REPORTS OF CASES IN HOUSE OF LORDS AND PRIVY COUNCIL DEALING WITH QUESTIONS OF INTEREST IN SCOTS LAW. *(Continued from page 632 ante).*

HOUSE OF LORDS.

Monday, December 3, 1906.

(Before the Lord Chancellor (Loreburn), Lords Macnaghten, James of Hereford, Robertson, and Atkinson.)

LETHBRIDGE *v.* ATTORNEY-GENERAL.

(ON APPEAL FROM THE COURT OF APPEAL IN ENGLAND.)

Revenue — Estate Duty — Policy of Life Insurance—Interest Provided by Deceased —Finance Act 1894 (57 *and* 58 *Vict. cap.* 30), *sec.* 2 (1) (*d*).

A father, equitable tenant for life of an estate, had raised sums amounting to £59,121 on the security of his life estate and of certain policies of insurance on his life. By agreement with his son, equitable tenant in tail in remainder, the estate was disentailed and £71,000 raised on mortgage of the fee, out of which the mortgages for £59,121 were paid off. Under the same agreement the policies, having been reassigned to the tenant for life, were assigned by him to his son, and the estate was re-settled upon trust, *inter alia*, out of the rents and profits to pay the interest on the mortgage debt of £71,000 and the premiums necessary for the policies, but in the event of any of the policies being surrendered by the son, then to pay the amount that would otherwise have been payable as a premium to the son, and to apply the residue of the rents and profits in paying to the son the sum of £1000 a-year, and, subject to the trusts already mentioned, in trust for the tenant for life with remainder on his death to his son in fee. Subsequently, in consideration of the sum of £4100, the tenant for life assigned his life estate to the son, subject, however, to the trust for keeping on foot the policies, and the amount of the price paid to the tenant for life was calculated on the footing that the life estate was subject to that trust. The policies were kept up under the before-mentioned trust, and on the death of the tenant for life the son received the sums due under the policies.

Held (*reversing* the judgment of the Court of Appeal) that, as the son had given full value for the policies, they were not "provided" by the father within the meaning of section 2 (1) (*d*) of the Finance Act 1894, and that consequently no estate duty was payable on the father's death in respect of the moneys received under them.

Appeal from a judgment of the Court of Appeal (COLLINS, M.R., MATHEW and COZENS-HARDY, L.JJ.), who had reversed a judgment of PHILLIMORE, J., upon an information claiming estate duty under the Finance Act 1894, sections 1 and 2 (1) (*c*) and 2 (1) (*d*).

PHILLIMORE, J., gave judgment for the defendant.

The facts of the case sufficiently appear from the rubric and the judgments of their Lordships.

The Finance Act 1894, section 2 (1) (*d*), provides as follows:—"Property passing on the death of the deceased shall be deemed to include . . . (*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."

LORD CHANCELLOR (LOREBURN) — The question raised by this appeal is whether estate duty should be paid on a sum of money received in discharge of fifteen life policies which fell due on the death of Sir Wroth Lethbridge, deceased. I will call him the father, for the present appellant, his son, is also Sir Wroth Lethbridge. The father originally effected these fifteen policies on his own life, and after maintaining them for some time, assigned them to his son under a family arrangement, or series of arrangements, necessitated by his (the father's) pecuniary difficulties. In substance it came to this, that the son mortgaged his inheritance in the family estates to save his father, and the father in return assigned these policies, together with an annual sum out of his life interest in the same estates sufficient to pay the premiums and also to pay an annuity to the son during their joint lives. In my opinion we have nothing to do with these transactions beyond what suffices to answer this question—Did the son give in money

or money's worth full consideration for the policies and the other advantages which he acquired under the arrangement? It is indisputable that he gave full value and more. He made sacrifices as a son for his father's sake. Having taken over these policies the son might have allowed them to lapse. He preferred to keep them alive, and paid the premiums, in substance, out of the moneys which he received annually from the life interest of his father pursuant to the family arrangements. He might have spent that money otherwise had he pleased, but even if he had not been free to spend it as he liked, that circumstance would have made no difference in my opinion. The son had given full value for the annual payments which were to be made to him out of the life estate. Therefore it could not be said that the father was keeping up the premiums on these policies, though the money which kept them up came out of the life estate. In these circumstances it was argued for the Crown that under section 2 (1) (*d*) of the Finance Act 1894 the fifteen policies constituted an interest purchased or provided by the father by an arrangement with the son, and that estate duty was accordingly payable. That was the only ground upon which the Crown rested a claim. The general purpose of this sub-section is to prevent a man from 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 this case from the date when the policies were assigned, and the obligation to find out of the life estate enough to pay the 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. He was compensated for what he originally expended in acquiring and maintaining the policies till their assignment, and also for what he stipulated by the family arrangements to do in future years, by the consideration proceeding from the son, and thenceforward he had no title to nor concern with the policies. I desire to limit my opinion to that ground. There may be cases where the deceased has not so fully cut himself and his estate adrift from the interest which he originally created, and yet no estate duty may be payable. But in this case it is exactly the same as if the father had never been concerned in the policies at all, and had never paid a single premium, for he parted with the whole thing to a purchaser. Accordingly the sub-section, in my opinion, has no application to the case, and the appeal prevails. I am not quite sure that I rightly interpret what Cozens-Hardy, L.J., says in regard to family arrangements. No doubt courts of equity will sustain such arrangements if they can to save the family honour, and apart from the adequacy of the consideration on either side. But if in any proceeding it be relevant to inquire whether the consideration for assigning property was adequate or not, that can be ascertained as well in a case of family arrangement as in any other, and in the same way. The fact that the transaction was a family arrangement is not inconsistent with its being also a purchase for full consideration in money or money's worth. If I thought that the case fell within section 2 (1) (*d*) (as I do not), I should still think that these policies were exempted from estate duty by virtue of section 3 (1) of the same Act upon the ground that there had been a purchase for full value within the meaning of that section. But in the view which I take this point does not arise.

LORD MACNAGHTEN—The learned Judges of the Court of Appeal, differing from Phillimore, J., hold that "estate duty must be paid on the full amount received in respect of the fifteen policies" on the life of the late Sir Wroth Acland Lethbridge, which were made over to his son in pursuance of a family arrangement when the Lethbridge estates were re-settled in 1885. Their view is that "the fifteen policies were 'provided' by the father, by arrangement with the son, by means of the application of part of his income in paying the premiums which kept the policies alive." They consider that the case comes under section 2 (1) (*d*) of the Finance Act 1894. They say that if nothing had occurred to disturb the arrangement and "the policies had been kept up under the trust of 1885 until the father's death in November 1902, the case would clearly have fallen within sub-section (*d*)." The learned Judges then proceed to consider the subsequent dealings between father and son, and the purchase of the father's life interest by the son in 1898. 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. The policies which had been effected in support of a charge on the father's life interest were redeemed by moneys raised by a charge upon the inheritance. The son, in my opinion, acquired them by purchase. He gave far more than they were worth. Any respectable insurance company would have dealt with him on much easier terms. If pecuniary considerations alone are to be regarded, the transaction seems to have been a most disadvantageous bargain for the son. However that may be, the son undoubtedly gave valuable consideration for the policies, and they were made over to him absolutely. The learned Judges of the Court of Appeal

seem to think that after the policies were assigned to the son the father still retained some interest in them or some concern in the arrangement which they describe as "the trust of 1885." They intimate that it would have been the duty of the trustees to apply any bonus declared on a policy in reduction of the annual premium. With the utmost deference it seems to me that there is no foundation for this view. All moneys assured by or to become payable by or under the said policies—all bonuses accrued or to accrue—became by assignment for valuable consideration the absolute property of the son and payable to him alone. Neither the father nor the trustees could have prevented the son from receiving a bonus or compelled him to apply a bonus in reduction of the premium. The only other question is, what was the position of the son with regard to the annual sums which, in pursuance of the family arrangement of 1885, were to be devoted to keeping up the policies. In my opinion they belonged to the son and to no one else. The Court of Appeal say that "in one event only could the son claim to be paid the £864, namely, in the event of his electing to surrender the policies." There, with all respect, I differ. It seems to me that the son could have called upon the trustees to hand over the £864 to him whether the policies were surrendered or not. There was no trust in favour of the father or anyone else—only a direction or order in the performance of which no one but the son could be interested, and he could therefore countermand it. No doubt the trustees would have made a difficulty about it. Probably they would have declined to hand the money over without the sanction of the Court, and they would have been justified in so doing. The whole object of this elaborate arrangement was to prevent the son from looking upon the sums intended to be applied to keeping up the policies, and so preserving or restoring the family property as part of his own income which he was free to spend as he liked. If the case does not fall under section 2 (1) (*d*) it is not suggested that the policy moneys are caught by any other provision in the Act. In the result, therefore, I am of the opinion that the appeal ought to be allowed and the judgment of Phillimore, J., restored, with costs here and below.

LORD ROBERTSON—I agree with the judgment of the Lord Chancellor.

LORD ATKINSON—I concur in the opinion that the decision of the Court of Appeal in this case was wrong and should be reversed, and that the decision of Phillimore, J., should be restored. It has been decided many times that in dealing with questions raised by the Finance Act of 1894 and the Succession Duty Acts, regard should be had to the substance of the transactions on which these questions turn rather than to the forms of conveyancing which the parties to them may have adopted in order to carry out their objects. If in this case the arrangements entered into between the appellant and his father in 1885 be so regarded, they appear to me, in substance and effect, to amount to this—that in consideration that the appellant would burden his inheritance with the sum of £71,000, fifteen policies of assurance were assigned to him, and an annuity amounting to £1000, plus a sum equal to the amount of the premiums on those policies, was made payable to him, or for his use and benefit, out of the rents of the estate annually, during the joint lives of himself and his father. No doubt the deed of the 19th August 1885 created a trust to raise and pay out of the rents the premiums on these policies, but it was entirely optional with the appellant whether the policies were kept up or not. If he elected to surrender them or any of them, he would not only retain the surrender value for his own purposes, but his annuity of £1000, per annum would be augmented by a sum equal in amount to the premiums on the policies surrendered. In a financial point of view the bargain must, I think, be taken to have been a bad one for the appellant. The moneys secured by the policies, including all the bonuses declared up to the month of June 1885, only amounted to the sum of £30,067, 4s. 2d. Their surrender value on the 19th August 1885 is not stated, but it must, one would think, have been considerably less than £30,000. If, therefore, the appellant had surrendered all the policies immediately after they were assigned to him, as he was quite entitled to do, and had applied the money received, assuming it to amount to £30,000, in part discharge of the mortgage debt of £71,000, the financial position would have been this — His inheritance would have remained charged with £41,000, and he would have been entitled in consideration of that charge to receive, during the joint lives of himself and his father, an annuity of £1864 per annum, about 4½ per cent. on the amount of the encumbrance. The appellant undoubtedly gave full value in money or money's worth for all the benefits which he received. If Sir W. A. Lethbridge and the appellant had been strangers to each other, or merely friends, instead of being father and son, it would not, I think, be contended that these policies were not purchased for money or money's worth within the meaning of section 3 of the Finance Act 1894; but because filial affection or family pride, or a desire to relieve a father from embarrassment, may have induced the appellant to make this bargain, and to pay an extravagant price for the benefits which he received under it, it is urged that the transaction is to be treated as a family arrangement and not as a purchase at all. I think that to do so is to confound the motive which induces to a transaction with the transaction itself; and 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 were members of the same family, and the interests or honour of the family

induced to or were promoted or protected by it. It is clear from the 2nd sub-section of section 3 that a transaction may amount to a purchase though the consideration given may comprise something in addition to money or money's worth. In that respect section 3 differs altogether from section 17 of the Succession Duty Act (16 and 17 Vict. cap. 51). I think that the case is covered on this point by the decision in *Lord Advocate* v. *Earl of Fife* (11 R. 222). The fact that the policies of assurance were assigned out and out to the appellant distinguishes this case from *Attorney-General* v. *Hawkins* (83 L.T.R. 581; (1901) 1 K. B. 285). It is plain from the judgments of the learned Judges in this latter case that if anything of the kind had existed there the decision would have been against the Crown. See *Brown* v. *Attorney-General* (79 L.T.R. 572). For the reasons mentioned by the Lord Chancellor and Lord Macnaghten, this case does not, in my opinion, fall within section 2, sub-section 1 (*d*). I am, therefore, of opinion that the appeal should be allowed, and the decision of Phillimore, J., restored.

LORD CHANCELLOR—Lord James of Hereford, who is unable to be present to-day, concurs in the opinion that our judgment ought to be for the appellant.

Judgment appealed from reversed.

Counsel for the Appellant—Lush, K.C.—Terrell. Agents—Toulmin & Chitty, Solicitors.

Counsel for the Respondent—The Attorney-General (Sir J. Lawson Walton, K.C.)—Sir R. Finlay, K.C.—Vaughan Hawkins. Agent—Sir F. C. Gore, Solicitor of Inland Revenue.

PRIVY COUNCIL.

Wednesday, December 19.

(Present—The Right Hons. Lords Macnaghten, Davey, Robertson, and Atkinson.)

EQUITABLE FIRE AND ACCIDENT OFFICE *v.* THE CHING WO HONG.

(ON APPEAL FROM THE SUPREME COURT FOR CHINA AND COREA AT SHANGHAI.)

Insurance—Fire—Policy—Construction—Re-insurance—Payment of Premium.

A firm of merchants effected a policy of insurance with insurance company A, one of the conditions of the policy being that it should be rendered void by the insured effecting any additional insurance upon the property without the company's consent. The firm subsequently, and without notice to company A, took out a policy from another company B, one of its conditions, however, being that the insurance would not be in force or the company liable until payment of premium. Subsequent to the date of the second policy, but before any premium had been paid upon it, a fire occurred in the firm's premises in connection with which they made a claim against company A, who denied liability under the condition of their policy already indicated.

Held that company A was liable, as the second policy had never become effective, no premium having been paid upon it.

The respondents did not appear and the appeal was consequently heard *ex parte*.

The facts appear sufficiently from the judgment of their Lordships delivered by Lord Davey.

LORD DAVEY—This is an appeal from a judgment of His Majesty's Supreme Court for China and Corea at Shanghai, dated the 8th July 1905. The action was brought by the respondents upon two policies of insurance against fire, dated respectively the 1st October 1904 and the 14th November 1904, effected by them with the appellant company upon stock-in-trade and other goods in a shop belonging to the respondents in Shanghai. The appellants denied their liability on two grounds, the first of which only was raised and argued before their Lordships. That ground of defence was that the policies had become null and void by reason of the respondents having omitted to give the appellant company notice of an additional insurance effected by the respondents with the Western Assurance Company, without the consent of the appellant company, on the same goods. The respondents denied that there was, at the date of the fire, or ever had been, any effective insurance with the Western Assurance Company. The learned Judge who tried the action gave judgment for the respondents. The policies sued on were in the same form. They both contained a clause in Chinese characters immediately following the operative part of the policy, in these words—"No additional insurance on the property hereby covered is allowed except by the consent of this company indorsed hereon. Breach of this condition will render this policy null and void." And one of the conditions indorsed on the policies was as follows—"12. The insured must, at the time of effecting the insurance, give notice to the company of any insurance or insurances already made elsewhere on the property hereby insured, or any part thereof, and on effecting any insurance or insurances during the currency of this policy elsewhere on the property hereby insured, or any part thereof, the insured must also forthwith give notice to the company thereof so that the particulars thereof may be indorsed on the policy, and unless such notice be given, the insured will not be entitled to any benefit under this policy, and on the happening of any loss or damage the insured shall forthwith declare in writing to the company all other insurances effected by him, or by any other person, on any of the property, and the giving of such notices at the respective times aforesaid shall be a condition-prece-