

could competently infer that the accident arose out of the deceased's employment. (3) Even if in some circumstances the fall of a commercial traveller from the edge of a railway platform to which he had occasion to go might be an accident arising out of his employment, it of course does not follow that every such accident would necessarily be so. If, for instance, he had been larking with another occupant of the station, and in the course of doing so had slipped and fallen in front of a passing train, it is plain that the accident would have had no relation to his employment. Now here there was no evidence at all as to how the accident happened. The arbitrator conjectured that he must either have been standing at the edge of the platform and knocked over by the engine of the non-stopping goods train, or that he must simply have fallen off the edge of the platform. These two conjectures do not exhaust the possible modes in which the man met his death. He may, for instance, have proceeded to cross the line, having some vague notion in his intoxicated state that he was on the wrong side of the station, or he may have attempted to join the moving train under the idea that it was a passenger train which he had observed too late. He certainly had no occasion at the time to be near the edge of the platform, for the train by which he intended to travel had not arrived at the station. Now if he attempted to join a moving train or to cross the line on the level, he would be in breach of the company's bye-laws, and would be deliberately incurring a risk which was in no way incidental to his employment. The *onus* is upon the respondents to show that the particular accident which he met was one which arose out of his employment, and this *onus* I think they have failed to discharge. I am therefore for answering the question of law in the negative.

LORD GUTHRIE—I am of the same opinion. On the question of whether the death arose in the course of the deceased's employment I doubt the soundness of the arbitrator's inference, but I cannot say that there is no evidence to support it. I am inclined to think, looking to the late hour and the class of goods for which the deceased travelled, that his statement that he might see some of his customers in Beith was a mere excuse for going with Hunter on what was nothing but a drunken jaunt or spree. But I accept the arbitrator's judgment on this point.

On the question of whether the occurrence arose out of the deceased's employment, I think the evidence all negatives this view. A case may be conceived where the fall of a commercial traveller over a railway platform would be an accident arising out of his employment. Suppose, for instance, that he travelled for a diamond merchant, and was obliged to carry the bag containing his diamond samples in his hand. If, thus encumbered, he slipped getting into a carriage, and fell between the platform and the train, that accident would arise out of his employment, because, as compared with ordinary

passengers, he was unable to part with personal possession of his luggage, and thus ran a special risk incidental to his employment. In this case I cannot see that as a commercial traveller he ran any risk incidental to his business greater than that of any ordinary traveller. I do not think it necessary to consider the question of intoxication. In the case I have figured of the commercial traveller for a diamond house, it may be, on the authority of the case of *Fraser v. Riddell & Company*, 1914 S.C. 125, that, even although such a person was under the influence of drink and unfit for his work, the accident which I have figured would still have arisen out of his employment. But I do not desire to indicate any difference of opinion on the matter of intoxication from the views expressed by Lord Salvesen.

Further, I concur in thinking that the respondent has not proved, either by direct evidence or by a process of exclusion, how the accident happened. It may have happened in one or other of the two ways suggested by the arbitrator. But there are other ways in which it may just as likely, if not more likely, have happened, in which it would be impossible to hold that the deceased met his death through an accident arising out of his employment.

LORD DUNDAS was not present, being engaged in the Extra Division.

The Court answered the question of law in the negative and recalled the arbiter's award.

Counsel for the Appellants—Horne, K.C.—MacRobert. Agents—Robson & M'Lean, W.S.

Counsel for the Respondents—Wilson, K.C.—Aitchison. Agents—Balfour & Manson, S.S.C.

Friday, March 20.

FIRST DIVISION.

[Lord Cullen, Ordinary.

THE STEAMSHIP "GLENBLOY" COMPANY, LIMITED v. LETHEM (SURVEYOR OF TAXES).

Revenue—Income Tax—Company—Method of Assessment—Business Set up within Period of Three Years Prior to Year of Assessment—Income Tax Act 1842 (5 and 6 Vict. cap. 35), sec. 100, Schedule D, First Case, Rule (i), and Sixth Case.

A company which commenced business on 13th September 1911 fell to be assessed by the Commissioners of Income Tax for the year 5th April 1912 to 5th April 1913. The Commissioners computed the assessment on the first profit and loss account of the company, which terminated on 20th November 1912, a reduction being allowed in proportion as that period exceeded the period of a year. The company maintained that

for such a computation the year of assessment could not be encroached upon, and accordingly that the period of computation must end on 5th April 1912. *Held* (Lord Johnston *diss.*) that the assessment must be computed on the period covered by the first profit and loss account.

The Income Tax Act 1842 (5 and 6 Vict. cap. 35), sec. 100, Schedule D, enacts:—"First Case—Duties to be charged in respect of any trade, manufacture, adventure, or concern in the nature of trade, not contained in any other schedule of this Act. Rule (1)—The duty to be charged in respect thereof shall be computed on a sum not less than the full amount of the balance of the profits and gains of such trade, manufacture, adventure, or concern, upon a fair and just average of three years ending on such day of the year immediately preceding the year of assessment on which the accounts of the said trade, manufacture, adventure, or concern shall have been usually made up, or on the 5th day of April preceding the year of assessment, and shall be assessed, charged, and paid without other deduction than is hereinafter allowed; provided always, that in cases where the trade, manufacture, adventure, or concern shall have been set up and commenced within the said period of three years, the computation shall be made for one year on the average of the balance of the profits and gains from the period of first setting up the same; provided also, that in cases where the trade, manufacture, adventure, or concern shall have been set up and commenced within the year of assessment, the computation shall be made according to the rule in the sixth case of this schedule. . . . Sixth Case—The duty to be charged in respect of any annual profits or gains not falling under any of the foregoing rules, and not charged by virtue of any of the other schedules contained in this Act. The nature of such profits or gains and the grounds on which the amount thereof shall have been computed, and the average taken thereof (if any) shall be stated to the Commissioners, and the computation shall be made either on the amount of the full value of the profits and gains received annually or according to an average of such period greater or less than one year as the case may require, and as shall be directed by the said Commissioners; and such statement and computation shall be made to the best of the knowledge and belief of the person in receipt of the same or entitled thereto."

At a meeting of the Commissioners for the General Purposes of the Income Tax Acts, and for executing the Acts relating to the Inhabited House Duties for the division of the City of Glasgow, held at Glasgow, on the 9th day of June 1913, the Steamship "Glensloy" Company, Limited, 31 Saint Vincent Place, Glasgow, *appellants*, appealed against an assessment under Schedule D of the Act 16 and 17 Vict. cap. 34, for the year ending 5th April 1913, in the sum of £7363, less depreciation £1434 = net £5929, made in respect of the business carried on by them as shipowners. Lethem,

Surveyor of Taxes, *respondent*, defended the assessment. The company had only been incorporated on 13th September 1911. Its first balance-sheet and profit and loss account were only made up on 20th November 1912, covering a period of 434 days.

The Steamship "Glensloy" Company, Limited, *contended*—"(1) That the profits shown in the printed account, which covered a period of 434 days and was made up to a date sometime subsequent to 5th April 1912, should not, so far as subsequent to said date, be taken into account as the basis of assessment for the year 1912-1913. (2) That the liability for the year 1912-1913 should be arrived at from the voyage accounts as follows:—

	Profits.
" Voyage 1. Closed 11th March 1912 -	£2753 0 0
12th to 31st March 1912,	
ship laid up at Hull owing	
to strike of coal miners -	nil.
	£2753 0 0
" Voyage 2. April 1st to 5th (proportion	
of £3194, being the profit of	
voyage No. 2 lasting 116	
days and terminating 25th	
July 1912) - - - - -	138 0 0
	£2891 0 0
" Less Expenses (including £370,	
17s. 8d. charges while	
vessel laid up at Hull during	
coal strike, when there were	
no earnings) - - - - -	1096 0 0
" Profit for 205 days from 13th Sept-	
ember 1911 to 5th April 1912 -	£1795 0 0

(3) That the profit for one year on this basis was £3196, less depreciation £1434 = £1762 net, which was the correct amount to be assessed for the year 1912-13, the computation being on profits made prior to 5th April 1912 as required by Rule 1 of the first case, Schedule D, section 100 of the Act (5 and 6 Vict. cap. 35). (4) That the principle for the assessment of trading profits under Schedule D of the Income Tax Acts is based on an average of the results of the business preceding the year of assessment, and where three years are not available that the computation should be made on the average for one year of the balance of the profit or gains earned in the period preceding the year of assessment from first setting up of the same; that this was not the case on a first assessment governed by the sixth case in Schedule D, which leaves the matter at the discretion of the Commissioners, and that the method of computation is definitely fixed by the first proviso in the first rule; that the nature of the business carried on by the appellants was not a season's business generally speaking, and that the profits accrued over the whole year, but that if there was one period of the year which contributed more than another it was the months from September until the end of March, when the grain harvest was being carried by the shipping trade."

The Surveyor of Taxes *contended*—"(1) That the charge was made under section 2 of the Act (16 and 17 Vict. cap. 34), which dealt with *annual profits*. (2) That it was provided by the first rule to the first case of Schedule D that in cases where the trade, manufacture, adventure, or concern shall have been set up

within the period of three years preceding the year of assessment the computation was to be made for one year on the average of the balance of the profits and gains from the period of first setting up the same. (3) That there was no provision that the profits for the year of assessment should be computed on the basis of the profits of the period preceding the year of assessment as contended by the appellants, nor was there any provision for computing the liability from accounts for a period less than a year except in cases where the trade was set up within the year of assessment, and in such cases the rule in the sixth case has to be invoked—a procedure which was unnecessary in the present case when a full year's accounts were available. (4) That the appellants' contention would in many cases produce an absurd result, as in the case of a business set up a few days before 6th April, or in that of a seasonal business established in the winter months in preparation for a summer trade. (5) That a fair estimate of the annual profits, which were the subject of charge, could only be obtained from the account to 20th November 1912, described in the manager's report as 'for the first year's work,' and this was the obvious method of estimating the annual profits for the year ending 5th April 1913 in the absence of any provision to the contrary."

The Commissioners decided that the assessment for the year ending 5th April 1913 should be based on the profits shown in the first printed account, and they accordingly reduced the assessment to £6708 ($\frac{3}{4}$ ths of £7976, 11s. 7d.), less depreciation £1434 = net £5274 in respect of the substitution of 13th September 1911 for 20th October 1911, as the date when the trade was set up and commenced.

The Steamship "Glensloy" Company, Limited, declared their dissatisfaction with the determination of the appeal as being erroneous in point of law, and required the Commissioners to state and sign a case for the opinion of the Court of Session as the Court of Exchequer in Scotland. Accordingly a Case was stated and signed on 26th January 1914, in which the following facts were admitted:—(1) The appellants were incorporated on the 13th September 1911, under the Companies (Consolidation) Act 1908, as a company limited by shares. (2) The appellants purchased a new steamship named the 'Glensloy,' which was delivered to them on the 20th October 1911, and is the only ship owned by them. (3) The first accounts submitted to the shareholders, which embraced a profit and loss account and balance-sheet, were made up to the 20th November 1912, which accounts, although described in the heading as 'from date of incorporation to 20th November 1912,' being a period of a year and sixty-nine days, are stated by the managers in their report to the shareholders to be the accounts for the first year's work of the company. The said accounts were duly certified by the auditors of the company, and showed a profit of £7976, 11s. 7d. These accounts were submitted to the shareholders and approved

by them at a meeting held on 19th December 1912. (4) The assessment for the period from the incorporation of the company to the 5th April 1912, which fell within the income tax year ending 5th April 1912, being the year previous to that dealt with in the present case, was computed by the additional Commissioners at the sum of £3386, under the provisions of the first rule of the first case of Schedule D, section 100, of the Income Tax Act 1842, and the sixth case of Schedule D of the same Act, by taking a proportion of the profits shown by the said accounts to 20th November 1912, but the said assessment was subsequently reduced by the General Commissioners to £1795, being the actual profits and gains arising from the trade in the year of assessment, under the provisions of sub-section (2) of section 24 of the Finance Act 1907 (7 Edw. VII, cap. 13). (5) The company's practice is to ascertain the profits of the ship at the close of each voyage, but no accounts in respect thereof are submitted to the shareholders, and the profits to 5th April 1912 were ascertained to the satisfaction of the Commissioners by taking the profits of the first voyage, which ended on the 11th March 1912, and a proportion of the second voyage, which ended on the 25th July 1912. (6) The assessment of £7363 for the year ending 5th April 1913, which forms the subject of this appeal, was computed under the provisions of the first rule of the first case of Schedule D aforesaid by taking the average for one year of the profits and gains of the company as shown by the above-mentioned balance-sheet and accounts to 20th November 1912, on the basis that the trade was commenced on 20th October 1911, the date when the vessel was delivered to the company. (7) It was proved that the trade was set up and commenced on the 13th September 1911 (the date of incorporation), trade transactions having been entered into by the company prior to the delivery of the ship to them on 20th October 1911. (8) The appellants were on the 20th April 1912 duly served by the assessor with a form on which to make the statutory statement of the profits for the said year ending 5th April 1913, which form was in due course returned to the assessor, endorsed with the following statement:—'This company only started operations on 20th October 1911, and the profits will not be ascertained till the end of this year.' On the 9th January 1913, the audited accounts made up to the 20th November 1912 as aforesaid having been submitted to and passed by the shareholders on 19th December 1912, the appellants filled up a second form for the same year and returned their profits at the sum of £2950 for the said year. (9) The said return was in due course considered by the additional Commissioners, who were of opinion that the amount returned was computed on an incorrect basis, and duly certified an assessment in the sum of £7363, computed on the basis of the company's first printed accounts as set forth in paragraph six above."

The Case was heard on 28th February 1914 before the Lord President and Lords

Johnston and Skerrington. On 13th March a rehearing was granted before the same Bench with the addition of Lord Mackenzie.

Argued for appellants—The law as found in the Income Tax Act 1842 (5 and 6 Vict. cap. 35), sec. 100, Sched. D, 1st case, rule (i), and 6th case, gave (a) a general rule when a business had been in existence for more than 3 years, and two provisos, (b) when it had been in existence for more than one year and less than three, and (c) when it had been in existence for less than one. The "*terminus ad quem*" was contained in the general rule, and could not be altered in the provisos. Unless this were so there was no "*terminus ad quem*" provided. The intention of the Legislature was shown in section 24 (2) of the Finance Act 1907 (7 Edw. VII. c. 13), which repealed section 133 of the Act of 1842.

Argued for respondent—The Finance Act 1907 (*cit.*) was not in point, as the question turned entirely on section 100, Schedule D, 1st case, rule (i), and 6th case of the Act of 1842. The method now proposed had always been followed by the Exchequer. Rule (i) did not in terms make 5th April the "*terminus ad quem*." The intention was that a balance should be struck on the profit and loss account—*Gresham Life Assurance Society v. Styles*, (1892) A.C. 309, Lord Watson at 317, Lord Herschell at 323. For this reason no "*terminus ad quem*" had been inserted in either of the provisos. It was intended that the Exchequer should have complete discretion as to the period on which to estimate the assessment.

At advising—

LORD PRESIDENT—The question we have to decide in this case is what is the amount of profits assessable to income tax of the Steamship "Glenisloy" Company, Limited, a one-ship company, for the year commencing 5th April 1912 and ending 5th April 1913. It is agreed that the rule, with which we are familiar, of determining the profits of a trading concern upon a fair and just average of three years is inapplicable to this case, for the company commenced its trading on the 13th September 1911, well within the three years anterior to the year of assessment, and consequently the business had been set up only for a period of 172 days prior to the commencement of the year of assessment.

In these circumstances it is agreed that the rule applicable to the determination of the profits in the case before us is to be found in the first proviso of the first rule for the first case in Schedule D in the Property and Income Tax Act 1842 (5 and 6 Vict. cap. 35), which runs as follows—" . . . [*quotes, v. sup.*] . . ." So here we have before us a period with a definite commencement, "the first setting up of" the company's trade, and the question we have to decide is at what date does the period end.

Now when it is remembered that the setting up of a trade or business always synchronises with the commencement of the trader's first trading and profit and loss account, it is easy to see that the end of the period must be the end of that account. If

that be correct—and I think it is—then the decision of the question before us is plain. I regard it as, indeed, the only possible reading of this proviso, for confessedly it is impossible to compute on the average the balance of the trader's profits or gains unless you have before you the trader's balance-sheet—his profit and loss account. For as Lord Watson observed in the case of the *Gresham Life Assurance Society*, [1892] A.C. 309, at p. 317—"Rule first of section 100, case first, prescribes that the duty to be charged shall be computed on a sum not less than 'the full amount of the balance of profits or gains of such trading, manufacture, adventure, or concern.' It plainly contemplates the preparation of a balance-sheet in which proper trading disbursements and liabilities are to be set against trade assets, so that the surplus of the latter, if any, will represent the assessable profits or gains of the concern. All the other rules applicable to Schedule D are framed upon the same footing. . . . If there be one point free from obscurity in the Act of 1842 it is this, that the Legislature intended all traders, whether in groceries, annuities, or other articles of commerce, to be assessed upon the same footing." That is to say, upon the footing that the average of the profits or gains of the trader shall be computed upon his own balance-sheet. And Lord Herschell observes in the same case—"The expression 'balance of the profits or gains' is not a happy one, but the meaning obviously is the balance arrived at by setting against the receipts the expenditure necessary to earn them." Lord Herschell adds, speaking of the third rule—"The rule contemplates the making up of a balance-sheet, and deals with what may be put on the debit side of it." Indeed, as it appears to me, it could not well be otherwise. This is the one and only method, so far as I can see, by which you are enabled to ascertain on the average the balance of the profits or gains of the trader, and it has this conspicuous merit, that it puts all traders on an equal footing whose businesses commenced within three years prior to the year of assessment. Each trader is assessed upon his own balance-sheet, and if the result of the assessment is to lay upon him a burden heavier than he ought to bear in respect that his profits have not been so great as are brought out by his balance-sheet, he has a statutory remedy.

This is the principle and method which has been applied in the present case, for the first profit and loss account of the "Glenisloy" Steamship Company, Limited, commenced on the 13th September 1911 and ended on the 20th November 1912. It embraced therefore a period of 434 days, and the Commissioners have arrived at the sum which they have fixed as the true amount of the profits for the year of assessment by performing a simple rule-of-three sum—As 434 days are to 365 days, so is the £7976 of profit shown by the balance-sheet to the answer. And by making the appropriate deductions they reach the figure of £5274 as the profits for the year on which this trad-

ing company ought to be assessed—profits honestly earned and clearly shown by the trader's own books, and to which, in detail at all events, no exception can be taken. And I merely mention in passing that the result of applying the appellants' method is to bring out for the same period a profit of £1762, as will be seen a very material difference which no doubt gives the appellants good grounds for attempting, if they can, to secure the application of a different method than that adopted by the Commissioners for the assessment of their profits.

Now the appellants say that the method adopted is wrong, because to take the trader's own account involves an invasion of the year of assessment to the extent, I think, of some 229 days, because it involves an encroachment on the year from 5th April 1912 to 5th April 1913—from 5th April 1912 to 20th November 1912. And they contend that there is an inflexible rule, as I understood their argument, of income-tax law that you must never in assessing the trading profits for one year encroach upon that year. Accordingly, to avoid invasion of the year of assessment a different rule must be applied. The rule they suggest is that the commencing period should be the commencement of their trading account—their ordinary profit and loss account—and that the close of the period should be the 5th April 1912—the beginning of the year of assessment, or rather the end of the year anterior to the year of assessment. That means that you must read into the proviso to which I have referred the words "down to the 5th April following," or some such words. And that they say is essential in order to secure a just method of assessing the profit. The objection that I entertain to that mode of computation is that it involves reading into the statute words which are not there, words which as I think have been deliberately left out, and it involves this principle, that each trader is assessed upon a different footing from every other trader. Each is taken upon a haphazard period, which commences at the date when his trading account begins, and ends always on the 5th April following. So that if a trader commences business upon the 5th April, he is assessed by computing no profits at all. If he commences business on the 6th April, then his profits are computed upon 364 days' trading, and so on with as many variations as there may be between the 6th April of one year and the 5th April of the following year. That appears to me to make this proviso wholly unworkable, because in the case of many traders who commence business at or shortly before the commencement of the year of assessment, there would be no profits at all to assess if you are to strike a balance and frame a balance-sheet in every case on the 5th April. And the case before us affords a very good illustration of the unworkability of the rule, because it will be seen that if this company had commenced business upon the 12th March, then a computation of their profits according to the method which they suggest as correct would result in their being no profits at all. And indeed when they

come to apply their own method—the method which they themselves suggest—it hopelessly breaks down, because in order to bring out the figure which I mentioned a short time ago was their alternative to the Commissioners' assessment, to wit, £1762, they require to encroach upon this very year of assessment to the extent of 111 days. The Commissioners encroach to the extent of 229 days, and the appellants to the extent of 111 days.

It appears to me therefore that if their method were adopted that we should reach not only irregularity but inequality, and as I think unworkability. But I desire to make it quite plain that my opinion does not rest upon the consequences of applying the method suggested by the appellants as the appropriate means of assessing income tax in such a case as we have before us, but upon the inadmissibility, as I think, of introducing into a taxing statute words which are not there—words which I think have been deliberately left out, and words which if introduced would involve, as I think, a reading out of the proviso of the important phrase on which I have offered some comment—"the average of the balance of profits and gains" for the period which involves the preparation of a balance sheet.

It is significant that this is the first occasion since the passing of the Income Tax Act in 1842 that this proviso has been made the subject-matter of judicial construction. We have been informed by the Solicitor-General that the method adopted in this case is the method which has been followed consistently since the date when the statute passed, and I for my part, even if I regarded this proviso as ambiguous—which I do not—would hesitate to adopt a construction of the statute which would lead to the destruction of the method which has been followed for upwards of seventy years, apparently to the complete satisfaction of the trading community.

LORD JOHNSTON—The question in this case is how to apply Schedule D and its rules where a business, though not commenced in the year of assessment, has not yet been long enough in existence to allow for the assessment of income tax being made on a three years' average.

The facts which raise the question are simple. The company commenced business on 13th September 1911. It did not, however, close its books for the first time until 20th November 1912. Thereafter its date of balance was presumably to be 20th November in each year.

It had to be assessed for income tax (1) for the broken period 13th September 1911 to 5th April 1912; (2) for the year 5th April 1912 to 5th April 1913; (3) for the year 5th April 1913 to 5th April 1914, and so on. The assessments fell to be made under Schedule (D), First Case, First Rule, and Sixth Case. The First Case, First Rule, provides for the normal case—that is, for a business which has been long enough in existence to admit of an average being struck on three years' working—thus: The duty to be charged is to be computed on the full amount of the

balance of the profits of the concern upon a just average of three years "ending on such day of the year immediately preceding the year of assessment on which the accounts of the said trade . . . shall have been usually made up, or on the 5th day of April preceding the year of assessment." This is followed by two provisos, the first dealing with the more general exception where the business has been set up within the said period of three years, and the second dealing with the special exception where the business has been set up within the year of assessment.

Returning to the provision for the normal case it will be observed that it offers two alternatives for the computation, and I think that it was admitted that the choice lay with the Inland Revenue. But if one thing is clear it is this, that the return has to be made and the assessment to be laid on, as at the 5th April in each year, for the year which is to come, but that it is to be based upon something which is already passed. And this is only consistent with the general conception of the Act. It was passed for the purpose of raising revenue by way of income tax for, and to come into the Exchequer during, the period from 5th April of one year to the 5th April in the year following (Act of 1842, section 176). To enable this to be effectively done it is of course necessary that the returns be made and the assessment laid on as soon after the 5th of April, which commences the period, as possible, in order that the tax may be collected within the year of assessment. Accordingly the three years on which the average has to be struck are to end either on the day of the firm's or company's annual balance preceding the year of assessment, or on the 5th of April preceding the year of assessment. Whichever alternative is selected, the last year of the triennium must have concluded before the year of assessment commences.

In the next place, it is clear that the Legislature contemplated that no difficulty would be experienced in striking a balance on 5th April in each year should the second alternative be adopted, although that might not be the close of the financial year of the firm or company. In point of fact, for the first year, in the case of this company, when the three years' average comes to apply, the average will have to be struck on the three years ending 5th April, though they are not the financial years of the firm, by reason that the company's first balance of profits was not struck for a year but rather more than fourteen months.

I pass now to the last proviso, which deals with the broken period when the business is set up within the year of assessment. In the present case the assessment had to be made for the period 13th September 1911 to 5th April 1912. The proviso is that the computation shall be made according to the rule in the Sixth Case of the Schedule. In that case the computation is to be made "according to an average of such period greater or less than one year as the case may require, and as shall be directed by the said Commissioners; and such statements and com-

putations shall be made to the best of the knowledge and belief of the person in receipt of" the profits and gains. In the present instance the return was made and the assessment laid on, as I have said, for a period less than a year, viz., 13th September 1911 to 5th April 1912. No difficulty was experienced in making the return or laying on the assessment.

The question relates to the assessment for 1912-13, and it effects in principle those for 1913-14 and 1914-15. The proviso is this—"provided always that in cases where the trade . . . shall have been set up and commenced within the said period of three years, the computation shall be made for one year on the average of the balance of the profits and gains from the period of first setting up the same." The assessment is to be on an average, and the dividend is the balance of profit and loss from the period of setting up the business. The *terminus a quo* is thus expressly defined. For 1912-13 it goes back to 13th September 1911, or to a point six months previous to the year of assessment. For 1913-14 it will go back to the same date or to a point eighteen months previous, and in 1914-15 again to the same date, or to a point thirty months previous to the commencement of the year of assessment. But the *terminus ad quem* of the period on which the average is to be struck is not expressed. I think, however, that it is a matter of irresistible implication:—

1st. From a general consideration suggested by the whole purview of the Act, and of this first rule in particular. I have already drawn attention to the fact that consistently with the object and with the necessities of the case returns must be made and the assessment laid on as from the first day of the revenue year or 5th April. It follows, therefore, as it seems to me, that the *terminus ad quem* intended was the date at which the year of assessment commenced. The computation can, I think, only be made for the year in question on the average of the balance of the profits and gains of the business from the date of its commencement to the date as at which the assessment is to be laid on, viz., the 5th of April, with which the year of assessment commences.

2nd. Having regard to the grammatical sequence of the rule, it may be contended that the proviso is not a separate and self-contained enactment, dealing exhaustively with the exceptional case, but is dependent on the principal enactment so much of which is carried forward with the proviso as is not inconsistent with the terms of the proviso. If so it may be that the *terminus ad quem* is to be either the date of the company's last balance preceding the year of assessment or the 5th April with which it begins. Personally I think that there are difficulties in the way of this contention, and that the former consideration is to be preferred. In any view I am unable to conceive how the computation is to be made as at 5th April 1912, on the average of the balance of the company's profits and gains from 13th September 1911, when the business was set up, to 20th November 1912, which

was seven months after the year of assessment commenced, without writing into the proviso something which is not there and which is wholly inconsistent with the scope of the whole rule. And the same will apply with still greater force when the years 1913-14 and 1914-15 come to be dealt with.

Your Lordship apparently considers that the Act regards the balance of profits and gains as nothing but the balance-sheet made up by the firm or company for its own purpose, and for such financial year as it pleases. Though usual, no business is bound to strike its balance yearly, or at one definite date in the year. That a balance may be made for the purposes of the income-tax, as at any date which may be necessary to comply with the provisions of the statute, though it be not the date of closing the books for the purposes of the business, is quite conceivable, and it has already been done for the broken period of the first year of the company's existence. Further, it would have to be so made in any case in which the Inland Revenue discarded the financial year of the business and required a return as at 5th April.

I do not think that the Court can be influenced in interpreting and applying this rule of the statute either by the consideration that inequality in the incidence of the tax may occur among young companies, according to the date at which they may happen to begin business, or by the consideration that young companies will escape more lightly for the first two or three years than businesses which have been longer in existence. Whatever construction may be put upon the rule, there will be initial inequality, and I can conceive that it was fully contemplated that the tax should bear somewhat more lightly upon the young business at its first start. But the question is not what would be the ideal but what is the rule as enacted. I think therefore that the Commissioners' conclusion is wrong and that the appeal should be allowed.

LORD MACKENZIE—I agree with the conclusion reached by your Lordship in the chair. In the first place, I should like to say that as regards the practice I am afraid I am not able to attach any weight to that in this case. If the practice was not warranted by the provisions of the statute we could give no effect to it. I put my judgment solely upon the construction of the Act of Parliament.

There is a difficulty in regard to the grammatical construction of the first proviso. The argument which was pressed upon us with considerable force on behalf of the appellants was that you must read into the first proviso one or other of the two dates contained in the enacting words of the clause; and that as no accounts were here made up between the date of commencing the business and the 5th of April, the latter must be taken as the *terminus ad quem* (5 and 6 Vict. cap. 35, sec. 100, Sched. D, first case, rule 1). No doubt, in regard to the grammar, that does raise a question which requires consideration, and is not one wholly without difficulty. I have, how-

ever, come to the conclusion that there is no obligation to read the 5th of April into the first proviso. There are words used in that proviso which indicate that the *terminus ad quem* was the close of the accounts which were kept by the company, because the words are "the computation shall be made for one year on the average of the balance of the profits or gains from the period of first setting up the same."

Now the word "balance," to my mind, is suggestive of a balance-sheet, and I think that the reasonable construction to put upon that proviso is that the balance-sheet in question was just such a balance-sheet as a trading company will make up for the purposes of its own business, and that when you find that it is to be a balance for a period commencing with the first setting up of the business, the natural consequence of that is that the *terminus ad quem* is the close of the first account.

It no doubt follows that if a trading company makes up their first balance-sheet for a period ending prior to the 5th April, that that would have been taken for the purposes of the first proviso. Possibly some trading company may think that it is to its advantage to make up its balance-sheet for a short period in order to get some benefit when it came to be assessed for income tax. As a rule, however, trading companies make up their balance-sheet with a view to their business and not with an eye to the Income Tax Acts.

I should say, agreeing with your Lordship, that I do not think that in dealing with a taxing statute we are entitled to lay very great stress upon the consequences that will follow from one construction or another. If we are tied up to one construction, then the statute must receive effect according to its exact language. Although the consequences which would follow from the reading for which the appellants contended would have been very anomalous, I put my judgment upon the construction of the words of the Act. It may, however, not be out of place to refer to the provisions of section 24 of the Finance Act of 1907, which enables a person who finds that he has not really earned the profit upon which he is sought to be assessed, to go to the Commissioners, and if it is found by them that the figure which has been struck for the purposes of assessment to income tax is too great, he gets a reduction, so that no trader ever runs any risk of being assessed upon a greater sum than has been earned.

Accordingly I agree with your Lordship.

LORD PRESIDENT—Lord Skerrington, who is unable to be present to-day, desires me to say that he concurs with the judgment of the majority.

The Court upheld the determination of the Commissioners of Income Tax and dismissed the appeal.

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