No. 774.—HIGH COURT OF JUSTICE (KING'S BENCH DIVISION).—15TH NOVEMBER, 1929.

COURT OF APPEAL.—11TH, 12TH AND 13TH FEBRUARY, 1930.

HOUSE OF LORDS.—17TH NOVEMBER AND 15TH DECEMBER, 1930.

DIGGINES (H.M. INSPECTOR OF TAXES) *v.* FORESTAL LAND, TIMBER AND RAILWAYS COMPANY, LIMITED.

Income Tax, Schedule D, Case V—Foreign Possessions—Stocks, shares or rents—Basis of assessment.

The Respondent Company was in receipt of dividends from foreign companies in various countries. The point at issue was whether the consequent liability to Income Tax, Schedule D, under Case V, for the years 1921–22 to 1926–27 should be based on the average amount of the whole of the dividends arising to the Company from foreign companies in the three years of average, or upon the footing that each of the holdings of shares was a separate source of income separately assessable.

Held, *that the liability should be based on the average amount of the whole of the dividends.*

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 High Court.

At a meeting of the Commissioners for the Special Purposes of the Income Tax Acts held at York House, Kingsway, London, on 13th February, 1929, for the purpose of hearing appeals, the Forestal Land, Timber & Railways Co., Ltd., of 15, St. Helen's Place in the City of London, hereinafter called the Company, appealed against assessments to Income Tax made upon it by the Additional Commissioners of Income Tax for the City of London in respect of foreign possessions in the following amounts for the years mentioned :—

For the year to 5th April,			1922,	in the sum of	£97,450	
,,	,,	,,	1923	,, ,,	£120,000	
,,	,,	,,	1924	,, ,,	£120,000	and
			£31,352 additional			
,,	,,	,,	1925,	in the sum of	£120,000	
,,	,,	,,	1926	,, ,,	£120,000	and
			£44,672 additional			
,,	,,	,,	1927,	in the sum of	£150,000.	

The above assessments were in estimated amounts in the absence of returns.

1. The following table gives a summary of the sterling values of the dividends from foreign companies receivable by the Company in the several fiscal years indicated. These companies are variously situated in the United States of America, the Argentine Republic, Germany, Spain and Poland :—

SUMMARY OF FOREIGN DIVIDENDS.

Fiscal Year in which Dividend is payable.

Name of Company.	1918–19.	1919–20.	1920–21.	1921–22.	1922–23.	1923–24.	1924–25.	1925–26.	1926–27.
1. The Tannin Corporation, U.S.A.	£79,404	£94,208	Nil	£154,321	Nil	£176,724	£18,181	£193,323	Nil
2. Fontana Limitada S.A. Industral de Quebrancho, Buenos Aires.	—	—	—	Nil	Nil	£13,975	£24,321 £22,170	Nil	£37,807
3. Compania Argentina de Lanchas.	£9,975	£10,819	£10,904	£9,975	£9,975	£16,865	£5,039	Nil	5,643
4. Sociedad Anomina de Ferro-Carriles Economicos (formerly called O'Campo Company).	5,238	3,677	3,677	524	Nil	Nil	2,661	2,803	3,972
5. Cedulas Hepoktareas Argentinas & Santa Fe Telephone Company.	854	95	95	95	95	80	90	92	—
6. Reinischen Gerbstoff - und Farbholz - Extract - Febrik Ger. Muller Aktiengesellschaft, Benrath am Rheim.	—	—	—	—	21	Nil	Nil	1,232	Nil
7. Extractos Curtuentes y Productos Quimicos S.A. Barcelona.	—	—	—	—	—	2,137 2,216	2,427	1,481	2,830
8. Gebr-und Farbstoffwerke H. Renner & Co. Aktiengesellschaft, Hamburg.	—	—	—	—	33	Nil	Nil	Nil	Nil
9. Polska Fabryka Ekstrakow Garbarschich, Spolka Akcyjna, Warszawa.	—	—	—	—	—	Nil	Nil	Nil	Nil
	£95,471	£108,799	£14,676	£164,915	£10,124	£211,997	£74,889	£198,931	£50,252

2. The holding of shares in the Tannin Corporation had been sold in the year 1926–27. The word " nil " has been inserted in the table for those years in which, while shares were held, no dividends were paid.

3. On behalf of the Company it was contended that the assessments should be made upon the footing that each of the holdings of shares was a separate source of income separately assessable under the provisions of Case V of Schedule D.

Reliance was placed on the decision in the case of *Commissioners of Inland Revenue* v. *Trustees of William Drysdale*(1), Court of Session, 18th February, 1928, and *Whelan* v. *Henning*(2) [1926] A.C. 293.

The computation of the duty payable for the years in question put forward on the basis of the contention made on behalf of the Company was £87,623 8*s*. 0*d*.

4. On behalf of the Inspector it was contended (*a*) that the assessment each year should be arrived at by including the average amount of the whole of the dividends arising to the Company from foreign companies in the three years of average (*b*) that accordingly the assessments should be arrived at in the following amounts :—

1921–22—£72,982 being the average of the foreign dividends of the 3 preceding years.
1922–23—£96,130 being the average of the foreign dividends of the 3 preceding years.
1923–24—£63,238 being the average of the foreign dividends of the 3 preceding years.
1924–25—£129,012 being the average of the foreign dividends of the 3 preceding years.
1925–26—£99,003 being the average of the foreign dividends of the 3 preceding years.
1926–27—£161,939 being the average of the foreign dividends of the 3 preceding years.

The computation of the duty payable for the years in question put forward on the basis contended for on behalf of the Inspector was £141,371 15*s*. 0*d*.

5. We, the Commissioners who heard the appeal, upheld the contentions put forward on behalf of the Company and reduced the assessments as follows :—

for the year to 5th April, 1922, to £72,982, being the sum of the averages for the previous 3 years of the dividends from the sources numbered 1, 3, 4, & 5.
for the year to 5th April, 1923, to £10,661, being the sum of the averages of the sources numbered 3, 5, 6, & 8.

(1) 13 T.C. 565. (2) 10 T.C. 263.

for the year to 5th April, 1924 to £61,820, being the sum of the averages of the sources numbered 1, 2, 3, 5 & 7.

for the year to 5th April, 1925, to £128,994, being the sum of the averages of the sources numbered 1, 2, 3, 4, 5 & 7.

for the year to 5th April, 1926, to £68,210, being the sum of the averages of the sources numbered 1, 4, 5, 6 & 7.

for the year to 5th April, 1927, to £32,442, being the sum of the averages of the sources numbered 2, 3, 4, 6, 7, 8 & 9.

(For this year we excluded the average of source No. 1 as on the basis of our decision it was admitted that owing to the shares having been sold during 1926–27 and no dividend having been received in that year the Company could obtain relief under the Miscellaneous Rules to Schedule D, Rule 3, Income Tax Act, 1918, by which the amount arrived at on the three years average would be reduced to NIL).

6. Immediately upon our so determining the appeal the Inspector of Taxes expressed to us his dissatisfaction with our determination 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.

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

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

29th July, 1929.

The case came before Rowlatt, J., in the King's Bench Division on the 15th November, 1929, when judgment was given against the Crown, with costs.

The Attorney-General (Sir W. A. Jowitt, K.C.) and Mr. R. P. Hills appeared as Counsel for the Crown, and Mr. A. M. Latter, K.C., and Mr. J. H. Bowe for the Company.

JUDGMENT.

Rowlatt, J.—In this case it seems to me that, although the Scotch Courts in form only decided as between Rule 1 and Rule 2, which differentiated between two classes of foreign possessions, in reality their decision was upon the broad ground that foreign possessions in the Act is not the name of one subject matter, but is a collective name for all the individual subject matters(1). That being so, I must dismiss this appeal. I can only say that I grudge the Scotch Courts having this interesting point to deal with, the arising of which I have looked forward to for many years.

Mr. Latter.—The appeal will be dismissed with costs?

Rowlatt, J.—Yes.

The Crown having appealed against the decision in the King's Bench Division, the case came before the Court of Appeal (Lord Hanworth, M.R., and Lawrence and Greer, L.JJ.) on the 11th, 12th and 13th February, 1930, and on the last mentioned date judgment was given against the Crown, with costs (Greer, L.J., dissenting) confirming the decision of the Court below.

The Attorney-General (Sir W. A. Jowitt, K.C.) and Mr. R. P. Hills appeared as Counsel for the Crown, and Mr. A. M. Latter, K.C., and Mr. J. H. Bowe for the Company.

JUDGMENT.

Lord Hanworth, M.R.—In this case the Crown appeals from a decision of Mr. Justice Rowlatt who confirmed the conclusion reached by the Commissioners for Special Purposes of Income Tax. The Commissioners reduced the amount on which the Respondents, the Forestal Land, Timber and Railways Company, Limited, should be assessed in respect of the years 1922, 1923, 1924, 1925, 1926, and 1927.

The Forestal Land, Timber and Railways Company are a company which has its registered place of business at 15 St. Helens Place and they hold a number of shares in companies carrying on business outside the United Kingdom. Those companies are variously situated in five foreign countries. They apparently have held these shares in these foreign companies for some period of time. In all but one of these companies the dividends received by the Forestal Land Company were intermittent.. In only one has there been a consistent dividend throughout all the years of charge. The

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(1) See the Commissioners of Inland Revenue *v.* The Trustees of William Drysdale, 13 T.C. 565.

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receipts which reached the Company in the form of dividends upon those shares which they held in these foreign companies fall to be taxed under a Rule which deals with what are called foreign possessions.

The Company contended that the assessments in those years should be made upon them upon the receipts in respect of the shares in the several years under charge respectively, thus taking into account the sums that they actually received. The Crown contended that the assessment in each year should be arrived at by including the average amount of the whole of the dividends arising to the Company from foreign companies in the three years of average, that is to say, taking no account of whether there was or was not any receipt from a particular company in the actual year of assessment of a dividend. In a word, the problem or question is this: Where a subject owns shares, which are for Income Tax purposes known as foreign possessions, does that owning and holding of shares induce tax upon the subject upon the basis of what those shares have previously, and before the year of assessment, contributed to his income upon an average of the receipts from all those shares during the three years previous to the year of assessment; or must regard be had only to the shares which are fruitful in the year of assessment and the computation be made upon an average taken of the fruit received from those shares in the past three years and not indiscriminately upon the receipts in the previous three years without any regard being paid to whether some particular shares yielded fruit or profit in the year of assessment? The subject says he has not had any profit or gain in the year of assessment from some of these shares and therefore that he ought not to be taxed in respect of a notional profit or gain received by him. That may or may not be an answer, because the subject is taxed under the Income Tax Acts not necessarily upon his actual income but upon the statutory estimation of his income. But, still it seems anomalous if he can be taxed when he has not got any profits or gains from that source in the year of assessment.

The figures illustrate the divergence of view. The Crown, we are told in paragraph (4), originally made the assessment in estimated amounts, but when the matter was before the Commissioners they claimed that the assessment should be arrived at in amounts which are set out in paragraph (4) of the Case. The total of those sums amounted to £622,304.

The Commissioners, after hearing the appeal and correcting the amounts according to the actual receipts of the Company in the several years respectively, reduced the amount on which the tax should be paid to a sum of £375,109. It will be seen, therefore, on

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these figures that, roughly speaking, the difference to the Company is whether or not they should pay tax on a sum of, roughly, £250,000, which, they say, they have not received. The actual computation made upon them on the basis which the Crown contend for, namely, the total sum of £141,371, and the sum which the Company contend for or which the Commissioners have allowed of £87,623, shows a difference of £53,748. I must ask that my figures should be taken as business men say " E. & O. E.", because I added them up myself, but whether I am quite accurate or not it will be seen from the figures I have given that the divergence involves large totals. One cannot help seeing that the Forestal Land Company have a considerable issue at stake and perhaps they may put forward their claim with some cogency on the ground that the proposal is to tax them in respect of sums which they have not received, on sums which are not negligible but involve a serious liability. Now, as I have said, the fact that they have not received them does not necessarily mean that the statutory income on which they are taxed, and which is a notional figure, may not be correctly estimated by the Crown, even though it involves this heavy responsibility by the Company. Lord Macnaghten, in the passage which I quoted, in *Tennant* v. *Smith*(1), said : " The duty under Schedules D and E is payable on " the ' annual amount '. It is a tax on income in the proper sense " of the word. It is a tax on what ' comes in '—on actual receipts ", and although the Income Tax Acts do sometimes impose a liability in respect of a notional income, it is fair to say that, throughout the numerous Acts which have imposed Income Tax, provisions have consistently been made whereby the subject, within certain limits, has had a right to correct his supposed or assessed income in accordance with the actual facts elucidated by the event. Thus, Sections 133 and 134 of the Income Tax Act of 1842 were provided for that purpose. The system which those Sections gave was modified later by the Act of 1865, Section 6. That, in turn, was repealed and a new system was introduced by the Finance Act of 1907, Sections 24 and 30, and the Third Schedule, and now the system is, if I may use the phrase, brought up to date by Sections 29 and 30, or parts of them, of the Finance Act of 1926. I make this observation as to these corrective powers in order to show that one ought not readily to accept the view that the Income Tax is to be imposed on what is not received unless it is clearly established by the Act. It has been said over and over again that if you are to charge the subject, you must be able to show clearly by reference to the statute that the statute has imposed a charge.

Now the Income Tax Act of 1918 is brought into operation year by year by the passing of a Finance Act. When it is so brought

(1) 3 T.C. 158 at page 171.

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into operation, by Section 1 it declares that tax at the rate imposed for the year shall be charged for that year in respect of all property, profits or gains respectively described or comprised in the Schedules A, B, C, D and E contained in the First Schedule and in accordance with the Rules respectively applicable to those Schedules. Turning to Schedule D, which embraces the matters in question, we find the statutory words "Tax under this Schedule shall be charged in "respect of . . . the annual profits or gains arising or accruing ". . . to any person residing in the United Kingdom". It is under those words of charge contained in the first Section and in the opening words of Schedule D that the Forestal Land, Timber and Railways Company are to be charged in respect of the profits or gains arising or accruing to them.

Now having imposed the charge in that way, the tax is then split up under the Schedule and is charged in several Cases. The one Case that is appropriate to the present facts is Case V, which deals with tax in respect of income arising from possessions out of the United Kingdom. I turn, therefore, to Case V. It is true, as Mr. Hills has said, that now in the present form of the Act Case V is expanded beyond what it was under the Act of 1842. Case V has now applicable to it two Rules. The first declares that "The tax "in respect of income arising from stocks, shares or rents in any "place out of the United Kingdom shall be computed on the full "amount thereof on an average of the three preceding years, as "directed in Case I, whether the income has been or will be received "in the United Kingdom or not". Those last words "whether "the income has been or will be received in the United Kingdom "or not" have now been introduced into the Rule by virtue of an amendment which was introduced by Section 5 of the first Finance Act of 1914. The second Rule applicable to Case V is, "tax in "respect of income arising from possessions out of the United "Kingdom, other than stocks, shares or rents, shall be computed on "the full amount of the actual sums annually received in the United "Kingdom". I need not trouble further with Rule 2, because we are dealing upon the facts here with the income arising from stocks, shares, or rents. Where there is income arising from stocks, shares, or rents, then the tax is to be computed on the full amount thereof on an average of the three preceding years, but it appears to me plain that before you get to Case V and Rule 1, which is the Rule for computation, you have to find that there are, or have been in the year of charge, some annual profits or gains arising or accruing upon which the tax is to be assessed, and you need not go to the Rule of computation for enlarging the measure of the annual profits or gains arising unless and until you have got annual profits or gains on which there can be, and there is, imposed by the earlier passages in the Act, a liability to tax.

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Now in the present case the Company say that, inasmuch as the dividends have been intermittent, you must look at the fruit in the particular year of assessment and measure the responsibility of the Company in respect of that fruit, if there has been fruit, received in the year of assessment, and that it is not right to say that the holding of shares unfruitful in the year of assessment imposes a liability in respect of those shares although they have been sterile in the year of assessment. I find myself in agreement with that view. I think that before the tax can fall there must have been some profit or gain arising to the Company in the year of assessment although the computation may be based upon an average of the three previous years. Income Tax is a tax imposed annually and with reference to the profits or gains of the particular year in respect of which the tax is imposed by the Finance Act of that year, and, if there are no profits or gains, it appears to me that the tax does not fall, even though a measure of computation might be used derived from past history.

The alternative view which is pressed by the Crown is this. They say whether there was fruit, or dividends, or profits or gains arising from a particular company in a particular year of assessment, yet the Company was the holder of these shares and that when you look at Rule 1 of Case V the tax in respect of the income, whatever it may be, arising from shares out of the United Kingdom is to be computed on the full amount thereof on an average of the three preceding years, and, inasmuch as they hold some shares out of the United Kingdom, you need go no further; they hold a source of possible income, and it is on that holding of shares grouped together that there is a liability, the computation of which is based upon the average of the three preceding years.

I find, quite apart from authority, great difficulty in accepting that view. It is now provided by Section 22 of the Act of 1926 that the view of the Crown shall prevail for, by that Section, Income Tax is computed on the profits of a previous period and is to be charged although there are no profits in the year of assessment. This case, therefore, may be of importance as a guide to but few cases in the future. None the less, it is important to the Forestal Land Company itself and, whether or not it guides in other cases, it must be decided according to the law applicable to these six years of assessment.

Now, having said what I do about the nature of the Income Tax, it may be said, although I do not rely upon it, that it needed Section 22 to impose this liability which is contended for, but, quite apart from that, it appears to me that the system of the Income Tax is to try to get at the profits and gains of the year. In my

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opinion the matter is not without some assistance from authority. I need not refer again to *Brown's*(1) case, for *Brown's* case may be well differentiated and widely differentiated from the present, but in the case of *Whelan* v. *Henning*(2) I pointed out in my judgment, in the part of it which is to be found on page 276, 10 T.C., that, without further discussing the argument for the Crown, the House of Lords appears to have decided already in *Brown's* case that if a source of income dries up and no income accrues, then no tax can be levied or collected in respect of a non-existing income. Lord Justice Scrutton(3) said "I understand the judgments of the three "Lords who formed the majority to proceed on the lines that what "is assessed is profits made in the year of assessment; that if there "are no profits there can be no assessment, and that the fact that "if there are profits they are to be computed in accordance with an "average of previous years does not enable such a computation to "be made when there are no profits to assess." Then Lord Cave(4) says, referring to *Brown's* case, "Those judgments proceeded on the "broad principle that the tax under Case III was a tax on the profits "of the year of assessment measured by, but not grounded on, the "figures of the preceding year, and accordingly where there were "no such profits there was nothing to which the tax could attach." Now I read those passages from Lord Justice Scrutton and Lord Cave as showing the basic principle which they thought underlay the case of *Brown*, although in its actual facts and its actual decision it may be differentiated from the present case. Applying that basic principle of no profits no tax, it was in fact decided in *Whelan* v. *Henning* that, where there was no dividend for the year, there was no liability to tax. "The Respondent was the owner of shares in "a Ceylon company which for the year 1920 declared no dividend, "and for the year 1920–21 he therefore received no income from that "source. On that ground he contended that he was not liable to "be assessed to Income Tax for that year on the average amount "of the dividends on the shares for the three preceding years. "*Held*, that, in view of the decision of the House of Lords in the "case of the *National Provident Institution* v. *Brown*, as there was "no income from the shares in the year in question, there was no "liability to Income Tax for that year."(5) It appears to me that the principle which I have adverted to was clearly indicated in *Whelan* v. *Henning*.

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(1) The National Provident Institution *v.* Brown, 8 T.C. 57.
(2) 10 T.C. 263.
(3) 10 T.C. 263 at pages 279, 280.
(4) *Ibid.* at pages 281, 282.
(5) *Ibid.* at pages 263, 264.

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Then, in *Grainger* v. *Mrs. Maxwell's Executors*(1), I said this, to which I still adhere, "What is it on which the charge falls? It "falls upon the profits or gains, and if there are no profits or gains "it does not fall upon them. It appears to me that you cannot "say that under (*f*)"—that was the Rule in the Act under Case III which refers to interest on Exchequer Bonds or on War Loans issued under the War Loans Acts or any Act amending those Acts— "you cannot say that under (*f*) or under any of the other Rules you "are to group together things which would fall within the same "system laid down under Rule 1 applicable to Case III and say "that, because you have got some gains that belong to that "particular category, you are to make the computation as if you had "received an income which you have never received at all." Then I quoted what was said by Lord Atkinson in *Brown's* case. Lord Haldane said(2) "It seems to me that the true meaning of the words "the Legislature has used is that the tax is intended as matter of "basic principle to be on profits and gains forming income in the "year of assessment, though not measured by the income of that "year." Then Lord Atkinson said(2) that "if in the year of "assessment a source of income should dry up and no income accrue, "then no tax could be levied or collected in respect of a non-existing "income."

Now I think that those passages lay down the basic principle of the Income Tax Acts and are applicable here. The alternative view is this: to say that Rule 1 of Case V when carefully examined refers to income and says that in respect of income arising from shares the tax "shall be computed on the full amount thereof on "an average of the three preceding years" and as the Forestal Land Company held some shares, then that Rule is brought in and no differentiation can be made as to whether the shares have produced profits or gains or not. That view, to my mind, is opposed to the basic principle of the Income Tax Acts, and, applying that to the old principle enunciated in *Colquhoun* v. *Brooks*(3), you must give the words which you have to construe some reasonable interpretation. It seems to me unreasonable to interpret those words, which are words to my mind of computation, as imposing a charge upon a non-existing income and thus to adopt an interpretation which offends against the basic principle of the Income Tax Act that it shall impose a tax on income, upon the profits or gains of the year of charge.

For these reasons I am of opinion that the Commissioners came to a right decision and that the appeal fails and it must be dismissed with costs.

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(1) 10 T.C. 139 at page 148.
(2) Quoted at page 149 of 10 T.C.
(3) 2 T.C. 490.

Lawrence, L.J.—In view of the exhaustive judgment delivered by the Master of the Rolls I think it would serve no useful purpose if I were to go over the same ground again. I therefore confine my judgment to a short statement of the reasons which have led me to come to the conclusion that the Order made by Mr. Justice Rowlatt in this case was right.

The question we have to determine ultimately turns on the true meaning and effect of Rule 1 of the Rules applicable to Case V under Schedule D. In construing that Rule, regard must of course be had to the position which it occupies in the scheme of the Act and to the real purpose for which it was enacted. It is essential to bear in mind that the charge for Income Tax is imposed, not by the Rules under the Schedule, but by the joint operation of the Income Tax Act for the particular year and Section 1 of the Act of 1918, and is thereby imposed in respect of the profits and gains described in the Schedules A to E contained in the First Schedule to the Act and in accordance with the Rules respectively applicable to those Schedules. Now turning to Schedule D, which is the only material one for the purposes of this case, we find that Rule 1 describes the profits or gains in respect of which the charge is imposed by Section 1 as the "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 result of the Act so far, in my opinion, is that the charge to Income Tax is a charge in respect of the profits or gains arising to the taxpayer from each separate item of property of whatever kind possessed by him.

We then come to Rule 2 of Schedule D, and that Rule provides that the tax is to be charged under certain Cases numbered I to VI. Case V is "Tax in respect of income arising from possessions out "of the United Kingdom." As has been pointed out more than once in the cases to which my Lord has referred, Rule 2 does not impose any charge, because that has already been imposed by the previous provisions of the Act and the object of the Rule in grouping the tax under Cases is to regulate the mode in which the charge is to be carried out. I refer more particularly to what Lord Justice Warrington said on that point in *Grainger's* case. He states the matter there very clearly and definitely, on page 152 of 10 T.C., as follows: "Taking Schedule D for the moment, which is the only "material one, the provision with regard to the Cases, as they are "called, is this: 'Tax under this Schedule shall be charged under "'the following cases respectively'. Now it has already been "pointed out that this is not a charging section. The tax has "already been charged by a previous provision of the Act. All "that is provided for is the regulation of the mode in which that "charge shall be carried out." Those observations of course apply *a fortiori* to the Rules enacted under the respective Cases themselves. We arrive therefore at this position. The charge is imposed by the

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annual Act and Section 1 of the 1918 Act, the subject matter of the charge is described in Rule 1 of Schedule D and all the rest of the provisions of the Act are mere machinery for carrying that charge into effect.

Now before coming to the actual words of Rule 1, Case V, I will briefly mention two further matters. The first is that the existence of a source of income is inherent in the scheme of the Act, and the next is that it has been held in *Whelan's* case(1), following the principle upon which *Brown's* case (2) was decided, that if there is no income from the particular foreign possession in the year of assessment, there is no liability to Income Tax for that year notwithstanding that the taxpayer continues to hold the source of income throughout that year. The charge being imposed on profits arising from any kind of property seems to me to involve the necessity of identifying the source of every item of profit arising to the taxpayer from each one of his foreign possessions. That is in accordance with the opinion expressed by the Lord President in *Drysdale's* case(3) where, after referring to the Rules I have mentioned, he says : " A separate " examination of each distinct source of income is thus in any view " fundamental to procedure under Case V. If such an examination " discloses the existence of income from any such source during the " year of assessment, the taxable amount of the income from that " source will be ascertained by applying the three years' average. " If the examination discloses none, there will be no taxable income " from that source." Turning now to Rule 1 under Case V, the Rule is as follows : " The tax in respect of income arising from stocks, " shares or rents in any place out of the United Kingdom shall be " computed on the full amount thereof on an average of the three " preceding years, as directed in Case I., 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 are provided in rule 1 of the " rules applicable to Case IV, and the provisions of this Act, including " those relating to the delivery of statements, shall apply " accordingly." Bearing in mind that this is only a regulation for carrying into effect the charge imposed by the previous provisions of the Act, I do not think that it can properly be construed as aggregating the separate items of income arising from all the various kinds of foreign stocks or shares or rents which the taxpayer may happen to possess and thus creating a new unit of taxable income. The better construction, and in my opinion the true meaning of

(1) Whelan *v.* Henning, 10 T.C. 263.
(2) National Provident Institution *v.* Brown, 8 T.C. 57.
(3) The Commissioners of Inland Revenue *v.* The Trustees of William Drysdale, 13 T.C. 565 at page 570.

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this Rule, is that it merely regulates the mode of computing the tax in the case of foreign stocks, shares or rents held by a taxpayer residing in this country. The Rule in my opinion does no more than describe in general terms a category of foreign property the tax upon which is to be computed as thereby prescribed.

The taxpayer is told by this Rule that if he holds property coming within that category, *i.e.*, any foreign stock or shares or rents the tax in respect of the income of each holding of his will be computed on a three years' average of the full amount of the income arising therefrom notwithstanding that that income is not remitted to this country. It is true, that the opinion to that effect expressed by the Lord President in *Drysdale's* case was not necessary for the purposes of the actual decision in that case, but I agree with it. In my opinion this Rule was not intended to, and does not on its proper interpretation, impose a tax in respect of profits from foreign shares which have in fact produced no income merely because the taxpayer has during the year of assessment become entitled to some income from other foreign shares belonging to him.

For these reasons I have come to the conclusion that this appeal fails and must be dismissed.

Greer, L.J.—I have come to a different conclusion and I do not hesitate to give expression to it, because the case is one of great importance to the taxpayer and to other taxpayers who may be in a similar position during the years with which we have to deal. It is also of importance to those who have to collect the Revenue ; and it is of general importance, because if the view which has proved acceptable to my Lords is right it produces in a great many cases very inequitable taxation ; that is to say, it makes a distinction between cases which are substantially alike, where a man who has a very small dividend from these shares and who has shares with very large dividends in some years and almost nominal dividends in other years has got to have the burden of having his income in the years in which he has only nominal dividends assessed on the basis of three years of high dividends, and he gets the advantage in course of time of having his low dividends during that year to assist him in reducing the amount that he has to pay in future. But in this case if the view which has prevailed so far is right, the taxpayer gets two benefits ; he gets the benefit in the year in which his returns are *nil* of not paying any tax at all in respect of the shares of the particular company which is not paying a dividend during that year, and he gets the additional benefit which he would not get, and which another man would not get who had a very small dividend—he gets the same kind of benefit as a man with a small dividend would get, of reckoning that year as one of the three years on which he estimates his income the next time he pays Income Tax. In this

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case, according to the arithmetic which I am responsible for, I make it that by this different method of assessment the Taxing Authority loses about £69,000, and the taxpayer gains about £69,000 that he would not gain if the view that I think is right were adopted, and that is a view that seems to me to make the position fair as between two kinds of shareholders, one kind receiving very small dividends during the year of tax and the other kind receiving no dividends at all in the year of tax. Of course, that aspect of the case ought not to make a Court attach to plain words a meaning which they were not intended to bear. We have only got to look at the Act of Parliament and the principles of construction that have been laid down in other cases as a guide to determine the questions that come before this Court. The contention of the taxpayer, as stated in the case for the Company, was that the assessment should be made upon the footing that each of the holdings of shares was a separate source of income separately assessable under the provisions of Case V of Schedule D. The argument for the Crown was that the assessment each year should be arrived at by including the full amount of the whole of the dividends arising to the Company from foreign companies on the three years' average, and that accordingly the assessment should be divided in the amounts which are stated in the Case as the result of that. Now I concede, as I am bound to concede, that if the income of the property which is taxed under the Act does not exist during the year of tax, then the taxpayer has not got to pay anything, even though if the average were ascertained by previous years he would have a large sum to pay. But the real question is not so much whether that principle is well founded or not. It has to be accepted, it has been so decided, and the question is what is the income upon which the tax is imposed? I might use the metaphor which has been used by my Lord with regard to fruit, and ask this—whether, putting it in a metaphorical form, the tax is imposed upon the fruit of one apple tree, on each apple tree in the orchard, or whether the tax is imposed upon the fruit of the orchard? My view, stated metaphorically, is that if you look at the Taxing Acts you find that the tax is imposed upon the fruit of the orchard, and the orchard in this case is these foreign shares in foreign companies; it may be larger, but it is at least shares in foreign companies.

Now in order to develop that it is necessary that I should look at the several provisions of the Taxing Act. I agree with what has been said, that the charging provisions are contained in Section 1 of the Income Tax Act, 1918, and so far as Case V is concerned, in the first Rule to Schedule D. The first Section of the Income Tax Act, 1918, is this: "Where any Act enacts that income tax shall "be charged for any year at any rate, the tax at that rate shall be

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" 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." You cannot find from Section 1 what is the subject-matter of the tax, whether it is income from individual items of property, as it may be in some cases, or whether it is income from classes of property or categories of property, which it may be in other instances. In order to find out what the income is upon which the tax is imposed you have got to go beyond this Section; you have got to go to the Schedules marked A, B, C, D, and E. Now when I look at Schedule D and the Cases under it, the first Rule says this. It is stated to be a charging Rule and it is taken in connection with Section 2 which describes the Cases and the Rules under Section 2 which interpret the Cases mentioned in Rule 2. There we have got to look to find out what is the income charged. Rule 1 says: " Tax under this Schedule shall be charged 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; " but you cannot from that find out whether the kind of property referred to is a class of property such as shares, or whether it means each and every individual item of property. You have got to look beyond this portion of the Schedule in order to answer that question. May I take an illustration from business? A shipowner owns five ships, A, B, C, D and E. Each of them is an article of property, a thing of property. If we stop at Rule 1 and read the kind of property as meaning individual items of property, we might then get this position. On a charter of vessel A a very large profit is made of £50,000; on a charter of B, C, D and E losses are made which wipe out entirely the £50,000. You cannot find from the first Rule of the Schedule whether the owner of ship A ought to be taxed upon the profits or gains he had got from that particular property. You must go beyond Rule 1 in order to ascertain what the position is; you must go to Section 2 which classifies the properties on which tax is to be levied. Case I is " Tax in " respect of any trade not contained in any other Schedule "; and then Case II, any employment, profession or vocation. Now with regard to Case I in relation to the case of the shipowner to which I refer, you get provided the subject-matter of the taxation, namely, the income which is to be taxed defined as the income of his trade and not the income of each item of profits of his trade. So when you come to Case V apart from the Rule which contains a further sub-division, if there had not been a further sub-division of the Rule, I should have thought that Case V defined another class of property, the income of which was to be taxable income—not the income from

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the individual items of that class, but the income from that class, namely, the income arising from possessions out of the United Kingdom. It would be asked if we were to draw a distinction between Case I and Case V, because they are cases in which it was determined that the fair and only reasonable way at one time of estimating the income was not to take the income during the year of tax, but to take the income during the three years preceding the tax. Now if we look further into the Rules under Case V, we get a Rule which seems to me to indicate the view I have so far adopted as to the meaning of the income which is taxable, that it is not income from individual items of property so far as Case V is concerned, but income from a source which is described in general terms. The first Rule applicable to Case V is this: "The tax in respect of "income arising from stocks, shares or rents in any place out of the "United Kingdom shall be computed on the full amount thereof "on an average of the three preceding years, as directed in Case I, "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 so on. Now in interpreting those words, so far as I am concerned I can only give them two possible constructions. The amount on which the tax is to be estimated is "the full amount thereof"; that is not the full amount of stocks or shares, or the shares in one company as different from the shares in another company, but it is the full amount of the income arising—arising from what? You cannot divide it further than by saying that it may be possible that the unit of measurement may be income from stocks in one case, income from shares in the other case, and income from rents in the third case. If the words had been "and rents" I should have thought it was clear that, so far as this Rule was concerned, the conclusion would be inevitably that in applying this Rule you have got to deal with the income from stocks, shares and rents as one source of income which is taxed under the charging Sections of the Act. The first words of this Rule seem to me to have a reflex action on the meaning of the charge. It is unnecessary to go so far as to say that in this case the class of property which must exist within the years of tax is the whole class of stocks, shares or rents, or some portion of that class which may exist, or whether the class that must exist is one of the three that are mentioned; that is to say, if you are dealing with the income from foreign shares, there must be in that year of tax some income from foreign shares; if you are dealing with foreign stocks there must be some income from foreign stocks, and if you are dealing with the rents received there must be some income from foreign rents. That is all that is necessary for the purposes of this decision; and as I understand the cases, there is no case decided yet to say that you must do what it seems impossible to do under this Rule—

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to separate the various companies in which the taxpayer holds shares and treat them as separate sources of income for the purpose of applying this Rule. There is no such case, and until I am compelled to come to that conclusion I think the right way to approach this case is to look at the Sections in question and see whether they have a meaning such as is contended. I think they have not, and I look at these cases that have been cited in order to see if it is necessary to show that any one of them in its decision touches the present case. In *Brown's* case, 8 T.C. 57, the facts are sufficiently stated in the headnote : " The National Provident Institution in the years ended " 5th April, 1916, and 5th April, 1917, respectively bought at the " Bank of England certain Treasury Bills, of which some were held " by it until maturity, others were sold in open market during their " currency and the remainder were early in 1917 converted into " 5 per cent. War Loan 1929–47, on the terms of the prospectus " issued 11th January, 1917. In the year ended 5th April, 1918, " the Institution did not hold, or have any transactions in, Treasury " Bills. In each of the years ended 5th April, 1917, and 5th April, " 1918, the Institution received and paid interest, from which " Income Tax was not deducted, on short loans to and from bankers. " In the year ended 5th April, 1918, the Institution received interest " on 5 per cent. War Loan Stock and Bonds ". So that the taxpayer had income from three sources from what were held to be discounts, namely, the purchase and sale of Treasury Bills ; from interest on loans, and, in one of the years, also from War Loan. Now if one looks at Case III under which the tax was made, one finds that the classes of property in Case III are divided into different sub-classes which are respectively referred to and in particular marked by the letters of the alphabet (a) to (f). You find " interest of money " in (a) ; (b) is " all discounts " ; and (f), which is the only one we need consider for the purposes of this case, is " interest on any " Exchequer bonds issued under the authority of the Treasury " during the continuance of the present war and a period of six " months thereafter, and on any securities issued under the War " Loan Acts ". So that in that case the taxpayer had income from source (a), income from source (b), and income from source (f), and all that was held was that because he had lost his income on discounts he was not therefore to be treated, so far as discounts were concerned, as being compelled to pay—he was not to be compelled to pay on the average of the three preceding years because during the year of tax he had no discounts. Now it is clear therefore that if that is a case under Rule III, a description of the cases which are stated at page 58 under Case III as taxed " in respect of profits of an uncertain " value and of other income described in the Rules applicable to " this Case ", therefore when you are dealing with Case III in order to ascertain what the subject-matter of the tax is you are referred to

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the very Rule under Case III, Rule I, which divides the subject-matter of the tax into these various classes. It was held in that case, and I think quite rightly held, that for the purpose of seeing whether there was any income during the year of tax you could not treat everything that is separately described in Rule 1 under Case III as if it was all part of the same source of income, because the Case says " Tax in respect of profits of an uncertain value and of other " income described in the rules applicable to this Case." I should say in passing that that Rule is another indication that you cannot start with Rule 1 when you find what income is charged by the Income Tax Act. You have to go beyond that ; you have to go not only to the description under Section 2, but you have to go to the Rules under the Schedule. That, I think, is all that need be said about *Brown's* case.

Then the next case is *Whelan* v. *Henning*, 10 T.C. 263, and also reported in the Law Reports when it got to the House of Lords. The facts are sufficiently stated in the headnote : " The Respondent " was the owner of shares in a Ceylon company which for the year " 1920 declared no dividend, and for the year 1920–21 he therefore " received no income from that source. On that ground he con- " tended that he was not liable to be assessed to Income Tax for " that year on the average amount of the dividends on the shares " for the three preceding years. *Held*, that, in view of the decision " of the House of Lords in the case of *The National Provident* " *Institution* v. *Brown*, as there was no income from the shares in " the year in question, there was no liability to Income Tax for that " year, notwithstanding that the Respondent continued to hold the " shares throughout the year." Now I think that case is a case decided under Case V ; but it is a case of this sort. It was dealing with a man who had no other source of income coming under any part of the Rules under Case V except the shares in question, and therefore it does not help to decide the question as to whether when there are other sources of income, including other shares in other companies, the fact that there is no taxable income from shares in one of the companies should be eliminated for the purpose of estimating the average. It does not touch the point that is involved in this case.

Then came the case of *Grainger* v. *Maxwell*[1]. *Grainger's* case seems to me to be on all fours with *Brown's* case and the observations I have made about *Brown's* case seem to apply equally to *Grainger's* case. " In the year 1919–20 an individual held and received " untaxed interest from (i) 6% Exchequer Bonds and (ii) 5% War " Stock, 1929–1947, and 5% National War Bonds, 1928, the last

(1) 10 T.C. 139.

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" two being securities issued under the War Loan Acts, 1914–1917. " The said Exchequer Bonds were redeemed in February, 1920, " and she received no further interest therefrom, but during the year " 1920–21 she continued to hold and received interest on the said " securities issued under the War Loan Acts." The Court there were dealing with three sources of income which in some part or other of the Rules under Case III are put under a separate heading, and it was held that you could not lump them all together. It is quite true that some of them may be in the same portion of the Rule but they are separately described, and the House of Lords held that they were to be separately dealt with as separate subjects of taxation for the purpose of measuring the tax to be paid. The case is very succinctly stated by Mr. Justice Rowlatt at page 142 of 10 T.C. " The present case is this. There was a holding of Exchequer " Bonds and of War Loan securities not taxed at the source. They " were both held in the year preceding the year of the assessment. " The Exchequer Bonds had ceased to be held before the commence- " ment of the year of assessment, and the question arises whether " in those circumstances, there being some income in the year of " assessment from the subject matter consisting of Exchequer Bonds " and War Loan securities grouped together, the whole income in " the previous year from those two securities grouped together can " be used as the measure of the taxpayer's liability in the year of " assessment. In other words, what is the unit of measurement " when you come to the consideration of the question: Are there " any profits in the year of assessment to be measured? " and he held that there were no profits in the year of assessment to be measured because you have to deal with Exchequer Bonds and War Loan as different properties, and therefore each was susceptible of its own unit of measurement. Now it has never been held in a case where a taxpayer has, say, five Exchequer Bonds in the three years before the year of tax and only one Exchequer Bond in the year of tax that you can then say that he is not to be taxed on any part of his income which is taxed under the Schedule, namely, the income from Exchequer Bonds. I should have thought that it was quite clear that if he had an income from Exchequer Bonds, he is taxable even though he has not got the same number of Exchequer Bonds that he had before. That case has never come up for decision and therefore we are not deciding it and I am not deciding it except so far as a decision may be, as I think it is, involved in the view that I take of this case.

The only other case is the Scottish case of *Drysdale*(1), which I need not refer to further except by saying that in any event it is not binding upon this Court and that it does not in its actual decision

(1) 13 T.C. 565.

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touch the case which we have to decide in the present appeal. There are observations which Lord Justice Lawrence has cited of one of the Scottish Judges which do touch the present case but they are *obiter* and, in my judgment, they are wrong. It is no use beating about the bush ; I think they are wrong and I think they ought not to be applied here.

As I say, I differ from my brethren with some hesitation but without any doubt in my own mind as to the view that ought to be taken in this case, though I should myself regard the view taken by the Master of the Rolls and Lord Justice Lawrence, who have had much larger experience in these taxation cases than I have, as of greater authority than the judgment which I have just delivered.

Lord Hanworth, M.R.—The appeal is dismissed with costs.

The Crown having appealed against the decision of the Court of Appeal, the case came before the House of Lords (Lord Buckmaster, Viscount Dunedin, and Lords Warrington of Clyffe, Tomlin and Thankerton) on the 17th November, 1930, when judgment was reserved. On the 15th December, 1930, judgment was given unanimously in favour of the Crown, with costs, reversing the decision of the Court below.

The Attorney-General (Sir W. A. Jowitt, K.C.), the Solicitor-General (Sir Stafford Cripps, K.C.), and Mr. R. P. Hills appeared as Counsel for the Crown, and Sir Patrick Hastings, K.C., Mr. A. M. Latter, K.C., and Mr. J. H. Bowe for the Company.

JUDGMENT.

Lord Buckmaster.—My Lords, the Appellant in this case represents the Inland Revenue. The Respondents are a Limited Company, incorporated under the Companies Acts. The question in dispute is as to the methods that should be adopted for estimating the income that the Respondents derived during the six years from 1922 to 1927 from their shareholding in a number of foreign companies. Their liability to be taxed is not denied. The point of controversy is whether, for the purposes of Income Tax and the Rules made under it, each separate share-holding in each foreign company should be treated as an independent source of income, or whether all the returns ought to be grouped together and treated as a whole.

For reasons which will appear when the facts are more specially examined, it is to the Appellant's interest to support the latter view, and the Respondents the former. Before the Commis-

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sioners, before Mr. Justice Rowlatt and in the Court of Appeal the Respondents have prevailed, though in the latter Court Lord Justice Greer dissented.

The provisions of the Income Tax Act, 1918, that are relevant to this dispute can be shortly stated. Section 1 enacts that tax for any year in respect of all property, profits or gains described in the five various Schedules shall be charged in accordance with the Rules applicable to the Schedules. Schedule D declares that under that Schedule the tax should be charged on the annual profits or gains arising or accruing to any person residing in the United Kingdom from any kind of property whatever whether situated in the United Kingdom or elsewhere. And Rule 2 of that Schedule divides into six Cases the property to be charged under the Schedule. Cases IV and V are as follows :—" Case IV.—Tax in respect of " income arising from securities out of the United Kingdom, except " such income as is charged under Schedule C; Case V.—Tax in " respect of income arising from possessions out of the United Kingdom ". The Rules applicable to these two Cases differ.

The Rule under Case IV provides that the tax shall be computed on the full amount of the income arising in the year of assessment whether the income has been or will be received in the United Kingdom or not but contains no provision as to its method of computation. The relevant portion of the Rules applicable to Case V, which are those admittedly applicable to the present case, contains a special provision for computation and is as follows :— " 1. The tax in respect of income arising from stocks, shares or " rents in any place out of the United Kingdom shall be computed " on the full amount thereof on an average of the three preceding " years, as directed in Case I., whether the income has been or " will be received in the United Kingdom or not. . . . 2. The tax " in respect of income arising from possessions out of the United " Kingdom, other than stocks, shares or rents, shall be computed " on the full amount of the actual sums annually received in the " United Kingdom from remittances payable in the United King- " dom, ... on an average of the three preceding years as " directed in Case I."

Now it was decided in the case of *Whelan* v. *Henning*(1), [1926] A.C. 293, by this House that if in any year there was no income arising from the source to be charged in that year, there was no liability to Income Tax for that year, notwithstanding that in any one or more of the preceding years such income would have arisen, since the tax is on the income of a particular year, and the method

(1) 10 T.C. 263.

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of computation is merely to ascertain the amount. If there was nothing to tax there would be nothing to ascertain. That case applies to the present, though only if the Respondents' contention be correct does it make any difference, because in every year there was some income received by the Respondents' company from all their holdings abroad taking them as a whole but in several cases some of the companies paid their dividends intermittently so that in one year a substantial sum would be received, and in the next nothing at all.

It is easy therefore to see that, treating the shares in each foreign company as a separate source of income, the Respondents would escape from the tax so far as that company was concerned.

The whole question is whether or not they are entitled to take up this position. Upon this question the case of *Whelan* affords no assistance at all. It merely shows what will happen in certain events on the decision. Nor does the case of *Grainger* v. *Maxwell's Executors*(1), [1926] 1 K.B. 430, carry the matter any further. The case in which the dicta of the Court are clearly relevant and against the Appellant's contention, is the case of *Commissioners of Inland Revenue* v. *Drysdale's Trustees*, 13 T.C. 565, which, although it did not in its actual decision cover the point now in dispute, did undoubtedly contain dicta of the learned Judges of the Court of Session which, if accurate, would decide the matter in the Respondents' favour.

This case had the unfortunate result of depriving us of the full judgment of Mr. Justice Rowlatt, who considered himself bound by the Scotch Courts, who he regretfully thought had anticipated a judgment which he desired to deliver. I share his regret as I should have been anxious to have enjoyed the benefit of his judgment.

Now the words for interpretation are few. The annual profits and gains from any kind of property are to be taxed, and this tax, it is declared, shall be charged in respect of incomes " arising from " possessions out of the United Kingdom ". These possessions are divided under Rule 1 into income from " stocks, shares or " rents," and income " from possessions . . . . other than stocks, " shares or rents " under Rule 2.

In my opinion " stocks, shares or rents " are nothing but one division, embracing three heads, of the properties under Case V to which there is applicable the provision that the tax is exigible whether the income has been received in the United Kingdom or

(1) 10 T.C. 139.

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not, thereby distinguishing it from possessions out of the United Kingdom " other than stocks, shares or rents " the income derived from which is not taxed unless so received. The two groups together making up the " possessions out of the United Kingdom " mentioned in Case V. The " full amount thereof " mentioned in Rule 1 is not the full amount of each shareholding or stockholding or each rent but of them all.

I can see nothing that requires a series of separate and independent conclusions in respect of the various groups of stocks, shares or rents.

It is, I think, unfortunate that the attention of the Court of Appeal seemed to be mainly centred on the construction of the authorities which, with the exception of *Drysdale's* case, really afford no help whatever in settling the problem which this appeal presents.

I think the appeal succeeds, and that the Appellant is entitled to a declaration to the effect as I have above indicated.

Viscount Dunedin.—My Lords, I concur.

Lord Warrington of Clyffe (read by Lord Thankerton).—My Lords, this is an appeal by the Crown from an Order of the Court of Appeal dated the 13th February, 1930, whereby that Court by a majority (Lord Hanworth, Master of the Rolls, and Lord Justice Lawrence, Lord Justice Greer dissenting) dismissed an appeal from an Order of Mr. Justice Rowlatt dated the 15th November, 1929, affirming a decision of the Special Commissioners in favour of the subject.

The Respondents are a company incorporated under the Companies Acts and carry on business in this country. In the several years of assessment the company were in receipt of income arising from possessions out of the United Kingdom consisting of stocks and shares in certain foreign companies. In each year they received income from such possessions treated as a whole, but in certain years they received no income from the stocks and shares in certain of the companies individually.

The question in this appeal is whether, as the Respondents maintain, the assessments should be made upon the footing that each holding of shares is a separate source of income separately assessable, or, as the Crown contends, the assessment for each year should be arrived at by treating the full amount of the dividends as arising from one source of income only, viz : the aggregate of the stocks and shares for the time being held by the company.

The question turns upon the construction of certain provisions of the Income Tax Act, 1918, and in particular of Rule 1 of the Rules applicable to Case V under Schedule D.

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By Section 1 of the Act, Income Tax at the rate fixed for a particular year is 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 the Act and in accordance with the Rules respectively applicable to those Schedules. Thus, though the actual charge is created by Section 1, the mode in which it is to be carried into effect is determined by the Schedules and the Rules there referred to. In the present case, the material Schedule is Schedule D.

By Clause 1 of this Schedule the tax is charged in respect of, amongst other things, " (*a*) 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 . . . for every twenty shillings of " the annual amount of the profits or gains."

Clause 2, so far as material to the present question, is as follows :—" Tax under this Schedule shall be charged under the " following cases respectively; that is to say,— . . . . Case IV.— " Tax in respect of income arising from securities out of the United " Kingdom . . . . Case V.—Tax in respect of income arising from " possessions out of the United Kingdom . . . . and subject to " and in accordance with the rules applicable to the said Cases " respectively."

We find, therefore, that so far a division is effected between securities out of the United Kingdom and possessions of other kinds out of the United Kingdom, but no further division of such last mentioned possessions. This further division is effected by the Rules applicable to Case V.

The material Rules are as follows :—" 1. The tax in respect of " income arising from stocks, shares or rents in any place out of " the United Kingdom shall be computed on the full amount thereof " on an average of the three preceding years, as directed in Case I., " whether the income has been or will be received in the United " Kingdom. . . . 2. The tax in respect of income arising from " possessions out of the United Kingdom, other than stocks, shares " or rents, shall be computed on the . . . . actual sums annually " received in the United Kingdom " in manner therein specified.

The question really turns on the true construction of Rule 1. Is the income the full amount whereof is to be the basis of the computation the income arising from the " possessions " as a whole, or is it to be the income arising from each separate item of such possessions taken by itself? The second of these two constructions would involve a separate computation for each item, and the further result that, in accordance with the principle laid down by this

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House in the *National Provident Institution* v. *Brown*(1), [1921] 2 A.C. 222, there would be no tax at all in respect of any item from which in the year of assessment there was no income arising.

There is no decision on the point in question either in this country or in Scotland. There is, however, a dictum of Lord President Clyde in *Drysdale's* case, 13 T.C. 565, which if correct supports the view of the majority of the Court of Appeal.

With all respect to these learned Judges I cannot agree with their views. Looking at the words of the Rule by itself, and construing them according to their natural meaning, I think the income there referred to is the income arising from the class of foreign possessions thereby dealt with, and not the income arising from a number of items making up that class, and I can see no justification for departing from what I conceive to be the natural meaning. On the contrary, the fact that the words describing Case IV and the first two Rules under Case V effect a division for purposes of computation between (1) securities (2) stocks, shares or rents and (3) other foreign possessions indicates an intention on the part of the Legislature that such division is to be final and that the further division contended for in this case was not intended to be made.

For these reasons I think the appeal should be allowed and the Orders of the Court of Appeal and Mr. Justice Rowlatt should be reversed and that an Order should be made to the effect that the tax should be computed in accordance with the contentions of the Crown as stated in the Special Case. The Respondents should be ordered to pay the costs here and below.

Lord Tomlin.—My Lords, the Respondents have for some years owned shares in a number of foreign companies. Dividends on these shares have been paid intermittently.

The Respondents in respect of certain years prior to the passing of the Finance Act, 1926, have been assessed to tax under Schedule D, Case V, Rule 1 upon the footing that the assessment for each year should be arrived at by including the average amount of the whole of the dividends arising to the Respondents from foreign shares in the three years of average, i.e. the three years preceding the year of assessment.

On appeal by the Respondents to the Commissioners for the Special Purposes of the Income Tax Acts, the Commissioners held that the assessments should be made upon the footing that each of the holdings of shares was a separate source of income separately assessable under the provisions of Case V of Schedule D so that

(1) 8 T.C. 57

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where in the year of assessment no dividend was received in respect of any holding no assessment should be made in respect of that holding for that year.

The view of the Commissioners was supported by Mr. Justice Rowlatt who considered himself bound by the decision in *Commissioners of Inland Revenue* v. *Trustees of William Drysdale*, 13 T.C. 565.

The Court of Appeal (Lord Justice Greer dissenting) affirmed Mr. Justice Rowlatt, and His Majesty's Inspector of Taxes now appeals to your Lordships' House to obtain a restoration of the original assessments.

Section 1 of the Income Tax Act, 1918, provides that " 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 " the Act of 1918 " and in accordance " with the Rules respectively applicable to those Schedules."

Up to this point there is nothing, it seems to me, to shew what the property, profits and gains chargeable are or whether there is to be for the purposes of the charge any dividing up into separate items of property, profits and gains when ascertained.

For the elucidation of these matters it is necessary to look at the Schedules which will be found to deal with different categories of property, profits and gains, each Schedule containing Rules for the charging of tax in respect of the subject matters to which it relates.

Schedule A deals with " property in all lands, tenements, " hereditaments, and heritages in the United Kingdom ".

Schedule B deals with the occupation of such " lands, tene- " ments, hereditaments, and heritages ".

Schedule C deals with " profits arising from interest, public " annuities, dividends and shares of annuities payable . . . . out " of any public revenue ".

Under Schedule E tax is to be " charged in respect of every " public office or employment of profit, and in respect of every " annuity, pension or stipend payable by the Crown or out of the " public revenue of the United Kingdom, other than annuities " charged under Schedule C ".

The relevant Schedule, viz., Schedule D, demands a closer scrutiny.

(Lord Tomlin.)

The first Section of that Schedule is as follows:—" 1. Tax " under this Schedule shall be charged in respect of—(*a*) The " annual profits or gains arising or accruing—(*i*) to any person " residing in the United Kingdom from any kind of property " whatever, whether situate in the United Kingdom or elsewhere; " and (*ii*) to any person residing in the United Kingdom from any " trade, profession, employment, or vocation, whether the same be " respectively carried on in the United Kingdom or elsewhere; " and (*iii*) to any person, whether a British subject or not, although " not resident in the United Kingdom, from any property whatever " in the United Kingdom, or from any trade, profession, employ- " ment, or vocation exercised within the United Kingdom; and " (*b*) All interest of money, annuities, and other annual profits or " gains not charged under Schedules A, B, C or E, and not " specially exempted from tax; in each case for every twenty " shillings of the annual amount of the profits or gains."

Section 2 of the same Schedule then proceeds as follows:— " 2. Tax under this Schedule shall be charged under the following " cases respectively; that is to say, Case I.—Tax in respect of any " trade not contained in any other Schedule; Case II.—Tax in " respect of any profession, employment, or vocation not contained " in any other Schedule; Case III.—Tax in respect of profits of an " uncertain value and of other income described in the rules " applicable to this Case; Case IV.—Tax in respect of income " arising from securities out of the United Kingdom, except such " income as is charged under Schedule C; Case V.—Tax in respect " of income arising from possessions out of the United Kingdom; " Case VI.—Tax in respect of any annual profits or gains not " falling under any of the foregoing Cases, and not charged by " virtue of any other Schedule; and subject to and in accordance " with the rules applicable to the said cases respectively."

Now the effect of the provisions of Schedule D which I have quoted seems to me to be this. The persons to be charged are indicated. The subject matters of charge are defined. In some cases the subject of charge is a particular item, e.g. " any trade ", in other cases the subject of charge is what may be called a block item, e.g. " income arising from securities out of the United " Kingdom " and again " income arising from possessions out of " the United Kingdom ".

The Respondents are admittedly chargeable under the Schedule and up to this point I do not think it could be said that their income arising from foreign shares was not chargeable as a block item under Case V.

But no final decision can be reached until the Rules applicable to Case V have been examined.

(Lord Tomlin.)

Rule 1 so far as material is as follows :—" 1. The tax in respect " of income arising from stocks, shares or rents in any place out " of the United Kingdom shall be computed on the full amount " thereof on an average of the three preceding years, as directed " in Case I., whether the income has been or will be received in " the United Kingdom or not ", and then provision is made for certain deductions and allowances.

Rule 2 is as follows :—" The tax in respect of income arising " from possessions out of the United Kingdom, other than stocks, " shares or rents, shall be computed on the full amount of the " actual sums annually received in the United Kingdom from " remittances payable in the United Kingdom, or from property " imported, or from money or value arising from property not " imported, or from money or value so received on credit or on " account in respect of any such remittances, property, money, or " value brought or to be brought into the United Kingdom, on an " average of the three preceding years as directed in Case I., " without any deduction or abatement other than is therein " allowed."

The effect of these two Rules, upon their true construction, seems to me to be that what I have called the block item referred to in Section 2 of Schedule D under Case V, namely " income " arising from possessions out of the United Kingdom ", has to be subdivided into (1) income arising from stocks, shares or rents in any place out of the United Kingdom and (2) income arising from possessions out of the United Kingdom, other than stocks, shares or rents, and that, so far as concerns the first item which results from the subdivision (and this is the only item it is necessary to consider on this appeal), it has for the purposes of the charge to be treated as a block item. In other words if the taxpayer in the year of assessment receives anything falling within the description of " income arising from stocks, shares or rents out of the United " Kingdom " he is assessable upon the basis of the average of the three preceding years of all receipts falling within the same description.

I can find nothing in the language to justify the taxpayer in separating the income arising from shares from the income arising from stocks or from the income arising from rents, still less in separating the income arising from the shares in one company from the income arising from shares in another company. Indeed, if there was to be any separation where is it to stop? Is there to be a separation between income arising respectively from two classes of shares in one company and how will the matter stand if shares are sold and other shares of the same class in the same company are subsequently bought?

(Lord Tomlin.)

The phrase " the full amount thereof " in Rule 1 of Case V, in my opinion, means the full amount of the " income arising from " stocks, shares or rents in any place out of the United Kingdom " i.e. the full amount of all the income having any of the origins mentioned.

For the success of this appeal the inseparability of shares is sufficient but the examination of the language of the statute which I have made satisfies me that the true effect of the language is as I have indicated.

So far as the observations of the Lord President in *Commissioners of Inland Revenue* v. *Trustees of William Drysdale*(1) are inconsistent with the view which I have expressed they are not in my opinion well-founded.

I think the appeal succeeds.

Lord Thankerton.—My Lords, I concur.

Questions put.

That the Order appealed from be reversed.

The Contents have it.

That this cause be remitted to the Commissioners for the Special Purposes of the Income Tax Acts with a direction that the tax shall be computed in accordance with the contention of the Crown as set forth in the Special Case, and that the Respondents do pay to the Appellant his costs here and below.

The Contents have it.

[Solicitors :—Solicitor of Inland Revenue ; Slaughter and May.]

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(1) 13 T.C. 565.