

VOL. VII—PART VII

NO. 413—IN THE HIGH COURT OF JUSTICE (KING'S BENCH DIVISION)—
1ST AND 8TH JULY, 1918

COURT OF APPEAL—27TH AND 28TH FEBRUARY, AND 2ND APRIL, 1919

HOUSE OF LORDS—17TH MAY, 1920

- (1) A. W. WILLIAMS (SURVEYOR OF TAXES) v. W. M. G. SINGER AND OTHERS⁽¹⁾
(2) A. F. POOL (SURVEYOR OF TAXES) v. ROYAL EXCHANGE ASSURANCE⁽¹⁾

Income Tax, Schedule D—Foreign dividends not remitted to United Kingdom—British trustees of foreign beneficiaries.

In each of these Cases the Respondents, who were resident in the United Kingdom, were trustees under a British trust for a cestui que trust who was resident and domiciled out of the United Kingdom. As trustees they held shares in a foreign company, in the books of which they were registered as the owners of the shares. The dividends on the shares were under mandate of the trustees paid direct to the account of the cestui que trust abroad and no part of the dividends was received in the United Kingdom.

Held, that the Respondents were not assessable to Income Tax in respect of the dividends arising abroad.

CASES

(1)

Stated under the Taxes Management Act, 1880, Section 59, by the Commissioners for the Special Purposes of the Income Tax Acts for the opinion of the King's Bench Division of the High Court of Justice.

1. At a meeting of the Commissioners for the Special Purposes of the Income Tax Acts held on 1st February, 1918, for the purpose of hearing Appeals, Washington Merritt Grant Singer, Sir George Alexander Touche, and John Ferguson (hereinafter called the Respondents), appealed against an assessment of £60,000, in respect of Foreign Possessions and an assessment of £5,000 in respect of Foreign Securities for the year ended 5th April, 1916, made upon them by the Additional Commissioners for the Division of New Sarum, in the County of Wiltshire, under 16 and 17 Vict. cap. 34, Section 2, Schedule D.

2. The greater part of the income in respect of which the assessments are made is derived from shares in a Company, incorporated under American Law, called the Singer Manufacturing Company of New Jersey, and the decision in respect of such income is to govern the liability of the Respondents in respect of all other income from foreign securities and possessions not remitted to the United Kingdom which they hold on the same title as the said shares.

⁽¹⁾ Reported K.B.D. [1918] 2 K.B. 749; C.A. [1919] 2 K.B. 108; and H.L. [1920] in 36 T.L.R. 661.

3. Such shares passed to Mr. Adam M. Singer, Mr. W. M. G. Singer and Mr. James Robertson (all of whom were domiciled and resident in the United Kingdom) under an assignment of the same to them by the Princesse de Polignac contained in an Indenture dated 26th July, 1887 (a copy of which is annexed hereto*) made between Winnaretta Eugenie Singer of the first part, Louis Marie Wilfred Prince de Scey Montbeliard of the second part, Adam Mortimer Singer and Washington Merritt Grant Singer and James Robertson of the third part, being the settlement on the marriage of the Prince and Princess de Scey Montbeliard, subject to the trusts therein expressed. Such trusts were varied by two Indentures dated 13 December, 1893 (copies of which are annexed hereto*) made as to one between Winnaretta Eugenie Singer (formerly the wife of Louis Marie Wilfred Prince de Scey Montbeliard, but who since the dissolution of her marriage with him had resumed her maiden name of Singer) of the first part and Edmond Melchior Jean Marie Prince de Polignac of the second part, Adam Mortimer Singer, Washington Merritt Grant Singer and James Robertson of the third part, being the Settlement on the marriage of the Prince and Princesse de Polignac, and as to the other between Winnaretta Eugenie Singer (formerly the wife of Louis Marie Wilfred Prince de Scey Montbeliard) of the first part, Edmond Melchior Jean Prince de Polignac of the second part, Adam Mortimer Singer and Washington Merritt Grant Singer and James Robertson of the third part, being the Release of Power of Appointment contained in Settlement dated 26 July, 1887. The said shares became vested in Mr. W. M. G. Singer, Sir G. A. Touche and Mr. J. Ferguson (all of whom were and still are domiciled and resident in the United Kingdom) by virtue of an Indenture of 31 July, 1913 (a copy of which is annexed hereto*) made between Winnaretta Eugenie Princesse Edmond de Polignac of the first part, Adam Mortimer Singer of the second part, Washington Merritt Grant Singer of the third part and George Alexander Touche and John Ferguson of the fourth part, being an appointment of new trustees, subject to the trusts created by the Indenture of 26th July, 1887, and to the two Indentures dated 13th December, 1893.

4. The said Mr. W. M. G. Singer, Sir G. A. Touche and Mr. John Ferguson are registered in the books of the Singer Manufacturing Company of New Jersey as, and are in law, the owners of the shares.

5. The said Mr. W. M. G. Singer, Sir G. A. Touche, and Mr. John Ferguson have given a mandate and instructions to the Bank of British North America, New York, to collect and receive the dividends of the aforesaid shares in the Singer Manufacturing Company of New Jersey and to credit them to the account of Princesse de Polignac at the said bank in New York. No part of the said dividends have at any relevant time been remitted to or received in the United Kingdom.

6. From other investments which the Respondents hold in like manner they receive dividends and interest in the United Kingdom, but in respect of such income no question arises, as the assessments under appeal relate solely and exclusively to income not received in the United Kingdom.

7. The said Princesse de Polignac did not, during the year of assessment, possess any place of residence in the United Kingdom, nor was she ever, during such year, in the United Kingdom. She is a French subject, and she is not

* Omitted from the present print.

domiciled in the United Kingdom. It was not contended that she was resident in the United Kingdom at any relevant time.

8. Counsel for the Respondents claimed to have the assessments under appeal discharged on the following grounds:—

- (a) It is admitted that, prior to 1914, the income assessed, not having been received in the United Kingdom, was not liable to assessment. Liability is sought to be established under Section 5 of the Finance Act, 1914, and it is only under this Section that liability can possibly exist.
- (b) Notwithstanding the said Section 5 it is still necessary to refer to Section 2 of the Income Tax Act, 1853, in order to ascertain what income is liable to taxation. Under that Section liability extends (1) to annual profits or gains arising or accruing to any person residing in the United Kingdom, and (2) to annual profits or gains arising or accruing to any person although not resident in the United Kingdom from any property whatever in the United Kingdom.
- (c) The income assessed in this instance is not the income of any person residing in the United Kingdom nor does it arise from property in the United Kingdom.
- (d) Under Section 2 of 5 and 6 Vict. cap. 80 and Section 10 of the Income Tax Act, 1853, the Crown does not seek to levy Income Tax on Foreign Dividends which, although actually payable in the United Kingdom by paying agents resident in the United Kingdom, are in fact the income of, and are remitted to, persons not so resident. If when the moneys actually are received in the United Kingdom and sent out of it again non-liability is admitted, still more should it be admitted where moneys do not reach the United Kingdom at all.
- (e) Apart from the foregoing contentions Section 5 provides that, in computing the amount of liability, a deduction shall be made for any annual payment payable out of the income to a person not resident in the United Kingdom. In this instance the Princess, who is not resident in the United Kingdom, is entitled to the whole of the income for life, and is entitled to dispose of the property by will or codicil, being in the position of an absolute owner who could if so desirous put an end to the trust altogether.
- (f) By its proviso, Section 5 is not applicable to a person who satisfies the Commissioners of Inland Revenue that he is not domiciled in the United Kingdom, and it is admitted by the Crown that the Princess is not so domiciled.
- (g) Sections 41, 42, and 53 of the Income Tax Act, 1842, and other Sections in later Acts all show that the tax is intended to be levied on the person who actually enjoys the income, the sections themselves not being charging sections, but merely machinery by which to give effect to the intention of the charging sections. The Princess not being domiciled in the United Kingdom and the moneys not being received in the United Kingdom no liability would exist even though she resided in the United Kingdom. The mere fact that the trustees through whom the moneys reach the Princess are resident

in the United Kingdom does not create liability. Their liability is not greater than the liability of the Princess would be if she were resident in the United Kingdom.

9. Counsel for the Surveyor of Taxes resisted the claim to exemption put forward on behalf of the Respondents, contending *inter alia* :—

- (a) That the Respondents, being the legal owners of the said shares and entitled to receive the profits and gains arising or accruing therefrom, and being domiciled and resident in the United Kingdom, are assessable to Income Tax in respect of such profits and gains under the provisions of Section 5 of the Finance Act, 1914.
- (b) That the proviso in that Section does not apply, inasmuch as the person therein referred to can only be the person assessed, or liable to assessment.
- (c) That the Princess is not a person entitled to an "annual payment payable out of the income."

10. The following Cases were referred to by Counsel during the hearing :—

Hill v. Gregory [1912] 2 K.B. 61 ; 6 T.C. 39.

Fry (Surveyor of Taxes) v. Shiels' Trustees [1915] S.C. 159 ; 6 T.C. 583.

Rex v. Commissioners of Taxes for the Newmarket Division of Suffolk and the Copthorne Division of Surrey [1916] 1 K.B. 788 ; 7 T.C. 49.

Marion Brooke (formerly Marion Price) v. The Commissioners of Inland Revenue.⁽¹⁾

11. At the conclusion of the hearing of the Appeal there was a division of opinion among us, one of our number considering that, subject to any necessary adjustment of figures, the assessment should be confirmed. The remaining two were of the contrary opinion, holding, for the following reasons, that the liability of the Respondents, being trustees, is neither greater nor less than the liability of the Princess would be if she were resident in the United Kingdom.

In reply to a question put by us at the hearing, Counsel for the Surveyor of Taxes admitted that the Respondents have no interest whatever in the income assessed other than such as arises from the fact that they are trustees, who hold the legal estate, and receive and distribute the said income under and in accordance with the trust deed. This being so we were of opinion that the mere omission on the face of the assessment sheets of words explicitly stating that the Respondents are trustees did not in any way affect the question to be determined by us, that question being the same as it would have been had the description of the person assessed as set out on the assessment sheets included words denoting that the Respondents are in fact trustees, viz., whether legal ownership by trustees can render them liable to a greater extent than the liability of the person actually enjoying the trust income.

We had then to consider the effect of the following enactments :—

As to foreign securities and possessions,

Section 100, Schedule D, Cases 4 and 5 of the Income Tax Act, 1842, and Section 5 of the Finance Act, 1914,

(1) 7 T.C. 261.

As bearing on the liability of trustees :—

Sections 41, 42, and 53 of the Income Tax Act, 1842, Section 71 (2) of the Finance (1909-10) Act, 1910, and Section 13 of the Revenue Act, 1911.

By Section 100, Schedule D, Cases 4 and 5 of the Income Tax Act, 1842, income from foreign securities and foreign possessions was made liable to Income Tax only in so far as it was received in the United Kingdom, but Section 5 of the Finance Act, 1914, enacted—

“Income Tax in respect of income arising from securities, stocks, shares, or rents in any place out of the United Kingdom shall, notwithstanding anything in the rules under the fourth and fifth case in section one hundred of the Income Tax Act, 1842, be computed on the full amount of the income, whether the income has been or will be received in the United Kingdom or not, subject in the case of income not received in the United Kingdom to the same deductions and allowances as if it had been so received and to the deduction (where such a deduction cannot be made under any other provision of the Income Tax Acts) of any sum which shall have been paid in respect of Income Tax in the place where the income shall have arisen, and to a deduction on account of any annual interest or any annuity or other annual payment payable out of the income to a person not resident in the United Kingdom. . . .”

“Provided that this section shall not apply in the case of a person who satisfies the Commissioners of Inland Revenue that he is not domiciled in the United Kingdom, or that, being a British subject, he is not ordinarily resident in the United Kingdom.”

Section 41 of the Income Tax Act, 1842 (as amended by Section 5 of the Income Tax Act, 1853)—omitting certain words not bearing directly on the point now under consideration—enacts that “the trustee, guardian, tutor, curator or committee of any person, being an infant, or married woman, lunatic, idiot, or insane, and having the direction, control, or management of the property . . . of such . . . married woman . . . whether such . . . married woman . . . shall reside in the United Kingdom or not, shall be chargeable to the said duties in like manner and to the same amount as would be charged if such . . . married woman were sole . . .”; and the latter part of the Section dealing specially with persons not resident in the United Kingdom enacts that “any person not resident in the United Kingdom, whether a subject of her Majesty or not, shall be chargeable in the name of such trustee . . . having the receipt of any profits or gains arising as herein mentioned, and belonging to such person, in the like manner and to the like amount as would be charged if such person were resident in the United Kingdom, and in the actual receipt thereof; and every such trustee . . . shall be answerable for the doing of all such acts . . . as shall be required to be done by virtue of this Act in order to the assessing of any such person”

This Section expressly limits the liability of trustees to that of the *cestui que trust*. The view that it is merely a machinery Section for bringing home the charge under the Acts to the *cestui que trust* is confirmed by opinions expressed in the Cases of—

Tischler and Company v. Aphorpe ([1885] 52 L.T. 814; 33 W.R. 548; 49 J.P. 372; 2 T.C. 89), and *Rex v. Commissioners of Taxes for the Divisions of Newmarket, Suffolk and Copthorne, Surrey*. (K.B.D. and C.A. [1916] 1 K.B. 788; 7 T.C. 49).

Section 42 of the Income Tax Act, 1842, is as follows :—

“ Provided always that no trustee who shall have authorised the receipt of the profits arising from trust property by the person entitled thereunto, or by the agent of such last-mentioned person, and which person shall actually receive the same under such authority . . . who shall return a list in the manner hereinafter required of the name and residence of such person, shall be required to do any other act for the purpose of assessing such person. . . . ”

The enactment that no liability to assessment at all shall attach to trustees who shall authorise the receipt of the profits arising from trust property by the person entitled thereunto, or by the agent of such last-mentioned person, appears to us wholly inconsistent with the supposition that the liability of a trustee may be greater than the liability of a sole beneficiary in possession resident in the United Kingdom as, if such had been the intention of Parliament, it is, to say the least, improbable that a Section would have been inserted providing an easy means of evading the larger liability.

The next Section of the 1842 Act to be considered is Section 53. This Section enacts :—

- (1) that in the making of Income Tax assessments the liability of a trustee on his own account is to be kept separate and distinct from his liability as trustee, and
- (2) that where two or more trustees shall be liable to be charged for the same person, one return only shall be required, and one assessment only shall be made.

From these two provisions we infer that the liability of *cestuis que trust* resident in the United Kingdom is the real object borne in mind, and not the liability of the persons in whom the legal estate of trust funds is vested as distinct from the liability of the *cestuis que trust*.

The next point that arises for consideration is whether such an inference is in conflict with the provisions of Section 71 (2) of the Finance (1909–10) Act, 1910, as amended by Section 13 of the Revenue Act, 1911.

Section 71 (2) of the Finance (1909–10) Act, 1910, is an exempting Section, applicable only to persons *not* resident in the United Kingdom. If we are correct in holding that the liability of trustees is not less than the liability of a *cestui que trust* who *is* resident in the United Kingdom it is clear that, if the Respondents, as trustees, were in receipt of income of the class with which the Section deals, they could not claim exemption under its provisions and the Section is not in conflict with the aforesaid inference.

Section 13 of the Revenue Act, 1911, was in our opinion intended to give relief to certain *cestuis que trust* who, although *not* resident in the United Kingdom, were still outside the exemption granted by the aforesaid Section 71 (2).

Assuming—

- (1) That a trustee is liable to assessment, and
- (2) That such liability extends as far as the liability of a *cestui que trust* resident in the United Kingdom, it follows that, in order to entitle a non-resident *cestui que trust* to the intended exemption, one or both of the above two barriers to the attainment of that object must be removed. This is precisely what Section 13 does—it enacts that, in so far as it applies, there shall be no liability on the part of the trustee.

Again as Schedule D, Section 100, of the Income Tax Act, 1842, enacts "The said . . . duties . . . shall be charged annually on and paid by the persons . . . receiving or entitled unto the same," and the aforesaid Section 13, by enacting only that the beneficiary in possession there dealt with shall be deemed to be the person owning the securities for the purpose of the aforesaid Section 71, treats beneficiaries as persons "receiving or entitled to the income", notwithstanding the fact that the legal estate is not vested in such persons, the view that liability to charge necessarily follows ownership of the legal estate apart from beneficiary rights appears to us unwarranted.

In our opinion the underlying idea in every Section dealing with trustees is to secure payment to the Revenue of such sums as the persons actually enjoying the income of the trust property may be liable to pay.

12. Pursuant to the opinion of the majority of our number we discharged the assessments.

13. The Appellant immediately upon the determination of the Appeal declared to us his dissatisfaction therewith as being erroneous in point of law, and in due course required us to state a Case for the opinion of the High Court pursuant to the Taxes Management Act, 1880, Section 59, which Case we have stated, and do sign accordingly.

G. F. HOWE, W. J. BRAITHWAITE, P. WILLIAMSON,	}	Commissioners for the Special Purposes of the Income Tax Acts.
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Windsor House,
83, Kingsway,
London, W.C.2.

28th May, 1918.

(2)

Stated under 43 & 44 Vict. Ch. 19, Sec. 59 (1) by the Commissioners for the Special Purposes of the Income Tax Acts for the opinion of the King's Bench Division of the High Court of Justice.

1. At a Meeting of the Commissioners for the Special Purposes of the Income Tax Acts, held at York House, Kingsway, London, W.C., on 24th November, 1916, for the purpose of hearing Appeals, the Royal Exchange Assurance (hereinafter called the Respondents) appealed against an assessment of £2,015 for the year ended 5th April, 1915, and an assessment of £2,018 for the year ended 5th April, 1916, made upon them "as Trustees under Will "of J. P. Mellor (deceased) for beneficiary Mrs. H. P. Munthe" by the District Commissioners of Taxes for the City of London under 16 & 17 Vict. Cap. 34, Sec. 2, Schedule D, in respect of foreign possessions. (Copies of the said assessments and of the notice of appeal are annexed and form part of this Case.)*

* Omitted from the present print.

2. At the hearing of the Appeal, an affidavit made by Mrs. H. P. Munthe in Italy, to the effect that her husband was and is a Swedish subject, and that she is not, and has not since her marriage been, domiciled in the United Kingdom, was exhibited to us, together with a certified extract from the Marriage Register of Paddington Parish Church, proving Mrs. Munthe's marriage there on 16th May, 1907; and the following facts were proved to our satisfaction:—

- (a) That the profits from foreign possessions in respect of which the assessments under appeal have been made arise from American securities, stocks and shares which have been set aside and appropriated under the said Will as part of the share in which Mrs. Munthe is interested.
- (b) That the Respondents, a body incorporated under the laws of England carrying on and having its chief place of business in London, hold, together with their co-trustee hereinafter mentioned, the said securities, stocks and shares as trustees under a trust created by the Will of Mrs. H. P. Munthe's father, the late Mr. J. P. Mellor. Their duties in relation thereto are such as arise under the terms of the said Will. By the said Will Mr. William Lockett Agnew and the Respondents were appointed Trustees, and both are acting, but it is agreed between the parties that the assessments under appeal shall not be impeached on the ground that Mr. Agnew's name is omitted. In the Will the testator refers to the two trustees as "my trustees"—they are directed to divide the residue of the estate into two equal parts and to "stand possessed of (one) moiety for the benefit of my daughter Hilda Pennington Mellor" and to "pay the income of the investments thereof" to her during her life, with remainder to her children, subject to the limitations and conditions appearing in the Will.
- (c) That Mrs. H. P. Munthe is the said daughter, and is sole beneficiary in possession of the said income.
- (d) That Trustees keep all the securities, stocks, and shares the subject of the trusts of the said Will in England in the vaults of their bankers in London. As regards such securities, stocks and shares as are held by the Trustees as representing the moiety in which Mrs. H. P. Munthe is interested so far as they are American securities, stocks, and shares, the coupons, dividend warrants, &c., necessary for collecting the profits arising therefrom are sent by the said bankers in London of the trustees to the New York office of the Respondents who collect such profit on behalf of the trustees. Such profits, the subject of the assessments in question having been so received by the Respondents in America, are paid over to Mrs. H. P. Munthe's bankers in America, and have not, nor has any part thereof, been received in the United Kingdom.
- (e) That Mrs. H. P. Munthe does not reside in the United Kingdom.
- (f) That the assessments appealed against were not made on the Royal Exchange Assurance simply, but on the Royal Exchange Assurance as trustees for Mrs. H. P. Munthe.

3. A copy of the said Will is annexed and forms part of this Case.*

4. On the foregoing facts and the several statutory enactments relating to trustees and to income arising from foreign securities and possessions, it was contended on behalf of the Respondents :

- (a) That the Sections in the Act of 1842 authorising the assessment of trustees are machinery only, and that their liability as trustees is not greater than the liability of Mrs. H. P. Munthe would be if she were resident in the United Kingdom and in the actual receipt of the income forming the subject of assessment.
- (b) That the said income, not having been received in the United Kingdom, no liability to assessment could arise unless under Section 5 of Finance Act, 1914.
- (c) That in this case no liability exists under that Section, as Mrs. H. P. Munthe is not domiciled in the United Kingdom.
- (d) That the Respondents as trustees are therefore not liable to assessment and that the assessments made upon them should be discharged.

5. On behalf of the Revenue it was contended that, inasmuch as the Respondents are the owners in law of the said securities, stocks, and shares, and the income arising therefrom is received by them, they are correctly assessed and are liable to pay the duty charged by the said assessments.

6. Having at the hearing of the appeal held over our decision, we subsequently considered the effect of the following enactments :—

- (a) As to foreign securities and possessions—Sec. 100, Schedule D, Cases 4 and 5 of the Income Tax Act, 1842, and Sec. 5 of the Finance Act, 1914.
- (b) As bearing on the liability of trustees :—
Sections 41, 42 and 53 of the Income Tax Act, 1842.
Section 71 (2) of the Finance (1909–10) Act, 1910, and Section 13 of the Revenue Act, 1911.

and have arrived at the conclusions hereinafter set out.

- (a) By Section 100, Schedule D, Cases 4 and 5 of the Income Tax Act, 1842, income from foreign securities and foreign possessions was made liable to Income Tax only in so far as it was received in the United Kingdom, but Section 5 of the Finance Act, 1914, enacted :—
“ Income Tax in respect of income arising from securities, stocks, shares, or rents in any place out of the United Kingdom shall, notwithstanding anything in the rules under the fourth and fifth case in section one hundred of the Income Tax Act, 1842, be computed on the full amount of the income, whether the income has been or will be received in the United Kingdom or not . . . ”
“ Provided that this section shall not apply in the case of a person who satisfies the Commissioners of Inland Revenue that he

* Omitted from the present print.

“is not domiciled in the United Kingdom, or that, being a British subject, he is not ordinarily resident in the United Kingdom.”

- (b) Section 41 of the Income Tax Act, 1842 (as amended by Section 5 of the Income Tax Act, 1853) enacts—omitting certain words not directly applicable to this Case—that “the trustee, guardian, tutor, curator or committee of any person, being an infant, or married woman, lunatic, idiot, or insane and having the direction, control or management of the property . . . of such . . . married woman . . . whether such . . . married woman . . . shall reside in the United Kingdom or not, shall be chargeable to the said duties in like manner and to the same amount as would be charged if such . . . married woman were sole . . .”; and the latter part of the section dealing specially with persons not resident in the United Kingdom enacts that “any person not resident in the United Kingdom whether a subject of her Majesty or not, shall be chargeable in the name of such trustee . . . having the receipt of any profits or gains arising as herein mentioned, and belonging to such person, in the like manner and to the like amount as would be charged if such person were resident in the United Kingdom, and in the actual receipt thereof; and every such trustee . . . shall be answerable for the doing of all such acts . . . as shall be required to be done by virtue of this Act in order to the assessing of any such person”

This Section expressly limits the liability of trustees in the manner contended for by the Respondents.

Section 42 of the Income Tax Act, 1842, is as follows :—

“Provided always that no trustee who shall have authorised the receipt of the profits arising from trust property by the person entitled thereunto, or by the agent of such last-mentioned person, and which person shall actually receive the same under such authority . . . who shall return a list in the manner hereinafter required of the name and residence of such person, shall be required to do any other act for the purpose of assessing such person”

The enactment that no liability to assessment at all shall attach to trustees who shall authorise the receipt of the profits arising from trust property by the person entitled thereunto, or by the agent of such last-mentioned person, appears to us wholly inconsistent with the supposition that the liability of a trustee may be greater than the liability of a sole beneficiary in possession resident in the United Kingdom, as, if such had been the intention of Parliament, it is, to say the least, improbable that a Section would have been inserted providing an easy means of evading the larger liability.

The next Section of the 1842 Act to be considered is Section 53. This Section enacts :—

- (1) that in the making of Income Tax assessments the liability of a trustee on his own account is to be kept separate and distinct from his liability as trustee, and

- (2) that where two or more trustees shall be liable to be charged for the same person, one return only shall be required, and one assessment only shall be made.

From these two provisions we infer that the liability of *cestuis que trust* resident in the United Kingdom is the real object borne in mind, and not the liability of trustees as distinct from the liability of the *cestuis que trust*.

The next point that arises for consideration is whether the contention put forward by the Respondents is in conflict with the provisions of Section 71 (2) of the Finance (1909-10) Act, 1910, as amended by Section 13 of the Revenue Act, 1911.

Section 71 (2) of the Finance (1909-10) Act, 1910, is an exempting Section, applicable only to persons *not* resident in the United Kingdom. As the Respondents admit that their liability as trustees is not less than the liability of a *cestui que trust* who *is* resident in the United Kingdom it is clear that if they were in receipt, as trustees, of income of the class with which the Section deals, the acceptance of their contention would not entitle them to claim exemption under its provisions, and that the Section contains nothing that conflicts with the said contention.

Section 13 of the Revenue Act, 1911, was in our opinion intended to give relief to certain *cestuis que trust* who, although *not* resident in the United Kingdom, were still outside the exemption granted by the aforesaid Section 71 (2). From the contention of the Respondents, admitting as it does the two points,—

- (1) That a trustee is liable to assessment, and
- (2) That such liability extends as far as the liability of a *cestui que trust* resident in the United Kingdom,

it follows that, in order to entitle a non-resident *cestui que trust* to the intended exemption, one or both of the above two barriers to the attainment of that object must be removed. This is precisely what Section 13 does—it enacts that, in so far as it applies, there shall be no liability on the part of the trustee. There is nothing in this that militates against the contention of the Respondents.

In our opinion the underlying idea in every Section dealing with trustees is to secure payment to the Revenue of such sums as the persons actually enjoying the income of the trust property may be liable to pay.

Lastly, we considered the contention of the Appellant as set out in paragraph 5 hereof. As to this, we were of opinion that as the assessments appealed against are made upon the Respondents as trustees, the question of whether or not they are liable otherwise than as trustees did not arise for determination by us.

7. On 19th December, 1916, we informed the Respondents that we would discharge the assessments on production of a certificate from the Commissioners of Inland Revenue or other conclusive evidence that those Commissioners were satisfied that Mrs. H. P. Munthe was not domiciled in the United Kingdom.

8. The Respondents having obtained from the Commissioners of Inland Revenue a certificate to the required effect we discharged the assessments on 6th February, 1917.

9. The Appellant immediately upon the determination of the Appeal gave notice of dissatisfaction with our decision as being erroneous in point of law

and in due course required us to state a Case for the opinion of the High Court pursuant to 43 & 44 Vict. ch. 19 sec. 59 (1) which Case we have stated and do sign accordingly.

G. F. HOWE.	}	Commissioners for the Special Purposes of the Income Tax Acts.
MARK STURGIS.		

York House,
Kingsway,
London, W.C.2.

9th July, 1917.

The Cases were argued on the 1st July, 1918, before Mr. Justice Sankey, when the Solicitor-General (Sir Gordon Hewart, K.C., M.P.) and Mr. T. H. Parr appeared as Counsel for the Appellants, and Mr. Disturnal, K.C., and Mr. A. M. Latter for the Respondents. Judgment was delivered on the 8th July, 1918, against the Crown, with costs.

JUDGMENT

Sankey, J.—This is a Case stated under Section 59 of the Taxes Management Act by the Commissioners for the Special Purposes of the Income Tax Acts for the opinion of this Court, and raises the question whether certain gentlemen who reside in England and who are the trustees of a French subject, who is not domiciled in the United Kingdom, can be made liable to English Income Tax in respect of dividends on shares of an American company, which dividends are never remitted to the trustees in England, but are sent direct from America to the French subject.

The facts are as follows :—The income in question is derived from shares in a company incorporated under American law called the Singer Manufacturing Company of New York. The Respondents are trustees of the Princesse de Polignac as stated in paragraph 3 of the Case. They are registered in the books of the Singer Company as, and they are in law, the owners of the shares. They gave instructions to the Bank of British North America, in New York, to collect and receive the dividends on the shares and to credit them to the account of the Princesse at the said bank in New York.

No part of the dividends has at any time been remitted to or received in the United Kingdom. The Princesse did not during the year of assessment possess any place of residence in the United Kingdom, nor was she during such year in the United Kingdom. She is a French subject and is not domiciled in the United Kingdom.

The Surveyor of Taxes contended that the Respondents being legal owners of the shares and entitled to receive the profits and gains arising or accruing therefrom and, being domiciled and resident in the United Kingdom, are assessable to Income Tax in respect of such profits and gains under the provisions of Section 5 of the Finance Act, 1914.

(Sankey, J.)

The Commissioners decided against the contention of the Surveyor and the Crown appeal from that decision in the present Case. The Solicitor-General, who appeared for the Appellants, stated the point at issue very concisely when he said that the question is whether the liability for tax on investments held by British trustees resident in the United Kingdom on behalf of a non-resident *cestui que trust*, where such proceeds are never remitted to the United Kingdom, is to be determined by the domicile of the trustees or by that of the *cestui que trust*.

A very large number of Sections in a very large number of taxing Acts and a great number of Cases were referred to, and I must be allowed to confess that I appreciate the position of those persons who "found no end in wandering mazes lost".

I will, however, endeavour to state as clearly as I can the principles which appear to me to apply to the present circumstances. The Income Tax Acts of 1842 and 1853 are, amongst a number of other matters, directed to two main points:—

- (1) The class of persons to be taxed;
- (2) The class of property to be taxed.

These classes being defined, there are innumerable machinery Sections which regulate the working out of the assessments.

The Solicitor-General drew my attention to the charging Sections, and, referring to the Case of *Rex v. Newmarket Commissioners*⁽¹⁾ ([1916] 1 K.B. 788), argued that these Sections are extremely wide and cover the cases of trustees like the present ones who are the legal owners of the property and are domiciled in England.

The learned Counsel for the Respondents on the other hand contended that persons in the position of the present trustees had never been assessed in like circumstances and that nobody would have thought of assessing them before Section 5 of the Act of 1914 was passed; that liability was sought to be established under that Section, and it was only under that Section that liability could exist, but that when properly considered the Section did not apply.

In my view, it is important to bear in mind the difference between the class of persons who are assessable and the class of income which is assessable. The charging Section is Section 100 of the 1842 Act, and by its 4th and 5th Cases provides (in respect of Schedule D) for the computation of duty from foreign securities and foreign possessions, and Schedule D in the 1853 Act provides for duties: "For and in respect of the annual profits or gains arising "or accruing to any person whatever, whether a subject of Her Majesty or not, "although not resident within the United Kingdom, from any property "whatever in the United Kingdom, or any profession, trade, employment, "or vocation exercised within the United Kingdom and to be charged for "every twenty shillings of the annual amount of such profits and gains."

It will be observed therefore that the Schedule contemplates—

- (1) the payment of Income Tax by persons, whether subjects of His Majesty or not, although not resident in the United Kingdom, and
- (2) the payment of the tax in respect of sums received from foreign securities, or possessions remitted to this country.

⁽¹⁾ 7 T.C. 49.

(Sankey, J.)

Section 41 of the 1842 Act, which is a machinery Section, provides that non-residents are to be charged in the name of their trustee or agent.

It seems clear that non-residents could only be made amenable to the English Income Tax if they could be brought within the ambit of those Sections, and, in my opinion, up to 1914, before a non-resident in the position of the Princesse in this Case could be made liable—

- (1) he must have had a trustee in England,
- (2) the sums received from the securities or possessions must have been remitted to England,

in which event the trustee would have been assessed and liability really imposed through him.

It was then urged by the Crown that Section 5 of the Finance Act, 1914, had altered this position by providing in effect that dividends earned abroad were liable to the English Income Tax whether they were remitted to England or not, and it was contended that the present trustees had been rightly assessed.

The distinction, however, between the classes of persons assessable and the classes of property assessable must still be borne in mind and I am of opinion that Section 5 enlarges the classes of property but does not enlarge the classes of persons liable.

It will be observed that the Section itself starts by saying that Income Tax in respect of "income" arising in any place out of the United Kingdom shall, notwithstanding anything in the Rules under the 4th and 5th Cases in Section 100 of the Income Tax Act, 1842, be computed on the full amount of the income whether the income has been received in the United Kingdom or not. The 4th and 5th Cases refer to property to be charged, as distinguished from persons to be charged, and in like manner I think Section 5 refers to property and not to persons.

Although it is true to say that persons are charged to the Income Tax, it is equally true to say that they are charged because they have property. It is the profits which have to pay—see Lord Salvesen in *Crookston Brothers v. Furtado* (5 T.C. 602), where, referring to Section 41 of the Act of 1842, he says: "The intention of the Statute is not to make the agent personally liable for the Income Tax due by the foreign firm, but only to make him so liable when he has the opportunity of recouping himself out of moneys belonging to the foreign firm". In my opinion, it is not possible to make a trustee liable for Income Tax to be paid out of the moneys of the *cestui que trust* when the *cestui que trust* is himself not liable. The machinery of Section 41 is machinery by which, through a trustee, a person who is liable for Income Tax can be reached. The residence of a trustee is not visited upon the *cestui que trust* so as to make the latter liable for Income Tax when he would not otherwise be so liable.

In my opinion, trustees in the position of the present ones were neither before, nor have they been since, the Act of 1914 liable to pay Income Tax under such circumstances.

In the result the Commissioners were right, and this Appeal must be dismissed with costs.

The second Case, *Pool v. The Royal Exchange Assurance*, follows the Case that I have just referred to, and the result is the same in that Case.

Mr. Disturnal.—In each Case, my Lord, the Appeal will be dismissed with costs?

Sankey, J.—Yes.

The Crown having appealed, the Cases came on for hearing before the Master of the Rolls, and Warrington and Scrutton, L.JJ., on the 27th and 28th March, 1919. The Attorney-General (Sir Gordon Hewart, K.C., M.P.) and Mr. T. H. Parr appeared for the Appellants, and Mr. Disturnal, K.C., Mr. A. M. Bremner, and Mr. A. M. Latter on behalf of the Respondents.

On the 2nd April, 1919, judgment was unanimously delivered against the Crown, affirming the decision of the Court below.

JUDGMENT

The Master of the Rolls.—These two appeals raise the same question, as to the liability of the Respondents, who are trustees, to be assessed to Income Tax. In the one Case the parties assessed are trustees, but the assessment is made upon them individually without reference to any trust. In the other Case, the Royal Exchange Assurance are assessed "as trustees for Mrs. H. P. "Munthe". In my view, this difference is unimportant.

In each Case the income is derived from foreign securities or possessions, and no part of it has been or will be received in the United Kingdom. It arises abroad and is paid to or credited to the account of the beneficiary abroad. In each Case the beneficiary is a foreign subject not domiciled or resident in the United Kingdom. The trustees, however, in each Case are domiciled and resident in the United Kingdom.

The question for decision is whether the liability to Income Tax is to be determined by the domicile of the trustees or by that of the *cestuis que trust*.

The Commissioners for Special Purposes of the Income Tax Acts decided that the liability to Income Tax was determined by the domicile of the beneficiary and they discharged the assessments. Mr. Justice Sankey took the same view and dismissed the appeals by the Surveyors who now appeal to this Court. Previous to the passing of the Finance Act, 1914, no Income Tax would have been payable on the income in question, as no part of it was actually received in Great Britain. The question turns upon the true construction of Section 5 of the Finance Act, 1914, which imposes Income Tax on the income "arising from securities, stocks, shares, or rents in any place out of "the United Kingdom" whether the income has been or will be received in the United Kingdom or not. The Section, however, contains the following proviso: "Provided that this Section shall not apply in the case of a person "who satisfies the Commissioners of Inland Revenue that he is not domiciled "in the United Kingdom, or that being a British subject he is not ordinarily

(The Master of the Rolls)

"resident in the United Kingdom." It is beyond dispute that, if the respective beneficiaries entitled to this income were here, they could not be assessed to Income Tax in respect of this income, no part of which reaches the United Kingdom.

The contention on behalf of the Surveyor of Taxes is, that the Income Tax Acts have regard only to the legal owners of property and disregard the persons equitably or beneficially entitled, and that, if the legal owners are domiciled here, it is immaterial that they are merely trustees for persons not domiciled here. On the other hand, the Respondents insist that the notion that for purposes of Income Tax the Commissioners look only to the legal owner is wholly unfounded. Section 5 of the Finance Act, 1914, provides for the taxation of income from foreign property, but does not contain any particulars of the person to be charged. It is necessary to consider the previous Income Tax Acts to determine this question. The charging Section is Section 2 of the Act of 1853, Schedule D: "For and in respect of the annual profits or gains arising or accruing to any person residing in the United Kingdom from any kind of property whatever whether situate in the United Kingdom or elsewhere."

The contention on behalf of the Crown is that a trustee for a foreigner domiciled abroad, is a "person" within this Schedule D and has to be assessed as well in respect of his own property as in respect of property held as trustee for others, without reference to the trust. If this be so, Super-tax will have to be assessed in the same way, and the larger the aggregate income, the higher the rate of Super-tax, up to the maximum limit. Thus a *cestui que trust* of limited means would suffer by having a wealthy trustee. Nor can it be urged that this is merely form, and that the *cestui que trust* can obtain such exemption, relief, or abatement as the nature of the case may require under Section 6 (3) of the Finance Act, 1914; as by Section 71 (1) of the Finance (1909-10) Act, 1910, no exemption, abatement, or relief under the Income Tax Act, which depends on the total income of an individual from all sources, shall be given to any person, unless the person claiming the exemption, abatement, or relief is resident in the United Kingdom.

Again, it is not true to say that the Income Tax Acts look only to the legal owners, as they contain references to persons who *pay* Income Tax either by way of deduction or otherwise. A person who pays Income Tax by deduction is a taxpayer. *Marion Brooke v. Inland Revenue Commissioners*⁽¹⁾ ([1918], 1 K.B. 257).

The case of *Colquhoun v. Brooks*⁽²⁾ (14 A.C. 493), established that, notwithstanding the wide language of the charging Sections of the Income Tax Acts, it is open to the subject to show that, having regard to the machinery of the Act for assessing and collecting, the language was not intended to bear the widest meaning so as to operate unreasonably in the case of foreigners. Section 41 of the Act of 1842 provides for the trustees and guardians of certain incapacitated persons being chargeable to the duties imposed in like manner and to the same amount as would be charged if such persons were capable of acting for themselves. This is merely machinery for the purpose of collecting the duty. It was argued for the Crown that this Section did not extend to a

⁽¹⁾ 7 T.C. 261.⁽²⁾ 2 T.C. 490.

(The Master of the Rolls)

case in which a trustee was legal owner, and was merely inserted in the Statute to include cases where a trustee, not being legal owner, nevertheless had "the direction, control or management". This contention, however, is not well founded. A trustee for a married woman is a person who is usually the legal owner of the property to which the married woman is beneficially entitled. I am of opinion that the view expressed by Mr. Justice Sankey was well founded, and that Section 41 is mere machinery by which a person who is liable for Income Tax can be reached through the trustee or other persons mentioned in the Section. The residence of the trustee is not a determining factor to render liable to Income Tax a person who would not otherwise be liable, or through the medium of a trustee to render income liable to tax which would not be so liable in the hands of the beneficiary himself. The income in question does not in my opinion fall within "annual profits or gains accruing to any person residing in the United Kingdom" within the meaning of Schedule D. This income accrues to a foreigner residing abroad, and the fact that there are English trustees residing here does not bring this income into charge.

Take the converse case of income arising from property abroad, remitted by a foreign trustee to a beneficiary resident here. Such a beneficiary would certainly be liable to be taxed here on the income received in the United Kingdom, and could not escape from payment upon the ground that the profits or gains did not "arise or accrue to any person residing in the United Kingdom", but arose or accrued to the trustee residing abroad, who was the legal owner of the foreign property.

I am of opinion that the proviso in Section 5 of the Act of 1914 extends to exempt a beneficiary not domiciled in the United Kingdom, and that the income of such a person, obtained from property abroad, and no part of which ever reaches the United Kingdom is not liable to Income Tax by reason only of one or more of the trustees being domiciled and resident here. In my opinion both appeals fail and should be dismissed with costs.

Warrington, L.J.—There are two Appeals from Orders of Mr. Justice Sankey on Cases stated by the Commissioners of Income Tax. They were heard together, the facts in the two Cases being, so far as material to the question for decision, the same, with one possible exception which I will refer to hereafter. Mr. Justice Sankey gave judgment in favour of the persons sought to be taxed; the Commissioners of Inland Revenue appeal.

In each Case the income sought to be taxed is income arising from stocks and shares of foreign companies. These stocks and shares are vested in trustees resident in the United Kingdom, and these trustees are therefore legally entitled to the income. The beneficiary, however, in each Case is not domiciled in or resident in the United Kingdom. No part of the income in either Case has been received in the United Kingdom, the whole of it being paid to the beneficiary in the foreign country where she resides. The Commissioners claim to charge the trustees with duty as the persons legally entitled to the income, leaving them to retain or recover the amount from their beneficiary who would thus be made ultimately liable to pay the tax.

In the Case of *Pool v. The Royal Exchange Assurance* the assessment was made upon the trustees "as trustees under the will of J. P. Mellor (deceased)

(Warrington, L.J.)

“for beneficiary Mrs. H. P. Munthe”. In the Case of *Williams v. Singer*, it is made against the trustees simply, without reference to their character as trustees or to their beneficiary. In the view I take, this difference in the facts is immaterial. Prior to the Finance Act, 1914, the income in question, not being received in the United Kingdom, would not have been subject to tax. By Section 5 of that Act, however, it is enacted that “Income Tax in respect of “income arising from securities, stocks, shares, or rents in any place out of “the United Kingdom shall . . . be computed on the full amount of the “income whether the income has been or will be received in the United “Kingdom or not”. This, however, is subject to the following proviso. “Provided that this Section shall not apply in the case of a person who satisfies “the Commissioners of Inland Revenue that he is not domiciled in the United “Kingdom or that, being a British subject, he is not ordinarily resident in “the United Kingdom”. There is no dispute that each of the beneficiaries satisfies the conditions thus laid down. The Commissioners, however, contend that if, as they insist, the trustees as the legal owners of the income are liable to be charged, they are the only persons referred to in the proviso and they are domiciled in the United Kingdom, and therefore not protected by the proviso.

It is to be observed that Section 5 of the Act of 1914 deals only with the income to be charged, and not with the persons who are to be made liable to pay. Who they are still depends on the Income Tax Acts of 1842 and 1853. The present charging Section is Section 2 of the Act of 1853, and the material provision is that contained in the first branch of Schedule D which refers to the duty “for and in respect of profits and gains arising or accruing to any “person residing in the United Kingdom.” Is a trustee residing in the United Kingdom liable to be taxed on gains and profits accruing to him in which he has no beneficial interest? In my opinion the provisions contained in the Sections dealing with trustees in the Act of 1842 shew clearly enough that the person liable to be taxed is the beneficiary and not the trustee, and that the provisions of Section 41 are mere machinery by which, in the cases there specified, the tax may be the more readily recovered. [(See Mr. Justice Mathew in *Tischler v. Apthorpe* (2 T.C. at page 89), whose opinion on this point was adopted by all the judges in the Court of Appeal in *Werle v. Colquhoun*,⁽¹⁾ (20 Q.B., page 753).] The first part of Section 41 provides that the trustee, amongst other persons, of any person being an infant or married woman, lunatic, idiot, or insane, having the control or management of the property or concern of such infant, etc., shall be chargeable to the said duties in like manner and to the same amount as would be charged, if such infant were of full age or such married woman were sole or such lunatic, idiot, or insane person were capable of acting for himself. It is therefore the liability of the beneficiary which is to govern that of the trustee, and by Section 44 trustees are authorised to retain the duty as against the beneficiary. It has been contended that the words “having the direction” and so on indicate that the Section is not dealing with a trustee in whom the property is vested. I can see no reason for so limiting its application. The second part of the Section deals with the case of a person not

(1) 2 T.C. 402.

(Warrington, L.J.)

resident in Great Britain and provides that he is to be chargeable in the name of such trustee, guardian, tutor, curator, or committee or of any factor, agent, or receiver having the interest of any profits or gains arising as in the Act mentioned and belonging to such person in the like manner and to the like amount as would be charged if such person were resident in Great Britain and in the actual receipt thereof. Finally, it is provided that every trustee, and so on, shall be answerable for the doing of all such acts, matters and things as shall be required to be done by virtue of the Act in order to the assessing of any such person to the duties granted by the Act and paying the same. It is the person entitled to the income who is to be charged, but in the name of the trustee, etc. It is to be observed that the Section makes no provision for the assessing of a trustee for a person not under disability and resident in this country.

The inevitable conclusion in my opinion is that the person contemplated by the Act as the taxpayer is the beneficiary and not the trustee.

I now turn to the proviso to Section 5 of the Act of 1914 and consider who, in the light of the conclusion so far arrived at, is the "person" so referred to. The object obviously is to exempt that person from taxation to which he would otherwise be liable. Was it intended to exempt a trustee only, who would not be liable, or to extend the exemption to a beneficiary on whom the liability would ultimately fall? The latter, must, in my opinion, be the true meaning. The exemption extends only of course to tax upon income not received in the United Kingdom. As to income so received, the matter remains governed by the provisions of the Income Tax Acts 1842 and 1853.

I am of opinion that both Appeals fail and must be dismissed.

Scrutton, L.J.—There are two Cases raising substantially the same question; whether a *cestui que trust* not domiciled, or, if a British subject, not ordinarily resident in the United Kingdom, is liable to bear the burden of English Income Tax on the full amount of income derived from trust funds abroad, though not remitted to or received in the United Kingdom, and is liable because his trustees, who are the legal owners of the trust funds, reside in the United Kingdom. The only material difference in the two Cases is that in the Royal Exchange Case, the Commissioners of the City of London assessed the trustees "as trustees under the will of M. for beneficiary Mrs. Munthe", and in Singer's Case the New Sarum Commissioners assessed the trustees in their own name simply without reference to any beneficiary.

The question turns in the first instance on the meaning of a proviso in the Finance Act, 1914, Section 5. Before that Act an assessment under Schedule D would be made "in respect of the annual profits or gains arising or accruing to any person residing in the United Kingdom from any kind of property whatever whether situate in the United Kingdom or elsewhere". Such profits or gains if shares in foreign companies would be assessed under Case V as "foreign possessions" on the full amount of the annual sums actually received in Great Britain on the average of the three preceding years. This resulted in certain English owners of foreign possessions, though resident in England, bringing home only part of their profits and leaving the rest to accumulate abroad. In 1914 the Legislature dealt with this by providing that

(Scrutton, L.J.)

Income Tax in respect of securities, shares, or rents in any place out of the United Kingdom should, notwithstanding anything in the fourth Case (foreign securities) or fifth Case (foreign possessions) be computed on the full amount of the income whether the income had been or would be received in the United Kingdom or not. They provided that the full income should be subject to a deduction on account of any annual interest or any annuity or other annual payment, payable out of the income to a person not resident in the United Kingdom, and added the following proviso: "Provided that this section shall not apply in the case of a person who satisfies the Commissioners that he is not domiciled in the United Kingdom, or that, being a British subject, he is not ordinarily resident in the United Kingdom". The Crown Counsel point out, I think rightly, that this proviso has a wide operation apart from any question of trustee and *cestui que trust*. Amongst other effects, it at any rate relieved a foreigner residing in the United Kingdom, but not domiciled there, from paying on all his foreign income, though not remitted to this country. It gave the same relief to a British subject not ordinarily resident in the United Kingdom, for instance, a Colonial visitor, as to his property out of the United Kingdom, even though his domicile was in the United Kingdom, as, e.g., a domicile of origin.

The question in this Case is, what is the effect of the proviso as applied to trustee and *cestui que trust*. If the trustee is resident in the United Kingdom, but the *cestui que trust* is not domiciled there, can the trustee escape assessment on the whole income? If the *cestui que trust* is resident in the United Kingdom, but the trustee is not domiciled there, can the *cestui que trust* escape assessment on his whole income as distinguished from the part received in England? For it seems clear that, if the Section does not apply by reason of the absence of domicile or ordinary residence of the "person", the old law applies and, if resident in the United Kingdom, the "person" is taxable on his receipts from foreign possessions, subject to the exemption of temporary residents from tax on foreign possessions contained in Section 39 of the Act of 1842.

Before the Act of 1914, in my view a *cestui que trust* resident in the United Kingdom and receiving remittances from property abroad, the legal estate in which was vested in a trustee abroad, would be taxable on his receipts, and could not be heard to say he was not entitled in law but only in equity to the remittance. How would the converse case of the trustee resident here with his *cestui que trust* abroad be dealt with? If he did not receive remittances here but ordered them to be sent direct to the *cestui que trust* abroad, he clearly would not be taxable; there would be no receipts here. But if he received remittances here, what was his position? The Crown Counsel said it was quite simple; he was under Schedule D a person residing in the United Kingdom to whom profits and gains accrued from property abroad which he owned, and it was quite immaterial that he was not the beneficial owner. The subject replied that it was always admissible to show by the assessing and collecting machinery provided, that wide words in the taxing Schedule had not their widest meaning, [see per Lord Herschell in *Colquhoun v. Brooks*,⁽¹⁾ (14 A.C., p. 493)], and this they endeavoured to do by certain Sections relating

(¹) 2 T.C. 490.

(Scrutton, L.J.)

to the assessing of trustees. In the case of trustees receiving in England income from foreign possessions to which others were beneficially entitled before the Act of 1914, Parliament thought it necessary expressly to provide, by Section 108 of the Act of 1842, that such trustees should be charged for the same "whether the person to whom the said profits belong shall be resident in "England or not". This looks as if the Legislature treated the *cestui que trust* as the person to whom the profits belonged and did not consider the trustee a person to whom profits accrued from property. The earlier Sections appear to support this view. Section 41 of the Act of 1842 deals with two classes of people to be charged instead of others who cannot easily be reached. First, the representatives of incapacitated persons, infants, married women and persons of unsound mind. This class of representatives begins with "trustee", and continues "guardian, tutor, curator or committee". These last four persons have not the legal property in them, and the property is spoken of as the property of the infant, lunatic, etc. But the trustee of the married woman may and generally has the legal estate, yet the property is spoken of as the property of the married woman. It is provided that this class of trustee, &c., shall be chargeable in like manner as if the incapacitated persons were of full capacity. The second class dealt with by the Section is persons not resident in Great Britain, who are to be chargeable in the name of "such" trustee, &c., apparently a trustee "having the direction, control or management" of their property, or in the name of any agent in receipt of any profits or gains "arising as "herein mentioned and belonging to such person". This again treats the property which the trustee manages, or receives profits from as agent, as the property of the *cestui que trust*; and every such trustee shall be answerable for the doing of all acts required to be done "in order to the assessing of any such person".

Section 42 is puzzling. Its apparent wording would free a trustee, who authorises a non-resident *cestui que trust* to receive the profits of English trust property, from any other liability except to give the name and residence of such person, the condition "and resident in Great Britain" being limited to persons who have agents or receivers. But in view of the express terms of Sections 41, 51 and 53 this can hardly be so, and the Section must be limited to trustees of persons resident in Great Britain who need only give the *cestui que trust's* name.

Section 44 begins: "Where any person being trustee . . . for any person "shall be assessed under this Act in *respect of such person*", and authorises him to retain sufficient of the trust funds to pay the assessment. Intermediate Sections provide for assessment and obtaining the information necessary for assessment, and then Section 51 provides that any person (A) who is in receipt of profits "of or belonging to any other person" (B) "in whatever character "the same shall be received for which such other person (B) would be chargeable "if he were resident in Great Britain" shall give information in prescribed form, including the name and place of abode of any "person (B) to whom "the same shall belong" in order that such person (B) . . . may be charged "either in the name of the person (A) delivering such list, . . . or in the name "of the person (B) to whom such property shall belong, if of full age and "resident in Great Britain". The prescribed form is contained in Section 190, (Schedule G), XVI and is to include "List to be delivered by every trustee . . . "of the name and place of residence of the person for whom they act in such

(Scrutton, L.J.)

"character, and the names of those who are joined in trust. . . . Declaration "on whom the duty is chargeable in respect of such trust." Section 53 provides that every person (A) who shall act in any character as aforesaid, (which includes a trustee) for any other person (B), who by reason of incapacity or non-residence in Great Britain cannot be personally charged, shall deliver a statement of the amount of profits and gains to be charged on him (A) on account of such other person (B). Section 55 deals with trustees delivering imperfect lists "on behalf of any other person". Section 170 provides that any trustee or person acting in any of the characters hereinbefore described may claim exemption on account of others. By Section 71 of the Finance (1909-10) Act, 1910, no exemption shall be given to any non-resident with certain exceptions. The Crown Counsel were asked how they proposed to deal with the case of a trustee whose own income would entitle him to exemption or a lower rate of duty, though if the income he received as trustee were added to it, he would pay a higher rate. They made the startling answer that the two incomes would be added together and the rate fixed by the total sum, and that then the trustee and *cestui que trust* might get back such part as they could, which in the case of a non-resident *cestui que trust* would be nothing, though he had paid an added rate because of the added income of his trustee.

The conclusion I draw from these involved Sections is that Parliament was endeavouring to put the burden on the beneficial owner, and only used the trustee as machinery to get at the person who had the benefit of the income. The trustee was only to be assessed "in respect of" the *cestui que trust* (Section 44), "on account of such other person" (Section 53), "on behalf of" "the other person" (Section 55). The person to whom the property belongs is to be charged in the name of the trustee (Section 51). The assessment by the very experienced Commissioners for the City of London, "as trustees "for beneficiary" is in accordance with this view. It follows that in my opinion when Parliament exempted a class of persons from the operation of the Statute of 1914, Section 5, they were at any rate including the beneficial owner or *cestui que trust*, if he came within the description of the class. The *cestui que trust* in each of the present Cases is not domiciled in England, and, therefore, in my view, comes within the protection of the proviso and is not bound to pay on her whole income but only on that part which her trustees receive in England. The word "person" in the proviso in my view includes a beneficial owner or *cestui que trust* who can satisfy the requirements of the proviso. I am not certain that the same result might not be arrived at by treating the payment to the *cestui que trust* as an annual payment out of the income to a person not resident in the United Kingdom under the earlier part of Section 5, but in view of the difficulties about "other annual payments" discussed and to be decided in Lord Howe's Case,⁽¹⁾ I prefer not to rest my decision on this ground.

Both appeals must be dismissed with costs.

The Master of the Rolls.—The order will be that both appeals will be dismissed with costs.

Mr. Disturnal.—If your Lordship pleases.

(¹) 7 T.C. 289.

Notice of Appeal having been given by the Crown, the Cases came on for hearing in the House of Lords before Viscount Cave and Lords Atkinson, Shaw of Dunfermline, Wrenbury and Phillimore, on the 17th May, 1920, when judgment was unanimously given against the Crown, with costs, confirming the decisions of the Court below.

The Attorney-General (Sir Gordon Hewart, K.C., M.P.), Mr. J. H. Cunliffe, K.C., and Mr. R. P. Hills appeared for the Crown, and Mr. Disturnal, K.C., Mr. A. M. Latter, and Mr. A. M. Bremner for the Respondents.

JUDGMENT

Viscount Cave.—My Lords, the question raised in these appeals is whether income from foreign investments, which is received abroad by a person not domiciled in this country, is chargeable with Income Tax under the Income Tax Acts by reason of the fact that the investments stand in the names of trustees who are domiciled here. As the point raised in both Cases is the same, the appeals have been heard together.

In *Williams v. Singer* the Respondents are the trustees of a settlement under which the Princesse de Polignac is the beneficial tenant for life in possession. The settlement is in English form, and the trustees are all domiciled and resident in the United Kingdom, but the Princesse (who is a widow) is a French subject by marriage, and is domiciled and resident abroad. The settled fund, so far as it comes into question in these proceedings, consists of certain foreign investments of considerable value, and under orders signed by the trustees the whole income from these investments is paid to the account of the Princesse at a bank in New York, no part thereof being remitted to this country. In these circumstances the Additional Commissioners for the division of New Sarum in the County of Wilts (in which one of the Respondents resides) made two assessments upon the Respondents for the year ended the 5th April, 1916, namely, an assessment of £60,000 in respect of foreign possessions and an assessment of £5,000 in respect of foreign securities—these sums representing approximately the income from the foreign investments comprised in the settlement as above mentioned. The Respondents objected to the assessments, and appealed to the Special Commissioners, who after argument discharged them: and, on a Case being stated for the opinion of the King's Bench Division, Mr. Justice Sankey confirmed the decision of the Special Commissioners. An Appeal by the Surveyor of Taxes to the Court of Appeal was dismissed, and the Surveyor has appealed to this House. The facts in *Pool v. The Royal Exchange Assurance* are in all material particulars (with one exception) similar to those in the other Case. In this Case the Respondent company, which has its principal place of business in the City of London, is the trustee of the will of Mr. J. P. Mellor, deceased: and the beneficial tenant for life under the will is Mrs. H. P. Munthe, a Swedish subject domiciled abroad. The will comprises foreign investments: and the whole income from such investments is paid directly to Mrs. Munthe abroad, no part of such income being remitted to this country. The District Commissioners of Taxes for the City of London made assessments upon the Respondent company in respect of foreign possessions of £2,015 for the year ended the 5th April, 1915, and £2,018 for the year ended the 5th April, 1916—these sums representing the income of the foreign investments above referred to. But these assessments differed from those which are

(Viscount Cave)

in question in *Williams v. Singer* in one respect, namely, that instead of being made (as in that Case) upon the trustees by name without reference to any trust, they were made upon the Respondent company "as trustees under the will of J. P. Mellor, deceased, for beneficiary, Mrs. H. P. Munthe". The Respondent company appealed to the Special Commissioners, who discharged the assessments and this decision also has been affirmed by Mr. Justice Sankey and the Court of Appeal and is the subject of appeal to this House.

My Lords, it was decided in *Colquhoun v. Brooks*⁽¹⁾ [(1889), 14 A.C. 493] that the tax imposed by the Income Tax Acts, 1842 and 1853 (Schedule D, Cases 4 and 5) upon the income from foreign securities and possessions was leviable upon so much only of that income as was remitted to the United Kingdom. But that limitation was to some extent abrogated by Section 5 of the Finance Act, 1914, which (as far as material in this appeal) is as follows:—"Income tax in respect of income arising from securities, stocks, shares or rents in any place out of the United Kingdom shall, notwithstanding anything in the rules under the fourth and fifth case in section one hundred of the Income Tax Act, 1842, be computed on the full amount of the income, whether the income has been or will be received in the United Kingdom or not . . . and the provisions of the Income Tax Acts (including those relating to returns) shall apply accordingly . . . provided that this section shall not apply in the case of a person who satisfies the Commissioners of Inland Revenue that he is not domiciled in the United Kingdom, or that, being a British subject, he is not ordinarily resident in the United Kingdom." It is obvious that, having regard to the proviso to the above Section, the Princesse de Polignac and Mrs. Munthe, who are domiciled abroad, could not have been assessed to Income Tax in respect of the foreign income above referred to. But the Revenue Authorities contend that they are entitled to levy tax upon that income by means of assessments upon the trustees, who are domiciled in this country. If this contention is upheld, the trustees will of course be entitled to retain the tax so paid out of the trust income payable to the beneficial life tenants, who will thus have to bear the burden of the tax from which the proviso appears to relieve them; but the Appellants contend that this is the effect of the statutes. The question to be determined is whether they have that effect. In support of the above contention Counsel for the Appellants relied principally upon the language of Schedule D to the Income Tax Act, 1853, which provides that the duties thereby imposed are to be deemed to be granted and made payable "for and in respect of the annual profits or gains arising or accruing to any person residing in the United Kingdom from any kind of property whatever, whether situate in the United Kingdom or elsewhere," and upon the first general rule in Section 100 of the Income Tax Act, 1842, which provides that the duties upon profits imposed by Schedule D are to be charged on and paid by the persons "receiving or entitled unto" such profits: and they contended that, as the income in question in the Cases under appeal "accrued" to the trustees as the legal holders of the investments, and the trustees are the persons legally "entitled" to receive it, they are the persons chargeable under the Act. Indeed, I understood Mr. Cunliffe to go so far as to say that, when funds are vested in trustees, the Revenue Authorities are entitled to look to those trustees for the tax and are neither bound nor entitled to look beyond the legal ownership.

(1) 2 T.C. 490.

(Viscount Cave)

My Lords, I think it clear that such a proposition cannot be maintained. It is contrary to the express words of Section 42 of the Income Tax Act, 1842, which provides that no trustees who shall have authorised the receipt of the profits arising from trust property by the person entitled thereto, and who shall have made a return of the name and residence of such person in manner required by the Act, shall be required to do any other act for the purpose of assessing such person. And, apart from this provision, a decision that in the case of trust property the trustee alone is to be looked to would lead to strange results. If the legal ownership alone is to be considered, a beneficial owner in moderate circumstances may lose his right to exemption or abatement by reason of the fact that he has wealthy trustees, or a wealthy beneficiary may escape Super-tax by appointing a number of trustees in less affluent circumstances. Indeed, if the Act is to be construed as Counsel for the Appellant suggests, a beneficiary domiciled in this country may altogether avoid the tax on his foreign income spent abroad by the simple expedient of appointing one or more foreign trustees. Accordingly, I put this contention aside. On the other hand, I do not think it would be correct to say that, whenever property is held in trust, the person liable to be taxed is the beneficiary and not the trustee. Section 41 of the Income Tax Act, 1842, renders the trustee, guardian or other person who has control of the property of an infant, married woman or lunatic chargeable to Income Tax in the place of such infant, married woman or lunatic; and the same Section declares that any person not resident in Great Britain shall be chargeable in the name of his trustee or agent having the receipt of any profits or gains. Section 108 of the same Act, which deals with the profits or gains arising from foreign possessions or foreign securities provides that, in default of the owner or proprietor being charged, the trustee, agent or receiver of such profits or gains shall be charged for the same. And, even apart from these special provisions, I am not prepared to deny that there are many cases in which a trustee in receipt of trust income may be chargeable with the tax upon such income. For instance, a trustee carrying on a trade for the benefit of creditors or beneficiaries, a trustee for charitable purposes, or a trustee who is under an obligation to apply the trust income in satisfaction of charges or to accumulate it for future distribution, appears to come within this category, and other similar cases may be imagined. The fact is that, if the Income Tax Acts are examined, it will be found that the person charged with tax is neither the trustee nor the beneficiary as such, but the person in actual receipt and control of the income which it is sought to reach. The object of the Acts is to secure for the State a proportion of the profits chargeable, and this end is attained (speaking generally) by the simple and effective expedient of taxing the profits where they are found. If the beneficiary receives them, he is liable to be assessed upon them. If the trustee receives and controls them, he is primarily so liable. If they are under the control of a guardian or committee for a person not *sui juris* or of an agent or receiver for persons resident abroad, they are taxed in his hands. But in cases where a trustee or agent is made chargeable with the tax, the statutes recognise the fact that he is a trustee or agent for others, and he is taxed on behalf of and as representing his beneficiaries or principals. This is made clear by the language of many Sections of the Act of 1842. For instance, Section 41 provides that a person not resident in Great Britain shall be chargeable "in the name of" his trustee or agent. Section 44 refers to the trustee or agent of any person as being assessed "in respect of" such person, and gives him a right to retain the tax out of any

(Viscount Cave)

money of such person coming to his hands. Section 51, under which trustees and others are bound to make returns, refers to the event of the beneficiary being charged either "in the name of" the trustee or other person making the return or in his own name. Section 53 refers to the trustee or agent as being charged "on account" of the beneficiary, and similar expressions are found in other Sections. In short, the intention of the Acts appears to be that, where a beneficiary is in possession and control of the trust income and is *sui juris*, he is the person to be taxed, and that, while a trustee may in certain cases be charged with the tax, he is in all such cases to be treated as charged on behalf or in respect of his beneficiaries, who will accordingly be entitled to any exemption or abatement which the Acts allow.

Applying the above conclusions to the present Case, it follows, in my opinion, first, that the Respondent trustees, who have directed the trust income to be paid to the beneficial tenants for life and themselves receive no part of it, are not assessable to tax in respect of such income; and secondly, that, even if they were so assessable, they would be assessable as trustees on behalf of the life tenants, who would accordingly be entitled to the benefit of the exemption contained in the proviso in Section 5 of the Finance Act, 1914. The assessments in question in *Pool v. The Royal Exchange Assurance*, which were made upon the Respondents as trustees for the beneficiary, Mrs. Munthe, and were probably so made with reference to Sections 41 and 108 of the Act of 1842, support this view of the Acts, but it does not appear to me that the absence of similar words in the assessments in *Williams v. Singer* makes any difference in the result.

The above conclusion is supported by the consideration that, under the express words of Section 5 of the Finance Act, 1914, a person thereby charged with tax is authorised to deduct from the taxable income "any annuity or other annual payment payable out of the income to a person not resident in the United Kingdom." It is difficult to believe that it was the intention of the Legislature, while exempting from the tax any definite part of the income which is payable to a person abroad, to impose the tax upon the whole income when so payable.

For the above reasons I think that the contention of the Appellants fails, and accordingly that these appeals should be dismissed with costs.

Lord Atkinson.—My Lords, I have had the pleasure and advantage of reading the judgment which has just been delivered by my noble and learned friend on the Woolsack. I thoroughly concur in it and I have nothing to add.

Lord Shaw of Dunfermline.—My Lords, the address just delivered to the House from the Woolsack so fully and exactly expresses the opinion I have formed, that I agree, without adding anything.

Lord Wrenbury (*read by Lord Atkinson*).—My Lords, in the decision of this Case it is essential to bear in mind (1) that the income with which we are concerned is derived from foreign securities or foreign possessions, (2) that no part of it is received in this country, (3) that the beneficiary to whom it is paid is a foreign subject neither domiciled nor resident in the United Kingdom, and on the other hand that (4) the trustees are domiciled and resident in the United Kingdom.

The Appellants initiate their contentions by pointing out quite accurately that Section 100 of the Act of 1842, to which they point as being the charging Section, charges annual profits or gains accruing to any person, whether a

(Lord Wrenbury, read by Lord Atkinson)

subject of His Majesty or not, although not resident in the United Kingdom, from property in the United Kingdom, and that by the Fourth and Fifth Cases duty is to be charged in respect of interest arising from foreign securities or foreign possessions and is to be computed upon the sums received in Great Britain. The duties are to be charged upon the persons "receiving or entitled unto the same". So far, therefore, a foreign subject resident in this country is chargeable upon income from foreign securities or foreign investments received in this country. But a foreign subject resident abroad and receiving the income abroad is not chargeable. This position, however, they say, was altered by Section 5 of the Finance Act, 1914, when it provided that Income Tax in respect of income arising from foreign securities shall, notwithstanding anything in the rules under the Fourth and Fifth Cases in Section 100 of the Act of 1842, be computed on the full amount of the income whether received in the United Kingdom or not. But the effect of Section 5 of the Act of 1914 so far would seem to be only that, where there is a person chargeable in respect of income arising from foreign securities, he is to be charged not, as the Act of 1842 had provided, upon so much as is received in the United Kingdom but upon the full amount whether received in the United Kingdom or not. The Appellants, however, seek to find in words of enlargement of the income charged an enactment affecting the characteristics of the person chargeable. I do not think that is the effect of Section 5 of the Act of 1914. The two things are quite distinct; the property chargeable is one thing, the person liable to be charged is another. Section 5 affects the former but not the latter. But the matter does not stop there, for Section 5 concludes with a proviso which excludes from its operation a person not domiciled in the United Kingdom or being a British subject not ordinarily resident in the United Kingdom. In other words, if the "person" there referred to is the beneficiary, then Section 5 does not apply to the beneficiary in the Case before your Lordships, and, if it were sought to assess her, the matter would remain as it was under the Act of 1842, and she would not be assessable for she is a foreign subject and the income is not received in this country.

But next the Appellants say that the persons assessable are not the beneficiary but the trustees, the persons legally entitled to the income. Section 2 of the Income Tax Act, 1853, provides as regards Schedule D that for and in respect of annual profits accruing to any person residing in the United Kingdom from any kind of property whatsoever whether situate in the United Kingdom or elsewhere—a certain duty shall be paid. The trustees, they say, are "persons" within these words; they are assessable and the foreign subject must suffer the tax in consequence. My Lords, I am not of this opinion. It is not necessary in this Case to investigate the question whether trustees are in any case assessable. I express no opinion that they are not. The case was put of a trust for accumulation of income for an infant contingently on his attaining 21, a case in which there is not in existence a beneficiary presently entitled to the income, and Section 14 of the Finance Act, 1917, was referred to as shewing, as no doubt is the case, that, nevertheless, someone must be liable in respect of the tax, and it was said this would be the trustees. I do not concern myself with this matter. It is not this Case. There is here a beneficiary of full age and not under disability. Is the tax recoverable upon the footing of the domicile and nationality of the beneficiary or of the trustees? That is the question. Upon this question Section 41 *et seq.* of the Act of 1842 are most material. Section 41 deals with two cases,

(Lord Wrenbury, read by Lord Atkinson)

viz., (1) beneficiaries under disability and (2) persons not resident in the United Kingdom whether subjects of His Majesty or not. In the former case the trustee is to be chargeable in like manner as he would be charged if the beneficiary were not under disability. In the latter case the beneficiary is to be chargeable in the name of the trustee and the trustee is to be answerable for doing such acts as shall be required for "the assessing of any such person". Here, therefore, are particular cases in which the trustee is to be dealt with in manner provided by this Section. The case of a beneficiary not under disability and resident in and not out of the United Kingdom is not dealt with in any similar manner and why? Presumably because such a person is to be dealt with by assessment in his own name. Section 42 is one which discharges a trustee, who returns a certain list disclosing the person who actually receives the income, from responsibility for doing any other act "for the purpose of assessing such person," *i.e.*, the beneficiary. Section 44 is one which entitles the trustee of a person under disability and who is assessed "in respect of such person" to retain money sufficient to pay the assessment. These Sections point to the conclusion that the person to be taxed is the beneficiary, not the trustee, and none the less because under certain circumstances the beneficiary is to be reached through the trustee. If the trustee is a foreign subject resident abroad but the beneficiary is in the United Kingdom, taxation will not be escaped and, if the trustee is a British subject resident in the United Kingdom but the beneficiary is a foreign subject resident abroad, taxation is not imposed by reason of those facts.

My Lords, no one can say that the Income Tax Acts are easy reading, but upon the question before your Lordships their effect is, I think, reasonably plain. I agree with the judgments given below, and am of opinion that this Appeal fails and should be dismissed.

Lord Phillimore.—My Lords, the facts in the Case of *Williams v. Singer* are as follows:—The Respondents are the legal owners of the investments in question and entitled at law to receive the income from them, but they hold the investments and the title to the income as trustees under the marriage settlement of the Princesse de Polignac, a lady apparently of American extraction who has married two French nobles in succession and is now a widow. Under the various instruments, which include two marriage settlements, and the release of a power of appointment contained in the first, the trustees, in the events which have happened, hold the property on trust to pay the income to the Princesse during her life, and then to the children, if any, as to which your Lordships are not informed, of the marriage, and, failing children, to such persons as the Princesse should by will appoint and, subject thereto, for the brothers and sisters of the Princesse. There are some subsidiary provisions in the deed which were relied upon by Counsel for the Appellant, but I do not think that any of your Lordships were impressed by them. The Princesse is a French subject, and is not resident in the United Kingdom. The Respondents instructed a bank in New York to collect and receive the dividends on the shares in the Singer Company and to credit them to the account of the Princesse with the same bank. These dividends have not been remitted to or received in the United Kingdom. Upon this set of facts Mr. Justice Sankey decided as follows:—"In my opinion it is not possible "to make a trustee liable for Income Tax to be paid out of the monies of the "*cestui que trust* when the *cestui que trust* is himself not liable. The machinery "of Section 41 of the Act of 1842 is machinery by which, through a trustee, "a person who is liable for Income Tax can be reached. The residence of a

(Lord Phillimore)

“ trustee is not visited upon the *cestui que trust* so as to make the latter liable for Income Tax when he would not otherwise be so liable ”. In the Court of Appeal the Master of the Rolls expressed himself as follows :—“ It was argued for the Crown that this Section (Section 41 of the Act of 1842) did not extend to a case in which a trustee was legal owner, and was merely inserted in the Statute to include cases where a trustee, not being legal owner, nevertheless had ‘ the direction, control or management ’. This contention, however, is not well founded. A trustee for a married woman is a person who is usually the legal owner of the property to which the married woman is beneficially entitled. I am of opinion that the view expressed by Mr. Justice Sankey was well founded, and that Section 41 is mere machinery by which a person who is liable for Income Tax can be reached through the trustee or other persons mentioned in the Section. The residence of the trustee is not a determining factor to render liable to Income Tax a person who would not otherwise be liable or, through the medium of a trustee, to render income liable to tax which would not be so liable in the hands of the beneficiary himself. The income in question does not, in my opinion, fall within ‘ annual profits or gains accruing to any person residing in the United Kingdom ’ within the meaning of Schedule D. This income accrues to a foreigner residing abroad, and the fact that there are English trustees residing here does not bring this income into charge ”. He also relied upon the proviso at the conclusion of Section 5. Lord Justice Warrington held that it was the liability of the beneficiary which was to govern that of the trustees and that, in consequence, as the beneficiary was not resident within the United Kingdom, the trustees were not liable. But he went further, and considered the general question of the liability of trustees to assessment and taxation and expressed himself as follows :—“ Is a trustee residing in the United Kingdom liable to be taxed on gains and profits accruing to him in which he has no beneficial interest? In my opinion the provisions contained in the Sections dealing with trustees in the Act of 1842 show clearly enough that the person liable to be taxed is the beneficiary and not the trustee, and that the provisions of Section 41 are mere machinery by which, in the cases there specified, the tax may be the more readily recovered ”. And again : “ It is to be observed that the Section makes no provision for the assessing of a trustee for a person not under disability and resident in this country ”. He also relied upon the proviso. Lord Justice Scrutton thus expressed himself : “ The conclusion I draw from these involved Sections is that Parliament was endeavouring to put the burden on the beneficial owner and only used the trustee as machinery to get at the person who had the benefit of the income. The trustee was only to be assessed ‘ in respect of ’ the *cestui que trust* (Section 44) ‘ on account of such other person ’ (Section 53) ‘ on behalf of the other person ’ (Section 55). The person to whom the property belongs is to be charged in the name of the trustee (Section 51). . . . It follows that, in my opinion, when Parliament exempted a class of persons from the operation of the Statute of 1914, Section 5, they were, at any rate, including the beneficial owner or *cestui que trust* if he came within the description of the class. The *cestui que trust* in each of the present Cases is not domiciled in England, and therefore, in my view, comes within the protection of the proviso and is not bound to pay on her whole income but only on that part which her trustees receive in England. The word ‘ person ’ in the proviso in my view includes

(Lord Phillimore)

“ a beneficial owner or *cestui que trust* who can satisfy the requirements of the “ proviso.” The Lord Justice was also inclined to think that the same result might be arrived at by treating the payment to the *cestui que trust* as an annual payment out of the income to a person resident out of the United Kingdom under the earlier part of Section 5.

The points raised by the Judgment of the Court of Appeal cover a wide field and the arguments of the Counsel for the Appellant have of necessity traversed the same ground ; but at the conclusion of the argument for the Appellants your Lordships were of opinion that it would not be necessary for the purpose of deciding this Case to express your opinion upon some of the points raised. It was suggested by Counsel for the Appellant that the Income Tax Acts, except in certain special and rather narrow instances, took no account of the position of trustees, but regarded only the legal ownership. On the other hand, from some of the language in the judgment of the Court of Appeal, especially that of Lord Justice Warrington, it would appear that a contention that the Income Tax Acts looked generally to the beneficiary and disregarded the trustee, except as a means of reaching the beneficiary in certain rare cases, had found favour. I do not propose to express an opinion whether either, or which if either, of these two extreme views is right. The charge is laid upon the taxpayer by the first Section of each Taxing Act : “ for “ and in respect of the annual profits or gains arising from or accruing to any “ person or persons whatever resident in the United Kingdom from any kind “ of property whatever ”. For the purpose of ascertaining the person to be charged by Section 5 of the Act of 1914, your Lordships have to determine who are the persons charged either by the words just quoted or by any additional provisions in the later Sections of the Act of 1842.

I think it convenient to mention, first, that Section 43 adds to the list of persons charged a receiver appointed by a Court, not as a person chargeable in himself, this being a very convenient provision for ensuring that the person ultimately found to be the owner shall pay. Then comes Section 41 which also adds to the list of persons, who are not owners under any construction but yet are to be charged, the guardian of an infant, or the curator or committee of an insane person, whether the infant or insane person reside in Great Britain or not, and the factor, agent or receiver of a person not resident in Great Britain. These are unquestionable additions. Then in the same Section and in the same relation is inserted the trustee of a married woman certainly, possibly also the trustee for an infant or insane person. If the trustee, as being legal owner, is already chargeable under the general Section, there would be no necessity for his insertion into this Section. It was attempted to escape from the force of this argument by a suggestion that the word “ trustee ” did not mean trustee but something else. The Master of the Rolls expressed himself upon this point in words which I have already quoted. I find it rather difficult to express my rejection of the argument in respectful language. The very essence of the position of a trustee is that he is a person who at law has all the rights of an owner, but who has nevertheless the obligation, which he has undertaken by accepting the trust, of using his powers as legal owner for the benefit of some person not himself or some object not his own. As for married women, the Act of 1842 was passed long before the modern Married Women’s Property Acts ; and the one case where, under the law as it then stood, a married woman could be treated as the legal owner or as in a position equivalent to that of a legal owner is especially provided for by Section 45. It remains, therefore,

(Lord Phillimore)

that the argument from this Section is a forcible one. In certain specified cases the trustee, in common with the guardian and committee; is made chargeable to Income Tax in like manner and to the same amount as would be charged if the infant were of full age or the married woman were sole or the insane person capable of acting for himself. But for this Section, the guardian or committee would not be liable. Section 42 provides that "No trustee who shall have authorised the receipt of the profits arising from trust property by the person entitled thereunto . . . nor any agent or receiver of any person being of full age and resident in Great Britain (other than a married woman, lunatic, idiot and insane person)" who returns a list giving the name and residence of such person, shall be required "to do any other act for the purpose of assessing such person," unless the Commissioner requires his evidence. Be it observed the provision is not that a trustee, agent or receiver who furnishes a list shall be released from assessment and charge, but that he is not to be required to do anything more for the purpose of arriving at the assessment of the person to be charged. By Section 51, "Every person who shall be in the receipt of any money or value, or the profits or gains arising from any of the sources mentioned in this Act, of or belonging to any other person . . . for which such other person is chargeable", shall deliver a list with a declaration whether such person is of full age, or a married woman living with her husband or a married woman for whose payment of the duty hereby charged on her the husband is not accountable by this Act, or resident in Great Britain, or an infant, idiot, lunatic, or insane person, in order that such person . . . may be charged either in the name of the person delivering such list, if the same shall be so chargeable, or in the name of the person to whom such property shall belong, if of full age and resident in Great Britain, and the same be so chargeable by this Act". Further light is thrown upon this matter by the provisions of Section 108 for regulating the mode in which duty in respect of profits or gains arising from foreign possessions or foreign securities is to be assessed. The Section contains a provision in the following words "in default of the owner or proprietor thereof being charged; the trustee, agent or receiver of such profits or gains shall be charged for the same . . . whether the person to whom the said profits belong shall be resident in Great Britain or not". Who is the person to whom the profits belong, and who is called the owner or proprietor and in default of whom the trustee is to be charged? Surely the beneficiary, the owner in equity.

Putting these Sections together, it would appear that trustees in the cases provided for in Section 41 and Section 108 are made the person assessable and liable, but that no trustee who has authorised the receipt of the profits from the trust property by the person entitled is assessable or liable, being bound only to the discharge of the obligations imposed upon him by Section 42. It may perhaps be said that, where there is a trust for accumulation or for payment of debts, no person can be said to be entitled to the receipt of the profits and that in such case the trustee is to be the person to be assessed. It is possible also that, where trustees have the management of a business, they should be the persons to be assessed or charged. There are disbursements which may have to be made in the course of conducting a business which a prudent owner would consider as deductions from profits and which trustees would make before they paid the net income over to the beneficiary, but which, nevertheless, for Income Tax purposes, as the law at present stands, are not considered as legitimate deductions from income—cases of which the decision of this House

(Lord Phillimore)

in *Strong & Co. v. Woodfield*⁽¹⁾ [(1906), A.C. 448] is an example. In these cases if the Revenue is to receive its full quota, it would seem that the assessment must be put upon the trustee and not upon the beneficiary, and that in such cases the trustee is the person to be assessed. The Case now before your Lordships is not one of such cases. The Trustees here merely exist in order to preserve the settlement. Their duty so long as the Princesse is alive is to see that the dividends reach her. In law they are entitled to them and they must give the discharge to the company; but the person entitled within the meaning of Section 42 and the person to whom they belong within the meaning of Section 51 is, as it appears to me, the Princesse. These considerations might be enough to decide the Case in favour of the Respondents, but I think that the proviso of Section 5 of the Statute of 1914 may fairly be relied upon as an indication that the Statute did not intend to reach a person in the position of this lady.

Lastly, while as at present advised I am inclined to agree with Counsel for the Appellant that the words in the earlier part of the Section "a deduction on account of any annual interest or any annuity or other annual payment payable out of the income to a person not resident in the United Kingdom" are not meant to cover the case where a trustee in this country is bound to pay the whole income to a person outside, still I think that the words are useful as supporting the general sense of the conclusion at which I have arrived. If the income which the Princesse is to receive from these shares had been charged, say by the person who first gave them to her, with an annuity in favour of an old servant residing in America, it seems to me that this annuity could be deducted from the income liable to tax; and it would be strange if this were so and yet the residue of income also received by a person residing out of the United Kingdom were liable to tax. I agree that this Appeal should be dismissed.

The Case of *Pool v. the Royal Exchange Assurance* should be determined on the same grounds, and I agree that the Appeal also in this Case should be dismissed.

In the Case of *Williams v. Singer*.

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.

The Contents have it.

In the Case of *Pool (Surveyor of Taxes) v. Royal Exchange Assurance*.

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.

The Contents have it.

(¹) 5 T.C. 215.