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NOTES ON RECENT STATUTES

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VARIATION OF TRUSTS ACT, 1958

THIS Act follows the recommendations of the Law Reform Committee upon the effects of the House of Lords decision in *Chapman* v. *Chapman* [1954] A.C., 429. It came into force on 23 July 1958 and is entitled 'An Act to extend the jurisdiction of courts of law to vary trusts in the interests of beneficiaries and sanction dealings with trust property.' As might, therefore, be expected, the two distinct matters of varying trusts and enlarging trustees' powers receive attention.

During the present century many applications to vary trusts on behalf of infants have been successful and it appears that Judges in Chambers have sometimes granted them in the belief that they had inherent jurisdiction by virtue of the Sovereign's right as *parens patriae* to protect the interests of an infant as a person incapable of doing so himself. No wonder the 'Chapman' decision that there was no general jurisdiction in the Court to vary trusts on behalf of infants came as a surprise to many. Briefly, the decision was that the Court had no jurisdiction to sanction on behalf of infant beneficiaries a re-arrangement of the trusts of a settlement to secure relief from future liability to estate duty, notwithstanding that the new trusts were clearly advantageous to them. The argument was rejected that the Court was able to consent on behalf of infants to approved dealings with trust property because of the inability of the infants to bargain for themselves. Counsel for the Attorney-General who appeared at the request of the Court as *amicus curiae* pointed out that at law trustees were the legal owners of the trust property and could do what they liked with it, but that the Court of Equity would not let them do anything contrary to the trust and would not authorize them to commit a breach of trust. This principle was not inconsistent with the limited jurisdiction which the Court had exercised in the past of: (*a*) authorizing changes in the nature of trust property, (*b*) allowing trustees to enter into some business transaction, (*c*) permitting maintenance out of income directed to be accumulated, and (*d*) approving a compromise on behalf of infants where there was a genuine dispute. 'The general rule...is that the court will give effect, as it requires the trustees themselves to do, to the intentions of a settlor as expressed in the trust instrument, and has not arrogated to itself any overriding power to disregard or re-write the trusts'. These words of Sir Raymond Evershed, M.R. (as he then was) in the Court of Appeal—see *In re Downshire Settled Estates, etc.* [1953] 1 Ch. 234—were generally accepted by the Judges in the 'Chapman' case and should be kept very much in mind when for any reason trustees are asked to depart from the terms of a trust.

Before examining the provisions of the new Act it may be helpful to summarize the existing Statutes that had previously dealt with the problem.

(i) The Law of Property Act, 1925, s. 171, enables the Court to direct a settlement to be made of any real or personal property or interest therein belonging to a lunatic.

(ii) The Settled Land Act, 1925, s. 64, permits the Court to authorize transactions affecting settled land 'which in the opinion of the Court would be for the benefit of the settled land'.

(iii) The Trustee Act, 1925, s. 57, gives powers to the Court to authorize dealings with trust property if they are 'in the opinion of the Court expedient'.

(iv) The Matrimonial Causes Act, 1950, s. 25, enables the Court after pronouncing a decree for divorce or nullity of marriage to make orders regarding any settled property for the benefit of the children or parties to the marriage 'as the Court thinks fit'.

It will be observed that these provisions of the Trustee Act, 1925, and Settled Land Act, 1925, relate chiefly to administrative powers affecting trust property, whereas, in addition, the other two Statutes enable the Court to vary the trusts or beneficial interests.

Broadly speaking, the new Act (s. 1) gives the Court jurisdiction to approve any arrangement to vary or revoke all or any of the trusts, or to enlarge the trustees' powers of managing any real or personal property held on trust on behalf of persons who are not in a position to do so on their own behalf provided the arrangement would be for their benefit. The Court is not to assent on behalf of anyone capable of assenting for himself (there is an exception for any person in respect of any discretionary interest of his under protective trusts where the interest of the principal beneficiary has not determined) even although he cannot be traced. Consent can, however, be given on behalf of any person who by reason of infancy or other incapacity is incapable of assenting and notwithstanding that the person may be unborn or unascertainable at the date of the application. It is important to observe that within these limitations the Court is given an absolute discretion to approve (or refuse approval) as it thinks fit. Apart from the exception as to discretionary interests to which reference has already been made, the Court is given no power under the Act to override the wishes of any beneficiary capable of making up his own mind on the matter. The Act expressly provides that it shall not extend to Scotland or Northern Ireland.

The Act reverses the 'Chapman' decision but it does not follow that the Court will necessarily approve schemes to avoid income tax or death duties. The primary purpose of the Act is to place infants and others who are under some form of legal disability in a somewhat similar position to beneficiaries of full age and capacity. For example, there is no legal reason why these tax schemes should not receive approval, nor why the terms of the Act should not be invoked to increase, say, a trustee's powers of investment. It is obviously difficult to forecast how these discretionary powers will be exercised, particularly until the Act has been in force for some years. Suffice it to say that the Court will, no doubt, refuse to approve any scheme which is in any way tainted and it is unlikely to approve an application to widen the normal investment clauses to such an extent as to give trustees unlimited power to invest in equities.*

ESTATE DUTY—FINANCE ACT, 1958

There were some important decisions relating to estate duty of particular interest to actuaries during the past two years. Cases such as *Re Beare* [1958] T.R. 181, *Re Hodge's Policy* [1957] 1 Ch. 339 and *Potter* v. *Commissioners of*

* Since this article was written the 'Chapman' trusts have again come before the Courts and the first order has been made under the Variation of Trusts Act, 1958, giving the desired approval on behalf of infant beneficiaries and any unborn children—see *Chapman* v. *Chapman* (No. 2) reported in *The Times*, 13 February 1959.

I.R. [1958] T.R. 55, will immediately come to mind and the position has been partly clarified—some would say obscured—by the Finance Act, 1958. It is generally known that certain aspects of the treatment of life policies for estate duty purposes are under review by the Board of Inland Revenue. Meanwhile, the Treasury has announced the 'Hodge' concession and it is to be hoped that the eventual recommendations will be sufficiently comprehensive to deal with any doubts that have arisen out of the 'Potter' decision. Consideration of these two cases is probably best left over until the Government's promised legislation is forthcoming, but ss. 28, 29 and 30 of the Finance Act, 1958, deserve comment.

In making actuarial apportionments or other calculations for transactions affecting the interests of life tenants and reversioners the incidence of income tax and estate duty has become an increasingly vital consideration. The Finance Act, 1940, s. 43, as subsequently amended, provided in effect that if a life interest had been disposed of or determined within five years preceding the death of the life tenant there was no saving in estate duty, but left the loophole that the duty could be saved by the life tenant purchasing the reversion or other interest expectant on the death of the life tenant. Accordingly, it was no surprise that s. 28 of the Finance Act, 1958, should contain complex provisions to prevent escape from duty if the life tenant dies within five years of the purchase of the reversion. The section is therefore to some extent complementary to s. 43 of the Finance Act, 1940.

Lawyers are only too familiar with the fact that a solution to one aspect of a problem may have totally unforeseen repercussions. In commenting on s. 184 of the L.P.A. 1925 a well-known authority stated in 1925 that the section 'is new and removes the difficulties shown by *Wing* v. *Angrave*' which had existed for 65 years. Now, some thirty years later it would be fair to say that s. 29 of the Finance Act, 1958, deals with certain hardship caused by s. 184 of the L.P.A. That section laid down the convenient legal presumption that for all purposes affecting the title to property the younger of two persons shall be deemed to have survived the elder when the circumstances of their deaths render it uncertain which of them survived the other. The presumption is subject to any order of Court and it is still open for the Court to hold as a fact that the contrary was the case or that the deaths were simultaneous. In the case of *Re Beare*, husband and wife were killed in a motor accident. In accordance with the L.P.A. the wife was presumed to have survived with the result that as the husband had left his estate to his wife, estate duty on his estate was payable in respect of his death and again in respect of the wife's death. The Finance Act, 1958, s. 29, reverses the effect of *Re Beare* by providing that when 'persons have died in circumstances rendering it uncertain which of them survived the other or others the property chargeable with estate duty in respect of each death shall be ascertained as if they had died at the same instant and all relevant property had devolved accordingly'. This provision, no doubt, deals satisfactorily with testamentary dispositions such as in the 'Beare' case because the wife would not be entitled unless she survived her husband, whereas for duty purposes she is deemed to have died simultaneously. Quite different considerations, however, arise in regard to settled property. Consider the case of a policy effected by Mr Beare for the absolute benefit of his wife under the M.W.P.A. 1882. In respect of his death estate duty is payable under s. 2 (1) (*c*) of the Finance Act, 1894, as 'estate by itself' subject, of course, to any limited aggregation under recent legislation (see Finance Act, 1954,

s. 33; Finance Act, 1956, s. 35 and Finance Act, 1957, s. 39) requiring certain somewhat similar interests to be aggregated therewith in fixing the rate of duty. Also, the policy moneys will be liable for duty under s. 1 in respect of Mrs Beare's death and subject to full aggregation. This brings us to s. 30 of the Finance Act, 1958, which replaces the previous provisions for 'quick succession relief'. Hitherto the relief was restricted to property consisting of land and businesses. There is now no such restriction and, generally speaking, if in respect of the 'same property' estate duty is again payable within five years and the person entitled before the later death has acquired the property otherwise than for money or money's worth, then the relief applies. The relief varies from 75% to 10% and the Eighth Schedule contains lengthy provisions to enable such matters to be determined as, for example, when moneys received under policies on the earlier death shall be regarded as the 'same property' and how cash passing on that death is to be identified at the later death. This s. 30 is concerned with reducing the duty payable on a 'later death' and would certainly apply to Mrs Beare's M.W.P.A. policy moneys if she survived her husband. The question arises, however, whether for the purposes of 'quick succession relief' Mr and Mrs Beare are to be assumed to have died simultaneously. The wording of s. 29 is that 'the property chargeable' shall be ascertained on this basis and it may be that the better view is that when once the property chargeable has been determined the section has no further application. Then the presumption of the L.P.A. 1925 should be applied and the policy moneys would be entitled to the relief. Possibly, however, this is a matter which will be dealt with in the promised legislation. At the same time the provisions require amendment to bring within the relief Mrs Beare's M.W.P.A. policy moneys for cases where the evidence is such that the Courts would hold the deaths to have been simultaneous.

INSURANCE COMPANIES ACT, 1958

This Act consolidates the Assurance Companies Acts, 1909 to 1946, with only such 'corrections and minor improvements' as are permitted by the simple procedure laid down by the Consolidation of Enactments (Procedure) Act, 1949. No major changes in the law are therefore involved. The form of insurance legislation in this country continues to be 'freedom and publicity' as it has been for nearly a century. It is interesting to note that the information and forms required to be deposited with the Board of Trade and which were given in the familiar first five Schedules to the 1909 Act are not reproduced in the new Act. In accordance with the powers conferred on the Board of Trade the necessary forms have been prescribed by Statutory Instrument 1958, No. 1765. Obviously this is a considerable improvement as the S.I. can be annulled and new forms prescribed without the necessity of further legislation to meet, say, the needs of the coming electronic age. As previously, the 1958 Act enables the Board of Trade on the application or with the consent of any insurance company to adapt the forms to the circumstances of the company. The Assurance Companies Act, 1909, and various amending Acts have been repealed, but seeing that the 1958 Act does not apply to Northern Ireland the 1909 Act as amended for Northern Ireland continues in force there. Also, of course, the new Act does not apply to Eire.

M.W.P.A. POLICIES

As from the coming into force of the Children Act, 1958, on 1 April 1959 a legally adopted child may be made a beneficiary under M.W.P.A. policies. Sub-section 22 (2) of the Children Act, 1958, is as follows:

> In section eleven of the Married Women's Property Act, 1882, and section two of the Married Women's Policies of Assurance (Scotland) Act, 1880 (which make provision as to policies of assurance effected for the benefit of children) references to a person's children shall include, and be deemed always to have included, references to children adopted by that person under an adoption order.

The Act does not extend to Northern Ireland.

Regarding Eire, the whole of the M.W.P.A. 1882 has been repealed by the Married Women's Status Act, 1957, which came into operation on 1 June 1957. S. 7 contains somewhat similar provisions to s. 11 of the M.W.P.A. 1882 and applies whether the policy was effected before or after the commencement of the Act. The section 'applies to a policy of life assurance or endowment expressed to be for the benefit of, or by its express terms purporting to confer a benefit upon, the wife, husband or child of the insured'. For the purposes of the section it is provided that 'child' includes stepchild, illegitimate child, adopted person (within the meaning of the Adoption Act, 1952 (No. 25 of 1952)), and a person to whom the insured is *in loco parentis*. No definition of a policy of endowment is contained in the Act but there is no reason why the words should not be liberally interpreted in the Courts.