

Enclosure.

MEMORANDUM.

By "The Revenue Act, 1884" (47, 48 Vict., ch. 62), section 11, it is provided as follows: "Notwithstanding any provisions to the contrary contained in any local or private Act of Parliament, the production of a grant of representation from a Court in the United Kingdom, by probate or letters of administration or confirmation, shall be necessary to establish the right to recover or receive any part of the personal estate and effects of any deceased person situated in the United Kingdom: Provided that, where any insurance company is authorised by a local or private Act of Parliament to pay money in respect of any policy of life insurance on production of a grant of representation obtained in the Empire of India or in any of the colonies, the production of a grant of representation from a Court in the United Kingdom shall not be necessary in case the policy was effected before the 1st day of July, 1884. Nor shall such production be necessary in case the policy was effected on or after the said day if the company shall, before paying such money, have deducted therefrom and paid to the Commissioners of Inland Revenue the amount which would have been payable for duty in respect of the money if there had been a grant of representation from a Court in the United Kingdom."

By the Revenue Act of 1889 (52, 53 Vict., ch. 42), section 19, it is provided as follows: "The proviso to section 11 of 'The Revenue Act, 1884,' is hereby repealed, and that section shall be read as if the following proviso were therein inserted in lieu of the repealed proviso: Provided that, where a policy of life assurance has been effected with any insurance company by a person who shall die domiciled elsewhere than in the United Kingdom, the production of a grant of representation from a Court in the United Kingdom shall not be necessary to establish the right to receive the money payable in respect of such policy."

By a circular of the Colonial Office dated the 13th September, 1889, a copy of the last-mentioned section was transmitted to the colonial Government, and a copy appears in the *New Zealand Gazette* of the 19th December, 1889, from which the following paragraphs are extracted: "A somewhat similar complaint was brought to the notice of Her Majesty's Government in connection with policies of life insurance issued in the colonies by insurance companies carrying on business in the colonies, but having their head office in the United Kingdom. The sums recoverable under such policies were held to be assets situated in the United Kingdom; and under section 11 of 'The Imperial Revenue Act, 1884,' the production of a grant of representation from a Court in the United Kingdom, by probate or letters of administration or confirmation, was necessary to establish the right to recover or receive such amounts."

"The hardship of this provision upon persons who had no real connection with the United Kingdom has been recognised, and section 19 has been passed to remove it."

A case has recently occurred in the colony in which a lady died holding two policies in this country, and the Public Trustee of New Zealand having been appointed administrator, has requested the Agent-General to obtain payment on his behalf of the amount of the two policies.

The question having been raised as to the person entitled under the provisions of this section to receive the money, the opinion of Mr. Justice Wright and Mr. George Farwell was taken on the subject, and their opinion was as follows: "We cannot advise the Public Trustee that he is entitled to recover the amount of the policies in question on proof of domicile in the colony, or that any person other than a legal personal representative duly constituted in England can recover. The Act of 1889 does not specify any person as entitled to recover. It is merely a Revenue Act, and, *prima facie*, may be supposed to deal with fiscal matters only. Apart from the Act, our Courts would not recognise a foreign administrator (*re* Vallance, 24 Ch.D., 177), and the Act has not provided that a foreign administrator shall recover, but has merely, so far as revenue is concerned, dispensed with the production of a grant of probate or administration. We are of opinion that if and when the Public Trustee can recover, he is not liable to pay duty. We think that the best course will be to bring a friendly action in order to obtain a judicial decision on the construction of the Act. If he takes out administration in order to obtain payment he should apply to the revenue authorities for repayment of any duty paid by him."

It may be mentioned that by special arrangement the difficulty in this case was overcome, but, in view of the advice the Agent-General has received, he thinks it right to call the attention of the Imperial Government to the difficulties which have arisen.

The practical difficulty that may arise is that, as pointed out by counsel, the present Act does not specify any person as entitled to recover, and though it would seem to suggest by implication that probably the person entitled to representation in the country of domicile is intended to be the person entitled to give the receipt, such a person would not be recognised by our Courts in this country; certainly not as against an administrator appointed by the Courts in this country. Further than this, although it is manifestly intended that probate duty should not be payable on these policies in this country, if the deceased happened to possess any other assets in this country which render it necessary for administration to be taken out, it would be difficult, if not impossible, to exclude from the affidavit required by the revenue authorities for the purpose of obtaining administration, these policies, which, it would appear, are necessarily assets in this country, although by the Act of 1889 letters of administration are not required for the purpose of receiving them.

It is suggested that, in order to meet the possible conflict of claimants, grant of administration should still remain necessary, but that where a policy for life assurance has been effected with any insurance company by a person who shall die domiciled elsewhere than in the United Kingdom, the moneys secured by such policy shall be expressly exempted from probate and legacy duty and that the person applying for the grant shall be entitled to this exemption on stating the facts in the affidavit made on applying for representation.