

No. 368.—COURT OF APPEAL.—27th and 28th April, 12th and
28th May, 1914.

HOUSE OF LORDS.—10th 11th, 14th, 17th, and 18th June and
28th July, 1915.

THE KING v. THE KENSINGTON INCOME TAX COMMISSIONERS
(*ex parte* ARAMAYO).⁽¹⁾

*Income Tax (Schedule D).—Place of Assessment.—Foreign
Income.*

Sections 106 and 108 of the Income Tax Act, 1842.

The proceedings in the Divisional Court, when the Rule for Writ of Prohibition obtained by Mr. Aramayo was discharged, are reported in the present volume of Tax Cases at pp. 279-292, *q.v.* During the hearing of the case in the Divisional Court Mr. Aramayo's Counsel had asked for leave to amend the grounds of the application by adding, as a separate ground, that Mr. Aramayo was not liable to be assessed by the Kensington Commissioners by virtue of Section 106 of the Income Tax Act, 1842, inasmuch as while residing in Kensington he was engaged in business elsewhere, viz., in the City of London. The Divisional Court refused leave to amend the statement of the grounds of the application, and, as stated above, discharged the Rule *Nisi*. Mr. Aramayo appealed to the Court of Appeal against the judgment of the Divisional Court and, after hearing arguments upon the grounds upon which this judgment had proceeded, the Court of Appeal reserved judgment, and at a later date intimated that they were of opinion that the Divisional Court were wrong in refusing leave to amend the grounds of the application and that the case ought to be re-argued upon the question whether the Kensington Commissioners were precluded from making the assessments upon Mr. Aramayo by Section 106 referred to above. On the 28th May, 1914, the Court of Appeal gave judgment allowing the appeal and granting a Writ of Prohibition except as regards the original assessment for the year 1907-8, on which payment of duty had been obtained and there were consequently no further proceedings to prohibit. The Court held that Section 106 determines where, and where alone, a person may be

⁽¹⁾ Reported 31 T.L.R. 606.

assessed to the duties in Schedule D, subject only to the provisions of Section 108, which give an option to the person liable to assessment, and that as Mr. Aramayo was engaged in trade in the City of London he could only be assessed by the City Commissioners, and the Kensington Commissioners had no jurisdiction.

JUDGMENT.

Swinfen Eady, L.J.—This is an Appeal from the Divisional Court discharging a rule nisi obtained by Felix Avelino Aramayo for a writ of prohibition, to prohibit the General Commissioners of Income Tax for Kensington from proceeding on any one of five several assessments to the Income Tax under Schedule D in respect of profits or gains from foreign possessions.

The Rule Nisi sets forth the grounds on which it was granted, the third ground being as follows:—“(3) The whole of the profits on which such assessments purport to be based were profits or gains arising from foreign possessions, and were received in the City of London and not elsewhere, and were by virtue of Section 108 of the Income Tax Act, 1842, assessable by the Commissioners acting for the City of London and not elsewhere.”

Thus the point taken is that on the facts stated the taxpayer could only be assessed by the Commissioners for the City. The Appellant need not have referred to any particular section of the Act, the ground would have been quite sufficiently stated if the words of the rule had been, “and were by virtue of the Income Tax Act, 1842, assessable by the Commissioners acting for the City of London and not elsewhere.” The sections really governing the matter are Sections 106 and 108, and both should have been mentioned in the rule if it was wished to particularize the material sections. The Appellant applied in the Court below for leave to amend this slip by mentioning Section 106 as well as Section 108, and in my opinion this leave to amend should have been given by the Divisional Court. We gave the leave to amend, by adding Section 106 to the third ground, so as to enable the point to be fully argued. No further costs were occasioned by the amendment, no new fact was involved or put in issue; in any case the Court in construing the Statute must have had regard to Section 106 as well as Section 108, and unless we had allowed the real point to be raised and argued, the Appellant's claim would have been defeated by the merest technicality. Again the true construction of the two Sections 106 and 108 raises a question of much general importance, and one which ought to be decided.

If the assessments in question were made by Commissioners who had not jurisdiction to make them, the question arises whether prohibition will lie, and whether it is an appropriate remedy.

In the case of *The Queen v. The Local Government Board* (1882) 10 Q.B.D., 309 Lord Justice Brett said, at p. 321: “My view of the power of prohibition at the present day is that

“ the Court should not be chary of exercising it, and that when
“ ever the Legislature entrusts to any body of persons other than
“ to the Superior Courts the power of imposing an obligation
“ upon individuals, the Courts ought to exercise as widely as they
“ can the power of controlling those bodies, or persons, if those
“ persons admittedly attempt to exercise powers beyond the
“ powers given to them by Act of Parliament.”

In *The King v. General Commissioners of Taxes for the District of Clerkenwell* (1901) 2 K.B. 879,⁽¹⁾ a Writ of Prohibition was only refused because the Commissioners had not gone wrong in the finding of any fact preliminary to giving themselves jurisdiction. It may be gathered from all the judgments in that case that the Rule would have been made absolute if the Commissioners had acted without jurisdiction. I entertain no doubt, notwithstanding what was said in the Divisional Court, that if the Kensington Commissioners have acted without jurisdiction, prohibition will lie and is an appropriate remedy.

The question then is whether, according to the true construction of the Act of 1842, the Kensington Commissioners had jurisdiction to assess the Appellant in respect of gains or profits from foreign possessions.

The Act provides for the appointment for Commissioners for General Purposes, of Additional Commissioners, and of Commissioners for Special Purposes, and determines their respective functions; it provides for the appointment of Assessors and Collectors (Section 36); for serving and delivering notices to persons requiring them to make out and deliver lists, declarations and statements; and (by Section 52) every person chargeable is required to prepare and deliver a statement of the annual value of all lands and tenements in his occupation, and the amounts of the profits or gains arising to such person from every source chargeable under the Act, with a declaration that it is estimated on all the sources contained in the several schedules. The foregoing are general provisions.

The Rules under which the particular duties are to be assessed and charged begin with Section 60. As to Schedule A, by that section it is provided by No. IV. “ Rules and Regulations respecting the said duties.” First—“ All properties chargeable to the duties in Schedule (A) shall be charged in the parish or place where the same are situate, and not elsewhere, except as hereinafter is excepted.” And then follow certain exceptions, which it is not necessary to follow up. Schedule (B) is dealt with by Section 63, Rules Nos. VII. and VIII., and provisions dealing with both Schedules (A) and (B) begin with Rule No. IX.

Section 64 provides that upon every account of the annual value of the several properties to be charged under Schedules (A) and (B), the Assessor shall make an assessment. Section 74 provides that the respective Assessors shall make their assessments on all lands, tenements and hereditaments within the limits of those places for which they are to act.

⁽¹⁾ 4 T.C. 549.

Schedule (C) is dealt with by Section 88 and following sections. These duties are assessed by Special Commissioners, and the " Rules for assessing and charging the duties under Schedule (C) " so provide.

The special provisions with regard to Schedule (D) begin with Section 100. Section 106 provides for the districts in which every person is to be charged or chargeable to the said duties in Schedule (D). Every person engaged in any trade (which is the case of the Appellant) shall be chargeable by the respective Commissioners acting for the parish or place where such trade shall be carried on.

The section then proceeds: " And in order that the place where " the said last-mentioned duties are to be charged may be ascer- " tained," every person is required on delivering a list or state- ment to deliver a declaration in writing signed by him " declaring " in what place he is chargeable."

In my opinion this Section 106 determines where, and where alone, a person may be assessed to the duties in Schedule (D) subject only to the alternative provisions of Section 108, which give an option to the person liable to assessment. It was urged by the Attorney-General that in whatever parish or place a tax- payer is liable to be assessed for any income tax, there he is also liable to make returns in respect of the whole of his income from every source, and to be assessed in respect of the whole of his income.

In my opinion, this contention cannot be supported so far as regards assessment. The Statute provides, by the sections to which I have already directed attention, where, and where only, the taxpayer is to be charged in respect of the duties granted. However wide the power of requiring returns or statements, the taxpayer can only be assessed and charged where the Statute provides that he is to be charged or is chargeable. Section 110 provides for the delivery of statements in various places, and also that the taxpayer shall not be liable to any double charge by reason thereof. This means that although he may be required to deliver statements in more places than one, or in many places, he shall not, by reason thereof, be liable to any double charge or to be charged except in " the parish or place where such person " ought to be charged." As regards Schedule (D), this parish or place is determined by Section 106. Sections 111 and 113 confer particular powers on the Commissioners, but must be read as applying to the Commissioners in their respective districts. Section 171 enables the Commissioners to correct errors or mistakes and put the matter right.

The conclusion at which I have arrived is in accordance with the view expressed by Lord Justice Stirling in *The King v. General Commissioners of Taxes for the District of Clerkenwell*, L.R. [1901], 2 K.B., 879, where he said, at p. 894, speaking of a trade partly carried on in the United Kingdom and partly abroad: "That assessment must be made by the persons " designated by Section 106 of the Income Tax Act of 1842, that " is, the Commissioners for the place where the trade is carried

“ on within the United Kingdom, if not made by them the
“ person carrying on the trade would escape taxation in respect
“ of the portion of the trade carried on abroad.”⁽¹⁾ The result
is that the Appellant succeeds on his contention that the Com-
missioners for Kensington had not any power to assess him in
respect of gains and profits from foreign possessions, and the Rule
for Prohibition must be made absolute, except in respect of the
first year, where the Commissioners have obtained payment, and
there are not any further proceedings to prohibit.

Upon the view of the case which I have taken, the other matters
discussed before the Divisional Court do not arise.

Having regard to the course which the case has taken, and to
the form in which the Rule was expressed, the justice of the case
will be met if each party is left to bear his own costs here and
below.

Pickford, L.J.—The Appellant in this case obtained a Rule Nisi
for a Prohibition to the General Commissioners of Income Tax
for the District of Kensington to prohibit them from further
proceeding on any one of five assessments to the income tax under
Schedule (D).

This Rule was discharged by the Divisional Court, and their
decision is reported in [1913] 3 K.B. 870, ⁽²⁾ where the facts are
fully set out. From that decision this Appeal is brought.

The Rule Nisi stated several grounds on which it was granted,
but it is only necessary to mention ground 3, which was in these
words: “ The whole of the profits on which such assessments
“ purport to be based were profits or gains arising from posses-
“ sions abroad, and were received in the City of London and not
“ elsewhere, and were by virtue of Section 108 of the Income Tax
“ Act, 1842, assessable by the Commissioners acting for the City
“ of London, and not elsewhere.”

On the argument before the Divisional Court, the Appellant
wished to argue that by virtue of Section 106 of the Income Tax
Act, 1842, the only persons who had the power to assess him were
the Commissioners for the City of London. He contended that it
was not necessary to state the grounds on which the Rule was
granted, and that he was not confined to those grounds, but could
support the Rule on any grounds justified by the facts stated in
the affidavit. He also contended that the grounds were sufficient
to cover his proposed argument, and finally asked for an amend-
ment of the Rule.

The Divisional Court refused the amendment. There seems
to have been some uncertainty in former times as to whether the
grounds of granting a Rule Nisi for Prohibition should be stated
in the Rule, but in 1909 in the Divisional Court of the King's
Bench Division, Lord Chief Justice Alverstone, sitting with
Mr. Justice Ridley and Mr. Justice Darling, directed that in all
cases the grounds on which the application is made (and this
must mean made and granted) should be endorsed on Counsel's
brief, and that no order should be drawn up unless that was done.

⁽¹⁾ 4 T.C. at p. 578.

⁽²⁾ See 6 T.C. 279.

The form of the Rule is taken from this endorsement, and, from the date of that direction the grounds have been stated in every Rule Nisi. The practice is convenient, as Rules are often refused on some of the grounds of application, and granted on others; and I think that in the absence of amendment the applicant should be confined to the grounds stated in the Rule.

I think that ground 3 did not cover the proposed argument under Section 106. It stated certain facts which it was contended, by virtue of Section 108, made the Commissioners of the City of London the only persons who had jurisdiction to assess the Appellant, while the proposed argument was that the Appellant, as a person trading in the City of London, was only assessable there by reason of Section 106, apart altogether from the effect of Section 108. In my opinion the two grounds were entirely different. The Divisional Court refused the amendment as they thought the point a purely technical one, but this Court decided to allow it. Such amendment was merely formal, it did not require the consideration of any new facts, and Section 106 would necessarily be considered by the Court in connection with the grounds as originally stated. This Court, therefore, did not consider that it was right that it should be prevented from giving a decision upon the effect of a section which it would have to consider, because the Appellant, either from not having at first realised the importance of the point, or from a mistake in stating the grounds of the Rule, had omitted to mention that particular section.

The argument therefore proceeded before us upon the Rule as amended.

The first point to consider is one rather raised by the Divisional Court than by the Respondents to the Rule, namely, whether prohibition will lie at all in a case of this kind. In the *King v. Commissioners for Clerkenwell*, [1901] 2 K.B., 879,⁽¹⁾ and other cases, it has been assumed that prohibition would lie, though on the facts it was refused. It is true that the point was not argued, but it could hardly have been overlooked by the Court, and I think we ought to take the same view as that taken there, which, in my opinion, was the right one.

In the Divisional Court the main points argued were: (1) that under Section 52 of the Taxes Management Act it is not enough for the Surveyor to think that certain profits have been omitted, but that in order to give him jurisdiction it must be actually proved that in fact such is the case; and (2) that under Section 108 of the Income Tax Act, 1842, it is necessary that in the facts there stated the assessment should be by the Commissioners of the City of London, and that the section does not only give the person to be charged an option to have them so assessed.

It is not necessary, in the view I take of the other point, to decide these questions, but I see no reason to dissent from the decision of the Divisional Court.

There remains, therefore, only the point raised by amendment, namely, whether the jurisdiction to assess the Appellant

(¹) 4 T.C. 549.

is confined to the Commissioners of the City of London, and therefore the Commissioners for Kensington acted without jurisdiction. On this point I think the Appellant is right. He resided in Kensington and carried on in the City of London a business carried on partly within and partly without the United Kingdom, and the question is where he should be assessed. Sections 47, 48, and 52 of the Income Tax Act, and others of the earlier sections, lay down general rules as to the notices to be given and the returns to be made in respect of income liable to tax, and other sections deal with taxes under different Schedules; but until Section 106 is reached there is no section stating specifically in what district the duties are to be charged under Schedule (D).

Section 106 deals with four classes of persons: first, householders not engaged in trade or other employment or vocation; secondly, persons engaged in trade, &c.; thirdly, persons not householders or engaged in trade, &c., but having a place of ordinary residence, and fourthly, persons not hereinbefore described; and in each case it is stated where the duties are to be charged.

In the case of persons engaged in trade it is enacted that they shall be chargeable by the Commissioners acting for the place where such trade shall be carried on, whether such trade shall be exercised wholly or in part in Great Britain.

I think that subject to modification, if any, by subsequent sections, this means that these Commissioners are the only persons who ought to charge persons engaged in trade. The word used with regard to them is "shall be chargeable" while with regard to the other classes of persons the expression is "shall be charged," but I cannot think that makes any difference, although I do not know the reason of the change of language. Assessments upon persons in respect of profits arising from foreign possessions, may, under Section 108, be made by the Commissioners of four named ports, but, as I have already stated, I agree with the Divisional Court that this merely gives an option to the person to be assessed, and it does not affect this case. Section 110, however, is said to give the right to the Commissioners of the place where a trader has his ordinary residence to assess him. It provides that every person carrying on any trade in any place different from the place of his ordinary residence, shall deliver at each such place the like lists as he is hereby required to deliver in the parish or place where such person ought to be charged, but shall not be liable to any double charge by reason thereof; and it was argued for the Crown that this must give a power to the Commissioners of the place of residence to assess. I do not think it does. I do not think "shall not be liable to any double charge" means "may be assessed twice but only made to pay once." I think it means shall not be liable to have more than one charge made upon him, and that the reference to the place where he ought to be charged relates to the provisions of Section 106, which point out that place. Section 171, in my opinion, confirms this construction of the Act,

It provides that where any person has been assessed to any of the duties granted by the Act, whether charged on him on his own account or otherwise, and shall by any error or mistake be again assessed, it shall be lawful for him to apply to the Commissioners for the place for which he shall have been assessed by error or mistake, to be relieved from such double assessment and such Commissioners shall, on proof to their satisfaction, vacate such assessment.

One method of proof is stated to be a certificate of the assessment made on him under the hands of the Commissioners by whom he shall rightly have been assessed. A later part of the section provides for repayment where double payment has been made.

This section seems to me to show that the Act only contemplates a second assessment as possible by error or mistake, and only one place where the person can rightly be assessed, which is inconsistent with the contention of the Crown, that under the combined effect of Sections 106 and 110 a trader may be assessed both where he trades and where he lives, though he can only be made to pay once. Section 60 of the Taxes Management Act, 1880, is to the same effect, and confirms the view that charge means assessment and not payment.

Sections 111 to 117 do not, I think, throw any light on the matter as they merely deal with the powers of the Commissioners in the districts within which they ought to act.

I think, therefore, that the Appellant could only be assessed by the Commissioners of the City of London, and that the Kensington Commissioners had no jurisdiction, and that the prohibition must go except as to the assessment on which payment has been made, and there are no further proceedings to be taken.

Under all the circumstances, however, and considering that much trouble and expense would possibly have been saved if the Appellant had had his Rule in proper form in the first instance, I think there should be no order as to costs.

Cozens-Hardy, M.R.—I agree.

Mr. Edwardes Jones.—The terms which I agreed with the learned Attorney-General, and which are initialled by him, provide for the Crown undertaking to repay the duty paid—that was excluding the first assessment—if the subject ultimately succeeded on appeal. I do not know whether any question will arise on that, but perhaps I may have liberty to apply.

Mr. Finlay.—No question whatever will arise. Of course, any undertaking will be fulfilled.

Pickford, L.J.—I ought to mention that when I said “No order as to costs,” I had forgotten that costs were ordered in the Court below. I meant to say the same as Lord Justice Swinfen Eady said, that there should be no costs either here or below.

Mr. Finlay.—Yes, my Lord.

Mr. Edwardes Jones.—They have not been taxed yet. I ought to make formal application, in the case of the matter going

further, for an Order for restitution, because I shall submit, if it does go further, that restitution of the first sum ought to be made.

Cozens-Hardy, M.R.—That is not before us at all.

Swinfen Eady, L.J.—You asked us for a Rule for Prohibition. You have got your Rule Nisi, and there is nothing in that with regard to restitution.

Mr. Edwardes Jones.—No, my Lord.

Cozens-Hardy, M.R.—We cannot accede to the application.

Mr. Finlay.—Then, my Lord, the form of the Order will be: Appeal allowed; Rule Absolute for Prohibition, except as to the first assessment; no costs either here or below.

Cozens-Hardy, M.R.—Yes.

The case was taken to the House of Lords, where judgment was delivered on the 28th July, 1915. The House of Lords, while adopting the view of the Court of Appeal that Section 106, where it applies, is exhaustive and restricts the power to make assessments under Schedule D on persons engaged in a business or profession to the Commissioners for the place in which the business is carried on or the profession exercised, decided that Section 108 is not optional, but applies to the exclusion of Section 106 if the subject of assessment is a foreign possession, and means that, notwithstanding the general terms of Section 106, the duties on profits arising from foreign possessions are to be charged at the place provided in Section 108 and not elsewhere. The Appeal was, therefore, dismissed with costs in the House of Lords and below, and the Order for the issue of a Writ of Prohibition, except as regards the original assessment for the year 1907-8, was affirmed.

JUDGMENT.

Lord Wrenbury (read by Lord Atkinson).

My Lords, this case affords a striking illustration of the involved and almost unintelligible expression of the law contained in the Statutes relating to income tax. It is difficult to reconcile one section with another. The same word is used here in one sense and there in another. There is no sequence or orderly arrangement of matter. Your Lordships will, I hope, agree with me in thinking that a taxing statute, particularly one upon which taxation to so large an amount is now collected, ought to be expressed in plain language, free from the defects to which I have pointed, and that the matter demands, as soon as opportunity offers, the early attention of the Legislature. The task of interpreting the statute with reference to the case before the House is not easy. But the relevant sections may, I think, be grouped under two heads. The first head contains clauses which I will

call administrative. They are clauses which relate to the collection and enforcement of information, and the ascertainment from those materials of the amount in respect of which the taxpayer is chargeable. The second class are clauses which set up a tribunal empowered to review the work done under the former class, and to impose upon the taxpayer liability in respect of the amount ascertained.

The question upon this Appeal is whether the General Commissioners for the purposes of the Income Tax Acts for the District of Kensington are the proper tribunal to fix Mr. Aramayo, the Respondent to this Appeal, with liability. He says they are not. He claims to prohibit them from proceeding on certain assessments, because whether the assessments were, as matter of figures, right or wrong, the Commissioners for Kensington had not (he said) jurisdiction to affect him in the matter.

My Lords, I do not think it necessary to travel through what I have called the administrative clauses in detail. They provide for the appointment of assessors and collectors (Act 1842, Section 36), of Additional Commissioners (1842, Section 16) who are not General Commissioners (1842, Section 21), and they define their powers and duties, viz., for example, the service of notices (1842, Sections 46-48), the making of lists of the persons served (1842, Section 57), and the making of assessments which they are to deliver to the General Commissioners (Act, 1880, Sections 49, 50). The assessments thus made are spoken of as well by the word "charge" as by the word "assessment." An assessor is said to "charge and assess" (*see, e.g.*, Act, 1880, Section 46, (2) (ii.), (3) (c)). A charge is spoken of as made upon a person by an assessment (1880, Section 57 (6)). A surveyor is spoken of as making a charge upon a person (1880, Section 58). A person is spoken of as charged by a certificate of a surveyor (1880, Section 65 (1)). Additional Commissioners are said to make an assessment in such sum as according to their judgment ought to be charged (1880, Section 52 (2)). But the assessment is one thing and the charge of the assessment upon the taxpayer is another (*see, e.g.*, 1880, Section 55). When the assessments have been made and delivered, the General Commissioners are to take them into consideration (1880, Section 56). It for the General Commissioners to execute the Act (1842, Section 22). The acts of the Assessors and Additional Commissioners are no more than subordinate and preliminary. In these Acts it is not possible to rest any conclusion upon a particular word. The same word is in one section used in one sense and in another in a different sense. This preliminary ascertainment of amount is, however, generally spoken of by the verb "assess," and its result by the noun "assessment." But it is equally true that the final act of imposing liability on the taxpayer is spoken of sometimes by these same words, but sometimes also by the word "charge." In popular language also the taxpayer is said to be "assessed," when the meaning is that he has been rendered liable to pay. On the other hand, the word "charge" is sometimes used to express the preliminary act done by the subordinate

officer, the assessor, and also, as I shall presently show, to express the final act done by the General Commissioners in fixing liability on the taxpayer.

When the Assessors and the Additional Commissioners have done their work, there may be an appeal (1842, Section 118, *et seq.*; 1880, Section 57, *et seq.*). When all this is completed, the administrative clauses, as I term them, have done their work. The next step is that liability is to be imposed upon the taxpayer in respect of the amount ascertained. This is the work of the General Commissioners. The assessments have no operation until they have been signed and allowed by the General Commissioners (*see, e.g.*, 1880, Section 30). The matter will be found summarised in the Commissioners' certificate of assessment in Forms 2 and 4 of the Second Schedule to the Act of 1880 (*see* 1880, Section 15). The form runs thus: The particulars of assessment are stated. The Additional Commissioners certify them. Then, after stating that the assessments have been presented and all appeals heard, the General Commissioners allow and confirm them. The General Commissioners are the authority, and the only authority, to do this last act, being the act which makes liability for the amount attach to the taxpayer. The whole question upon this Appeal is: Who are the Commissioners who in the facts of this case can do this final act in the case of this particular taxpayer?

The clauses which I have called executive, are the clauses which determine who are the Commissioners who are by the Act constituted the tribunal to do this act. I have found only two sections of the Act which fall within this class. They are Sections 106 and 108 of the Act of 1842. Your Lordships have been pressed in argument with the contention that Section 48 of that Act is another. In my opinion it is not. The words relied on are the words at the end of Section 48: "And the said Commissioners shall moreover proceed to assess or cause to be assessed every person making such default in manner herein directed." I do not rely upon the fact that the verb here is "assess" not "charge." As I have said, no reliance can be placed upon an assumption of accuracy in the use of language in these Acts. I look at the Section as a whole. It is one by which the assessor is to give notice to every person chargeable in respect of property or profits within his district requiring him to deliver all such lists, &c., as he is required to deliver under the Act. That district, therefore, will obtain a return of the taxpayer's property in all districts. It is a fact, and it is not disputed, that (however oppressive and unreasonable it would be) the taxpayer, if resident or carrying on business in more than one district, must, if required, deliver in each district a return of all his property in all districts (Section 110). But this is not so as regards either assessment or charge. As regards Schedule A, the Act works out with some care that assessment and charge shall be made in one place only, *viz.*, the place where the property is situate, and contains provisions to deal with cases in which a parish is in two or more counties or districts, and in which a doubt

arises as to the district or parish in which a person ought to be assessed (1880, Sections 53, 54). The Act contemplates throughout, I think, only one tribunal which shall affect the taxpayer with liability. If the contention upon Section 48 is right, the taxpayer will, if he makes default, be liable to be assessed (in the sense of having liability imposed upon him) in every one of those districts. And one district may take one view as to the amount, and another district another view. It is true that the Act makes provision against double charge, and that he will not have to pay twice; but if the amounts in the different districts vary, which is to prevail? Moreover, if he does not make default, the authority to assess under this section does not arise. So that liability could be imposed upon him by one set of Commissioners if he did, and by another if he did not, make default. The argument that Section 48 is a section under which liability can be enforced upon the taxpayer, is, I think, untenable. It is based upon the assumption that the verb "assess" bears the meaning "impose liability upon." That is only one of its meanings. The meaning here is that which it bears in the administrative clauses, *i.e.*, ascertain the amount with which the person ought to be charged, leaving that charge to be imposed by the appropriate tribunal.

From Section 171, also, it results that the taxpayer can be assessed in the sense of being charged or rendered liable in one place only. If he be assessed in more than one place it is by "error or mistake."

My Lords, it remains to construe Sections 106 and 108. Section 106 deals with four classes of persons: (1) the householder who is not engaged in trade; (2) the person engaged in trade; (3) the person, who is neither a householder nor engaged in trade, who has a place of ordinary residence; and (4) every person not before described. The section does not say "engaged in trade" in Great Britain," but that must, I think, be the meaning, for the second class are to be chargeable by the Commissioners acting for the place where the trade is carried on, whether the trade is carried on wholly or in part only in Great Britain, and if this is the meaning in the words defining the second class it must also, I think, be the meaning of the same words in the definition of the first class. As regards classes (1), (3), and (4), the words of the section are "shall be charged"; as regards class (2) they are "shall be chargeable." My Lords, I can assign no reason for the change of language. From a change of language, I should in the absence of other considerations infer a change of meaning. But I cannot do so in this case. There are no alternative persons named who are to charge this taxpayer if those persons do not charge him—either the persons authorised to charge him are defined here or they are not defined at all. The change of language is attributable only, I think, to the very indifferent drafting, which is found throughout this most complicated and ill-digested Act.

The Appellants' argument is that Section 106 is to be read as if the second head of the charge were expressed in the words

“and every person engaged in trade . . . shall also be chargeable in respect thereof . . .”, introducing the words “also” and “in respect thereof.” There are cogent reasons, I think, for rejecting this argument. First, the second head does not define the same class of persons as are excepted from the first head. It defines the excepted class and others. For it defines persons engaged in trade whether householders or not. The word “also,” therefore, cannot be supported. Secondly, the frame of the clause is to define classes of persons and say where they shall be charged or shall be chargeable. There is no sub-division addressed to the classes of property in respect of which they are so charged or chargeable. The language of the section is that they are chargeable (*i.e.*, in respect of everything) not that they are charged or chargeable for some defined thing. The words “in respect thereof,” therefore, cannot be supported. Thirdly, this section (and also sections 110, 171) seem to me to contemplate some one definite place where the taxpayer is to be charged. Section 110 requires delivery in every place there mentioned of the like lists “as he is hereby required to deliver in the parish or place where such person ought to be charged.” And this Section 106 provides that “in order that the place where the last mentioned duties” [Schedule D] “are to be charged may be ascertained,” the taxpayer is to deliver a declaration in writing declaring in what place he is chargeable and if he is engaged in trade is to declare the place where the same is carried on. The former of these is sufficient if he is of the first, third, or fourth class, the latter is further wanted if he is of the second class. The strength of the Appellants’ argument lies in the fact that the words “shall be chargeable,” in the second head, differ from the words “shall be charged” in the first, third, and fourth heads. The difference, although hard to explain, does not lead me to the conclusion for which the Appellants contend, *viz.*, that the second head creates an alternative and not an exclusive place of charge. If it is alternative, then the section fails to name the other supposed alternative place of charge, for the second class having been already described in the section are not within the fourth class, “every person not hereinbefore described,” and consequently are not included in the section at all except to the extent of that which is called the alternative direction to charge.

If Section 106 applies, it results that the Respondent, being engaged in trade in the City, is “chargeable,” *i.e.*, is to be charged, in the City where his trade is carried on. If so, prohibition ought to go. But, in my judgment, Section 108, and not 106, is the section which governs this case. These two sections reproduce that which in 46 Geo. 3, c. 65, s. 117, was contained in a single section. In that section that which is Section 108 of 1842 is expressed as a proviso upon that which is Section 106 of 1842. Section 108, I think, is to be read in the Act of 1842 as a proviso upon Section 106 qualifying and excluding that section in the cases to which it applies.

The persons or any of the persons named in Section 106 may, of course, own foreign possessions. Section 108 names another

tribunal which is to charge in the case to which Section 108 applies. It follows that Section 108 must necessarily qualify Section 106. Section 108, in the fifth line, uses the words "may be stated to and assessed by," and in the tenth line uses the words "shall be stated to and assessed and charged by." The contention is raised that by the words "may be stated to," the section does no more than offer an option to the taxpayer, and that unless the option is exercised the section does not apply. My Lords, I cannot accept this contention. The words "may be stated to and assessed by" do no more, I think, than enlarge the bodies of persons to whom and by whom, under Section 110, the duty could otherwise be stated and assessed. The owner of the foreign possession may be neither resident in nor carrying on business in London, and would not be assessable in London at all but for this section. He may, however, reside nearer to London, than to either Bristol, Liverpool, or Glasgow. Under these circumstances, he may make his statement to and shall be assessed by London under Section 108. Section 108 is, I think, a section which excludes Section 106 in the cases to which it applies. Further, it is perhaps worthy of notice (although I place but little reliance upon any assumption of verbal accuracy) that the words in the tenth line are not the same as, but are longer than those in the third line, for the words "and charged" are found in the former and not in the latter.

My Lords, I go on to apply these principles to the facts of the present case. Mr. Aramayo at the date of the assessments in dispute lived in Kensington and was a partner in Avelino Aramayo and Company, carrying on business in the City. The assessments in dispute are not in respect of his general income, nor in respect of his City business. In respect of both of these he has been assessed and has paid the assessed amounts. The assessments in dispute are in respect of profits of foreign property derived from a firm in Bolivia carrying on business there. This business was transferred in 1907 to a limited company. The Commissioners of Income Tax, however, are entitled to establish, if they can, that since the date of the transfer Mr. Aramayo has received profits of the firm earned before the transfer and not included in the transfer. Whether this is so or not is a question of fact with which your Lordships are not concerned. But it is said that the assessment in question is not in respect of the profits of the City business, but of the Bolivian business, and he is a householder not engaged in any trade in Great Britain in the sense that it is not that trade that is here in question, and that he is therefore for this purpose a householder not engaged in any trade, and is within the first head, and is to be charged by the Kensington Commissioners. The contention is, I think, inadmissible. The same person is not engaged in trade in Great Britain for one purpose, and not so engaged for another. The Respondent is engaged in trade, and if Section 106 applies it is the City, and not Kensington, which is the tribunal to assess him.

But it is, as I have said, in my judgment, not Section 106, but Section 108 that applies. If the subject of assessment is a foreign possession, Section 108 applies to the exclusion of Section 106. The question as to amendment therefore does not, I think, arise. Under Section 108, it is not the place of residence nor the place of trade which governs the matter. The inquiry is which of the four places—London, Bristol, Liverpool, and Glasgow—is the nearest to the residence of the person to be charged. The answer in the present case is London. It results, therefore, that as regards this foreign possession the Respondent is assessable in London, and (in the language of Section 108) not elsewhere. The Kensington Commissioners therefore have no jurisdiction, and the prohibition must go.

My Lords, it follows that, in my opinion, this Appeal should be dismissed with costs.

Lord Atkinson.—My Lords, I beg to express my concurrence in the judgment, which I have read, and I move accordingly that the Appeal be dismissed with costs.

Lord Parker of Waddington (read by Lord Sumner).

My Lords, I agree.

The provisions of the Income Tax Acts, so far as they bear upon the question your Lordships have to decide, are analysed so fully in the opinions of my noble and learned friends, Lords Parmoor and Wrenbury, that there is no necessity for me to refer to them in detail. I should like, however, to state generally the process by which I have been led to the conclusion that this Appeal fails.

If your Lordships will turn to the 171st section of the Act of 1842 you will find that it provides a remedy in the case of any person being "assessed" more than once for the same cause and on the same account and for the same year. The words "assessed" and "assessment," as used in this section, refer to that which creates a charge upon the person assessed, and not to that which ascertains the amount on which such person is chargeable. The section contemplates that it can only be by some error or mistake that any person can be charged more than once in respect of the same duties. In such a case, the person so charged is to apply to the Commissioners for General Purposes acting for the division or place "where he shall have been so assessed by "error or mistake," and those Commissioners are to vacate the assessment upon the certificate of the Commissioners "by whom "he should have been rightly assessed according to the provisions of the Act." There must, therefore, be some division or place in which every person ought to be charged. If he is charged elsewhere, it can only be by error, and the directions as to the division or place where such person ought to be charged are to be found in the Act itself.

My Lords, so far as Schedule D is concerned, the only sections which can be said to deal specifically with the division or place in which a person ought to be charged with duty are Sections 106 and 108. In Section 106 persons on whom duty may be charged under Schedule D are divided into four classes. First, there is

the householder who is not engaged in any business or profession; he is to be charged in the parish or place where his dwelling-house is situate. Secondly, there is the person, whether a householder or not, who is engaged in any business or profession; he is to be chargeable in the parish or place where such business or profession is carried on, whether it be carried on wholly or in part only in Great Britain. Thirdly, there is the person who is neither a householder nor engaged in any business or profession; he is to be charged in the parish or place where he shall ordinarily reside. Lastly, there is the person who is neither a householder nor engaged in business or trade nor ordinarily resident in any particular parish or place; he is to be charged in the parish or place where he happens to be resident when the general notices required by the Act are given.

My Lords, this classification is clearly meant to be exhaustive, though some difficulties may arise as to whether this or that individual is included, or this or that class. The Act contains special provisions dealing with some of these difficulties; for example, the case of a person who has two or more residences, or carries on business at two or more places. Each person making a return for the purposes of Schedule D is bound to state in what place he is chargeable, it being assumed that the directions contained in the Act are sufficient to enable him to do so. I cannot attach any importance to the fact that in the second class the word used is "chargeable," whereas in the other three classes it is "charged." Assuming that the Commissioners for any place will proceed to charge every person there chargeable—no very great assumption—it is immaterial for the purposes of the section which expression is used, and the Income Tax Acts are not remarkable for accuracy in the use of language. My conclusion is that, with the exception of the case specially dealt with in Section 108, there is one place only in which a person subject to duty under Schedule D is chargeable, and ought to be charged, and that this place is to be ascertained from the provisions of Section 106.

My Lords, the Respondent is a householder in Kensington, but he is engaged in business in the City of London. He is not the sole proprietor of the business in question, but a partner therein only. I was inclined to think at first that class II. of Section 106 might possibly be held to exclude a partnership business, and that a similar construction might be placed on the exception to class I. I have, however, come to the conclusion that this would be doing some violence to the language used. It follows that the Respondent is in class II. and ought to be charged in the City and not elsewhere. But even if this were not so, I still think that the Commissioners for Kensington exceeded their jurisdiction in charging him as they have affected to do. They have affected to charge him in respect of the profits received in Great Britain from a business wholly carried on abroad. A business carried on wholly abroad is a foreign possession within the meaning of Case V., Schedule D (*Colquhoun v. Brooks*),⁽¹⁾ and the profits

(¹) 2 T.C. 490.

arising from it are chargeable under Section 108. I cannot agree that Section 108 is optional only. It must, I think, be read as a proviso on and as creating an exception to Section 106. It means that, notwithstanding the general terms of Section 106, the duties on profits arising from foreign possessions are to be charged at the place therein provided and not elsewhere. This construction is borne out by the fact that in the earlier Act of 46 Geo. 3, c. 6, the provisions of Sections 106 and 108 were contained in a single section.

Construed as above suggested, the Act does not, in my opinion, involve any difficulty in collecting the tax. The Crown can always ascertain the place where the taxpayer ought to be charged. On the other hand, if constructed as Sir Robert Finlay contends it ought to be, the Act might entail great hardship on the taxpayer. If assessable and chargeable in every place in which he can be compelled to make returns, he might be assessed in a dozen different places, have to appeal from a dozen different assessments, and finally to take proceedings under the 171st section, without being able to say which assessment had been rightly made or which assessment was made in error or by mistake.

My Lords, I will not refer in detail to any other of the sections which were discussed before your Lordships. It is enough to say that they do not in my opinion contain anything inconsistent with the conclusions at which I have arrived. They are sections conferring general powers on the Commissioners or Additional Commissioners in every district, and must be read as subject to the express provisions of Sections 106 and 108.

Earl Loreburn (read by Lord Atkinson).

My Lords, the question in this case is whether Mr. Aramayo, who lived and possessed taxable property in Kensington, could be made liable for Income Tax under Schedule D by the General Commissioners of Kensington. I have studied these Acts very closely and have listened to the protracted arguments, and the conclusion at which I have arrived is that no one can give any answer to this question, either in the affirmative or in the negative, without doing violence to the language of one or more of the sections, that is, if he tries to give to the same words the same meaning in every section, such, for example, as the word "charge" and the word "assess." My conjecture is that the Legislature intended that anyone who could be charged upon any property within a district might be charged in that district under Schedule D by the General Commissioners and not merely assessed in that district by the Additional Commissioners; and I do strongly think technical difficulties ought not to prevail to defeat the collection of any tax which has been imposed by the Legislature, but I have searched in vain to find warrant for holding that this is so. I regret to say that in this respect the statutory language of the different Acts is not coherent. You may strain the language to mean either one thing or the other. You must strain it to arrive at any conclusion. On the whole I agree with Lord Wrenbury's view.

The point now to be decided has never been before Courts of Law, and if it be true, as we were told, that the view I am obliged to take is fatal to the prevailing practice of taxing people on Schedule D in the place where they reside, I shall regret it. The business of collecting taxes is very necessary and it must be very difficult with a tax upon income of the most diverse kinds derived from the industries of the whole Kingdom.

But there ought to be no difficulty, now that there have been so many decisions, in placing the law relating to this tax in clearly intelligible language. Certainly it is not so at the present time in regard to the question now before the House. I think this Appeal fails.

Lord Sumner.—My Lords, I concur.

Lord Parmoor (read by Lord Sumner).

My Lords, the question in this Appeal is whether the Appellants had jurisdiction to charge the Respondent under Schedule D of the Income Tax Acts. The Respondent resided within the district of Kensington, but has engaged in business in the City. The Rule Nisi was moved on the 26th day of May, 1911. It was granted upon four distinct grounds, but it is only necessary to refer to one of these: "The whole of the profits on which such assessment purports to be based were profits or gains arising from foreign possessions and were received in the City of London and not elsewhere, and were by virtue of Section 108 of the Income Tax Act, 1842, assessable by the Commissioners acting for the City of London and not elsewhere." At the hearing before the Divisional Court an application was made to amend the above ground by inserting a reference to Section 106 of the Act of 1842. This application was refused. Section 106 is so material on the point of jurisdiction that it is impossible to decide the question of jurisdiction without reference to it. I fail to understand how Section 108 can be construed apart from Section 106. In the Court of Appeal the amendment was allowed, but each party was left to bear his own costs there and below. The question whether prohibition will lie has not been argued, but I entertain no doubt that it is an appropriate remedy if the Kensington Commissioners have acted without jurisdiction.

The case made on behalf of the Appellants is competently expressed in the reasons stated in their case. It is said that upon the true construction of the sections of the Income Tax Acts relating to the machinery of assessment the right to demand returns and to make assessments resides in the Commissioners of the place of residence of the person to be assessed. The word "assessment" is used in different parts of Income Tax Acts with different meanings, but if to make assessments is used in this passage as an equivalent to charges to the duties contained in Schedule D, I think that this reason cannot be maintained. Throughout the Acts there is distinction between the right to demand returns and obtain information and the power to charge, and, for the reasons hereinafter stated, there is in my opinion no general power to charge to duties under Schedule D to be found in any of the sections of the Income Tax Acts, 1842, before

Section 106. I cannot assent to the argument that a power to charge can be found by implication in the previous sections, and obvious difficulties would arise if different bodies of Commissioners were empowered to charge independently of one another, and not improbably at different figures. It is stated in further reason that the jurisdiction to charge is not exclusive and that it is the scheme of the Act, that in some cases a right to charge is possessed by two sets of Commissioners, and that in the present case this jurisdiction has vested both in the Commissioners of the place of residence and in the Commissioners of the place of trade. The provisions of the Act are so complicated that it may be that in some cases a right to assess is possessed by two sets of Commissioners, but in the present case I can find no such power in the Commissioners of the place of residence, and the Kensington Commissioners, in my opinion, have acted without jurisdiction.

Sir Robert Finlay in his exhaustive argument called attention to Sections 46-50 and Sections 52, 55, 106, 108, 110, 111, 112, 113, 118, 131, and 171 of the Income Tax Act, 1842. Sections 46-50 deal with the appointment of assessors and the giving and delivery of notices in the manner within the time mentioned. The assessors have no power in this respect outside the town, parish, or place for which they act, and the Commissioners cannot give them authority outside the territorial limits of their own jurisdiction. At the end of Section 48 the Commissioners are ordered to assess or cause to be assessed in the manner in the Act directed every person refusing or neglecting to make out the required lists, declarations, or statements. It is difficult to say whether an assessment so made would charge to the duties contained in Schedule D, but the provision is only operative in the case of a refusal or neglect to make out the required lists, declarations, or statements, and has no application in the present case. Section 52 required the person chargeable to return the amount of the profits or gains arising to such person from all and every the sources chargeable under the Act. The section contains no power of charging, and there is a clear difference between requiring duplicate returns and vesting a jurisdiction to charge in two different bodies. Section 55 imposes a heavy penalty on persons neglecting to deliver any list, declaration, or statement within the time limited by notice. None of these earlier sections to which the attention of your Lordships was directed confers a general power to charge the duties under Schedule D and I agree with Lord Justice Pickford that until Section 106 is reached there is no section which states in what district a person shall be charged to the duties contained in Schedule D, with the doubtful exception in the case of a neglect or refusal to make the required returns under Section 48.

Sections 106 and 108 direct by what Commissioners persons shall be charged or chargeable to the duties contained in Schedule D. I think that the sections are, and are intended to be, exhaustive. Section 106 deals with four classes of persons. First, a householder not engaged in any trade, manufacture, adventure

or concern, or any profession, employment or vocation, is charged by Commissioners acting for the parish or place where his dwelling-house shall be situate. Secondly, every person engaged in any trade, manufacture, adventure or concern, or any profession, employment or vocation, is chargeable where such trade, manufacture or concern is carried on, or where such profession, employment or vocation is exercised, whether wholly or in part only, in the United Kingdom. Thirdly, persons not being householders nor engaged in any trade, &c., are charged by the Commissioners acting for the parish or place where they shall ordinarily reside, and fourthly, persons not thereinbefore described are charged by the Commissioners acting for the parish or place where such persons shall reside at the time of beginning to execute the Act in each year by giving such general notices as are mentioned, or shall first come to reside after the time for giving such general notices. I doubt whether there is any difference between the words "shall be chargeable" in the case of persons engaged in trade and the expression "shall be charged" used with regard to the other classes of persons. In any case, I cannot read the words "shall be chargeable" as equivalent to "may be charged." Should, however, this be the meaning, as contended by Sir Robert Finlay, it would still be necessary for the Appellants to show that they had jurisdiction to charge the Respondent under the powers conferred on them by Statute. The question remains whether a subsequent section of the Act of 1842 or subsequent legislation has given a power to the Appellants to charge the Respondent to duties contained under Schedule D. Section 108 provides for the charging of duties on profits of foreign or colonial possessions or securities. The Divisional Court construed Section 108 as only applicable to a case in which the taxpayer has exercised an option of sending his statement for assessment to the Commissioners acting respectively for London, Bristol, Liverpool and Glasgow. The Court of Appeal did not dissent from this view but based their decision on Section 106. There are later words in the section which appear to direct that the duties on profits from foreign possessions shall be charged by the Commissioners named and at one place only. Whatever may be the true meaning of Section 108, it gives no jurisdiction to the Appellants, and cannot be relied on by them to support their claim to charge the Respondent to the duties contained in Schedule D.

The next section on which reliance was placed is Section 110. This section provides that every person having two residences or carrying on any trade or exercising any profession in different parishes, places, or in any place different from the place of his ordinary residence, shall, if required by the respective Commissioners, deliver at each such parish or place, the like list, declaration and statement, as he is required to deliver in the parish or place where such person ought to be charged, but shall not be liable to any double charge by reason thereof. It was argued for the Appellants that this section would give them jurisdiction to charge the Respondent. I think that the section has

the contrary meaning and that the obligation to deliver in different parishes or places, lists, declarations, or statements is subject to the limitation that there is no liability to be charged in more than one place, such place being where such person ought to be charged under Sections 106 and 108.

Sections 111-117 relate to assessments made by the Additional Commissioners, not giving them wider jurisdiction than the General Commissioners in the district in which they act, and by Section 118 an aggrieved person may appeal from any assessment made by the Additional Commissioners to the Commissioners for General Purposes in the district where the assessment has been made. The power given by Section 131 to persons chargeable under Schedule D to require the proceedings in order to an assessment to be had and taken before Commissioners for Special Purposes instead of the Additional Commissioners or the Commissioners for General Purposes, does not apply in the present case.

The only remaining section on which reliance was placed is Section 171. This section appears to me to confirm the construction of Section 106 as already stated. It provides that whenever any person who has been assessed or by any error or mistake is again assessed for the same cause and on the same account and for the same year, he may apply to the Commissioners for General Purposes acting for the division or place for which he shall have been so assessed by error or mistake, for the purpose of being relieved from such double assessment, and such Commissioners shall, if satisfied, vacate such assessment. This section appears to me to show that the Act only contemplates a second assessment as taking place by error or mistake. It is inconsistent with the contention that a trader may be charged in different places by different Commissioners, whose determination as to the amount might differ in each case. I agree with the construction placed on this by Lord Justice Pickford.

Reference was further made to Sections 52 and 56 of the Taxes Management Act, 1880, but in my opinion neither of these sections gives any jurisdiction to Commissioners to make a charge to duties under Schedule D. These sections refer to procedure in cases where jurisdiction to charge has already been conferred. The steps to be followed in this procedure are summarised in Form 2 of the Second Schedule of the Act. The General Commissioners, if satisfied that assessments have been made to charge the properties and persons with the full duty which ought to be charged, sign and allow such assessments, and the assessments so signed and allowed finally determine the amount on which the person chargeable is charged to duties in Schedule D.

My Lords, in my opinion, the Appellants had no jurisdiction to charge the Respondent to duties under Schedule D, and the Appeal should be dismissed with costs.

Mr. Edwardes Jones.—My Lord, I apply that the Order of the Court of Appeal may be varied to the extent of our having the costs in the First Court below and in the Court of Appeal. Your Lordship will remember that the Court of Appeal, on the

ground that we required amendment under Section 108, deprived us of any costs. Your Lordships' House, where there is an Appeal and the Judgment below is affirmed, does deal with the costs if your Lordships think fit to do so; and I submit that there is no reason now why we should not have the costs in the other Courts.

Questions put.

That the Order appealed from be reversed.

The Not Contents have it.

That the Order appealed from be affirmed and this Appeal dismissed with costs here and below.

The Contents have it.
