

THE HIGH COURT

[2017 No. 279 R.]

BETWEEN

LEANNE DEANE

APPELLANT

AND

THE REVENUE COMMISSIONERS

RESPONDENT

JUDGMENT of Ms. Justice Costello delivered on the 25th day of September, 2018**Introduction**

1. The Tax Appeals Commission stated a case for the opinion of the High Court pursuant to s. 949 AQ of the Taxes Consolidation Act, 1997, as amended, in relation to the determination by Commissioner Gallagher in the tax appeal of *Deane v. The Revenue Commissioners* dated 14th August, 2017. The appeal relates to the question of whether the appellant ("Ms. Deane") is entitled to avail of the exemption in accordance with s. 86 of the Capital Acquisitions Tax Act, 2003 ("CATCA 2003") commonly referred to as "dwelling house exemption". The central issue in the case was whether Ms. Deane was, at the date of the inheritance of the dwelling house, beneficially entitled to any other dwelling house or to any interest in any other dwelling house within the meaning of s. 86 (3) (b) CATCA 2003.

The facts found by the Tax Appeals Commission.

2. Ms. Deane had resided in the family home since childhood and in particular throughout the period of three years immediately preceding the date of inheritance and for a continuous period of six years thereafter commencing on the date of inheritance. Ms. Deane's father, the testator, executed his last will and testament on the 24th June, 2002. All property in the estate was bequeathed in accordance with Clause 3 of the will, which provided:

"I GIVE DEVISE AND BEQUEATH all of my property of every nature, description and kind, wheresoever situate, to my son Gavin and daughter Leanne in equal shares for their own use and benefit absolutely."

Clause 3 of the testator's will was in the nature of a residuary clause and the properties devised comprised residuary legacies. There were no specific legacies.

3. The testator died on the 27th October, 2010. The net estate was ascertained on the 29th March, 2011. The grant of probate was extracted on the 30th May, 2011. The assets in the estate were distributed to the beneficiaries on the 17th August, 2011.

4. Prior to ascertaining the net estate and the issuing of a grant of probate, a deed of family arrangement was executed by Ms. Deane and her brother, Mr. Gavin Deane, on 21st February, 2011. The effect of the deed of family arrangement was that Ms. Deane would receive 100% (as opposed to 50%) interest in the family home in relation to which she claimed dwelling house exemption and her brother received 100% (as opposed to 50%) interest in a business and a business premises in Cookstown Business Park, Tallaght, County Dublin. Ms. Deane also inherited from the testator a 50% interest in four other residential properties, three in Ireland and one in Spain.

Standard of review applicable to the case stated

5. In *O'Cualachain (Inspector of Taxes) v. McMullan Brothers Ltd* [1995] 2 I.R. 217, the Supreme Court set out principles governing the mode and standard of review the courts adopt when considering an appeal of a decision of the Appeal Commissioners on a point of law. At p. 222 Blayney J. held as follows:

"In the light of these statements of the law it seems to me that when a court has before it a case stated seeking its opinion as to whether a particular decision was correct in law, the following principles apply (I refer in them to a case stated by a judge, as is the position here, but they apply equally where the case is stated by the Appeal Commissioners or by any other party): —

(1) Findings of primary fact by the judge should not be disturbed unless there is no evidence to support them.

(2) Inferences from primary facts are mixed questions of fact and law.

(3) If the judge's conclusions show that he has adopted a wrong view of the law, they should be set aside.

(4) If his conclusions are not based on a mistaken view of the law, they should not be set aside unless the inferences which he drew were ones which no reasonable judge could draw.

(5) Some evidence will point to one conclusion, other evidence to the opposite: these are essentially matters of degree and the judge's conclusions should not be disturbed (even if the court does not agree with them, for we are not retrying the case) unless they are such that a reasonable judge could not have arrived at them or they are based on a mistaken view of the law."

6. The Tax Appeals Commission was established by the Finance (Tax Appeals) Act, 2015 and is the successor body to the Appeal Commissioners. This case stated by the Tax Appeal Commission should be approached on the basis of the principles set out in *ÓCualachain* as there is no reason in principle to vary the principles simply because of the establishment of the Commission.

7. In hearing the case stated, the High Court may either reverse, affirm or amend the determination of the TAC and shall remit the matter to TAC with its opinion on the matter (s. 949 AR TCA, 1997).

Principles governing the interpretation of Taxation Acts.

8. In *Inspector of Taxes v. Kiernan* [1981] I.R. 117 the Supreme Court through Henchy J. established three basic rules of statutory interpretation. At p. 121 and 122 of the report Henchy J. held:

"First, if the statutory provision is one directed to the public at large, rather than to a particular class who may be expected to use the word or expression in question in either a narrowed or an extended connotation, or as a term of art, then, in the absence of internal evidence suggesting the contrary, the word or expression should be given its ordinary or colloquial meaning.."

"Secondly, if a word or expression is used in a statute creating a penal or taxation liability, and there is looseness or ambiguity attaching to it, the word should be construed strictly so as to prevent a fresh imposition of liability from being created unfairly by the use of oblique or slack language.."

"Thirdly, when the word which requires to be given its natural and ordinary meaning is a simple word which has a widespread and unambiguous currency, the judge construing it should draw primarily on his own experience of its use. Dictionaries or other literary sources should be looked at only when alternative meanings, regional usages or other obliquities are shown to cast doubt on the singularity of its ordinary meaning, or when there are grounds for suggesting that the meaning of the word has changed since the statute in question was passed ..."

9. In relation to the question of an exemption to tax, it was held in *Revenue Commissioners v. Doorley* [1933] I.R. 750 that the principles which apply to the imposition of tax applied equally to exemption from tax. At p. 765 – 766 Kennedy C.J. held:

"I have been discussing taxing legislation from the point of view of the imposition of tax. Now the exemption from tax, with which we are immediately concerned, is governed by the same considerations. If it is clear that a tax is imposed by the Act under consideration, then exemption from that tax must be given expressly and in clear and unambiguous terms, within the letter of the statute as interpreted with the assistance of the ordinary canons for the interpretation of statutes. This arises from the nature of the subject-matter under consideration and is complementary to what I have already said in its regard. The Court is not, by greater indulgence in delimiting the area of exemptions, to enlarge their operation beyond what the statute, clearly and without doubt and in express terms, except for some good reason from the burden of a tax thereby imposed generally on that description of subject-matter. As the imposition of, so the exemption from, the tax must be brought within the letter of the taxing Act as interpreted by the established canons of construction so far as applicable."

10. In *Charles McCann Ltd v. ÓCualachain (Inspector of Taxes)* [1986] I.R. 196 the Supreme Court considered a provision granting relief from corporation tax for profits derived from the sale by export of goods manufactured within the State. The court held that the Act was addressed to the public at large and accordingly, in the absence of internal evidence suggesting to the contrary, the word used in the Act should be given its ordinary or colloquial meaning. In order to determine whether the goods were "manufactured" within the meaning of the Act, a court should consider whether a person, properly informed as to the nature of the goods and the extent to which the process in question contributed to the characteristics of the goods, would attribute the word "manufacture" to the process. The question is to a certain extent one of degree and in determining the question a judge should have regard to his or her own experience. At p. 201 of the report McCarthy J. held:

*"One must also, in aid of construction of the particular word **as used in a statute**, look to the scheme and purpose as disclosed by the statute or by the relevant part thereof...the scheme and purpose of the relevant part of the statute appeared to me to be the very context within which the word is used and the requirements of which must be examined in order to construe it. It is manifest that the purpose of Part IV of the Act of 1976 was, by tax incentives, to encourage the creation of employment within the State and the promotion of exports – naturally outside the State – objectives of proper, social and economic kind which the State would be bound to encourage. Employment is created by labour intensive processes and exports by the creation of saleable goods. The operation described in the case stated clearly comes within both categories; in my judgment, it is then a matter of degree, itself a question of law, as to whether or not what the company has done to the raw material makes its goods within the definition in s. 64. Applying that test, I am satisfied that the ripened bananas, having been subjected to the process as described, constitute a commercially different product and one within the definition."*

The relevant legislative provisions

11. The case stated concerns benefits passing under a will. Section 10 of the Succession Act, 1965 provides:

"10.(1) The real and personal estate of a deceased person shall on his death, notwithstanding any testamentary disposition, devolve on and become vested in his personal representatives."

(2) The personal representatives for the time being of a deceased person are deemed in law his heirs and assigns within the meaning of all trusts and powers."

(3) The personal representatives shall be the representatives of the deceased in regard to his real and personal estate and shall hold the estate as trustees for the persons by law entitled thereto."

(4) The references in this section to the real and personal estate of a deceased person are to property to which he was entitled for an estate or interest not ceasing on his death, and include property over which he exercised by will a general power of appointment."

(5) This section shall apply to property vested on any trust in a deceased person solely, as it applies to his real and personal estate."

12. The relevant sections of the Capital Acquisitions Tax Consolidation Act, 2003 are as follows:

"2. 2(1) ... "date of the inheritance" means—

(a) in the case where the successor or any person in right of the successor or on that successor's behalf becomes entitled in possession to the benefit on the happening of any such event as is referred to in section 3 (2), the date of the event,

(b) in the case of a gift which becomes an inheritance by reason of its being taken under a disposition where the date of the disposition is within 2 years prior to the death of the disponent, the date which would have been the date of the gift if the entitlement were a gift, and

(c) in any other case, the date of the latest death which had to occur for the successor, or any person in right of the successor or on that successor's behalf, to become beneficially entitled in possession to the benefit,

and a reference to the time when an inheritance is taken is construed as a reference to the date of the inheritance;

... "disposition" includes—

(k) a will or other testamentary disposition"

s. 9.—A capital acquisitions tax, to be called inheritance tax and to be computed in accordance with this Act, shall, subject to this Act and any regulations made under the Act, be charged, levied and paid on the taxable value of every taxable inheritance taken by a successor.

s. 10.—(1) For the purposes of this Act a person is deemed to take an inheritance, where, under or in consequence of any disposition, a person becomes beneficially entitled in possession on a death to any benefit (whether or not the person becoming so entitled already has any interest in the property in which such person takes such benefit), otherwise than for full consideration in money or money's worth paid by such person.

(2) Subsections (2), (4) and (5) of section 5 shall apply, with any necessary modifications, in relation to an inheritance as they apply in relation to a gift.

86.—(1) In this section—

"dwelling-house" means—

(a) a building or part (including an appropriate part within the meaning of section 5 (5)) of a building which was used or was suitable for use as a dwelling, and

(b) the curtilage of the dwelling-house up to an area (exclusive of the site of the dwelling-house) of one acre but if the area of the curtilage (exclusive of the site of the dwelling-house) exceeds one acre then the part which comes within this definition is the part which, if the remainder were separately occupied, would be the most suitable for occupation and enjoyment with the dwelling-house;

"relevant period", in relation to a dwelling-house comprised in a gift or inheritance, means the period of 6 years commencing on the date of the gift or the date of the inheritance.

(2) In this section any reference to a donee or successor is construed as including a reference to the transferee referred to in section 32 (2).

(3) Subject to subsections (4), (5), (6) and (7), a dwelling-house comprised in a gift or inheritance which is taken by a donee or successor who—

(a) has continuously occupied as that donee or successor's only or main residence—

(i) that dwelling-house throughout the period of 3 years immediately preceding the date of the gift or the date of the inheritance, or

(ii) where that dwelling-house has directly or indirectly replaced other property, that dwelling-house and that other property for periods which together comprised at least 3 years falling within the period of 4 years immediately preceding the date of the gift or the date of the inheritance,

(b) is not, at the date of the gift or at the date of the inheritance, beneficially entitled to any other dwelling-house or to any interest in any other dwelling-house, and

(c) continues to occupy that dwelling-house as that donee or successor's only or main residence throughout the relevant period,

is exempt from tax in relation to that gift or inheritance, and the value of that dwelling-house is not to be taken into account in computing tax on any gift or inheritance taken by that person unless the exemption ceases to apply under subsection (6) or (7).

The construction of s. 86 (3) (b) of CATCA

13. Section 86 (3) of the CATCA 2003 provides for an exemption from the charge to capital acquisition tax in relation to a gift or inheritance of a dwelling house, commonly referred to as dwelling house relief. It applies where a person receives a gift or inheritance

of a house in which he or she has lived for three years prior to the gift or inheritance, where he or she is not beneficially entitled to any other house, or any interest in any other house, and which he or she remains in for a period of six years after the date of the gift or inheritance and occupies the house as his or her only or main residence.

Date of inheritance

14. The first issue that arises is the date of inheritance within the meaning of s. 86 (3) (b). This is because the question whether or not Ms. Deane was beneficially entitled to any other dwelling-house or an interest in any other dwelling-house (and thus ineligible for the exemption from tax) must be assessed as of the date of inheritance.

15. At para. 7 of her determination the Commissioner noted as follows:

"The parties agreed that the applicable sub clause of s. 2 CATCA 2003 in respect of the date of the inheritance was sub clause (c), which provides that the date of inheritance means "the date of the latest death which had to occur for the successor, or any person in right of the successor or on that successor's behalf, to become beneficially entitled in possession to the benefit."

Both parties submitted that the date of the inheritance in respect of all properties inherited was the 27th October, 2010, the date of death of the testator. In her determination at paras. 20 and 21 she held as follows:

"20. The definition of 'date of inheritance' connects the event of a successor becoming beneficially entitled in possession, to 'the latest death which had to occur' in order for that event to take place. The provision does not import that the date of death and the date a successor becomes beneficially entitled in possession to a benefit, are the same event.

21. Furthermore, the date of the inheritance is the latest which had to occur, for the successor to become beneficially entitled in possession. The provision does not provide that the date of the inheritance and the date upon which a successor becomes beneficially entitled in possession are matters which take place on the same date."

16. I agree with the reasoning of the Commissioner and it is an important distinction which she makes. The date of inheritance in this case was the date of the death of the testator, 27th October, 2010 and that is the date which must be applied in construing s. 86 (3) (b) of CATCA 2003. It does not follow that it is also the date upon which Ms. Deane became beneficially entitled in possession to any of the houses the subject of this judgment.

Any interest in any other dwelling house

17. The next question for consideration then is whether as of the 27th October, 2010 Ms. Deane was not beneficially entitled to any interest in any other dwelling house within the meaning of s. 86 (3) (b).

18. The central dispute between the parties is the meaning in sub para. (b) of the phrase *"is not...beneficially entitled to any other dwelling house or to any interest in any other dwelling house"*. In approaching its task of ascertaining the meaning of the subparagraph the court must apply the principles of construction set out above. The statute is direct to the public at large and so the expression should be given its ordinary or natural meaning. But *"interest"* is a word with many different meanings both in an ordinary or natural sense and in a technical or legal sense, therefore this is of limited assistance. The expression is used in a section in a tax Act conferring an exemption to tax. It should therefore be construed strictly. Finally, as was stated by McCarthy J, in construing the word or expression the court must look to the scheme and purpose of the section as disclosed by the statute.

19. Prior to the death of the testator, the testator was the owner of the family home and the other houses comprised in his estate. As the testator's estate devolved to his children by way of a residue clause, one must consider the nature of the interest held by Ms. Deane, as a residuary legatee, pending the administration of the estate. Section 10 of the Succession Act, 1965 provides that the real and personal estate of a deceased person shall on his death, notwithstanding any testamentary disposition, devolve on and become vested in his personal representatives. (sub. para. 1). By virtue of subs. 2 the personal representatives of a deceased person *"are deemed in law his heirs and assigns within the meaning of all trusts and powers"*. Therefore, on the death of the testator, the estate (both legal and beneficial) devolved on and became vested in his personal representatives, notwithstanding anything in the will. His personal representatives were deemed to be his heirs and assigns.

20. In any estate there will be funeral expenses, legal costs and there may be liabilities and claims against the estate. Property in the estate may ultimately be sold to discharge these expenses and liabilities or property appropriated to satisfy claims, such as a claim brought pursuant to s. 117 of the Act or the legal right share of a surviving spouse or civil partner. As a result, property in the estate may become unavailable to the beneficiaries named in the will due to the obligation to discharge these costs and expenses and the requirement to comply with the claims in advance of any distribution to the beneficiaries named in the will. These liabilities must be discharged first from the residue of the estate, though sometimes it is necessary to realise specific legacies in order to satisfy all of the claims on the estate. Where a will makes no specific bequests and where all the property passes in the residue and is left to more than one beneficiary, it cannot be said that any one person has any right to any particular asset in the estate prior to the date when the net value of the estate is established.

21. In Keating's, *Equitable Succession Rights*, 2005 p. 93 the author states as follows:

"Before the residue of the estate has become ascertained by the personal representatives, the beneficiaries have no legal or equitable right to any part of it, as the whole estate would have devolved and vested in the personal representatives. They will of course have a right to ensure that the estate has been duly administered by the personal representatives but other than that they will have to wait until the residue of the estate is first ascertained."

22. In *Gleeson v. Feehan* [1997] 1 ILRM 522 Keane J. in the Supreme Court held:

"It is, however, clearly contrary to elementary legal principles to treat the persons entitled to the residuary estate of a deceased person as being the owners in equity of specific items forming part of that residue, until such time as the extent of the balance has been ascertained and the executor is in a position either to vest the proceeds of sale of the property comprised in the residue in the residuary legatees or, where appropriate, to vest individual property in specie in an individual residuary legatee."

23. It is thus clear that at a matter of succession law Ms. Deane did not become beneficially entitled to any interest in any of the dwelling houses until, at the earliest, the net value of the estate and thus of the residue was established i.e. on 29th March, 2011.

24. What then is the impact of s. 10 (1) of CATCA 2003 on this conclusion? Section 10 (1) provides that for the purpose of capital acquisitions tax:

"a person is deemed to take an inheritance, where, under or in consequence of any disposition [which includes a will], a person becomes beneficially entitled in possession on a death to any benefit... otherwise than for full consideration in money or money's worth paid by such person."

25. Section 10 is concerned with when a person is deemed to have taken an inheritance for the purposes of the Act. It is not concerned with the date of inheritance which is defined in s. 2 of the Act. The Revenue Commissioners argued that the effect of s. 10 was that Ms. Deane was deemed to have taken the inheritance on the date of death of the testator. They submitted that she had an interest in the other houses from the date of death of the testator because, by virtue of s. 10 of CATCA, she was deemed to have inherited the other houses as of the date of death of the testator.

26. The Commissioner did not accept this submission and I believe she was correct in rejecting it. Capital acquisitions tax applies to both gifts and inheritances. Section 10 uses precise words to establish when the inheritance is deemed to be taken. It does not refer to when the interest in any property passes to the successor. As already discussed, the date of inheritance as defined in CATCA 2003 does not import that the date of death of the testator and the date a successor becomes beneficially entitled in possession to a benefit are the same event. There is no assurance that a person named as a beneficiary will succeed to a benefit under a will precisely because in law there may be claims on the estate which must be satisfied in priority to the beneficiary's claim to the asset(s). The argument of the Revenue Commissioners erroneously conflates the event giving rise to an inheritance-the death of the testator- with the date when the successor becomes beneficially entitled to a benefit under a will. Section 86 refers to the date of inheritance (as defined in s. 2 and not s.10) and the tax payer's beneficial entitlement to any other dwelling house or to any interest in any other dwelling house. The date of inheritance of such properties as are ultimately transmitted to a beneficiary is different to the date when they become beneficially entitled to them. It follows that the Commissioner was correct to reject this argument.

27. The second argument advanced by the Revenue Commissioners was based on the Commissioner's construction of the word interest in s. 86 (3) (b) of the Act. The Revenue Commissioners complained that the construction was unduly narrow and failed to accord the words their ordinary and natural meaning having regard to the legislative intent of s. 86 CATCA 2003. They submitted that Ms. Deane had an interest in the other houses at the date of death of the testator because she had an interest in the due administration of the estate such that the executors were required to distribute the other houses to her *if* the administration of the estate so permitted. In addition, she had a sufficient "interest" for the purposes of s. 86 (3) (b) based on her beneficial interest in the estate by virtue of s. 10 of the Act of 1965.

28. This latter point conflicts with the decision in *Gleeson v. Sheehan* as Keane J. clearly stated that a residuary legatee may not be treated as the owner in equity of the specific properties comprised in the residue prior to ascertaining the net value of the estate. The wording of s. 86 (3) (b) is clearly directed towards an interest in any other *dwelling house*. It follows that even if the word "interest" is interpreted in a broad fashion as urged by counsel for the Revenue Commissioners and a residuary legatee could be regarded as having an interest in a house in the sense that they hope to inherit it if the due administration of the estate leaves the inheritance intact, nonetheless an interest in the estate of the testator, even if it comprises a dwelling house, does not come within the wording of the sub paragraph. There is a fundamental distinction between an interest in the *estate* of a testator and an interest in an asset comprised in the estate.

29. Likewise, the Revenue Commissioner's argument that the word "interest" in the sub para. includes a beneficiary's interest in the due administration of the estate fails. The sub para. provides:

"Is not, ...beneficially entitled to any other dwelling house or to any interest in any other dwelling house."

The requirement is that the tax payer be beneficially entitled to either a dwelling house or an interest in a dwelling house. I cannot construe the interest referred to in sub para.(b) as including the interest of a beneficiary in the due administration of the estate of a testator. The overriding requirement of s. 86 (3) (b) is that the tax payer be beneficially entitled to some interest *in a dwelling house*. While a beneficial entitlement to "any interest in a dwelling house" is less than being "beneficially entitled to any other dwelling house", it still requires the tax payer to have a beneficial entitlement to the interest in question. In my opinion it refers to a situation where the tax payer is entitled to an interest in land, such as a life interest or as a co-owner of a dwelling house, as opposed to the person solely entitled to the dwelling house. But the interest in question must connote an entitlement to the dwelling house.

30. Furthermore, this interpretation accords with the legislative intention in providing for, and placing a limitation on, the exemption. The exemption is to protect the interests of persons who have resided and continued to reside in the family home from being required to sell the family home in order to pay CAT which would otherwise be chargeable in respect of a gift or the inheritance of the family home. The exemption is not linked to the wealth or level of income of a taxpayer either prior to or after receipt of the gift or inheritance. But a taxpayer may be ineligible to benefit from the exemption no matter what his or her financial circumstances may be if the taxpayer is beneficially entitled to another dwelling house or any interest in another dwelling house at the date of the gift or at the date of the inheritance. It is clear that the exception to the entitlement to the exemption from tax is to ensure that tax payers who have an interest in other dwelling houses should not benefit from the relief. While this may not always achieve the perceived legislative intent, this is the effect of the subsection. If the taxpayer is to lose the exemption to which he or she would otherwise be entitled, the interest in any other dwelling house must be that: an interest in a house. It could not be lost by the interest of a beneficiary in the due administration of an estate.

31. The Revenue Commissioners argued that the fact that Ms. Deane and her brother entered into a deed of family arrangement on the 21st February, 2011 before the testator's net estate was ascertained on 29th March, 2011 showed that they had each an interest in the properties prior to the 29th March, 2011. The Revenue Commissioners argued that by executing this deed of family arrangement Ms. Deane must have claimed an interest in the assets which formed part of the estate of the testator prior to the date when, according to the Commissioner, she became beneficially entitled to the properties comprised in the residue.

32. Whatever may be the legal effect of the deed of family arrangement between Ms. Deane and her brother, Mr. Gavin Deane, the fact that they entered into it prior to the date the residue was ascertained cannot affect the correct interpretation of s. 86 (3) (b). Counsel for Ms. Deane submitted that the deed of family arrangement was an error and that in fact they should have executed reciprocal deeds of renunciation. The fact that they had received incorrect advice in 2011 in no way impacts on the correct interpretation of s. 86 (3) (b).

33. I agree with this submission. The fact that Mr. and Ms. Deane entered into a deed of family arrangement in February 2011 cannot impact on the correct interpretation of s. 86 (3) (b).

Is there a requirement that the taxpayer claiming an exemption from CAT be beneficially entitled to the dwelling house in respect of which relief is claimed at the date of inheritance?

34. This case is concerned with the dwelling house exemption granted by s. 86 (3) CATCA 2003. Normally the passing of a dwelling house whether by gift or inheritance will attract a liability to pay capital acquisitions tax. Section 86 provides an exemption to the liability to pay that tax. The exemption must be strictly construed. Subsection 3 provides that the exemption applies to a dwelling house "comprised in a gift or inheritance which is taken by a donee or successor". The donee or successor must have continuously occupied the dwelling house as the donee or successor's only or main residence throughout the period of three years immediately preceding the date of inheritance (sub para. (a)). Also the donee or successor must continue to occupy the dwelling house as that donee or successor's only or main residence "throughout the relevant period" (sub para. (c)). The relevant period means "the period of six years commencing on the date of the inheritance". Thus, in order to come within the exemption a successor must take the dwelling house by way of inheritance and must satisfy the occupational requirements.

35. A successor who qualifies for the dwelling house exemption may be disentitled to that exemption if the successor is "at the date of the inheritance, beneficially entitled to any other dwelling house or to any interest in any other dwelling house". It was pointed out by the Commissioner in para. 54 of her determination, the words "beneficially entitled" are used in relation to s. 86 (3) (b) but they are absent as regards the requirements attaching to the dwelling house the subject of the exemption claim. At para. 55 and 56 she continued:

"55. The statutory requirements attaching to a dwelling house, the subject of a claim are distinct from the statutory requirements attaching to a dwelling house(s) the subject of s. 86 (3) (b). This distinction arises as a result of the statutory wording contained in s. 86. It is the matter of occupation of a property by a successor on the date of inheritance which prima facie marks that property out as the subject matter of a potential s. 86 exemption claim, subject to, that is, satisfaction of all other s. 86 conditions.

56. Section 86 does not require a successor to be beneficially entitled to the dwelling house, the subject matter of the claim, on the date of the inheritance. It requires that the dwelling house, the subject of the claim, has been "continuously occupied" by the successor for three years preceding the date of the inheritance as the successor's only or main residence and that the dwelling house is occupied by the successor on the date of the inheritance (the date of the inheritance forming part of the six-year relevant period."

She concluded by stating that s. 86 did not require that on the date of the inheritance a potential claimant must be beneficially entitled to the dwelling house the subject of the exemption claim.

36. The Revenue Commissioners argued that there must be an inheritance of the family home in order for a charge to CAT even to arise. They submitted that s. 10 of CATCA 2003 provides that an inheritance is deemed to be taken where "a person becomes beneficially entitled in possession on a death to any benefit". While s. 86 may not require that on the date of the inheritance a potential claimant must be potentially entitled to the dwelling the subject of the exemption claim, they submit that s. 10 CATCA does.

37. This reasoning is based upon an eliding of s. 10, when a person is deemed to take an inheritance with s. 2, the meaning of the date of the inheritance. I have already agreed with the Commissioner where she concluded that the two dates are not necessarily the same. It is true that, for the purposes of this case, a charge to CAT can only arise if Ms Deane inherits the family home. Undoubtedly Ms. Deane has in fact inherited her family home. She did so under her father's will, once the net value of the estate had been determined, and by agreement with her brother in relation to a distribution of the assets comprised in the net residue estate. She has inherited the family home and prima facie it is subject to a charge to CAT. This is so even though the date of inheritance in fact predates her beneficial interest in the family home. This is not altered by s. 10 of the Act of 2003. Section 10 is not a charging section and so does not introduce into s. 86 a requirement that on the date of the inheritance a potential claimant to the exemption to tax must be beneficially entitled to the dwelling house the subject of the exemption claim. It follows that the Commissioner was correct when she determined that s. 86 does not require a successor to be beneficially entitled to the dwelling house the subject matter of the claim at the date of the inheritance.

At the date of the inheritance

38. The final issue raised in the case stated was one which Ms. Deane requested be inserted in the case stated and arose out of an argument she raised in the alternative at the appeal. This concerned the meaning of the phrase "at the date of the inheritance" in s. 86 (3) (b). The Commissioner and the Revenue Commissioners said that there was no inherent ambiguity in the expression and that as a result the words were to be given their ordinary and natural meanings. Ms. Deane submitted that the expression was ambiguous on the basis that it was not clear whether the words referred to the start of the day (when she had no interest in any of the properties), the time of the death or the end of the day (when, according to the Revenue Commissioners, she and her brother were beneficially entitled to all of the properties). On one interpretation, Ms. Deane did not own any interest in any property while on another interpretation, she was entitled to interests in both the family home and the four other dwellings. As I have held that Ms. Deane did not have any interest in either the dwelling house the subject of the claim to exemption from tax or the other dwelling houses as at the date of inheritance (27th October, 2010) it is not necessary for me to rule on this point in order to dispose of this case stated. Therefore, I am reserving my decision on this point to a future case should it arise.

Conclusion

39. The answers to the questions of law for the opinion of the High Court are as follows:

(1) Whether, upon the facts proved were admitted as above, [the Commissioner] was correct in law to interpret the words "in the interest" per s. 86 (3) (b) as meaning "beneficially entitled...to any interest in any other dwelling house" as per the statutory wording of the provision, being an interest in land, as opposed to interpreting the expression as simply any interest". Yes.

(2) Whether, upon the facts proved or admitted as above, [the Commissioner] was correct in law in my determination that a beneficiary's interest in the due administration of an estate is not an interest in land and is not an "interest in any other dwelling house" for the purposes of s. 86 (3) (b), and is not an "interest" for the purpose of s. 86 (3) (b). Yes.

(3) Whether, upon the facts proved or admitted as above, [the Commissioner] was correct in law to determine that the Appellant was not beneficially entitled to residuary legacies on 27th October, 2010 (the date of the inheritance). Yes.

(4) Whether, upon the facts proved or admitted as above, [the Commissioner] was correct in law to determine that the Appellant in this appeal became beneficially entitled to the residuary legacies on 29th March, 2011 at the earliest, that being date upon which the net estate was ascertained. Yes.

(5) Whether, upon the facts proved or admitted as above, [the Commissioner] was correct in law to determine that the date of the inheritance of all of the residuary legacies inherited in this case (i.e. the family home plus the interest in four other properties) on 27th October, 2010 preceded the date upon which the appellant became beneficially entitled to all of those properties. Yes.

(6) Whether, upon the facts proved or admitted as above, [the Commissioner] I was correct in law when I determined that s. 86 CATCA 2003, contains no requirement that a successor be beneficially entitled to the dwelling house the subject matter of the claim, on the date of the inheritance. Yes.

(7) Whether, upon the facts proved or admitted as above, [the Commissioner] was correct in law in law to determine that the expression "at the date of the inheritance" in s. 86 (3) (b) means "at any time on the date of the inheritance". It was not necessary to answer this question.