulous 30  
“ construction of those particular provisions and not upon the  
“ supposition of any general principle underlying them, and  
“ remaining unexpressed. No such supposition is legitimate.  
“ In the words of the late Rowlatt J., whose outstanding knowledge  
“ of this subject was coupled with a happy conciseness of phrase,  
“ ‘ in a taxing Act one has to look merely at what is clearly said.  
“ ‘ There is no room for any intendment. There is no equity  
“ ‘ about a tax. There is no presumption as to a tax. Nothing  
“ ‘ is to be read in, nothing is to be implied. One can only look  
“ ‘ fairly at the language used ’.”

With great respect for the view taken by the learned Judge in the 40  
Court below, I think that it is subject to the criticism that he interpreted  
the words “ settlement, trust or other disposition ” in the early part of  
paragraph (j) as if that expression stood alone. With respect, I think that  
the relevant context is to be found in the whole of the paragraph, an  
important part of which is contained in the sub-paragraphs (i), (ii) and (iii).

If the words "settlement, trust or other disposition" should be read as if they stood alone, then it seems to me that there is much more to be said in favour of reading the words "other disposition" *ejusdem generis* with "settlement" and "trust," than is to be said in favour of such a reading when the "settlement, trust or other disposition" is confined to one that falls within one of the sub-paragraphs (i), (ii) or (iii). "Disposition of property" is defined in S. 39 of the Act in very wide terms. It is the word "other" and the conjunction of "disposition" with "settlement" and "trust" in the early part of paragraph (j) that affords the basis for a view that the *ejusdem generis* rule applies. If, however, as clearly is the case, all dispositions as defined in S. 39 do not fall within S. 5 (1) (j), the inclusion of other dispositions along with settlements and trusts, which latter would be the instruments the more likely to be chosen to carry out such transactions as would fall within sub-paragraphs (i), (ii) or (iii), might well be simply to meet the case in which the transaction, while being within one of the sub-paragraphs, was not carried out by means of a settlement or trust. The judgment under review contains a passage :—

20 " If the Legislature had intended that 'disposition of property' as used in section 5 (1) (j) should comprehend all that is enumerated in section 39 it might very well have enacted those words and no more. It has not done so. Instead it has prefaced them by the words 'settlement' and 'trust.' "

Mr. Byrne for the Appellant does not accept the view that "disposition of property" as defined in S. 39 necessarily includes all settlements. Assuming, however, that it does, while I appreciate the point made in this passage, I think that the Legislature might very well, and understandably, have specially mentioned settlements and trusts as being the types of disposition that would the more likely be used for the purposes set out in the sub-paragraphs without thereby intending to exclude from the operation of the provision any other dispositions that might be used for those purposes.

30 I am treating as a separate and alternative argument, as Mr. Spratt for the Respondent so put it forward, the contention that S. 5 (1) (j) does not apply to transactions of the nature of a sale for full consideration. So treating that argument, I am of the opinion, on the first submission for the Respondent, that dispositions of property may be caught by paragraph (j) even if they are not of the nature of settlements or trusts. The genus is, in my opinion, established by sub-paragraphs (i), (ii) and (iii) rather than by reference to settlements and trusts.

40 If, however, I should be wrong in that view, I think, for the reasons given in the judgment of my brother McGregor, which I have had the opportunity of reading, that the disposition in this case was of the nature of a settlement, and accordingly that, even on an application of the *ejusdem generis* rule to the expression "settlement trust or other disposition" alone, it would be within those words.

It is convenient to say, before dealing with Mr. Spratt's main alternative

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argument, that it was common ground that at the time of the transfer of the Devon Street property the equity in the property was £6,195 and the assessed value of the annuities payable by the sons of the deceased was £7,247 and that the transfer did not constitute a gift within the meaning of the Act. I think, however, that, before dealing with that argument, I should first refer to two other submissions made by him.

The first of these was that paragraph (j) cannot apply to this transaction because there was in the transaction nothing amounting to a reservation of a benefit to the vendor or any device equivalent to or securing the same effect or result as a reservation. Mr. Spratt's reference to "reservation 10  
" of a benefit " related to the wording of sub-paragraph (i), and his reference to a " device equivalent to a reservation " to the words " assurance of, or " a contract for " a benefit in sub-paragraph (ii). Whatever may be said as to " reservation," I do not see any reason for so restricting the meaning of the words " assurance of or a contract for." As it seems to me, sub-paragraph (i) applies only to a case where the benefit is reserved out of the property disposed of or the proceeds of its sale, but sub-paragraph (ii) makes the same consequences follow if the benefit is conferred by some accompanying reservation, assurance or contract, it being for the purpose of this sub-paragraph immaterial that the benefit is to come from a source 20  
different from the property disposed of or the proceeds of its sale. The grant of the annuities secured on the land was the consideration for the transfer of the land to the sons, and the connection of these two dispositions, in my opinion, brings the former within the meaning of the words " assurance of " or " contract for " and the transaction within the meaning of " accompanied " see *Craven v. Commissioner of Stamp Duties* (1948) N.Z.L.R. 550, 564, 566.

The second of these submissions was that, having regard to the terms of S. 16 (1) (g) of the Act, relating to property liable to succession duty, it was impossible to hold that S. 5 (1) (j) covers the case before the Court. 30  
That, it was said, was because the essence of a succession is that it is something conferred on the successor by the death of the person from whose estate the succession comes, and that in this case the death conferred nothing on the sons but merely marked the time when they reached the end of the payment of the first annuity. It was assumed for the purpose of this argument that, if the present case came within S. 5 (1) (j), it necessarily came also within S. 16 (1) (g), an assumption that I am prepared to take as well-founded. I think that this argument places a meaning on the word " succession " that is more restricted than that given to it by the Act. It may be that the more common case of a succession is that in which the 40  
succession is conferred by the death of the person from whose estate it comes ; but S. 16 defines " successor " in terms that are not restricted to such a succession as that. The word is defined as meaning any person who, on the death of the deceased, comes within any of the paragraphs (a) to (i). Paragraphs (a), (b) and (h), introduced by the words " Acquires " under (or by) " and paragraphs (e) and (f), introduced by the words " becomes beneficially entitled to," appear to me to relate to what I have

said may be the more common type of succession. Paragraph (g), however, in common with paragraphs (c) and (d) is introduced by the words "Is beneficially entitled to"; and those words indicate, I think, that the "succession" referred to in those paragraphs need not have been conferred on the person described as the "successor" by the death of the deceased and that it is sufficient that such person *is* on the death of the deceased entitled to the property in question. Still another case is covered by paragraph (i), in which the introductory words are "Has become entitled to," and which relates back to a previous gift or *donatio mortis causa*. In

10 *The Lord Advocate v. Fleming* (1897) A.C. 145, cited for the Respondent on this point, the importance of the precise words of the provision defining the succession appears clearly. The person entitled to the policy of insurance in that case did not "become beneficially entitled" "upon the "death of any person" because she had become entitled by reason among other things, of her own payment of premiums during a period of years prior to the death of her father see per Lord Halsbury at p. 152, Lord Herschell at p. 153. The learned Judge in the Court below said :

20 " . . . nor in this case did the sons 'on the death of " 'the deceased' become 'beneficially entitled' to an interest " in the property. It was theirs wholly and entirely, subject " to encumbrances from the date of the registration of the " transfer. . . . "

Mr. Byrne points out that His Honour there uses, to precede the words "beneficially entitled," the word "become," whereas in paragraph 16 (1) (g) those words are preceded by the word "is," and this observation, in my view, is one of weight. I would respectfully agree with His Honour that the sons became beneficially entitled to the property, subject to encumbrances, on their purchase. But so, for example, did the successor in relation to a gift *inter vivos* covered by paragraph (i). If the sons became

30 beneficially entitled to the property on their purchase, they still were beneficially entitled to it on the death of their father. In my opinion, the same question rises on S. 16 (1) (g) as on S. 5 (1) (j), that of whether the property is within the dutiable estate of the deceased, and the former sub-section does not help in the interpretation of the latter on that point.

I turn then to Mr. Spratt's main alternative submission that S. 5 (1) (j) does not apply to transactions in the nature of a sale for full consideration. As the learned Judge said in the Court below, it has never been decided whether a purely commercial transaction would be outside the scope of section 5 (1) (j). In this case, the transaction was between a father and

40 sons and, therefore, as the learned Judge pointed out, it would be difficult to regard it as a purely commercial transaction. With that I respectfully agree, and I do not so regard it. Mr. Spratt's submission, however, is that a transaction of the nature of a sale for full consideration, even though not a purely commercial transaction, is outside the ambit of the paragraph. In his submission, the fact that the transaction was, in this case, between father and sons is not of importance, but what is of importance is that full consideration was given.

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Much weight was placed for the Respondent on *Lethbridge v. Attorney-General* (1907) A.C. 19. The House of Lords there had under consideration S. 2 s.s. (1) (d) of the Finance Act 1894 :—

“ Property passing on the death of the deceased shall be  
“ deemed to include the property following, that is to say :—

\* \* \* \* \*

“ (d) Any annuity or other interest purchased or provided  
“ by the deceased, either by himself alone or in concert or  
“ by arrangement with any other person, to the extent of the  
“ beneficial interest accruing or arising by survivorship or  
“ otherwise on the death of the deceased.”

10

Lord Loreburn L.C. said :—

“ The general purpose of this sub-section is to prevent a man  
“ escaping estate duty by subtracting from his means, during  
“ life, moneys, or money's worth, which, when he dies, are to  
“ reappear in the form of a beneficial interest accruing or arising  
“ on his death. Now it is not subtracting from his means if the  
“ deceased has received a full equivalent in return for whatever  
“ he has laid out.”

In *Commissioner of Stamp Duties v. Russell* (1948) N.Z.L.R. 520, Mr. Justice Smith, whose judgment was concurred in by Mr. Justice Blair, 20 considered a number of cases, including *Lethbridge's* case, in relation to S. 5 (1) (g) of the Death Duties Act 1921, which in substance is the same as S. 2 (1) (d) of the Finance Act 1894. He said :—

“ The principal object of the sub-section is to bring into the  
“ dutiable estate of the deceased an interest, on the purchase or  
“ provision of which he has expended his means in his lifetime  
“ and in respect of which a beneficial interest will arise or accrue  
“ upon his death.”

In my opinion, the Lord Chancellor's statement of the general purpose of the sub-section and Mr. Justice Smith's reinstatement of it in somewhat 30 different terms, do not relate solely to S. 2 (1) (d) of the Finance Act 1894 and S. 5 (1) (g) of the Death Duties Act 1921 respectively but state the general purpose of all death duty legislation introduced to meet cases other than that in which the property was at the time of the death of the deceased his own property. In my view such general purpose provides the background against which any particular statutory provision is to be interpreted.

The Lord Chancellor went on :—

“ In this case, from the date when the policies were assigned,  
“ and the obligation to find out of the life estate enough to pay the 40  
“ premiums was created (for all of which full value was given),  
“ no further liability was incurred, nor sacrifice made by the  
“ father in connection with these policies. He purchased nothing

“and he provided nothing. What he originally expended in acquiring and maintaining the policies till their assignment was compensated, what he stipulated by the family arrangement to do in future years was also compensated, by the consideration proceeding from the son; and thenceforward he had no title to, nor concern with, the policies.”

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Lord Macnaghten said:—

10 “I do not propose to trouble your Lordships with any observations on the latter part of the judgment of the Court of Appeal, because it appears to me that the policies were not ‘provided’ by the father within the meaning of that expression in the Act. It was not by the father’s gift, or at his cost, or by means of any expenditure on his part, that the policies were vested in the son. After they became vested in the son they were, as it seems to me, kept up at the son’s sole expense, and not to any extent or in any sense by the application of any part of the father’s income.”

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20 Lord Atkinson agreed with the reasons of the Lord Chancellor and Lord Macnaghten. Lord Robertson agreed with the Lord Chancellor, who stated the concurrence of Lord James of Hereford also.

The case is authority for the view that a transaction for which full consideration was given is not within S. 5 (1) (g) of the Death Duties Act 1921, and that was so held by this Court, following *Lethbridge’s* case, in *Craven v. Commissioner of Stamp Duties (supra)*—I refer to the judgment of Smith J. at p. 563 and of Kennedy J. at p. 566.

30 While *Lethbridge v. Attorney-General (supra)* is, of course, of the highest authority on the interpretation of S. 5 (1) (g) of the Death Duties Act 1921, it does not follow that it is necessarily so on the interpretation of S. 5 (1) (j). In my opinion, the decision in *Craven v. Commissioner of Stamp Duties (supra)* shows that it is not an authority on the interpretation and scope of S. 5 (1) (j) or, at any rate, of sub-paragraph (ii) of that paragraph. In *Craven’s* case, this Court following *Lethbridge’s* case, as I have already said, held the disposition before it, the transfer by the deceased son of his rights in an insurance policy, not to be within S. 5 (1) (g) because full consideration had been given for it. At the same time, however, it held it to be within sub-paragraph (ii) of S. 5 (1) (j)—see the judgments of Blair J. at p. 561, of Smith J. at p. 564, and of Kennedy J. at p. 566.

40 As, however, the reasons of the Court for holding, as I think it did, that the opinions expressed in *Lethbridge’s* case do not apply to S. 5 (1) (j) (ii), were not stated *in extenso*, I proceed, in deference to the argument presented to us, and with the greatest respect, to express my own view why they do not.

It cannot be doubted that paragraph 5 (1) (j) was enacted by the Legislature because it had been found that such methods as were indicated in the paragraph had been used to avoid payment of duty. The paragraph would have as its general purpose that stated by the Lord Chancellor in *Lethbridge’s* case. An extreme case of those against which sub-paragraphs (i)

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and (ii) are directed, one may think, would be a case in which a person, knowing or suspecting himself to be medically a bad life, disposed of his property to members of his family for an annuity and died shortly after. The annuity might well be one that, on the face of it, the value of it being actually calculated on an average expectancy of life, appeared to be full consideration for the transfer of the property. There may well, however, have been other cases, much less extreme, against which these subparagraphs are directed. In any event, I do not doubt that their general purpose is that stated by the Lord Chancellor.

In my view, it is apparent from the opinions of their Lordships in *Lethbridge v. Attorney-General* that they were arrived at on the wording of the section on which the Crown relied. The question was whether the father "provided" the policies within the meaning of that expression in the section. Mr. Justice Smith in *Commissioner of Stamp Duties v. Russell* (*supra*) drew certain conclusions from the authorities:—

"4. In the determining whether the deceased did purchase or provide the policy, the Court, having regard to the legal nature of the transaction in question ascertains whether the means of the deceased were used for the purpose of acquiring or maintaining the policy.

"5. In accordance with the principle established in *Lethbridge v. Attorney-General* the interest is not provided by the deceased where, though he has purchased or provided it for some period, he subsequently transfers it during his lifetime for adequate consideration."

These conclusions, concurred in as the judgment was by Mr. Justice Blair, afford, I think, recognition by this Court that the question before the House in *Lethbridge v. Attorney-General* was the limited question as to whether the father purchased or provided the policies within the meaning of the sub-section. The House, looking at the circumstances, which included the very important circumstance that the son gave the father full consideration for the policies, held that the father did not purchase or provide them. As I read the opinions of their Lordships, I think that they are that the word "provided" in S. 2 (1) (d) of the Finance Act 1894 means "supplies without payment" or words to that effect. With the greatest respect, I venture to add my own view that the giving of such a meaning to the word "provided" would do no violence to its ordinary connotation—I refer to the examples of the use of the word given in the Oxford Dictionary (1909) Vol. VII Part II p. 1521 under No. 5.

Whether or not *Lethbridge v. Attorney-General* would be an authority on the interpretation of S. 5 (1) (j) must, in my opinion, depend on the wording of S. 5 (1) (j). If, in the interpretation of any part of that paragraph the fact that full consideration was given for the property would be of assistance, it would be proper so to use that fact. In my opinion, its use goes no further than that; in particular that fact may not be used to remove from the scope of the paragraph a transaction that, on a proper interpretation, is within the paragraph.



I do not see any words in paragraph 5 (1) (j) that would justify a Court in saying that the paragraph is not to apply where the disposition was for full consideration. The word "made," as applied to settlements trusts or other dispositions, is an entirely different word from "provided," and has no such connotation as I think "provided" has. It seems to me that, if "disposition" could be read *ejusdem generis* with "settlement" and "trust" on a basis that all have an element of gratuity, that would be a ground for holding outside the paragraph the case in which full consideration has been given. I have expressed the view, however, that

10 "disposition" may not be read *ejusdem generis* with "settlement" and "trust." Even on the alternative view that it may be so read, the element of gratuity is not a necessary element in settlements or trusts—see, as regards settlements, *Buzza v. Comptroller of Stamps* 83 C.L.R. 286, per Dixon J. 297; *re D'Avigdor-Goldsmid's Life Policy* (1951) 2 A.E.R. 543, 547 F-G.

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A section enacted for the general purpose for which this one was enacted and no wider than the Legislature thought necessary for that purpose, may, however, in its application to a particular case, create hardship, and that I think is the position here. That may be the price

20 that has to be paid for closing the door against a number of other cases against which the Legislature has said that the door should be closed, and against which it may be generally agreed that it should be closed. If, in this case, the father had died within a year or two after the transfer, which was dated of a date in 1932 and registered in 1933, and if his former wife had died shortly after he did, no one would, I think, have felt that there was injustice in the property being held to be within the dutiable estate of the father. It so happens, however, that in this case the father lived for 16 or 17 years after the date of the transfer, his former wife is still alive, and the property, the value of which in 1932 and 1933 would have

30 been depressed as a result of the economic troubles of that time, has become of much greater value. Hence hardship arises.

I have, I think, referred to each of the submissions made by Mr. Spratt for the Respondent. I have not expressly referred to the submission which he numbered (5), that the transaction was outside the mischief of the Act and not within its general scope, but I think that I have covered that in what I have just written.

I turn back then to the submission for the Appellant. On that, my opinion is that the transaction in question was a disposition of property within the words of the paragraph and one that comes within sub-

40 paragraph (ii). I need not consider whether it may also come within sub-paragraph (i). I would therefore allow the appeal and answer the question set out in the case in the affirmative.

I would allow the Appellant his costs in this Court on the highest scale with twenty guineas for the second day of the hearing and with his disbursements, including cost of printing, to be fixed by the Registrar, and would allow him also costs in the Lower Court on the same basis as they were allowed against him in the judgment appealed against.

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This is an appeal by the Commissioner of Inland Revenue from a judgment of Gresson J. on a case stated under S. 62 of the Death Duties Act 1921. The facts are fully set out in the judgment of the learned Judge in the Court below, and it is unnecessary to recapitulate them. After very fully considering the legal questions involved, the learned Judge rejected the contention of the Commissioner that the property transferred by the deceased to his sons in 1932 is properly included in the dutiable estate of the deceased.

The Appellant's claim to include the property in the dutiable estate of the deceased is based on S. 5 (1) (j) of the Death Duties Act, which reads as follows :—

“ In computing for the purposes of this Act the final balance of the estate of a deceased person his estate shall be deemed to include and consist of the following classes of property :

“ (j) Any property comprised in any settlement, trust, other disposition of property made by the deceased—and situated in New Zealand at the death of the deceased—

“ (i) By which an interest in that property or in the proceeds of the sale thereof, is reserved either expressly or by implication to the deceased for his life or for the life of any other person or for any period determined by reference to the death of the deceased or of any other person ; or

“ (ii) Which is accompanied by the reservation or assurance of, or a contract for, any benefit to the deceased for the term of his life or of the life of any other person, or for any period determined by reference to the death of the deceased or of any other person ; or

“ (iii) By which the deceased has reserved to himself the right, by the exercise of any power to restore to himself or to reclaim that property or the proceeds of the sale thereof.”

Counsel for the Appellant submits first that the only conditions that have to be satisfied to attract property into the dutiable estate by virtue of S. 5 (1) (j) are :—

- (1) That such property is comprised in a settlement trust or other disposition of property made by the deceased ;
- (2) That such property is situated in New Zealand at deceased's death ;
- (3) That the facts bring the case within one or other of the paragraphs numbered (i) (ii) and (iii) of S. 5 (1) (j).

Secondly, that the Devon Street property is property comprised in a “ settlement ” made by deceased, and I understood him to argue that the contemporaneous transfer and mortgage constituted one transaction,

that the two documents must be read together, and together constitute a settlement within the meaning of the section.

The first question therefore that has to be determined is whether or not the instruments constitute a settlement and I agree with the learned Judge in the Court below that they do not so constitute a settlement. The Death Duties Act contains no definition of the term "settlement." Vaizey on Settlements (p. 1) tells us that "the homely word 'settlement' has been put to various technical uses in the language of the law" and for the purposes of his work accepts the meaning as "a legal act designed to regulate during a specified period the enjoyment of property, and to provide during the same period for the safe custody and prudent management of the subject matter of that property." Later (p. 2) he refers to the fact that "it is the perpetual interest in this variable subject-matter which cannot be alienated."

The word "settlement" has been considered in numerous cases under the Bankruptcy Act and the Statute 27 Eliz. C 4 and has been given a very wide meaning, but in such statutes the term is used in a very different connotation and for a very different purpose to its use in Acts dealing with revenue, and Mr. Justice Hawkins in *Crossman v. The Queen* 18 Q.B.D. 256 (a case arising under the Customs and Inland Revenue Act 1881) at p. 262 explains the difference in the objects of a revenue statute as compared with the Statute 27 Eliz. C. 4 and the necessity of looking at the real substance of the transaction and its object. To my mind the construction of the word "settlement" in statutes having an entirely different object, does not assist in deciding the meaning of the term in the Death Duties Act. There is, however, assistance in appreciating the underlying concept of the word "settlement" in its general use in a passage in the judgment of Vaughan Williams J. in *In re Vansittart* (1893) 1 Q.B. 181, where at p. 184 the learned Judge says in effect that for a transaction to constitute a settlement it must be manifest from the nature and circumstances of the case that it was the object of the transferor that the subject matter of the transfer *should permanently remain* the property of the transferee (the italics are mine).

The question of the meaning of the term "settlement" was recently considered in *Buzza v. Comptroller of Stamps* (Victoria) 83 C.L.R. 286, by the High Court of Australia in which all the Judges of the High Court accept the same underlying concept attachable to the word "settlement." Latham C.J. at p. 295 (in his judgment which is a dissenting judgment on other points) expresses the matter thus: "A transfer of property which immediately gives a full right of disposition of the whole interest in the property cannot be described as a settlement. . . . A provision for immediate transfer of the whole interest in property to an existing person absolutely cannot possibly make that property "settled" property. Such property is necessarily and essentially property which is not settled." Dixon J. (as he then was) at p. 300 expresses the same idea from the converse aspect as follows: ". . . the restriction involved in all the trusts upon the enjoyment which would arise from full ownership mark the instrument

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“ out as a settlement ” ; and Williams J. at p. 310 to the same effect :  
“ An instrument is a settlement because it creates trusts and contains  
“ limitations which restrict or affect alienation and transmission, according  
“ to the course provided by law for estates in fee simple or a full ownership.”

I accept the principle that a transaction or instrument whereby full  
rights of immediate alienation of the legal title are conferred on the transferee  
cannot be a settlement. In this case, the fee simple estate or interest in  
the property was transferred to the sons (subject, I agree, to the giving of  
a mortgage back to the transferor). Such estate or interest conferred on  
the transferees a full and immediate right of redisposal of their legal estate 10  
in the land. Consequently I take the view that the property was not  
settled and the instruments whereby the transaction was effected do not  
amount to a settlement within the meaning of the section.

Mr. Byrne next submitted that if it is not property comprised in  
a settlement, it is property comprised in a “ disposition of property ” made  
by the deceased. It is necessary to note first that the subsection refers to  
“ any property comprised in any settlement, trust, or other disposition,”  
and also to consider the clauses qualifying such words contained in subs. (i)  
and (ii). Mr. Byrne’s main argument on this aspect is that the phrase  
“ disposition of property ” is comprehensively defined by S. 39 of the Act 20  
and he disputes the judgment of the learned trial Judge when he decides  
that the words “ other disposition of property ” must be construed as  
*ejusdem generis*, with the preceding words “ trust ” and “ settlement.”  
The words used in S. 5 (1) (j) are “ other disposition of property ” and it must  
be observed that if the full meaning as defined in S. 39 were given to the  
words in S. 5 (i) (j) “ other disposition of property,” there would have been  
no object in preceding them by the terms “ settlement ” and “ trust ” and  
such words would be complete surplusage.

Section 39 of the Death Duties Act 1921, defining “ disposition of  
“ property,” is a re-enactment of the same section of the Death Duties Act 30  
1909, and first appeared in that Act. It is contained in Part IV of both  
these Acts—a separate part of the Act devoted to the subject of “ gift  
“ duty.” Prior to the 1909 Act the provisions dealing with gift duty were  
contained in the Stamp Duties Act 1908, ss. 92 and 93, and in previous  
Acts dealing with the subject of stamp duty. Although the phrase  
“ disposition of property ” is used in these earlier enactments relating to  
gift duty, it was not the subject of definition and the primary matter of  
concern in each case was whether or not the instrument sought to be made  
liable to duty was a “ deed of gift.” It is somewhat surprising that in both  
the 1909 and 1921 Acts all other terms are defined in S. 2 whereas for the 40  
purposes of definition the phrase “ disposition of property ” is given the  
honour of a section by itself. This may suggest that the phrase is defined  
simply for the purposes of Part IV of the Act—e.g. “ any disposition of  
“ property as hereinafter defined ” in S. 38 (1) and strengthens the inference  
that it was not intended to be used with the meaning contained in  
the definition in S. 39 in S. 5 (1) (j) with the result, as I have said,  
that “ settlement ” and “ trust ” used in this subsection would be mere

surplusage. On the other hand, the words "In this Act" by themselves are of wide import.

It seems to me that the definition of "disposition of property" in S. 39 must be read in the light of the reference to such definition in S. 38 and I would not be prepared to accept the comprehensive meaning applicable to any alienation of property with or without consideration as a meaning required to be accepted in any or every section of the Act where such words are used. Furthermore, in the present matter it seems to me that the meaning of "disposition of property" in the section under review cannot be decided without giving full effect to the preceding word "other," and the qualifying clauses contained in subss. (i), (ii) and (iii) of the subsection. I agree with the learned Judge in the Court below that the meaning to be attributed to the words in the section is controlled by the context and the wide meaning attributed to disposition of property is not applicable.

But in considering the meaning of "other disposition of property" as qualified in (i), (ii) and (iii) of S. 5 (1) (j) of the Act, it seems to me that assistance can be obtained as to the application of the phrase from the preceding words "settlement" or "trust" with which it is associated. In regard to the terms "settlement" or "trust" there may be a genus in that in regard both to settlements and trusts there is at least this in common, that the beneficial owner in neither case has the complete immediate right to alienate the legal interest in the property settled or held in trust. Should the same connotation be applied to the phrase "other disposition of property"? In other words, is the meaning limited to dispositions in the nature of a settlement or trust?

Before deciding this point, it must be repeated that it is not to all dispositions of property that the section may apply, but it is only to such dispositions as possess the qualifications contained in any of the three succeeding subsections. The transfer of the asset in the present case is accompanied by the contract contained in the mortgage for a benefit to the deceased during the term of his life, i.e. the annuity.

The two instruments must be regarded as one transaction (*Attorney General v. Sandwich* (1922) 2 K.B. 500) and the substance of the transaction is to be regarded. It seems to me that while, as I have already stated, the transaction is not strictly within the meaning of the term "settlement," the transaction is nevertheless a disposition accompanied by a contract for the benefit of the deceased and that such transaction is in the nature of or akin to a settlement in that its effect is to reserve to the transferor during his life an annuity secured on the property comprised in the disposition. Such transaction is not a settlement in that the fee simple with full powers of alienation has passed to the transferees, but nevertheless it effects what is a feature of very many settlements, an interest reserved to the settlor by virtue of the mortgage and on the death of the annuitants unfettered enjoyment by the transferees. I would hold therefore, apart from authority, that the transaction is caught by S. 5 (1) (j)—that it is a disposition of property in the nature of a settlement within the characteristics required by subs. (ii).

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I now propose to consider the cases that have already been decided on this somewhat abstruse and certainly far-reaching section. Counsel for the Respondents has contended that, as is admittedly the case in the final result, full consideration has been given by the transferees to the transferor for the transfer of the land in question by way of the annuity to the transferor secured by the mortgage, the element of benefaction which he contends is necessary for the application of S. 5 (1) (j) is lacking and that a transaction of this nature is a "commercial" transaction and as such is outside the scope of the subsection.

The English authorities on this aspect are not helpful as the English 10  
legislation differs substantially from the section of the New Zealand Act. In England the corresponding section was contained in S. 38 of the Customs and Inland Revenue Act 1881, as amended by the Customs and Inland Revenue Amendment Act 1889 and reads as follows :

"The personal or moveable property to be included in an  
account shall be property of the following descriptions :

\* \* \* \* \*

"(c) Any property passing under any part or future  
voluntary settlement made by any person dying on or  
after such date by deed or any other instrument not taking  
effect as a will whereby an interest in such property for life 20  
or any other period determinable by reference to death is  
reserved either expressly or by implication to the settlor  
or whereby the settlor may have reserved to himself the  
right by the exercise of any power to restore to himself  
or to reclaim his absolute interest in such property."

This section was amended by S. 2 (1) (c) of the Finance Act 1894,  
as follows :—

"Property passing on the death of the deceased shall be  
deemed to include the property following :

\* \* \* \* \*

"(c) Property which would be required on the death of 30  
the deceased to be included in an account under section 38  
of the Customs and Inland Revenue Act 1881 as amended  
by S. 11 of the Customs and Inland Revenue Act 1889  
if those sections were herein enacted and extended to real  
property as well as personal property and the words  
"voluntary" and "voluntarily" and a reference to a  
volunteer were omitted therefrom."

It must be noted that the English legislation covers firstly only property passing under a settlement, and secondly, prior to 1894, only property passing under a voluntary settlement, and thirdly the English Act contains 40  
no provision comparable to subs. (ii) of S. 5 (1) (j). Furthermore, the English Act of 1894, S. 3 contains an express exemption of property passing by reason only of a *bona fide* purchase for full consideration. Consequently,

in view of, prior to the 1894 Act, the inclusion in the estate only of property passing under voluntary settlements and since the 1894 Act the exemption of property passing by reason of a *bona fide* purchase for full consideration, the English authorities are of little assistance in considering the meaning of the section in the New Zealand Act or its application.

In regard to judicial decisions in New Zealand, the precise case with which we are here concerned was considered by the Court of Appeal in *In re Deans* 29 N.Z.L.R. 1089. There the matter was considered in the light of the then existing law, the Stamp Duties Act 1908, S. 92, but under that section a “ deed of Gift was extended to include ‘ (c) Every deed or  
 10 “ “ instrument whereby any person directly or indirectly conveys, transfers  
 “ “ or otherwise disposes of property to or for the benefit of any persons  
 “ “ connected with him by blood or marriage in consideration or with the  
 “ “ reservation of any benefit or advantage to or in favour of himself or any  
 “ “ other person whether . . . or by way of annuity or other payment or  
 “ “ otherwise howsoever.’ Mr. Justice Williams in the Court of Appeal  
 “ at p. 1093 succinctly states the position: The object of enacting  
 “ subsection (c) was prevention. The transactions mentioned in the  
 “ subsection are in general family and not ordinary business arrangements.  
 20 “ It was very easy by means of such transactions to avoid death duties.  
 “ Hence the Legislature brought all such transactions under the category  
 “ of ‘ deeds of gift ’ irrespective of whether any particular transaction was  
 “ in fact a conveyance for a full and genuine consideration.”

The section with which we are now concerned is very different in many respects from S. 92 of the 1908 Act, but it might well be that the objects of the legislation expressed by Mr. Justice Williams were the same objects as prompted the enactment of S. 5 (1) (j) of the present Act. The Court of Appeal considered a matter of a somewhat similar nature in *Commissioner of Stamps v. Finch* 32 N.Z.L.R. 514, where, in reference to S. 9 of the Death  
 30 Duties Amendment Act 1911 (now S. 49 of the Death Duties Act 1921), Mr. Justice Edwards remarks at p. 532 : “ For these reasons certain classes  
 “ of monetary consideration are excluded by the statute in the determination  
 “ of what is and what is not a gift for taxation purposes. Where  
 “ a transaction of the excepted class is *bona fide*, as was admitted to be the  
 “ case in *In re Deans* this may cause a hardship ; but this is not the intent  
 “ of the statute but merely an unfortunate result of what has been deemed  
 “ by the Legislature to be a necessary precaution for the protection of the  
 “ revenue.”

It seems therefore, to me to be beyond question that if the words of the  
 40 section applicable are sufficiently wide, property, even although transferred for valuable consideration, can in appropriate cases be treated as the subject of a gift for the purposes of gift duty or similarly, as property included in the estate of the deceased for the purposes of death duty. Nor can I find any reason in the section itself to limit its application to settlements, trusts, or other disposition of property in the nature of gifts. The matter is referred to in *Commissioner of Stamp Duties v. Russell* (1948) N.Z.L.R. 520 where Smith J. at p. 542 in view of the fact that he finds the transaction

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under consideration was not a bargain and sale for full consideration, finds it unnecessary to decide “whether a commercial transaction for adequate consideration would be outside the scope of S. 5 (1) (j).” In *Craven v. Commissioner of Stamp Duties* (1948) N.Z.L.R. 550, Smith J. at p. 563 states: “It is sufficient here to say that I do not consider the settlement “in the present case was a commercial transaction for value and that it is “not necessary to decide whether such a transaction is outside the scope “of S. 5 (1) (j).” But later (pp. 563 and 564) the learned Judge decides that although the son did not give anything like full consideration for the benefits conferred upon him by the settlement, nevertheless the value of the property transferred by the son under the settlement was taxable. With this view both the other members of the Court concurred. 10

I agree with the judgment of the learned Judge in the Court below that the relationship of the parties to the transaction (although it may well be an element for consideration in deciding) is not decisive as to whether the transaction is one to which the section applies, but with respect I differ from him in his application of the test of full consideration as excluding the transaction from coming within the meaning of the words “settlement, “trust or other disposition of property.” It is clear to my mind that the transaction was accompanied by a contract for the benefit to the deceased 20 for the term of his life, and I adopt the plain natural meaning of “any “advantage” given by Fair J. to these words in *Commissioner of Stamp Duties v. Shrimpton* (1941) N.Z.L.R. 761 at p. 821. I do not think it can be gainsaid that the transaction conferred advantages both on the transferor and the transferees. I have had the opportunity of reading the judgment of my brother Hutchison with whose views as to the *ratio decidendi* of *Lethbridge v. Attorney-General* (1907) A.C. 19, and the limitation of its authority to the interpretation of S. 5 (1) (g) I entirely agree.

If the Appellant’s contention is correct, the Respondents suffer a great hardship in that a property for which they have already given 30 full consideration is, by means of an embracing section, included in the dutiable estate of the testator, and further included in such dutiable estate not at its fair value at the date of the original transaction but at its considerably enhanced value at the subsequent date of death of the testator some seventeen years later. However this result may be deplored, I must remind myself of the dictum of Lord Blackburn in *Coltress Iron Co. v. Black* (1881) 6 App. Cas. 315 at p. 330: “No tax can be imposed on the subject “without words in an Act of Parliament clearly showing an intention to “lay a burden on him. But when that intention is sufficiently shown, it “is, I think, vain to speculate on what would be the fairest and most 40 “equitable mode of levying that tax . . . and I think the only safe “rule is to look at the words of the enactments and see what is the intention “expressed by those words;” and of the dictum of Lord Atkinson in *Ormond Investment Co. Ltd. v. Betts* (1928) A.C. 143 at p. 162: “It is well “established that one is bound in construing Revenue Acts, to give a fair “and reasonable construction to their language without leaning to one side “or the other, that no tax can be imposed on a subject by an Act



“ of Parliament without words in it clearly showing an intention to lay  
“ the burden upon him, that the words of the statute must be adhered to  
“ and that so-called equitable constructions of them are not permissible.”

The position seems to be very similar to the question considered in  
*Shrimpton's* case (*supra*) as to whether, under S. 5 (1) (c), a gift of land was  
within the subsection where a donor takes a lease at a rack rent, and where  
it was decided (*vide* p. 820 per Fair J.) that the limitation sought to be  
attached could not be read into S. 5 (1) (c). Similarly, here I think it would  
be a restriction of plain and unambiguous words to limit the applicatfon  
10 of the section to exclude the present transaction on the ground of its  
commercial or quasi-commercial nature. It may well be that the subsection  
is necessary to prevent a person with a pessimistic outlook on his normal  
expectation of life adopting the form of the present transaction, although  
I do not suggest that the present testator was actuated by such motives  
which are here altogether beside the point.

With regret that my interpretation of the subsection is in conflict  
with that of the learned Judge in the Lower Court and the learned Chief  
Justice in this Court, I would allow the appeal and answer the question set  
out in the case stated in the affirmative. I also agree with the suggestions  
20 of Hutchison J. as to costs.

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No. 4.

Formal Judgment of the Court of Appeal.

IN THE COURT OF APPEAL OF NEW ZEALAND.

Between

THE COMMISSIONER OF INLAND REVENUE ... .. *Appellant*  
and

30 FLORENCE EMMA WARD of New Plymouth, Widow, RONALD  
STANLEY WARD of Hawera, Draper, and LIONEL MORAN  
WARD of New Plymouth, Draper as Administrators in  
the Estate of Charles Cameron Ward, late of New  
Plymouth, Draper, deceased ... .. *Respondents.*

Before The Right Honourable The CHIEF JUSTICE.  
The Honourable Mr. Justice HUTCHISON.  
The Honourable Mr. Justice MCGREGOR.

Friday, the 29th day of October, 1954.

THIS APPEAL coming on for hearing on the 30th and 31st days of  
March 1954 UPON HEARING Mr. Byrne of Counsel for the Appellant  
and Mr. Spratt and Mr. W. N. Sheat of Counsel for the Respondents

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In the Court of Appeal of New Zealand. — No. 4. Formal Judgment of Court of Appeal. 29th October 1954— continued.

IT IS ORDERED AND DECLARED that the Appellant in computing the final balance of the dutiable estate of the abovenamed Charles Cameron Ward deceased was entitled pursuant to section 5 (1) (j) of the Death Duties Act 1921 to include the sum of seventeen thousand two hundred and sixty five pounds (£17,265) representing the value at the date of deceased's death of the land described in Certificates of Title Volume 125 Folios 203, 204, 205 and 206 Taranaki Registry less the amounts owing under Deed of Mortgage Numbers 48414 and 50792 as at the 15th day of June 1932 And it is ordered that the Respondent pay the Appellant the sum of £143 5s. 0d. for costs and £51 12s. 8d. for disbursements.

10

By the Court,  
V. J. HITCHCOCK,  
Deputy Registrar.

No. 5. Order Granting Final Leave to Appeal. 29th April 1955.

No. 5. Order Granting Final Leave to Appeal.

IN THE COURT OF APPEAL OF NEW ZEALAND.

Between

THE COMMISSIONER OF INLAND REVENUE ... .. *Appellant*  
and

FLORENCE EMMA WARD of New Plymouth, Widow, RONALD STANLEY WARD of Hawera, Draper, and LIONEL MORAN WARD of New Plymouth, Draper as Administrators in the Estate of Charles Cameron Ward late of New Plymouth, Draper, deceased ... .. *Respondents.*

20

Before The Honourable Mr. Justice COOKE.  
The Honourable Mr. Justice NORTH.  
The Honourable Mr. Justice TURNER.

Friday the 29th day of April, 1955.

UPON READING the Notice of Motion filed herein for an Order granting leave to the above-named Respondents to appeal to Her Majesty in Council AND UPON HEARING Mr. W. N. Sheat of Counsel for the Respondents and Mr. Byrne of Counsel for the Appellant THIS COURT DOTH ORDER by consent that final leave be and the same is hereby granted to the above-named Respondents to appeal to Her Majesty in Council from the Final Judgment of this Honourable Court given on the 29th day of October, 1954.

30

By the Court,  
V. J. HITCHCOCK,  
Deputy Registrar.

## No. 6.

## Memorandum as to Documents Omitted from Record.

In the  
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Zealand.

- (a) At the hearing of the case in the Supreme Court before His Honour Mr. Justice Gresson photostat copies of a Memorandum of Sub Mortgage No. 65878 and a Partial Discharge thereof were filed by consent. They were not printed in the Record for the Court of Appeal but Counsel craved leave to refer to them if necessary. They were, however, not referred to at all in the Court of Appeal and by consent of both parties they are omitted herefrom.
- 10 (b) By consent of the parties certain formal parts have been omitted from exhibits " a " and " b " herein. They consist of the formal endorsements of registration by the Land Transfer Office and the attestation clauses of the documents.

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Documents  
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In the Privy Council.

No. 18 of 1955.

ON APPEAL FROM THE COURT OF APPEAL OF  
NEW ZEALAND.

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BETWEEN

FLORENCE EMMA WARD, RONALD  
STANLEY WARD and LIONEL  
MORAN WARD as Administrators in  
the Estate of CHARLES CAMERON WARD  
deceased ... .. *Appellants*

AND

THE COMMISSIONER OF INLAND  
REVENUE ... .. *Respondent.*

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RECORD OF PROCEEDINGS

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