

HIGH COURT OF JUSTICE (CHANCERY DIVISION)—12TH AND 13TH MAY,
AND 18TH JUNE, 1953

COURT OF APPEAL—23RD, 24TH AND 25TH NOVEMBER, AND
9TH DECEMBER, 1953

HOUSE OF LORDS—31ST JANUARY, 1ST, 2ND AND 3RD FEBRUARY, AND
11TH MARCH, 1955

Boarland (H.M. Inspector of Taxes)

v.

Madras Electric Supply Corporation, Ltd. (in liquidation)⁽¹⁾

Income Tax, Schedule D—Balancing charge—Succession by Crown—Whether cessation provisions apply—Income Tax Act, 1918 (8 & 9 Geo. V, c. 40), Schedule D, Cases I and II, Rule 11; Finance Act, 1926 (16 & 17 Geo. V, c. 22), Section 32.

The Respondent Company carried on an electricity undertaking in Madras under several licences which all provided that on 29th August, 1947, the local authority or local government should have the option to purchase the undertaking. This option was exercised by the Madras Government who took possession of the undertaking on that date and thereafter carried it on.

A balancing charge was made on the Company for the year 1947–48 on the footing that on 29th August, 1947, the Madras Government succeeded to the trade within the meaning of Rule 11 (2) of Cases I and II of Schedule D; that accordingly the basis period for the assessment on the Company for that year was the period beginning 5th April, 1947, and ending 29th August, 1947; and that the sale of the Company's undertaking occurred in that basis period.

On appeal to the Special Commissioners, the Company contended that the person succeeding to its trade was the Crown; that Rule 11 (2) of Cases I and II of Schedule D had no application where the successor to the trade was the Crown or was not chargeable to Income Tax; and that the Company's basis period for the year of assessment 1947–48 was therefore the preceding year, the year to 31st December, 1946, and not the period in which the sale occurred. The Commissioners allowed the appeal, holding that the trade was carried on after 29th August, 1947, by the Crown and that the Crown was not a "person" for the purposes of Rule 11 (2).

Held, that "person" in Rule 11 (2) includes the Crown.

⁽¹⁾ Reported (Ch.D.) 216 L.T. Jo. 345; [1953] 2 All E.R. 467; [1953] 1 W.L.R. 920; 97 S.J. 489; (C.A.) [1954] 1 W.L.R. 87; [1954] 1 All E.R. 52; 98 S.J. 28; 217 L.T. Jo. 9; (H.L.) [1955] 1 All E.R. 753; 219 L.T. Jo. 152; [1955] 2 W.L.R. 632; 99 S.J. 217.

CASE

Stated under the Income Tax Act, 1952, Section 64, by the Commissioners for the Special Purposes of the Income Tax Acts for the opinion of the High Court of Justice.

1. At a meeting of the Commissioners for the Special Purposes of the Income Tax Acts held on 22nd May, 1952, the Madras Electric Supply Corporation, Ltd. (in liquidation), hereinafter called "the Company", appealed against an assessment to Income Tax made upon it under Schedule D for the year of assessment 1947-48 in the sum of £850,000.

2. The assessment was made in respect of balancing charges under Part II of the Income Tax Act, 1945, alleged to arise on the sale by the Company of its plant and machinery on 29th August, 1947.

3. The question of law for the opinion of the Court is whether the assessment was competent.

4. Our attention was drawn in the course of the appeal (*inter alia*) to the following documents:—

(1) The memorandum and articles of association of the Company.

(2) Two extracts from the "Fort St. George Gazette" dated 29th August, 1905, and 17th August, 1909, which respectively contain the terms of the Madras Electric License, 1905, and the Madras (Port) Electric License, 1909.

(3) An extract from the "Gazette of India" dated 8th January, 1910, containing the terms of the Madras (Cantonments) Electric License, 1910.

(4) Three notices served on the Company by the Government of Madras, Public Works Department, dated 16th March, 1945, 27th July, 1945, and 27th July, 1945, respectively, relating to the aforesaid licences.

(5) A notice served on the Company by the Government of India, Department of Labour, dated 7th August, 1945.

(6) An agreement dated 27th August, 1947, between His Excellency the Governor of Madras and the Company and a further agreement supplemental thereto dated 29th August, 1947.

(7) An indenture dated 30th March, 1951, between His Excellency the Governor of Madras and the Company.

With the exception of the notices (nos. (4) and (5)) and the indenture (no. (7) above) these documents, which are referred to later in this Case, are not annexed hereto, but may be referred to, if necessary, as part of this Case.

5. The Company was incorporated under the Companies Acts, 1862 to 1900, on 27th January, 1906, with the objects, *inter alia*, of carrying on in India and elsewhere the business of an electric light and power company in all its branches, and, in particular, of entering into a contract referred to in article 3 of its articles of association and to carry the same into effect and to put into operation the licence therein referred to.

The said article 3 of the Company's articles of association reads as follows:—

"3. The Company shall enter into the following agreement:—

An agreement with Crompton & Co., Limited, on the terms set forth in the draft of such agreement, and which agreement will provide for the acquisition by the Company of a license granted by the Madras Government

to Crompton & Co., Limited, and their permitted assigns to supply energy for electric traction and to the public for all purposes within the areas controlled by the Corporation of Madras, and for the construction and equipment by Crompton & Co., Limited, of all works necessary to enable the Company to carry on the supply of electrical energy in Madras pursuant to the said license."

6. The licence referred to in the said article 3 is the Madras Electric License, 1905, hereinafter called "the licence of 1905", the grant of which was sanctioned by the Governor of Madras in Council and notified in the "Fort St. George Gazette" on 29th August, 1905 and referred to in paragraph 4 (2) above. The licence was granted under the powers in that behalf conferred by the Indian Electricity Act, 1903 (Act III of 1903), and was subject to the provisions of Section 7 thereof, which reads as follows:—

"7. (1) Where a license has been granted, a local authority shall, on the expiration of such period, not exceeding forty-two years, and of every such subsequent period, not exceeding ten years, as shall be specified in this behalf in the license, have the option of purchasing such portion of the undertaking as is in the area for which it is constituted, and, if the local authority, with the previous sanction of the Local Government, elects to purchase, the licensee shall sell the undertaking or part thereof to it upon terms and conditions similar to those set forth in section 5, clauses (b) and (d).

(2) In any such case as aforesaid, if a local authority does not elect to purchase, the Local Government shall have the like option upon the like terms and conditions save that where the Local Government purchases the undertaking or any part thereof under such option, the license shall, in so far as the Local Government is concerned, cease to have any further operation.

(3) Where, in exercise of the option conferred by sub-section (1), a local authority has elected to purchase a portion of the undertaking which is within the area for which it is constituted, the Local Government shall have the like option upon the like terms and conditions in respect to any portion of the undertaking which is without such area.

(4) Not less than twelve months' notice in writing of any election to purchase under this section shall be served upon the licensee by the local authority or Local Government as the case may be.

(5) Notwithstanding anything hereinbefore contained, the local authority may, with the previous sanction of the Local Government, waive its option to purchase and enter into agreement with the licensee for the working by him of the undertaking, or such portion thereof as is in the area for which such authority is constituted, until the expiration of the next subsequent period referred to in sub-section (1), upon such terms and conditions as may be stated in such agreement."

The Indian Electricity Act, 1903, was repealed by Act IX of 1910, but most of its provisions were re-enacted. Section 7 of the 1903 Act was re-enacted in substantially similar terms.

7. (1) The said licence of 1905 was granted to Crompton & Co., Ltd., and empowered them or their permitted assigns to supply energy for electric traction and to the public for all purposes within a defined area in Madras. Clause 10 of the licence provided:—

"The option of purchasing the undertaking accorded to the local authority and the Local Government by section 7 of the Act [i.e. the Indian Electricity Act, 1903] shall be exercisable at the end of the period of 42 years computed from the commencement of the license and at the end of every subsequent period of ten years during the subsistence of this license."

(2) The date of the commencement of the licence was 29th August, 1905, and the said period of 42 years expired on 29th August, 1947.

(3) On 23rd December, 1905, the sanction of the Governor in Council was accorded to the transfer of the licence from Crompton & Co., Ltd., to the Company proposed to be formed (i.e. the Company, which had not at that date been incorporated) and by an agreement dated 7th February, 1906, the licence was transferred to the Company.

8. The Company acquired at various times two further licences for the supply of electricity in Madras.

(a) The first was the Madras (Port) Electric License, 1909, hereinafter called "the licence of 1909", granted to the Company by the Government of Madras and coming into force on 17th August, 1909, and also subject to the provisions of the Indian Electricity Act, 1903, and referred to in paragraph 4 (2) above. It entitled the Company during the continuance of the licence to supply energy for all purposes including electric traction (a) to the public, (b) to particular consumers under special agreements, and it applied to areas not covered by the licence of 1905. Clause 10 thereof reads as follows:—

"10. The option of purchasing the undertaking accorded to the local authority and the local Government by section 7 of the Act shall be exercisable on the 29th day of August, 1947, and at the end of every subsequent period of ten years during the subsistence of this license."

(b) The second was the Madras (Cantonments) Electric License, 1910, hereinafter called "the licence of 1910", which affected certain cantonment areas not covered by the previous licences and referred to in paragraph 4 (3) above. Like the previous licences, it was granted under the powers conferred by, and was subject to the provisions of the Indian Electricity Act, 1903, but was granted by the Governor-General in Council, being the sanctioning authority in the case of cantonments. It came into force on 8th January, 1910, and entitled the Company to supply energy within a prescribed area (a) to the public for the purpose of general supply, (b) to particular consumers under special arrangements. Clause 9 thereof provided:—

"9. The Governor-General in Council shall have the option of purchasing the undertaking as on the 29th day of August, 1947, and at the end of every subsequent period of ten years during the subsistence of this license."

9. From 1906 onwards the Company carried on business as suppliers of electricity in Madras under the three licences until 29th August, 1947, when the events hereinafter set out took place. The issued capital of the Company at that date was £1,050,000, divided into £598,200 ordinary stock and £451,800 preference stock.

10. (a) On 16th March, 1945, notice was given to the Company by the Government of Madras of the election by the Government of Madras to purchase the undertaking covered by the licence of 1905, in the following terms:—

"Fort St. George, Madras, 16th March, 1945.

Gentlemen,

Subject: The Madras Electric License, 1905—Election to purchase the undertaking by the Government of Madras—Notice.

I am directed to invite your attention to Clause 10 of the Madras Electric License, 1905, published at pages 664 to 666 inclusive of part I of the Fort St. George Gazette dated 29th August, 1905, whereby the option of purchasing your electrical undertaking accorded to the Government of Madras is exercisable at the end of the period of 42 years computed from the commencement of the said license. It has been decided by His Excellency the Governor of Madras to exercise that option and purchase the said electrical undertaking from the 29th day of August 1947. I am directed to give you notice of the election to purchase the electrical undertaking covered by the Madras Electric License, 1905 (as amended subsequently) by the Government of Madras on the expiration of the period of 42 years specified in Clause 10 of the Madras Electric License, 1905. You are hereby required to specify the terms and conditions under

Section 7 (2) of the Act for the sale to the Government of Madras on the 29th day of August 1947 of the said electric undertaking on payment of the value of all lands, buildings, works, plants and materials suitable to and used by you for the purpose of the undertaking.

Yours faithfully,

(Signed) K. Ramunni Menon,
Secretary to Government."

(b) On 27th July, 1945, notices were given to the Company by the Government of Madras of the said Government's elections to purchase the electrical undertakings covered by the licences of 1909 and 1910 respectively on 29th August, 1947, in similar terms. In relation to the licence of 1910, the Government of Madras acted upon authority conferred upon it to represent and act on behalf of the Governor-General in Council, as is shown by a notice given to the Company by the Government of India, Department of Labour, dated 7th August, 1945. Copies of the two notices dated 27th July, 1945, and the notice dated 7th August, 1945, are annexed hereto in one bundle, marked "A", and form part of this Case⁽¹⁾.

11. On 27th August, 1947, an agreement was entered into between His Excellency the Governor of Madras and the Company by which, after reciting the notices referred to in paragraph 10 above, and that for the purpose of the purchase referred to in such notice the parties were desirous of having a valuation made of the undertaking by Messrs. Merz and McLellan (therein referred to as "the valuers") it was declared and agreed (*inter alia*) as follows:—

1. that the Government of Madras and the Company agreed to entrust the valuers with the work of valuation of the physical assets to be purchased by the Government and to be sold by the Company ;

2. that the valuation to be made by the valuers should be in conformity with the first proviso to Section 7 (1) of the Indian Electricity Act, 1910. For the removal of doubts, it was declared that the Company should not be eligible for any solatium to be added to such valuation in accordance with the second proviso to the said Section 7 (1) for determining the purchase price . . . ;

7. that the Company should hand over the undertaking to the Government and the Government should take over the undertaking from the Company at the commencement of 29th August, 1947.

12. By a further agreement dated 29th August, 1947, expressed to be supplemental to the above-mentioned agreement of 27th August, 1947, and made between the same parties, it was witnessed :—

1. that the Company had on the date of execution thereof handed over physical possession of the lands, buildings, works, materials and plant suitable to and used by the Company for the purpose of the undertaking ;

2. that the Company acknowledged receipt of certain moneys, being a payment on account of the purchase price provided for in the principal agreement of 27th August, 1947 ;

3. that the Company undertook to execute and register in favour of the Government of Madras a proper deed of conveyance and assignment of the lands, buildings, fixed machinery and plant.

(¹) Not included in the present print.

13. In due course the valuation forming the measure of the purchase price was agreed at Rs. 215 lakhs, excluding the sum to be paid to the Company for service lines paid for by consumers (the valuation of which was reserved for arbitration). The sterling equivalent of this sum of rupees was £1,612,500, and the amount actually received by the Company (due to exchange rates) was £1,611,437.

14. On 29th September, 1950, the Company went into voluntary liquidation.

15. On 30th March, 1951, the Company made a formal conveyance and assignment of lands, buildings, fixed machinery and plant to His Excellency the Governor of Madras. A copy of this deed of conveyance and assignment (which recites the various notices, agreements and other matters hereinbefore referred to) is annexed hereto, marked "B", and forms part of this Case⁽¹⁾.

16. On the date of the sale, 29th August, 1947, the Company ceased to trade. Its former undertaking continued to be carried on without interruption in Madras under the management of a department of the Madras Government. Substantially all the Company's former staff continued to work in the undertaking.

17. It was common ground between the parties:—

(1) that by reason of Section 17 (1) of the Income Tax Act, 1945, the balancing charges forming the subject of the assessment under appeal fell to be made upon the Company (if at all) for the year of assessment in the Company's basis period for which the sale of its plant and machinery occurred;

(2) that for the purposes of the said Act such sale occurred on 29th August, 1947;

(3) that by reason of Section 57 (2) of the said Act the Company's basis period for the year of assessment 1947-48 was the period on the profits or gains of which Income Tax for that year fell to be computed under Case I of Schedule D in respect of its trade.

18. It was contended on behalf of the Crown:—

(1) that on 29th August, 1947, there was a succession to the Company's trade which brought into operation the provisions of Rule 11 (2) of the Rules applicable to Cases I and II of Schedule D;

(2) that by virtue of the said Rule 11 (2) the tax payable by the Company for all years of assessment fell to be computed as if the trade had been discontinued on that date;

(3) that by reason of Section 31 (1) (a) of the Finance Act, 1926, the Company fell to be charged to Income Tax for 1947-48 on the amount of the profits or gains for the period beginning 6th April and ending 29th August, 1947, and that that period was the Company's basis period for 1947-48;

(4) that the sale of the Company's plant and machinery occurred in its basis period for 1947-48;

(5) that the assessment was correctly made, subject to final adjustment of the figures.

(¹) Not included in the present print.

19. It was contended on behalf of the Company:—

(1) that the person succeeding to the Company's trade on 29th August, 1947, was the Crown, and that Rule 11 (2) had no application to a case where the Crown succeeded to a trade;

(2) alternatively, that if the Crown did not succeed to the trade, the person so succeeding was not a person chargeable to Income Tax in respect thereof, and that Rule 11 (2) has no application where the person succeeding to the trade in question is not so chargeable;

(3) that Section 31 of the Finance Act, 1926, did not apply to the Company in relation to the year 1947-48 or any relevant year;

(4) that the Company's basis period for 1947-48 was the preceding year, namely, the year to 31st December, 1946;

(5) that the sale did not occur in the Company's basis period for 1947-48, and that the assessment was therefore bad.

20. We were referred, *inter alia*, to the following:—

Government of India Act, 1935, Section 175.

Indian Independence Act, 1947.

India (Provisional Constitution) Order, dated 14th August, 1947.

India (Consequential Provision) Act, 1949.

Attorney-General v. Hancock, [1940] 1 K.B. 427.

Province of Bombay v. Municipal Corporation of the City of Bombay, [1947] A.C. 58.

Coomber v. Justices of Berks., 2 T.C. 1.

Pharmaceutical Society v. London & Provincial Supply Association, Ltd., 5 App. Cas. 857.

Fry v. Burma Corporation, Ltd., 15 T.C. 113.

21. We, the Commissioners who heard the appeal, gave our decision as follows:—

We find that the trade or undertaking in Madras carried on up to 29th August, 1947, by the Corporation was not discontinued at that date, but continued to be carried on in Madras. We are of opinion, on consideration of the various Acts of Parliament, Indian Acts and Orders to which our attention was drawn that it was so carried on after 29th August, 1947, by the Crown.

The central question for our determination is whether the provisions of Rule 11 (2) of the Rules applicable to Cases I and II of Schedule D apply to the case before us. In our opinion they do not. The Rule, which was introduced by Section 32 of the Finance Act, 1926, must be construed in the context in which it is found among the Rules applicable to Cases I and II. In our view the expression "any person" in the main charging Rule of Schedule D does not refer to the Crown, and we see no reason for giving it any different meaning in Rule 11 (2). Indeed, the context of Rule 11 (2) itself seems to us to indicate that the "person" there referred to must be a person who is or might in certain events be liable to the charge imposed by Schedule D—subject, perhaps, to questions of residence. We do not see how the Crown can be such a "person".

This being our view, it is not necessary for us to come to any decision on the other contention put on behalf of the Company, that the "person" referred to must in any event be a person actually liable to Income Tax in respect of the trade, and we do not do so.

The appeal succeeds and we leave the figures to be agreed.

We subsequently reduced the assessment to the figure, agreed on the basis of our decision, of £379 less capital allowances £379.

The Appellant immediately after 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, 1952, Section 64, which Case we have stated and do sign accordingly.

R. A. Furtado, } Commissioners for the Special Purposes
Norman F. Rowe, } of the Income Tax Acts.

Turnstile House,

94-99, High Holborn,

London, W.C.1.

28th October, 1952.

The case came before Upjohn, J., in the Chancery Division on 12th and 13th May, 1953, when judgment was reserved. On 18th June, 1953, judgment was given in favour of the Crown, with costs.

The Attorney-General (Sir Lionel Heald, Q.C.), Mr. J. H. Stamp and Sir Reginald Hills appeared as Counsel for the Crown, and Mr. J. Millard Tucker, Q.C., and Mr. John Clements for the Company.

Upjohn, J.—The principal point in this case is whether in Rule 11 (2) of the Rules applicable to Cases I and II of Schedule D of the Income Tax Act, 1918, the word "person" includes "Crown". The Special Commissioners have held it does not. There is also a subsidiary point not raised before the Commissioners but sought to be raised before me. The steps that lead to that first point are fully set out in the Case Stated and I need only recapitulate them very shortly.

The Respondent Company was incorporated on 27th January, 1906, with the object, as its name would imply, of carrying on the business of suppliers of electricity in Madras. The Company did so under three licences granted by the Government of Madras, and each of these licences provided that on 29th August, 1947, the local authorities, whom failing the local Government, should have the option of purchasing the electricity undertaking of the Respondent Company. The option was duly exercised by the local Government and as on the said 29th August, 1947, the Company sold, and the local Government purchased, the undertaking for Rs.215 lakhs, the sterling equivalent actually received being £1,611,437. The Commissioners have found as a fact that the trade or undertaking in Madras was not discontinued on 29th August, 1947, but continued to be carried on without interruption there under a department of the Madras Government.

(Upjohn, J.)

It is conceded that for the purposes of this appeal the Madras Government is a branch of the Crown and therefore the purchaser of the undertaking was the Crown.

So far as the principal point is concerned, it is also conceded that *prima facie* upon the sale of the Company's plant and machinery a balancing charge of some £850,000 or thereabouts fell to be made upon the Company under Section 17 of the Income Tax Act, 1945. The relevant year of assessment in respect of that charge is to be ascertained by finding out the Company's "basis period", which is defined in Section 57 (2) of the Act.

I need not consider that Section, for it is conceded by the Company that if Rule 11 (2) of the Rules applicable to Cases I and II of Schedule D to the Income Tax Act, 1918, is applicable, then having regard to Section 31 (1) (a) of the Finance Act, 1926, the Company would fall to be assessed to Income Tax for the year 1947-48 on its profits from 5th April to 29th August, 1947, and it would be subject to assessment upon the balancing charge for the same period. The Company, however, submit that Rule 11 (2) has no application because the Crown is not a person, and that the balancing charge fell to be assessed pursuant to Rule 9 in respect of the following year, when the Company, having ceased to trade, was not in fact assessable at all under Case I.

In view of the submissions made to me, it will be convenient to trace the history of the relevant Rules in tax legislation before reading the vital Rule 11 (2) itself.

In the Income Tax Act, 1842, in the Fourth Rule dealing with Cases I and II of Schedule D, it was provided that whenever there was any change in any partnership by death, dissolution or the admission of a new partner or whenever any person succeeded to any trade, tax was to be computed according to normal principles (then the three year average) notwithstanding such change or succession. There was no provision for apportionment of the profits as between predecessor and successor in that Act, but by Section 134 it was provided in effect that where there was a succession both the predecessor and the successor should be liable, presumably at the option of the Crown.

The first provision for apportionment of tax between predecessor and successor is to be found in Section 62 of the Taxes Management Act, 1880, where it is provided that where one ceases to carry on business and there is a succession a certificate is to be given to the Commissioners, and then Sub-sections (2) and (3) provide:

"(2) On receipt of such certificate the Commissioners shall cause notice to be given to the respective parties of a meeting of Commissioners for considering the same; and the Commissioners shall, on the examination of the respective parties, if in attendance, or on other satisfactory proof of the facts, adjust the assessment by charging the successor with a fair proportion thereof from the period of his succeeding to the concern and relieving the person originally assessed from a like amount.

(3) The determination of the Commissioners on any such certificate shall be final, and the assessment so adjusted shall be recoverable from the respective parties in like manner as an original assessment; and if either of the parties has paid in respect of an assessment so certified more than the proportion which appears by the determination of the Commissioners to be chargeable on him, the amount so overpaid shall, when recovered from the party liable, be paid to the person by whom the overpayment was made."

(Upjohn, J.)

These provisions were consolidated in the Income Tax Act, 1918, the earlier Fourth Rule and Section 62 of the 1880 Act appearing as Rules 11 and 9 respectively of the Rules applicable to Cases I and II of Schedule D and Section 134 of the Act of 1842 as Rule 3 of the Miscellaneous Rules applicable to Schedule D.

Then by the Finance Act, 1926, drastic alterations were made.

Section 31 provided that where a trade is permanently discontinued profits for the last year are to be charged on the profits from the last 6th April to the date of discontinuance with a right on the part of the Crown to reopen the previous year's assessment.

Section 32 repealed the existing Rule 11 and re-enacted the following, which is the present Rule 11, and which I must read in full:

" 11.—(1) If at any time after the fifth day of April, nineteen hundred and twenty-eight, a change occurs in a partnership of persons engaged in any trade, profession or vocation, by reason of retirement or death, or the dissolution of the partnership as to one or more of the partners, or the admission of a new partner, in such circumstances that one or more of the persons who until that time were engaged in the trade, profession or vocation continue to be engaged therein, or a person who until that time was engaged in any trade, profession or vocation on his own account continues to be engaged in it, but as a partner in a partnership, the tax payable by the person or persons who carry on the trade, profession or vocation after that time shall, notwithstanding the change, be computed according to the profits or gains of the trade, profession or vocation during the period prescribed by the Income Tax Acts:

Provided that, where all the persons who were engaged in the trade, profession or vocation both immediately before and immediately after the change require, by notice signed by all of them or, in the case of a deceased person, by his legal representatives, and sent to the surveyor within twelve months after the change took place, that the tax payable for all years of assessment shall be computed as if the trade, profession or vocation had been discontinued at the date of the change, and a new trade, profession or vocation had been then set up or commenced, and that the tax so computed for any year shall be charged on and paid by such of them as would have been charged if such discontinuance and setting up or commencement had actually taken place, the tax shall be computed, charged, collected and paid accordingly.

(2) If at any time after the said fifth day of April any person succeeds to any trade, profession or vocation which until that time was carried on by another person and the case is not one to which paragraph (1) of this rule applies, the tax payable for all years of assessment by the person succeeding as aforesaid shall be computed as if he had set up or commenced the trade, profession or vocation at that time, and the tax payable for all years of assessment by the person who until that time carried on the trade, profession or vocation shall be computed as if it had then been discontinued.

In this paragraph references to a person include references to a partnership."

There was no alteration to Rule 9, which remained and gave rise to much discussion as to how far Rule 9 remained effective having regard to the new form of Rule 11. The history of these Rules and the conflict, if I may so describe it, between Rules 9 and 11, were the subject of elaborate opinions delivered in the House of Lords in *Rex v. General Commissioners of Income Tax for the City of London* (ex parte *Gibbs*), 24 T.C. 221, but the brief outline I have given is, I hope, sufficient to make clear the submissions made to me based on the historical development of the relevant taxing provisions.

(Upjohn, J.)

The case for the Appellants can be stated concisely. It is submitted and not disputed that the Crown is a corporation sole and therefore a person: see Section 19, Interpretation Act, 1889. Therefore it is said the case where the Crown purchases a business or trade is within Rule 11 (2).

It is submitted that the true approach to the Rule is that throughout the Act the word "person" must be given its ordinary wide meaning. Thus it is said a person resident outside this country who does not carry on business in this country is not taxed for the reason that, although he is a "person" for the purposes of the Act, he is not a person who is within the class of persons mentioned in any of the sub-headings in sub-paragraph (a) of paragraph 1 of Schedule D. So, to give another example, a charitable trustee is not taxed, not because he fails to fulfil the definition of a person for the purposes of the Act, but because, although such a person, he is exempt from taxation by Section 37 of the Income Tax Act, 1918.

Finally, it is said that the Crown is not taxed, not because it fails to fulfil the definition of a person for the purposes of the Act, but because not being expressly mentioned in the Act the rights of the Crown cannot be prejudiced by anything in the Act: *Bank voor Handel en Scheepvaart N.V. v. Slatford*⁽¹⁾, [1953] 1 Q.B. 248.

It is pointed out that, if the contrary view be right, namely, that the Crown is exempted from tax because upon the true construction of the Act it is not a "person", the wealth of learning to be found in the authorities on the immunity of the Crown from taxation was quite unnecessary. A number of authorities were cited to me on this point. I do not propose to review them all at length, for the exact point I have to consider was never raised; it is sufficient to refer to one passage in *Coomber v. Justices of Berks*, 2 T.C. 1. In the House of Lords, Lord Blackburn, at page 17, said this:

"It seems to me that it is not material whether the assessment statute imposing any tax does so, like the Poor Rate Acts, for a local purpose, or like the statute imposing a duty on post horses, considered in *The King v. Cook*⁽²⁾, or the income tax, for an imperial purpose. In each there is an implied exemption on the ground of prerogative. And if the property is so held as to bring it within the ground of exemption for the one statute, it must surely be brought within the ground of exemption for the other."

That seems inconsistent with the view that the Crown is immune from taxation because it is not a person for the purposes of taxing Acts.

Then, again, in *Slatford's* case, already mentioned, it is said that the illuminating judgments in the Court of Appeal on "Crown status" and "Crown purposes" would have been quite unnecessary if the short answer was that as a matter of construction the Crown, and therefore its servant the Custodian of Enemy Property, is not a person for the purposes of the Income Tax Acts, and the decision must have been the other way. I think there is much force in the contention of the Crown upon this point.

It was next submitted that it would be a most strained and unnatural construction of the Act to hold that the principles of taxation of a vendor of a business should vary according to the apparently irrelevant circumstance whether the vendor should happen to sell to another subject of the Crown or to the Crown itself.

⁽¹⁾ 35 T.C. 311 (*sub nom.* *Bank voor Handel en Scheepvaart N.V. v. Administrator of Hungarian Property*).

⁽²⁾ 3 T.R. 519.

(Upjohn, J.)

On the other hand, Mr. Millard Tucker, for the Respondent Company, submits that the only safe guide is to consider the necessary construction which must be placed on the word "person" in a taxing Act. He points out that in every taxing Act going back for many years there is a preamble in the following form:

"Most Gracious Sovereign, We, Your Majesty's most dutiful and loyal subjects, the Commons of the United Kingdom in Parliament assembled, towards raising the necessary supplies to defray Your Majesty's public expenses, and making an addition to the public revenue, have freely and voluntarily resolved to give and grant unto Your Majesty the several duties hereinafter mentioned; and do therefore most humbly beseech Your Majesty that it may be enacted, and be it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—"

then follow the substantive taxing provisions.

It is said with force, having regard to that preamble, that the Crown as the grantee of the taxes cannot be a person for tax purposes, and that in the charging provisions in the Income Tax Act, 1918, charging tax upon "persons" cannot sensibly include the Crown.

In support of that argument, Mr. Tucker points to the history of the relevant Rules which I have already summarised. He points out that until the Finance Act, 1926, at all events, the relevant Rule would be Rule 9 re-enacting Section 62 of the Act of 1880, and he said the Crown could never be a "person" for the purposes of paragraphs (2) and (3), for Parliament cannot possibly have intended that the Crown should be summoned to appear before the Commissioners. In further support of his argument, Mr. Tucker drew my attention to certain Rules applicable to Schedule A. By Rule 1 of No. VII Income Tax is charged upon the occupier. By Rule 1 of No. VIII the occupier is entitled to deduct such tax out of the next rent payable by him to the landlord. A special provision is made in the Rule that the right to deduct is available against a receiver of Crown Lands. Therefore, it is said, that *prima facie* shows that the Crown is, as a matter of construction of the Act, not a landlord. I do not find this argument very convincing, because a special provision entitling a subject to deduct rent against the Crown is necessary whichever of the contending views is right. The argument is also somewhat double-edged, for the Rule refers in terms to a "receiver on behalf of the Crown or *other* person receiving the rent".

Mr. Tucker's next main point is that Rule 11 (2) contemplates a predecessor and a successor both subject to tax. It is pointed out that in *Rex v. General Commissioners for the City of London (ex parte Gibbs)*,⁽¹⁾ Lord Macmillan, in dealing with Rule 9, points out, at page 247, that the word "person" denotes an entity of assessment. Therefore, it is said, for the rule to apply there must be found two entities of assessment, a predecessor and a successor, both of them subject to tax. Lord Macmillan, however, was dealing with quite a different problem. The sole question was whether Rule 9 applied to the case of admission of a new partner to a firm of stockbrokers carrying on business in the City of London, having regard to the new Rule 11 introduced by the 1926 Act. Lord Macmillan was not in any way concerned with the position of the Crown, and it would be contrary to every principle of construction to lift his words out of their context and try to apply them to the case before me.

(1) 24 T.C. 221.

(Upjohn, J.)

The question ultimately comes to a very short point of construction as to the meaning of the word "person" in Rule 11 (2), and to paraphrase the words of Lord Dunedin, delivering his opinion in *Fry v. Burma Corporation, Ltd.*, 15 T.C. 113, at page 139, another taxing case although on quite a different point, it is safest to go by the ordinary meaning of words. There is here no context which compels me to give some special meaning to the word "person". In its ordinary meaning it is a word of widest import and apt to include the Crown. If some limitation is to be placed upon the ambit of that word, difficulties arise, as the Commissioners appear to recognise in their finding in paragraph 21 of the Case Stated: is the word limited to "all persons other than the Crown" or to "all taxable persons"? As a matter of construction, I see no ground for placing any limitation upon the ordinary and natural meaning of the word. In my judgment, in Rule 11 (2) the word "person" includes the Crown, persons resident abroad, or charity trustees and others who for different reasons may be found to be exempt from tax. Consequently, in my judgment, the Commissioners came to a wrong conclusion upon this point.

I must now turn to the subsidiary point briefly mentioned at the beginning of my judgment. In an undated letter sent after the hearing before the Commissioners, the Respondents gave notice that they would rely on a recent decision in the Court of Session, *Commissioners of Inland Revenue v. Barr*⁽¹⁾. In reply to that letter the Crown stated that they would rely on proviso (ii) to Section 17 (1) of the Income Tax Act, 1945. Judgment was given in *Barr's* case on 13th January, 1953, and it is not yet reported, but I have been supplied with a transcript of the judgment.

The point arose in this way. In an earlier case of *Commissioners of Inland Revenue v. Reid*, reported together with *Commissioners of Inland Revenue v. West* at 31 T.C. 402, a fishing vessel, the "Girl Eileen", was sold, and although the purchaser continued to use the vessel for fishing there was nothing in the nature of a purchase of the vendors' business and goodwill or undertaking as fishermen but only of the ship, and it was found as a fact that on the sale of the ship there was a simultaneous permanent discontinuance of the trade. On these facts the Court of Session naturally held that upon the true construction of Section 17 (1) of the Income Tax Act, 1945, a claim to a balancing charge failed, though both the Lord President (Cooper) and Lord Keith expressed the view that a balancing charge could only be recovered from persons still carrying on the trade.

That decision has, however, no application to the facts of the present case, having regard to the finding of fact that there was no discontinuance of the trade or undertaking though it was carried on by another. The present case is clearly one where (apart from the argument on "person") one person succeeds to a trade of another within the meaning of Rule 11 (2). The proviso at the end of Section 17 (1) is, therefore, relevant. It is in these terms:

"Any reference in this subsection to the permanent discontinuance of a trade does not include a reference to the happening of any event which, by virtue of any of the provisions of Rule 11 of the Rules applicable to Cases I and II of Schedule D, is to be treated as equivalent to the discontinuance of the trade."

In the subsequent case of *Commissioners of Inland Revenue v. Barr*, however, the facts were similar to those before me. A business was sold as a going concern, but the Court of Session held that no balancing charge

(1) 35 T.C. 293.

(Upjohn, J.)

was leviable. They did so, as it appears from the very brief judgment, because Counsel for the Appellant, in opening the appeal, admitted that the *ratio* of *West's* case⁽¹⁾ (it was not disputed before me that in fact *Reid's* case⁽²⁾ was the relevant case) covered the case then under appeal. That admission overlooked the relevant provision in Section 17 (1) I have already read, which does not appear to have been drawn to the Court's attention. Counsel for the Company candidly did not endeavour to support the decision by independent reasoning, but he invited me to follow it. Normally I should feel it my duty to follow a unanimous decision of the Court of Session: see *In re Hartland*,⁽³⁾ [1911] 1 Ch. 459; *In re D'Avigdor Goldsmid*, [1951] Ch. 321; but in the circumstances I have mentioned I do not feel compelled to do so. Nor do I think this is a case where I ought to send the case back to the Commissioners in order that the Company may invite the Commissioners to express new findings upon this matter.

It seems to me that the concluding words of Section 17 (1) govern this case on the findings of the Commissioners, and I cannot treat this case as one where there has been a simultaneous discontinuance of the trade; a balancing charge is therefore leviable.

The appeal must be allowed and the original assessment must be remitted to the Commissioners for adjustment of the figures. The Respondents must pay the Appellant's costs of the appeal.

Mr. Attorney, do you know whether *Barr's* case⁽⁴⁾ has yet been reported, because, if so, for the purposes of the Reports I will put the reference in my judgment?

The Attorney-General.—I am not able to tell your Lordship whether it has been reported yet.

Upjohn, J.—It does not matter.

The Attorney-General.—This is an estimated assessment, and your Lordship will remit it to the Commissioners to adjust the figures?

Upjohn, J.—Yes.

The Company having appealed against the above decision, the case came before the Court of Appeal (Singleton, Birkett and Hodson, L.J.J.) on 23rd, 24th and 25th November, 1953, when judgment was reserved. On 9th December, 1953, judgment was given in favour of the Crown, with costs.

Mr. J. Millard Tucker, Q.C., and Mr. John Clements appeared as Counsel for the Company, and the Attorney-General (Sir Lionel Heald, Q.C.), Mr. J. H. Stamp and Sir Reginald Hills for the Crown.

Singleton, L.J.—The Madras Electric Supply Corporation, Ltd., later referred to as "the Company", was incorporated under the Companies Acts, 1862 to 1900, on 27th January, 1906, with the object of carrying on in India the business of an electric light and power undertaking in all its branches. The undertaking was carried on under three licences granted by the Government of Madras. Particulars of the licences are set out in paragraphs 6, 7

(1) and (2) 31 T.C. 402.

(3) See 7 T.C., at p. 295.

(4) 35 T.C. 293.

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and 8 of the Case. Under the first two licences the local authority, with the sanction of the local Government, had an option to purchase such portion of the undertaking as was in the area for which it was constituted, and a similar option was given to the local Government if the local authority did not elect to purchase. Under the third licence the Governor-General in Council had the option to purchase. The option was exercisable in each case on 29th August, 1947. The Company carried on its business until that date. Notices to exercise the options were duly given.

On 27th August, 1947, an agreement was entered into between the Government of Madras and the Company the effect of which is stated in paragraph 11 of the Case:—

“ . . . it was declared and agreed (*inter alia*) as follows:—

1. That the Government of Madras and the Company agreed to entrust the valuers with the work of valuation of the physical assets to be purchased by the Government and to be sold by the Company.

2. That the valuation to be made by the valuers should be in conformity with the first proviso to Section 7 (1) of the Indian Electricity Act, 1910. For the removal of doubts, it was declared that the Company should not be eligible for any solatium to be added to such valuation in accordance with the second proviso to the said Section 7 (1) for determining the purchase price. . . .

7. That the Company should hand over the undertaking to the Government and the Government should take over the undertaking from the Company at the commencement of 29th August, 1947.”

There followed a supplemental agreement of 29th August, 1947, by which it was witnessed:—

“ 1. That the Company had on the date of execution thereof handed over physical possession of the lands, buildings, works, materials and plant suitable to and used by the Company for the purpose of the undertaking.

2. That the Company acknowledged receipt of certain moneys being a payment on account of the purchase price provided for in the principal agreement of 27th August, 1947.

3. That the Company undertook to execute and register in favour of the Government of Madras a proper deed of conveyance and assignment of the lands, buildings, fixed machinery and plant.”

In due course the valuation forming the measure of the purchase price was agreed at Rs.215 lakhs, excluding the sum to be paid to the Company for service lines paid for by consumers (the valuation of which was reserved for arbitration). The sterling equivalent of this sum of rupees was £1,612,500, and the amount actually received by the Company (due to exchange rates) was £1,611,437.

On 29th September, 1950, the Company went into voluntary liquidation. On the date of the sale, 29th August, 1947, the Company ceased to trade. Its former undertaking continued to be carried on without interruption in Madras under the management of a department of the Madras Government. Substantially all the Company's former staff continued to work in the undertaking. On 30th March, 1951, the Company made a formal conveyance and assignment of lands, buildings, fixed machinery and plant to the Government of Madras.

It is claimed by the Crown that the circumstances give rise to an assessment to Income Tax in the sum of £850,000 in respect of balancing charges under Part II of the Income Tax Act, 1945. The claim is made in

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this way. Rule 11 (2) of the Rules applicable to Cases I and II of Schedule D provides that if any person succeeds to any trade which until that time was carried on by another person, the tax payable for all years of assessment by the person succeeding shall be computed as if he had set up or commenced the trade at that time, and the tax payable for all years of assessment by the person who until that time carried on the trade shall be computed as if it had then been discontinued. It is said that on 29th August, 1947, the Government of Madras succeeded to the business which the Company had carried on until that time.

The next step leads to consideration of Section 17 (1) of the Income Tax Act, 1945:

“ 17.—(1) Subject to the provisions of this section, where, on or after the appointed day, any of the following events occurs in the case of any machinery or plant in respect of which an initial allowance or a deduction under Rule 6 of the Rules applicable to Cases I and II of Schedule D has been made or allowed for any year of assessment to a person carrying on a trade, that is to say, either—(a) the machinery or plant is sold, whether while still in use or not, . . . and the event in question occurs before the trade is permanently discontinued, an allowance or charge (in this Part of this Act referred to as ‘a balancing allowance’ or ‘a balancing charge’) shall, in the circumstances mentioned in this section, be made to, or, as the case may be, on, that person for the year of assessment in his basis period for which that event occurs ”.

The reason for the introduction of this Section is, I think, fairly clear. Under Rule 6 of the Rules applicable to Cases I and II of Schedule D a trader is allowed a deduction each year on account of wear and tear of machinery. He may sometimes be allowed less than he ought to be allowed: in other cases he may be allowed more than is warranted. If he continues in trade the matter may adjust itself in course of time. On the other hand, if he sells the plant or machinery before the trade is permanently discontinued there may arise a balancing allowance to him or a balancing charge against him, and the Section is intended to provide for adjustment accordingly. We are not concerned with figures. It is sufficient to say that the claim of the Crown is that something in the neighbourhood of £850,000 falls to be included as a balancing charge in the Company's assessment to tax.

It was common ground between the parties (1) that by reason of Section 17 (1) of the Income Tax Act, 1945, the balancing charges forming the subject of the assessment under appeal fell to be made upon the Company (if at all) for the year of assessment in the Company's basis period for which the sale of its plant and machinery occurred; (2) that for the purposes of the said Act such sale occurred on 29th August, 1947; (3) that by reason of Section 57 (2) of the said Act the Company's basis period for the year of assessment 1947-48 was the period on the profits or gains of which Income Tax for that year fell to be computed under Case I of Schedule D in respect of its trade.

The contention put forward on behalf of the Company is that Rule 11 (2) does not apply to the facts of this case and that no balancing charge can be made on the Company. This is based mainly, if not wholly, on the submission that the sale of plant, etc. was a sale to the Crown, and it is claimed that the Crown is not a person within the meaning of that word in Rule 11 (2). This contention was accepted by the Special Commissioners, from whom Upjohn, J., allowed the appeal of the Crown. The Company appeals to this Court.

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Mr. Millard Tucker drew our attention to Section 175 (2) of the Government of India Act, 1935, under which it is provided :

“ All property acquired for the purposes of the Federation or of a Province . . . shall vest in His Majesty for those purposes.”

He appeared to seek to draw a distinction between this case and other cases in which the State acquires property for the benefit of subjects. I do not see that any such distinction can be drawn. The undertaking was undoubtedly acquired for the public good and it vested in His Majesty for the purpose for which it was acquired. The options to purchase were exercised by the Government of Madras. The two agreements of 27th August and 29th August, 1947, were made between the Government of Madras and the Company, and the conveyance was to the Government.

The learned Counsel submitted that the Crown acquired the undertaking of the Company and that Rule 11 (2) has no application to such a case. He put his submission in this way : “ The Queen is the Monarch legislating with the other Estates. The Finance Acts are all addressed to subjects ; charging orders cannot include the Crown itself. Therefore the word ‘ person ’ in a charging order, or section, will not include the Crown. The Crown does not impose a tax upon itself.” He drew our attention to the preamble to the Finance Act, 1947 :

“ Most Gracious Sovereign,

We, your Majesty’s most dutiful and loyal subjects, the Commons . . . in Parliament assembled . . . have freely and voluntarily resolved to give and grant unto Your Majesty the several duties hereinafter mentioned ; and do therefore most humbly beseech Your Majesty that it may be enacted, and be it enacted by the King’s most Excellent Majesty by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—”

Mr. Millard Tucker added that Schedule D was a charging Schedule and the Rules under it were charging Rules, and it would not be right to read “ person ” in Rule 11 (2) in two different ways : in other words, it could not include the Crown.

The old form of preamble is preserved. It is, however, recognised that the freedom of the Monarch from taxation arises by virtue of the prerogative. In *The King v. James Cook*, 3 T.R. 519, Lord Kenyon, C.J., said at page 522 :

“ Now although there is no special exemption of the King in this act of parliament, yet I am of opinion that he is exempted by virtue of his prerogative, in the same manner as he is virtually exempted from the 43d *Eliz.* and every other act imposing a duty or tax on the subjects.”

In the case of *Coomber v. Justices of Berks* (1883), 2 T.C. 1, at page 13, Lord Blackburn cited the words of Lord Kenyon and referred to

“ the exemption, by virtue of the prerogative, of property actually occupied or enjoyed for the Crown.”

Now the Crown is a person : see the *Magdalen College Case*, 11 Co. Rep. 66 b—I take these words from page 70 a of the report—

“ And first it was resolved (a) That the general Words of the Act extend to the Queen, for the Words are, ‘ To any Person or Persons, Body Politic or Corporate,’ and without Question the Queen was a Person, as it is said in 10 H. 7. 18a.”

Indeed it has not been disputed that the Monarch is a person, but it is said that he (or she) is not a person within the meaning of that word in the Income Tax Act, 1918, or at least for the purposes of Schedule D. It

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appears to me that this reasoning fails to draw a distinction between the word "person" and a "taxable person". I cannot see why we should not give the ordinary meaning to the word "person" when considering the provisions of Rule 11 (2). Of course, the Crown is not chargeable under Schedule D: that follows from the exemption arising from the prerogative. I draw attention to the words of Wrottesley, J., in *Attorney-General v. Hancock*, [1940] 1 K.B. 427, at page 435:—

"Sec. 1 of the Courts (Emergency Powers) Act, 1914, begins with the words: 'From and after the passing of this Act no person shall . . .' Pausing there, Mr. Murphy said, and everybody, I think, must agree with him, that the word 'person' clearly can include the Crown, and it is for that reason that it has been necessary from time to time for the Courts to remind themselves of the rule with which I am dealing."

It would be strange indeed if the provisions of Rule 11 (2) were not to apply if the purchaser of a business—the one who succeeded to the trade—was the Crown or a Department of State; it is difficult to think of any reason for any such distinction. And when one comes to apply Section 17 (1) of the Income Tax Act, 1945, it is worth noticing that there may be a balancing allowance or a balancing charge: it matters not who the purchaser is so long as the event in question happens before the trade is permanently discontinued.

Mr. Millard Tucker cited the words of Lord Macmillan in *Rex v. General Commissioners of Income Tax for the City of London* (ex parte Gibbs), 24 T.C. 221, at page 247:

"The important thing to ascertain is the meaning of the word 'person' in the vocabulary of the Income Tax Acts. The word constantly occurs throughout the Acts, and I think that it is most generally used to denote what may be termed an entity of assessment, i.e., the possessor or recipient of an income which the Acts require to be separately assessed for tax purposes."

No question such as this was under consideration, and I do not think that the citation really carries us any further unless the submission is that the word "person" throughout means taxable person—and Mr. Tucker did not make that a part of his case.

The contentions of the Crown are set out in paragraph 18 of the Case stated by the Special Commissioners. The submission of the Attorney-General was that the word "person" must be given its ordinary meaning apart from some compelling reason to the contrary, and that "person" includes the Crown and servants of the Crown. He argued that there is no difference for the purpose of Rule 11 (2) whether the successor is the Crown, or the Transport Commission, or the Post Office, or another company or an individual, and, relying upon the authorities I have mentioned, he submitted that the word "person" includes the Crown though the Crown is immune from taxation by reason of the prerogative. Mr. Stamp, who followed, spoke of the Income Tax Acts as regulating the position between the Crown (a person) and other persons. The Crown, he said, is bound by the Income Tax Acts but by virtue of its prerogative does not pay tax. He drew our attention to the use of the word "person" in the 1918 Act as meaning a person other than a person taxable, e.g. Section 116, Section 132 (2), Section 133 (1) (b), Section 166 (10) and Section 190—and there are others.

It appears to me that the contention put forward on behalf of the Company fails. I can find nothing to justify the giving of a limited meaning to the word "person" in Rule 11 (2). It must, I think, be read in the ordinary way.

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I agree with the conclusion of Upjohn, J., and I would dismiss the appeal of the Company.

I do not think that it is necessary for me to add anything to that which was said by Upjohn, J., in relation to two cases recently before the Court of Session, except that Mr. Millard Tucker desired to keep open the position arising upon them.

Birkett, L.J.—I agree with the judgment of my Lord which has just been delivered. I have also had the opportunity of reading and considering the judgment which is about to be delivered by Hodson, L.J., and with that judgment I also agree. In those circumstances I do not desire to add a judgment of my own.

Hodson, L.J.—The main question in this appeal is whether in Rule 11 (2) of the Rules applicable to Cases I and II of Schedule D to the Income Tax Act, 1918 (as substituted by the Finance Act, 1926, Section 32 (1)), the word "person" includes the Crown. If the word "person" includes the Crown the Appellant Company, it is conceded, is liable to certain balancing charges since the Crown has succeeded to its trade within the meaning of the Rule. The balancing charge is borne by the Company and the identity of the successor has no effect financially or otherwise.

Upjohn, J., held that as a matter of construction there was no ground for placing any limitation on the ordinary natural meaning of the word, and that in Rule 11 (2) the word "person" includes the Crown, persons resident abroad, charity trustees and others who for different reasons may be found to be exempt from tax. I agree with his judgment and with the reasons given in support of it.

The Appellant Company bases its argument on the admitted fact that the purchaser of its undertaking was the Crown, and refers in particular to the Government of India Act, 1935, Section 175 (2), which came into force (other than Part II) by Order in Council on 1st April, 1937. The wording of this Sub-section has been slightly varied by another Order in Council, but the material words remain :

"All property . . . shall vest in His Majesty for those purposes."

The argument accordingly is restricted to this narrow proposition, that the successor to the Company being His Majesty in person, the word "person" in the charging sections of the Income Tax Acts cannot be construed as including His Majesty. It is said that it is not necessary to examine the nature of the royal prerogative which includes exemption from taxation, but that the Company is entitled to say that the word "person" in Rule 11 (2) cannot, as a matter of construction, include the Crown in its personal capacity.

The Court was reminded of the constitutional position set out by Professor Hearn in his "*Government of England*" at page 18 :

"The law places no restriction upon the extent of the Royal Power but rigorously defines the manner in which the several branches of that power may be exercised. In every part of public affairs the expression of the Royal will is conclusive; but in each case the Royal will must be intimated through the appropriate channel."

Thus in theory in the making of a statute

"The king . . . is *pars agens*, the rest [Lords and Commons] are but *consentientes*",

per Mr. St. John arguing in *Rex v. Hampden, the Ship Money* case (1637), 3 State Tr. 826, at page 863. Emphasis was placed on the preamble to the taxing Acts, which is set out in full in the judgment of Upjohn, J., as showing

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that having regard to the language of this preamble the Crown as grantee of the taxes cannot be a person for tax purposes and that, in the charging provisions of the Income Tax Act, 1918, charging tax upon "persons" cannot sensibly include the Crown.

On the other hand it is to be observed that in numerous places in the Income Tax Act, 1918, the word "person" is used to include others than taxable persons, or, to borrow the language of Lord Macmillan in *Rex v. General Commissioners of Income Tax for the City of London* (ex parte *Gibbs*), 24 T.C. 221, at page 247, "entities of assessment". This is the sense in which, as Lord Macmillan said, the word "person" is most generally used throughout the Income Tax Acts.

Some dozen examples were given in argument on behalf of the Crown of places in the Acts where the word "person" does not denote an "entity of assessment", and as a pure question of construction I see no reason why the word "person" in a charging section also should not include the Crown. No question of taxing the Crown arises, so that there is no invasion of the Crown's prerogative by construing the word "person" in its natural and ordinary meaning. That the word "person" in an Act of Parliament is apt to include the Crown there is no doubt. The Crown is a corporation sole, and therefore a person: see Section 19 of the Interpretation Act, 1889. The authorities are all one way; the earliest cited being the *Magdalen College Case*, 11 Co. Rep. 66b, where the Year Book, 10 Henry VII, 18a, is in turn cited for the sentence

"*Rex est persona mixta.*"

One of the latest cases cited was *Attorney-General v. Hancock*, [1940] 1 K.B. 427, at page 435, where Wrottesley, J., stated:

"the word 'person' clearly can include the Crown".

The Company perforce contended that the authorities drew a distinction between the Crown in its personal capacity and the Crown in its capacity as part of the constitution. In order to mark the distinction reference was made to 39 & 40 Geo. III, c. 88, Section 6, which provided that Crown lands when bought by private funds of the King are liable to Parliamentary and parochial rates; and reference was made to the Crown Private Estates Act, 1862. I can, however, find no justification for the distinction sought to be drawn between the Crown in its personal capacity and the Crown in the constitutional sense which the Company seeks to draw. The Crown usually can act only through its servants, and this consideration must apply to His Majesty as referred to in the Government of India Act, 1935, to which I have already referred. Thus there is here no practical distinction between the Crown and Crown servants. There are a number of authorities where the claim for exemption from taxation of Crown servants has been considered. This claim has always been based on the royal prerogative that the King is exempted from taxation by virtue of his prerogative. In *The King v. Cook* (1790), 3 T.R. 519, it was decided that the post-horse duty imposed by 25 Geo. III, c. 51, was not to be paid for horses employed for forwarding public expresses on the service of Government. It was decided that the King was exempt from tax by virtue of his prerogative. The Attorney-General pertinently observed that if the contention of the Company were correct the proper question for argument would appear to have been, not: "Was there an exemption on the ground of prerogative?" but: "Were the

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horses 'royal horses'?" *The King v. Cook* was considered in the House of Lords in *Coomber v. Justices of Berks*⁽¹⁾, 9 App. Cas. 61, per Lord Blackburn at page 71, who in connection with taxation spoke of

"an implied exemption on the ground of prerogative".

These principles were applied by the Court of Appeal in *Bank voor Handel en Scheepvaart N.V. v. Slatford*⁽²⁾, [1953] 1 Q.B. 248. The actual decision there was that the office of Custodian of Enemy Property was not such as of itself to confer upon its holder the immunity from tax belonging to the Crown, but there was an elaborate discussion on Crown immunity in the judgments, which proceeded on the basis that the custodian was a person within the orbit of the charge created by Schedule D to the Income Tax Act, 1918. The question was answered adversely to the claim for immunity. Sir Raymond Evershed, M.R., expressed himself, at page 291⁽³⁾, as follows:—

"the commonly used formula that the Income Tax Act does not bind the Crown conceals the true principle, which is that, in the absence of express provision to the contrary, the Crown and the rights of the Crown are not thereby prejudiced."

There is no prejudice to the Crown in this case in construing the word "person" in Rule 11 (2) so as to include the Crown, and, as I have already indicated, I cannot distinguish the instant case from *Slatford's* case by drawing a distinction between the King in person and servants of the Crown. The reasoning of all the judgments in *Slatford's* case appears to me to be inconsistent with the claim put forward by the Company that the Crown is immune not because of the prerogative but because it is not as a matter of construction covered by the word "person" in the charging sections of the Income Tax Acts. The common law rule as to the prerogative must be applied, but the Act must first be construed in the ordinary way.

When the Act has been construed the Crown is entitled to set up its right against the construction if prejudiced thereby, and the construction will, when necessary, yield to the prerogative. There is nothing in Rule 11 (2) which interferes with the rights of the Crown, so that there is no conflict between the Statute and the prerogative. On the contrary, the Crown is relying on the Section, as it is entitled to do. In my opinion the word "person" is a general word which is apt to include the Crown and it is, as the Attorney-General contended, a question of construction of the Act as a whole whether, in a particular case, the Crown is entitled to claim exemption by prerogative.

As to the subsidiary point taken by the Company in reliance on the decision of the Court of Session in *Commissioners of Inland Revenue v. Barr*⁽⁴⁾, the report of that case appears to show that the concluding words of Section 17 (1) of the Income Tax Act, 1945, were overlooked by the Court. Counsel for the Company recognised this and found difficulty in supporting this decision by independent reasoning. We were informed that *Barr's* case is now under appeal to the House of Lords. In the circumstances I am content to say that as at present advised I can find nothing useful to add to what Upjohn, J., has said upon the subsidiary point.

I agree, therefore, that the appeal should be dismissed.

(1) 2 T.C. 1, at p. 17. (2) 35 T.C. 311. (3) *Ibid.*, at p. 331. (4) 35 T.C. 293.

Mr. John Clements.—Mr. Millard Tucker asked me first to express his apologies for not being before your Lordships, but he is on his feet in another Court.

May I ask for leave to appeal to the House of Lords in this case?

Singleton, L.J.—There is no application by the Crown?

The Attorney-General.—I thought my learned friend was only going to say something about Mr. Millard Tucker. I simply ask that the appeal be dismissed with costs.

Singleton, L.J.—Have you anything to say on that, Mr. Clements?

Mr. Clements.—I cannot say anything on that.

Singleton, L.J.—Appeal dismissed, with costs. Do you wish to apply for leave to appeal to the House of Lords?

Mr. Clements.—I do. In this case there are just two or three points, quite shortly. As your Lordship has appreciated, the point is of great importance. It is perhaps the first time it has come before the Courts in this particular form; secondly, the *Dutch Bank* case⁽¹⁾ is under appeal to the House of Lords, and as your Lordship knows it is coming up next week.

Singleton, L.J.—What is the position of the Company—it is in liquidation?

Mr. Clements.—As regards this Company, which is in liquidation, the tax involved is about £480,000. There are two associated companies. The total sum of tax involved is just under £1,000,000. There is another case, as your Lordship—

Singleton, L.J.—There is a great deal of money involved.

Mr. Clements.—Mr. Millard Tucker mentioned one involving the Australian and New Zealand Governments.

Singleton, L.J.—What do you say, Mr. Attorney?

The Attorney-General.—I leave it in your Lordships' hands. I understand there are other cases which would be affected.

Singleton, L.J.—You may have leave, Mr. Clements.

The Company having appealed against the above decision, the case came before the House of Lords (Lords Oaksey, MacDermott, Reid, Tucker and Keith of Avonholm) on 31st January, and 1st, 2nd and 3rd February, 1955, when judgment was reserved. On 11th March, 1955, judgment was given in favour of the Crown, with costs.

Mr. J. Millard Tucker, Q.C., Mr. Kenneth Diplock, Q.C., and Mr. G. B. Graham appeared as Counsel for the Company, and the Attorney-General (Sir Reginald Manningham-Buller, Q.C.), Mr. J. H. Stamp and Sir Reginald Hills for the Crown.

Lord Oaksey.—My Lords, this is an appeal from an Order of the Court of Appeal (Singleton, Birkett and Hodson, L.J.J.) dated 9th December, 1953, dismissing an appeal by the Appellant Company from an Order of the High Court (Upjohn, J.) dated 18th June, 1953, whereby an appeal by the

⁽¹⁾ *Bank voor Handel en Scheepvaart N.V. v. Administrator of Hungarian Property*, 35 T.C. 311.

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Respondent from a determination of the Commissioners for the Special Purposes of the Income Tax Acts upon a Case Stated by those Commissioners was allowed, and the decision of the Commissioners was reversed.

The matter arises upon an assessment to Income Tax for the year of assessment 1947-48 for balancing charges made in the estimated sum of £850,000 upon the Appellant Company under Section 17 of the Income Tax Act, 1945, in respect of the sale by the Company of its undertaking and the machinery and plant belonging to it to the Government of Madras on 29th August, 1947. The undertaking was sold as a going concern, and was taken over and carried on as previously by the purchaser, and it is agreed that the purchaser succeeded to the trade of the Appellant Company on 29th August, 1947.

It is agreed that in these circumstances the Company was liable to balancing charges in respect of the sale of its plant and machinery, and further that such balancing charges were correctly assessed for the year of assessment 1947-48, if the purchaser of the Company's undertaking was a "person" within the meaning of Rule 11 (2) of the Rules of Cases I and II of Schedule D of the Income Tax Act, 1918. If, however, the purchaser was not a "person" within the Rules, such balancing charges could not be assessed for the year 1947-48 as, unless Rule 11 (2) applied, the basis of assessment for that year would be the profits of the previous year which would not include the said balancing charges. The point in issue in the appeal is, therefore, whether the purchaser, the Government of Madras, being for this purpose (as is admitted by the Respondent) a branch of the Crown, was a "person" within the meaning of Rule 11 (2), the contention for the Appellant Company being that neither the Crown nor any person exercising the functions of the Crown is a "person" within the meaning of the Rule, so that no "person" succeeded to the undertaking of the Company.

There is no dispute as to the construction and effect of the provisions of the Income Tax Act, 1945, which impose balancing charges. The balancing charge is to be made for the year of assessment in the "basis period" for which the disposal of the machinery or plant takes place, and the basis period for the year of assessment 1947-48 in the present case is the period on the profits of which Income Tax for that year falls to be computed under the directions contained in the Rules of Cases I and II of Schedule D of the Income Tax Act, 1918, and in subsequent amending enactments.

These directions (so far as they affect the question in dispute) are as follows:

(a) Section 31 (1) (a) of the Finance Act, 1926, provides that where in any year of assessment a trade is permanently discontinued the profits of the trade for the period from the beginning of the year (6th day of April) to the date of discontinuance shall be the profits to be charged to Income Tax under Cases I and II of Schedule D for that year.

(b) By Section 32 of the Finance Act, 1926, the present Rule 11 was introduced by amendment into the Rules of Cases I and II of Schedule D and was substituted for the previous Rule 11 contained in those Rules. Paragraph (1) of the Rule deals with successions to a trade as the result of the formation of a partnership or a change in a partnership in circumstances which admittedly do not apply to the facts of the present case.

(Lord Oaksey.)

Paragraph (2) of Rule 11 (in which the meaning of the word "person" is the issue in this appeal) is in the following terms:

"(2) If at any time after the said fifth day of April any person succeeds to any trade, profession or vocation which until that time was carried on by another person and the case is not one to which paragraph (1) of this Rule applies, the tax payable for all years of assessment by the person succeeding as aforesaid shall be computed as if he had set up or commenced the trade, profession or vocation at that time, and the tax payable for all years of assessment by the person who until that time carried on the trade, profession or vocation shall be computed as if it had then been discontinued.

In this paragraph references to a person include references to a partnership."

If the succession by the Government of Madras to the trade of the Appellant Company was the succession of a "person" within the meaning of Rule 11 (2) of the Rules of Cases I and II of Schedule D, the basis period for the year of assessment 1947-48 will admittedly be the period from 6th April, 1947, to 29th August, 1947, in which said period the sale of the machinery and plant took place, and the assessment for that year in respect of the balancing charges will admittedly be competent, the joint effect of Rule 11 (2) if it applies and Section 31 (1) (a) of the Finance Act, 1926, being that the year of assessment in which the sale takes place is its own basis period.

If, however, Rule 11 (2) was not applicable to the succession by the Government of Madras, the basis period for the year of assessment 1947-48 would, according to the rule for computing profits in the normal case when not displaced by Rule 11 (2), be the preceding accounting year, namely, the year to 31st December, 1946. As the sale of the plant and machinery did not take place in that period no assessment could be made for a balancing charge on account of it for the year of assessment 1947-48, and the assessment for that year which was made would not be competent. An assessment for the year 1948-49 would also not be competent, as in that year the Appellant Company was not carrying on a trade. Accordingly, if Rule 11 (2) was not applicable, the balancing charges which would otherwise have been assessable for 1947-48 escape assessment.

The Income Tax Act, 1945, enacted a revised and extended general code of capital allowances in the taxation of the profits of business undertakings, and in Part II thereof made special provisions as regards machinery and plant. A new feature of these allowances was the provision, upon the acquisition by a trader of machinery or plant, of an initial allowance in respect of a percentage of its cost as well as an annual allowance of a specified amount representing the annual depreciation in value of the machinery or plant as previously provided by Rule 6 of the Rules of Cases I and II of Schedule D.

Where the machinery or plant is disposed of by a trader before the initial and annual depreciation allowances in respect of it have amounted to its full cost and upon its disposal the value received falls short of the balance of its cost, it is provided by Section 17 of the Act that a balancing allowance shall be claimable by the trader in respect of such balance in reduction of his chargeable profits. Conversely, in the event of the value received upon such disposal being in excess of the written down value of the machinery and plant a balancing charge may be imposed upon the trader, so as in effect to restore to the public revenue the amount in respect of past allowances for Income Tax which is shown in the result to have been excessive.

(Lord Oaksey.)

The Appellant Company was assessed to Income Tax for the year of assessment 1947-48 in an estimated amount of £850,000 in respect of balancing charges claimed to be due upon the sale of its plant and machinery on 29th August, 1947, to the Government of Madras. The Company appealed to the Special Commissioners against the assessment.

It was common ground between the parties at the hearing of the appeal—

“(1) that by reason of Section 17 (1) of the Income Tax Act, 1945, the balancing charges forming the subject of the assessment under appeal fell to be made upon the Company (if at all) for the year of assessment in the Company's basis period for which the sale of its plant and machinery occurred;

(2) that for the purposes of the said Act such sale occurred on 29th August, 1947;

(3) that [applying the definition of ‘basis period’ contained in Section 57 (2) of the same Act] the Company's basis period for the year of assessment 1947-48 was the period on the profits or gains of which Income Tax for that year fell to be computed under Case I of Schedule D in respect of its trade.”

The contentions on behalf of the Respondent in support of the assessment before the Special Commissioners were as follows:

“(1) that on 29th August, 1947, there was a succession to the Company's trade, which brought into operation the provisions of Rule 11 (2) of the Rules applicable to Cases I and II of Schedule D;

(2) that by virtue of the said Rule 11 (2) the tax payable by the Company for all years of assessment fell to be computed as if the trade had been discontinued on that date;

(3) that by reason of Section 31 (1) (a) of the Finance Act, 1926 [which deals with the permanent discontinuance of a trade], the Company fell to be charged to Income Tax for 1947-48 on the amount of the profits or gains for the period beginning 6th April and ending 29th August, 1947, and that that period was the Company's basis period for 1947-48;

(4) that the sale of the Company's plant and machinery occurred in its basis period for 1947-48;

(5) that accordingly the assessment was correctly made, subject to final adjustment of the figures.”

The contentions on behalf of the Appellant Company before the Special Commissioners in opposition to the assessment were as follows:—

“(1) that the person succeeding to the Company's trade on 29th August, 1947, was the Crown, and that Rule 11 (2) had no application to a case where the Crown succeeded to a trade;

(2) alternatively, that if the Crown did not succeed to the trade, the person so succeeding was not a person chargeable to Income Tax in respect thereof, and that Rule 11 (2) has no application where the person succeeding to the trade in question is not so chargeable;

(3) that Section 31 of the Finance Act, 1926, did not apply to the Company in relation to the year 1947-48 or any relevant year;

(4) that the Company's basis period for 1947-48 was the preceding year, namely, the year to 31st December, 1946;

(5) that the sale did not occur in the Company's basis period for 1947-48, and that the assessment was therefore bad.”

The Special Commissioners accepted the Company's first contention that the purchaser of the trade was not a person within the meaning of Rule 11 (2), and allowed the appeal of the Company against the assessment to the balancing charges. At the request of the Respondent they stated a Case for the opinion

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of the High Court pursuant to Section 64 of the Income Tax Act, 1952. The Case Stated by the Special Commissioners came on for hearing in the High Court on 12th and 13th May, 1953, before Upjohn, J., who on 18th June, 1953, gave judgment allowing the appeal and reversing the determination of the Special Commissioners. The Appellant Company appealed to the Court of Appeal, and on 9th December, 1953, the Court of Appeal gave judgment dismissing the appeal and affirming the decision of the High Court.

In your Lordships' House the Attorney-General and Mr. Stamp contended that as a matter of construction the Crown is included in the persons chargeable to tax under the Income Tax Acts, but that the Crown obtains immunity from taxation by the prerogative right to claim such immunity. In the Respondent's printed case the argument is expressed as follows :—

“ (7) Because the Crown is upon accepted principles of English law a person and comes within the ordinary meaning of that word in an Act of Parliament.

(8) Because the immunity of the Crown from taxation is based upon the prerogative right to claim such immunity and not upon the construction of the word 'person' in a taxing Act as excluding the Crown.”

My Lords, I agree with my noble and learned friend, Lord Tucker, that it is unnecessary in this case to decide whether the Crown's admitted immunity from taxation depends upon the construction of the Statute or arises from the prerogative in some other way. In the present case the only question is whether Rule 11 (2) applies to the case of a succession by the Crown to a trade previously carried on by a person taxable under the Income Tax Acts. I have come to the conclusion, though not without some doubt, that whatever the construction of the word “person” in the charging provisions of Schedule D may be, it must necessarily be implied that the person succeeded is not deprived of his right to balancing allowances and remains liable to balancing charges when the Crown succeeds to his trade. It cannot, I think, have been intended that in cases where the Crown succeeds to a trade the taxpayer whose trade is taken over should be affected in the matter of Income Tax. Either that must be the necessary implication of the Statute, or the Crown would be entitled by asserting the prerogative to claim to make the balancing charges but not bound to allow the balancing allowances. The words “the tax payable for all years of assessment by the person succeeding” must, I think, be construed to mean the tax, if any, and not to deprive the taxpayer of balancing allowances to which he would have been entitled because his successor is not taxable.

For these reasons I would dismiss the appeal.

Lord MacDermott.—My Lords, this appeal challenges the validity of an assessment under Schedule D of the Income Tax Act, 1918, made upon the Appellants for the tax year 1947-48 in respect of balancing charges under Section 17 of the Income Tax Act, 1945, which were alleged to arise on a sale of the Appellants' plant and machinery. The dispute now lies within a narrow compass, and the only question calling for determination by your Lordships is as to the true construction of Rule 11 (2) of the Rules applicable to Cases I and II of Schedule D.

In these circumstances the situation which makes Rule 11 (2) decisive may be stated briefly and with a minimum of detail. On 29th August, 1947, the Appellants transferred their electric light and power undertaking in Madras to

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the Crown. As from that date the Crown succeeded to the Appellants' trade and the Appellants ceased trading. The transfer was by way of sale and included the plant and machinery already mentioned. Depreciation allowances on these assets had been received in previous years by the Appellants to an extent that justified an assessment for balancing charges, provided such assessment could properly be made with reference to the period in which the sale occurred. The Appellants' normal basis period for assessment was its own accounting period immediately preceding the year of assessment, and this meant that, had the Appellants continued trading, the balancing charges in question would have been payable on foot of an assessment for the tax year 1948-49. An assessment for that year could not, however, be made as trading had ceased during the previous year; and an assessment for the tax year 1947-48, based on the Appellants' previous accounting period, would have been ineffective to impose liability for these balancing charges as the sale which evoked them took place subsequent to that period. These difficulties do not, however, confront the present assessment for 1947-48, the last year of trading, if Rule 11 (2) applies, for in that event Section 31 (1) of the Finance Act, 1926, would operate to make the relevant basis period that which began on 6th April, 1947, and ended when the Appellants' machinery and plant had been sold.

Rule 11 (2) therefore becomes the crux of this litigation. Omitting what is not material it reads as follows:—

“(2) If at any time after the said fifth day of April any person succeeds to any trade . . . which until that time was carried on by another person . . . the tax payable for all years of assessment by the person succeeding as aforesaid shall be computed as if he had set up or commenced the trade . . . at that time, and the tax payable for all years of assessment by the person who until that time carried on the trade . . . shall be computed as if it had then been discontinued.”

The applicability of this Rule, accordingly, depends on whether the transfer to the Crown of the Appellants' undertaking comes within the words

“If at any time . . . any person succeeds to any trade . . . which until that time was carried on by another person . . .”

and this, in turn, depends on whether the word “person” as first used in this context includes the Crown. That is the governing issue. If the Crown is included the assessment is competent and the appeal fails. If the Crown is not included Rule 11 (2) does not apply, the assessment is bad and the appeal succeeds.

For the Appellants it was contended that in the charging provisions of paragraph 1 of Schedule D in respect of the annual profits or gains arising or accruing “to any person residing in the United Kingdom” the word “person” did not, on its true construction, include the Crown, and that there was nothing in the language or subject-matter of Rule 11 (2) of that Schedule to give the same word there a different meaning. Against this an argument in alternative form was advanced on behalf of the Respondent. First of all, it was said that “person” in the charging provisions of paragraph 1 of Schedule D included the Crown and that Rule 11 (2) used the word in the same sense. And, secondly, it was submitted that even if “person” in paragraph 1 did not include the Crown, the language and purpose of Rule 11 (2) justified a wider interpretation which would include the Crown.

My Lords, the meaning of the word “person” in the charging provisions of paragraph 1 of Schedule D was vigorously canvassed at your Lordships' Bar, and Counsel for the Respondent took the first branch of their

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argument, logically enough, the length of saying that the Crown's undoubted immunity from tax under Schedule D flowed not from the construction of the Statute but from the assertion, or at any rate the existence, of a prerogative right. In seeking to show that the decision of the Court of Appeal was wrong Mr. Millard Tucker, for the Appellants, contended that it had accepted that view and he relied upon certain passages in the judgments of Singleton and Hodson, L.JJ., as indicating this to be the case. When these judgments are read in their entirety I am by no means certain that they were meant to go quite as far as this, though they do contain observations such as

"It is, however, recognised that the freedom of the Monarch from taxation arises by virtue of the prerogative"

(Singleton, L.J.)⁽¹⁾, and

"When the Act has been construed the Crown is entitled to set up its right against the construction if prejudiced thereby, and the construction will, when necessary, yield to the prerogative"

(Hodson, L.J.)⁽²⁾. Some of the authorities cited in the course of the hearing also contain expressions which when read literally appear to relate the Crown's immunity from tax to the prerogative. But in those cases the distinction between ascribing this immunity to the prerogative and treating it as a matter of statutory construction was not the subject of dispute, and I do not think much can be built on the use of a phraseology which was never directed to the point now under consideration and which was sufficient for the purposes in connection with which it was used. It may, indeed, be said that for most purposes it matters little whether one attributes the Crown's immunity from taxation to the existence of a prerogative right or to a construction of the taxing Statute that respects that right. In the present appeal, however, the choice between these ways of explaining the position of the Crown is relevant to the issue and was regarded by both parties as having an important bearing upon it.

My Lords, I consider the Appellants to be right on this particular matter. Whatever ideas may once have prevailed on the subject it is, in my opinion, today impossible to uphold the view that the Crown can find in the prerogative an immunity from tax if the Statute in question, according to its true construction, includes the Crown amongst those made liable to the tax it imposes. The appropriate rule, as I understand it, is that in an Act of Parliament general words shall not bind the Crown to its prejudice unless by express provision or necessary implication. That, however, is and has long been regarded as a rule of construction, and such being its nature its application to the charging provisions of paragraph 1 of Schedule D seems to me to make an end of the Respondent's submission on this aspect. In that paragraph the word "person" is a general word capable of including the Crown, but there is no express provision and nothing by way of necessary implication to make it include the Crown, and so, as a matter of construction, it must be read in accordance with the rule as excluding the Crown.

The question, then, is whether the word is to receive a similar construction in Rule 11 (2) or whether it is there used in a less restricted sense and so as to include the Crown.

The presumption that the same word is used in the same sense throughout the same enactment acknowledges the virtues of an orderly and consistent use of language, but it must yield to the requirements of the context, and it is

⁽¹⁾ See page 628 *ante*.

⁽²⁾ See page 632 *ante*.

(Lord MacDermott.)

perhaps at its weakest when the word in question is of the kind that readily draws its precise import, its range of meaning, from its immediate setting or the nature of the subject with regard to which it is employed. In the present instance it seems to me that paragraph 1 and Rule 11 (2) of Schedule D are so different in their subject-matter and purpose that the word "person" must be given a different connotation in each. Paragraph 1 is intended to impose a tax and, in conformity with the rule of construction I have mentioned, the Crown is not bound because, if it were, it would be by its inclusion to its prejudice in the general word "person". Rule 11 (2), on the other hand, is not intended to impose a tax or to do anything prejudicial to any of the persons to whom it refers. It may work now one way and now another, but its object is not to add to the liabilities of the taxpayer but to provide for terminal computations in the case of a trade changing hands. It does not purport to tax those who were not taxable before, and I am unable to see how its provisions can prejudice the Crown so as to justify its exclusion from the word "person" as used therein. Moreover, so to exclude the Crown would be to ignore and run counter to the natural meaning of Rule 11 (2) and its obvious purpose. It is expressed in terms—" . . . any time . . . any person . . . any trade . . ."—which are designedly comprehensive and it caters for a situation which is there to be met whether or not it is the Crown that succeeds to or is succeeded in the trade in question.

For these reasons I am of opinion that the assessment was competent, and I would therefore dismiss the appeal.

Lord Reid.—My Lords, the Appellants have been assessed to Income Tax in respect of balancing charges under Section 17 of the Income Tax Act, 1945, arising from a sale of plant and machinery, which was in use by them in their electricity undertaking in Madras until the Government of Madras, who are admitted to have been the Crown, in 1947 exercised an option to purchase the undertaking. It is admitted that the Crown succeeded to the Appellants' trade within the meaning of the Income Tax Acts, and it is further admitted that if the Appellants' successor in their trade had been anyone else but the Crown there would be no ground for the present appeal.

The sole point at issue in this case is the meaning of the word "person" in Rule 11 (2) of the Rules applicable to Cases I and II of Schedule D. That Rule provides:—

"(2) If at any time after the said fifth day of April any person succeeds to any trade, profession or vocation which until that time was carried on by another person and the case is not one to which paragraph (1) of this Rule applies, the tax payable for all years of assessment by the person succeeding as aforesaid shall be computed as if he had set up or commenced the trade, profession or vocation at that time, and the tax payable for all years of assessment by the person who until that time carried on the trade, profession or vocation shall be computed as if it had then been discontinued.

In this paragraph references to a person include references to a partnership."

It is common ground that if the word "person" where it first occurs in that Rule includes the Crown the appeal fails, but if it does not then the appeal succeeds.

It is not disputed that the Crown is in law a person and the Respondent's first argument is that the word "person", wherever it appears in the Income Tax Acts, includes the Crown. The Appellants, on the other hand, argued that the word "person" in the Income Tax Acts never includes the Crown. In my opinion, both these arguments are unsound.

(Lord Reid.)

It is common ground that the Crown does not have to pay Income Tax, but the reason for that is in dispute. The rule is often stated in the form that an Act does not bind the Crown unless the Crown is bound expressly or by necessary implication. But neither party accepts that as an accurate or sufficient statement of the rule. It is said for the Respondent that as a matter of construction the Crown is within the scope of the words of all the charging provisions of the Act; it is a person and could be assessed for tax, but if it were, it could plead the royal prerogative and decline to pay; when it is said that the Crown is not bound what is meant is that, although the terms of an Act apply to the Crown, the Crown can by the exercise of the prerogative prevent the Act from being applied so as to prejudice its interests. The Appellants, on the other hand, say that the prerogative operates at an earlier stage, and that unless an Act binds the Crown expressly or by necessary implication the Crown is never brought within the scope of any of its provisions which might operate to prejudice Crown interests if they applied to it; so, as a matter of construction, the word "person" in the Income Tax Acts must be held to mean "person other than the Crown".

My Lords, this argument for the Respondent is novel. I do not think that it has ever even been suggested, at least since 1688, that, if an Act in its terms and on its true construction applies to the Crown, its operation can be prevented by the royal prerogative. It is true that there does not appear to be in the authorities any statement which precisely negatives this argument, but that is not surprising. As the point has never been raised it has not been necessary to formulate the answer to it.

Chitty states the rule as follows:—

"But Acts of Parliament which would divest or abridge the King of his prerogatives, his interests or his remedies, in the slightest degree, do not in general extend to, or bind the King, unless there be express words to that effect."

(Prerogatives of the Crown, page 383.) I draw attention to the words "extend to, or bind the King". It is not a matter of the King preventing the operation of an Act which extends to the Crown, but of the scope of provisions which prejudice the Crown being so limited that they never extend to the Crown.

The Respondent relied on *Coomber v. Justices of Berks*⁽¹⁾, 9 App. Cas. 61. In that case it was held that the justices were entitled to plead, against the Crown, immunity from taxation in respect of certain buildings used for what were held to be Crown purposes. Lord Blackburn there speaks of

"the exemption, by virtue of the prerogative"

of Crown property and of

"an implied exemption on the ground of prerogative",

and Lord Watson speaks of

"the privilege of the Crown"⁽²⁾.

But I do not find in any of the speeches anything to suggest that this exemption or privilege only comes in after the Act has been passed to limit the operation of provisions which, until so limited, apply to Crown property, or that it does not limit the scope of the Act by preventing it from ever applying to such property. The case is notable in that the

(1) 2 T.C. 1.

(2) 9 App. Cas., at pp. 65, 71 and 72; 2 T.C., at pp. 12, 17 and 18.

(Lord Reid.)

justices successfully invoked the prerogative against the Crown. This is intelligible if the operation of the prerogative was to exclude entirely from the scope of the Act property used for certain "Crown" purposes, whoever it might belong to. The justices could then say that on a true construction of the Act it did not apply to or make them liable in respect of this property, and that the Crown, by making a demand for tax, could not alter the true construction of the Act. But if the true view were that the Act did apply in the first instance and the prerogative had then to be invoked to prevent its operation, I find it difficult to see what right the justices could have themselves to invoke the prerogative against the will of the Crown.

I shall not multiply references because, the present question not being in issue, the language used was not directed to it and is generally capable of more than one interpretation. But I might add a passage from the judgment of Wrottesley, J., in a recent case, *Attorney-General v. Hancock*, [1940] 1 K.B. 427, at page 439,

"the rule is now well laid down and clear that if an Act of Parliament would otherwise devest the Crown of its property, rights, interests or prerogative, it is not to be construed as applying to the Crown unless the Crown is mentioned either expressly or by necessary implication."

I must, however, deal with the case *Bank voor Handel en Scheepvaart N.V. v. Administrator of Hungarian Property*(¹), [1954] A.C. 584, because a passage in my speech is said to assist the Respondent on this question. The Custodian of Enemy Property had paid Income Tax on a sum which came into his hands, and the sole question was whether when he paid the tax assessed on him he was liable to do so. I agreed with the majority that he was not. I said at one point(²) that

"Undoubtedly he would have had to pay if the Crown had waived its immunity and if he had been directed to pay by the Board of Trade".

It was argued that one cannot waive an immunity unless one is first liable and that this statement of mine is inconsistent with the view that the charging provisions of the Income Tax Acts do not apply at all to Crown income. I must confess that I had thought that if an Act of Parliament imposes a general charge but contains an exception that AB shall not be liable to pay that charge, and if AB is then asked to pay and, notwithstanding his immunity, agrees to pay the charge, that could properly be described as waiving his immunity. But I am not the best interpreter of what I said. It must stand. I can only say that I do not read anything in that case as supporting the Respondent's present argument (which was not submitted in that case). Indeed, I rather think that, if it had been submitted and were right, I should have been able to decide the case the other way. The question was whether the Custodian was liable to pay when he paid the tax. If the true view were that the Acts apply to Crown income unless and until the prerogative is invoked, then it would seem to me that the Crown or its servants must be liable under the Acts unless and until the prerogative is invoked. In the *Bank* case the prerogative was not invoked before payment and payment was made, in this view, under the Act. That seems to me to be very like paying what the Custodian was then liable to pay.

It is true that a variation of the Respondent's argument was submitted to the effect that although an Act applies to the Crown, the prerogative comes into play automatically to prevent the Act from operating and, if

(¹) 35 T.C. 311.

(²) [1954] A.C., at pp. 624-5; 35 T.C., at p. 355.

(Lord Reid.)

the Crown wishes the Act to operate in a particular case on its property, it must for that case waive its privilege. At least that appeared to be the argument, but I found it too subtle to grasp easily. It seems to me to be indistinguishable from saying that the Act does not apply to the Crown but that in a particular case the Crown may waive its immunity in the sense of agreeing in that case to pay as if the Act did apply to it.

In my opinion, the real question is what is the proper construction of the statutory provision taking into account the royal prerogative, and I now turn to the Appellants' argument. They say that inherently the Crown is not a taxable person and, therefore, in a taxing Act "person" must as a matter of construction always mean a person other than the Crown. I think that that is much too widely stated. I agree that the question is one of construction, but the Act may state expressly that some one of its provisions does bind the Crown, and then the Crown will be bound by that provision, though not by others. In the Income Tax Act, 1918, there is a provision of this kind. A tenant who pays tax under Schedule A can deduct tax from his rent when he pays it to his landlord. If his landlord is the Crown he is liable to pay tax as in other cases but in the absence of special provision he could not deduct tax in paying his rent because that would be prejudicing the Crown by interpreting the provision which allows deduction as binding the Crown. But No. VIII, Rule 1, of the Rules applicable to Schedule A expressly provides that

"any receiver on behalf of the Crown or other person receiving the rent shall allow the deduction on receipt of the residue of the rent".

If an Act contains a general provision and an express exception, then the scope of the general provision is limited by the exception. In the same way it appears to me that a general taxing provision must be construed in light of what Lord Blackburn called the "implied exemption on the ground of prerogative"⁽¹⁾. A charging provision which, on the face of it, would or could result in imposing a charge on the Crown must be held inapplicable to the Crown unless the Crown is bound expressly or by necessary implication, and if the result of reading the word "person" in Rule 11 (2) as including the Crown would be to make the Crown chargeable to tax, then it could not be so read.

But at this point I part company with the Appellants' argument. Rule 11 (2) is not a charging provision. It does not say that the person succeeding to a trade shall pay tax. For example, let me suppose that, instead of being bought by the Crown, the Appellants' undertaking had been bought by an Indian company which had no connection with this country. It is admitted, and rightly, that the company would have been a person succeeding to the trade of the Appellants within the meaning of Rule 11 (2), but that company would not have been taxable under Rule 11 (2) or any other provision of the Act. In effect, what Rule 11 (2) provides is only this: if the person succeeding to the trade is taxable in this country, his tax shall be computed in a certain way. And there is nothing to exclude the application of the Rule to the seller if it so happens that the purchaser is not liable to pay tax; whether or not the purchaser is taxable, the tax payable by the person who sold the business is to be computed as if the business had been discontinued at the time of the sale.

(1) Coomber v. Justices of Berks, 9 App. Cas. 61, at p. 71; 2 T.C. 1, at p. 17.

(Lord Reid.)

The Appellants found on a passage in the speech of Lord Macmillan in *Income Tax Commissioners v. Gibbs*⁽¹⁾, [1942] A.C. 402, at page 419, where he says:

“The important thing to ascertain is the meaning of the word ‘person’ in the vocabulary of the Income Tax Acts. The word constantly occurs throughout the Acts, and I think it is most generally used to denote what may be termed an entity of assessment, i.e., the possessor or recipient of an income which the Acts required to be separately assessed for tax purposes.”

Lord Macmillan does not say that the word is always used in this sense, and I do not think that it is used in this sense in Rule 11 (2). If an Indian company, not taxable in this country, had bought the Appellants’ undertaking it would have been a person within the meaning of this Rule. But it would not have been an entity of assessment in the sense that the Acts would require its income to be assessed for tax purposes.

So the reason which requires the scope of charging provisions to be limited so as not to include the Crown does not apply to Rule 11 (2). But the Appellants say that, even if this Rule is not in itself a charging provision, it is so closely connected with the charging provisions in the Act that the word “person” must have the same meaning here as in those other provisions, where it does not include the Crown. I do not agree with that. No doubt there is a presumption that the same word preserves the same meaning in closely related Sections, but there are numerous cases where that presumption has had to give way to other considerations and, in my opinion, it cannot prevail in this case. To apply it would produce an entirely unreasonable result. There is no reason why the amount of tax payable by the seller of a business should depend on the tax liability of the purchaser, and there is nothing in this Rule or in any other part of the Act to indicate any intention that it should.

I am therefore of opinion that this appeal should be dismissed.

Lord Tucker.—My Lords, I am not persuaded that the decision of this appeal calls for an historical investigation of the true nature of the royal prerogative or its precise impact upon parliamentary legislation.

It is beyond dispute that the Income Tax Acts do not operate to charge the Crown with payment of tax—in other words, the immunity derived from the prerogative has not been affected by express words or by necessary implication.

This being the position I can see no reason why the word “person” in those parts of the Acts which do not impose a charge to tax should be construed otherwise than in its ordinary and natural meaning, which clearly includes the Crown.

Rule 11 (2) does not prescribe what persons shall be chargeable to tax. It deals with the computation of tax payable by taxable persons in a certain event, viz. when a succession to a trade takes place. It is quite immaterial to the computation of the tax payable by the person who previously carried on the trade whether the successor is or is not a taxable person. Similarly, it is immaterial to the computation of tax payable by the successor whether the previous trader was taxable. It is in this context that the words “if any

⁽¹⁾ 24 T.C. 221, at p. 247 (*sub nom.* *Rex v. General Commissioners of Income Tax for the City of London (ex parte Gibbs)*).

(Lord Tucker.)

person succeeds to any trade" occur. This is the natural way to describe a trade succession—an event upon the happening of which a computation of the tax payable by taxable persons is to be made.

My Lords, this appears to me to be the natural and reasonable construction of Rule 11 (2), whatever may be the correct approach to the construction of the word "person" in paragraph 1 of Schedule D, which is the charging provision.

I would accordingly dismiss the appeal.

Lord Keith of Avonholm.—My Lords, it is not in dispute that the Appellants' undertaking was sold to the Crown on 29th August, 1947. It is also not in dispute that the validity of the assessment made on the Appellants (whom I shall call "the Company") for the year 1947-48, being the Company's last year of trading, depends on what is the "basis period" for that year of assessment, as defined by Section 57 of the Income Tax Act, 1945. The Company says it is its trading year 1946, for which its accounts were made up. The Revenue say it is the year of assessment, viz. 1947-48. The importance of the question lies in the fact that the balancing charge which falls to be made on the Company under Section 17 of the Income Tax Act, 1945, in respect of the sale of its machinery and plant, arises in the year 1947-48 and unless that year is its basis period for the purpose of the assessment the balancing charge cannot be brought into computation for the purpose of estimating the profits of the Company liable to tax.

The determination of this question depends on whether Rule 11 (2) of the Rules applicable to Cases I and II of the Income Tax Act, 1918, introduced by Section 32 of the Finance Act, 1926, applies to the Company or not. Again, it is agreed that if Rule 11 (2) applies to the Company the present appeal fails; if it does not apply the appeal succeeds. For convenience I quote the Rule in question:

"11. . . (2) If at any time after the said fifth day of April any person succeeds to any trade, profession or vocation which until that time was carried on by another person and the case is not one to which paragraph (1) of this Rule applies, the tax payable for all years of assessment by the person succeeding as aforesaid shall be computed as if he had set up or commenced the trade, profession or vocation at that time, and the tax payable for all years of assessment by the person who until that time carried on the trade, profession or vocation shall be computed as if it had then been discontinued.

In this paragraph references to a person include references to a partnership."

In seeking to exclude the application of this Rule, Mr. Millard Tucker relied on two submissions: first, that "person" in Rule 11 (2) has the same meaning as under the charging provision of Schedule D, which taxes the annual profits or gains arising or accruing to any person, etc.; and, secondly, that under the charging provision "any person" means any person other than the Crown.

For the second of these submissions reliance was placed on the royal prerogative as introducing a principle of construction into legislation which limited the meaning of words so as not to affect the Crown. For the Revenue, on the other hand, it was contended that the prerogative operated to give an exemption, or privilege, to the Crown to say that, though general words in a Statute were capable of including the Crown, the Crown had the prerogative to claim exemption, or to say that it was not bound by the Act. Thus, while it was common ground that the prerogative operated to prevent the Crown being taxed under the Statute, the dispute was as to how it did it.

(Lord Keith of Avonholm.)

Much authority was cited on this matter. But as, in my opinion, none of the cases was directed to the aspect of the matter raised by this appeal, I do not find them very helpful. In *Mersey Docks v. Cameron*, 11 H.L.C. 443, references are made by the consulted Judges and by their Lordships of this House, in almost identical terms, to the rule that the Crown not being named in a Statute is not bound by it. But in *Coomber v. Justices of Berks*, 9 App Cas. 61, the emphasis is laid on the exemption by virtue of the prerogative. Lord Watson states the matter thus⁽¹⁾:

“The exemption of the Crown from the incidence of rating statutes is a general privilege, and is nowise dependent upon the local or imperial character of the rate. It takes effect in all cases when the Crown is not named in the statute, or, I should prefer to say, in all cases where the enactments do not take away the privilege, either in express terms or by plain and necessary implication.”

The matter will be found similarly expressed by Day, J., and Wills, J., in *Gorton Local Board v. Prison Commissioners*⁽²⁾, and Lord Du Parc in *Province of Bombay v. Municipal Corporation of Bombay*, [1947] A.C. 58. In Bacon's Abridgment (I quote from the 7th edition, volume 6, page 462), it is said:

“But where a statute is general, and thereby any prerogative, right, title, or interest, is devested or taken from the king, in such case the king shall not be bound, unless the statute is made by express words to extend to him”;

and again at page 463,

“... in a variety of cases we find it determined, that general words in an act shall not oust the king of his prerogative.”

The authority most favourable to the Appellants' contention would seem to be the following passage from Alderson, B., in *Attorney-General v. Donaldson*, 10 M. & W. 117, at pages 123-4:

“It is a well-established rule, generally speaking, in the construction of acts of Parliament, that the king is not included unless there be words to that effect; for it is inferred *primâ facie* that the law made by the crown, with the assent of Lords and Commons, is made for subjects and not for the crown”.

That passage based on Plowden⁽³⁾ has not escaped criticism from more modern authority.

The contention for the Company seems indistinguishable from the proposition that it is a principle of statutory construction that words used do not include the Crown, or Crown property, unless the contrary is expressed, or clearly implied. But if so no question of the prerogative arises. The matter is just a rule of statutory construction that calls for no invocation of the prerogative. If so all the previous decisions are unexplained, in their reference to and reliance on the prerogative. The true explanation, easily understandable on historical and legal grounds, is that words in a Statute capable of applying to the Crown may be overridden by the exercise of the prerogative. That is necessarily involved in the oft-repeated phrase that the King is not bound by a Statute unless by express words or by clear implication. If the Statute does not apply to him there can be no question of his being bound by it. It is only because it can apply to him that appeal to the prerogative is necessary. The conception of the prerogative, in my view, is of something that stands outside the Statute, on which the Crown can rely, to control the operation of the statute so far as it prejudices the Crown. This, in my opinion, is implicit in all the decisions

⁽¹⁾ At p. 76; 2 T.C., at p. 21.

⁽²⁾ [1904] 2 K.B. 165n.

⁽³⁾ *Willion v. Berkley* (1561), 1 Plowd. 223.

(Lord Keith of Avonholm.)

and works of commentators on the subject and underlies the observations of most of their Lordships in this House who delivered speeches in *Bank voor Handel en Scheepvaart N.V. v. Administrator of Hungarian Property*⁽¹⁾, [1954] A.C. 584. If then it had been necessary my opinion would, I think, have been adverse to the contention for the Company. But I find a more limited ground of decision in the language of Rule 11 (2) itself.

Rule 11 (2) is a rule designed with other rules to set up the basis of assessment on which the taxpayer will be taxed. As *ex hypothesi* the Crown escapes taxation under the charging provision, the Crown is not affected directly by Rule 11 (2). But the Crown is bound by the assessment and other provisions of the Statute which fix the basis of taxation. The tax is levied for the benefit of the Crown and can only be raised by statute and the Crown must recognise the conditions on which Parliament says it shall be levied. Whatever the word "person" means in the charging provision, it does not necessarily follow that it means the same thing in Rule 11 (2). If in Rule 11 "person" meant person other than the Crown, the whole basis of assessment in the case of a particular class of taxpayer, namely, purchasers from or sellers to the Crown, would be disrupted. A different basis of assessment would exist for persons who had bought or sold businesses according as they bought from or sold to the Crown, or persons other than the Crown. No reason for any such distinction was, or can be, suggested. The Rule is, in my opinion, intended merely to deal with the situation that arises on a purchase or sale of a business, and to give the Rule a reasonable and intelligible meaning "person" must, if possible, be given a meaning that will include the Crown. There is nothing in the Act to exclude such a reading and it is supported also by the definition of "person" in the Interpretation Act, 1889.

I would dismiss the appeal.

Questions put :

That the Order appealed from be reversed.

The Not Contents have it.

That the Order appealed from be affirmed and the appeal dismissed with costs.

The Contents have it.

[Solicitors:—Solicitor of Inland Revenue; Sanderson, Lee, Morgan, Price & Co.]

(¹) 35 T.C. 311.

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