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CITATION

These reports are cited thus:

[1979] 3 All ER

REFERENCES

These reports contain references, which follow the headnotes, to the following major works of legal reference described in the manner indicated below.

Halsbury's Laws of England

The reference 35 Halsbury's Laws (3rd Edn) 366, para 524, refers to paragraph 524 on page 366 of volume 35 of the third edition, and the reference 26 Halsbury's Laws (4th Edn) para 577 refers to paragraph 577 on page 296 of volume 26 of the fourth edition of Halsbury's Laws of England.

Halsbury's Statutes of England

The reference 5 Halsbury's Statutes (3rd Edn) 302 refers to page 302 of volume 5 of the third edition of Halsbury's Statutes of England.

English and Empire Digest

References are to the replacement volumes (including reissue volumes) of the Digest, and to the continuation volumes of the replacement volumes.

The reference 44 Digest (Repl) 144, *1240*, refers to case number 1240 on page 144 of Digest Replacement Volume 44.

The reference 28(1) Digest (Reissue) 167, *507*, refers to case number 507 on page 167 of Digest Replacement Volume 28(1) Reissue.

The reference Digest (Cont Vol D) 571, *678b*, refers to case number 678b on page 571 of Digest Continuation Volume D.

Halsbury's Statutory Instruments

The reference 12 Halsbury's Statutory Instruments (Third Reissue) 125 refers to page 125 of the third reissue of volume 12 of Halsbury's Statutory Instruments; references to subsequent reissues are similar.

CORRIGENDA

[1979] 2 All ER

p 1204. **R v Stephenson.** Solicitors for the Crown: read *'Drivers,* New Malton' instead of as printed.

[1979] 3 All ER

p 254. **St Catherine's College v Dorling.** Line *g* 2: for 'let as separate dwellings' read 'let as a separate dwelling'.

p 390. **R v Inland Revenue Comrs, ex parte Rossminster Ltd.** Lines *e* 1 and 2: for 'his contentions could support' read 'the applicants contend'. Page 391, line *j* 4: for 'treated' read 'tested'. Page 392, line *a* 2: for 'because' read 'on the grounds that'. Page 395, line *h* 3: for 'one document to contain' read 'one document thought to contain'. Page 396, line *e* 3: delete the words ', as I see them, but again' and insert full point in their place.

p 744. **Bocardo SA v S & M Hotels Ltd.** Line *e* 3 and footnote 4: for 'Prideaux's Precedents in Conveyancing' read '11 Encyclopaedia of Forms and Precedents (4th Edn) 321, form 2:27'.

Cases reported in volume 3

Shaw v Shaw

FAMILY DIVISION
BALCOMBE J
9th FEBRUARY 1979

Constitutional law – Diplomatic privilege – Immunity from legal process – Removal of immunity on cessation of diplomatic function – Divorce proceedings by wife of diplomatic agent – Summons by husband to strike out petition on ground of diplomatic immunity – Husband a diplomatic agent at date of petition and issue of summons but ceasing to be diplomatic agent before summons heard – Whether petition should be struck out – Whether petition rendered void by issue of summons – Diplomatic Privileges Act 1964, Sch 1, art 31(1).

On 19th December 1978 the wife presented a petition for divorce in which she averred that she and the husband had been habitually resident in England throughout the year ending with the date of presentation of the petition. On January 12th 1979 the husband issued a summons to strike out the petition on the ground that he was immune from suit under the Diplomatic Privileges Act 1964. At the date of presentation of the petition and the issue of the summons the husband was a diplomatic agent within the 1964 Act, being the commercial attaché at the United States Embassy, and was therefore entitled to rely on diplomatic immunity as a bar to the petition, under art 31(1) of Sch 1 to the Act. On 25th January, however, his appointment came to an end and he ceased to be a diplomatic agent. Accordingly, when the summons came on for hearing on 9th February he was no longer entitled to immunity from suit. He nevertheless contended that as he had been entitled to immunity from suit at the date of issue of the summons, the petition became null and void from that date and the court should strike it out, even though the wife could present a fresh petition to which the husband could not object on the ground of immunity from suit.

Held – The petition remained a valid petition until it was struck out on the ground of the husband's immunity from suit, notwithstanding the existence of the procedural bar of diplomatic immunity. It therefore remained a valid petition despite the issue of the summons and was valid at the date of the hearing of the summons. Since at the date of the hearing the husband was not entitled to immunity from suit, there was no justification at that date for striking out the petition. It followed that the summons would be dismissed (see p 6 *b* to *f*, post).

Empson v Smith [1965] 2 All ER 881 applied.

Notes

For immunity from jurisdiction of diplomatic agents, see 18 Halsbury's Laws (4th Edn) para 1566, and for cases on the subject, see 11 Digest (Reissue) 733–737, 505–533.

For the Diplomatic Privileges Act 1964, Sch 1, art 31, see 6 Halsbury's Statutes (3rd Edn) 1019.

Cases referred to in judgment

Dickinson v Del Solar [1930] 1 KB 376, [1929] All ER Rep 139, 99 LJKB 162, 142 LT 66, 11 Digest (Reissue) 742, 590.

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a Article 31, so far as material, is set out at p 3 *c d*, post

Empson v Smith [1965] 2 All ER 881, [1966] 1 QB 426, [1965] 3 WLR 380, CA, 11 Digest (Reissue) 743, 596.
Musurus Bey v Gadban [1894] 2 QB 352, [1891–4] All ER Rep 761, 63 LJQB 621, 71 LT 51, CA, 11 Digest (Reissue) 736, 517.
R v Madan [1961] 1 All ER 588, [1961] 2 QB 1, [1961] 2 WLR 231, 125 JP 246, 45 Cr App R 80, CCA, 11 Digest (Reissue) 736, 525.
Suarez, Re, Suarez v Suarez [1918] 1 Ch 176, [1916–17] All ER Rep 641, 87 LJCh 173, 118 LT 279, CA, 11 Digest (Reissue) 742, 589.

Cases also cited
Baccus SRL v Servicio National Del Trigo [1956] 3 All ER 715, [1957] QB 438, CA.
C (infant), Re [1958] 2 All ER 656, [1959] Ch 363.
Ghosh v D'Rozario (or Rosario) [1962] 2 All ER 640, [1963] 1 QB 106, CA.
Rahimtoola v Nizam of Hyderabad [1957] 3 All ER 441, [1958] AC 379, HL.
Zoernsch v Waldock [1964] 2 All ER 256, [1964] 1 WLR 675, CA.

Summons
By a summons dated 12th January 1979, the husband, Charles Marlowe Shaw, applied for an order that the petition for divorce filed on 19th December 1978 by his wife, Christina Maria Shaw, be struck out, set aside or stayed or that such order be made as regards the continuation of the petition as might be just, on the grounds that the husband was immune from the jurisdiction of the court by reason of the Diplomatic Privileges Act 1964. The facts are set out in the judgment.

Alan Ward for the husband.
Eleanor Platt for the wife.

BALCOMBE J. I have before me a summons by a respondent husband that the petition be struck out or set aside or stayed, or that such order be made as regards the continuation of the petition as may be just, on the grounds that the husband is immune from the jurisdiction of the court by reason of the Diplomatic Privileges Act 1964.

This raises a short but by no means uninteresting, and to me at any rate novel, point of law which arises in these circumstances. On 19th December 1978 the wife presented a petition for divorce in the Divorce Registry. She avers that she and her husband were married in 1960 in the United States of America; that they have since lived in London; that neither party is domiciled in England and Wales, but that both have been habitually resident in England and Wales throughout the period of one year ending with the date of presentation of the petition. She then states her occupation, and states that the husband is a diplomat and civil servant.

He has put in evidence an affidavit, supported by a certificate from the Foreign Office, that he was at the date in question, 18th January 1979, when he swore the affidavit, the commercial attaché at the United States Embassy, and as such a member of the diplomatic staff of the United States mission in this country; and that was the ground on which he claimed the relief in the summons which I have already mentioned.

However, since the date of the summons and, indeed, since the date of that affidavit, the husband has ceased to be the commercial attaché at the United States Embassy. His appointment in that capacity has ended with effect from 25th January 1979, and I am told that he has now returned to the United States of America. And it is in those circumstances that this application comes before me.

Counsel, in an able and spirited submission on behalf of the husband, has submitted to me that the fact that the husband has gone back to the United States of America and is no longer entitled to diplomatic immunity is neither here nor there, because at the date of the issue of the summons he was so entitled; therefore, submits counsel, I should strike out the petition. He accepts that the point is a somewhat technical one in that he further accepts that it would be possible for the wife to present a fresh petition tomorrow

to which no such objection could be taken; but, nevertheless, if the point is a good one I must give effect to it.

I turn first to consider the provisions of the Diplomatic Privileges Act 1964, on which the point is based. Section 1 says: 'The following provisions of this Act shall, with respect to the matters dealt with therein, have effect in substitution for any previous enactment or rule of law.' I find that section a somewhat encouraging one because a number of the cases cited to me indicate that the previous law was by no means clear. It then goes on in s 2 to apply the articles set out in Sch 1 to the 1964 Act (being articles of the Vienna Convention on Diplomatic Relations[1] signed in 1961) to the law of the United Kingdom, and I turn straight away to the schedule. Article 1 is a definition article and defines 'a diplomatic agent' as 'the head of the mission or a member of the diplomatic staff of the mission', and then in turn defines the 'members of the diplomatic staff' as 'members of the staff of the mission having diplomatic rank'.

On the evidence before me, to which I have already referred, I am satisfied that at the date of the petition, as well as at the date of the summons to strike out, the husband was a diplomatic agent within the meaning of that article. Article 31, para (1), then provides: 'A diplomatic agent shall enjoy immunity from the criminal jurisdiction of the receiving State. [Nothing turns on that in this case. It goes on:] He shall also enjoy immunity from its civil and administrative jurisdiction, except in the case of . . .' and then there are three exceptions listed, none of which is relevant to the case I have before me. The matrimonial jurisdiction of the High Court is part of the civil jurisdiction of the court and therefore, in my judgment, the husband would be entitled to rely on his diplomatic immunity as a bar to the petition in this case, if it is still available to him.

Finally, I must refer to art 39, which provides by para (2):

> 'When the functions of a person enjoying privileges and immunities have come to an end, such privileges and immunities shall normally cease at the moment when he leaves the country, or on expiry of a reasonable period in which to do so, but shall subsist until that time, even in case of armed conflict. However, with respect to acts performed by such a person in the exercise of his functions as a member of the mission, immunity shall continue to subsist.'

Now, this petition is not based on any acts performed by the husband in the exercise of his functions as a member of the mission and, as I have already said, counsel for the husband concedes that the husband has now lost his immunity in the sense that any fresh petition launched by the wife could not be met by any similar plea of diplomatic immunity. And so the short point that I have to decide is this: on the basis, as I have said, that the husband had diplomatic immunity at the date when the petition was launched and at the date when he issued his summons to strike out the petition, but has as of today's date lost that immunity, what order should I now make?

There have been cited a number of cases on the old law. Some of those cases are very difficult to understand or to reconcile with each other, largely because of the language used in the Diplomatic Privileges Act 1708 which, paraphrased, said that all suits against ambassadors should be utterly null and void to all intents and purposes. And yet there were a number of cases where it was held that suits brought against diplomats in the past were valid where the immunity had been waived, and much legal ingenuity has been devoted to try and reconcile these apparently contradictory statements. In *Re Suarez*[2] Scrutton LJ made it clear that he was troubled by this apparent contradiction and said that he desired to reserve his liberty to consider how exactly a writ issued without the consent of an ambassador, and therefore apparently a nullity (and he cited another case in the Court of Appeal which was cited to me, *Musurus Bey v Gadban*[3]) was made an effective writ by the consent of the defendant and the extent to which it became effective.

1 Vienna, 8th April 1961, TS 19 (1965), Cmnd 2565
2 [1918] 1 Ch 176 at 200, [1916–17] All ER Rep 641 at 650
3 [1894] 2 QB 352, [1891–4] All ER Rep 761

Fortunately, it seems to me that I am not bound to have to deal with that troublesome point, because of a more recent decision in the Court of Appeal in *Empson v Smith*[1], by which I am bound and whose reasoning I find compelling. In order to understand the reasoning in that case, it is right that I should refer to the headnote which sets out the relevant facts[2]:

> 'On October 17, 1961, the plaintiff let her house in London for one year certain less one day to the defendant, an administrative officer in the employ of the High Commission of Canada in the United Kingdom. A special clause in the tenancy agreement provided, inter alia, that in the event of the tenant being officially ordered by his Government to duty outside London and the landlord being duly notified in writing by the tenant, the agreement should cease and terminate three calendar months after the date of the delivery of such notice to the landlord. In December, 1961, the defendant, who alleged that he had been officially ordered to Europe for duty, gave notice to the plaintiff to terminate the tenancy agreement and left the premises in March, 1962. In March, 1963, the plaintiff began proceedings in the county court for damages for breach of the tenancy agreement. The defendant did not enter an appearance, but a certificate was issued by the Ministry of Commonwealth Relations under section 1(3) of the Diplomatic Immunities (Commonwealth Countries and Republic of Ireland) Act, 1952, certifying that he was a member of the official staff of the High Commissioner. On the basis of that certificate the registrar, on 26th March, 1963 [and I correct the date in the headnote because according to the text the date was 26th April], stayed the action. On July 31, 1964, the Diplomatic Privileges Act, 1964 ... was passed [and then there is a reference to article 37 (2). The headnote continues:] On August 31 the plaintiff applied for removal of the stay, her application being adjourned. On October 1, 1964 the Diplomatic Privileges Act, 1964, came into force. On November 4, the defendant applied for an order dismissing the action on the ground that it was a nullity. On December 15 both applications were heard together and a certificate, issued under section 4 of the Act of 1964, certifying that the defendant was a member of the administrative staff of the High Commissioner, was before the judge. The judge struck out the action on the ground that the proceedings were a nullity at the time they were begun and were not affected by the Act of 1964.
>
> On Appeal by the plaintiff: *Held*, – (1) that, as the law stood at the time that the proceedings were begun, the defendant was covered by diplomatic immunity, and the proceedings could not be lawfully maintained while that immunity remained; but that the action subsisted until struck out by the judge and the stay imposed by the registrar could have been removed and the action allowed to proceed if the immunity had been lost either by a valid waiver or, in respect of acts done by the defendant in his personal capacity, by the cessation of his diplomatic employment; that a change in the law similarly permitted the action to proceed, if not barred by the Limitation Act, 1939, if it removed the immunity previously enjoyed, which was probably the case here. [And then various cases are cited. Then:] (2) That, since the defendant had not applied to have the action dismissed on the grounds that it was a nullity before the Act of 1964 came into force, he could not now do so, since under the new Act immunity from civil suit of administrative and technical officers had been curtailed, and the defendant's immunity depended on whether the acts done by him in relation to the tenancy were within or outside the course of his duty. Accordingly, the plaintiff was entitled to have her action tried and that issue determined.'

The Court of Appeal was unanimous in allowing the appeal. Sellers LJ gave a short judgment for allowing the appeal, Dankwerts LJ a slightly longer one, in which he ends

1 [1965] 2 All ER 881, [1966] 1 QB 426
2 [1966] 1 QB 426 at 427–428

up by saying[1]: 'Some logical difficulties have been suggested in regard to the survival of an action which is described as having been a nullity [That is a reference to some of the earlier cases that I have already mentioned:] but, in my opinion, and in the circumstances these do not form a useful mental exercise.' Diplock LJ giving, if I may say so with respect, one of his usual very lucid judgments, really analyses the jurisprudential problem. After setting out the facts, he says[2]:

> 'When the action was commenced in March, 1963, the defendant was entitled under s. 1(1) (*b*) of the Diplomatic Immunities (Commonwealth Countries and Republic of Ireland) Act, 1952[3] "to the like immunity from suit and legal process as is accorded to members of the official staff of an envoy of a foreign sovereign Power accredited to Her Majesty". He was thus entitled so long as he remained en poste to complete immunity from civil suit in the United Kingdom, both as respects acts done in his official capacity on behalf of his government and as respects acts done in his private capacity. This immunity he could, however, lose at that date in one of two ways: first, as respects acts done in either capacity if his immunity were waived by the head of his mission on behalf of the Government of Canada [and then two cases are cited] or secondly, but only as respects acts done in his personal capacity, if he should cease to be en poste and a sufficient time had elapsed thereafter for him to wind up his affairs. [and then other cases are cited, including *Musurus Bey v Gadban*[4]. Diplock LJ continues:] If the defendant had applied before the commencement of the Diplomatic Privileges Act 1964, to have the plaintiff's action dismissed there would have been no answer to his application, but he delayed until November, 1964. By that date his right to immunity from civil suit had been curtailed by that Act, which applies to the United Kingdom the provisions of the Vienna Convention. [Then he sets out the effect of arts 31 and 37 of the Convention. Diplock LJ continues:] It is elementary law that diplomatic immunity is not immunity from legal liability but immunity from suit. If authority is needed for this, it is to be found in *Dickinson* v. *Del Solar*[5], which has been cited by DANKWERTS, L.J. Statutes relating to diplomatic immunity from civil suit are procedural statutes. The Diplomatic Privileges Act 1964, is in my view clearly applicable to suits brought after the date on which that statute came into force in respect of acts done before that date. [Then he continues and cites various other cases which had been cited to the judge below. Then:] It follows therefore that until steps were taken to set it aside or to dismiss the action the plaintiff's plaint was no nullity: it was a valid plaint. If the defendant had, with the permission of his High Commissioner, appeared to it before Oct. 1, 1964, the procedural bar to the hearing would have been removed. So too if the defendant had ceased to be en poste while the plaint was still outstanding the action could then have proceeded against him. I can see no reason in logic or the law of nations why the position should be any different when the procedural bar has been removed by Act of Parliament – particularly when that Act of Parliament gives statutory effect to an international convention . . . In holding, in my view, incorrectly, that the proceedings were a nullity at the time they were commenced, the deputy county court judge founded himself on a passage in the judgment of LORD PARKER, C.J., in *R.* v. *Madan*[6] in which he referred to the proceedings being "null and void unless and until there is a valid waiver which, as it were, would bring the proceedings to life and give jurisdiction

1 [1965] 2 All ER 881 at 885, [1966] 1 QB 426 at 435
2 [1965] 2 All ER 881 at 885–887, [1966] 1 QB 426 at 437–439
3 Section 1(1) of the 1952 Act was subsequently re-enacted by the Diplomatic Privileges Act 1964, s 8(4) and Sch 2
4 [1894] 2 QB 352, [1891–4] All ER Rep 761
5 [1930] 1 KB 376, [1929] All ER Rep 139
6 [1961] 1 All ER 588 at 591, [1961] 2 QB 1 at 7

to the court." LORD PARKER was clearly not using the words "null and void" in a precise sense for what is null and void is not a phoenix, there are no ashes from which it can be brought to life. In that case he was concerned only with waiver as removing the procedural bar of diplomatic immunity. His words should not be read that only waiver can, as it were, bring the proceedings to life. The removal of the procedural bar from any other cause will have the same effect.'

Faced with that decision counsel for the husband, admittedly pressed by myself, did not feel able to assert that the petition in this case was null and void ab initio; although certainly some of the cases he cited to me would only be relevant if that were the case. What he sought to do was to say that the petition had merely some inchoate existence and that unless it were brought to life, either by waiver or, possibly, by termination of the diplomatic immunity by loss of the position, it had no force; and in this case he said it was not brought to life by the husband departing for the United States on 25th January, because it had previously been killed stone dead when the summons was issued on 12th January. I hope I do no injustice to counsel's argument, but that seems to me to be a summary of it.

I cannot accept that argument. It seems to me from the reasoning of Diplock LJ[1] which I find compelling, that this petition was a valid petition at the moment of its issue. The husband himself was entitled, as he did, to claim diplomatic immunity; and if he had still been entitled to that immunity at the moment when this summons came to be heard, the court would have struck it out. Similarly, as it appears from the authorities, if it had come to the attention of the court without direct action on the part of the husband that he was entitled to diplomatic immunity, the court should of its own motion have struck it out. But nevertheless, the fact is that by the time the matter has come before the court the husband is no longer entitled to diplomatic immunity. In those circumstances, therefore, the procedural bar has gone and I can see no justification, either as a matter of law nor, I am glad to say, of sense, for striking out a petition when it is accepted that an identical petition could be issued tomorrow because of the removal of the bar to proceedings.

I therefore dismiss the husband's summons to have the petition struck out.

Summons dismissed.

Solicitors: *Davies Arnold & Cooper* (for the husband); *Brecher & Co* (for the wife).

Georgina Chambers Barrister.

1 See *Empson v Smith* [1965] 2 All ER 881 at 885–886, [1966] 1 QB 426 at 437

Pearson and others v Inland Revenue Commissioners

COURT OF APPEAL, CIVIL DIVISION
BUCKLEY, BRIDGE AND TEMPLEMAN LJJ
5th, 6th, 7th, 8th, 11th JUNE 1979

Capital transfer tax – Settlement – Interest in possession – Beneficiary entitled under settlement to income of property subject to trustees' power to accumulate – Whether beneficiary's interest a present interest or an interest in reversion or remainder – Whether beneficiary's interest an interest in possession – Finance Act 1975, Sch 5, para 6(2).

By a settlement dated 30th November 1964, a settlor settled a trust fund during a defined period ('the trust period') on such one or more of his children and their issue as the trustees should appoint. The settlement provided that until and subject to any such appointment the trustees were to 'accumulate so much (if any) of the income of the trust fund as they shall think fit' during a period of 21 years from the date of the settlement. Subject to that the trustees were to hold the capital and income of the trust fund in equal shares absolutely for such of the children of the settlor as attained the age of 21 or married under that age. The settlor had three daughters, all of whom had attained the age of 21 years by the end of February 1974. By a deed of appointment dated 20th March 1976 the trustees, in exercise of their power of appointment, appointed a sum of £16,000 (part of the capital of the trust fund comprised in the settlement) to be held on trust to pay the income to F, one of the settlor's daughters, during her life or the trust period, whichever was the shorter. It was common ground that in consequence of the appointment, F became entitled to an interest in possession in the appointed £16,000. The Crown contended however that prior to the appointment F had no interest in possession in any part of the trust fund, by virtue of the fact that the trustees were under a duty to consider from time to time whether income from the trust fund, as it arose, should be paid to the three daughters in equal shares, be accumulated or be dealt with partly in one way and partly in the other, with the result that when on the execution of the deed of appointment F became entitled to an interest in possession in the £16,000 there was a capital distribution by the trustees, within para 6(2)[a] of Sch 5 to the Finance Act 1975, rendering them liable to capital transfer tax.

Held – A beneficiary's 'interest in possession' under a settlement was an interest which conferred on him a right to the present enjoyment of the subject-matter of the interest, even though it was defeasible by an exercise of one or more of the discretionary powers vested in the trustees, whether the power was one of appointment or of accumulation. Furthermore, the fact that the immediate enjoyment of the income from the trust property might be postponed for a reasonable period to permit the trustees to consider whether to exercise any of the powers vested in them in defeasance of the beneficiary's vested right to the income was not sufficient to deprive the beneficiary's interest of the character of an interest in possession, because in that period the beneficiary would still be entitled to the income, although in the event his right to it might be partially or wholly defeated. It followed, therefore, that at the time of the appointment F was already entitled to an interest in possession in the trust fund and accordingly the appointment did not involve a capital distribution out of the trust fund within the charge to capital transfer tax under para 6(2) of Sch 5 to the 1975 Act (see p 11 *e* to *h*, p 12 *a*, p 14 *g h* and p 15 *c*, post).

Decision of Fox J [1979] 1 All ER 273 affirmed.

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a Paragraph 6(2) is set out at p 9 *d e*, post

Notes

For the meaning of interest in possession, see 19 Halsbury's Laws (4th Edn) para 636.
For the Finance Act 1975, Sch 5, para 6, see 45 Halsbury's Statutes (3rd Edn) 1889.

Cases referred to in judgments

Allen-Meyrick's Will Trusts, Re, Mangnall v Allen-Meyrick [1966] 1 All ER 740, [1966] 1 WLR 499, Digest (Cont Vol B) 733, *3435*.
Attorney-General v Power [1906] 2 IR 272, 21 Digest (Repl) 33, **40*.
Gartside v Inland Revenue Comrs [1968] 1 All ER 121, [1968] AC 553, [1968] 2 WLR 277, [1967] TR 309, 46 ATC 323, HL, Digest (Cont Vol C) 326, *74b*.
McPhail v Doulton [1970] 2 All ER 228, [1971] AC 424, [1970] 2 WLR 110, HL, Digest (Cont Vol C) 805, *1324a*.
Jones, Re (1884) 26 Ch D 736, 53 LJ Ch 807, 50 LT 466, CA, 40 Digest (Repl) 797, *2776*.
Morgan, Re (1883) 24 Ch D 114, 53 LJ Ch 85, 48 LT 964, 40 Digest (Repl) 797, *2775*.

Cases also cited

Aylwin's Trusts, Re (1878) LR 16 Eq 585.
Baird v Lord Advocate [1979] 2 All ER 28, [1979] 2 WLR 369, [1979] STC 229, HL.
Buttle's Will Trusts, Re, Buttle v Inland Revenue Comrs [1977] 3 All ER 1039, [1977] 1 WLR 1200, [1977] STC 459, CA.
Locker's Settlement Trusts, Re Meachem v Sachs [1978] 1 All ER 216, [1977] 1 WLR 1323.
Master's Settlement, Re, Master v Master [1911] 1 Ch 321.
Rochford's Settlement Trusts [1964] 2 All ER 777, [1965] Ch 111.
Weir's Settlement, Re, McPherson v Inland Revenue Comrs [1970] 1 All ER 297, [1971] Ch 145, CA.

Appeal

The Crown appealed against an order of Fox J[1] dated 31st July 1978, granting the plaintiffs, Clifford Pearson, Arthur Cope Pilkington and John Murray McKenzie ('the trustees'), a declaration that, for the purposes of Sch 5 to the Finance Act 1975, a settlement made on 30th November 1964 by the settlor, Sir Richard Pilkington, was such as to confer on the principal beneficiaries, namely the daughters of the settlor, Fiona Pilkington, Victoria Serena Pilkington and Diane Penelope Julia Pilkington, interests, which on 27th March 1974 were beneficial interests in possession in equal shares in the trust fund. The facts are set out in the judgment of Templeman LJ.

Martin Nourse QC and *Michael C Hart* for the Crown.
D J Nicholls QC and *C H McCall* for the trustees.

BUCKLEY LJ. This is an appeal from a decision of Fox J[1], given on 31st July 1978. The question is whether capital transfer tax became payable under the Finance Act 1975 on 20th March 1976, when the trustees of a settlement made by the late Sir Richard Pilkington appointed, under a power conferred on them by the settlement, £16,000, part of the trust fund in favour of one of the settlor's daughters during her life or the continuance of a defined trust period, whichever should be the shorter. Fox J[1] decided that the tax did not become payable, and the Crown appeals.

The judgment of the learned judge is now reported[1]. The facts are clearly and sufficiently stated in the judgment and I shall not recapitulate them now.

The capital transfer tax was brought into existence by Part III of the 1975 Act. By ss 19 and 20 the tax is charged on any chargeable transfer made after 26th March 1974, other than an exempt transfer. A chargeable transfer is any 'transfer of value' as defined by s 20(2), that is, any disposition made by a person as a result of which the value of his estate immediately after the disposition is less than it would be but for the disposition.

1 [1979] 1 All ER 273, [1979] 2 WLR 353, [1978] STC 627