1942 *Present :* **Soertsz and Keuneman JJ.**

VANDER POORTEN *v.* THE COMMISSIONER OF INCOME TAX.

D. C. (*Inty.*) 38 (*s*).

Income Tax—Sums paid in satisfaction of legacy—Statutory income of beneficiary—Legacy not liable to tax—Income Tax Ordinance (Cap. 188), s. 11 (11).

A legacy paid under the last will of a deceased person does not form part of the "income of a beneficiary of the estate" of the deceased within the meaning of section 11, sub-section (11), of the Income Tax Ordinance and is not liable to tax in the hands of the legatee.

THIS was a case stated for the Supreme Court by the Board of Review under the Income Tax Ordinance.

Two questions arose in the case stated, viz. :—(1) whether or not two sums of money paid to the appellant's wife by the executors and trustees of the last will of A. W. Winter fall within the definition of profits or income under section 6 of the Income Tax Ordinance and/or whether these two sums of money are part of the statutory income of a beneficiary of the estate of the deceased, Mr. Winter, within the meaning of sub-section (11), section 11, of the Ordinance.

H. V. Perera, K.C. (with him *N. M. de Silva*), for assessee, appellant.—The legacy of Rs. 10,000 is a capital receipt in the hands of the legatee and is, therefore, not taxable.

This sum cannot be caught up under section 11 (11) for two reasons :—(1) It is a capital sum. (2) The wife of the assessee, i.e., the person receiving the legacy, is not a beneficiary of the estate of a deceased person. There is a distinction between one who is a legatee and a beneficiary. A beneficiary is one who has an interest in the property of the deceased.

An examination of the various amendments of section 11 clearly shows that it was never the intention of the Legislature to tax legacies or other payments in nature of capital payments. The latest amendment, i.e., the portion within brackets, merely makes explicit what was implicit in the section.

The Board of Review sought to bring this amount under section 6 (1) (*f*) or (*h*). This cannot be done. Charge has nowhere been defined. Here it is intended to be a charge in the nature of an annuity, which is specifically taxed. The corresponding section in the English Act refers to "annuity or other annual payment". The draftsman in Ceylon has merely revised the order.

Under 6 (1) (*h*) this payment is casual. It is a simple legacy—the mode of payment does not affect the question.

H. H. Basnayake, C.C., for Commissioner of Income Tax, conceded that for the purposes of this appeal he could not support the finding of the Board of Review, that the legacy falls within the ambit of section 6.

The legacy was statutory income of the beneficiary under section 11 (11). Every payment from an executor to a beneficiary is taxable under this section. The executor is exempted from the payment of tax and, therefore, the beneficiary has to pay. The wife of the assessee is a beneficiary.

She has an interest in the property of the deceased and is entitled to get her legacy from the estate. In fact, the estate is charged with the payment of the legacy. Counsel refers to definition of term "beneficiary" in *Stroud's Judicial Dictionary, p. 183,* where it is defined as one who is interested in property and entitled to it for his own benefit.

Cur. adv. vult.

September 9, 1942. SOERTSZ J.—

This is a case stated by a Board of Review under the Income Tax Ordinance for our consideration. It was stated at the instance of an assessee who appealed to the Board unsuccessfully against the decision of the Commissioner of Income Tax.

Two questions arose on the case as stated by the Board, namely, "whether or not the two sums of Rs. 2,509 and Rs. 5,000", paid to the appellant's wife by the executors and trustees of the last will of A. W. Winter, "fall within the definition of 'Profits' or 'Income' under section 6 of the Income Tax Ordinance" and/or "whether or not these two sums are part of the statutory income of a beneficiary of the estate of the deceased Mr. Winter, within the meaning of sub-section 11 (11) of the Ordinance".

These two sums of money were paid to the assessee's wife in the following circumstances. A. W. Winter, who died in December, 1931, left a Last Will and Testament by which, *inter alia,* he gave and devised a half of Pillagoda Valley to his executors and trustees upon trust to pay from the income thereof, together with the income from the other half of Pillagoda Valley , to Hilda, the wife of Joseph Vander Poorten (the appellant), the sum of Rs. 10,000 on certain conditions. The testator left it open to the executors and trustees to pay this sum in reasonable instalments. The relevant conditions having been satisfied, the executors and trustees, in the exercise of the discretion given to them, paid these two sums of money to the appellant's wife in part satisfaction of the legacy.

The Assessor, in assessing income in this case, included these two sums of money as liable to tax. On appeal, the Commissioner of Income Tax upheld this assessment as properly made, in virtue of section 6 (1) (*f*) and sub-sections 10 and 11 of section 11 of the Income Tax Ordinance (Cap. 188). The Board before whom the matter then went took the same view, and stated this case.

Crown Counsel, appearing on behalf of the Commissioner of Income Tax, conceded, I think quite rightly, that he could not support the view that the sums involved were income under section 6 (1) (*f*) or under any other category of section 6 (1).

The sole question, then, that we have to answer is whether these sums, although they are not within the meaning of "profits" or "income" in section 6 (1) of the Income Tax Ordinance, are none the less liable to tax in the hands of the appellant's wife under sub-section 11 (11) of the Ordinance.

Once it is conceded that these sums of money are not "profits" or "income" within the meaning of section 6 (1), which is the section that enumerates the things that are income, chargeable with tax, there must be clear words in some other provisions of the Ordinance to render liable

to tax that which is not income either in the ordinary connotation of that word, or in the meaning given to it by section 6 (1). There are no such words in the sub-section relied upon, namely 11 (11), which is in these terms :—

> "The statutory income for any year of assessment of any beneficiary of the estate of a deceased person administered by an executor shall, subject to the provisions of sub-sections (8) and (9), be the amount of profits or income received by or distributed to him, or applied to his benefit, from the income of the estate during the year preceding that year of assessment."

Assuming, without conceding, that the appellant's wife, who is a legatee under the will of A. W. Winter, is a beneficiary of his estate, sub-section 11 (11) would render her, and not the executor, liable to pay tax on that part of profits or income received by or distributed to her as the share of profits or income due to her. But these sums of money, although they were income in the hands of the executors and trustees, came into her hands not as income but as part of a capital sum due to her on account of the legacy left to her. The latest amendment of the Income Tax Ordinance, effected at a date subsequent to this case, makes it quite clear that such receipts are not liable to tax. That amendment introduces certain additional words placed within brackets at the end of sub-section 11 (11) as quoted by me above. Those words are :—

> (" otherwise than as the capital amount, or any part of the Capital amount of his interest in the Estate ".)

In my view, the insertion of those words, in that way, was not intended to. and did not, alter the law but served to make explicit the true content of the law as it stood. They are explanatory words.

I would, therefore, in answer to the one question left for our consideration say that these two sums of money are not liable to tax in the hands of the appellant's wife under sub-section 11 (11).

The appellant is entitled to costs.

KEUNEMAN J.—I agree.

Appeal allowed.