SUPPLEMENTARY BENEFIT

Resources: money provided for a specific purpose.

After the claimant's death it was found that he had had two building society accounts which had not been disclosed to the Department. The claimant's son had transferred £2,850 into one of the accounts. The supplementary benefit officer considered that amount to have been a resource of the deceased and that in consequence of its non-disclosure benefit had been overpaid; he decided that £2,172 was required to be repaid by the estate of the deceased. On appeal the tribunal found as a fact that the sum transferred by the son was to be held by the claimant "for his use should he wish to go to India but the money remained the son's" but upheld the supplementary benefit officer's decision. The personal representatives appealed to a Social Security Commissioner.

Held that:

1. that the transaction could be viewed as creating a trust; the claimant on that basis had held the money on trust with power to apply it in his discretion on a holiday in India; since he had not so applied it there was a resulting trust in favour of the son (paragraph 7);

2. that, alternatively, the transaction amounted to a loan for the specific purpose of enabling the deceased to take the holiday; the lender retained an equity in the sum loaned and, since the money was not used for the specified purpose, he was entitled to have it returned to him—applying *Barclays Bank Ltd v Quistclose Investments Ltd* [*1970*] *AC 567* (paragraphs 8 and 9);

3. on either view, the tribunal could not reasonably have concluded that the money was a resource of the deceased (paragraph 10).

The appeal was allowed.

1. For the reasons hereinafter appearing, the decision of the supplementary benefit appeal tribunal given on 20 October 1982 is erroneous in point of law, and accordingly I set it aside. I direct that the matter be reheard by a differently constituted tribunal.

2. This is an appeal brought with my leave against the decision of the supplementary benefit appeal tribunal of 20 October 1982.

3. Mr. S. M. Mandalia, deceased, ("the deceased") was in receipt of supplementary benefit from April 1975 to the date of his death in April 1982 on the basis of statements made by him in 1975 and in subsequent years up to and including 1979 to the effect that he had no capital resources. However, as a result of enquiries carried out after his death it came to light that he had since 25 May 1975 been in possession of an account with the Nationwide

Building Society and since 15 June 1981 an account with the Abbey National Building Society. In particular, it became apparent that his son had on 15 June 1981 transferred to him the sum of £2,850.00, and that this sum was held by the deceased in his Abbey National Building Society account, where it remained until his death. According to the son, the money had been paid over to the deceased to enable him, if he so wished, to take a holiday in India. His son took the view that he (the son) was so deeply engaged in his own business affairs that he really had no time to write out a cheque in favour of his father, as and when the latter wanted it, and anyway it would have greater therapeutic value to the deceased if the latter knew that he had the money in his possession and was in a position to go on holiday at any time without further reference to his son. However, the benefit officer decided that the sum of £2,850.00 was a resource of the deceased, and that in consequence there had been, if the Nationwide Building Society account was also included in the computation, an overpayment of £2,172.00, which was recoverable, pursuant to section 20 of the Supplementary Benefits Act 1976.

4. The solicitors acting for the estate appealed to the appeal tribunal, and in their letter dated 20 September 1982 made the somewhat damaging admission that "the monies were loaned by [the son] to his father for the sole purpose of using the monies to visit India for a holiday which never took place as a result of the deceased's illness which was over a long period". If the monies were in fact loaned (without at the same time being impressed with a trust—see paragraph 8), there could be no question of deducting such indebtedness from the deceased's Abbey National Building Society account, in that it was not secured thereon, and there is "no general provision in the supplementary benefit legislation providing for the deduction of debts in ascertaining a claimant's capital or income resources" (paragraph 6 of R(SB) 14/81).

5. However, the tribunal did not accept that there had been a loan. Their findings of fact were as follows:

> "[The son] transferred a total of £2,850.00 from his Bank and the Building Society accounts to his late father's account on 15 June 1981. The money was to be held by [the deceased] for his use should he wish to go to India but the money remained his son's. There was no written agreement—the transaction involved only moral obligations. At the time of [the deceased's] death, the money was still in his name".
>
> "[The son] did not simply write a cheque to cover his father's possible holiday because he was working and had no time. He also considered that it would be therapeutic for his father to have the money in his own account".

6. Nevertheless, the tribunal confirmed the benefit officer's decision and gave as the reasons for their conclusion the following:

> "At the time of the [deceased's] death, the money was in fact in his own name and was his own asset".

It is difficult to see how this conclusion can stand consistently with the findings of fact referred to above. But irrespective of this, I am quite satisfied that the beneficial interest in the money could not on any footing have belonged to the deceased and therefore it was not a resource belonging to him.

7. The matter can be approached in alternative ways. Firstly, the transaction can be viewed as creating a trust with a special power conferred on the deceased as trustee/beneficiary to apply all or so much of the sum transferred as he should in his absolute discretion consider appropriate, on a

holiday in India. On this basis there was a resulting trust in favour of the son, subject only to the passing absolutely to the deceased of any sum actually expended on the holiday. In the event, no sum was expended at all, so that the entirety of the sum transferred in the event continued in the beneficial ownership of the son pursuant to a resulting trust. In the case of a transfer from a son to a father there is, of course, no presumption of advancement.

8. A second way of viewing the transaction is, as the solicitors for the estate initially conceded, to regard the sum transferred as a loan. But it is clear from the evidence that the loan was not a general loan, but one made for a specific purpose. Now, as it appears from such cases as *Barclays Bank Ltd v Quistclose Investments Ltd* (1970) A.C. 567, in those circumstances the lender will retain an equity in the sum loaned. In the words of Lord Wilberforce, (at pp 581, 582) (who was considering whether in the case of a loan to a company to pay a dividend, which in the event was not used for that purpose, such loan belonged, on the insolvency of that company, to the general body of creditors or was reclaimable by the lender):

> "There is surely no difficulty in recognising the co-existence in one transaction of legal and equitable rights and remedies: when the money is advanced, the lender acquires an equitable right to see that it is applied for the primary designated purpose (see *In re Rogers* 8 Morr. 243 where both Lindley L.J. and Kay L.J. recognised this): when the purpose has been carried out (i.e. the debt paid) the lender has his remedy against the borrower in debt: if the primary purpose cannot be carried out, the question arises if a secondary purpose (i.e. repayment to the lender) has been agreed, expressly or by implication: if it has, the remedies of equity may be invoked to give effect to it, if it has not (and the money is intended to fall within the general fund of the debtor's assets) then there is the appropriate remedy for recovery of a loan. I can appreciate no reason why the flexible interplay of law and equity cannot let in these practical arrangements, and other variations if desired: it would be to the discredit of both systems if they could not. In the present case the intention to create a secondary trust for the benefit of the lender, to arise if the primary trust, to pay the dividend, could not be carried out, is clear and I can find no reason why the law should not give effect to it".

9. In the present case, if the money was lent, it was lent by the son to the deceased to enable him to go on holiday to India. In the event it was not used for that particular purpose. In those circumstances the secondary purpose came into play, namely the requirement that the money be returned to the lender. There was an intention to create a secondary trust for the benefit of the son to arise if the primary trust to finance the deceased's holiday abroad failed to be carried out. In those circumstances, I do not see how it could be said that the sum of £2,850.00 was a resource of the deceased. He had no power over it save to discharge the cost of a holiday in India, and by definition the money could not be used for the relief of living expenses generally.

10. Accordingly, whichever way the matter is looked at, there was clearly a resulting trust in favour of the son, and accordingly the tribunal could not have reasonably reached the conclusion that they did. Their decision must be set aside, and the appeal must be reheard by a differently constituted tribunal, who will on the basis that the sum of £2,850.00 is not regarded as a resource of the decision, re-calculate the sum, if any, recoverable pursuant to section 20.

(Signed) D. G. Rice
Commissioner