1951 *Present :* **Gratiaen J. and Swan J.**

THE ATTORNEY-GENERAL, Appellant, *and* HALE, Respondent

S. C. 329—D. C. Colombo, 73/T (Special)

Estate Duty Ordinance (Cap. 187)—"Property passing on death"—Bona fide alienation operating from time of death—Exemption from estate duty—Sections 6 (a), (b), 10, 20 (1), 21, 24, 25.

Three solicitors were practising in partnership. It was clear from the partnership deed that they had undertaken to work with one another in partnership to their mutual financial advantage and that their engagement was " a business deal ". Clause 11 provided: " In case of the death or retirement of any partner during the continuance of the partnership the share of such deceased or retiring partner in the Reserve Fund and in the capital assets and goodwill of the partnership and in the office furniture books and papers shall accrue to and be purchased by the surviving or continuing partners or partner in the proportions in which they are entitled to the net profits of the business ".

One of the partners died on 29th March, 1944. On his death, therefore, Clause 11 of the deed of partnership came into operation and his interest in the entire assets of the partnership business consisting of the Reserve Fund, capital, assets and goodwill " accrued to " his surviving partners. The consideration for these assets was duly paid into his estate in accordance with the basis of computation provided by the partnership deed.

Held, that the interest of the deceased partner " in the Reserve Fund and in the capital, assets and goodwill " of the partnership business passed to his surviving partners by reason only of a *bona fide* purchase for full consideration in money or money's worth which was paid to the vendor for his own benefit. Estate duty on the market value of the deceased's interest in the goodwill and other partnership assets was therefore exempted under Section 10 of the Estate Duty Ordinance. Only the total sum paid into the deceased's estate as full consideration for his share of the partnership assets (including his interest in that part which constituted goodwill) was liable to duty under Section 6 (*a*).

APPEAL from a judgment of the District Court, Colombo.

H. W. R. Weerasooriya, Crown Counsel, with *G. U. Sethukavaler*, Crown Counsel, for the defendant appellant.

H. V. Perera, K.C., with *J. R. V. Ferdinands* and *E. LaBrooy*, for the plaintiff respondent.

Cur. adv. vult.

November 29, 1951. GRATIAEN J.—

This is an appeal by the Crown under Section 43 of the Estate Duty Ordinance against an order made by the learned District Judge of Colombo in favour of the respondent who is the executor of the last will and testament of the late Mr. O. P. Mount.

The deceased was at the date of his death, which occurred on 29th March, 1944, a Solicitor and Proctor of this Court carrying on business in partnership with two other professional gentlemen in terms of a Deed of Partnership A 2 dated 10th May, 1937.

Clause 2 provided that the profits and losses of the business should be divided between the parties in certain agreed proportions, and that the goodwill, capital and assets of the partnership should belong to them in the same proportions. Each partner was to devote his whole time and attention to the partnership business and was precluded from engaging in any other business or holding any office, appointment or directorate without the consent of the other partners. The other clauses in the Deed A 2 which are relevant to the present appeal are as follows:—

"4. No partner shall sell give mortgage or otherwise dispose of or charge his share of the partnership or any part thereof without the previous written consent of the other partners.

"8. The death of a partner shall not determine the partnership between the other partners.

"11. In case of the death or retirement of any partner during the continuance of the partnership the share of such deceased or retiring partner in the Reserve Fund and in the capital assets and goodwill of the partnership and in the office furniture books and papers shall accrue to and be purchased by the surviving or continuing partners or partner in the proportions in which they are entitled to the net profits of the business.

"13. For the purposes of this deed the value of the goodwill of the partnership business shall be taken to be a sum equal to two years purchase of the average net profits of the business for the three years ending with the previous thirtieth day of September as appearing in the annual accounts for those three years.

"15. None of the said partners shall (except on the ground of ill-health) be entitled to retire from the business without giving to the continuing partners twelve months previous notice in writing of his intention so to retire ".

The partnership had not been dissolved by mutual consent during Mr. Mount's lifetime nor had any partner exercised his right of retirement under clause 15. On his death, therefore, clause 11 came into operation and his interest in the entire assets of the partnership business consisting of the Reserve Fund, capital, assets and goodwill "accrued to" his surviving partners. The consideration for these assets was duly paid into his estate in accordance with the basis of computation provided by A 2. The value of the deceased's share in the goodwill was for this purpose computed at Rs. 63,230.53 in terms of clause 13.

The respondent, as the executor of Mr. Mount's estate, in due course submitted to the Commissioner of Estate Duty a declaration of the deceased's property wherein the value of the Ceylon estate was declared at a total figure which included the entire sum payable and in fact paid by the surviving partners for his interest in the partnership (including goodwill). The Assessor, however, served on the respondent a notice of assessment dated 11th June, 1947, valuing the Ceylon estate at a considerably higher figure. In particular, he assessed the deceased's interest in the goodwill at Rs. 130,000. The basis of this computation has not been disclosed, but it in fact represents a figure slightly exceeeding *four*

years' purchase of the deceased's average share of the net profits in the business—whereas the sum actually payable under clause 13 as consideration for this asset by the surviving partners to whom it had accrued on Mr. Mount's death was calculated with reference to only *two* years' purchase of the average net profits earned during the preceding three years. The respondent appealed from this assessment to the Commissioner of Estate Duty, who (as far as the present dispute is concerned) reduced the "value" of the deceased's interest in the goodwill to Rs. 92,647—which was approximately the deceased's proportionate interest in three years purchase of the net profits. We are not required, for the purposes of this appeal, to decide the vexed question as to how the market value of the goodwill in a solicitor's business should be assessed.

The respondent appealed to the District Court of Colombo against the Commissioner's assessment, and the appeal proceeded, in terms of Section 40 of the Ordinance, as an action between the respondent and the Crown. By his judgment dated 22nd March, 1950, the learned Judge upheld the respondent's contention that no sum in excess of the sum of Rs. 63,230.53 (computed as provided by clause 13) attracted duty under the Ordinance in respect of the deceased's interest in the goodwill which had passed on his death to the surviving partners. The present appeal is from this decision. The amount of duty involved in the dispute is only Rs. 1,765, but Mr. Weerasooriya informed us in the course of the argument that the revenue authorities were more particularly concerned to obtain an authoritative ruling as to the correct interpretation of Section 10 of the Estate Duty Ordinance.

Such provisions of the Ordinance as are relevant to the decision of this case have been taken over from the Finance Act, 1894, of England. Sections 10 (1) and 10 (2) of the Ordinance, for instance, correspond precisely to Sections 3 (1) and 3 (2) of the Act.

The Ordinance provided that estate duty shall, subject to certain exceptions, be levied at prescribed rates upon the value of a deceased person's property which "passes" or is "deemed to pass" on his death.

Sections 6 (*a*) and 6 (*b*)—which correspond to Sections 2 (1) (*a*) and 2 (1) (*b*) of the English Act—provide as follows:—

> "6. Property passing on the death of the deceased shall be deemed to include the property following, that is to say:—
>
> (*a*) Property of which the deceased was at the time of his death competent to dispose;
>
> (*b*) Property in which the deceased or any other person had an interest ceasing on the death of the deceased to the extent to which a benefit accrues or arises by the cesser of such interest; . . . . " (The remaining part of the sub-section is not material in the present context.)

An exception to Section 6 (*b*) is provided by Section 10, the relevant parts of which declare as follows:—

> "10. (1) Estate duty shall not be payable in respect of property passing on the death of the deceased by reason only of a bona fide

purchase from the person under whose disposition the property passes, ... where such purchase was made . . . . for full consideration in money or money's worth paid to the vendor . . . . for his own use or benefit . . . .

(2) Where any such purchase was made . . . . for partial consideration in money or money's worth paid to the vendor . . . . for his own use or benefit . . . . the value of the consideration shall be allowed as a deduction from the value of the property for the purpose of estate duty ".

Section 20 (1) provides that as a general rule the value of any property liable to duty shall be estimated at its market value, and, with reference to cases falling under Section 6 (*b*) which are not wholly or partially exempted by the operation of Section 10, it is provided by Section 21 that:—

" 21. The value of the benefit accruing or arising from the cesser of an interest ceasing on the death of the deceased shall—

(*a*) if the interest extended to the whole income of the property, be the value of that property ; and

(*b*) if the interest extended to less than the whole income of the property, be such proportion of the value of the property as corresponds to the proportion of the income which passes on the cesser of the interest."

The liability to pay estate duty on property caught up by Section 6 (*a*)—that is, property " of which the deceased was competent to dispose at his death "—falls on the executor of the deceased's estate (Section 24). On the other hand, it is important to note that in cases covered by Section 6 (*b*), but not exempted or partially exempted by Section 10, the liability falls, to the extent provided by Section 25, on the person to whom the deceased's interests have passed.

So much for the general scheme of the Ordinance. I now proceed to consider the purpose of the Legislature in exempting from the operation of Section 6 (*b*) cases where the deceased's property has passed on his death to someone else by virtue of a transaction of the kind described by Section 10. It is important to appreciate the financial implications which, but for Section 10, would otherwise result from a given hypothetical situation:—

" A. sells a valuable estate to B. for a consideration of Rs. 100,000 which represents its full market value; the conditions specified in the conveyance provide that the sale shall become operative so as to pass title to B only upon A's death. A dies within a few days of the completion of the transaction, and the consideration is still lying to the credit of A's account in his Bank."

In such a case, but for the protection afforded by Section 10, *the executor* would be liable under Section 24 to pay estate duty on the basis that the sum of Rs. 100,000 lying to A's credit at the Bank was " property of which the deceased was at the time competent to dispose " within the meaning of Section 6 (*a*); and *the purchaser* would, at the

same time, also be under an obligation under Section 25 to pay duty on Rs. 100.000 representing the value (computed as provided by Section 21) of the beneficial interest which had passed to him on A's death within the meaning of Section 6 (*b*).

Such a consequence would no doubt have been very agreeable to the minds of enthusiastic tax collectors, but it is precisely the result which the Legislature, by enacting Section 10 of the Ordinance, was anxious to prevent. The aim of this Section, as Lord Atkinson said with reference to the corresponding Section of the English Act, is, while discountenancing any attempted evasion of estate duty by resorting to fictitious sales, " to prevent the tax being in effect levied twice on the same property ". *Attorney-General v. Duke of Richmond and Gordon* [1]. " It would be unjust ", he pointed out, " to tax first the property alienated and secondly the money paid for it ". The same idea has been emphasised with characteristic clarity by Jessel, M.R., in *Fryer v. Morland* [2] when he said, with reference to the earlier Succession Duty Act, 1853, " I approach this Act with the impression that it is *not intended to be a tax on alienation* ". The intention of the Act, he said, was " to grant duties on succession to property by persons succeeding to *gratuitous* estates. The man is to pay the duty who gets something on the death of the prior owner either by way of settlement or gift or descent. It is opposed to that notion to imagine that a purchaser for value is to pay the duty besides. He had already bought the property, and he gets nothing more by the falling in of the life. On the falling in of the life, the property comes into his possession. It is bought and paid for, probably, according to the terms of its full value ".

These general observations in *Fryer v. Morland* with reference to the provisions of the Succession Duty Act, 1853, have been adopted by the English Courts as having equal application to the scope of Section 3 of the Finance Act, 1894, On the same analogy, I would say that Section 10 of the Estate Duty Ordinance is intended to grant immunity from duty to a person " who has bought something and paid for it at a price—a consideration in money or money's worth, but who is not to get the benefit of his purchase until the death of his vendor ". *Attorney-General v. Dobree* [3].

It is now convenient to examine the language of Section 10 in order to determine whether it catches up the particular transaction to which the present appeal relates.

Admittedly the deceased's interest in the partnership assets (including goodwill) was an interest in " property passing on his death " to his surviving partners within the meaning of Section 6 (*b*) of the Ordinance. Complete exemption from estate duty in respect of the property can only be claimed under Section 10 (1) on proof of the following facts:—

(*a*) that the property passed on death *by reason only of a bona fide purchase* from the deceased;

[1] *(1909) A. C. 466.*
[2] *(1876) L. R. 3 Ch. D 675 (= 45 L. J. Ch. 817).*
[3] *(1900) 1 Q. B. 442.*

(*b*) that there was *full consideration for the purchase in money or money's worth;* and

(*c*) that such consideration was *paid* to the vendor (i.e., to the deceased) for his "*own use or benefit*" within the meaning of the Section.

If (*a*) and (*c*) be established, but only partial consideration is found to have been paid, complete exemption from duty is not permissible, but a proportionate reduction of duty is sanctioned by Section 10 (2).

In the present case the Crown does not and cannot deny that, in terms of clause 11 of the deed of partnership A 2, the "property" passed to the surviving partners by reason of "a *bona fide* business or commercial transaction between the parties founded on each side upon business or commercial considerations only"—*per* Lord Shand in *Brown v. Attorney-General* [1]. No "donative element" or "act of bounty" on the part of the deceased induced the deceased to dispose of his interest in the partnership business upon his death. On the contrary, in so far as the element of "commerce" can appropriately be imputed to dealings between members of an honourable profession, it is very clear that all three solicitors had undertaken to work with one another in partnership to their mutual financial advantage. The engagement was "a business deal" from beginning to end. It was impossible to predict with certainty which partner would predecease the others, and the object of clause 11 was to secure that the goodwill and other fruits of their association should not be lost to the business but should be available to the survivors on payment of a sum which would represent, in their honest opinion, a fair value of the interest of the first-dying (whoever he might be). The mutuality of the covenant was indeed the best evidence of the good faith of all concerned.

The Crown rightly concedes that the sum of Rs. 63,230.53 paid in respect of the share in the goodwill represented "full consideration in money or money's worth" within the meaning of Section 10. As Rowlatt J. points out in *re Bateman* [2], "the term means that the money paid or the money's worth paid is the *full, fair price* and that *nothing is left either for gift or for natural love or affection" or for any other benevolent consideration.* When it is the full and fair value of the thing *as between buyer and seller,* then it is full consideration in money or money's worth". The observations of Hamilton J. (later Lord Sumner) in *Attorney-General v. Boden* [3] are equally pertinent in this context. "Full consideration" need not precisely correspond to what is later discovered to be the "market value" at the point of time when the property actually passed to the "purchaser". For the purpose of measuring whether full consideration was paid or not, "*one must look at the state of affairs at the time of the contract* and not at the issue of the matter. The mutual promises and not their result or realisation form the subject-matter of the inquiry". See also *Attorney-General v. Kitchin* [4].

[1] *(1898) 79 L. T. 572.*
[2] *(1925) 2 K B 429.*
[3] *(1912) 1 K. B 539.*
[4] *(1941) 2 A. E. R. 735.*

So much has been conceded by the Crown. It was nevertheless contended by Mr. Weerasooriya that the benefit of Section 10 is not available in this case on the grounds that:—

(*a*) the consideration was not in fact paid *to the deceased himself* " for his own use and benefit " within the meaning of Section 10 ;

(*b*) the admittedly *bona fide* " transaction " whereby the property passed on death to the surviving partners did not constitute in law a " *purchase* " from the deceased within the meaning of Section 10.

I shall deal with each of these submissions in the order in which I have set them out. It is appropriate, however, to make some preliminary observations of a general kind. Lord Justice Scrutton has pointed out that Section 3 of the English Finance Act, 1894, which corresponds to Section 10 of the Ceylon Ordinance, " is intentionally wide and untechnical, so that the real substance of each transaction is to be looked at rather than the precise legal terms in which it is contained ". *Attorney-General v. Earl of Sandwich* [1]. The language of Section 10 must therefore be construed with due regard to the object which the Legislature enacting it had in mind—namely, the avoidance of " a tax on alienation for valuable consideration " in a statute intended to impose duty in respect of property over which the deceased had retained full disposing power at the time of his death and which had gratuitously passed to some other person upon that event.

If the matter be looked at in this way, it seems to me that Section 10 can, without doing any violence to its language, receive a perfectly legitimate construction which is consistent with the object of the Legislature. The Section is specially designed to prevent the levying of a double duty first from the *bona fide* purchaser on the market value of the property which has accrued to him and secondly from the executor on the full consideration which may be—or which, as happened in this case, is in fact—available in its entirety to attract duty under Section 6 (*a*).

The submissions made on behalf of the Crown cannot be accepted unless there exists some canon of interpretation which compels us to give some of the words in Section 10 a meaning so very technical as to defeat entirely the object of the Ordinance. In truth, however, the function of a Court which is called upon to interpret a statute which has not, perhaps, been drafted with " divine precision and perfect clarity " is entirely different. The Court must in such cases " supplement the written word so as to give ' force and life ' to it . . . . . A Judge must not alter the material of which (the Act) is woven but he must and should iron out the creases ".—*per* Denning L.J. in *Seaford Court Estates, Ltd. v. Asher* [2].

It is no doubt correct, in a certain sense, to say that the purchase price was not actually " paid " *in specie* to the deceased in his lifetime; on the contrary, payment was made into his estate by virtue of a binding contract which the deceased had entered into with his partners. The Crown admits that the form and manner of this payment was such as effectively and automatically to attract liability to duty because the money, *even before it was actually received*, was " property of which the deceased was *at the time of his death* competent to dispose " within the meaning of Section

[1] *(1922) 2 K. B. 500 C. A.* [2] *(1949) 2 K. B. 481 at p. 491.*

6 (*a*). The deceased was clearly entitled to, and I have no doubt that he did in fact, dispose by will of the sum which would be paid into his estate by his surviving partners in the event of his dying before they did. Similarly, it was open to him to assign during his lifetime the right to receive this money in due course. The correct meaning of the words " paid to the vendor . . . . for his own use and benefit " in Section 10 has been given by Lord Macnaghten in *Attorney-General v. Duke of Richmond and Gordon* [1]. They are applicable to any transaction where " the vendor's purpose is to make himself *master of a sum of money over which he and he alone has power of disposition* ". The consideration must be " received " by him in the sense that, upon its realisation, the money is, in the words of Lord Atkinson, " *his own, to be disposed by him in any way he pleases, free from the control or interference of others* ". The same idea is implicit in the decision of Hamilton J. in *Boden's case*. I hold that in the present case the consideration was " paid " to the deceased " for his use and own benefit " just as effectively as if it had been received by him personally before he died. Indeed, from the point of view of the revenue authorities, the additional advantage accruing from the form of " payment " provided by the deed of partnership A 2 is that it ensures that the money will be available to attract duty under Section 6 (*a*).

I now pass on to consider the final submission on behalf of the Crown, namely, that the present transaction did not constitute a " purchase " in the strict sense of the term. Here again Mr. Weerasooriya frankly concedes that if this view be correct, *Boden's case* was wrongly decided and has been erroneously followed with unqualified approval by the Courts in England ever since the date of its pronouncement—*vide* for instance the *Duke of Sandwich's case* which was argued before the Court of Appeal. Having given my best consideration to the arguments addressed to us, I am quite unable to subscribe to an indictment which implies that the very distinguished lawyer, Sir John Simon, who represented the Crown in *Boden's case*, was so remiss as to make ill-founded concessions to the detriment of his case.

Mr. Weerasooriya's argument is that there can be no " purchase " in law unless, at the time of the contract, the vendor divests himself unconditionally and irrevocably of his title (except somewhat illogically perhaps, his life interest) in the property. On this hypothesis he points out that in the present case the deceased continued to be the absolute owner of his interest in the partnership business until he died, and that no title of any kind " accrued to " the surviving partners until that event occurred; the partnership could have been dissolved by mutual consent; the deceased could also have exercised, if he so wished, his right of retirement under clause 15 in which event his interests would have been purchased by the others before he died. All these circumstances, he submits, are obnoxious to the " true conception " of a binding contract of purchase and sale.

It would have sufficed, I think, to reject this argument by pointing out that it manifests a spirit of undue subservience to the *assumed* technical meaning of a single word appearing in a statute which had advisedly been drafted in " wide and untechnical " language. But in

[1] *(1909) A. C. 466.*

truth the law of this country does not betray such a narrow conception of a legal contract of sale. The Roman-Dutch Law jurists recognise the validity of such contracts which are entered into subject to what are described as " suspensive conditions ". " When the condition is fulfilled, the rights and duties of the parties are determined *as from the date of the agreement* and not as from the date of the fulfilment of the condition ".—*Wessells on Contract, Volume 1, page 452, para 1352.* Wessells also pointed out (Volume 2, paragraph 4909) that although the sale is not complete (*perfecta venditio*) until the condition is fulfilled, there still exists " a legal relationship between the parties, for the one cannot withdraw from the conditional sale without the consent of the other, and the legal representative of each party can enforce the sale when the condition is fulfilled ". Upon that event, " *the sale operates retrospectively* ".

A Divisional Bench of this Court has decided that a sale by anticipation of even a *contingent* interest in land is not obnoxious to the Roman-Dutch Law, so that the instrument of sale operates automatically to vest that interest in the purchaser if and when it has been acquired by the vendor. *Sirisoma v. Sarnelis Appuhamy* [1]. A conditional sale by anticipation of an interest which is already vested in the vendor presents far less difficulty. It is therefore not permissible to regard the operation of Section 10 as restricted only to transactions which were *perfectae venditiones* from their very inception.

In *Boden's case*, where, in comparable circumstances, a deceased partner's interests had been acquired by the survivors in terms of a deed of partnership not dissimilar from A 2 (apart from a single complication which does not arise here) the Crown conceded that there had been a " purchase ", *to take effect upon the deceased's death,* of his interest in the tangible assets. There too the title remained in each partner until he died, and the consideration was " paid " only to the deceased's estate but nevertheless for his " own use and benefit " within the meaning of the Section. All the arguments which have now been submitted to us would have equally applied in that case. The only point of controversy in *Boden's case* was as to whether the deceased's interests in the goodwill of the business had also been " purchased " by " payment " of consideration in " money's worth " in the form of *services to be rendered.* Hamilton J. held that no distinction could, for reasons which need not here be closely examined, be drawn between the " purchase " of the " goodwill " on the one hand and of the tangible assets on the other.

After the argument was concluded before us, I was able to trace the judgment of Lawrence J. in *Attorney-General v. Ralli* [2] referred to at page 113 of *Hanson on Death Duties* (9th edition). That case dealt with a deed of partnership in a business whose activities necessitated the keeping of substantial reserves. The agreement provided that, on the death or retirement of any partner, his interest in the reserve fund should pass to the other partners *without payment.* Lawrence J. held that, on the death of the partner Ralli, exemption from estate duty in respect of his interest in the fund which passed to the survivors was granted by Section 3 of the Finance Act, 1894. " The transaction ", he said, " was an ordinary commercial arrangement entered into between the three

[1] *(1950) 51 N. L. R. 337.* [2] *(1936) 15 A. T. C. 523.*

partners for valuable consideration. *It had none of the elements of a gift.* All three partners were treated equally . . . . The consideration moving from one partner to the others was the undertaking of each partner on those terms, one of which was that his interest in the reserves should pass to his partners if he retired or died ". He accordingly concluded, following *Boden's case*, that the transaction would not attract duty because the property passed " by reason only of a *bona fide purchase* from the person under whose disposition the property passed, and *full consideration* in money or money's worth *was given for it* ". *A fortiori*, Section 10 of our Ordinance applies to the present case because, in addition to the " consideration " given in the form of the reciprocal undertakings which affected each partner's share, the deed A 2 also provided for a payment of money proportionate to what all the partners regarded as a fair pre-estimate of the value of the goodwill and other assets of the business.

The judgments to which I have referred all proceed upon the basis that the word " purchase " in the present context is a non-technical term employed in contradistinction to a gratuitous disposition.

It is idle to suggest that the decision of this Court in the *Commissioner of Stamps v. Logan* [1] does not assume that *Boden's case* was correctly decided. Dalton A.C.J. distinguished the case which he was considering because the goodwill of the partner Henderson had passed upon his death to the surviving partner Hanscomb *for services rendered in the past* which could not therefore be regarded as " consideration " within the meaning either of Section 3 of the English Act or of Section 10 of the local Ordinance. Dalton A.C.J. did not purport to construe the *ratio decidendi* in *Boden's case* in a manner inconsistent with the interpretation which is generally placed upon it. Indeed, *Logan's case* came up for adjudication when Ceylon was still a Crown Colony, so that the interpretation placed on Section 3 of the English Finance Act by the Superior Courts of England were at that time regarded as binding on the Ceylon Judges —*Nadarajah Chettiar v. Tennekoon* [2]. I have already pointed out that the English Court of Appeal has consistently accepted the judgment of Hamilton J. as a correct decision.

For the reasons which I have given, I would hold that the interest of the deceased O. P. Mount " in the Reserve Fund and in the capital, assets and goodwill " of the partnership business passed to his surviving partners by reason only of a *bona fide* purchase for full consideration in money or money's worth which was paid to the vendor for his own benefit. Estate duty on the market value of the deceased's interest in the goodwill and other partnership assets was therefore exempted under Section 10 of the Ordinance. On the other hand, this money, or at least the right to receive it, was property of which he was at the time of his death competent to dispose. Only the total sum paid into the deceased's estate as full consideration for his share of the partnership assets (including his interest in that part which constituted goodwill) was for that reason liable to duty under Section 6 (*a*). The judgment of the learned District Judge must in my opinion be affirmed, and the appeal dismissed with costs.

SWAN J.— I agree.

Appeal dismissed.

[1] *(1933) 35 N. L. R. 393.*

[2] *(1950) 51 N. L. R 491 S. C.*