

ated out of Ontario shall be included. No allowance as to insurance money is referred to in s. 4 of the Act so that the exemption provided by s. 5 is not to be deducted as directed by s. 3 (g).

Sec. 5, s.-s. 4, provides that no duty shall be leviable on any moneys received under a contract for insurance effected by any person on his life payable to any of the persons mentioned in s.-s. 3 of this section when the aggregate of such insurance or insurances does not exceed \$5,000; but, as stated above, this is not to be considered as a deduction under s. 3 (g).

It was held by Falconbridge, C.J.K.B., and affirmed in appeal by the Court of Appeal, *Attorney-General v. Lee*, 9 O.L.R. 9, and 10 O.L.R. 79, that in ascertaining the aggregate value of property the amount of a mortgage against real estate could not be taken from the value of the property under the law as then existing, which provided that the aggregate value meant the value of the property before any debts or other allowances or exemptions were deducted therefrom. That Act has since been amended, and therefore that case is not at present applicable to the present state of the law but it shews that although certain property would be exempt from the duty, yet it should be considered in ascertaining the aggregate value of the estate for the purpose of the Succession Duties Act. I refer to s. 3, s.-s. 2, and s. 3 of 1 Edw. VII. c. 8.

I am therefore of opinion that in ascertaining the aggregate value of the estate it is proper to include the moneys received under the insurance policy effected by the intestate as in this case, notwithstanding that the sum subsequently becomes exempt from duty.

It is, however, contended that insurance money is not "property" as defined by s. 3 (b) and that it cannot be considered as "passing on the death of the owner" under that section as the deceased could not be the owner of the insurance money under the provisions of the policy. If s. 3 (b) were the only enactment respecting insurance moneys I am inclined to think that this contention would be correct, but s. 6, s.-s. 2 (b) expressly provides that such moneys shall for all purposes of the Act be deemed to pass on the death of the deceased.

In *Attorney-General v. Robinson* (1901) Ir. Rep. 2 K.B. 67, it was held that moneys payable under policies of insurance were liable to estate duty under the English Finance Act of 1894, s. 2, s.-s. 1 (c), as property (deemed to pass) within the meaning of the section. The sections of the Finance Act of 1894 are somewhat similar to s. 6 (f), and s. 6, s.-s. 2 (b), of the Ontario Act.

Palles, C.B., in his judgment at p. 90, said: "Upon the whole,