

No. 596.—HIGH COURT OF JUSTICE (KING'S BENCH DIVISION).—
15TH JUNE, 1925.

COURT OF APPEAL.—24TH AND 25TH NOVEMBER, AND
15TH DECEMBER, 1925.

HOUSE OF LORDS.—7TH DECEMBER, 1926.

- (1) MARTIN v. LOWRY (H.M. INSPECTOR OF TAXES).⁽¹⁾
(2) MARTIN v. THE COMMISSIONERS OF INLAND REVENUE.⁽¹⁾

*Income Tax, Schedule D—Excess Profits Duty—Profits of
trade—Isolated transaction.*

A wholesale agricultural machinery merchant who had never had any connection with the linen trade purchased from the Government the whole of its surplus stock of aeroplane linen as at the 7th June, 1919 (some 44 million yards). The price was a flat rate per yard and the contract provided that he should take delivery of the whole stocks at the depots where stored within six months from the 18th June, 1919, that he should pay cash with each order for delivery, and on the 18th December, 1919, should pay for any balance of goods still undelivered. He found from his own resources a deposit of £50,000 required by the contract, the balance of the purchase money being provided out of cash received by him with orders.

Failing in his original endeavour to sell the whole of the linen to Belfast linen manufacturers outright, he sought to bring pressure on them by placing the linen on sale to the public. In pursuance of this policy he embarked on an extensive advertising campaign, rented offices and engaged an advertising manager, a linen expert as adviser and a staff of clerks. All account books normally used by a trader were kept except purchase books which were unnecessary. All receipts and payments in connection with the linen were passed through a separate banking account. Sales proceeded rapidly, and by the 16th February, 1920, the whole stocks were disposed of, three-quarters being taken by 55 wholesale firms in Belfast and the remainder by various export and retail firms. In all 4,279 orders were received from 1,280 purchasers.

Assessments to Income Tax and Excess Profits Duty were made upon the merchant in respect of the profits of the transaction.

Held, that his dealings in the linen constituted the carrying on of a trade of which the profits were chargeable to Income Tax and Excess Profits Duty.

⁽¹⁾ Reported (K.B.D.) 41 T.L.R. 574; (C.A.) [1926] 1 K.B. 550, and (H.L.) [1927] A.C. 312.

CASES.

(1) MARTIN *v.* LOWRY.

CASE

Stated under the Income Tax Act, 1918, Section 149, 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 meetings of the Commissioners for the Special Purposes of the Income Tax Acts held on the 10th and 15th January, 1921, for the purpose of hearing appeals, Mr. Leonard James Martin (hereinafter called "the Appellant") appealed against an assessment to Income Tax in the sum of £1,900,000 for the year ending 5th April, 1920, made upon him by the Additional Commissioners of Income Tax for the Holborn Division of the County of Middlesex under the provisions of the Income Tax Acts.

2. The Appellant has since 1910 carried on a business of a wholesale agricultural machinery merchant under the name of the Associated Manufacturers Company at 124, Minories, in the City of London. He has been duly assessed to Income Tax in respect of the profits of that business and no question arises in regard thereto. Apart from the transactions hereinafter described he has never had any connection with the linen trade, nor has he ever had any other similar transaction in surplus Government stores.

3. At the end of April or the beginning of May, 1919, the Appellant had a number of conversations with Mr. Pryce-Jones who was manager of the Bank at which he kept his account, in regard to various matters in connection with his business and in the course of one of these conversations the question was discussed of the possibility of making a profit out of Government stores, the Appellant having seen the announcements in the Press of the sale of Government stores, with the result that Mr. Pryce-Jones introduced the Appellant to Mr. Sheppy, another customer of the Bank, who was contemplating the formation of a small syndicate for the purpose of buying and selling surplus Government stores. On the 5th May, 1919, the Appellant met Mr. Sheppy, Mr. Pryce-Jones, and a Mr. Marsh at luncheon and in their company visited the Government Depot at Shepherd's Bush, where there was a large accumulation of surplus stores in great variety. In going to Shepherd's Bush the Appellant had no idea or intention of dealing or trading in Government stores on his own account. He merely made the visit to the Government Depot at the invitation of the other persons to see what stores there were for disposal and whether he would care to participate in the syndicate contemplated to be formed by Mr. Sheppy. Among other goods there was a large quantity of unbleached linen which had been acquired for the purpose of covering the

planes of aeroplanes. This attracted the Appellant's attention, and its uses were explained to him by one of the officials in charge. He was informed that there were 4,000,000 yards of the linen at Shepherd's Bush, and that the Government had in all about 40,000,000 yards for disposal. The Appellant before leaving the Depot decided to purchase the whole quantity himself and informed his companions of his decision. The Appellant at once entered into negotiations with Mr. Cameron, the Controller of the Aircraft Disposal Department, and after three interviews with him a contract was entered into and embodied in a letter addressed to the Appellant by Mr. Cameron on the 17th June, 1919, a copy of which is attached hereto and forms part of this Case.

4. Under the terms of this contract the Appellant agreed to purchase the whole surplus stock of Government Aircraft linen remaining in the Government's possession and unsold at the 7th June, 1919, (which amounted to 44,803,888 $\frac{1}{4}$ yards) at the rate of 1s. 8d. per lineal yard totalling £3,733,625 5s. 5d. without regard to quality or width, to take delivery of the whole stocks at the Depot or Depots in which they were stored within six months from the 18th June, 1919, to pay cash with each order for delivery, and to make payment on the 18th December, 1919, for the balance of goods remaining undelivered at that date. Any goods not removed from the Government Stores by the 18th December, 1919, were to remain in these Stores at the Appellant's risk for a further period to be agreed upon, the Appellant to be responsible for and to pay for the storage and all other charges in connection with the same. The Appellant was forthwith to make a deposit of £50,000 with the Minister of Munitions, to be absolutely forfeited if he should fail to comply with any of the terms of the contract, in which case the Minister was to be entitled to resell any of the goods for which payment had not been made, and any deficiency arising from such resale and all expenses attending the same were to be made good and paid by the Appellant as liquidated damages, while any increase of price in such resale was to belong to the Minister. Any further stocks of Government Aircraft linen becoming surplus between the 18th June, 1919, and the 18th December, 1919, were to be purchased by the Appellant at the same price and upon the same conditions. The Appellant was to have the right to refuse to take delivery of any piece of goods where more than 25 yards from the outside end of the piece was damaged. In all other cases he was to take delivery but the length of the damaged portion was to be deducted in assessing the purchase price. Any claims in respect to damage were to be made by the Appellant in writing prior to delivery. The Appellant was to reimburse the Minister any extra expense occasioned by examination of goods for damage conducted at his request. Any dispute as to the extent of damage and the amount to be deducted from the purchase price in respect thereof was in default of agreement

to be determined by arbitration. The Appellant and his properly authorised representatives were to have such access to Stores as should be necessary to enable him to carry out or supervise the despatch of goods from such Stores and the Government Stores Agent was to afford him all reasonable facilities for taking delivery of the stocks in each one of the Stores concerned, and for removing the same from such Stores. The Appellant was not without the consent in writing of the Minister of Munitions to assign or sublet the benefit of the agreement, but nothing contained in the agreement was to prevent him from selling or disposing of the stock as and when he desired subject to the provisions of the agreement.

5. The Appellant provided out of his own resources the deposit of £50,000 required by the contract. The remainder of the purchase money payable to the Minister of Munitions was provided out of the purchase money of the linen sold by him which was paid by the purchasers in cash with the orders. The Appellant did not make any arrangements for financing the transaction, though from time to time there was a debit balance on the Appellant's Bank Account owing to delays in payment on the part of his purchasers, and in all he paid the Bank £710 interest on account of the accommodation afforded him on these occasions.

6. Immediately after the signature of the contract the Appellant was approached by a Mr. Copley with a proposal to take the whole or a portion of the linen off his hands and thus relieve him of his responsibility in whole or in part. As this proposal did not offer the Appellant any profit on the transaction he rejected it. Shortly afterwards he was approached by a Mr. Craig on behalf of a group of persons who proposed to purchase the whole benefit of the contract, and negotiations proceeded up to the point of an agreement being prepared, but the matter fell through on account of financial obstacles. The Appellant then communicated through an intermediary with the Belfast Linen Manufacturers' Association and offered to sell the whole of the linen to the Association or such of its Members as were prepared to purchase it at a price of 2s. a yard, but the offer was not accepted.

7. The Appellant explained in sworn evidence that he took the view that the Belfast Manufacturers had a monopoly of the linen business in the United Kingdom, that they were the only people who could, through their organisation, successfully handle the linen, and that there was little or no prospect of his successfully disposing of the linen in the period of six months allowed by the terms of the contract unless they could be induced to purchase the bulk of it. His policy therefore was to alarm them by leading them to think that their market would be undermined by his making a widespread offer of Government linen to the public, and starting an advertising campaign for this purpose.

8. In pursuance of this policy the Appellant rented an office at 95, High Holborn, from the beginning of July, 1919, till March, 1920, for which he paid in rent, rates and taxes approximately £525. He furnished this office, had a telephone installed, and employed there a staff of 18 or 20 clerks. He engaged an Advertising Manager at a salary at the rate of £1,000 a year and carried on an extensive advertising campaign from June till October, 1919. He issued circulars, inserted advertisements on a large scale in the trade journals and in "The Times" newspaper, and gave interviews to many newspaper representatives. From the first many small retail orders for linen were received from the public in response to his advertisements. The Appellant also engaged a linen expert to advise him and give his services in the disposal of the linen for twelve months or such shorter time as might be required on the terms that the expert was to receive a payment of £10,000 if the Appellant made a profit and nothing if a profit was not made. The Appellant employed an invoice clerk at each of the depots where the linen was stored (18 in all situate in 10 different towns) to see that deliveries were made correctly. The despatch of the linen was undertaken by the Government Staff at the depots. The charges made by the Ministry of Munitions for packing, sorting and making up the linen into parcels amounted to £17,248 12s. 2d. A commission of $1\frac{1}{4}$ per cent. was offered to anybody who introduced orders from abroad. In all the Appellant's wages bill in connection with the transaction amounted to nearly £7,000 and upwards of £20,000 was paid as commission, including the £10,000 paid to the linen expert. There was an expenditure of £843 on postage and telegrams in connection with the disposal of the linen. An account showing the receipts and expenses in connection with the disposal of the linen is attached hereto and forms part of this Case. The whole of the unbleached linen was sold in the same state in which it was purchased.

9. On the 15th July, 1919, the first order was received from one of the Belfast houses, which eventually purchased about 1,800,000 yards in all, and on the following day an order was received from another Belfast house which eventually purchased about 1,236,000 yards in all. Thereafter sales to the Belfast houses proceeded rapidly, and although they slackened at the time of the railway strike in October, 1919, only 700,000 yards remained unsold by 18th December, 1919 and the whole stocks amounting to 44,803,816 yards were sold by 16th February, 1920. In all 4,279 orders were received, of which 510 came from wholesale houses in Belfast. The total number of purchasers was 1,280, of whom 55 were wholesale firms in Belfast, 208 were export firms, and 1,017 retail firms. The 55 Belfast firms took 34,736,991 yards, of which the great bulk was purchased by eight houses. The export sales amounted to 5,116,425 yards, and the retail sales to 4,937,062 yards, of which about one-third was purchased by Messrs. Ponting and Messrs.

Barker (who are associated firms) and over 2,000,000 yards by Belfast houses. A separate "Linen Account" was opened at the Appellant's bank into which all moneys received in connection with the sales were paid and out of which all expenses were defrayed, and 78 cheques were drawn on this account in favour of the Ministry of Munitions in payment for the linen; 446 delivery orders were issued, which were prepared in triplicate, one copy being sent to the Ministry of Munitions, one copy to the invoice clerk at the depot, and one copy retained in the office at 95, High Holborn. A sales book, a delivery book, and a ledger were kept, and generally all the books that would normally be kept in a trading concern, with the exception that there was no purchase daybook or purchase ledger and no stock book. Purchase books were not necessary as only the one purchase was made, but the delivery book recorded the advice notes from the Ministry of Munitions of the quantities delivered, and the Appellant was kept aware of the quantities of linen remaining at each depot by means of daily stock sheets forwarded to the office at High Holborn by the invoice clerks. The Appellant continued to devote the greater part of his time to his business as agricultural machinery merchant, but he spent about three hours a day at the office in High Holborn and he made one journey to America in connection with the disposal of the linen.

10. It was contended on behalf of the Appellant:—

- (a) that the Appellant did not carry on any trade, manufacture, adventure or concern in the nature of trade in connection with linen;
- (b) that the transaction was conceived and carried out as a gambling transaction, the selling organisation being not in truth the selling organisation of any trade but an instrument devised and used for the purpose of bringing the gamble as such to a successful issue;
- (c) that the profit was not an annual profit chargeable to Income Tax under Case VI of Schedule D or under any other Case of that Schedule, or under any other Schedule of the Income Tax Act.

11. It was contended on behalf of the Crown (*inter alia*):—

- (a) that the Appellant carried on a trade, adventure or concern in the nature of trade and that the profits arising therefrom were assessable to Income Tax under Case I of Schedule D;
- (b) alternatively, that such profits were annual profits or gains and assessable under Case VI of Schedule D.

12. We, the Commissioners who heard the appeal, after considering the facts and arguments put before us, gave our decision upon the question of principle on the 29th January, 1921, in the following terms:—

" Mr. Martin purchased a large quantity of linen with
" the sole intention of selling it again at a profit, and he

“ proceeded to sell it piecemeal by an extensive series of
 “ transactions spread over a period of seven months, using
 “ for the purpose an organisation and methods such as are
 “ ordinarily adopted by traders in selling the articles in
 “ which they deal. We consider that in exercising these
 “ activities Mr. Martin was for the time being carrying on a
 “ trade the profits of which are chargeable to Income Tax
 “ and Excess Profits Duty.

“ As we were asked to give a ruling on the questions
 “ whether Mr. Martin's operations constituted an adventure
 “ and/or a business, we express the opinion that Mr. Martin
 “ could properly be described as having entered upon an
 “ adventure or upon the business of a dealer in linen, but
 “ while so doing we wish to make it clear that our decision
 “ that he is liable to Income Tax and Excess Profits Duty in
 “ respect of the profits accruing from the operations in
 “ question rests primarily upon the construction which we
 “ put on the words ' carrying on a trade ' as above
 “ indicated.”

13. The ultimate determination of the appeal was delayed in consequence of an application made (without prejudice to the contention that no trade had been carried on) by the Appellant to the Board of Referees under Section 42 of the Finance (No. 2) Act, 1915, for a special percentage standard for the purposes of Excess Profits Duty. The decision of the Board of Referees on this application was delivered on the 14th January, 1924, no order being made, and we thereupon reduced the assessment to the sum of £908,989. There is no dispute as to the amount of the assessment on the assumption that the profit is properly chargeable to Income Tax.

14. 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 Income Tax Act, 1918, Section 149, which Case we have stated and do sign accordingly.

P. WILLIAMSON, } Commissioners for the Special
 J. JACOB, } Purposes of the Income Tax Acts.

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

30th January, 1925.

EXHIBIT referred to in paragraph 3.

Department of Aeronautical Supplies, Ministry of Munitions of War, Aircraft Disposal Department, York House, Kingsway, London, W.C.2.

Ref. : D.B. 5B. 24/14/1 C.A.D./889.

17th June, 1919.

To L. J. Martin, Esq.,
Associated Manufacturers' Company,
72-80, Mansell Street,
London, E.1.

Dear Sir,

In accordance with your previous communications of the 28th May, 1919, and 24th June, 1919, and verbal alterations which had been agreed upon in connection with your tender for the whole of the Government Surplus Stocks of aeroplane linen, I am directed by the Ministry of Munitions to offer these stocks to you upon the following conditions :—

1. The Ministry of Munitions agrees to sell, and you agree to purchase, under the conditions following, the whole stock of Government Aircraft linen, exclusive of "tape fabric", surplus to Government requirements which remains in the Government's possession and unsold at the 7th June, 1919, and which is more particularly described in the stock lists referred to in Clause 8 hereunder.

2. You agree to pay for the linen at the rate of 1/8 (one shilling and eightpence) per lineal yard without regard to quality or width.

3. You agree to take delivery at the depot, or depots, in which they are stored of the whole stocks within a period of six months from the 18th day of June, 1919. Any stocks undelivered to remain at Government risk until the 18th day of December, 1919, but not after. You are to give to the Aircraft Equipment Disposal Department reasonable notice in writing of your intention to take delivery of any particular stocks.

4. Payment will be made by you to the Ministry of Munitions, cash with each order for delivery.

5. Payment will be made by you on the 18th day of December, 1919, for the balance of the goods remaining undelivered at that date.

6. If by the 18th day of December, 1919, you shall not have removed all the goods from the Government stores it will be arranged by the Minister, in so far as is reasonably possible to do so, that the material shall remain in these stores at your risk

for a further period to be agreed upon, but in such a case you will become responsible for and pay for the storage and all other charges in connection with the same. Deliveries shall be taken so far as reasonably possible over a fair average of the different grades of which the said stocks consist.

7. You shall upon entering into this agreement forthwith make a deposit of £50,000 with the Minister of Munitions and if you fail to comply with any of the terms herein contained such deposit shall be absolutely forfeited and the Minister shall be entitled to resell any of the goods for which you shall not have paid either by public auction or private contract and the deficiency (if any) arising from such resale made and all expenses attending the same or any attempted resale shall be made good and paid by you as liquidated damages; any increase of price in such resale shall belong to the Minister.

If at any time before the 18th day of December, 1919, the stocks of linen remaining in store undelivered and unpaid for shall have become reduced to a value of £50,000 computed on the above basis of 1s. 8d. per lineal yard payment for deliveries thereafter will be taken from the said deposit.

8. The stock list attached shows approximately all the stocks sold to you and the distribution of such stocks in Depots, but is subject to corrections as to receipts into and sales from stores as from the first day of June, 1919.

A corrected stock list will be prepared as soon as possible and supplied to you. This corrected stock list will thereafter be adopted in lieu of the attached stock list.

9. In the event of any further stocks of Government aircraft linen exclusive of "tape-fabric" becoming surplus to Government requirements between the 18th day of June, 1919, and the 18th day of December, 1919, the Minister further agrees to sell and you agree to purchase at the same price and upon the same conditions as apply to the stocks included in the said stock lists such further surplus stocks of Government aircraft linen provided that in the case of any such further stocks being declared surplus during the period of 14 days before the 18th day of December, 1919, you shall be entitled to not less than 14 days' notice in writing before you are required to pay for such further surplus stocks so declared, delivery thereof in no case will be made before payment.

10. The intention of this agreement is that you purchase the whole of the surplus stocks but reasonable allowance will be made to cover errors in the stock list and subject to Clause 9 hereof the Minister shall not be called upon to deliver more linen than was in fact physically held by the Government at the date mentioned in Clause 1 even though it is shown that deliveries

made are short of the quantity stated in the " correct stock " list. On the other hand subject always to Clause 9 hereof you shall not be called upon to take delivery unless otherwise arranged of stocks beyond the quantities stated in the " corrected stock " list.

The Minister shall not be under any liability for the non-delivery of any portion of the stock sold under this agreement, in the event of such stock being destroyed by fire or other agency prior to delivery thereof to the purchaser.

11. You are to have the right to refuse to take delivery of any piece of goods where more than 25 yards from the outside end of the piece is damaged. In all other cases you are to take delivery, but the length of the damaged portion shall be deducted in assessing the purchase price. Any claims hereunder in respect of damage must be made by you in writing prior to delivery. You are to reimburse the Minister any extra expense occasioned by examination of goods for damage conducted at your request. Any dispute as to whether any and if so what extent of damage exists for the purpose of this clause and as to the amount to be deducted from the purchase price in respect of any damage shall in default of agreement be determined by arbitration.

12. You and your properly authorised representatives shall have such access to stores as shall be necessary to enable you to carry out or supervise the despatch of goods from such stores, and the Government stores agent will afford you all reasonable facilities for taking delivery of the stocks in each one of the stores concerned and for removing the same from such stores.

13. You are not without the consent in writing of the Minister of Munitions to assign or sub-let the benefit of this agreement but nothing herein contained shall prevent you from selling or disposing of stock as and when you desire, subject always to the provisions of this agreement.

14. You are requested to write indicating your acceptance of the above terms.

Yours truly,

(Signed) W. McC. CAMERON,
Controller,
Aircraft Disposal Department.

June 17th, 1919.

(2) MARTIN v. THE COMMISSIONERS OF INLAND REVENUE.

This Case related to an Excess Profits Duty assessment made upon the appellant for the accounting period ended 28th February, 1920, in respect of the profits of the transactions described in Case (1), and the Case was stated in similar terms, *mutatis mutandis*.

The cases came before Rowlatt, J., in the King's Bench Division on the 15th June, 1925, when judgment was given in favour of the Crown in both cases with costs.

Mr. R. W. Needham and Mr. J. S. Scrimgeour appeared as Counsel for the Appellant, and the Attorney-General (Sir Douglas Hogg, K.C.) and Mr. R. P. Hills for the Crown.

JUDGMENT.

Rowlatt, J.—I do not think I need trouble you, Mr. Hills. I think this is a very clear case; at any rate it is overwhelmingly clear that there was evidence upon which the Commissioners could find there was a carrying on of trade here.

Now this gentleman embarked upon a very bold coup, because he bought a vast supply of linen which was available to a purchaser under circumstances, of course, of the most unusual and extraordinary character, namely, the state of affairs which resulted from the end of the War, and he sold it within the year, mainly in large quantities, to houses in the Belfast linen trade. Now he only made one purchase, but that of course does not prevent the subject-matter being a trade. I think the *California Copper* case⁽¹⁾ was a case of one purchase; the *Cape Brandy* case⁽²⁾ was in effect one purchase, although there were a lot of other things done too; and then I think the *Beynon v. Ogg* case⁽³⁾ was practically a case of one purchase, but I do not think it matters. This one purchase was so enormous that, although only one transaction of purchase has been mentioned as material, it only shows how dangerous it is to pin oneself to the use of a particular word, because it is clear that the scope of this purchase was enough to provide the material for a very long trading. Now what did he do? It was not his business to buy and sell linen, of course; he had a different business; but he did buy this linen; he tried to sell it in one direction; he tried to sell it in another, and he thought that the real buyers in the trade were not likely to come in unless they were alarmed, so he set to work to organise a vast activity, looking towards

(1) *Californian Copper Syndicate (Limited and Reduced) v. Harris*, 5 T.C. 159.

(2) *The Cape Brandy Syndicate v. The Commissioners of Inland Revenue*, 12 T.C. 358.

(3) 7 T.C. 125.

(Rowlatt, J.)

pushing the sales of these goods. He got expensive experts and expensive premises and all sorts of people, and he laid himself out apparently to force the sale of these goods, or to dispose of these goods among the public generally. Now on seeing that, the Belfast people thought better of it, and although a certain amount of the goods was sold through this agency, through this organisation, the main part was sold to big houses in Belfast, and so on. It is said that that was done as a little artifice to persuade the Belfast people. Well, be it so; it does not matter how it works. He bought this gigantic consignment of linen, and he set to work to make people (he did not care who they were) come in and buy it; to induce them to come in and buy it, and he set to work and worked away at it, got offices, did this, that and the other, and worked away at it so as to persuade people and make people think that it was to their advantage to come in to buy, some more and some less, and they bought it all, and all this is profit. Why is not that a trade? It is said that it is not habitual. Unfortunately perhaps for him he cannot do it often. That is very true, but as I think I said once, I did not think the word "habitually" necessarily covered the whole ground, and, as Mr. Justice Sankey said in *Beynon's case*⁽¹⁾, the isolation of the transaction was not necessarily conclusive, and that is so. You cannot find any word which will cover the whole ground; you cannot be so accurate as to frame a formula which will be absolutely right to whatever state of facts you apply it; you cannot do it. It is said it is not habitual; it was isolated. Now the sort of thing which is looked at when the Court uses those words and has used those words, is this: If a person buys a thing, an object, a stock, a piece of land or anything, he says "It is going cheap"; he says "This is worth a great deal more than people are going to let it go for now; I will buy it, because some day or other I shall be able to sell it again", and he buys it because he intends to sell it again, and one fine day in the view of the public, if it is a picture, or in the view of the neighbours, if it is land or what not, its value changes; he finds it of greater value, and he sells it. Now if he is always doing it, of course he is a dealer, but if he only does it once it is an isolated transaction; but that is quite different in my judgment from where a man gets control of an enormous amount of material and sets to work as if he was the most pushing tradesman in the world, sets to work to find his customers, to stimulate them, and to get rid of it. I really think this is a clear case. It is said that it is not "annual". Of course it is not annual in the sense that it occurs yearly. I have tried to deal with this matter in another case, but it is what happened in this tax year by way of income. It is, I think, income of the trade, and it is the income belonging to this year, and that is all that is necessary to make it annual. The Income Tax Act is dealing with

(1) 7 T.C. 125.

(Rowlatt, J.)

the imposition of a tax from the point of view of the Legislature. It says, What we are going to charge are the annual profits—that is to say, as the years come round we will charge the profits of the year. It does not mean it must be *de facto* current. All it means is, it must be a profit and it is the profit of the year. I fail to see any difficulty in the case really, and therefore I think both the appeals must be dismissed with costs.

An appeal having been entered against the decision in the King's Bench Division, the cases came before the Court of Appeal (Pollock, *M.R.*, and Atkin and Sargant, *L.J.J.*) on the 24th and 25th November, 1925, when judgment was reserved.

The Hon. E. A. Harvey, K.C., Mr. R. W. Needham and Mr. J. S. Scrimgeour appeared as Counsel for the Appellant, and the Attorney-General (Sir Douglas Hogg, K.C.) and Mr. R. P. Hills for the Crown.

On the 15th December, 1925, judgment was given unanimously in favour of the Crown, with costs, in both cases, confirming the decisions in the Court below.

JUDGMENT.

Pollock, M.R.—This is an appeal from two judgments of Mr. Justice Rowlatt dated 15th June, 1925, by which he confirmed the decision of the Commissioners in two appeals by Mr. L. J. Martin against assessments upon him in respect of Income Tax under Schedule D, and of Excess Profits Duty under Section 38, Sub-section (1), of the Finance (No 2) Act, 1915.

It is unnecessary to repeat the facts which are set out in the two Cases Stated. It is sufficient to recall that the Appellant on 17th June, 1919, agreed to purchase the whole surplus stock of Government aircraft linen remaining in the Government's possession, namely, nearly 45,000,000 yards, and set up a large and skilled organisation for disposing of it in smaller quantities. In the result some 55 wholesale firms in Belfast purchased nearly 35,000,000 yards of the linen; some 208 export firms bought over 5,000,000 yards, and sales to 1,017 retail firms absorbed the remainder of about 5,000,000 yards.

The Appellant's wages bill totalled £7,000, and the commission paid on the sales reached to upwards of £20,000, while the cost of packing the parcels was £17,248. The whole of the linen purchased was disposed of in some seven months.

The office from which these transactions were carried on was at 95, High Holborn, which was rented by the Appellant from the beginning of July, 1919, till March, 1920.

(Pollock, M.R.)

The Appellant's contention was that he had had one speculation in the nature of a gambling transaction, and had not carried on a trade or business, for his own calling was that of a merchant engaged in the business of wholesale machinery under the name of the Associated Manufacturers, a business which had no part in, or affinity to, the trade in linen.

We agree with the Commissioners and Mr. Justice Rowlatt that this contention is untenable. The Appellant entered upon this separate and new trade, or business, or adventure, for the purpose of realising profits or gains in it, and even if his purchase was made under a single contract, the realisation of his profits, which were large, was accomplished by his setting up a trading organisation. If it was maintained only until the 45,000,000 yards was disposed of, it was none the less characterised as a business while it was in being. Whatever view may be taken by the Courts upon such a point, it is a question of fact which it is for the Commissioners to determine. They had abundant material upon which to reach the conclusion that they did. The appeal, therefore, must fail on this point. It is not possible to lay down definite lines to mark out what is a business or a trade, or adventure, and to define the distinctive characteristics of each; nor is it necessary, or wise, to do so. The facts in each case may be very different, but it is the facts that establish the nature of the enterprise embarked upon.

The Commissioners have found that the Appellant was carrying on a trade or business within the meaning of the Act which imposed the Excess Profits Duty and this determination concludes that appeal against the Appellant, and it must be dismissed with costs.

Similarly the Commissioners' decision upon the facts brings the Appellant within the liability to Income Tax in respect of his profits or gains arising or accruing from the trade carried on by him. But the Appellant takes a new point upon the question of his liability to Income Tax. The words of Schedule D are: "Tax under this Schedule shall be charged in respect of (a) The "annual profits or gains arising or accruing", etc., and he contends that the profits or gains that he has made—admitting for this purpose that he has carried on a trade—are not "annual". He urges that the trade was carried on for some seven or eight months and no more, and that the profits or gains, to fulfil the qualification of being "annual" must arise from some enterprise that is capable, if it is continued, of yielding fruit annually, that is periodically, from year to year, even though it may not in fact be carried on for a full year or for more than a year; that regard must be had to the nature of the enterprise, and what was in contemplation, and what was the motive in undertaking it. Tried by this meaning of "annual", the Appellant contends that his profits or gains are not caught by the words of the Schedule.

(Pollock, M.R.)

It is thus necessary to examine the use of the word "annual", and its meaning in the Income Tax and Finance Acts where it is freely used.

Schedule D contains the detailed provisions necessary to work out the application of the Act to the trades, professions, employments and vocations and other activities and receipts which are embraced in its wide ambit. The charge upon the subject is found in Section 1, which is as follows: "Where any Act enacts that income tax shall be charged for any year at any rate, the tax at that rate shall be charged for that year in respect of all property, profits, or gains respectively described or comprised in the Schedules marked A, B, C, D, and E, contained in the First Schedule to this Act and in accordance with the Rules respectively applicable to those Schedules." Section 2 is as follows: "Every assessment and charge to tax shall be made for a year commencing on the sixth day of April and ending on the following fifth day of April, except where under the provisions of this Act weekly wage-earners are to be assessed and charged quarterly."

The Finance Act each year imposes the tax, and by its terms revives and continues the system under which provision is made for the collection of the tax. The system is maintained by the operation of Section 210 of the Income Tax Act, 1918, which ensures its application to Income Tax for the succeeding year. It is clear, therefore, that the Acts contemplate and impose a tax for one year only. Since 1842, when the Act was passed which is the forerunner of the consolidated Act of 1918, this has been the system adopted. Lord Macnaghten in *The Income Tax Commissioners v. Pemsel*⁽¹⁾, [1891] A.C. 531, at page 591, said of the Income Tax passed each year: "The Income Tax Act is not a statute which was passed once and for all. It has expired and been revived and re-enacted over and over again; every revival and re-enactment is a new Act." So too the assessors are appointed for the financial year—see Section 76, Sub-section (3), and the collector of taxes is appointed "in the month of April in every year"—see Section 80.

Special provision is made for assessment in the case of a trade which is set up in the year of assessment—see Rule 1 (2) applicable to Cases I and II of Schedule D. There is, however, no definition of "a trade" which limits it to a trade continued, or the continuance of which is intended or contemplated, beyond the year of assessment, or which defines it as one which has the characteristic of bearing fruit in successive years. The word used is trade, *simpliciter*, without restriction, limitation, or definition. There is no case decided in the 80 years and more during which the Income Tax has been collected which suggests such an interpretation.

(¹) 3 T.C. 53, at p. 102.

(Pollock, M.R.)

It was contended that *Goslings and Sharpe v. Blake*⁽¹⁾, 23 Q.B.D. 324, was a decision to that effect, but when examined it has no relevance to the point in issue. It was determined upon the meaning to be given to the words in Section 40 of the Income Tax Act, 1853 (16 and 17 Vict. c. 34), which are as follows: "Every person who shall be liable to the payment of any rent, or any yearly interest of money, or any annuity or other annual payment." It was held, following the *ejusdem generis* rule, that interest upon a loan by a banker to a customer for a period of less than a year—short loans, as they are termed among business men—is not caught by these words "yearly interest of money," which connote interest for a year and not less than a year. Lord Esher on page 327⁽²⁾ makes it quite clear that the collocation of the words in the Section induce the meaning "for a year," or "over the lapse of a year."

There are, however, some cases which suggest the contrary. Thus Mr. Justice Grove in the *Ryhope Coal Company v. Foyer*⁽³⁾, 7 Q.B.D. 485, at page 497, takes annually to mean "for the current year", and Mr. Justice Lindley agreed in his view. Mr. Justice Rowlatt in the course of his judgment in *Inland Revenue v. Blott*⁽⁴⁾, [1920] 1 K.B. at page 133, said "I lay no stress upon the word 'annual'. A dividend for the year is annual for this purpose though only paid once", and in *Ryall v. Hoare* and *v. Honeywill*⁽⁵⁾, [1923] 2 K.B. 447, he decided that a casual profit arising from an isolated transaction in the course of the year was taxable under the Sixth Case of Schedule D. Under that Case the profits must be "annual", so that his decision decides the point raised in the present appeal. He gives reasons for the conclusion which he came to, with which I agree.

Lord Birkenhead's sixth proposition, considered by him in *Coman v. Governors of Rotunda Hospital*⁽⁶⁾, [1921] A.C. 1, at pages 11 and 14, seems to involve a similar expression of opinion.

The wide terms of Schedule D itself appear to require that an unrestricted meaning is to be given to the word "trade", which is still further expanded by Section 237 to include "every trade, manufacture, adventure or concern in the nature of trade".

I cannot find any authority to support the contention made by the Appellant that the characteristic of repeating the profits or gains in other years beyond the year of assessment and charge must be attached to the trade carried on so as to make the gains annual.

In my judgment Mr. Justice Rowlatt was right. "Annual" means "in the current year", "occurring in the year of the assessment to taxation". For these reasons the Appellant fails on this point also as to the Income Tax. The assessment was rightly made, and the appeal must be dismissed with costs.

(1) 2 T.C. 450. (2) 2 T.C. at p. 452. (3) 1 T.C. 343. (4) 8 T.C. 101 at p. 112. (5) 8 T.C. 521. (6) 7 T.C. 517, at pp. 578 and 580.

Atkin, L.J. (Read by Lord Justice Sargant).—These two appeals are in respect of assessments to Income Tax and Excess Profits Duty respectively. For Income Tax the Appellant has been assessed under the Income Tax Act, 1918, Schedule D, under Case I and Case VI. The question is whether annual profits or gains have arisen or accrued to him from any trade carried on in the United Kingdom or elsewhere (Case I, Rule 1), or otherwise (Case VI). For Excess Profits Duty the Appellant has been assessed under the Finance (No. 2) Act, 1915, and subsequent Acts. The question here is whether profits have arisen to him from any trade or business (whether continuously carried on or not), of any description carried on in the United Kingdom (Finance (No. 2) Act, 1915, Section 39). The Excess Profits appeal only raises the question whether the Appellant carried on a trade or business; the Income Tax appeal raises the same question, but also the further question whether the profits that arose to the Appellant were within the terms of the Act "annual profits." The first question, as to whether the Appellant's operations could properly be found to be carrying on a trade, does not appear to me to admit of doubt. Taking into account the ordinary occupation of the Appellant, the subject matter of his purchase and sale, the method adopted for disposal, the number of the operations, and the period occupied, there is ample evidence to support the finding of the Commissioners that the Appellant carried on a trade. This disposes of the Excess Profits Duty appeal, which must be dismissed with costs.

The other question is one of general importance, upon which there appears to be only one direct decision, *Ryall v. Hoare*, (1923) 8 T.C. 521. This is a decision of Mr. Justice Rowlatt directly opposed to the Appellant's contention, and this case is in effect an appeal from that decision. The contention is that annual profits mean profits recurring year by year, or derived from a source capable of, or at any rate intended to be capable of, producing profits year by year. There must therefore be in contemplation, at the least, profits for more than one year. The words "annual profits" therefore do not include profits from an adventure which is begun and completed within one year; just as, so it is suggested, they do not include any profits made in employment for a period not extending over a year by a man whose general occupation is not to be employed; or in journalism or the exercise of an art by a man who is not a journalist or an artist; or from the possession of property where the profits do not recurrently arise from the property, as in the case of a single instance of letting a house furnished for a short period.

The argument for the Crown is that the words "annual profits" merely mean profits arising for the year of charge, profits of the year. It is pointed out that all the classes of non-periodic profits which the argument of the Appellant seeks to exclude have in fact in ordinary practice for years been included in assessments for Income Tax; and the judgment of Mr. Justice

(Atkin, L.J.)

Rowlatt in *Ryall v. Hoare*⁽¹⁾ is maintained to be right. In my opinion the judgment in the case cited was correct, and the contention of the Appellant fails. It derives what plausibility it possesses from the terminology of the Income Tax Act, which now is the Act of 1918, and is not free from difficulty. Why, it is asked, does Schedule D (a) speak of "annual" profits or gains arising from trade, while in (b) it speaks of "all interest" of money, annuities, and other annual profits or gains, unless in respect of interest of money it wishes to exclude some quality other than that of being annual interest, which must be other than that of being interest of the year? Why again does it use the phrase in the Rule to Case II, "whether such retainer shall be annual or for a longer or shorter period," unless the word there connotes something at least different from "of a year" and probably equivalent to recurrent? Again it is said "annual" and "yearly" must be equivalent terms, and if so what is the meaning of "any interest of money whether yearly or otherwise" in Case III, Rule 1 (a), unless "yearly" means something more than interest on a transaction completed within six months? And the case of *Goslings and Sharpe v. Blake*⁽²⁾, (1889) 23 Q.B.D. 324, was cited, where the power given by Section 40 of the Income Tax Act, 1853, to deduct the amount of Income Tax from the payment of any yearly interest of money was held not to authorise the deduction from payment of interest on a loan from a banker to a customer for a period of less than a year. Lord Esher, in dealing with this phrase, said at page 327⁽³⁾: "The word 'other' obliges us to say that an annual payment is an instance of the same kind as those that have gone before, so that what have gone before are in the nature of annual payments. . . . 'Any rent' becomes any annual rent. 'Any yearly interest of money' surely cannot be interest for less than a year, in ordinary English, and there remain 'any annuity,' which is admitted to be an annual thing, and any 'other annual payment.'" The same words are now found in Rule 19 (1) of the General Rules to all Schedules.

If one could adopt as a rigid canon of construction an assumption that in any statute the same word is always used with the same meaning, one's task would perhaps be easier; but it is plain that the assumption is ill-founded, and particularly so in regard to the Income Tax Acts. We must have regard to the context. When the history of the Income Tax Acts is looked at, the meaning of the words in question becomes plain. One may begin with the Income Tax Act of 1842, when Income Tax, after a period of relief, was reimposed. The Act itself, unlike the Act of 1918, imposes the tax and fixes the amount, providing by Section 1 that from the 5th April, 1842, "there shall be charged during the term hereinafter limited the several rates and duties mentioned in the Schedules." Schedule D was:

⁽¹⁾ 8 T.C. 521.⁽²⁾ 2 T.C. 450.⁽³⁾ *Ibid.* at p. 452.

(Atkin, L.J.)

Upon the annual profits or gains arising or accruing to any person residing in the United Kingdom from any trade there shall be charged yearly for every twenty shillings of the amount of such profits or gains the sum of sevenpence. By Section 193 the Act was to continue in force until April 6th, 1845. It was renewed for two further periods of three years and then of one year; and in 1853 was passed the Income Tax Act of that year, which again was an Act directly charging the subject and fixing the amount of the tax. It altered the form of charge. Section 1 begins: From and after April 5th, 1853, there shall be charged, etc., and paid yearly during the respective terms hereinafter limited the several rates and duties mentioned, namely, For and in respect of the annual profits or gains arising or accruing to any person resident in the United Kingdom from any trade for every twenty shillings of the annual value or amount thereof during the term of the next two years sevenpence, the further term of two years sixpence, and the further term of three years fivepence. By Section 2: For the purpose of classifying and distinguishing the several properties, profits and gains, and for the purpose of assessing, etc., such duties, the said duties shall be deemed to be granted and made payable yearly for and in respect of the several properties, profits and gains comprised in the Schedules; and the Schedules with which we were for so long familiar are set out. Schedule D does not materially depart from the terms of the first Section as set out above. It is: For and in respect of the annual profits or gains to be charged for every twenty shillings of the annual amount of such profits or gains.

In 1854 (17 & 18 Vic. c. 24), the amount of the tax was increased by reason of the war in the Crimea. The charging section, Section 1, is that there shall be charged in lieu of the rates and duties chargeable under the Act of 1853 in respect of all property, profits and gains chargeable under the Act the increased rate and duty of 1s. 2d. for every twenty shillings of the annual value or amount of all such property, profits and gains. The terms of the Act of 1853 expired on April 5th, 1860, and in that year there was imposed for one year commencing on April 6th, 1860, for and in respect of all property, profits and gains chargeable under the Act of 1853 the rate or duty of tenpence for every twenty shillings of the annual value or amount of all such property, profits or gains; and by Section 2 it was provided that the duties should be assessed, raised, and so on, under the regulations and provisions of the Act of 1853 and all the forms, etc., of that Act should apply to the collection of the duties of the present Act. This procedure has continued until 1918. Income Tax was imposed by an Act for a year, sometimes called an Income Tax Act, then a Customs and Inland Revenue Act, and later, as at present, a Finance Act. The provisions of the Acts of 1842 and 1853, the operation of which had expired, were incorporated into each yearly Act, at first by express reference,

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latterly by the formula that all such provisions of any Act relating to Income Tax as were in force on the last day of the preceding financial year and were not repealed by the then Act should have full force and effect on the duties thus imposed, so far as consistent with that Act. I find this form in Section 2 of the Customs and Inland Revenue Act of 1873, when the duty was only threepence, and when the long-established statutory exemption of Judges' salaries from all taxation was removed in the Judicature Act of that year: and it has continued in similar form to the present day.

The Income Tax Act, 1918, is constructed on different lines from the Acts of 1842 and 1853. It does not impose any duty at any rate. It is in the nature of an Income Tax Clauses Act and is to apply whenever any Act imposes any Income Tax. Section 1: "Where any Act enacts that income tax shall be charged for any year at any rate, the tax at that rate shall be charged for that year in respect of all property, profits, or gains respectively described or comprised in the Schedules marked A, B, C, D, and E, . . . and in accordance with the Rules respectively applicable to those Schedules." Though the Act is called a consolidating Act, in various provisions the wording of the previous Acts is altered, and I should consider that it was plain that where the words used have a plain meaning that alone must be given effect to, though no doubt, in cases of doubt, regard may be had to previous legislation which this Act purported to consolidate. Schedule D does not materially differ from the original Schedules in the Act of 1853. The tax, so far as relevant, is imposed on all annual profits or gains arising or accruing from any trade for every twenty shillings of the annual amount of the profits or gains. It is not irrelevant to recur to the following provisions: Paragraph 2 of the Schedule: "Tax . . . shall be charged under the following cases . . . (VI) Tax in respect of any annual profits or gains not falling under any of the foregoing Cases." Rule 1 of Rules applicable to Cases I and II: "Where the trade . . . has been set up and commenced within the year of assessment the computation shall be made according to the rules applicable to Case VI." Rule 2 of Rules applicable to Case VI: "The computation shall be made, either on the full amount of the profits or gains arising in the year of assessment, or according to the average of such a period, being greater or less than one year, as the case may require, and as may be directed by the commissioners."

In the last Rule it may be noticed that the consolidating Act has changed the wording of the Rule, substituting "profits or gains arising in the year of assessment" for the words in the Rule to the Sixth Case in the Act of 1842, "profits or gains received annually." It appears to me that these words indicate that the Statute meant to charge profits made from trading within the year of assessment for less than a year, though this does not

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entirely dispose of the plaintiff's contention that the trade must be capable of recurrent profits, and secondly that the Statute is capable of using the words " arising in the year of assessment " as the equivalent of " annual ".

On this survey of the legislation it appears to me plain that when the original Act of 1842 granted for a term of three years upon the annual profits a charge yearly for every twenty shillings of the amount of such profits, it was intending to impose a charge for the year upon the profits for the year on twenty shillings of the amount for the year, and when the Act of 1853 said that the rate shall be charged yearly on the annual profits or gains for every twenty shillings of the annual amount, it meant the same thing. The same construction should be placed upon the Act of 1918, the language of which is, I think, made plainer by the terms of the Rules which I have just set out. I am inclined to accede to the argument that " annual " often, perhaps usually, connotes recurrence, and that it is sometimes used with that connotation in the Income Tax Acts, on the other hand it sometimes means " of the year ", and is also used in that connotation in the Income Tax Acts. In the context in which it is used in this Schedule it appears to me to mean profits of the year of charge. In that view the question that arises in respect to them is not whether they are recurrent or capable of being recurrent. With that quality an Act imposing taxation for a year only may be considered to take little concern. The question is whether they can fairly be brought within the main purview of the Acts, which is to tax income, not capital, and whether, if they are profits in the sense of income, they arose within the year in respect of which the Legislature is exacting revenue. For these reasons I think that this appeal also should be dismissed with costs.

Sargant, L. J.—The first question to be answered is one common to both these appeals, namely, was there material before the Commissioners on which they could properly find that there was a carrying on of trade by the Appellant within the Income Tax Acts? It has been urged that there was here a single transaction by way of purchase, but this is by no means conclusive. It is not essential to trading or trade as defined by the Acts that there should be a series of transactions both of purchase and of sale. A series of retail purchases followed by one bulk sale, or a single bulk purchase followed by a series of retail sales, may well constitute a trade. Indeed, the contrary view was but faintly, if at all, urged for the Appellant. His case rather was that as he had made a single bulk purchase, and had originally intended to dispose of the whole of his purchase by way of a single bulk sale, he was not thereby entering on a trade but was merely embarking on an isolated transaction entirely different from his ordinary business. He meant, it is said, to make a single gigantic speculation.

(Sargant, L.J.)

But this argument gives the go-by to what the Appellant actually did as distinguished from what he originally intended. For, having failed to dispose of his purchase by way of a sale in bulk, he proceeded to set up and use for the purpose of realisation an extensive selling organisation, the general character of which is shown by paragraphs 8 and 9 of the Special Case and by the account annexed thereto. In these circumstances not only were the Special Commissioners entitled to find that the Appellant was carrying on a trade, but I cannot for myself see how they could have come to any other conclusion.

This disposes altogether of the second appeal. But as regards the first appeal, a second argument has been presented for the Appellant, namely, that, even if he was carrying on a trade, the profits realised thereby were not "annual" within the meaning of the Income Tax Acts. It was argued that the use in the Acts of the phrase "annual profits" implies that the trade from which they are derived has, or at any rate was intended to have, some element of permanence resulting in the production of recurrent annual profits; and in this connection the decision in *Goslings and Sharpe v. Blake*⁽¹⁾, 23 Q.B.D. 324, was referred to. But in my judgment that decision merely dealt with the meaning of the word "annual" in a different part of the Act, and in a very special collocation, namely, "any rent or any yearly interest of money or any annuity or other annual payment," and has no applicability here. And I can find nothing in the legislation in question (which has reference to a series of Acts each imposing a rate of tax for a single year) to suggest that "annual" means anything but "during the year in question"; or that the trades or adventures being dealt with are limited to enterprises lasting, or intended to last, more than a year, and so calculated to yield recurrent annual profits. I agree with the recent decision to that effect of Mr. Justice Rowlatt in *Ryall v. Hoare and v. Honeywill*⁽²⁾, [1923] 2 K.B. 447.

Further, even if the phrase "annual profits" indicated that the trade was intended to last, or to be capable of lasting, for more than a year, I doubt whether this would be sufficient for the Appellant. His operations were, in fact, concluded within the period of some seven months. But the process of realisation might well have lasted over a year or more. And it is reasonably clear that the Appellant intended that his operations should continue until the whole of his purchase was realised.

I agree that both appeals should be dismissed.

Mr. W. B. Manley.—The appeals, my Lords, will be dismissed with costs?

Pollock, M.R.—Yes, I said so: both appeals dismissed with costs.

⁽¹⁾ 2 T.C. 450.

⁽²⁾ 8 T.C. 521.

The Appellant having appealed against the decisions of the Court of Appeal, the cases came before the House of Lords on the 7th December, 1926, when judgment was given unanimously in favour of the Crown in both cases, with costs, confirming the decisions of the Court below.

Mr. A. M. Latter, K.C., and Mr. R. W. Needham appeared as Counsel for the Appellant, and the Attorney-General (Sir Douglas Hogg, K.C.) and Mr. R. P. Hills for the Crown.

JUDGMENT.

Viscount Cave, L.C.—My Lords, it is unnecessary to state all the facts of this extraordinary transaction, which are set out in the Case Stated by the Commissioners for the opinion of the High Court. It is enough to read the finding with which the Case concludes, and which is in these terms: "Mr. Martin"—that is the Appellant, who is not usually engaged in the purchase or sale of linen—"purchased a large quantity of linen with the sole intention of selling it again at a profit, and he proceeded to sell it piecemeal by an extensive series of transactions spread over a period of seven months, using for the purpose an organisation and methods such as are ordinarily adopted by traders in selling the articles in which they deal. We consider that in exercising these activities Mr. Martin was for the time being carrying on a trade the profits of which are chargeable to Income Tax and Excess Profits Duty." By means of the transactions so described the Appellant made a profit of something like £1,900,000, and upon that sum he has been held assessable to Income Tax and Excess Profits Duty. The question is whether he was rightly so held, and, if not, why not.

Counsel for the Appellant have taken two points. First, they say that the Appellant did not carry on a trade or business, but only engaged in a single adventure not involving trading operations. My Lords, the Commissioners have found as a fact that he did carry on a trade, and they set out in the Case ample material upon which they could come to that conclusion. Indeed, having regard to the methods adopted for the resale of the linen, to the number of operations into which the Appellant entered, and to the time occupied by the resale, I do not myself see how they could have come to any other conclusion. That disposes of the appeal as to Excess Profits Duty, which therefore fails.

With regard to the claim for Income Tax, the Appellant takes another point. He says that at all events these profits did not come within the description of "annual profits or gains" arising or accruing in respect of a trade—those words being quoted from the first paragraph under Schedule D to the Income Tax Act, 1918. He says they did not come within those words because they were not recurrent profits or capable of recurrence from year to year. My Lords, there are, no doubt, passages in

(Viscount Cave, L.C.)

the Act in which the word "annual" or the word "yearly" has an implication of recurrence; but one must have regard to the context in which the words are found, and, having regard to the context, I do not think that there is any such implication in the words "annual profits or gains" as applying to the profits or gains arising in respect of a trade which are taxable under Schedule D of the Act. It appears to me that in that context the words bear the construction put upon them by Mr. Justice Rowlatt in the case of *Ryall v. Hoare*⁽¹⁾, where he said that the words meant "profits or gains in any one year or in any year as the succession of years comes round." He pointed out that in fact the tax is imposed for one year only, and, having regard to that fact and to the context which accompanies the particular words which he was called upon to construe, he held that those words meant simply the profits or gains accruing in the year in question. I agree with that interpretation as applied to this case, and accordingly I think that the profits which are now in question come within the words of charge, and that this appeal fails. I move your Lordships that it be dismissed with costs.

Lord Atkinson.—My Lords, I concur.

Lord Shaw of Dumfermline.—My Lords, I agree.

Lord Sumner.—My Lords, I agree that there was abundance of evidence to justify the Commissioners in holding that the Appellant carried on a trade.

With regard to the argument raised on the word "annual", I would point out that the nature of the trade, as described in the Case Stated, was such as to show that there was at the outset every possibility of repeated trading operations and a considerable chance of their lasting over a protracted period; and I do not question that the word "annual", in connection with the profits of that trade, would be satisfied by there being profits falling within the year of charge, upon which the system of the Income Tax Acts is based.

In so far as the judgment of Mr. Justice Rowlatt in *Ryall v. Hoare*⁽¹⁾ decided a similar point, as I think it did, I concur in his conclusion. In that case it is clear that the profits in question, whatever their other qualities may have been, had the quality of being repeated and of continuing over a considerable period; but I wish to guard myself against appearing to agree with all his instances and observations. I understand that your Lordships, like the Lords Justices in the Court of Appeal, affirm his decision only in regard to the exact

(Lord Sumner.)

question arising in that case, and not in the full breadth of the illustrations that he gave. I would point out that the case on which he relied, which is *Wylie v. Eccott*⁽¹⁾, 1913 S.C. 16, was a case in which liability to the tax in respect of the letting of a furnished house was admitted, and the question in dispute was as to the right to a deduction. Accordingly, it is not authority, as the learned Judge would appear to have thought that it was, for some of the more extended cases that he mentioned. The whole subject is a difficult one, and as I hope some time, and perhaps before long, your Lordships may have the opportunity of considering it in full detail, I make no further observation about it, except that I should wish to reserve my judgment very fully on every aspect of it that goes beyond the facts of this particular case.

Lord Carson.—My Lords, I also concur with the motion which has been moved from the Woolsack, and I should like to limit the decision as regards *Ryall v. Hoare*⁽²⁾ to what is necessary to be decided in this case. The learned Judge who decided that case introduced instances where he thought Income Tax would be payable, where there was in reality no trade being carried on and where it could hardly be alleged that trade was being carried on, they being isolated transactions. My Lords, I desire, like my noble friend who has preceded me, to reserve my opinion upon that subject if it ever becomes necessary to decide it.

Questions Put :

- (1) In *Martin v. Lowry (Inspector of Taxes)*:—

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.

- (2) In *Martin v. Commissioners of Inland Revenue*:—

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⁾ 6 T.C. 128.

⁽²⁾ 8 T.C. 521.