THE ESTATE DUTY SCENE*

In saying how pleased I am to have the opportunity of addressing you tonight I am indulging in no formal courtesy. The fact is that the Estate Duty Office has found that meetings of this kind with professional bodies are of considerable assistance in handling its work, if only because it can help both sides to see a little of the other's point of view. I may say, too, that while facing an audience of this eminence fills me with considerable apprehension, I do derive a little comfort from two grounds: first, as an established Civil Servant - one of that body which is generally sober, sedentary and safe, and more often than not approaches man's allotted three score years and ten - I am probably a rather better than average insurance risk; and, secondly, I am concerned with a tax which, perhaps ironically and certainly inadvertently, has probably played a modest part in helping to make life insurance such a growth industry.

What I would like to do is to spend a few moments trying to create an outline sketch of the Office - because I think it is always useful to know something of the other side - and then to spend the bulk of the time in standing well back and taking a very broad look at certain principles in the development of Estate Duty, with special reference to insurance and policy aspects. I must also ask you to regard what I am saying tonight as personal and unofficial and in no way purporting to represent the views of the Board or of the Estate Duty Office.

Now about the Estate Duty Office. Unlike the Tax Offices, there is only one of us in England - there is another for Scotland in Edinburgh, but that is administered quite separately and I cannot speak for it. Our address is West Kensington, but as those of you who have visited us well know, we work less than a landlady's stone's throw to the south of Shepherds Bush Green. It has a technical staff of some 450, recruited in the main from school-leavers and others with the appropriate "A" level standards. These are supplemented by a few graduates and by officers recruited from other branches of the Revenue. I venture to think that you will agree with me that Estate Duty is not a particularly easy subject. It flourishes in a context provided not only by the precise facts of each particular case but also by the exact rights and liabilities of the parties concerned, and the Commissioners naturally require that all new members of the staff should receive an adequate legal training. To this end, all new entrants who are not legally qualified attend a three-year course tailored to their needs at a London College, while the Board also encourage the staff to obtain a university degree in law or to be called to the Bar.

---

*Address given to the Association on 9 January, 1968, by Mr. K. W. Chetwood, Assistant Controller at the Estate Duty Office.

The work itself covers a very wide range, from the examination of Estate Duty accounts, and of information supplied, coping with the numerous reliefs and allowances which have grown up through the years, the interpretation and unravelling of legal documents including complicated family arrangements, settlements and pension schemes; the problems of locality, domicile and double taxation conventions; the valuation of unquoted shares - what Mr. Justice Danckwerts (as he then was) described in the Holt case as "a dim world peopled by the indeterminate spirits of fictitious and unborn sales" - and the valuation of all other assets from race horses to reversions. And finally, we are concerned with the recovery of duty - involving nice questions of accountability - from recalcitrant taxpayers (or perhaps I should say recalcitrant non-payers). Inevitably there is a certain amount of specialisation, in the interests of efficiency and despatch, but the technical staff are all interchangeable between the various divisions of the Office and every effort is made to prevent officers remaining too long on one aspect of the Estate Duty complex.

I have thought it worthwhile to say a little about the Office because we find that some people who have dealt with us over many years have very little idea of us as a body. I would like to mention two points about the handling of the work. First, it is the firm and long established practice of the Office to seek, within the rules, to get the proper and reasonable tax answer to each situation, or the proper or reasonable value of the assets in question. Allowances and reliefs are often complicated and not always comprehended even by professional advisers, but there are firm Office instructions to bring all reliefs to the notice of taxpayers. Secondly, if there are awkward or arguable points which can lead to longwinded and hair-splitting correspondence, we are always pleased to see you to discuss the matter. Two hours across the table can often do more to resolve a point - or at least to clarify the other's point of view - than a series of long letters which are profligate of time and can lead to misunderstanding. At the least it gives you every chance to weigh up your opponent at first hand. So please don't hesitate to suggest a discussion if you think it may help at all. We, for our part, will be pleased to see you.

And now perhaps we can stand back and take a broad look at the pattern and development of the Estate Duty - or at least at a few aspects of it.

Now I regard the imposition of a tax like Estate Duty as a kind of net. It is the function of the Finance Acts to fashion the size and shape of the net, to determine its strength, and to weave the mesh of such a size that it catches all the fish it aims at while allowing the undersized minnows, or those which are not wanted, to pass through the mesh or outside the net. And perhaps I may add that while the legislature is largely on its own in making the net itself, there is

usually no shortage of volunteers for providing the holes. In 1894, Sir William Harcourt, the Chancellor of the Exchequer, introducing his budget which created the present Estate Duty, had no doubts about what he wanted to do. It was to be a mutation duty, taxing all property which changed hands on a death. Realty was to be taxed along with personalty, settled property should bear the same burden as free estate, and large estates should bear duty at a higher rate than small estates - hence the need for aggregation. The principles were clear, the size and approximate shape of the net was reasonably clear. How, in outline, was the net fashioned and how did it work out?

As you know, Section 1 of the Act merely charged duty on all property which passed or changed hands on a death, but it was obviously no use leaving it at that; so Section 2 provided a series of circumstances in which property would be deemed to pass. We can quickly pass over Section 2(1)(a) which caught property of which the deceased was competent to dispose at the time of his death - which would clearly catch life policies belonging to the deceased when he died - and Section 2(1)(b) which covered property in which the deceased - or anyone else for that matter - had an interest ceasing on the deceased's death. This would clearly cover settled property, including policies, in which the beneficial interest changed hands on the death.

What I want to consider a little more is part of the Section 2(1)(c) net. Now the 1894 Act contains hardly any specific references to policies, but did so in Section 2(1)(c) which was a masterpiece of legislation by reference and included (inter alia), as property to be deemed to pass, monies received under a policy of insurance effected by the deceased on his own life, kept up by him for the benefit of a donee.

Now, on the face of it, that was pretty simple and straightforward. If the deceased had taken out a policy on his life, assigned it to someone else and then kept up the policy for the benefit of that person by paying the subsequent premiums, it would be taxed proportionately to the premiums which the deceased paid after the assignment - a very reasonable and proper provision.

But when was a policy effected by the deceased? Was it if he made the contract or if he paid the first premium? Obviously in most cases he did both, but it is the exceptional or marginal cases which test the efficacy of any enactment. "Effected" is not a very precise word in this context and for many years it was the official view that the deceased effected it if he paid the first premium, regardless of who signed the proposal form, on the basis that there was no cover until it had been paid. But in 1951, in the case of Re Oakes the court held that the deceased, who had contracted with the insurance company, "effected" the policy even though his father-in-law (it was a Married Women's Property Act policy for the wife) had paid the first

two premiums, so subsequently the general practice changed - some 57 years after the Finance Act.

Similarly, one would not have expected much trouble with the requirement that the policy should have been "kept up" by the deceased. He did this surely if he paid or provided the premiums, but we are ever naive, as the Barclays Bank case in 1944 demonstrated. In that case the deceased settled some policies on his life and also transferred some funds to the trustees for payment of the premiums. I must confess that I would have had little doubt that as the deceased provided the money for the premiums the policies were kept up by the deceased within Section 2(1)(c), but the House of Lords, reversing the Court of Appeal decision, decided otherwise. Lord Simonds, in his judgment, said "a person cannot be said to keep up a policy merely because he has provided a fund out of which the premiums were intended to be, and were in fact, paid. If (he went on) as each premium becomes payable, it lies with him to say whether or not it shall be paid ... I should have no difficulty in saying that he keeps up the policy, but equally, where the payment is made by a trustee whose duty and right it is to pay whether the settlor wills it or not, it is not he but the trustee who pays the premiums and keeps up the policy". A hole had clearly been torn in this part of the Section 2(1)(c) net, and repairs had to be made by Section 76 of the 1948 Act which provided, broadly, that premiums paid by virtue of a settlement made by the deceased should be regarded as having been made by the deceased.

One aspect of the sub-section which, in my early days in the Office, I always thought a little hard, was that one had regard only to the premiums paid after the assignment. Supposing George took out a policy on which premiums were to be paid for 20 years or until his earlier death, he paid ten premiums and then assigned the policy to Mary as a gift. After that he kept up the policy by paying eight more premiums and then died. In this case duty would have been payable on the whole of the policy monies because he paid all the premiums after assignment - although the deceased had, in effect, given away a partly paid policy eight years before his death and a good part of the policy monies was attributable to that. But the terms of the section were clear enough and the principle of looking only at premiums paid after the assignment had been settled in the Fleming case as early as 1897.

But Nemesis was close at hand. I think the probable philosophy behind the provision we have just been discussing, that is, of taxing the monies received under a life policy, was that the monies paid under a life policy on a death were regarded as a new item of property springing up on that event for the benefit of the donee and therefore properly and intentionally within the scope of the net, however long before the death the payment of premiums was completed. It will be remembered that the 1889 provision specifically referred to money

received under a policy of insurance - and we shall see later that under Section 2(1)(d), which referred to interests arising on a death and made no specific mention of policies, there was a strong tendency in the early days in cases where life policies were involved for the courts to equate the property with the policy monies and not with the policy itself. But by the early 1950s this had become alien to current judicial thought which looked upon the death of the life assured as merely the occasion for payment of the policy monies and not, solely by reason of that payment, an occasion on which rights are conferred or interests arise.

The example I have just given, but in an even more extreme form, is what happened in the famous - or infamous, according to your point of view - case of Hodge as recently as 1958. In that case, the payment of the premiums was completed 34 years before the death of the deceased when the monies became payable, but there was no doubt that all the requirements of Section 2(1)(c) were satisfied. The Court of Appeal duly confirmed that Estate Duty was payable as claimed, but delivered powerful criticisms of the statutory provisions because the policy had been owned by the donee for so many years before the death.

It was indeed clear that under modern thought, this part of the Estate Duty net needed re-designing. As a temporary measure this was achieved by an extra-statutory concession known, logically, as the "Hodge Concession" - the gist of which was to exclude such policy monies from taxation under Section 2(1)(c) where the beneficiary was absolutely entitled and no premiums had been paid during the five years immediately preceding the death.

The following year heralded a completely new approach to the subject by equating it as closely as possible to the ordinary gift provisions. And so, under Section 34 of the Finance Act, 1959, the former provisions were completely repealed. Instead, the payment by the deceased of any premium within five years of his death on a policy on his life, the beneficial interest in which is already vested in another person, is regarded as a gift of a rateable proportion of the rights under that policy valued at the deceased's death. It followed, of course, that the normal gift reliefs also applied.

But if the history of the taxation of policy monies under Section 2(1)(c) turned out to be a case where the net came to be thought too large, and in the end had to be completely refashioned, the Section 2(1)(d) scheme was one which originally - and for many years - looked sensible and workmanlike, but has been so battered about in recent years that using it now is a little like trying to catch sharks with a shrimping net.

Although similar in some respects to the charge on policy monies which we have just been talking about, Section 2(1)(d) was a new conception in 1894 and deemed that property passing on a death should include:

> "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."

The principle was simple and was admirably defined in 1907 by the Lord Chancellor in the Lethbridge case as being:

> "to prevent a man escaping Estate Duty by subtracting from his means, during his 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."

You will see that, unlike the last head of charge, there was no reference to policies or to policy monies, but policies have always loomed largest in the contested cases and it is these that I want to consider primarily under this head.

There were three points to be satisfied and I do not want to spend long on the first two. First, there had to be an "annuity or other interest" and this has posed little difficulty, relatively speaking. It includes policies and policy monies.

Secondly, the interest must have been purchased or provided by the deceased - alone or in concert or by arrangement, etc. This point is very material, as we shall see, in superannuation schemes.

Finally, a beneficial interest must accrue or arise on the death. It is over this ground that the great legal battles have been fought and blood spilt over the years - mostly Revenue blood, I might add.

Now in the early days - where a life policy was involved - the benefit arising was generally considered to be the policy monies which were paid on the death. It was, I think, a reasonable and not illogical conception, and was no doubt influenced by the specific liability of policy monies under Section 2(1)(c) which we have just been talking about.

It took half a century before that conception was firmly quashed by the House of Lords in 1953 in the D'Avigdor Goldsmid case, although the ground had been prepared in 1942 in the Hamilton case.

In Goldsmid, the deceased had settled a policy (among other assets) on his life and later - still some years before the death - the policy was appointed under a power absolutely to his son. The House of Lords, in reversing the decision of the Court of Appeal, held that the interest was the policy. The whole beneficial interest in it had passed to the son, not on the death, but many years earlier when it was appointed to him. The death was merely the occasion when the policy monies became payable - the mere payment was in no sense an interest arising. Lord Morton summarised the view of their Lordships when he said:

> "I think that confusion has arisen in certain earlier cases because the Court has regarded the monies ultimately paid under the policy instead of the policy itself, as the 'other interest' purchased or provided."

This conception is so familiar now that it is difficult to realise what a volte-face it represented - and, of course, how easily it might not have occurred. The Court of Appeal had held differently and if the case had stopped there, the old ideas about this head of charge would have been reinforced instead of destroyed.

While the Revenue was still licking its wounds incurred in the Goldsmid case, their Lordships took another look at the same point in the twin cases of Wrightson and the Westminster Bank. You will recall that in Goldsmid the policy had been appointed absolutely to the beneficiary several years before the death. He could have surrendered it or sold it: it was his own property. In those circumstances it might well have been an injustice for it to have borne duty. But the position was quite different in the two cases just mentioned. Thus, in the Westminster case, the deceased settled (among other assets) some fully paid policies on his life, directing payment of the income to his nephew for life. The trustees had no power to sell or to surrender the policies - their duty was to hold the policies until they matured. Until the death, the nephew could do nothing except to require the trustees to hold the policies. But as soon as the death occurred he could, for the first time, require the trustees to collect the policy monies, invest them and pay him the income. It seemed reasonable enough to regard this substantial change as a benefit arising on the death: the Court of Appeal certainly thought so and so did Lord Radcliffe in the House of Lords. He stated, in his judgment:

> "When a man takes out a policy on his life and ties it up in this way, it is the essence of the arrangement that he makes and the benefits that he provides, that those benefits arise on and by virtue of his death and not before"

and he held that a Section 2(1)(d) claim should emerge on the death.

But Lord Radcliffe's was a lone voice in the Lords and the other four Lords of Appeal were quite clear - the nephew had a vested interest in the settled fund, including the policies, from the moment the trust commenced; the death was merely the occasion for the commencement of income being payable to him in fact. No beneficial interest arose on the death merely because - as Lord Keith put it - the interest had begun to bear fruit, and no claim arose. If, for any reason, the policies or monies had borne income sooner, the nephew would have received it.

What I think had been clearly established was that a policy was not to be treated differently from any other form of investment during its period of gestation, simply because it then produced no income. And this was confirmed in 1966 when Kilpatrick was heard. Now the facts in Kilpatrick were simple. The deceased, some years before his death, had effected several single premium policies on his life for the benefit of his wife should she survive him by more than one month (which she did), and in default for the benefit of two sons. Estate Duty was claimed under Section 2(1)(d) on the policy monies paid to the widow on the basis that she had a contingent interest which became vested on a date referable to the death, or a defeasible interest which then became indefeasible.

The claim was unanimously rejected. It was held that in view of the rule in Phipps v. Ackers - an 1842 case - the widow previous to the death had a vested but defeasible interest; and since by virtue of that interest she would have received any income before the death - if there had been any - it was a vested interest in possession. All that happened by reference to the death was that the policy monies became payable and the possibility of defeasance was removed. Her beneficial interest was unaffected by the death and there was no Estate Duty liability.

Finally, I would like to say a few words about the Estate Duty aspect of pension and superannuation schemes. In this field, even more than in connection with what is now behind us, I feel considerable presumption being, as it were, arraigned before my peers.

You may, too, be thinking that although I have talked overlong already, I have scarcely mentioned the magic word "aggregation", which is such a godsend to the policy specialists. Of course, policies are not only a special variety of property but have special aggregation provisions beyond those relating to property in general. The whole subject of pension schemes leans so heavily on the aggregation rules that I thought it better to touch on it under this head.

Since Estate Duty is a mutation duty and not an acquisition duty, the rate of duty must depend basically - as we saw at the beginning - on the total value of property taxable on the death,

without regard to the persons from whom or the persons to whom the property moves. Otherwise it would be the simplest thing for disponers to make legions of separate settlements in order to avoid duty largely or wholly. The main exception, of course, is that property in which the deceased never had an interest is excluded from aggregation and treated as an estate by itself.

Later, of course, the manner of enactment of that elementary exception seemed remarkably naive because it opened the way - if one got the procedure right - for the creation of an infinite number of estates by themselves. And no field was given greater scope than the life policy, especially as the Married Women's Property Act provided the necessary machinery to enable the deceased never to have had a life interest. Why worry about whether each policy is caught by the Estate Duty provisions if each is regarded separately and is of such a sum that the duty on it is negligible or nil?

Inevitably this led to modification of the rule, and Section 33(2) of the 1954 Act limited non-aggregation in the case of policies on the deceased's life. Broadly, as you know, that sub-section created a ring fence for all such policies in which the deceased never had an interest, so that all would be aggregated inter se, and supplemented that with other internal ring fences for the policies taken absolutely and indefeasibly by each person. The provision covers policies in which the deceased never had an interest which are taxable under any head and does, I think, restore the position to somewhat reasonable proportions, although it still enables such policies totalling large sums at the death, to bear little duty provided they are diffused among a sufficient number of persons so that each takes an amount - absolutely and indefeasibly, of course, as the section requires.

And now for pension and retirement schemes, the rules of which largely turn on the principles we have already discussed. There is a great difference here between the Income Tax aspect and that for Estate Duty. If you want to get tax relief in respect of the contributions - and, of course, you do - you will have to get Revenue approval, usually under Section 379, but possibly under Section 388, and that will mean, as I understand it, consulting with the Revenue at the drafting stage of the trust deed, to ensure that you have complied with their requirements. When a question of Estate Duty arises, because of the death of a member, the scheme is in operation and the position has to be considered in the light of the law and the particular facts existing at the date of the death.

We are not, of course, concerned with the pension provision for the employee himself - he will get that, if at all, during his life. What we are concerned with are the provisions for payment of a lump sum or annuity on the deceased's death while still in employment or

after retirement. As I expect most of you know, the Board of Inland Revenue issued in 1961 a public notice setting out the basic Estate Duty consequences of varying schemes. Moreover, the Estate Duty Office has a special branch dealing with this field and keeps a record of schemes which have been submitted to it. This normally enables the question of any liability to duty to be dealt with quickly and efficiently when the death occurs of any member of the scheme. If I could make a request at this point - it would often help greatly to speed matters if you would ask the solicitors or personal representatives who are completing the Inland Revenue Affidavit (and have to declare any superannuation scheme benefits payable on the death) to state the precise title of the scheme in question. In most cases we would then be able to go straight to our records of the scheme and either note that no duty is payable or notify the claim. What happens so often is to find it reported merely that a pension is payable to the widow by the employers without naming them: or it is added that Bloggs & Co. are the employers, when in reality it is a subsidiary company and the pension scheme title relates to the controlling company or the group. And then, of course, we have to trouble the solicitors with a lot of questions to identify the scheme.

There are really two main principles about payments on death - whether lump sums or annuities - under superannuation schemes. The first is that if the employee (given the opportunity) is to play safe and keep control over who is to get the payments - for any reason - then he, or his estate rather, has to pay for it. This situation arises when, say, on his death while in service (as an alternative to the pension he therefore will not get) a lump sum is payable as of right to his executors, without anyone having any discretion to withhold it; or, alternatively, if a lump sum or annuity is payable on his death and he has a general power to appoint or nominate it to anyone he wishes. In both these cases he is, of course, competent to dispose of the money which in effect forms part of his estate, is taxable in the ordinary way and is fully aggregable with the rest of his estate to determine the rate of Estate Duty payable.

You will appreciate, too, that it does not matter whether he contributed to the benefit or not.

Not dissimilar is the case where a single annuity or pension is payable for a period beyond the deceased's life, in effect as a separate item of property. For instance, where an annuity was payable to the deceased for ten years certain and the deceased dies after six years; or where it is payable for the longer of the lives of the employee and his wife. I cannot here go into the criteria of deciding whether the annuity should be regarded as a separate item of property, but it is briefly set out in the Board's note. The point I want to make is simply that, regardless of who provided it, the

continuing annuity is also taxed in the normal way as property passing on the death - being valued actuarially - and is, of course, aggregable.

There is, however, an important exception as regards annuities to a spouse or dependant payable on the death or continuing, and that is that if it emanates from a retirement annuity contract or trust scheme approved by the Revenue under Section 22 of the 1956 Act, it will be subject only to the limited aggregation which I mentioned a few minutes ago. In other words, it will be regarded as an interest in a policy on his life in which he never had an interest - even though he palpably did so.

The position, then, as regards the simple provisions I have just mentioned - and subject, of course, to the Section 22 exception - has really remained unchanged since the principal Act in Queen Victoria's reign. In many cases nowadays the employee does not get those options because the scheme is based on one or more of sophisticated criteria which (quite apart from Income Tax implications) have the effect of limiting or excluding Estate Duty liability. The second principle, then, is that if monies payable on death under pension schemes are to avoid liability to duty or minimise liability, the employee at his death can have no control over the payments then to be made and often he will have to trust the discretion of the persons who decide who is to get the benefit or, indeed, sometimes whether anyone shall get it. But nothing is straightforward and there are other pitfalls in the case of discretionary schemes, as we shall see.

Here we are back to Section 2(1)(d), and we have already seen what a modest instrument that has become. You will remember, too, that no liability can arise under it unless all the conditions are satisfied.

First of all, of course, the benefit must have been purchased or provided by the deceased either by himself or in concert or by arrangement with the employer. It is in connection with pension schemes that this question has been mainly argued, because the words are obviously capable of widely differing interpretations. There is, of course, no problem where the deceased made contributions to the scheme, or accepted lower salary or pension as a condition to joining, and the fact that the employer may also contribute is immaterial. Thus, in the case of Payton, the Austin Motor Co. case in 1951, the employers paid the policy premiums partly out of the employee's contributions and partly out of its own, and the employee took a smaller pension than he would otherwise have received to enable it to continue to his widow. The courts had no doubt that the widow's pension was provided by the deceased in concert, etc., within Section 2(1)(d).

That case is, I think, clear enough, but what about the case where the employee makes no overt contribution, i.e., as a specific term of joining? Yet the knowledge of the scheme must play its part in the employee's mind in deciding whether to join a company, and he would obviously have it very much in mind in deciding what salary to accept and whether, during his career, to be satisfied with it. In such circumstances, can it really be said that the benefit, when it becomes payable, is not provided by the deceased in concert or arrangement with his employers? This point was highlighted in 1952 in the Bibby case. The deceased in that case had been employed by a company for some 26 years when a pension scheme under a trust deed was introduced for the benefit of retired employees and for the widows and children. The deceased was not a contributor to the fund, but Estate Duty was claimed on the annuity which was paid to his widow as having been purchased or provided by the deceased in concert, etc., with the company by virtue of his employment. The court decided, on the particular facts, that as the deceased had made no specific contribution, he had already qualified for a pension before the scheme was introduced, that there was no evidence of a bargain with the company or that he received less salary thereafter than he would otherwise have done - that he could not be regarded as having provided the widow's pension. That was an extreme case with many factors pointing in the same direction, but in practice, as the Board's notice indicates, the Office in this context usually has regard only to whether the deceased, directly or indirectly, made some kind of monetary contribution to the scheme. As you will appreciate, this is in any case only one factor in determining liability, and many payments swim through the net by the next point I want to touch on. Before doing so, however, I should mention one exception to the point I have just discussed. That is that even if the company alone makes the contribution, the deceased might still be regarded as the provider if the company held property belonging to him. This is likely only to catch the occasional directors' pension scheme aimed at substantial avoidance, but any payment taxed under this provision would be fully aggregated with the rest of the estate.

Now if the benefit was provided by the deceased, the question then arises whether there was in fact a beneficial interest arising on the death. We have already considered this aspect in discussing the Goldsmid, Westminster Bank and Kilpatrick cases - and, of course, the same principles apply here; so no duty can arise under this head if the beneficiary already had a vested interest in possession and merely awaited the occasion for payment.

Finally - and you will appreciate now, if not before, how technical this subject has become - liability cannot arise unless the payment is legally due and enforceable by the beneficiary who gets it after the death. Many schemes nowadays give the trustees or persons nominated a discretion as to payees and sometimes as to amount. Thus,

in the Bibby case I have just mentioned, the trustees of the scheme had a wide discretion as to payment among the widow and children of the employee - and indeed as to whether they paid at all - and it was held that as the widow had no enforceable right to the pension which she in fact received, no duty was payable.

The incorporation of a discretion to trustees or nominated persons is now, of course, common practice. Moreover, the discretion given is commonly wider than a defined group of relatives, sometimes extending to "dependants", whoever they may be, or even to "persons who have a moral claim" on the deceased - expressions which are, I assume, intended to cover the realities of any situation. This is not, of course, primarily a Revenue matter, but recent developments have shown that nothing is straightforward and that the Revenue is not the only body to find some of its "bankers", if I may use the expression, coming unstuck. Because the wider you make the discretionary body, the more difficult you may find it to steer a safe course between those dread perils, the Scylla of Uncertainty and the Charybdis of Perpetuity. Those awful twins are always lying in wait, dormant until the false step is taken, when one or both strike suddenly with fatal effect on the validity of the trust. I am sure I need hardly mention in this context the case of Leek, in which the Court of Appeal gave judgment just before Christmas. In that case, Colonel Leek was managing director of a company which effected a policy on his life providing an annuity on his 65th birthday or a lump sum payment on his death before that age, which in fact occurred, and wrote him a letter setting out the terms of the arrangement. The legal results turned very much on the precise wording of the arrangement, but the crucial point was that the sum payable, in events, was to be held upon trust, at the discretion of the company, for one or more of the wife, children, issue or - and I quote - "such other persons as the company may consider to have a moral claim upon you", or failing them for such of his next of kin as the company should decide. Now, these provisions are by no means unusual, but in this case the questions came before the court, first whether the trusts, if trusts they were, failed for uncertainty or perpetuity - and if they did fail for either, whether there was a trust for Colonel Leek's estate under the Hancock v. Watson rule or a resulting trust for the company.

Both the first court and the Court of Appeal came to the same decision - a decision clearly unintended by Colonel Leek or the company. The first court held that the trust failed for perpetuity but was not uncertain; the Court of Appeal took the view that it was valid perpetuity-wise but failed for uncertainty. They both held that there was a consequential trust in favour of the estate of Colonel Leek and presumably the lump sum will be assessable to Estate Duty accordingly. The decision turned very much on the facts and the particular words used, and was not primarily an Estate Duty case at all, but it demonstrates, to my mind, both from the point of view of the practitioner and that of the Revenue, that for Estate Duty purposes there is no point

of general law which can be ignored or disregarded - one does so at one's peril. I do not yet know whether the case will go to the House of Lords.

I realise that I have probably talked for too long already, especially to the many of you to whom all this is bread and butter stuff and very well known. But if I have succeeded in lifting a corner of the Revenue veil to show that from the inside we try to interpret and cope with an increasingly complex and ever-shifting body of law, in a pretty reasonable manner, I hope you will not regard the time as entirely wasted.

All enquiries concerning the British Insurance Law Association should be addressed to the Honorary Secretary, 21-24, Chiswell Street, London, E.C.1.