

NO. 790.—COURT OF SESSION, SCOTLAND (FIRST DIVISION).—
12TH JUNE, 1930.

HOUSE OF LORDS.—17TH MARCH AND 11TH MAY, 1931.

THE COMMISSIONERS OF INLAND REVENUE v. JOHN C. DEWAR AND
ANOTHER (CHARLES BRUCE'S TRUSTEES).⁽¹⁾

*Income Tax—Trust income—Whether income of beneficiary for
Income Tax purposes.*

Under a deed of trust a father made over funds to trustees, directing them to take out an educational endowment assurance policy on the life of his daughter, born in 1927, to provide an annuity for four years from the date when she attained the age of fifteen. The premiums on the policy were to absorb practically the whole trust income. The trustees were to apply the annuity and any income of the trust funds for the daughter's education and advancement from the date of her attaining the age of fifteen until she was twenty-one, when the funds in trust were to be transferred to her absolutely. In the event of the daughter dying before attaining the age of twenty-one the trust funds were to revert to the father.

A policy providing for the required endowment, with alternative benefits, was taken out in 1927. The Respondents on behalf of the daughter claimed repayment of Income Tax deducted from the trust income for the year 1928-29 on the ground that it was her income and that she was exempt from tax.

Held, that the income in question was not income of the daughter.

I.—CASE.

At a meeting of the Commissioners for the General Purposes of the Income Tax Acts held at Arbroath on 14th October, 1929, for the purpose of hearing appeals, John Carnochan Dewar and John Webster, both solicitors in Arbroath, the trustees acting under a deed of trust, dated 17th October, 1927, and registered in the books of Council and Session on 2nd February, 1929, (hereinafter called the Respondents) appealed against an objection by the Inspector of Taxes to a claim made by the Respondents for repayment of Income Tax for the year ended 5th April, 1929.

⁽¹⁾ Reported (C.S.) 1930 S.C. 787, and (H.L.) [1931] A.C. 566.

I. The following facts were admitted or proved :—

- (1) By deed of trust dated and registered as aforesaid, Mr. Charles Bruce, of Tarriebank, Arbroath, created a trust for behoof of his daughter, Jill Rosalind Bruce. The extract registered deed of trust which is printed in the Appendix and held to form part of the Case, is referred to for its terms.
- (2) In pursuance of the directions in the deed of trust the trustees took out a policy of assurance, dated 27th October, 1927, with the Caledonian Insurance Company. The policy is printed in the Appendix.
- (3) The beneficiary under the foregoing trust, Jill Rosalind Bruce, has no income apart from the income of the trust, which amounts to £33 per annum and is accordingly well under the limit of exemption from Income Tax.
- (4) In March, 1929, the Respondents, on behalf of Miss Jill Rosalind Bruce, lodged a claim for repayment of Income Tax on the ground that Jill Rosalind Bruce has no income which is liable to Income Tax, tax having been deducted at the source from the income received by the trustees on her behoof.
- (5) It was admitted that on 7th April, 1922, Mr. Bruce conveyed to trustees for behoof of his three elder children, under a deed of trust in terms similar to those of the deed in question, certain funds to be held for behoof of the children, and that the trustees have, on behalf of the children, reclaimed, and have in each year been repaid, the tax deducted from the income of the trust since its inception to 5th April, 1929.

II. It was contended on behalf of the Respondents :—

- (1) That the grounds stated by the Inspector of Taxes for rejection of the Respondents' claim to relief in his letter of 18th April, 1929, against which the original appeal was taken cannot be maintained.

Section 32 (3) (e) of the Income Tax Act, 1918, has no bearing on the circumstances of the case; nor has the further observation that "there is accordingly no expenditure on which a claim can be founded." The ground of the claim for relief is the absence of taxable income, not any speciality attaching to the expenditure of the income either for insurance or otherwise.

- (2) That the Respondents as trustees under a duly constituted trust under which Miss Jill R. Bruce was at present the sole beneficiary, received the income in

question for her benefit and under obligation for her. This being the sole income of the beneficiary and below the level of taxable income, it was exempt from taxation under Section 18 (1) of the Finance Act, 1920; and Miss Bruce's trustees were parties entitled under Section 28 (5) of the Act of 1918 to pursue a claim of relief on behalf of the pupil to the effect of obtaining repayment of tax under Section 29 of that Act.

- (3) That the income in question at the relevant time was income held by these trustees for the sole benefit of the pupil and under obligation to apply and expend the same for her immediate behalf and therefore fell to be regarded as her income.
- (4) That the quality and extent of Miss Jill R. Bruce's right in the said income was governed by the terms of the deed of trust of 17th October, 1927. Under this she had a *jus quæsitum* to have the income applied according to its terms. Considerations depending on the terms of the particular policy taken out were irrelevant, these being incidental to the particular mode of expenditure adopted by the trustees and not being a condition of the trust. The trustees might at any time surrender the particular policy if they thought that it was for the benefit of the pupil to do so in exchange for one giving her larger and more exclusive benefits.
- (5) That the *jus quæsitum* vested in Miss Jill R. Bruce to have the income expended for her was immediate, not future—the trust being one for expenditure of income year by year as it arises, and not one for accumulation; and
- (6) That the relief claimed being due to Miss Bruce through her trustees, on a sound construction of the Acts it ought to be allowed.

III. H.M. Inspector of Taxes (Mr. A. V. Wright), on behalf of the Crown, contended:—

- (1) That as there was no immediate gift to the daughter under the deed of trust and the insurance policy, which must be read together, the daughter had no vested right thereunder.
- (2) That unless and until the daughter attained fifteen years of age no income was payable either to her or on her behalf.
- (3) That, even if and when the daughter attained fifteen years of age, the sums falling to be paid to her under the insurance policy would not be income but instalments of a capital sum; and
- (4) That the claim should be refused.

IV. A majority of the Commissioners who heard the appeal were of opinion that the contentions put forward on behalf of the Respondents were correct and held that the income of the trust was the income of Jill Rosalind Bruce, and that her trustees were entitled, on her behalf, to be repaid the Income Tax which has been deducted from the trust income.

I, the undersigned John Alexander Duncan, dissent from the finding of the Court on the following grounds:—

- (1) In my view, that part of the income of the trust funds which the trustees are obliged to expend in payment of an annual premium on an educational endowment assurance policy, namely £30 (the total income of the trust being stated to be at present about £33), cannot be considered as income of Miss J. R. Bruce in the sense of the Finance Acts and therefore no claim on her behalf can at present be founded on this income (£30) with a view to repayment of the tax deducted.
- (2) Section 25 of the Income Tax Act, 1918, precludes the admission of a claim for repayment of Income Tax in respect of income from trust funds applied for the sole purpose of obtaining a future benefit for a minor having a contingent interest in the said income until the contingency happens.
- (3) As regards the small surplus of the trust income beyond what is required to meet the obligatory payments of premium, at present about £3, a claim by the trustees on behalf of Miss J. R. Bruce for repayment of Income Tax in respect of such portion of this surplus as they may actually expend on her education within the year in question would be competent. *Vide* Note on page 3 Inland Revenue form R.232 (Scotland) (Income Tax Repayment Claim).
- (4) In my judgment the appeal should fail for the reasons set out above.

V. The Inspector of Taxes having expressed dissatisfaction with our decision as being erroneous in point of law and required us to state a Case for the opinion of the Court of Session, as the Court of Exchequer in Scotland, we have, in pursuance of the Income Tax Act, 1918, Section 149, stated and do sign this Case accordingly.

VI. The question of law for the opinion of the Court is whether the income received by the Respondents is the income of Jill Rosalind Bruce, so that they are entitled on her behalf to obtain repayment of Income Tax.

SAM M'DONALD.
D. C. RUTHERFORD LINDSAY CARNEGIE.
JOHN A. DUNCAN.

II.—APPENDIX.

1. EXTRACT REGISTERED DEED OF TRUST by CHARLES BRUCE, of Tarriebank, Arbroath, for behoof of his daughter, JILL ROSALIND BRUCE, dated 17th October, 1927, and registered in the Books of Council and Session, 2nd February, 1929.

At Edinburgh the second day of February one thousand nine hundred and twenty-nine the deed hereinafter engrossed was presented for registration in the books of the Lords of Council and Session for preservation, and is registered in the said books as follows:—

I, Charles Bruce, of Tarriebank, Arbroath, in order to provide for the suitable education of my daughter, Jill Rosalind Bruce, on her attaining the age of fifteen do hereby assign, transfer and make over to John Carnochan Dewar and John Webster, both solicitors in Arbroath, and such other persons as may be assumed into the trust hereby created, provided that no person shall be assumed as a trustee during my lifetime without my consent, and the acceptors or acceptor, survivors and survivor of the persons above named or to be assumed as aforesaid, as trustees and trustee for the purposes aftermentioned, stocks of the present value of five hundred and forty-six pounds sterling as set forth in the schedule hereto annexed, and I direct my trustees immediately upon the granting of these presents to take out an educational endowment assurance policy with any British assurance company of high standing on the life of my said daughter for such sum as can be insured for an annual premium of thirty pounds sterling the endowment to commence upon her attaining the age of fifteen, and to continue for four years; and in the event of the income of the trust being in any year insufficient to meet the premium on said policy, I bind myself to pay to the trustees a sum equal to the deficiency thus arising; further I direct my trustees during the years from the date of my daughter's attaining the age of fifteen until she attain the age of twenty-one to utilise for her education and advancement the educational annuity payable under the said policy, and also any income of the trust funds that may be available. When the said Jill Rosalind Bruce attains majority, I direct my trustees to assign, transfer and make over to her absolutely the capital of the trust estate, and should she die before attaining majority, the trustees shall re-convey and re-assign the whole trust funds to me and my heirs or assignees; and I authorise the trustees to hold the stocks in which the trust funds are at present invested for such time as they in their sole discretion may think fit without their incurring any liability for so doing, but with full power to them to realise the said stocks at any time and to re-invest the proceeds in the debenture or preference stocks of any Financial Trust or Insurance Company; and I undertake if required by the trustees to do so to bear the

expense of administering this trust, including such professional remuneration as is usual and proper which I authorise the trustees to pay to themselves notwithstanding that they are trustees; and I consent to registration hereof for preservation: in witness whereof these presents are, along with the relative schedule hereto annexed, subscribed by me at Arbroath on the seventeenth day of October, nineteen hundred and twenty-seven, before these witnesses, George Ferrier and George MacDonald Bremner, both clerks to Clark, Oliver, Dewar & Webster, solicitors before the Supreme Courts of Scotland, Arbroath, (Signed) C. Bruce; George Ferrier, Witness; George M. Bremner, Witness.

Schedule of stocks referred to in the foregoing Deed of Trust.

£600 5½ per cent. preference stock of the Scottish and Southern Counties Investment Trust Limited at 91	£546 0 0
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C. BRUCE.

Extracted on this and the two preceding pages by me holding a commission to that effect from the Keeper of the Registers and Records of Scotland.

ROBERT D. GRAY.

The principal deed above extracted is impressed with a stamp duty of ten shillings and an adjudication stamp.

ROBERT D. GRAY.

2. Policy No. 105866 of the Caledonian Insurance Company on the life of Jill Rosalind Bruce, dated 27th October, 1927.

Dundee Branch.

Sum Assured £3,600

No. 105866 F.

First Premium due 6th
October, 1927 £30

Class A.D.

Renewal Premium £30

With Profits

from and after 7th July, 1948.

The Renewal Premium is payable yearly on the 6th July from 1928.

Deferred Assurance

With options at age twenty-one or an Educational Endowment commencing at age fifteen.

CALEDONIAN INSURANCE COMPANY
(Founded 1805)

INCORPORATED BY SPECIAL ACT OF PARLIAMENT.

Whereas John Carnochan Dewar and John Webster, both solicitors, Arbroath (hereinafter called the trustees) as trustees under a deed of trust by Charles Bruce, of Tarriebank, Arbroath, for behoof of his daughter, Jill Rosalind Bruce, having made a proposal, dated 6th October, 1927, to effect an assurance on the life of the said Jill Rosalind Bruce (hereinafter called the life assured) with the Caledonian Insurance Company, to commence after the life assured has attained the age of twenty-one years, and to continue thereafter during the term of the life of the life assured and having paid to the Company the sum of thirty pounds as the first premium,

it is hereby declared that, subject to the provisos aftermentioned, if the life assured shall die after the seventh day of July nineteen hundred and forty-eight, being then of the age of twenty-one years complete, the Company shall pay to the life assured's executors, administrators, or assigns, the sum of three thousand six hundred pounds sterling, together with such further sum or sums, if any, as, pursuant to the regulations of the Company for the time being, shall have been added by way of bonus, after proof of the death of the life assured, and of the title of claimant, also (if not previously supplied) proof of the correctness of the statement of age in the proposal above referred to, all to the satisfaction of the directors of the Company, shall have been lodged with the Company. But if the life assured shall die at any time before attaining the age of twenty-one years complete, no part of the said sum assured shall be payable, and the Company shall only be liable to refund to the trustees, their successors or assigns the whole of the premiums which shall have been paid under this policy, with the exception of that for the first year, with two and one-half per cent. compound interest thereon, and that on the expiry of ten days after proof satisfactory to the directors of the Company of the death of the life assured and of the title of the claimant shall have been lodged with the Company, subject to the option at age fifteen referred to in the schedule on the back hereof.

And it is hereby declared that this assurance may be renewed from year to year until the expiration of the term first above-mentioned, by payment to the Company, on the regular yearly dates, of the renewal premium stated in the memorandum at the head of this policy.

And it is also hereby declared that until the life assured has attained the age of twenty-one years, the trustees alone shall have right to deal with this policy in the way of surrender, discharge or otherwise, and that after the life assured has attained the said age, he (or she) alone shall have right to deal with this policy in the way of loan, surrender, discharge or otherwise; further, the trustees shall have the option, on the life assured attaining the said age, of changing the class of this assurance in terms of the schedule on the back hereof, and the option of an educational endowment on the life assured reaching age fifteen also in terms of the said schedule.

And it is further declared that this policy is granted subject to the provisions of the Caledonian Insurance Company's Act, 1923.

It witness whereof these presents are sealed with the common seal of the Company, and are subscribed at Edinburgh, the twenty-seventh day of October in the year nineteen hundred and twenty-seven.

Age admitted.

W. H. FRASER,
Director.
T. MACMASTER,
Secretary.

Schedule within referred to.

The trustees may, on 6th July, 1948, exercise one or other of the following options (provided Option No. 3 has not been exercised) :—

1. Continue to pay the premium within stated, but alter the policy :—

(a) To an endowment assurance, with profits, payable at age 60 or previous death, for ...	<u>£3,186</u>
or (b) To an endowment assurance, with profits, payable at age 50 or previous death, for ...	<u>£2,580</u>
or (c) To an endowment assurance, with profits, payable at age 40 or previous death, for ...	<u>£1,950</u>

2. Discontinue payment of premiums and receive :—

(a) Cash payment of £837 on surrender of the policy	
or (b) A paid-up policy, without profits, payable at death only, for	<u>£2,631</u>

3. The trustees may also discontinue payment of the premiums after 6th July, 1942, surrender the policy, all due premiums having been paid, and obtain an educational endowment of £612, payable in half-yearly instalments of £76 10s. for four years, the first being due on 7th July, 1942, and the last on 7th January, 1946. In the event of the death of the life assured before all the instalments are paid, the payments may be commuted by a single payment in the option of the trustees. In lieu of the foregoing educational endowment, a cash payment of £570 may be taken on 7th July, 1942.

T. MACMASTER,
Secretary.

3. Copy claim for repayment of Income Tax lodged on behalf of Miss Jill Rosalind Bruce, Tarriebank, Arbroath, on 11th March, 1929.

I declare that, to the best of my knowledge and belief, the following is a true account of the income from every source, whether taxed or not, for the year to 5th April, 1929, of Jill Rosalind Bruce, who is resident in Great Britain or Northern Ireland, and who is a minor, and for whom I am trustee under deed of trust, dated 17th October, 1927. I therefore claim to be repaid the sum of £6 12s.

J. C. DEWAR.
8th March, 1929.

The minor's interest is absolute.

J. C. DEWAR.

	Income.	Tax.
Scottish and Southern Counties Investment Company, Limited...	<u>£33 0 0</u>	<u>£6 12 0</u>
No charges.		

4. Letter from H.M. Inspector of Taxes, Arbroath, to Messrs. Clark, Oliver, Dewar & Webster, S.S.C., Arbroath, dated 18th April, 1929.

Miss Jill R. Bruce (Minor).

Dear Sirs,—With reference to the claim to repayment of Income Tax lodged by you on behalf of the above, repayment does not appear to be competent in this case.

The insurance policy is for deferred insurance, and Section 32 (3) (e) of the Income Tax Act, 1918, would apply.

The minor does not take any benefit. In the event of her death, all monies payable would fall to the trustees under the terms of the policy. There is accordingly no expenditure on which a claim can be founded.

I accordingly return all papers herewith.—Yours faithfully,

A. V. WRIGHT,
H.M. Inspector.

The case came before the First Division of the Court of Session (the Lord President and Lords Sands, Blackburn and Morison) on the 12th June, 1930, when judgment was given in favour of the Crown, with expenses.

The Solicitor-General (Mr. J. C. Watson, K.C.) and Mr. A. N. Skelton appeared as Counsel for the Crown and Mr. J. Robertson Christie, K.C., and Mr. R. P. Morison for the Respondents.

I.—INTERLOCUTOR.

Edinburgh, 12th June, 1930. The Lords having considered the Case and heard Counsel for the parties, Answer the question of Law in the Case in the Negative; Sustain the Appeal; Reverse the determination of the Commissioners and Decern; Find the Respondents liable to the Appellants in the expenses of the Case and remit the account thereof when lodged to the Auditor to tax and to report.

(Signed) J. A. CLYDE, I.P.D.

II.—OPINIONS.

The Lord President (Clyde).—This case arises out of the refusal by the Inspector of Taxes of an application for repayment of Income Tax.

The application arose in the following circumstances. The father of a young girl placed in trust a sum of about £600. The trust purpose was the application of the income arising from this

(The Lord President (Clyde).)

£600 to the taking out of an educational endowment assurance policy, the object of which was to provide, at the child's appropriate age, the necessary means for her education. According to the plan, the trustees were to take out the policy in such terms that the money payable under it would be available when the girl attained the age of fifteen, and should be payable in four yearly instalments thereafter. After the termination of those four years, the trust was that the income of the trust fund was to be used for the further education of the child until twenty-one; and lastly, when the child attained majority, the capital sum of £600 was to be paid over to her; but, in the event of her death before attaining majority, the trust fund was to go back to the father. The trustees duly accepted the trust and completed title to the money, and they are at present using £30 out of the £33 of income produced by it (the child being still under fifteen) in paying the annual premiums upon a policy which, as it turns out when one examines it, is primarily a policy on the child's life payable upon her death to her executors; but it has certain options attached to it. One of these options is that, if and when the child attains the age of fifteen, the policy may be surrendered, and in consideration of such surrender there shall be provided by the insurance company what is called an education endowment of between £600 and £700 payable in four annual instalments.

The claim for repayment of tax on the income arising from the trust fund was made by one of the trustees on behalf of the child. It proceeded upon the view that the income of the trust fund was income of the child. If that were truly the case, then—in respect that the child had no other income of her own—it would follow that any Income Tax which had been deducted at source from the income arising from the £600, as received by the trustees, would be repayable to the child; and the question in the case—quite a short question but not altogether a simple one—is whether the income of that £600 is the child's income.

It is familiar that when a trust holds money for the life of a beneficiary, or for the payment of an annuity to a beneficiary, or for the application of the income for the maintenance, upbringing and education of a beneficiary—in all these cases—whether the income of the trust is taxed at source, or (if not taxed at source) is assessed to Income Tax in the hands of the trustees, such income so far as payable to, or spent for the maintenance and upbringing and education of, the beneficiary is income of the beneficiary. And in that case the Income Tax upon it is subject—either at the instance of the beneficiary himself, or at the instance of the trustees acting on his behalf—to those adjustments by way of repayment or abatement or relief which apply to the circumstances of the particular beneficiary. But there is almost always

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some trust income which never reaches a beneficiary in the form of income at all. Sometimes the expenses of trust administration are large, and these expenses have to come off the trust income, while the whole of the income has to bear the tax. In that case, to the extent to which the expenses of administration absorb the income of the trust, the burden just falls upon the trust itself; and the trustees, no matter whether the income of the trust be big or little, have none of those privileges given to individuals in the shape of abatement repayment and relief which are provided by the Income Tax Acts. In like manner, it is quite possible that the income of a trust may, in accordance with the directions of the truster, be applicable in other ways than the distribution of income or the distribution of benefits in the nature of income, such as maintenance, upbringing and education.

Now, in the present case the direction is that the income is to be applied in acquiring and maintaining an educational endowment policy for the ultimate benefit, and with the object of securing the education of, this young girl if she survives the age of fifteen. There is no doubt that this mode of applying the income of the trust is for her contingent benefit. But it is equally clear that the benefit she is at present getting was not an income benefit. She at present gets, and can get, no income, nor anything that is the equivalent of income. Whether she will ever derive any benefit from the insurance, to the purchase of which the income is at present being devoted, depends on whether she survives the age of fifteen.

There are other instances of the devotion of the income of a trust for the advantage of a beneficiary other than by way of providing him or her with a present income; and some of these may present difficult problems. There is, for example, the case of a trust for accumulation. When the interest which the accumulation is intended to serve is a contingent one, the matter is the subject of special statutory enactment in Section 25 of the Income Tax Act, 1918. If a case can be imagined in which the benefit of a trust for accumulation is not contingent, there is no provision in the Act directing how that should be dealt with, and it may be (I do not say that it would be) in such a case that the benefit given to the beneficiary is truly an income benefit. But the case which we have here is altogether distinct from a trust for accumulation.

It is enough for the decision of the case to point out that whatever this child may get, whatever be the benefit which the investment of the trust income in acquiring this policy may ultimately provide her with, she does not at present receive in any shape or form an income benefit. In other words, no part of the income of the trust is at present income of hers. Income Tax is

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chargeable only upon income which a person receives or is entitled to; and at present this girl neither receives nor is entitled to any share of the income of the trust.

Upon these grounds it seems to me that the question of law put to us should be answered in the negative.

Lord Sands.—I agree in the conclusion, but on somewhat different grounds from those of your Lordship in the Chair. This interest was received by the trustees on behalf of the girl, and, subject to what I have to say as to other contingent interests, it was applied on her behalf. But I understand your Lordship in the Chair to indicate the view that that is not sufficient, that it is not applied as income, and therefore is not her income. Now, of course, if, without being handed over to her at all, it had been spent on some purpose that was useful to her—paying school fees during the year—no question would have arisen; but it was spent in paying the premiums of a policy of insurance for her benefit. I should have difficulty in holding that, if under a trust part of the annual income was to be devoted to paying the premiums upon a life policy on B's life which belonged absolutely to B, this annual payment did not fall to be included in the total amount of B's income. A father knowing that his son has a life insurance policy of his own directs his testamentary trustees to pay annually for the son's relief and benefit the premiums upon that policy. Surely the sums so paid are income of the son within the meaning of the Income Tax Acts.

Your Lordship referred to the question of accumulations, and that is illustrated by Section 25 of the Act of 1918 which bears upon the subject. And your Lordship indicated that this was weaker than accumulations. That is not my view. I think it is stronger than accumulations because it is the payment of what is, inherently, an annual charge—the premium of a policy of insurance. Therefore, I am unable to commit myself to the view that this was not, in so far as it was money received by the trustees and spent on the payment of the premium of a policy of insurance for the benefit of the young lady, to be regarded as her income. But I reach the same result as your Lordship upon somewhat different grounds.

The direction in the settlement was to purchase an educational endowment assurance policy. It is not stated in the case that the policy actually purchased was anything other than the policy contemplated; and I have no reason to suppose it was, because one may take it that the whole thing was a friendly family arrangement and there is no suggestion that the trustees purchased another sort of policy than that which was contemplated. This is a policy, I have no doubt, which is quite in common form. One

(Lord Sands.)

of the options is for the provision of education at a certain age. When the boy or girl gets to the age of fifteen the policy as a life policy may be brought to an end and the capital sum due may be taken in so many instalments to cover the four years of education. I have no doubt that the object of these policies is to compensate for the loss of educational allowances for children under the Income Tax Act which, I think, terminate at sixteen. But be that as it may, a policy was taken out in a certain form. There is no suggestion of departing from that policy as it stands and substituting a new policy for it on the ground that the trustees acted improperly.

Accordingly, I think we must take it that this money coming in and used for the payment of the premiums on this policy is applied to the purposes which this policy secures. Now, this policy does not secure any absolute right to the girl. The right is a contingent one. A policy might be contingent in two ways. It might be contingent in this respect that, if the girl dies before fifteen, the policy was to be at an end and nobody was to get anything. In that case it might be said that the benefit no doubt was contingent because there was none unless the girl survived; but then the whole present benefit was going to her if there was nothing over for anybody else, and, whilst it was in a sense contingent, still she got the full benefit of what was expended each particular year in so far as it purchased for her security against the future. But then, on the other hand, the policy may be contingent in this way, that there are rights of other people which will emerge in certain circumstances, and the fact of the existence of these supplementary rights no doubt increases the amount of the premium, and part of the premium is being applied in virtue of the existence of these supplementary rights. Accordingly, I do not think it can be said here that the whole of this premium is being applied exclusively for the benefit of the girl. The benefit is in part at least contingent. I have already referred to Section 25 of the Act, and that Section obviously proceeds on the view that in the case of accumulations when the contingency is purified, the person who would have got the relief, if the right had been absolute from the first, may claim it retrospectively, but not till then.

Accordingly, I do not think there is here any claim for repayment of the Income Tax which has been deducted at the source in the case of this trust. I do not think that it is necessary for the disposal of this case that I should commit myself to any further view than that the income cannot be treated as income of the child, because it is applied to purposes under which the full benefit does not go to her, but only a contingent interest.

Lord Blackburn.—My Lords, I agree with your Lordships. The question in this case seems to me to be a narrow one, and I do not think it is the least surprising that it should have led to a

(Lord Blackburn.)

difference of opinion among the Commissioners who first dealt with the case. But I am unable to agree with the conclusion which the majority of the Commissioners arrived at. The terms of the trust deed give no immediate right to the child in either the capital or the income of the trust fund. It is true that the income is directed to be spent in a manner which may provide a benefit to the child if she attains the age of fifteen, and that she has a right to the capital contingently on her attaining the age of twenty-one. But I cannot regard these provisions as constituting the present income of the trust as her personal income within the meaning of the Income Tax Acts. She has no control over it, and it is not applied for any present purpose beneficial to her. Accordingly, I concur with your Lordships that the question should be answered in the negative.

Lord Morison.—I agree with the Lord President.

An appeal having been entered against this decision, the Case came before the House of Lords (Lord Buckmaster, Lords Warrington of Clyffe, Thankerton, Russell of Killowen and Viscount Dunedin) on the 17th March, 1931, when judgment was reserved. On the 11th May, 1931, judgment was given unanimously in favour of the Crown, with costs.

Mr. J. Robertson Christie, K.C., and Mr. R. P. Morison appeared as Counsel for the Appellants, and the Lord Advocate (the Rt. Hon. C. M. Aitchison, K.C.), Mr. R. P. Hills and Mr. A. N. Skelton for the Crown.

JUDGMENT.

Lord Buckmaster (read by Lord Thankerton).—My Lords, the question on this appeal is the right of the Appellants as trustees under a deed of trust to recover on behalf of their beneficiary, the return of Income Tax for the year 1929 deducted at the source from a sum of £33, the annual income of a sum of £600 $5\frac{1}{2}$ per cent. Preference Stock of the Scottish and Southern Counties Investment Trust Limited. Their claim is of course the claim of the beneficiary under the trust deed, and to succeed it is essential to establish the title of the beneficiary to the income from which the deduction has been made.

The trust deed is dated 17th October, 1927, and by it Charles Bruce, of Arbroath, "in order to provide for the suitable education " of my daughter, Jill Rosalind Bruce, on her attaining the age of " fifteen," transferred the £600 stock before mentioned to the Appellants as trustees, directing them to take out an " educational

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“endowment assurance policy . . . on the life of my said daughter for such sum as can be insured for an annual premium of thirty pounds sterling the endowment to commence upon her attaining the age of fifteen, and to continue for four years”.

In the event of the income becoming insufficient to cover the premium, Charles Bruce bound himself to make good the deficiency. He further directed his trustees from the date of his daughter's attaining fifteen, until she attained twenty-one, to use for her education and advancement the educational annuity under the policy, and also any income from the trust funds that might be available.

On her attaining her majority, the trustees were to make over to her the capital of the trust estate, and should she die before, the trustees were to reconvey the funds to him.

The trustees effected a policy at the annual premium of £30, providing for a policy of £3,600 on the life of the daughter if she attained twenty-one, and if she did not, the insurance company bound themselves to refund the premiums with the exception of the first year, with 2½ per cent. compound interest, with the option to the trustees to obtain an education endowment policy on the daughter attaining fifteen years.

One of the options so provided enabled the premiums to be discontinued after the 6th July, 1942, in consideration of an endowment of £612 payable in half-yearly instalments of £76 10s. for four years from 7th July, 1942.

A question has arisen as to whether this policy is within the terms of the trust, but this it is not necessary to decide. It depends upon whether it answered the terms of the “educational endowment assurance policy” mentioned in the deed on the life of the truster's daughter and upon this evidence might be necessary as to the meaning among insurance companies of an educational endowment assurance policy on the life of the assured.

The decision, however, really turns upon the actual terms of the trust deed itself. From these it is observed that if the daughter dies before fifteen, she receives no benefit whatever, apart from the fact that during her life she has an insurance for her maintenance and education if she does attain fifteen. This does not, in my opinion, give her any present beneficial right to receive the income which must be applied for the purpose in which both she and her father have a contingent interest; she, if and when she attains fifteen, he, if she dies before.

In these circumstances it is impossible to say that the income is solely devoted to her absolute benefit. Further, it will be observed that nowhere under the trust deed is there any gift whatever to her of the income of the trust fund. If, therefore, she died

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with any part of the income for any time unapplied, and unless her death synchronised with the actual date of payment of the premium, this must result; her estate would have no right to the money that was unapplied, for nowhere has it been given to her.

This to my mind defeats her claim to the return of tax, for that can only be made by the person entitled to the income.

This is all that arises for present decision, and it is not advisable to speculate as to whether any right would arise if she attains fifteen.

The judgments of the judges of the First Division fully express my opinion, and it is unnecessary further to add to the reasons they have given.

Lord Warrington of Clyffe.—My Lords, the Appellants are the trustees of a deed of trust dated the 17th October, 1927, executed by Charles Bruce for the purpose of providing for the suitable education of his daughter Jill Rosalind Bruce on her attaining the age of fifteen years. The fund consists of a sum of stock in a company producing an income of about £33 a year, from which Income Tax was deducted at the source. The infant Jill was born on the 7th July, 1927.

The Appellants alleging that the income of the trust fund is income of the infant, and, being her only income, is not subject to tax, claimed on her behalf a return of the tax which had been deducted at the source.

The claim was allowed by a majority of the General Commissioners. On the requisition of the Crown they stated a Case for the opinion of the Court of Session on the question of law whether the income received by the trustees is the income of the infant, so that they are entitled on her behalf to obtain repayment of Income Tax. Their Lordships of the First Division, by Interlocutor, dated the 12th June, 1930, answered the question of law in the negative, sustained the appeal of the Crown and reversed the determination of the Commissioners. Hence this appeal.

The real question is whether the infant has an immediately vested interest in the income so as to be entitled to insist on its application as her income for her immediate benefit or whether under the provisions of the trust deed her right to the income as such is contingent interest only.

The answer to this question depends on the true construction and effect of the trust deed and perhaps on the effect of the policy which it was found was effected in pursuance of the trust.

The trust deed is printed in full in the Appendix, and I propose to refer only to those parts of it which bear directly on the present question.

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The object of the trust is stated to be to provide for the suitable education of the infant on her attaining the age of fifteen. The trustees are directed to take out an educational endowment assurance policy on the life of the infant for such sum as can be insured for an annual premium of £30 to commence on her attaining the age of fifteen and to continue for four years. The trustees are directed during the years from her attaining fifteen until she attains twenty-one to utilise for her education and advancement the educational annuity payable under the policy, and also any income of the trust funds that may become available. The capital of the trust fund is to be transferred to her on her attaining twenty-one, but should she die before that age the trustees are to reconvey and reassign the whole trust funds to the donor.

In my opinion, under the terms of this deed, the infant has no immediately vested interest in the income as such. Admitted that she has a *jus quaesitum*, this is limited to requiring the trustees to effect the policy specified in the deed, and it is provided that the endowment secured by the policy shall not commence till she has attained fifteen. If she does so, then, and not till then, are the trustees directed to utilise the income as such for her benefit. Moreover, if she dies under twenty-one the whole trust funds are to be returned to the donor. The last direction would include any unapplied income in the hands of the trustees, and accordingly, if for example, she were to die shortly before a premium becomes due, the income which would otherwise go to pay that premium would pass not as part of her estate but to her father. The fact is that though by the payment of the premium she obtains a possible benefit, that benefit is of no present pecuniary value but is wholly contingent on future events.

On the deed itself therefore, I come to the conclusion that the income in question is not the income of the infant. As I understand the judgments of their Lordships of the First Division, except Lord Sands, this opinion agrees with their view. Lord Sands, however, prefers to rely on the terms of the policy which he assumes to be the kind of policy contemplated by the trust deed.

The policy was one on the life of the infant, to commence at twenty-one and to continue during her life, for the sum of £3,600, at an annual premium of £30 commencing at once. If the assured should die before twenty-one the premiums (except the first) were to be returned to the trustees with compound interest. They would then revert to the donor under the deed. The trustees had several options exercisable in certain events of which the only material one is that specified in clause 3 of the schedule, under which they would, after the 6th July, 1942, viz., on the infant attaining the age of fifteen, by surrendering the policy obtain the educational endowment referred to.

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There seems to me to be no real doubt that, as Lord Sands says, this is such a policy as was contemplated, and if so, it strengthens the views I have already expressed on the construction and effect of the deed itself, but I prefer to base my judgment on the deed rather than on what the trustees thought fit to do under it.

In my opinion the appeal fails and ought to be dismissed with costs.

Lord Thankerton.—My Lords, I have had the opportunity of considering the opinion of my noble and learned friend Lord Buckmaster, and with it I entirely agree.

Lord Russell of Killowen (read by Lord Macmillan).—My Lords, I have felt considerable doubt as to the correctness of the decision which is here under appeal, the crucial question being whether the income from which the tax had been deducted, was income which was held by the trustees of the deed for the sole benefit of the infant, and which therefore should be regarded as her income.

In my opinion your Lordships, in seeking the answer to this question, should only have regard to the terms of the trust deed, and should not be influenced by a consideration of the terms of the policy of assurance which the trustees in fact took out. The rights of the infant must be ascertained from the language of the trust deed and from no other document.

In the trust deed, the trusts of the income of the trust fund during the minority of the infant are declared by reference to two periods.

The first period ends with the infant attaining the age of fifteen years. During that time the trustees are to apply the income in payment of an annual premium of £30 for the maintenance of an educational endowment assurance policy on the infant's life, the endowment to commence when the infant attains the age of fifteen and to continue for four years.

The second period covers the six years from the infant's attaining the age of fifteen until her majority. During that time the trustees are to apply the income of the trust fund for her education and advancement.

If and when the infant attains her majority, the capital trust fund (and the income) will belong to her absolutely. If she dies under age, they will belong to the settlor.

It is with the income accruing during the first period that this appeal is concerned.

The difficulty which I have felt is this. While it is true to say that the application of the income during the first period will only benefit the infant contingently on her attaining the age of fifteen

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years, it is also true to say that, according to the wording of the deed of trust, it cannot enure for the benefit of anyone but the infant.

During the second period not only is the infant the only person who can derive benefit from the application of the income, but the derivation of benefit by her is free from any element of contingency.

Is the fact that, if the infant were to die under the age of fifteen, she would derive no benefit from the application of the income during the first period, sufficient to prevent the income of that period from being regarded as income of the infant?

Your Lordships think yes, and I am not disposed to disagree. What weighs with me is the consideration that, as has been pointed out, there is no provision in the deed which, if the infant died under the age of fifteen years, would entitle her estate to claim any portion of income which had accrued at the time of her death, but which had not yet been applied in payment of the policy premium.

The doubts which have disturbed me are those which assailed Lord Sands. Unlike him, I found myself unable to escape from them by appealing to the terms of the policy; but upon consideration I find myself able for the reason indicated above, to concur in the motion proposed.

Viscount Dunedin.—My Lords, I concur in the judgment of my noble and learned friend Lord Buckmaster.

Questions put:—

That the Interlocutor appealed from be reversed.

The Not Contents have it.

That the Interlocutor appealed from be affirmed and this appeal dismissed with costs.

The Contents have it.

[Agents:—Solicitor of Inland Revenue, England, for the Solicitor of Inland Revenue, Scotland; Biddle, Thorne, Welsford and Gait, for Mackenzie and Kermack, W.S., Edinburgh.]
