He would bring this order within the last class, and so base the petition now in question.

I think that the clause cannot be read in this way—the plain intention of the clause is—I believe—to make provision for two classes of cases only, and the third class can only be extracted from it by reading in what is not there, for the expression "made in the exercise of original jurisdiction" appears to govern the following clause "or by any Division Court," which is not, I think, a 3rd term, importing orders not made on appeal or in the exercise of original jurisdiction, but all other orders, whether in the first, or second class made by a Division Court. Had this been the intention it would have been easy to express it clearly otherwise, and since it has not been done, I must conclude that it was not the object of the Letters Patent.

I agree, therefore, with the order propounded by my learned brother Patkar J.

Rule discharged.

B. G. R.

ORIGINAL CIVIL.

Before Mr. Justice Rangnekar.

In re ADARJI MANCHERJI DALAL.

1931
April 11.

Indian Succession Act (XXXIX of 1925), section 250—Letters of administration—Partnership property—Policy of insurance on lives of partners—Premia paid out of partnership property—Policies part of partnership property—Death of partner—Recovery of amount due on policies—Will by partner—Renunciation by executors—Grant of letters of administration limited to amount due on policies—Indian Trusts Act (II of 1882), section 88—Indian Court-fees Act (VII of 1870), section 19 D.

Where both the partners in a firm effect assurances on their lives for and on account of the partnership and the premia in respect of those insurance policies are paid out of the funds of the partnership, those policies form part of the partnership assets. In such a case the surviving partner is entitled under the provisions of section 250 of the Indian Succession

1930

ADARJI MANCHERJI DALAL, IN RE.

Act, to apply for a grant of letters of administration to the estate of the deceased partner, limited to the amount recoverable under those policies, provided the deceased leaves no general representative or leaves one who is unable or unwilling to act as such.

If any partnership estate stands in the name of a partner he is merely a trustee of that estate for the partnership.

No partner has any beneficial interest on his own account in any particular estate or property of the partnership within the meaning of section 250 of the Indian Succession Act, 1925, until the partnership is wound up and its accounts taken.

In the goods of Sir A. A. D. Sassoon [1] and *Lord Sudeley* v. *Attorney-General*,[2] followed.

The fact that the trustee's estate might derive benefit from the trust property does not affect the matter as section 250 of the Indian Succession Act is silent as to the subsequent or ultimate devolution of property of which the deceased was a trustee.

PETITION for Letters of Administration.

Two brothers Adarji and Ratanji carried on for many years business in partnership as merchants and contractors in the name of Adarji Mancherji & Co. at various places in India. Each of them had an equal share in the business. Both the brothers had insured their lives with several Life Insurance Companies. The premia in respect of these policies were paid out of the moneys belonging to the partnership and the policies were treated by both the brothers as assets of the partnership.

One of the brothers, Adarji, died on February 24, 1927, leaving a will dated February 17, 1927, and leaving a widow and three sons as his next-of-kin. The executors of the will renounced their intention of applying for probate of the will and the next-of-kin did not take any steps to take out representation to the estate of the deceased.

On February 17, 1930, Ratanji, the brother of the deceased and the surviving partner of the firm of Adarji Mancherji & Co., finding himself unable to realise the

[1] (1897) 21 Bom. 673. [2] [1897] A. C. 11.

moneys due on the policies on the life of the deceased applied for letters of administration of the property of the said deceased limited to the moneys recoverable under the said life policies. The petition was based on the ground that the said policies on the life of the deceased were effected by the deceased as a trustee for the said partnership and that he at the time of his death had no beneficial interest in them. The petitioner also claimed exemption for payment of probate duty in respect of the said grant.

The Crown opposed the application on the ground that general representation to the estate of the deceased should be taken out as the case did not fall within the purview of section 250 of the Indian Succession Act. They also contended that probate duty to the full extent of the estate left by the deceased should be levied before letters of administration were issued to the petitioner.

V. F. Taraporewäla, for the petitioner.

Sir Jamshed Kanga, Advocate General, *amicus curiæ* for the Crown.

The arguments of counsel are sufficiently set out in the judgment.

RANGNEKAR, J.:—This is an application by one Adarji Mancherji Dalal for letters of administration limited to two policies standing in the name of the deceased Ratanji Mancherji Dalal. [After dealing with points not material to this report, his Lordship proceeded.]

The facts in this case are that the petitioner and his brother Ratanji were carrying on business in partnership at various places, and in the course of such business had acquired considerable property for and on behalf of the partnership. Ratanji died leaving a will by which he appointed three executors, one of them being the

1930

ADARJI MANCHERJI DALAL, IN RE

Rangnekar J.

petitioner himself. All the executors have renounced, and, therefore, it follows that there is no general representative of the estate left.

The evidence before me shows that in the course of the partnership business, the partners effected insurance on their own lives and obtained certain policies, some in the name of the deceased and others in the name of the petitioner. There is no doubt on the materials before me, which have not been challenged by the Advocate General, that the account in respect of these policies and the premia payable was a partnership account, and not the individual account of the partners. Then in the will itself the testator has described these policies as being partnership property. The entry showing that these are partnership properties is in the handwriting of the deceased. Therefore, I have no hesitation in coming to the conclusion that these policies were partnership assets, effected no doubt on the lives of individual partners, but for the benefit of the partnership. And this position is not challenged, and cannot be challenged.

That being the position, the only question is whether the present case comes within section 250 of the Indian Succession Act. That section runs as follows :—

"Where a person dies, leaving property of which he was the sole or surviving trustee, or in which he had no beneficial interest on his own account, and leaves no general representative, or one who is unable or unwilling to act as such, letters of administration, limited to such property, may be granted to the beneficiary, or to some other person on his behalf."

Therefore, in cases in which the deceased was the sole or surviving trustee and left no general representative, or one who is unable or unwilling to act, letters of administration limited to such property may be granted. Certainly in cases in which the deceased had no beneficial interest in the property on his own account, a limited grant may issue, if the other conditions in the section are satisfied.

The only question, therefore, is whether the application falls within section 250. Now, under the law it is clear that even if any partnership estate stands in the name of a partner, the latter is a trustee of that particular estate or property for the partnership. If any authority is necessary, reference may be made to section 88 of the Indian Trusts Act. The position, therefore, is that the policies were partnership property. They stood in the name of the deceased and the deceased was a trustee thereof for the benefit of the partnership.

A very elaborate argument has been addressed by the Advocate General as to the consequences which may happen if I accepted the contention of the petitioner. I may point out that I am not concerned with the consequences of any order which I may make. The only question with which I am concerned is whether the facts of the case fall within the purview of section 250. His first argument was that under the section it was necessary that the deceased must have no beneficial interest in the property of which he is also a trustee. But in the end he gave up that position, and rightly too, because that position cannot be maintained having regard to the authorities to which my attention has been drawn by the learned counsel on behalf of the petitioner, viz., *In the goods of Sir A. A. D. Sassoon*[1] and *Lord Sudeley* v. *Attorney-General.*[2] Apart from these cases, the position in law is very clear. No partner can be said to have any beneficial interest in any particular estate or property until the partnership is wound up and accounts taken. And it is in evidence that this particular partnership was not wound up till the death of the deceased. Therefore, until the death of the deceased he was a trustee of the policies which stood in his name on behalf of the partnership, and it is clear that he

[1] (1897) 21 Bom. 673.

[2] [1897] A. C. 11.

1930

ADARJI MANCHERJI DALAL, IN RE

Rangnekar J.

would not have been able to make any beneficial use thereof for himself or to assign them to his heirs.

Then the next argument, as I understand, is that this section can only apply if the estate of the deceased does not derive any benefit from the particular property, and if the estate of the deceased derives such benefit from the property, then the section cannot apply. I am unable to accept this contention also, because it comes to this that if a person is a trustee within the meaning of the section up to the time of his death, he would cease to be a trustee if after his death his heirs are likely to derive benefit out of the property of which he was a trustee. Nothing is said in the section about the subsequent or ultimate devolution of property of which the deceased was a trustee.

The third argument of the Advocate General was that this is a case in which, if probate was applied for by the executors, they would have had to pay probate duty. Apart from the fact that this question does not arise on the present application, section 19 D of the Court-fees Act is a complete answer to that argument.

I, therefore, hold that the deceased was a trustee within the meaning of section 250 of the Indian Succession Act, and the petition must be granted, subject to this, that before any grant issues the petitioner will put in renunciation of Cursetji Dalal.

Costs of the Advocate General as well as of the petitioner to come out of the estate. Those of the petitioner as between attorney and client. No probate duty to be charged. Counsel certified.

Attorneys for petitioner, Messrs. *Manchershah & Narmadashankar*.

Order accordingly.

B. K. D.