

HIGH COURT OF JUSTICE
(CHANCERY DIVISION)—4, 5 AND 6 NOVEMBER 1980

A

COURT OF APPEAL—26 AND 27 OCTOBER
AND 13 NOVEMBER 1981

HOUSE OF LORDS—10, 11, 15 AND 16 NOVEMBER AND 16 DECEMBER 1982

B

Wicks v. Firth (H.M. Inspector of Taxes)⁽¹⁾
Johnson v. Firth (H.M. Inspector of Taxes)⁽¹⁾

Income tax—Schedule E—Benefits—Higher paid employees—Educational awards to children—Whether assessable as benefits to employees—Whether Benefits exempt as scholarship income—Finance Act 1976, s 61, Income and Corporation Taxes Act 1970, s 75.

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The trustees of a fund set up by ICI Ltd. made awards to children of employees of ICI to help them with their further education. Two cases of employees in “higher-paid employment” (as defined in s 69(1), Finance Act 1976) were selected as test cases in which the Inspector raised assessments on the employee parents on the footing that the awards were benefits for the purposes of s 61, Finance Act 1976.

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Before the Special Commissioners it was contended for the parents that (1) there was no benefit chargeable to tax on them under Schedule E, and (2) if there was such a benefit, it was income exempt from tax as being scholarship income for the purposes of s 375, Income and Corporation Taxes Act 1970. The Special Commissioners rejected both contentions and confirmed the assessments. The taxpayers appealed.

E

The Chancery Division, allowing the taxpayers’ appeals held that no benefit was chargeable under s 61 because the Finance Act 1976 was not to be construed so as to nullify or impair the unqualified exemption conferred by s 375 of the Income and Corporation Taxes Act 1970. The Crown appealed

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The Court of Appeal, allowing the Crown’s appeals held that:

- (a) the awards were cash benefits provided by ICI Ltd. to the child of each employee “by reason of his employment” for the purposes of s 61 and such benefits were chargeable under that section; and
- (b) (Lord Denning M.R. dissenting) s 375 did not exempt the parents from such a charge.

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The taxpayers appealed.

⁽¹⁾ Reported (Ch D) [1981] 1 WLR 475; [1981] 1 All ER 506; [1981] STC 28; 124 SJ 829; (CA) [1982] Ch 355; [1982] 2 WLR 208; [1982] 2 All ER 9; [1982] STC 76; 126 SJ 82; (HL) [1983] 2 AC 214; [1983] 2 WLR 34; [1983] 1 All ER 151; [1983] STC 25; 127 SJ 37.

- A *Held*, in the House of Lords, allowing the taxpayers' appeals, that:
- (1) the awards were benefits within s 61, were provided for members of the families of the taxpayers at the cost of ICI Ltd., and were to be treated as emoluments of the taxpayers; and
 - (2) (Lord Templeman dissenting) those emoluments were exempt from income tax under s 375, being income arising from scholarships.

B

CASE

Stated under s 56, Taxes Management Act 1970, by the Commissioners for the Special Purposes of the Income Tax Acts for the opinion of the High Court of Justice.

- C 1. At a meeting of the Commissioners for the Special Purposes of the Income Tax Acts held on 6, 7 and 8 February 1980 Malcolm James Wicks ("Mr. Wicks") appealed against an assessment to income tax under Schedule E for the year 1978-79 in the sum of £11,413.

2. Shortly stated the question for our decision was whether Mr. Wicks was liable to income tax in respect of an award made to his son from the Imperial Chemical Industries Educational Trust ("the educational trust").

- D 3. At the same time we heard an appeal by Mr. Maurice Johnson ("Mr. Johnson") against an assessment to income tax under Schedule E in respect of an award to his daughter from the educational trust.

4. Our decision which we gave in writing on 8 April and which is appended hereto as a schedule covers the appeals of both Mr. Wicks and Mr. Johnson.

- E 5. The witnesses who gave evidence before us are listed in para 4 of our decision.

6. The following documents were proved or admitted before us:

- (1) folder containing:—
- a (1) income tax assessment on Mr. Wicks;
 - (2) income tax assessment on Mr. Johnson;
 - (3)–(6) notices of appeal etc.;
 - b. trust deed dated 13 January 1977 constituting the educational trust;
 - c. accounts of educational trust to 30 September 1977, 1978 and 1979;
 - d. interim reports of the trustees of the educational trust for the academic years 1976-77, 1977-78 and 1978-79;
 - G e. bundle of documents relating to the award to Mr. Wicks' son;
 - f. bundle of documents relating to the award to Mr. Johnson's daughter;
 - g. bundle of correspondence relating to the funding of the educational trust;

h. analysis of merit bonuses awarded by the educational trust; A

(2) press release by Department of Education & Science dated 18 November 1976;

(3) press release by Inland Revenue dated 14 June 1978;

(4) proof of evidence of Sir Roy Marshall (with attachments);

(5) letter from the educational trust to holders of scholarships for the year 1977–78 with application form for 1978–79; B

(6) schedule showing the distribution of salaries of parents (employed by ICI) of applicants for scholarship awards;

(7) computer print-out of scholarships awarded in 1978–79.

Copies of these are available for inspection by the Court if required.

7. Our decision sets out the facts that we found admitted or proved before us (paras 5 and 6) and the contentions of the parties (para 7). C

8. The following authorities were referred to during the appeal:—*Hochstrasser v. Mayes* 38 TC 673; [1960] AC 376; *Rendell v. Went* 41 TC 641; [1964] 2 All ER 464; *Brumby v. Milner* 51 TC 583; [1976] 1 WLR 29, 1076; *Vestey v. Commissioners of Inland Revenue (Nos. 1 and 2)* 54 TC 503; [1980] AC 1148; [1979] 3 All ER 976; *Duport Steel v. Sirs* [1980] 1 WLR 142.

9. The Appellant, immediately after the determination of the appeal, declared to us his dissatisfaction therewith as being erroneous in point of law and on 9 April 1980 required us to state a Case for the opinion of the High Court pursuant to s 56, Taxes Management Act 1970, which Case we have stated and do sign accordingly. D

10. The questions of law for the opinion of the Court are:

(1) whether there was evidence before us on which we could find the facts that we did and, if so, E

(2) whether on the basis of those facts our decision was correct in law.

J.G. Lewis	}	Commissioners for the Special Purposes of the Income Tax Acts
H.H. Monroe		

Turnstile House,
94–99 High Holborn,
London WC1V 6LQ

28 July 1980

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Decision

1. These are two separate appeals—one by Mr. Wicks and the other by Mr. Johnson. Mr. Wicks and Mr. Johnson are together called “the Appellants” and by agreement their appeals were heard together. The Appellants are and at all material times were employees of Imperial Chemical Industries Ltd. (“ICI”) and, put shortly, the question for our decision is whether the Appellants are liable to income tax under Schedule E for the year 1978–79 in respect of awards made to their children from the Imperial Chemical Industries Educational Trust (“the educational trust”). G

2. It has been agreed that these two appeals should be regarded as a test-case in the sense that the outcome will determine the Inland Revenue’s H

A policy regarding the large number of other ICI employees whose children have received or may in the future receive similar awards.

3. Mr. F. Heyworth Talbot Q.C. and Mr. G.R. Aaronson appeared for the Appellants. The Inspector of Taxes was represented by Mr A. Wheaten of the Office of the Inland Revenue Solicitor.

4. The following witnesses gave evidence before us: Dr. Trevor Cawdor Thomas, Vice Chancellor of Liverpool University from 1970 to 1976 and at all material times chairman of the trustees ("the trustees") of the educational trust; Sir Roy Marshall, Secretary General of the Committee of Vice-Chancellors and Principals of the United Kingdom Universities ("CVCP") from 1974 to 1979 and since then Vice Chancellor of Hull University; James Ferguson Mitchell, an employee of ICI from 1953 to March 1977 and since that date secretary ("the secretary") of the educational trust; Mrs. Dian Kaye Huddart, who at the material time was a personnel officer at ICI Head Office, Milbank, London; Miss Gwendoline Irene Evans, who was employed by the Personnel Department of ICI specifically to prepare schedules of particulars (which were presented before us) of awards made from the educational trust in the academic year 1978-79; Martin Wicks ("Martin"), son of Mr. Wicks and an undergraduate at King's College, Cambridge; the Appellants.

The facts

5. The following facts (taken from a statement of agreed facts) were admitted before us.

(1) By a deed ("the trust deed") dated 13 January 1977 ICI established the educational trust. The initial trust fund comprised £15,000 which ICI on that day transferred to the educational trust, and this was augmented by subsequent payments, again made by ICI, as follows:

	£
26 January 1977	735,000
1 September 1977	800,000
20 July 1978	700,000
31 August 1978	200,000
27 June 1979	800,000.

Apart from these payments no other contributions as such have been made to the educational trust, although other substantial sums have been received by way of deposit interest. This interest amounted to (in round figures) £28,000 for the period 13 January 1977 to 30 September 1977, £33,000 for the year to 30 September 1978 and £71,000 for the year to 30 September 1979, totalling in all £132,000 (these figures are all gross before deduction of income tax). [Further particulars are set out in para 6 below.]

(2) Under the trust deed the trustees are directed to exercise their discretion in paying what the trust deed terms scholarships to such of the class beneficiaries as they think fit. Scholarships are limited (by clause 4) to awards only in respect of full-time instruction at a university or other comparable establishment of further education, with preference to be given to undergraduate courses. The class of beneficiaries is defined (by clause 1(3)) to mean the children of all employees and officers of the settlor (that is to say ICI) and certain nominated subsidiaries of ICI. Children for this purpose includes adopted children, step-children and illegitimate children. It is expressly provided (by clause 4(5)) that once a scholarship has been awarded to a

beneficiary it remains payable normally even if he or she ceases to be a beneficiary as a result of the parents' ceasing to be employed by ICI (or one of the nominated subsidiaries). It is further provided that such an individual (even though technically no longer a beneficiary) remains eligible for some future awards. A

(3) The trustees awarded 2,072 scholarships for the academic year 1976-77, 2,533 scholarships for the academic year 1977-78, and 2,683 scholarships for the academic year 1978-79. No issue arises as to any of the scholarships awarded in the academic years 1976-77 and 1977-78, because until 14 June 1978 the Inland Revenue accepted that scholarship awards of this type were exempted from income tax by s 375, Income and Corporation Taxes Act 1970. By a press release issued on that date the Inland Revenue announced that henceforth they would regard the cost of providing such scholarship awards as being a benefit in kind taxable (in the case of directors and higher-paid employees) under s 61, Finance Act 1976. The press release included the following paragraphs: B C

"3. The Revenue will not, however, contend that there is a benefit giving rise to liability under Section 61 where there is only a fortuitous connection between the identity of the recipient of the scholarship and his parent's employment, for example, where a firm sets up a scheme for awarding scholarships which is open to all, but where one of the successful candidates happens to be the child of a higher-paid employee of that firm. 4. The new practice will be applied to income from scholarships awarded on or after [14 June 1978] but not to income from existing awards." D E

(4) In November 1978 the trustees awarded a scholarship of £600 to Martin and a scholarship of £460 to Christine Johnson ("Christine"), daughter of Mr. Johnson. Christine was about to start her first year at Newcastle University reading Medicine, and Martin was about to start his first year at Kings College, Cambridge reading Natural Sciences. In the tax year 1978-79 (with which we are concerned) the emoluments of both Appellants exceeded the threshold of the "higher-paid" employment for the purposes of s 61. F

(5) On 13 July 1979 an income tax assessment for the year 1978-79 was made on Mr. Wicks in respect of his emoluments from ICI. This assessment included the sum of £600 for Martin's scholarship, which is described in the assessment as "Benefits—ICI Educ. Trust". On 17 August 1979 an assessment for the year 1978-79 was made on Mr. Johnson in respect of his emoluments from ICI. This assessment included the sum of £460 for Christine's scholarship, which is described in the assessment as "ICI Ltd. Educational Trust". G

6. As a result of the oral and documentary evidence produced before us, we find the following further facts proved. H

(1) Dr. Thomas and Sir Roy Marshall gave evidence to the effect that many students at universities and colleges suffered hardship (which could affect both their health and their studies) if their financial resources for living expenses were limited to the amount of the grant that they actually received from local education authorities (LEAs)—parents often failed to pay the full amount of the assessed parental contribution—and that the educational trust fulfilled a valuable educational and social purpose. We fully accept their evidence. I

(2) Sir Roy Marshall also gave evidence to the effect that the awards from the educational trust were scholarships, as that word is normally understood

A among educationalists. Mr. Wheaten accepted on behalf of the Inspector of Taxes for the purposes of these appeals that the awards were scholarships.

(3) Dr. Thomas and Mr. Mitchell gave evidence in considerable detail about the criteria used by the trustees in making awards and the mechanics by which candidates applied for and received awards. For the purposes of these proceedings we can summarise the evidence, which we fully accept, as follows:

B (A) Selection of scholars. The trustees in deciding whether to make an award were in no way influenced by the position of the applicant's parent *vis-à-vis* his employer. The only criteria were whether the applicant was eligible under the terms of the trust deed and whether his educational attainments were such that he had been accepted for a course which in accordance with the trust deed the trustees had determined as eligible for awards. Indeed, when the question whether the award should be renewed for a subsequent year came before the trustees they would not know whether his parent was still an employee of ICI (for one of its nominated subsidiaries, as the case might be). Broadly speaking, however, awards were made to all eligible applicants for eligible courses. We inferred that ICI had made and would continue to make (if the present appeals were to succeed) sufficient contributions to the educational trust to enable the trustees to continue their existing policy in this respect.

(B) Selection of courses. Clause 4(1) to (3) of the trust deed is in the following terms:

E "4.(1) A Scholarship shall be awarded to a Beneficiary only in respect of his or her full-time instruction at a university or such other comparable establishment of further education as the Trustees may determine. The Trustees shall give preference in their award of Scholarships to Beneficiaries who are or will be following instruction leading to a first university degree or comparable diploma but shall not be precluded in exceptional circumstances from awarding Scholarships in respect of post-graduate courses. (2) The Trustees may upon awarding a Scholarship to a Beneficiary prescribe such terms and conditions attached to the holding of the Scholarship as they may think fit. (3) No Scholarship shall be awarded to a Beneficiary unless: (a) the beneficiary qualifies or has qualified for the award of some other scholarship exhibition bursary grant or other similar educational endowment on grounds of academic merit only not awarded by the Trustees in respect of the particular educational establishment where he or she attends or intends to attend; or (b) the Beneficiary has been accepted for admission by a university or other comparable establishment of further education for instruction leading to a first university degree or comparable diploma; or (c) the trustees after considering any information concerning the academic ability of the Beneficiary as is available to them and after examining or interviewing the Beneficiary (which examination or interview may in exceptional circumstances be dispensed with) determine in their absolute discretion that the Beneficiary has sufficient academic ability to merit the award of a Scholarship."

I The trustees determined as eligible courses for 1978-79 those that were either: (a) designated by the Department of Education and Science ("DES") as qualifying for awards by LEAs or (b) supported by the Department of Health and Social Security and which required of the applicant the attainment of an academic standard equivalent to that required of an applicant for a course designated by DES. They considered courses individually, however, and,

exceptionally, might accept as eligible other courses, e.g., for a second first degree as where an applicant who had graduated as a B.Sc. wanted to qualify as a doctor or where the applicant's education had suffered as a consequence of exceptional hardship. A

(C) Amount of award. The award consisted of a basic award which might, according to the merits of the case, be supplemented by a merit award.

(i) The basic award. The trustees fixed the basic award with the general object of closing the gap between the national maximum amount of maintenance awards by LEAs (£1,100 per annum for the academic year 1978-79) and the LEA maintenance award actually made. Their aim was that the gap should be no greater than £300. If, which was rare, a student had a scholarship from another source, that would be taken into account. Parental contributions were not taken into account. B

(ii) The merit award. The basic award might be supplemented by a merit award of variable amount. This was based, broadly, on the scholar's academic performance. For the first year's award, it would normally depend on the results of his GCE A Level examination and for later years on a report from his university or college. C

(D) Machinery. Applicants for awards usually learned about the educational trust from their parents, who knew of the scheme from internal publicity in ICI (e.g. noticeboards) and who would obtain application forms from ICI personnel officers. After the applicant had made his application, his parent had no further standing in the matter and the trustees dealt only with the applicant himself and, if he was successful, sent him the cheque: they would refuse to tell the parent of the amount of any award to his child. No award would be made until the trustees had seen a copy of the letter stating the amount of the LEA's award to the applicant. The scheme of awards was sufficiently flexible to meet special circumstances and special hardship. D E

(4) We summarise below the income and expenditure accounts of the educational trust for the period ended 30 September 1977 and the years ended 30 September 1978 and 30 September 1979.

	13 January 1977 to 30 Sept. 1977	Year ended 30 Sept. 1978	Year ended 30 Sept. 1979	F
Payments received from ICI	1,550,000	900,000	800,000	G
Deposit interest received	28,482	32,657	70,960	
	1,578,482	932,657	870,960	H
Less income tax	11,332	9,484	29,088	
	1,567,150	923,173	841,872	I
Less expenses (Secretary's salary, wages, services etc.)	18,609	25,558	29,219	
	1,548,541	897,615	812,653	

A	January 1977 to 30 Sept. 1977	Year ended 30 Sept. 1978	Year ended 30 Sept. 1979
B			
Less awards for academic years 1976-77, 1977-78 and 1978-79 respectively.	617,994	824,144	823,933
C			
Accumulated surplus [deficit] of income for period	930,547	73,471	[11,280]
Surplus brought forward	—	930,547	1,004,018
D	930,547	1,004,018	992,738.

(5) The trustees' award to Martin for his first year at university was £600—a basic award of £400 and a merit award of £200 (based on 4 grade As in his A Levels): his LEA maintenance grant for the year was £409. Mr. Wicks did not reduce his assessed parental contribution as a result of the award to Martin; when the trustees came to consider renewing Martin's award for the academic year 1979-80, they continued the basic award but, having taken account of his college report, did not renew the merit award.

(6) The award to Christine for her first year was £460—a basic award of £260 and a merit award of £200 (based on 4 grade As in her A Levels): her LEA maintenance grant was £542. Mr. Johnson did not cut down his assessed parental contribution as a result of the award. Christine had an outstanding college report (coming first with distinction in a class of 130 students) and the trustees increased her merit award for 1979-80 while continuing her basic award.

The Contentions

7.(1) Mr. Heyworth Talbot's primary contention was that even assuming that all the conditions were satisfied for the application of s 61, Finance Act 1976, the Appellants were exempt from any tax charge thereunder by virtue of s 375, Income and Corporation Taxes Act 1970. The requirement in the last few lines of s 61(1) that "an amount equal to whatever is the cash equivalent of the benefit" is to be treated as an emolument of the employment and chargeable to income tax under Schedule E was another way of saying that it should be treated as taxable income. It was "income arising from a scholarship held by a person receiving full time instruction at a university, college, school or other educational establishment" within the meaning of s 375(1) and was accordingly exempt from income tax under that subsection and no account was to be taken of such income in computing the amount of income of the scholar's parents for income tax purposes.

(2) In the alternative Mr. Heyworth Talbot contended that, as the benefit was provided not for the Appellants themselves but for their children, it could only be brought within the scope of s 61(1) via ss 72(3) and 63(2), so that to pin a charge on an employee of ICI, the Inspector of Taxes had to show that the benefit was provided at the cost of ICI. Here the source of the award was a

trust fund. However, the benefit had not been provided at the cost of the trustees. Moreover, it was impossible to find out from what particular source any particular payment to Martin or Christine came—from the original fund or from the income from it. Unless the Inland Revenue could say with precision how the tax claim was to be quantified it must fail: it was not for the courts to come to their aid. A

(3) The appeal should succeed in principle and the assessments should be reduced by the sum of £600 in the case of Mr. Wicks and by the sum of £460 in the case of Mr. M. Johnson. B

8. Mr Wheaten contended:

(1) The awards to Martin and Christine were benefits within the meaning of s 61(2) not only for them but also for their respective parents.

(2) On the facts there was a close link between ICI, the educational trust and ICI's employees. The inference was that the purpose of the trust was to confer benefits on the employees. Accordingly, the benefit of the awards was provided by reason of the Appellants' employment. In this connexion reference was made to *Rendell v. Went* 41 TC 641 and *Brumby v. Milner*⁽¹⁾ [1976] 1 WLR 1096. C

(3) If he was wrong on (2), such provision was deemed to have been made by virtue of s 72(3). D

(4) Accordingly the amount equal to whatever was the cash equivalent of the benefit was chargeable to income tax under s 61(1).

(5) The expense incurred in or in connexion with the provision of the benefit was incurred both by ICI and by the trustees. There was only one lot of expenses but ICI were the paymasters and the trustees handed out the money after deduction of expenses. In the present cases the cost of the provision of the benefit was the actual amount paid to the child—£600 to Martin, £460 to Christine. E

(6) The charge under s 61 is on the "cash equivalent of a benefit" (which by s 63 is "an amount equal to the cost of the benefit"). It was impossible to equate that with "income arising from a scholarship" (which was the amount the scholar receives) within the meaning of s 375, Income and Corporation Taxes Act 1970. The two might be the same in amount but were different in character. Neither leg of s 375(1) could confer exemption on a charge which arose under s 61. F

(7) The assessments should be confirmed.

9. Conclusion. G

(1) Chapter II of Part III of the Finance Act 1976 sets out to extend the scope of the liability for tax imposed on a director or a higher-paid employee (both hereinafter referred to for convenience as "employee") in respect of fringe benefits. Previously a charge to tax arose if company incurred expense in the provision of a benefit for such an employee. Under s 61 an employee is chargeable if by reason of his employment he receives a benefit—it matters not from whom. H

(2) Moreover, if the benefit is provided by his employer, it will be deemed to be received by the employee by reason of his employment whether or not intended to be received as a reward or in return for his services.

A (3) At the receiving end liability extends to any benefit provided for a member of the employee's family or household .

(4) Four ingredients of the charge can thus be identified of which one of (i) and (ii) and one of (iii) and (iv) at least must be present: (i) receipt of a benefit by the employee, or (ii) by a member of his family, including a child whether or not any longer dependant on him, and (iii) a causal link between employment and benefit or (iv) provision of the benefit by his employer with or without such link.

B (5) The question who is the provider of a particular benefit is to be answered by asking at whose cost was it provided.

(6) For good measure it has been argued before us on behalf of the Revenue that in these proceedings all four ingredients were present. In the case of Mr. Wicks it is said that Mr. Wicks himself received a benefit and that Martin received a benefit, that ICI provided the benefit and that the trustees provided the benefit, that the benefit was received by reason of Mr. Wicks' employment and that it matters not whether or not it was so received since it was provided at the cost of ICI.

(7) That Martin received a benefit is common ground and not in dispute.

D (8) The evidence before us does not support the suggestion that Mr. Wicks received any financial benefit from Martin's award. Mr. Wicks was under no legal obligation to finance Martin at Cambridge. Martin's award made no difference to his moral obligation to make a parental contribution. He paid what he would have paid to Martin in any event, sufficient to bring Martin's resources together with his LEA grant, up to the recommended level.

E We find that no benefit was received by Mr. Wicks.

(9) It seems to us that Martin's benefit was provided by ICI. It was ICI which each year put the trustees in funds to make awards. To say that the awards were paid or provided at the cost of the trustees appears to us to be a wholly inaccurate use of language. The function of the trustees was to select recipients of awards provided at the cost of ICI. Each year it cost ICI the sum which ICI contributed to the fund to provide the awards paid out of the fund in that year. To the extent to which what ICI paid into the fund in the year was in excess of the awards paid out, the cost was in part attributable to awards paid out in subsequent years. We see no reason to distinguish the income of the trust fund from the capital in identifying the source.

F (10) The benefit which Mr. Wicks must be deemed to have received must also be deemed to have been received by reason of his employment because provided by ICI. There was no evidence before us to establish that the benefit was in fact received by Mr. Wicks by reason of his employment. Reliance was placed on behalf of the Revenue on the circumstance that Martin was and could only be selected as the recipient of an award because he was the son of an ICI employee. But that, as it seems to us, falls short of establishing that the reason for Martin's award was his father's employment. It was for the Revenue to establish a causal link between Mr. Wicks' employment and Martin's award. They have not done so. Martin received his award because he was selected by the trustees as a person having the necessary qualifications. One of those qualifications was that when he first applied for an award, his father was an ICI employee. We have not been told and do not know why ICI established the fund or contributed to it each year save as appears from the terms of the trust deed. We do not infer that ICI's purpose was to remunerate its employees or to add an additional perquisite to their emoluments.

(11) Since, however, we hold that within the meaning of the statute the benefit was provided at the cost of ICI, what purpose ICI had is immaterial. A

(12) As ingredients (ii) and (iv) to which we have referred in subpara (4) above are present, we decide the first issue (see subpara (6)) in principle in favour of the Inspector of Taxes.

(13) It seems to us that the proper proportion of the cost incurred by ICI in making its contribution to the fund in a particular year to be attributed to Martin's award is the same proportion of the whole as Martin's award bears to the aggregate of the awards paid out in that year. We do not have to decide this point, however, as it is common ground in these appeals that the actual amount of the awards to Martin and Christine should be taken as the measure of any liability under s 61. B

(14) As to the second issue—whether the scholarship exemption applies—we find, first, so far as it may be relevant, that Martin's scholarship was not in itself income. It was neither an annual payment taxable under Case III nor, contrary to the suggestion advanced on the Revenue's behalf, such an annual profit or gain as is taxable under Case VI. But nor was the cost of providing the scholarship incurred by ICI, of itself, income. The charge under s 61 is on the cash equivalent of the benefit provided not on the benefit itself. The cash equivalent is not of itself income but is to be treated as an emolument. A notional sum so treated is not, in our judgment, covered by the words income arising from a scholarship. That a wholly laudable attempt to assist young people of promise in their university careers may to some extent be frustrated or discouraged may well be a matter for regret, but regret as it seems to us is not a factor in what we have to decide, whether Martin's award was provided at the cost of ICI. If it was, and we find the conclusion inescapable on the language used in the statute, liability follows unless the expense incurred in providing the award was itself income arising from the award. But the expense of providing a benefit cannot itself be income arising from what is provided: the charge under s 61 is quite separate and distinct from the benefit the provision of which is the occasion of the charge. C D E F

(15) What is said about Martin's award applies equally to Christine's.

(16) The appeals fail in principle and we confirm the assessments.

(17) This decision does not, of course, cover awards from the educational trust to children of parents employed not by ICI but by one of its nominated subsidiaries.

J.G. Lewis } Commissioners for the Special Purposes
H.H. Monroe } of the Income Tax Acts

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8 April 1980

Johnson v. Firth. The Case Stated in this appeal was in all material respects identical to the above case.

- A The case was heard in the Chancery Division before Goulding J. on 4 and 5 November 1980 when judgment was reserved. On 6 November 1980 judgment was given against the Crown with costs.

F. Heyworth Talbot Q.C. and G. Aaronson for the taxpayers.

Robert Carnwath for the Crown.

- B The following cases were cited in argument in addition to the case referred to in the judgment:—*Hughes v. Bank of New Zealand* 21 TC 472; [1938] AC 366; *R. v. City of London Commissioners* (ex parte *Gibbs*) 24 TC 221; [1942] AC 402; *Metropolitan Water Board v. Assessment Committee of the Metropolitan Borough of St. Marylebone* [1923] 1 KB 86; *Hochstrasser v. Mayes* 38 TC 673; [1960] AC 376; *Brumby v. Milner* 51 TC 583; [1976] 1 WLR 29, 1076; *Reg. v. Criminal Injuries Compensation Board* (ex parte *Ince*) [1973] 1 WLR 1334; *Barty-King v. Ministry of Defence* [1979] 2 All ER 80; *Commissioners of Inland Revenue v. Educational Grants Association Ltd.* 44 TC 93; [1967] Ch 993; *Maughan v. Free Church of Scotland* 3 TC 207.

- Goulding J.**—I have before me two appeals by taxpayers from decisions of the Special Commissioners given in favour of the Crown. Both taxpayers are in the employment of Imperial Chemical Industries Ltd., which I shall refer to by the well-known abbreviation of “ICI”. The subject-matter of the appeals is the taxation of certain scholarships, coming from a fund known as the ICI Educational Trust, which was set up in 1977 by ICI, in cases where the scholarship is given to the child or dependant of a director or of what is known in the legislation as “a higher-paid employee” of ICI. The trust, as I have said, was established in 1977. It is constituted under a trust deed dated 13 January in that year. The initial trust fund mentioned in the deed is £15,000, but it has been subsequently augmented by very large payments, all made by ICI. The Special Commissioners found that at the date with which they were concerned no other contributions had been made to the fund, although it had of course received additions by way of interest on money awaiting use.

- F I am content to take from the Case Stated by the Special Commissioners, without reading the deed, a sufficient indication of its character. They say:

- G “Under the trust deed the trustees are directed to exercise their discretion in paying what the trust deed terms scholarships to such of the class of beneficiaries as they think fit. Scholarships are limited... to awards only in respect of full-time instruction at a university or other comparable establishment of further education, with preference to be given to undergraduate courses.”

- H The class of beneficiaries is defined under the deed to mean the children of all employees and officers of ICI and of certain nominated subsidiaries of ICI. “Children” for this purpose includes adopted children, step-children and illegitimate children. It is expressly provided by the deed that once a scholarship has been awarded to a beneficiary it remains payable normally even if he or she ceases to be a beneficiary as a result of the parent employee ceasing to be employed by ICI or one of the nominated subsidiaries. It is further provided that such an individual remains eligible for certain future awards. The trustees, according to the Case Stated, have been awarding scholarships regularly since the foundation of the trust at the rate of something over 2,000 in each academic year.

The facts as regards the particular cases before the Court are these. A son of one of the Appellant taxpayers received in November 1978 from the trustees the award of a scholarship of £600. He was about to start his first year at King's College, Cambridge, reading natural sciences. Subsequently, when the trustees came to consider the renewal of the award for a second academic year, they continued a part of the £600—namely, what they called a basic award of £400—but did not renew the additional £200, which was originally described as a merit award, because of the contents of his college report. The other case is that of a daughter of the other Appellant taxpayer. She also, in November 1978, was about to start her university career, in her case reading medicine at the University of Newcastle. Her initial award was £460, consisting of a basic award of £260 and a merit award of £200—the merit award, as in the boy's case, being based on her previous record, particularly her A-levels. However, the lady, when she completed her first year at college, had a quite exceptionally distinguished report and so, in her case, not only was the basic award continued for a second year but the merit award was also continued and, indeed, increased.

In both cases income tax assessments for the year 1978–79 were made on the respective fathers of the scholarship holders—that is, on the two Appellants—in respect of their emoluments from ICI, and in each case a figure was included as a benefit from the ICI Educational Trust, the figure being that of the first year's scholarship award—£600 in the case of the boy's father, £460 as regards the girl's father. The Special Commissioners received oral as well as documentary evidence of the practice of the trustees in exercising their discretion under the trust deed. They accepted evidence that the trust fulfilled a valuable educational and social purpose in helping to bridge the gap between the financial resources available to university students and their real needs for money sufficient to get the maximum benefit from the university. Evidence was also given (at considerable length, I am told) about the selection of candidates by the trustees. The Special Commissioners found these facts:

“The trustees in deciding whether to make an award were in no way influenced by the position of the applicant's parent *vis-à-vis* his employer. The only criteria were whether the applicant was eligible under the terms of the trust deed and whether his educational attainments were such that he had been accepted for a course which in accordance with the trust deed the trustees had determined as eligible for awards. Indeed, when the question whether the award should be renewed for a subsequent year came before the trustees they would not know whether his parent was still an employee of ICI (or one of its nominated subsidiaries, as the case might be). Broadly speaking, however, awards were made to all eligible applicants for eligible courses.”

The Special Commissioners “inferred that ICI had made and would continue to make (if the present appeals were to succeed) sufficient contributions to the Educational Trust to enable the trustees to continue their existing policy in this respect”. The Special Commissioners also found that applicants for awards usually learned about the trust from their parents, who knew of the scheme from notice boards and other publicity inside ICI and obtained their application forms from ICI's personnel officers. Then the Special Commissioners say this:

“After the applicant had made his application, his parent had no further standing in the matter and the trustees dealt only with the applicant himself and, if he was successful, sent him the cheque: they would refuse to tell the parent of the amount of any award to his child.

- A No award would be made until the trustees had seen a copy of the letter stating the amount of the" local education authority's "award to the applicant. The scheme of awards was sufficiently flexible to meet special circumstances and special hardship."

Such being, in outline, the facts of the case as found by the Special Commissioners, I now turn to the legislation under which the Revenue has assessed the two Appellants in respect of the sums here in question. It is s 61 of the Finance Act 1976, the first subsection of which I will now read, though, as will appear in a moment, it is necessary in order to understand it to look at several other subsections in the same Act. Section 61(1) of the Finance Act 1976 reads (I omit certain immaterial words at the beginning):

- C "...where in any year a person is employed in director's or higher-paid employment and—(a) by reason of his employment there is provided for him, or for others being members of his family or household, any benefit to which this section applies; and (b) the cost of providing the benefit is not (apart from this section) chargeable to tax as his income, there is to be treated as emoluments of the employment, and accordingly chargeable to income tax under Schedule E, an amount equal to whatever is the cash equivalent of the benefit."
- D

- The phrase "director's or higher-paid employment" is defined in s 69(1) of the Act, subject to certain qualifications, as employment as a director of a company or employment with emoluments at a particular rate per year or more, the figure having been modified from time to time. It was originally £5,000; it was £7,500 in the year 1978–79; and it was subsequently raised to £8,500. There is no question in this case as to the meaning of the term: it is accepted that both the Appellants are in "director's or higher-paid employment". Then, s 61(1)(a) starts off with the words "'by reason of his employment' there is provided" a benefit. The phrase "by reason of his employment" has an extended meaning, because in s 72(3) of the Act we find this:
- E

- F "For the purposes of this Chapter, all sums paid to an employee by his employer in respect of expenses, and all such provision as is mentioned in this Chapter which is made for an employee, or for members of his family or household, by his employer, are deemed to be paid to or made for him or them by reason of his employment."

- G Thus, a benefit is material for the purposes of s 61 if it is either, on a proper construction of the words, provided by reason of the taxpayer's employment or in fact provided by his employer. Either of those alternatives, which of course must often coincide, will bring the benefit within s 61. The next phrase explained is "members of his family or household", benefits to whom are to rank in the same way as benefits to the employee himself. That is explained in s 72(4), which is in these terms: "References to members of a person's family or household are to his spouse, his sons and daughters and their spouses, his parents and his servants, dependants and guests." Then there is a provision in s 61(3) to identify the person who provides the benefit. That says: "For the purposes of this section and sections 62 and 63 below, the persons providing a benefit are those at whose cost the provision is made." "Benefit" receives a highly extended meaning by s 61(2), which (as amended) reads:
- H

- I "The benefits to which this section applies are accommodation (other than living accommodation), entertainment, domestic or other services, and other benefits and facilities of whatsoever nature (whether

or not similar to any of those mentioned above in this subsection), A
excluding however those taxable under sections 64 to 68 below in this
Chapter, and subject to the exceptions provided for by the next following
section."

The subsection thus makes a number of special exceptions, but it is not
necessary for me to go through them here.

Finally, in order to understand what s 61 is doing it is necessary to see B
what is meant by the phrase "the cash equivalent of the benefit", because at
the end of the first subsection what is to be chargeable to tax under Schedule E
is "an amount equal to whatever is the cash equivalent of the benefit". That is
defined in s 63(1), which reads: "The cash equivalent of any benefit C
chargeable to tax under section 61 above is an amount equal to the cost of the
benefit, less so much (if any) of it as is made good by the employee to those
providing the benefit."

Mr. Heyworth Talbot and Mr. Aaronson, on behalf of the Appellant
taxpayers, made, I think, five alternative points in answer to the claim by the
Crown under s 61 of the Finance Act 1976. I can deal with the matter most
conveniently if I enumerate the five points at once and afterwards return to
two of them which require further observations not convenient to make in a D
short survey. The first point—and, in the submission of Mr. Heyworth Talbot,
at any rate, the primary or main point—was that the claim is answered by a
specific exemption relating to scholarship income contained in s 375 of the
Income and Corporation Taxes Act 1970. It is necessary for me to read only
the first two subsections of the three in s 375:

"(1): Income arising from a scholarship held by a person receiving E
full-time instruction at a university, college, school or other educational
establishment shall be exempt from income tax, and no account shall be
taken of any such income in computing the amount of income for income
tax purposes. (2): In this section 'scholarship' includes an exhibition,
bursary or any other similar educational endowment."

That, as I have said, was Mr. Heyworth Talbot's primary submission and I F
shall return in a moment to deal with it in detail.

The second point was that when one looks at the provisions of s 61 of the
1976 Act and the neighbouring ancillary sections one sees that the emphasis
is entirely on benefits in kind and they are not apt to cover cash payments such as
that made by the trustees to the children of the two Appellants. It is pointed
out that there is a long enumeration of benefits in kind in s 61(2), which I have G
read, and that s 62, which I have not read, contains exceptions relating to
different species of benefits in kind. It is also submitted that the very words of
charge, if you read the definition of "cash equivalent" back into s 61(1)—that
is, tax is chargeable on "an amount equal to whatever is an amount equal to
the cost of the benefit, less so much (if any) of it as is made good by the
employee"—are really only sensible in relation to benefits in kind, and not in H
cash. I may say at once that I have not been persuaded by that submission. The
words "of whatsoever nature (whether or not similar to any of those
mentioned above in this subsection)" are to my mind too strong to admit of
the inference which I have been invited to draw. It is also not immaterial, I
think, that one of the specific exceptions in s 62—namely, in subs (6)
thereof—is a benefit consisting in the provision of a pension, annuity or the I
like on the employee's death or retirement. At least that makes it clear that,
but for the words of exception, provisions for future cash sums would be

A within the scope of s 61, thereby making it all the harder, I think, to limit the words "benefits and facilities of whatsoever nature" by reference to what has gone before. Accordingly, without further ado, I can reject that second submission.

The third point is this. The Appellants challenge the assertion of the Crown that the scholarships (or the benefit of the scholarships, if preferred) have been provided by reason of the Appellants' employment. That, of course, requires two propositions to be made good: first, that on the proper construction of the words in the Statute the benefits were not in fact provided by reason of the employment; and, secondly, bearing in mind the extended provision in s 72(3), that the provision was not in fact made by ICI. It is said that, on the one hand, the employment of the parent was a necessary qualification for the child, as was, on the other, the attainment by the child of a sufficient academic standing to benefit from or be eligible for a university or college course. But those are qualifications. The benefits, it is submitted, were *provided* by reason of the decision of the trustees as an independent act, quite independent, as the Special Commissioners have found, of ICI, in the exercise of their fiduciary discretion under the trust deed. It is contended, secondly, on a consideration of the same facts, that the provision was made not by ICI but by the trustees out of the trust fund under their sole control. Those submissions raise matters of difficulty on the interpretation of the Finance Act 1976 and I leave them for the moment.

The fourth point is really conceived, I think, as a *reductio ad absurdum*. The Finance Act 1976 inserted a fresh version of s 15 into the Taxes Management Act 1970. That is the section which requires employers to make returns to the Inspector of Taxes relating to their employees; and in its revised form it provides also for returns to state, in respect of an employee, whether any benefits have been provided "for him (or for any other person) by reason of his employment, such as may give rise to charges to tax under", among other provisions, ss 61 to 68 of the Finance Act 1976. Various details may be required; and there is also provision for the Inspector to require information from any person who appears to him to have been concerned "in providing benefits to or in respect of employees of another". I need not go into detail, but Mr. Heyworth Talbot submitted, putting it shortly, that when one looks at that section and also at the general machinery for obtaining information for the purposes of assessment to income tax, the charge introduced under s 61 is simply unworkable if construed so widely as to bring in the scholarship payments made, not by an employer but by the trustees, not to an employee but to the child of an employee, in the present case. He says that without information that they perhaps could not get, it would be impossible for employers to make correct returns of their own income; it would be impossible for employers to comply with their statutory obligations because they would be required to have knowledge in the possession of people like the trustees in the present case, whom they might not be able to compel to disclose the facts; and s 61 would present, it may be, an impossible task to the officers of the Inland Revenue themselves. That submission is another that I can dispose of shortly. I am not convinced by it. It is of course possible that, in spite of the endeavour of Parliament to extend the field of s 15 of the Taxes Management Act 1970 to dimensions commensurate with the new legislation in the Finance Act 1976, great difficulties will arise in particular cases both for the taxpayer and for the Revenue. Nevertheless, such difficulties cannot to my mind affect the construction of the Act to such an extent as to curtail the natural meaning of the terms employed in s 61 and its appended ancillary sections.

I can likewise dismiss shortly the fifth and last of the points made on behalf of the Appellants, as I understood them. That again is an appeal to possible difficulty in the application of the 1976 legislation if given the wide construction favoured by the Crown. The particular difficulty emphasised was that a payment might be made to an individual who had a double qualification, so that two or more employees of the same employer might be assessable. For example, the child of one employee of ICI might be the dependant of another, or might be the wife of a child of the other. In those cases, who is to be assessed, or is there to be a double charge to tax? It is even conceivable that a director or higher-paid employee might himself be a scholar under the educational trust. Those are interesting and difficult problems which may or may not arise in practice, but, once again, I do not think they are any answer to the proper construction of the charging section itself.

After that survey I return to what was described on behalf of the Appellants as the primary submission—that based on the exemption contained in the first subsection of s 375 of the Income and Corporation Taxes Act 1970. It has two limbs. The first says that “Income arising from a scholarship held by a person receiving full-time instruction at a university, college, school or other educational establishment shall be exempt from income tax”; and the second limb is that “no account shall be taken of any such income in computing the amount of income for income tax purposes”. Both limbs were relied on by Counsel for the Appellants and both have been debated at some length. On the first limb—that income arising from a scholarship should be exempt—it is not disputed that the awards under the ICI Education Trust are scholarships; nor is it disputed for the purposes of these cases that the sums received by the taxpayers’ children are income arising from a scholarship.

In their decision the Special Commissioners relied on the distinction between the income received by the scholarship holder and the cash equivalent which is to be taxed as emoluments of the parent employee under s 61 of the Finance Act 1976. They say this:

“The charge under s 61 is on the cash equivalent of the benefit provided not on the benefit itself. The cash equivalent is not of itself income but is to be treated as an emolument. A notional sum so treated is not, in our judgment, covered by the words income arising from a scholarship.”

I think that at one time I should have found that reasoning more conclusive than I do at present. I think there is no doubt that, perhaps under continental influences, in recent years the Court, in interpreting recent statutes, has tended to be less literal and to look a little more at the purposes of a particular enactment, as disclosed by the words of the enactment itself. Considered in that way, although I do not find the point free of difficulty, I cannot think that Parliament, without giving an express indication, intended in effect to nullify or impair an unqualified exemption of this kind of scholarship income under s 375 by introducing, in relation to a very much wider class of benefit, a scheme of assessing notional sums, that scheme (which is really in the nature of machinery) being necessary because in general the benefits aimed at are given not in cash but in kind. Accordingly, although I see the force of the distinction drawn by the Special Commissioners between a purely notional sum and actual income, when one looks at the purposes of s 375 in giving an exemption and at the reason for introducing the fiction of a notional sum in s 61 of the later Act, I do not think it would be right to infer that the generality of the exemption was impaired. Accordingly, it seems to me that on the first limb the Appellant taxpayers should succeed.

- A I now turn to the second limb. There are really two points, I think, on that. When the Act says that no account shall be taken of income arising from the scholarship in computing the amount of income for income tax purposes, does it relate only to the scholarship holder or does it forbid the taking of scholarship income into account in computing any taxpayer's income? The main argument about that for the Crown was that, if s 375 receives such a construction that its latter part is not limited to the income of the scholarship holder, then the proviso to s 10(5) of the same Income and Corporation Taxes Act 1970 would be otiose. Of course, one hesitates to make inferences of that kind from a consolidation statute drawn from many sources, but any such objection was removed when it was shown that both the present s 10(5) and the present s 375 are derived from the same original Statute, namely, the Finance Act 1920. However, a similar argument was developed before the Court of Appeal in *Mapp v. Oram*⁽¹⁾ 45 TC 651, and it was not found persuasive by any of the members of the Court, divided though they were on the result of the appeal in that case. It afterwards went to the House of Lords, but the particular argument was not, as I understand it, used there, so no further light can be found in the speeches of their Lordships. There is, I think, no other sufficient ground for curtailing the literal breadth of the second limb, so I decline to limit it to the income of the scholarship holder himself.
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- The other point is directed to the words "computing the amount of income for income tax purposes". The relevant computation, as it seems to me, of the amount of income for income tax purposes is of the emoluments taxable under Schedule E of the scholarship holder's parent. Mr. Carnwath, for the Crown, submitted that in making that computation you do not take account of the scholarship income: it is only taken into account, if it is proper to use such words at all, at the earlier stage of ascertaining the relevant benefit received by the child of an employee from his employer which is afterwards converted into a cash equivalent by the Act of 1976, the cash equivalent, but nothing else, entering into the computation of the amount of income for income tax purposes. That, I think, is too narrow an interpretation. Trying to use the words in their ordinary sense, it seems to me that account has been taken in the present case of the income arising from the Appellants' children's scholarships in computing the amount of the Appellants' respective emoluments for income tax under Schedule E. Accordingly, in my judgment they succeed on the second limb of s 375 as well as on the first.
- E
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- G That leaves the third point, as I called it in my general survey, which relates to the construction of the provisions in s 61 and also s 72 of the Finance Act 1976, requiring the relevant benefits to be provided by reason of the employment of the taxpayer. As I said, those questions are difficult. They apply not only to scholarships but to the whole field of operation of s 61. It would not assist an appellate Court, if this case should go further, to know what was my opinion on these pure matters of law. Accordingly, though I must not be thought in any way ungrateful or discourteous in regard to the excellent arguments I heard on both sides, I think it better that I should not give any judgment on that question; I have found in favour of the Appellants' main contention, that they can rely on the specific exemption in s 375 of the Income and Corporation Taxes Act 1970.
- H

- I Accordingly, in my judgment both appeals must be allowed.

(¹) [1970] AC 362.

Appeals allowed, with costs.

A

The Crown's appeals were heard in the Court of Appeal (Lord Denning M.R. Oliver and Watkins L.J.J.) on 26 and 27 October 1981 when judgment was reserved. On 13 November 1981 judgment was given in favour of the Crown with costs, (Lord Denning M.R. dissenting).

D.C. Potter Q.C. and Robert Carnwath for the Crown.

B

F. Heyworth Talbot Q.C. and G. Aaronson for the taxpayers.

The following cases were cited in the Court of Appeal in addition to those referred to in the judgment:—*Turner v. Cuxson* 2 TC 422; *Blakiston v. Cooper* 5 TC 347; [1909] AC 104; *Cowan v. Seymour* 7 TC 372; [1920] 1 KB 500; *Ormond Investment Co., Ltd. v. Betts* 13 TC 400; [1928] AC 143; *Beynon v. Thorpe* 14 TC 1; *Lindus & Hortin v. Commissioners of Inland Revenue* 17 TC 442; *Hughes v. Bank of New Zealand* 21 TC 472; [1938] AC 366; *Cunard's Trustees v. Commissioners of Inland Revenue* 27 TC 122; *Lush v. Coles* 44 TC 169; [1967] 1 WLR 685; *Brumby v. Milner* 51 TC 583; [1976] 1 WLR 1096; *Tyrer v. Smart* 52 TC 533; [1979] 1 WLR 113; *C. v. C.* [1980] Fam 23.

C

Lord Denning M.R.—I.C.I. have established an educational trust. It is for the benefit of the sons and daughters of their higher-paid employees. That is, those whose salary is £7,500 a year upwards. I.C.I. have paid into the Trust Fund about £1m. a year. Out of it the Trustees have awarded scholarships for the sons and daughters at the Universities. Their value ranges from £200 to £600 a year, or even more. The awards go to about 2,500 students a year.

D

Now it is quite clear that the students are not themselves liable for tax on these scholarships. But the Crown claim that their fathers are liable to tax. The Crown say that the amount of the scholarship is to be added to the father's income: and that he is to be taxed on it as if it were part of his emoluments. The Crown say that this follows because the scholarships are confined to students whose fathers are employed by I.C.I. These scholarships, say the Crown, are "fringe benefits" which are to be treated, under modern legislation, as if they were part of the income of the employee himself.

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Two cases have been brought before the Courts to test the position. Martin Wicks is a student at King's College, Cambridge. His father is in the agricultural division of I.C.I. His home is in Stockton-on-Tees. He is reading for an Honours Degree in Natural Sciences. He applied for a grant from the County of Cleveland, which is their local education authority. The County paid his tuition fees at the University. They also made him a grant of £409 towards his maintenance. They knew that that would not be sufficient for him to manage on. They thought that a student needed £1,100 for his maintenance. But they said that his parents ought to contribute £691 so as to bring his total maintenance up to £1,100.

G

It was in those circumstances that Martin applied for one of the I.C.I. scholarships. He was eligible for it because on his examination results he had obtained a place at the University, and his father was a higher-paid employee

H

- A of I.C.I. His salary was about £10,000 a year. The Trustees awarded Martin a scholarship of £600 in all, made up of £400 basic award and £200 merit award.

It is that award which gives rise to this case. The Crown say that the £600 award is to be added to the father's salary and that tax is to be paid by the father on the total. In the assessment on the father, they inserted this addition: "Benefit—I.C.I. Educational Trust £600."

- B Christine Johnson is a student at the University of Newcastle-Upon-Tyne. Her father is in the petro-chemicals division of I.C.I. Her home is in Middlesbrough. She is reading medicine, and has done exceptionally well. She too applied for a grant from the local education authority. They paid her tuition fees at the university. They made her a grant of £542 towards her maintenance, but they said that her parents ought to contribute £558 so as to bring her total maintenance up to £1,100. Christine applied for one of the I.C.I. scholarships. The Trustees awarded her £460. This was £260 as a basic award and £200 as a merit award. The Crown assessed her father on his salary of about £10,000 a year, and added this item: "I.C.I. Educational Trust £460."

- D So the problem is this: the Crown say that the father is liable to pay tax on the amount of the scholarship as if it were part of his own emoluments. They regard it as a "fringe benefit" which has become taxable under s 61 of the Finance Act 1976.

- E **Before 1976**—Before 1976 each father was chargeable to tax under Schedule E on the "emoluments therefrom"—that is, the "emoluments from" his employment. The word "emolument" covers any advantage which can be turned to pecuniary account. The word "therefrom" brings in the test of causation. In order that any pecuniary advantage can be taxable in the hands of the employee, the employment has to be the *causa causans* of the money being received. The payment must be made as a remuneration or reward for his services. It is not sufficient for the employment to be the *causa sine qua non*. Nor is it sufficient to say that the employee would not have received it unless he had been an employee. Thus, when I.C.I. gave financial assistance to any of their employees who wanted to buy a house or to move house, the employee was held not liable to tax upon the amount. The payment was a housing grant. It was not a reward or return for his services. So he was held not taxable on it, see *Hochstrasser v. Mayes*(¹) [1960] AC 376: see especially *per* Lord Simonds at page 389 and *per* Lord Radcliffe at page 392.

- G **The 1976 Act**—Thereafter many employers granted "fringe benefits" to their employees. The employers used them as a means of giving benefits to their employees free of tax. So much so that in 1976 Parliament enacted a comprehensive clause designed to make fringe benefits taxable in the hands of the recipients. They did so by s 61 of the Finance Act 1976, which was in these terms:

- H "(1) Where in any year a person is employed in director's or higher-paid employment and—(a) by reason of his employment there is provided for him, or for others being members of his family or household, any benefit to which this section applies; and (b) the cost of providing the benefit is not (apart from this section) chargeable to tax as his income, there is to be treated as emoluments of the employment, and accordingly

(¹) 38 TC 673.

chargeable to income tax under Schedule E, an amount equal to whatever is the cash equivalent of the benefit. (2) The benefits to which this section applies are living or other accommodation, entertainment, domestic or other services, and other benefits and facilities of whatsoever nature (whether or not similar to any of those mentioned above in this subsection)” A

I will take the important phrases in order. B

By reason of his employment—It seems to me that the words “by reason of” are far wider than the word “therefrom” in the 1970 Act. They are deliberately designed to close the gap in taxability which was left by the House of Lords in *Hochstrasser v. Mayes*⁽¹⁾. The words cover cases where the fact of employment is the *causa sine qua non* of the fringe benefits, that is, where the employee would not have received fringe benefits unless he had been an employee. The fact of employment must be one of the causes of the benefit being provided, but it need not be the sole cause, or even the dominant cause. C
It is sufficient if the employment was an operative cause—in the sense that it was a condition of the benefit being granted. In this case the fact of the father being employed by I.C.I. was a condition of the student being eligible for an award. There were other conditions also, such as that the student had sufficient educational attainments and had a place at a University. But still, if D
the father’s employment was one of the conditions, that is sufficient. If two students at a university were talking to one another—both of equal attainments in equal need—and the one asked the other “Why do you get this scholarship and not me?”, he would say “Because my father is employed by I.C.I.”. That is enough. The scholarship was provided for the son “by reason E
of the father’s employment”.

The cash equivalent of the benefit—This section is designed to overcome the evasion of tax by giving “fringe benefits”. These fringe benefits are often in kind and not in cash. They may be such as not to be able to be turned to pecuniary account. Nevertheless Parliament intends them to be taxed. It does so by saying that tax is to be charged on “an amount equal to whatever is the cash equivalent of the benefit”. But, if the fringe benefit is in cash and not in kind, then it seems to me that the tax is to be charged on the cash. There is no need to seek for a cash equivalent when the benefit is in cash. So the section should be interpreted as if it read: “and accordingly charged to income tax under Schedule E on the cash (when the benefit is in cash) or on an amount equal to whatever is the cash equivalent of the benefit (when the benefit is in kind)”. In short, when the benefit is paid in cash, the cash is itself to be treated as an emolument of the employment. So the “emolument” here was the actual sum paid in cash to the son. It was paid “by reason of” the father’s employment. So *prima facie* it is chargeable by s 61 and is taxable as if it was part of the emoluments of the father. F
G

Provision made by his employer—Even if I were wrong in thinking that these scholarships were awarded “by reason of the employment” of the father, nevertheless, the statute contains a “deeming” provision. Section 72(3) says that when a fringe benefit is “provided by his employer”, it is deemed to be “by reason of his employment”. In this case the provision of the scholarship was made by the Educational Trust. This in turn was provided with funds by I.C.I. Does that mean that the benefit is provided by I.C.I.? I H
I

(1) 38 TC 673.

A think so. If this were not so, it would be an easy way for any employer to evade the tax. He could form a subsidiary company, provide it with funds with which to provide fringe benefits for his employees. To avoid such a result, we must hold that the benefit is provided by the persons "at whose cost the provision is made". That is, in this case, by I.C.I. So the benefit is in any event "deemed" to be made "by reason of the father's employment".

B **Result of 1976 Act**—If I were to stop at this point, I would hold that these scholarships were fringe benefits which were taxable in the hands of the employee, either as being emoluments "by reason of his employment"—or, alternatively, as being provision made "by his employer", and so "deemed" to be made for him by reason of his employment.

C But now I come to the decisive question in this case. Are these scholarships exempt by reason of s 375(1) of the 1970 Act? It says:

"Other exemptions

D (1) Income arising from a scholarship held by a person receiving full-time instruction at a university, college, school or other educational establishment shall be exempt from income tax, and no account shall be taken of any such income in computing the amount of income for income tax purposes. (2) In this section 'scholarship' includes an exhibition, bursary or any other similar educational endowment. . . ."

E **Scholarships**—Those words are very wide. They seem to me to cover these two cases exactly; and to exempt the fathers from tax. The Crown argue against it in two ways. First, the Crown refer to the words "cash equivalent of the benefit" in s 61(1) of the Finance Act 1976. They say that the "cash equivalent" is a notional sum and not income. This argument appealed to the Commissioners, but it does not appeal to me. When the benefit is paid in cash, it is income. When the benefit is given in kind, it is still income—to be assessed at a cash equivalent. Here it is paid in cash. It is "income", and within the wide words of s 375. Second, the Crown refer to the history of the section going back to 1920. They say that at that time the words only applied when the scholarship holder is himself the person to be taxed. Likewise they only applied in 1970. So even today the Crown say the words only apply when the scholarship-holder is the person to be taxed.

G I do not agree with this fall-back on history. When Parliament in 1976 made fringe benefits taxable, it made several express exceptions to it. It said nothing about scholarships because there was no need to do so. They were already exempt by the wide words of s 375. In short, I would not myself limit the beneficial provision in s 375 by reference to history. These scholarships are the young people's own income. Parliament clearly intended that there should be no income tax paid on them. They are not the father's income, and he should not be taxed on them.

H **Conclusion**—Taking s 61 of the 1976 Act alone, I think that these scholarships were provided for members of the employee's household "by reason of his employment", and that the amounts paid to the son and daughter are to be treated as emoluments of the employee. The fathers would be chargeable to tax on them by s 61, except for the general provision in s 375 of the 1970 Act. This gives a wide exemption for all scholarships. It frees scholarship moneys from tax, either in the hands of the scholarship-holder, or in the hands of his father, or anyone else. This is as it should be. It was the view held by Goulding J. I agree with him. I would dismiss the appeal.

Oliver L.J.—We are here concerned with a taxing statute and it is trite law that the subject is not to be taxed save by clear words. That is, I think, *a fortiori* the case where it is sought to tax him upon moneys which he has never personally received. Nevertheless, that said, I find the wording of the sections upon which the Crown relies, taken in the context of the express legislative purpose which emerges clearly from the fasciculus of sections of which they form part, to be too clear to permit any different conclusion from that reached by the Special Commissioners. The purpose of ss 60 to 72 of the Finance Act 1976 was to bring into charge for tax purposes the pecuniary value of all kinds of benefits conferred by employers on their directors and senior managers which do not directly form part of the emoluments of their employment but which, because paid for by or at the instance of the employer, enable them to enjoy a standard of life substantially higher than that which could be sustained if reliance had to be placed solely on their own cash resources. That is quite clearly the purpose and it is not for this court to question or to evaluate the social justification for the legislation. The legislature may have cast the net wider than it needed to and even wider than, objectively, it should have done. It may seem a pity, at a time of grave educational economies, that any application of legislative provision should have the result of impeding or discouraging a proper and benevolent educational endeavour; but that cannot, in my judgment, justify the Court in adopting a construction of the statutory provisions at variance with what, with tolerable clarity, these provisions expressly say.

My Lord has already referred, in his judgment, to the words of the relevant sections and I will not repeat them, beyond referring to what seem to me to be a number of critical phrases upon which the main part of the argument has focussed. In the first place this chapter of the Act and s 61 in particular are directed to sums of money or other benefits which are provided “by reason of his” (that is, the director’s or employee’s) “employment”—a phrase which will have to be considered in the context of the second argument advanced by the taxpayer. Secondly, that which is to be brought into charge is, in the words of s 61(1), “to be treated as the emoluments of the employment, and accordingly chargeable to income tax under Schedule E”. In other words, as Mr. Heyworth Talbot submits—and this is common ground—it is or is to be treated as income; for income tax is a tax on income.

Thirdly, what is brought into charge is not the benefit which is received by the employee or the member of his family but “an amount equal to whatever is the cash equivalent of the benefit”; and s 63 subss (1) and (2) contain a formula for arriving at the cash equivalent. The amount brought into charge under s 61 is the amount equal to “an amount equal to the cost of the benefit less so much (if any) of it as is made good by the employee to those providing the benefit”. Subsection (2) defines the “cost” of the benefit as “the amount of any expense incurred in or in connection with its provision and . . . includes a proper proportion of any expense relating partly to the benefit and partly to other matters”. Just to complete the references on this part of the case the expression “those providing the benefit” in s 63(1) is a reference back to s 61(3) which provides that, for relevant purposes, “the persons providing a benefit are those at whose cost the provision is made”.

It will be necessary to come back to these sections in connection with the question raised by the taxpayers whether the benefits claimed to be taxable here ever were provided “by reason of” the taxpayers’ employment, but I can leave them for the moment, having indicated what seem to me to be the salient points, and turn to s 375 of the Finance Act 1970.

A Again I need not set out the provisions of the section *in extenso*. It exempts from income tax, and directs that there be excluded from computation for tax purposes "income arising from a scholarship held by a person receiving full-time instruction" at one or other of the specified types of educational establishment.

B Mr. Potter, in the course of his submissions, raised the question whether in any event the sums paid to the taxpayers' children in the two appeals before us, could be said to be "income" from a scholarship, since neither had any enforceable right to receive them nor, in any real sense, were they annual payments. The proper analysis, he suggested, was that the scholarships in this case were merely voluntary grants from time to time resolved to be distributed by the trustees in the same way as the retirement allowance paid to the former headmaster of Bradfield College in *Stedeford v. Beloe*⁽¹⁾ 16 TC 505. I think that there is a good deal to be said for this view of the matter and the more so because, in s 375(2), there appears a definition which seems to suggest that what the legislature was there contemplating was income from an endowed scholarship. But Mr. Potter is content to deal with the case on the footing that the scholarships actually paid do constitute "income from a scholarship" and it is unnecessary to decide the point since, either way, Mr. Heyworth Talbot's submission remains unaffected. His submission is that whatever be the nature of the grant made to the scholarship holder we are not concerned with that but with the notional cash equivalent which is statutorily deemed to form part of the parent's emoluments. Since, by definition, an emolument is income, the notional sum included in it is income and the question therefore is not "what is the nature of the scholarship?" but does that which is the cash equivalent of the cost of provision of the scholarship and which is statutorily deemed to be income constitute "income arising from the scholarship held by the taxpayer's child?"

F That is the short—indeed the only—question on this part of the case and Mr. Heyworth Talbot submits that it is susceptible of only one answer. It becomes part of the taxpayer's income because the benefit of the scholarship has been provided to the child. That which triggers off the notional addition to the parent's emoluments is the receipt by the child of the scholarship. Therefore, the submission is, it arises from the scholarship and, since it is, *ex concessis*, income, it is "income arising from a scholarship" and so exempt from tax.

G The submission is an engagingly simple one but it is not one by which I find myself able to feel persuaded. In the first place, I find myself unable to read s 375 as affecting or exempting any income other than that of the holder of the scholarship. Certainly the legislative history appears, as Mr. Potter suggests, to support such a construction. The section dates back to the Finance Act 1920 and Mr. Potter suggests that its purpose was simply to put scholarships which conferred upon the holder a vested right to receive annual amounts (and which might therefore have been considered to be the income of the recipient for tax purposes) upon the same footing as scholarships of the *Stedeford v. Beloe* type, that is voluntary grants, which could not be so considered. Quite clearly, it was not the purpose of the section to protect the income of a scholarship fund itself from taxation, for that is the income out of which the scholarship is paid and not income arising *from* the scholarship; and

(1) [1932] AC 388.

the legislature patently did not contemplate the income as being that of anyone other than the holder of the scholarship, for the exemption from tax is not absolute. It applies only to income from a scholarship held by a person with a particular qualification, namely that he is receiving *full-time* instruction at some educational establishment. But in any event and even assuming that the exemption were aptly expressed to cover the income of some person other than the scholarship holder, I do not feel able to accept Mr. Heyworth Talbot's submission that the amount deemed to be included in the emoluments of the employee can properly be described as income "arising from" a scholarship. Accepting that that which triggers off s 61 of the 1976 Act is the provision of the benefit in the form of a scholarship, it seems to me to be wholly inappropriate to describe a notional sum measured by an amount equal to the cost to the provider as "arising from the scholarship held etc.". That is a sum which, if it can be said to "arise from" anything, arises simply from the circumstances that a benefit of the type envisaged in s 61 has been provided for the child or dependant of an employee whether or not taxable in the hands of the child or dependant. The assumption is, of course, that the benefit will not indeed be taxable in the hands of the dependant recipient. That is the rationale of the charging provisions. Section 61(2) enumerates a number of specific non taxable benefits—non taxable, that is, apart from the section—to which the section applies, but it goes on, in terms, to apply it to "other benefits and facilities of whatsoever nature (whether or not similar to any of those mentioned above in this subsection)". It then goes on to exclude certain benefits such as the use of motor cars, loans at reduced rates and options which are themselves expressly made taxable by ss 64 to 68. It is beyond argument that this subsection applies to a benefit of the type here in question and I do not consider that a rational construction of s 375 can fairly be held to exclude its operation.

For these reasons, therefore, I cannot agree with the learned Judge's conclusion as regards the interplay of s 61 and s 375.

But that, of course, is not the end of the case because s 61 brings into charge only those benefits which are provided "by reason of the employment". The learned Judge, because of the view which he took of the ambit of s 375 of the Taxes Act 1970, found it unnecessary to deal with this point. The Special Commissioners concluded that, leaving aside the deeming provisions of s 72(3) to which I will come in a moment, the scholarship was not provided by reason of the employment of the scholarship holder's parent even though the relationship to an employee of the company was the essential *sine qua non* without which he could not have qualified for an award at all. Mr. Aaronson has, with persistence and ability, sought to uphold that decision both as a conclusion of fact which cannot be challenged in this Court and as based on a correct construction of the section. On an initial reading of the Special Commissioners' reasons for decision, it appeared to me that they were at one point saying that although the employment of the father might be one reason for the award to the child it was not the only reason and that, therefore, the benefit could not be said to have been provided "by reason of" that employment. If that is what they were saying, I cannot think that they were right, for the section does not say "by reason *only*" of the employment and if the correct approach is to look for the events or circumstances which brought about the award, the employment was clearly one of them. But Mr. Aaronson submits that that was not in fact the Commissioners' approach and he points to the last sentence of para 10 on page 14 of their decision which certainly affords support for his contention. There the Commissioners say this: "We do

- A not infer that I.C.I.'s purpose was to remunerate its employees or to add an additional perquisite to their emoluments".

- That, Mr. Aaronson submits, reflects the correct approach. He has been good enough to refer the Court to a number of authorities, but the point is perhaps best encapsulated in *Hochstrasser v. Mayes*⁽¹⁾ 38 TC 673, where the question was as to the taxability of payments made by an employer to employees in respect of losses sustained by them on the sales of their houses when they were transferred by their employer to another part of the country. The House of Lords held that these payments were not taxable under Schedule E under the description of "salaries, fees, wages, perquisites or profits whatsoever therefrom"—the "therefrom" meaning "arising or accruing from an office or employment". Viscount Simonds postulated the issue as turning upon whether the employment was the *causa causans* or only the *sine qua non* of the benefit and pointed out that it was for the Crown to demonstrate that the payment was a reward for the employee's services. The same distinction had been made in the judgment of Jenkins L.J. in the Court of Appeal, and Mr. Aaronson points to the learned Lord Justice's equation (at page 696 of the report) of "profits of employment" with "remuneration accruing by reason of the employment". Lord Radcliffe at page 707 said:

- "The test to be applied is the same for all. It is contained in the statutory requirement that the payment, if it is to be the subject of assessment, must arise 'from' the office or employment. . . . For my part I think that their meaning" (that is, the meaning of the words of the statute) "is adequately conveyed by saying that, while it is not sufficient to render a payment assessable that an employee would not have received it unless he had been an employee, it is assessable if it has been paid to him in return for acting as or being an employee". He concluded that "the circumstance that brought about his entitlement to the money was not any services given by him but his personal embarrassment in having sold his house for a smaller sum than he had given for it".
- F The essence of Mr. Aaronson's submission is that the words "by reason of" in s 61 are merely a synonymous alternative for the word "from" as construed in that case and that they must be given the same meaning, so that the question to be asked (and one which the Commissioners, as a finding of fact, answered in the negative) is simply "was the child's scholarship a remuneration or reward for the father's services?" He points out that the original charge to Schedule E in the 1842 Act was on salaries etc. "accruing by reason of" an office or employment and that the fasciculus of sections with which this appeal is concerned is headed "Benefits derived by company directors and others *from* their employment". Thus, the argument runs, unless it can be said—and the question is one of fact for the Commissioners—that the benefit under consideration is provided, in effect, as part of the consideration for the rendering of the employees' services, it is not a benefit arising from or provided by "reason of" the employment.

- Whilst I see the attraction of an argument which attributes to the legislature an admirable consistency in the expression of its intention, I find myself unable to accept Mr. Aaronson's submissions on this point. Accepting once more that the subject is not to be taxed except by clear words, the words must, nevertheless, be construed in the context of the provisions in which they

(1) [1960] AC 376.

appear and of the intention patently discernible on the face of those provisions, from the words used. As it seems to me, the obvious intention of this legislation—presumably in an attempt to produce fairness between taxpayers—is to impose tax on the value of those otherwise untaxed advantages which the employee enjoys because he is employed, advantages which may not even accrue to him directly but which, because of their receipt by a member of his household, benefit him by relieving him of an expense which he might otherwise expect to bear out of his own resources. These are, in many cases, by definition, benefits which could not in any ordinary sense be attributed to a reward for the employee's services—for instance the use of a car for the private purposes of a member of the employee's family or an interest-free loan to one of his relatives—and to restrict the operation of the section in the way suggested by Mr. Aaronson would, in my judgment, virtually deprive it of any operation at all in the case of benefits other than those provided to the employee himself. Speaking only for myself I do not in the case of this legislation, find the philosophical distinction between a "*causa causans*" and a "*causa sine qua non*" helpful. I see no reason why a benefit "derived" from the employment (to use the words of the chapter title) necessarily has to be invested with an intention on the part of the employer to remunerate the employee for the performance of his duties. One is directed to see whether the benefit is provided by reason of the employment and in the context of these provisions that, in my judgment, involves no more than asking the question "what is it that enables the person concerned to enjoy the benefit?" without the necessity for too sophisticated an analysis of the operative reasons why that person may have been prompted to apply for the benefit or to avail himself of it.

For the reasons which the Commissioners gave, however, the question is, I think, academic in the instant case, because they found—and in my judgment rightly found—that the benefit with which the appeal is concerned was provided by the employer so that s 72(3) deems it to be provided by reason of the employment.

Counsel for the taxpayers do not dispute that although s 61(3) is introduced by the words "for the purposes of this section and sections 62 and 63 below", that subsection is to be applied in determining whether, for the purposes of s 72(3), a given provision is made "by the employer". The argument has centred upon the question whether, having regard to the fact that the scholarships concerned were provided by the trustees from moneys already affected by an exhaustive trust, admittedly created by and at the expense of the employer, the benefit (i.e. the scholarship) can be said to have been provided "at the cost of" the employer. The Special Commissioners thought that it was a wholly inaccurate use of language to say that the scholarships were provided "at the cost" of the Trustees. They said

"Each year it cost I.C.I. the sum which I.C.I. contributed to the fund to provide the awards paid out of the fund in that year. To the extent to which what I.C.I. paid into the fund in the year was in excess of the awards paid out, the cost was in part attributable to awards paid out in subsequent years. We see no reason to distinguish the income of the trust fund from the capital in identifying the source."

I find myself unable to disagree with that analysis on the facts of this case. The summary of accounts on page 9 of the Special Commissioners' reasons shows that each year I.C.I. paid to the trustees sums to finance the awards. It is true that at the end of each of the years 1977 and 1978 a surplus was carried forward and that the funds were increased during those years by substantial

- A amounts of deposit interest, but these, after deducting income tax, were insufficient to cover the administration expenses. In the year ended 30 September 1979 there was an excess of net deposit interest over expenses. This appeal is concerned with scholarships awarded in November 1978 and paid over the ensuing year and if one asks, therefore, the question "who paid the cost of the scholarships?", I think, as the Special Commissioners thought, that
- B there can, realistically, be only one answer. It is submitted, however, that at least where the benefit is provided out of the income of an endowment, the cost of the provision cannot be attributed to the settlor, for the endowment having been irrevocably devoted to trusts under which the settlor has no interest, the income never was his, so that he has been deprived of nothing. That may be so and I would prefer to leave the point until it arises. It is not this
- C case.

In my judgment the Special Commissioners' decision was correct, and I would therefore allow this appeal.

- Watkins L.J.**—This is, we are told, the first case to come before this Court involving consideration of the provisions of s 61 of the Finance Act 1976. The question for determination is whether the Appellants—employees of
- D I.C.I.— have received fringe benefits upon which they are liable to pay tax under Schedule E for the year 1978 to 1979, because their children, whilst at university or college, have been awarded scholarships from the I.C.I. Educational Trust.

- Although it has laudable purposes which are in the main to provide benefits for educational charities and scholarships for educational instruction
- E and it is conscientiously and impeccably administered by the trustees this is unfortunately a non-charitable trust. In the few short years of its existence it has brought welcome financial relief to many young students who exist on government grants. It is to be regretted, therefore, that it has become a means by which, so the Inland Revenue contends, a taxable fringe benefit has been put into the hands of a person who is either a director of or in the higher paid
- F employment of I.C.I.

- I have to acknowledge, however, albeit with reluctance, that without regard for the moment to the provisions of s 375 of the Income and Corporation Taxes Act 1970 this contention is, in my view, well founded. The effects of the provisions of s 61(1) and (2) allow of no other conclusion than that by reason of his employment with I.C.I. there has been provided for a
- G member of Mr. Wicks' family a cash benefit which is to be treated as an emolument of Mr. Wicks' employment and is accordingly liable to tax under Schedule E.

I have been greatly assisted in reaching this conclusion by the construction put upon s 61 by Lord Denning M.R., with which in every respect I entirely agree.

- H Therefore, I am left only with the problem of deciding whether (1) Martin, son of Mr. Wicks, can be said to receive an income from a scholarship and (2) if that be so, do the provisions of s 375(1) of the Act of 1970 exempt

Mr. Wicks from paying tax upon the value of the scholarship although it is a fringe benefit to him. Section 375(1) provides: A

“Other examples

(1) income arising from a scholarship held by a person receiving full-time instruction at a university, college, school or other educational establishment shall be exempt from income tax, and no account should be taken of any such income in computing the amount of income for income tax purposes. (2) In this section ‘scholarship’ includes an exhibition, bursary or any other similar educational endowment.” B

Mr. Potter submits that a voluntary payment from a discretionary trust, for instance, is not as a general rule deemed to be income. Thus, it is not chargeable to tax as though it were income in the hands of the recipient. But I did not understand him to say, at any rate with confidence, that scholarship moneys received by Martin, if received regularly over a period of years could not constitute an exception to what he called the general rule and become, therefore, income chargeable to tax. C

The I.C.I. Trust, so it seems to me provides for repetitive awards to one beneficiary of a scholarship over a number of years. As Mr. Heyworth Talbot said, and I agree with him, the award was practically automatic once entitlement to it was first established. Furthermore, I see nothing in the provisions of s 375 which excludes from the term “income arising from a scholarship” moneys which have come from a source which is not an endowment fund. So I would be disposed to hold that Martin received income arising from a scholarship upon which he himself would not, of course, because of the exempting provisions affecting scholarships pay tax. D E

This enables me to deal with the second and crucial question which cannot be answered without attention to the history of s 375. It was first enacted as s 28 of the Finance Act 1920 when fringe benefits and taxation of them were unheard of. At that time the provisions of s 28 could only conceivably be taken, in my view, having regard to the Act as a whole to give exemption from tax to the recipient of the scholarship income. The only benefit derived out of this by anyone else arose out of s 21 of the Act of 1920 which made provision for a reduction of assessable income in respect of children in the calculation of whose income, if any, scholarship income was to be excluded. A similar provision now appears in s 10(5) of the Act of 1970. Nothing occurred, so far as I know, during the 50 years between the Act of 1920 and the Act of 1970 which serves to disturb the effect I have attributed to s 28. There is nothing in the Act of 1970 which disturbs it. On the contrary, its layout—its division into parts and so forth— when compared with the Act of 1920 serves to reinforce the conclusion that the benefit of s 28 was given to the recipient of the scholarship alone and goes to show that s 375 provides for a similar singular benefit of exemption from taxation. F G

Does the Act of 1976 affect this view or in any other way prove that s 375 imposes itself on s 61? H

I listened with an interest approaching awe to the arguments which revolved around the words “cash equivalent of the benefit”, used in s 61(1) as this equivalent in cash of a gift in kind was translated from income into a notional sum and back again in the course of an exhausting and I confess for me meaningless intellectual exercise which both parties seemed at times to contend assisted them. I

- A When one of H.M. Inspectors seeks to impose a tax on a fringe benefit he wants to know, if it was a gift in cash, the amount of it and, if it was a gift in kind, the cash value of it. There surely cannot be anything notional about the results of those two usually elementary exercises. Each of them is a sum of money capable of being regarded as income and if the circumstances warrant it income from a scholarship. Mr. Potter's submission that, if it was intended
- B that a fringe benefit in the form of a scholarship income should be exempt from the provisions of s 61 the Act of 1976 would have expressly provided for it, I find more appealing and to some extent persuasive. But in the end, what must govern the answer to this second question is, comparing it with that of 1920, the construction of the Act of 1970. Section 375 lies squarely within that part in which there is set out a variety of exemptions from tax for the benefit
- C exclusively of he who receives the material income. There is nothing within the provisions of s 375 which leads me to think that it is different in the extent of its beneficial effect from any of the sections which surround it. So I find that it is the recipient of the scholarship income alone who is exempt from tax.

Accordingly, although I derive no pleasure from saying so, I too would allow this appeal.

- D *Appeal allowed, with costs. Leave to appeal to the House of Lords granted.*

The taxpayer's appeals came before the House of Lords (Lords Fraser of Tullybelton, Scarman, Bridge of Harwich, Brandon of Oakbrook and Templeman), on 10, 11, 15 and 16 November 1982 when judgment was

E reserved. On 16 December 1982 judgment was given against the Crown with costs, (Lord Templeman dissenting).

- (¹)F. Heyworth Talbot Q.C., Graham Aaronson Q.C. and Terence Mowschenson for the taxpayers. The Special Commissioners expressly found that the trustees' decision whether to award a scholarship, and if so as to the amount of such award, was in no case influenced by the position of the
- F student's parent *vis-a-vis* his employer. Nothing in the terms of the deed constituting the trust restricts eligibility to children of directors or "higher-paid" employees of I.C.I.; and an analysis of awards put in evidence before the Commissioners shows that almost one half of the new awards made in 1978-79 was to students whose parents were employed by I.C.I. at a salary lower than the "higher-paid threshold."

- G In examining how s 375 of the Income and Corporation Taxes Act 1970 interacts with the "benefits" legislation in the Finance Act 1976 it is helpful first to analyse the nature of the charge under the 1976 legislation. It is well established that the basic charge to income tax under Schedule E is imposed upon money or money's worth received as a reward for services. So far as the quantum of charge is concerned, difficulties used to arise where the receipt
- H took the form of money's worth rather than an actual money payment. A simple example is the case where an employer rewards the employee by giving him a bespoke suit. In such cases the court developed the principle that the quantum of charge to be imposed under Schedule E with respect to the money's worth was to be confined to the amount of the money into which the

(¹) Argument reported by Michael Gardiner Esq., Barrister-at-Law.

employee could convert the object. Thus, taking the bespoke suit example, the charge was confined to its second-hand value, often but a small fraction of the cost to the employer of providing the suit. It is notorious that much ingenuity was exerted by some employers to take the fullest advantage of this principle, with employees' remuneration being augmented by a wide range of items or rights having little, if any, re-sale or convertible value. In this way, the amount of out-of-pocket expenditure which the employee saved was in no way reflected in the quantum of his Schedule E assessments. To counteract this, the Act of 1976 introduced a comprehensive set of rules designed to ascribe realistic values to the various types of benefits-in-kind with which employees were at that time being rewarded. This is manifestly the primary purpose of Chapter II of Part III of the Act of 1976. What s 61 actually charges to tax is the benefit, with the quantum of that benefit being determined by the "cash equivalent" formula. This is what one would expect from the general scheme of Schedule E taxation, where emoluments in money or money's worth are the subject matter of the tax. This would also seem to be the natural reading of the opening words of s 63 (1): "The cash equivalent of *any benefit chargeable to tax under section 61 above...*" This construction similarly explains the insertion of the words "amount equal to" in the final passage of s 61 (1): "there is to be treated as emoluments of the employment, and accordingly chargeable to income tax under Schedule E, *an amount equal to* whatever is the cash equivalent of the benefit".

There are two issues that determine whether s 61 is capable of imposing a charge on the taxpayers by reference to their children's scholarships. The first is whether the award of the scholarships to the children was made "by reason of" their parents' employment with I.C.I. The Commissioners held that this was a question of fact in respect of which the onus lay on the Revenue. Their conclusion was that the inspector had not discharged that onus, so that in their view the scholarships were not provided "by reason of" employment with I.C.I. Their analysis on this aspect was correct, and their consequent finding of fact should not be disturbed. The expression "by reason of" has roots in the Schedule E context that reach at least as far as to the income tax legislation of 1842. The basic charge to Schedule E income tax was, under the original rules, imposed in the terms of rule I in s 146 of the Income Tax Act 1842. In a series of cases the question was considered by the courts as to what was meant by the concept of a payment being made "by reason of an employment". The cases were mainly concerned with voluntary payments made to employees (such as Easter offerings), and were fully reviewed by the Court of Appeal in *Cowan v. Seymour*⁽¹⁾ [1920] 1 KB 500. The reasoning of Younger L.J., at page 518, was approved and adopted by the House of Lords in *Hochstrasser v. Mayes*⁽²⁾ [1960] AC 376. It appears that none of their Lordships considered it pertinent to note the change in expression from "by reason of" to "arising from" in the 1918 consolidation, the terms apparently being used synonymously. Having endorsed Younger L.J.'s conclusion as to the insufficiency of a mere '*causa sine qua non*', their Lordships went on to confirm that it was for the Revenue to demonstrate that the employment was the '*causa causans*' of a payment: see in particular the comments of Viscount Simonds, at page 389⁽³⁾. In the present case, all three members of the Court of Appeal considered that a benefit was to be regarded as being provided "by reason of an employment" even if the employment was merely a pre-condition (or a '*causa sine qua non*') of the provision of that benefit. None of their Lordships considered it necessary for the employment to be the operative reason (or '*causa causans*') for the provision of the benefit. In so holding,

(1) TC 372, at p 385.

(2) 38 TC 673.

(3) *Ibid*, at pp 705-6.

- A they failed to adhere to the well-established principle of construction in *Barras v. Aberdeen Steam Trawling and Fishing Co. Ltd.* [1933] AC 402, 411, per Viscount Buckmaster.

- The taxpayers accept that, if the scholarships had been provided by I.C.I., the benefits would be deemed to have been provided "by reason of their employment", for that is the effect of s 72 (3). Plainly, however (and, indeed, the Revenue have never disputed it), the scholarships were not provided by I.C.I.: they were provided by the trustees. The words "providing" and "provision" are used in s 61 (3) because the benefits to which the legislation is directed are mainly, if not exclusively, benefits in kind. Where the benefit takes the form of a payment of a sum of money, "paying" and "payment" would be the words normally used as appropriate synonyms for "providing" and "provision". In such a case, the person at whose cost the payment is made is the person whose financial resources are depleted by the payment. In the instant case, the payment of the scholarships depleted the trustees' funds: that is to say, the funds that had become irrevocably vested in the trustees. Those funds formed no part of the financial resources of I.C.I. and the payment of the scholarships in no way depleted I.C.I.'s own financial resources. Whether or not it is an elegant use of language to describe a payment made out of trust funds pursuant to the trusts on which the funds are held as made at the "cost" of the trustees, it would be untrue to describe the payment of the scholarships as made at the cost of a person who had no interest in, or right or control over, the moneys drawn upon in making the payments. A settlor incurs cost when he settles moneys to which he is beneficially entitled on trusts in which he retains no interest. He incurs no cost when the trustees apply the settled funds.
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- Lord Denning M.R. and Watkins L.J. thought that ss 61 (3) and 72 (3) should be given a wide meaning so as to prevent employers evading the tax by routing benefits through subsidiary companies. Any benefit, however, that is in fact provided by reason of the employment (i.e. as a reward for services) will always be taxable, whether or not it is routed through a subsidiary, or, indeed, given in any other indirect way. This is the express effect of s 61 (1). There is therefore no reason to construe ss 61 (3) and 72 (3) otherwise than in accordance with the normal canons of construction.
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- The taxpayers' main contention throughout has been that the clear words of s 375 of the Act of 1970 afford a complete protection against any assessment to income tax made with respect to the scholarships awarded to their children. The Revenue have been content to accept (indeed, they positively so contended before the Commissioners) that the awards made to the taxpayers' children constituted "income" within the meaning of the Income Tax Acts. That is correct as a matter of law: payments made under a trust to the *cestuis que trust*, when capable of recurrence and made for an income purpose, are to be treated as income: *Cunard's Trustees v. Commissioners of Inland Revenue* 27 TC 122.
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- Accepting, for the sake of hypothesis, that they are *prima facie* within the charge under s 61 of the Act of 1976 in consequence of the payment of the scholarships to their children, the first limb of the taxpayers' submission under s 375 notes the fact that an assessment under s 61 results in the taxpayer being treated as receiving emoluments, chargeable under Schedule E. Emoluments so chargeable plainly constitute "income". Those emoluments arise from the particular benefit in question. In the present case, the only benefits are the
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scholarships awarded to the taxpayers' children. Accordingly, the emoluments arise from those scholarships, and are thus exonerated by the opening words of s 375 (1). A

The second limb of the taxpayers' submission relies on the concluding words of that subsection. In making assessments, and computing the amount thereof, under s 61 of the Act of 1976, the Revenue are necessarily "taking account of" the scholarships awarded to the children. Since, as they have accepted, the scholarships themselves constitute income, it necessarily follows that an assessment under s 61 on the parents contravenes the requirement that "no account shall be taken of any such" (i.e. scholarship) "income". B

Oliver L.J. rejected the taxpayers' submission on the first limb on the basis that the charge under s 61 of the Finance Act 1976 arose not from the scholarship itself but merely from some notional sum. That is not correct, since the charge under s 61 is assessable on the benefit and therefore arises from the scholarship. It is merely quantified by reference to a notional sum. Nor is there any justification for confining the exemption afforded by s 375 to the scholarship holder himself, as Watkins L.J. considered it was confined. The words are perfectly plain. The only requirements are (i) that there should be income arising from a scholarship and (ii) that the scholarship should be held by a person receiving full-time instruction. In so far as Oliver and Watkins L.JJ. prayed in aid the historical position when s 375 was first enacted (as s 28 of the Finance Act 1920) that is an impermissible method of construction. It is permissible to refer to an earlier legislative context in order to resolve an ambiguity, but not to create an ambiguity. This is so *a fortiori* in construing consolidated Revenue Acts: see *Commissioners of Inland Revenue v. Joiner*(¹) [1975] 1 WLR 1701, 1709, *per* Viscount Dilhorne, a dictum endorsed and elaborated upon by Lord Diplock, at page 1711. C D E

Apart from the impermissibility of such an approach, the legislative context in 1920 does not in fact support the Revenue's contention that the precursor to s 375 was confined in its effect to the scholarship holder. In 1920, a husband was assessable in respect of his wife's income. In so far as the wife was in receipt of scholarship income, her husband would be *pro tanto* exonerated. Similarly, if a partner in a professional partnership were to enrol for a course of further education, and agreed to bring any scholarship income as a contribution to partnership profits, there seems no reason why the partnership (as the separate taxable entity) should not in 1920 have been entitled to pray in aid the contemporary provisions exempting scholarship income. F G

Finally, Watkins L.J. relied on a point not argued before him, namely that s 375 lay within a part of the Act of 1970 in which there were set out a variety of exemptions from tax that he regarded as being "for the benefit exclusively of him who receives the material income" [1982] Ch 355, 373(²). This is not a correct reading of the provisions in Part XIII. Some of these do confine their right of exemption to specified recipients of the income: for example, ss 372 and 374. In these cases, the legislation expressly so provides. In others, particularly those concerned with awards and grants, there is not only no expressed restriction, but the exemption is expressly extended so as to exclude the income from being "taken account of" for income tax purposes. Section 375 falls into this latter class. H I

It may be of importance that s 375 of the Act of 1970 does not say that the *scholar* is exempt: it says that the *income* shall be exempt. [Reference was made to *Tennant v. Smith*(³) [1892] AC 150 and *Hochstrasser v. Mayes*(⁴)

(¹) 50 TC 449, at pp 483 and 485.

(²) Page 347 *ante*.

(³) 3 TC 158.

(⁴) 38 TC 673.

- A [1960] AC 376.] The taxpayers' primary contention is now and has throughout been that, whether or not the benefits arising from these scholarships can be said to come within the scope of s 61 of the Act of 1976, they are firmly exonerated from taxation by s 375. They are exempt in the hands of the scholar, and any benefit attributable to the parent is likewise exempted. It is inconceivable that Parliament can have intended the result, in the case of the second taxpayer, that he should pay tax on the increase in the scholarship due to his daughter's academic merit.

As regards s 61, nothing is chargeable under Schedule E unless it is income. Nothing that is not income is an emolument under Schedule E. "Income arising from any source" has a far wider context than "scholarship income": from what does the income attributable to the first taxpayer arise? It is not "income the source of which is a scholarship", which is too wide, nor "the source, direct or indirect".

- C Whether or not such moneys as these are the income of the child, they are treated by s 61 as the income of the parent and are income arising from the scholarship within s 375. The fact that the payment to the child is treated as an emolument of the parent the under s 61 and so is income means that it is income of the parent arising from the child's scholarship under s 375. The taxpayers agree that the source of the emolument enjoyed by the father is the scholarship of the child.

In the Act of 1970, ss 338, 339, 351, 353, 363 and 372 all have the same form and give exemption to a person in receipt of certain income, but s 375 is quite different.

- E The taxpayers' argument would have been the same if the scholarship moneys had been paid to the fathers in trust for their children. [Reference was made to *Commissioners of Inland Revenue v. Joiner*⁽¹⁾ [1975] 1 WLR 1701, 1709, *per* Viscount Dilhorne, 1710–1711, *per* Lord Diplock.]

- F On the taxpayers' alternative contention, their submission as to the whole effect of the provisions of this group of sections is: 1. Where a benefit is provided for a child of an employee, and is provided at the cost of the employer, an amount equal to the cash equivalent of the benefit is to be treated as emoluments of the employment chargeable with income tax under Schedule E. 2. The cash equivalent of the benefit so chargeable is to be measured by reference not to the value of whatever may accrue to the child but to the amount of any expense incurred in or in connection with the provision of the benefit. Or, one may run 1 and 2 together by substituting "equal to that cost". At whose cost? Whose account will be debited, or depleted? Who is the poorer (by reason of the making of the awards)? On s 375, Goulding J. was right: the taxpayers are not in any event within the scope of s 61.

- H *Aaronson Q.C.* following. This is the first case on the provisions of the Act of 1976. The issues under the 1976 legislation are not peripheral: they go to the core of the provisions. The issue is: what are the criteria that determine whether *any* benefit is chargeable to tax under that legislation? The way by which this is brought in is by the expression "by reason of". This is used by the draftsman throughout this part of the Act. In the context of loans, there is an expansive, but delineated, definition of "by reason of" in Sch 8, para 3. [Reference was made to ss 66 (9) (c), 67 (3) and 68 (1) (b).] It is a reasonable assumption that the draftsman has not adopted the expression casually. One might expect that, where taxability depends on a phrase, and no definition of it is given, the draftsman expected it to have a clear, not a vague, meaning and gave care and consideration to that. This is precisely what happened here.

(1) 50 TC 449, at pp 483 and 484–5.

The phrase used, "by reason of", was the very expression adopted in the original 1842 legislation as the test for taxability under Schedule E. In the context of that early legislation the expression received a clear and consistent interpretation in the courts. Essentially, the payment had to be in some way a reward for services, past, present or future. When the Schedule E rules were consolidated in the 1918 legislation, the expression "by reason of" the employment was replaced by income "arising from" the employment. Thereafter, of course, it was the expression "arising from" the employment which fell to be construed; but the courts made it plain that the two expressions had precisely the same meaning. They "were not materially different": *per* Viscount Cave L.C. in *Seymour v. Reed*⁽¹⁾ [1927] AC 554, 559; and note the equation of the two expressions in Morris L.J.'s judgment in *Bridges v. Hewitt* [1957] 1 WLR 674, 696.

Hochstrasser v. Mayes⁽²⁾ [1960] AC 376 was one of the many cases in which the meaning of these expressions was reviewed. That case was in no way an aberration in affirming the long-standing principle that it was not sufficient for the employment to be a mere precondition. Turning to the 1976 legislation, there was nothing in the mischief that that was designed to correct to indicate that some different meaning should be given to "by reason of" where it appears in s 61 (1) (a). The Court of Appeal were, therefore, quite wrong in suggesting that a benefit could be provided "by reason of" the employment where the employment was no more than a mere precondition. The Special Commissioners had applied the correct interpretation to the expression, and they had found as a fact that the awards made to Martin Wicks and Christine Johnson had not been provided "by reason of" their parents' employment with I.C.I. The Special Commissioners were entitled on the evidence before them to make that finding. [Reference was made to *Blakiston v. Cooper*⁽³⁾ [1909] AC 104; *Cowan v. Seymour*⁽⁴⁾ [1920] 1 KB 500; *Barras v. Aberdeen Steam Trawling and Fishing Co. Ltd.* [1933] AC 402, 411, *per* Viscount Buckmaster; *Laidler v. Perry*⁽⁵⁾ [1966] AC 16 and *Tyrer v. Smart*⁽⁶⁾ [1979] 1 WLR 113.]

On s 72 (3) of the Act of 1976, the question can be formulated: did I.C.I. provide the benefit? The preliminary question is the identity of the benefit with which we are concerned. Here, the benefit is the actual scholarships awarded to Martin Wicks and Christine Johnson, not the institution of the educational trust itself. Whereas I.C.I. instituted the trust, it did not provide the scholarships paid under that trust. Those scholarships were paid out of the trustees' funds.

The Court of Appeal thought that the expression "at the cost of" ought to be given a wide meaning, so as to close obvious loop-holes in the 1976 legislation. This approach is inappropriate and based on a fallacy: any scheme designed to reward employees via a trust would automatically be caught by s 61, since *ex hypothesi* any reward for employment routed via the trustees would be provided "by reason of" the employment.

Using the expression in its primary sense, the person "at whose cost" an award is provided is the person whose account is debited in respect of the award. However, where the context requires, the expression is capable of extending to the person whose own expectations are diminished by those awards (e.g. I.C.I.) and to the persons whose own expectations are diminished by the initial benefaction (e.g., the shareholders of I.C.I.). That the expression is used in its primary sense in s 61 (3) is indicated by the following considerations: (i) this is the natural meaning of the expression as it is applied

⁽¹⁾ 11 TC 625, at p 646.

⁽²⁾ 38 TC 673.

⁽³⁾ 5 TC 347.

⁽⁴⁾ 7 TC 372.

⁽⁵⁾ 42 TC 351.

⁽⁶⁾ 52 TC 533.

- A to ss 62 and 63; (ii) using the expression in the same sense in s 61(1)(a) (as amplified by s 72 (3)) achieves an adequate legislative result; (iii) using the expression there in a wider sense will not achieve a reasonable legislative result.

On this last aspect two unreasonable results would flow from the wider interpretation. (i) Extension of s 72 (3) will have the result of extending the field of fortuitous taxation, where there is no connection (not even in the sense

- B of a *sine qua non*) between the employment and the benefit. For example, in the case of an open charitable trust set up by I.C.I. with 3,000 beneficiaries, 300 of them being I.C.I. employees, all the benefits received by the I.C.I. employees would be taxable. (ii) It would be exaggerating the distinction between endowed and non-endowed trusts, although there is no reason why this distinction should be in any way material to the charge under the benefits
- C legislation. Both these unfortunate results would be for the sake of closing one particular avenue of tax avoidance which the Court of Appeal perceived would otherwise remain open, but which in fact did not exist.

D.C. Potter Q.C. and *Robert Carnwath* for the Revenue. Clearly, scholarship money paid to a son or daughter of a higher-paid employee is within the phrase "other benefits and facilities of whatsoever nature" and is

- D thus a benefit to which the charging section, s 61, applies. Clearly also, it is a benefit provided for a member of the employee's family or household. Therefore, subject to the test contained in the vital words "by reason of his employment", there is a notional emolument of the employment, chargeable to income tax, being "an amount equal to whatever is the cash equivalent of the benefit" (i.e., "the cost of the benefit", which includes a "proper
- E proportion" of any cost relating partly to that benefit and partly to other benefits or other matters). In the present cases it was agreed that the cost of the benefits, and, therefore, the measure of liability, should be taken as equivalent to the amount of the awards.

If the benefit was provided by I.C.I. (i.e., at their cost) it is unnecessary to consider whether it was provided "by reason of" the employment, since this requirement is deemed to be fulfilled (s 72(3)). Admittedly the benefit came not directly from I.C.I. but through the trustees. Nevertheless, the only person who provided the trust moneys was I.C.I. There can be no other candidate for possible qualification under s 61(3) as the person "at whose cost the provision is made" save I.C.I. and the trustees. Between these two candidates it must be I.C.I. Providing the scholarships to the sons and daughters cost the trustees

G nothing, since the cost was entirely born by I.C.I. It matters not whether one can properly refer to the trustees as a "conduit" (although the figures in the stated case do show a pattern of moneys coming from I.C.I. to the trustees and, together with income earned in the interim, from the trustees to sons and daughters of employees). The important point is that the scholarship money all came from I.C.I.

- H Accordingly, the fringe-benefit issue can be answered in favour of the Revenue on this short ground, which was accepted by the Special Commissioners and the Court of Appeal. However, if it stood alone it would leave open a wide tax-avoidance possibility, because the scholarship or other fringe benefits could simply be provided not by the employer but by another company in its group. It is, therefore, prudent to examine the position on the
- I basis that provision of the benefits was not by I.C.I. itself. This entails ascertaining the true meaning and extent of the phrase "by reason of his employment".

Even before turning to the purpose of the enactment, the words themselves indicate that the employment will not be the only reason. It is sufficient if the employment (i.e. the master-servant relationship) was a

substantial reason. Nor need the benefit be a direct result of, or return for, the employment. This indication is supported when one turns to the statutory purpose, and examines the following considerations. (1) The purpose is to be found by examining the “mischief” that ss 60–72 appear to be intended to rectify. (2) Income tax is charged under Schedule E in respect of any office or employment “on emoluments therefrom”: see the Act of 1970, ss 181(1) and 183(1). The vital word “therefrom” is re-enacted from the Act of 1952, s 156, Schedule E, which in turn takes it from the Act of 1918, Sch 1, Schedule E, rule 1. The word “therefrom”, and indeed the whole of Schedule E, has been interpreted by the courts in such a way that many benefits that were obtained in consequence of the employment nevertheless escaped taxation because they were not “from” the employment, in particular because the employment was not the *causa causans* of the benefit but only a *causa sine qua non*. (3) Parliament has at various times enacted new provisions aimed at extending in specific areas the Schedule E charge on emoluments. In particular, new rules bringing into charge “fringe benefits” of directors and persons in higher-paid employment were introduced by the Act of 1948, s 38–46 (later the Act of 1952, ss 160–168). Those provisions were repealed and replaced in 1976 by the enactments now under consideration. Thus, the intention of Parliament is to extend the scope of the existing Schedule E charge, in particular to extend the scope of the word “emoluments” and the limitation encapsulated in the word “therefrom”. (4) The narrowness of the scope of Schedule E is illustrated by *Hochstrasser v. Mayes*⁽¹⁾ [1960] AC 376; see especially *per* Viscount Simonds, at page 389, Lord Radcliffe, at pages 391, 392, and Lord Cohen, at pages 394, 395. Thus, to use popular language, the phrase “by reason of” is intended by Parliament to have a wider meaning than “from”: to prevent the director or higher-paid employee from being able to say: “Yes, I—or my family—do get this perk. It does not come *from* my employment. Mind you, if I did not have the employment, we would not get the perk. Happily, therefore, it is free of tax.”

It remains to deal with a point on which the taxpayers relied unsuccessfully in the Court of Appeal. It is that in many judgments, and statutes, the phrases “from”, “by reason of” and “by virtue of” have been used in such a way as to suggest that they all have the same meaning. Consequently, it is argued, when Parliament in 1976 used the phrase “by reason of”, it was not attempting to cast the net wider than the ambit of “therefrom”. The short answer is that in 1976 Parliament had in mind the word “therefrom” in the Act of 1970, s 181(1), and by using a different, wider phrase must be taken to have intended a different, wider meaning. The history of “from” may also assist in considering the taxpayers’ argument. Both the Income Tax Act 1803 and the Act of 1842 (which respectively introduced and reintroduced the modern form of income taxation) charged income “arising or accruing... *from* any... employment...” under Schedule D, but charged “every public office or employment of profit” under Schedule E by reference to “profits whatsoever accruing *by reason of* such offices... [or] employments...” The Act of 1918, effecting a consolidation, retained the phrase “from any... employment...” in Schedule D, but in relation to Schedule E, rule 1, abandoned the phrase “by reason of” and instead used the phrase “profits whatsoever therefrom...” (Subsequently by the Finance Act 1922, s 18, all employments were taken out of Schedule D and put into Schedule E.) Thus, ever since 1918 the statutory language has been restricted to the word “from”, and that wording was retained when in 1922 all employments were switched to Schedule E. No doubt it is possible to find judicial statements here and there that seem to draw no distinction between the phrases “from”, “by

(1) 38 TC 673, at pp 705–6, 707–8 and 709–710.

A virtue of" and "by reason of". However, judicial statements are not to be construed as if they were statutory provisions, and they do not, in considering Parliament's purpose in 1976, carry much weight in view of the statutory use of "therefrom" from 1918 onwards and the restriction on the Schedule E charge that has resulted therefrom, which one sees from reading *Hochstrasser v. Mayes*⁽¹⁾ [1960] AC 376.

B As respects the "scholarship exemption" issue, the Special Commissioners and the majority of the Court of Appeal decided it in favour of the Revenue for correct reasons.

(1) Sections 375 and 61 deal with different concepts. Section 375 deals with the scholarship as income of the child. In general, some scholarship moneys may be income of the recipient (for example, where they are identifiably the income of a fund of investments); others may not be income (for example, where they are merely a voluntary allowance made otherwise than out of income of a fund: see and compare *Stedeford v. Beloe*⁽²⁾ [1932] AC 388). In this case, the Special Commissioners decided that the scholarships in question were not income of the child; that part of their decision appears to be correct, but strictly the point does not have to be decided. Either the moneys were not income of the child or, if they were income, they were exempt in the child's hands under s 375. The Act of 1976, s 61, creates a fictitious emolument of the employee and charges that emolument to tax under Schedule E. That emolument is not "income arising from a scholarship". It is not identifiable with the moneys received by the child. It is a separate source of income measured by the cost to I.C.I., that is, a proper proportion of the total expense incurred by I.C.I. in or in connection with the provision of scholarships through the trust. No doubt (as was agreed in this case) the moneys received by the child and the notional emolument may turn out to be the same figure (although expenses of and income accruing to the trustees should strictly be taken into account and could well produce a difference), but that does not make them the same source of income.

F (2) Section 375 applies to "income arising from a scholarship", which, before the Act of 1976 became law, clearly meant income of the scholarship holder. Had Parliament in 1976 intended to extend the exemption to notional income quantified by reference to the scholarship, it could have said so.

G (3) In any event, the purpose of s 375 and its predecessor is not to confer exemption on all scholarships. It is more modest: merely to put on the same footing those scholarships that happen to be "income" of the recipient and those that happen not to be (see (1) above). If the taxpayers are right, the application of the fringe benefit legislation to scholarships will depend, anomalously, on whether or not they give rise to "income", since s 375 cannot apply unless they do.

H (4) The taxpayers have sought to base some arguments on the fact that s 375(1) appears to repeat the exemption because it says "shall be exempt from income tax" and then goes on to say: "and no account shall be taken of any such income in computing the amount of income for income tax purpose". It has been suggested that the first phrase exempts the scholarship in the hands of the holder; that the second phrase gives a wider exemption than in 1970 was intended by Parliament to cover any future legislation such as the Act of 1976, s 61. The short answer is that Parliament, though omnipotent, is not prescient. Furthermore, a consideration of the Act of 1920, s 28, the origin of s 375, shows that the second limb of the exemption had a clear but modest purpose. The Act of 1920 gave taxpayers various deductions and allowances (see ss 17

(1) 38 TC 673.

(2) 16 TC 505.

22 inclusive), and for present purposes one may look at s 18 ("Personal to Allowance"), which gave to a single person a deduction of £135. If a scholarship holder had a small private income, the question would have arisen whether his £135 allowance had to be deducted from the sum of his private and scholarship income, or merely from his private income. The second limb of the exemption in s 28 made it clear beyond doubt that his personal allowance was deducted wholly from his private income. A

In the Court of Appeal, the taxpayers emphasised the injustice of imposing taxation by reference to scholarship income, especially in the case of a great public corporation that was prepared to expend considerable sums of money in what was seen to be a worthy cause. Admittedly, scholarships are a worthy cause. Nevertheless, at the risk of appearing niggardly, the following considerations are mentioned, to keep the matter in perspective. (1) Apart from his relationship to I.C.I., the only qualification for a scholarship in this case is that the beneficiary "has been accepted for admission by a university or other comparable establishment of further education . . ." (clause 4 (3) (b) of the trust deed). (2) While the beneficiary has in his application form to give details of examination results, nevertheless "broadly speaking . . . , awards were made to all eligible applicants for eligible courses" (see the decision of the Special Commissioners). It can thus fairly be said that these scholarships were not so much prizes for outstanding ability as the means whereby every child whose parent was in the employ of I.C.I. would, provided he had a place at a university, receive money from the trustees. (3) It has always been open to any company (save perhaps a "close" company) able and willing to advance the charitable cause of education to set up a public charitable trust and to make to it contributions that can be wholly deducted in taxing the profits of the company and will suffer no taxation of any kind in the hands of the trustees or the scholarship holders. The cry "injustice" because the statutory language frustrates private benevolence has less emotional appeal when the alternative of public charity is kept in mind. B C D E

As to "by reason of", and the applicability of s 61 of the Act of 1976 to these scholarships, the Revenue are entitled to win by both routes: (i) the "employer providing" route; (ii) the "by reason of" route: here, there is an error of law by the Commissioners on the face of their decision in applying the wrong test; one does not, therefore, get to *Edwards v. Bairstow*⁽¹⁾ [1956] AC 14, 36, *per* Lord Radcliffe. Both the Commissioners' decisions are decisions of mixed fact and law. F G

(i) (The cost point.) "Provision" is a process, not a single moment of time. There is no substantial difference between a number of cases: (a) an independent committee awards the scholarships, and I.C.I. make payments direct to such holders, which is clearly caught; (b) independent trustees, who do have a small fund, which is not adequate, make awards anticipating receipt of moneys from I.C.I.; (c) (the present case); (d) a charity could be used as a conduit: the trust could be constructed so as to give preference to I.C.I. employees; it would be a mere conduit and no different; (e) a real endowment, which is clearly distinguishable. H

The dividing line could well be within the concept of charity. The Revenue, however, go further: if the result of their argument is that all, including a charity, are caught, it is unfortunate but must be accepted. I

The provisions of the trust deed here lead to no other conclusion than that these were provisions, benefits, provided either by the employer or at the cost of the employer. The Commissioners came to the right conclusion for the right reasons.

(1) 36 TC 207, at p 229.

A Alternatively, the primary charge is on the benefits provided by reason of the employment. In all taxation, however, there is the difficulty of the Revenue proving it. It is administratively convenient to have one obvious case where "by reason of" is buttressed by a deeming provision.

(ii). In two cases in the House of Lords preceding the Act of 1976, *Seymour v. Reed*⁽¹⁾ [1927] AC 554 and *Brumby v. Milner*⁽²⁾ [1976] 1 WLR 1096, there was full allusion to the concept of "from". So, to determine the mischief at which the Act of 1976 was aimed, one should look at the existing law, especially *Brumby v. Milner*, and see that what was brought into charge in *Brumby v. Milner* (it was left out in *Hochstrasser v. Mayes*⁽³⁾ [1960] AC 376), was "from". If Parliament has simply intended to bring into charge the cost of emoluments instead of their secondhand value, all that would have been required would have been a section with 10 lines. [Reference was made to *Laidler v. Perry*⁽⁴⁾ [1966] AC 16.] The old Acts were looking simply at the employer/employee relationship. It does not follow that, when the Act of 1976 has a wider scope, it should be given the same narrow meaning. [Reference was made to *Tyrer v. Smart*⁽⁵⁾ [1979] 1 WLR 113.] All that the cases are doing is to distinguish between emolument and personal gift. It was the "blanket benefit" type of case such as *Hochstrasser v. Mayes* that was attacked by the Act of 1976.

In 1976, by using a different phrase, Parliament intended a wider test. Even if it does not impose a wider test, and "by reason of" is the same as "from", it still follows (following the old cases) that a benefit provided by a third party may be within the phrase. On the facts found, the only true and reasonable conclusion was that these were benefits provided *by reason of* the employment. The Revenue agrees with Lord Denning M.R. [1982] Ch 355, 363⁽⁶⁾ that it is "sufficient if [it] was an operative cause". Oliver L.J.'s test is correct.

As to s 375, if a director of I.C.I. employed a gardener and I.C.I. paid the gardener, there would be two sources, that of the director and that of the gardener; and no one could describe the former as "income arising from gardening". It is not the scholarship that is the deemed emolument but a figure: a slice of what it cost I.C.I. to provide these scholarships. It is the provision of the benefit that is taxed; the cost to I.C.I. is the measure. [Reference was made to *Stedeford v. Beloe*⁽⁷⁾ [1932] AC 388.] The scholarship generates a notional income, but the income is not income arising from the scholarship. One can have two sources of income based on the same payment. [Reference was made to the Act of 1970, s 37 (1).]

The purpose of s 375, going back to 1920, was a very modest one: to bring those scholarships that would be taxable as income into line with those that were not so taxable. That was still a good reason in 1970. It is stretching the language of s 375 to make it apply to a notional emolument of someone other than the scholarship holder.

H *Heyworth Talbot Q.C.* in reply. Whether the scholarship constitutes income in the hands of the scholar is wholly irrelevant, though in fact these did do so: *Cunard's Trustees v. Commissioners of Inland Revenue* 27 TC 122.

Section 375 exonerates the income, not the person. So, when one finds a situation in which there is "income arising from a scholarship", where one finds income, and that income is arising from a scholarship, it is entitled to the exemption.

As to the Revenue's alternative argument (i.e. that based on the

(1) 11 TC 625.

(2) 51 TC 583.

(3) 38 TC 673.

(4) 42 TC 351.

(5) 52 TC 533.

(6) Page 338 *ante*.

(7) 16 TC 505.

construction of ss 61 and 72 (3) (the deeming provision)), "by reason of" does not mean anything different from "from". The prime condition for the operation of the charging provision in s 61 is that the benefit has been provided for an employee of defined status *because of* his employment. A

Their Lordships took time for consideration.

The following cases were cited in the House of Lords in addition to those referred to in the speeches:—*Tennant v. Smith* 3 TC 158; [1892] AC 150; *Hochstrasser v. Mayes* 38 TC 673; [1960] AC 376; *Commissioners of Inland Revenue v. Joiner* 50 TC 449; [1975] 1 WLR 1701; *Wilkins v. Rogerson* 39 TC 344; [1961] Ch 133; *Seymour v. Reed* 11 TC 625; [1927] AC 554; *Bridges v. Hewitt* [1957] 1 WLR 674; *Blakiston v. Cooper* 5 TC 347; [1909] AC 104; *Cowan v. Seymour* 7 TC 372; [1920] 1 KB 500; *Laidler v. Perry* 42 TC 351; [1966] AC 16; *Tyrer v. Smart* 52 TC 533; [1979] 1 WLR 1096; *Commissioners of Inland Revenue v. Gibbs* [1942] AC 402; *Brumby v. Milner* 51 TC 583; [1976] 1 WLR 1096; *Barras v. Aberdeen Steam Trawling and Fishing Co., Ltd.* [1933] AC 402; *Cunard's Trustees v. Commissioners of Inland Revenue* 27 TC 122; *Stedford v. Beloe* 16 TC 505; [1932] AC 388. B C

Lord Fraser of Tullybelton—My Lords, the facts out of which these appeals arise are explained in the speech about to be delivered by my noble and learned friend, Lord Templeman, and I need not repeat them. The appeals raise two questions of law. The first is whether the benefits, consisting of awards to Martin Wicks and Christine Johnson, were provided "at the cost of" Imperial Chemical Industries Ltd. in the sense of s 61(3) of the Finance Act 1976. I.C.I. were the employers of the fathers of Martin and Christine. For the reasons explained by Lord Templeman I agree with him that the answer to that question is in the affirmative. It follows that, by reason of s 72(3) of the 1976 Act, the benefit in each case is deemed to have been made by reason of the father's employment, and therefore that the cash equivalent, or cost of providing the benefit, is to be treated as an emolument of the father's employment and chargeable to income tax under Schedule E (s 61(1)). D E F

Like Lord Templeman I decline to be drawn into consideration of what is, in the circumstances of these appeals, the hypothetical question whether the benefit was provided by reason of the employment apart from the deeming provisions of s 72(3).

The second question is whether the emoluments are exempt, on the ground that they are income "arising from a scholarship" within the meaning of s 375(1) of the Income and Corporation Taxes Act 1970. I would answer that question also in the affirmative. I entirely agree with the reasons given by my noble and learned friend Lord Bridge of Harwich for arriving at that result. I wish only to make a brief addition to the reasons which he has so well expressed. In the first place it seems to me that the contrary view depends on what I regard, with the utmost respect, as an unduly literal reading of s 61(1) of the 1976 Act and s 375(1) of the 1970 Act, which fails to give effect to the clear intention of Parliament expressed in s 375(1) that scholarship income should be exempt from income tax. In the second place, even reading the two sections literally, I do not think it is correct to describe the notional income created by s 61(1) as income "arising from" an emolument. It is to be treated G H I

- A as an emolument of the employee, in this case the father of the scholar, and, like all emoluments it necessarily *is* income—see Income and Corporation Taxes Act 1970 s 183(1). But I think that it arises from the scholarship awarded to the taxpayer's child.

For these reasons I would allow the appeal and restore the order of Goulding J.

- B **Lord Scarman**—My Lords, I have had the advantage of reading in draft the speeches delivered by my noble and learned friends, Lord Fraser of Tullybelton and Lord Bridge of Harwich. I agree with them. For the reasons which they give I would allow the appeals.

- C **Lord Bridge of Harwich**—My Lords, I gratefully adopt the statement of the facts giving rise to these appeals in the speech to be delivered by my noble and learned friend Lord Templeman. I also agree with him that, for the reasons he gives, the awards made to Martin Wicks and Christine Johnson from the Imperial Chemical Industries Educational Trust were benefits provided at the cost of the Appellant taxpayers' employers, within the meaning of s 61(3) of the Finance Act 1976. It follows that, in each case, by the application of s 72(3), the benefit was deemed to be provided by reason of the relevant taxpayer's employment and, therefore, by s 61(1), in the case of each taxpayer, an amount equal to the cash equivalent of the benefit was to be treated as emoluments of the employment, and accordingly chargeable to income tax under Schedule E.

- E The only difficult question raised by the appeals is that on which the judges who have already considered the case have been equally divided in opinion, viz. whether s 375(1) of the Income and Corporation Taxes Act 1970 is capable of providing an exemption from the liability which s 61 of the Act of 1976 creates. Section 375(1) provides:

- F "Income arising from a scholarship held by a person receiving full-time instruction at a university, college, school or other educational establishment shall be exempt from income tax, and no account shall be taken of any such income in computing the amount of income for income tax purposes."

- G It is common ground that the awards to Martin and Christine were "scholarships" within the meaning of this provision. The argument for the taxpayers in favour of the exemption to which they claim to be entitled is, as Oliver L.J. pointed out in the Court of Appeal, an engagingly simple one. The effect of s 61 of the Act of 1976 is to attribute to the taxpayer a certain sum of money which is to be treated as part of his income for tax purposes. The fact that it is notional income of the taxpayer arising from a statutory fiction does not prevent it from being "income" within the meaning of s 375. If one then asks what gives rise to this income, the answer must be the scholarship awarded to the taxpayer's child, for this is the benefit the provision of which brings into operation the machinery of s 61 of the Act of 1976. That which is treated as income under s 61 is accordingly income arising from a scholarship under s 375.

- I For myself I find the argument not only engagingly simple but also compelling. If there is a fallacy in it, I have been unable to detect it. I cannot see that the argument involves any straining of language beyond its natural meaning, and I should require to be persuaded that there were cogent reasons for denying the taxpayer an exemption to which, on the face of it, he appears to be entitled.

The Commissioners' reason for deciding this point in favour of the Revenue was thus expressed: A

"The charge under s 61 is on the cash equivalent of the benefit provided not on the benefit itself. The cash equivalent is not of itself income but is to be treated as an emolument. A notional sum so treated is not, in our judgment, covered by the words income arising from a scholarship." B

With respect, I cannot follow this reasoning. That which a statute deems to be income, whatever the precise language used to achieve that effect, can and should, in my opinion, be treated as income for all purposes. If it is income *prima facie* liable to bear tax, it is equally income *prima facie* eligible to qualify for any relevant exemption.

It appears that the primary consideration which weighed with Oliver L.J. and the sole consideration which weighed with Watkins L.J. on this point was that s 375 of the Act of 1970 re-enacted without change s 28 of the Finance Act 1920, which was said to have been intended only to exempt from taxation scholarship income in the hands of the scholarship holder. I am content to assume that the original intent of the provision was so limited. The argument founded on this consideration, however, seems to me, with respect, to beg the question arising from the need to construe s 375 in the new statutory context created by the Finance Act 1976. The legislature, enacting the latter statute, had no need to provide an express exemption of scholarships from the fringe benefits to be taxed under Chapter II of the Act of 1976, if the language of s 375 of the Act of 1970, in its ordinary meaning, was already apt to provide such an exemption. The earlier limitation on the scope of s 375 is irrelevant to its operation and effect when read in conjunction with the charging provision of s 61 of the Act of 1976. C D E

Oliver L.J., at [1982] 2 WLR 216 D-H⁽¹⁾, also presents a more sophisticated version of the view expressed by the Commissioners, on which I have already commented, and which I again find unconvincing. He further emphasises the wide definition of the "benefits" to which s 61 applies and the limited range of exceptions. The language of s 61, however, cannot have intended that the sums required to be "treated as emoluments of the employment, and accordingly chargeable to income tax under Schedule E" should be ineligible for any appropriate reliefs and exemptions made available by provisions to be found elsewhere in the general *corpus* of taxing legislation. For the reasons I have indicated, I think s 375 of the Act of 1970 affords such an appropriate exemption. F G

I note that in a press release issued by the Inland Revenue in June 1978, of which the relevant extract is quoted in the Case Stated, the Revenue, when announcing their intention to exact tax in cases such as those under appeal, indicated that they would still treat as exempt scholarships awarded, from a fund open to all, to scholars who happened to be the children of employees of the firm by which the fund was financed. Yet, if the construction of the relevant provisions for which the Revenue contend is right, liability would arise equally in such cases. This is not a decisive consideration, but in choosing between competing constructions of a taxing provision it is legitimate, I think, to incline against a construction which the Revenue are unwilling to apply in its full rigour, but feel they must mitigate by way of extra-statutory concession, H I

(¹) Page 342 *ante*.

- A recognising, presumably, that in some cases their construction would operate to produce a result which Parliament can hardly have intended.

Although I have expressed my reasons at some length, the point at issue is essentially a very short one. But for the conflict of judicial opinion in the courts below I should have been content respectfully to adopt and endorse the view of Goulding J., who said, in allowing the taxpayers' appeals from the

- B Commissioners, at [1981] 1 WLR 475, at page 483 C-D⁽¹⁾:

"I cannot think that Parliament, without giving an express indication, intended in effect to nullify or impair an unqualified exemption of this kind of scholarship income under section 375 by introducing, in relation to a very much wider class of benefit, a scheme of assessing notional sums, that scheme (which is really in the nature of machinery) being necessary because in general the benefits aimed at are given not in cash but in kind."

- C

My Lords, I would allow the appeals and restore the order of Goulding J.

Lord Brandon of Oakbrook—My Lords, I have had the advantage of reading in draft the speech prepared by my noble and learned friend, Lord Bridge of Harwich. I agree with it and for the reasons which he gives I would

- D allow the appeals.

Lord Templeman—My Lords, these appeals raise two problems for consideration; first, the construction of certain of the provisions of the Finance Act 1976 which levy income tax on directors and higher paid employees in respect of fringe benefits, and secondly, the scope and effect of s 375 of the Income and Corporation Taxes Act 1970 which confers exemption from income tax in respect of scholarships.

- E

By a trust deed dated 13 January 1977, Imperial Chemicals Industries Ltd. (ICI) established a trust for the award of scholarships. Each scholarship holder must be a student at a university or other comparable establishment and must be the child of an employee or officer of ICI, or of certain nominated subsidiaries of ICI, when the scholarship is awarded.

- F By clause 2 of the trust deed, the trustees appointed by the deed were directed to hold the trust fund settled by ICI during a defined perpetuity period not exceeding 79 years upon trust to pay or apply capital or income:

"... in the award of scholarships for the educational instruction of such of the beneficiaries as the trustees (being at least two in number) shall from time to time by writing under their hands in their absolute discretion resolve and direct."

- G

This trust in favour of the beneficiaries was subjected to a power for the trustees to pay capital and income to any educational charities, and there was an ultimate trust for the educational charities or the Charities Aid Foundation. These charitable trust provisions are not relevant to these appeals save that they ensured, and clause 20 of the deed expressly confirmed, that no part of the trust fund or the income could thereafter enure for the benefit of ICI.

- H

⁽¹⁾ Page 334 *ante*.

Between 13 January 1977 and 30 September 1979, ICI contributed the aggregate sum of £3,250,000 to the trust fund, and ICI have continued to make contributions. In the year ending 30 September 1979 the trustees received £800,000 from ICI and made 2,683 awards, amounting in all to £823,933, out of capital receipts and reserves and out of income earned. The policy of ICI as disclosed by the trust accounts appears to be to supply the trustees towards the end of each academic year with sufficient money to enable the trustees to meet the demand for scholarships in the following year. The trustees exercise their powers independently and without reference to ICI. It is the policy of the trustees to see that all eligible applicants receive by way of scholarship basic awards which make up the difference between the maintenance grants made by the local educational authorities and the assessed maintenance requirements of the students, save for a sum of £300 which may then be made up by merit awards or hardship awards by the trustees.

Martin is the son of the Appellant taxpayer Mr. Wicks and Martin received a local educational authority maintenance grant of £409 as a student of King's College, Cambridge, the authority considering that Mr. Wicks having regard to his income and resources ought to contribute the balance of Martin's maintenance requirements of £1,100. In November 1978 the trustees awarded Martin a scholarship of £600 made up of £400 basic award and £200 merit award. Christine Johnson, the daughter of the Appellant taxpayer, Mr. Johnson, received a local educational maintenance grant of £542 as a student of Newcastle upon Tyne University and in November 1978 the trustees awarded Christine a scholarship of £460 made up of £260 basic award and £200 merit award.

Chapter II of Part III of the Finance Act 1976 is entitled "Benefits derived by company directors and others from their employment". Section 61(1) of the Act is in these terms:

"61(1) Where in any year a person is employed in director's or higher-paid employment and—(a) By reason of his employment there is provided for him, or for others being members of his family or household, any benefit to which this section applies; and (b) the cost of providing the benefit is not (apart from this section) chargeable to tax as his income, there is to be treated as emoluments of the employment, and accordingly chargeable to income tax under Schedule E, an amount equal to whatever is the cash equivalent of the benefit."

The Appellant taxpayers, Mr. Wicks and Mr. Johnson, were both higher paid employees of ICI. Section 61(2) provides as follows:

"61(2) The benefits to which this section applies are living or other accommodation, entertainment, domestic or other services, and other benefits and facilities of whatsoever nature (whether or not similar to any of those mentioned above in this subsection) . . ."

The scholarships received by Martin and Christine were benefits as defined by s 61(2) and they were provided for members of the families of the Appellant taxpayers, Mr. Wicks and Mr. Johnson, within s 61(1). Section 63(1) is in the following terms:

"63(1) The cash equivalent of any benefit chargeable to tax under section 61 above is an amount equal to the cost of the benefit, less so much (if any) of it as is made good by the employee to those providing the benefit."

The cost of the benefit was £600 in the case of Martin, and £460 in the case of Christine. It follows that if Martin's scholarship was provided by reason of the

- A employment of Mr. Wicks by ICI, then £600 must be treated as emoluments of that employment and taxed accordingly. But as against that tax burden Mr. Wicks is relieved of the burden of finding £600 for the maintenance of Martin out of Mr. Wicks' taxed income. Similarly if Christine's scholarship was provided by reason of the employment of Mr. Johnson by ICI, £460 must be treated as emoluments of that employment and taxed accordingly. Section
- B 72(3) provides *inter alia* that:

"... all such provision as is mentioned in this Chapter which is made for an employee, or for members of his family or household, by his employer, are deemed to be paid to or made for him or them by reason of his employment." By s 61(3): "... the persons providing a benefit are those at whose cost the provision is made."

- C If, therefore, the benefit provided for Martin, namely his scholarship of £600, was provided "at the cost" of ICI, then such provision is deemed to be made by reason of the employment of Martin's father, Mr. Wicks, by ICI and to be treated as emoluments of that employment charged to income tax under Schedule E. Similarly if the benefit provided for Christine, namely her scholarship of £460, was provided "at the cost" of ICI then such provision is
- D deemed to be made by reason of the employment of Christine's father, Mr. Johnson, by ICI and to be treated as emoluments of that employment subject to income tax under Schedule E.

- On behalf of the taxpayers, it was argued that the scholarships were not provided "at the cost" of ICI. The trust fund which financed the scholarship was settled by ICI but the scholarships were provided at the cost of the trust
- E fund or at the cost of the trustees.

- In my opinion the scholarships were either provided at the cost of ICI or at the cost of the trustees. They were not provided at the cost of the trust fund. Section 61(3) requires an identification of "the persons ... at whose cost" the scholarship is provided. If the person thus identified is the employer, then by virtue of s 72(3) the employee is charged to tax under s 61(1). If the person
- F thus identified is not the employer but is some third party then the employee is only to be charged with tax under s 61(1) if the scholarship was provided "by reason of his employment"; that is to say, if there is a relevant connection between the award of a scholarship and the employment. In the present case if the scholarships were provided at the cost of ICI then liability under s 61(1) attaches to the taxpayer employees. If the scholarships were provided at the cost of the trustees, then liability under s 61(1) only attaches if the Crown
- G establish that the scholarships were otherwise made "by reason of the employment" of the Appellant taxpayers by ICI.

- In my opinion the scholarships were provided at the cost of ICI and not at the cost of the trustees because the trustees with moneys supplied by ICI were only performing fiduciary duties imposed on them by ICI. All the trust powers
- H and discretions and other authorised activities of the trustees emanate from and were established and defined by ICI. The capital moneys necessary for the performance by the trustees of their functions were provided by ICI. The income of the trust fund was sacrificed by ICI to the same purpose. The trustees can only continue to award scholarships if ICI remain able and willing to bear the cost of those scholarships. Martin and Christine could appropriately thank the trustees for the awards of their scholarships but they could only
- I thank ICI for their generosity in meeting the cost of the scholarships. In those circumstances the scholarships were provided at the cost of ICI.

There was no need for the appointment of independent trustees. By the trust deed ICI could have declared themselves sole trustees of the trust fund upon the irrevocable trusts specified in the deed. In that event the scholarships must have been provided "at the cost" of ICI in default of any other candidate. But the identity and personality of the trustees cannot make any difference to the effect of s 61. If the course of the scholarship payment can be traced to the employer, then the benefit conferred by that payment is provided "at the cost" of the employer. A B

Your Lordships were invited by Counsel for the taxpayers to express a view as to the meaning of the expression "by reason of his employment" for the purposes of s 61 and to determine whether tax would have been chargeable if the true construction of s 61(3) had been different from that which I have indicated. I do not feel tempted to accept this invitation to decide a hypothetical question on the basis of a construction of the Act which I have rejected. Whether a benefit provided at the cost of a third party is provided by reason of his employment must depend on a variety of circumstances including the source of the benefit and the relationship, rights and expectations of the employer, the employee and the third party respectively. I decline to speculate. C D

If then the payment of the scholarship moneys to Martin and Christine requires sums of £600 and £460 to be treated as emoluments of the employment by ICI of Mr. Wicks and Mr. Johnson respectively chargeable to tax under Schedule E by virtue of s 61 of the Finance Act 1976, the question arises as to whether s 375 of the Income and Corporation Taxes Act 1970 has the effect of exempting those sums from income tax. Section 375 of the 1970 Act is in these terms:— E

"375(1) Income arising from a scholarship held by a person receiving full-time instruction at a university, college, school or other educational establishment shall be exempt from income tax, and no account shall be taken of any such income in computing the amount of income for income tax purposes. (2) In this section 'scholarship' includes an exhibition, bursary or any other similar educational endowment." F

On behalf of the Appellants it was submitted that s 61 of the 1976 Act creates a notional remuneration which is additional income of the taxpayer employee. That income is "income arising from a scholarship" within s 375 of the 1970 Act because the scholarship is the cause, the subject matter and the measure of the income which is created and which is taxed under s 61. G

On behalf of the Crown it was submitted that the exemption afforded by s 375 only applies to income of the scholarship holder. Alternatively, the exemption afforded by s 375 does not affect income of a parent employee created by s 61 of the 1976 Act which is income "arising from an emolument" and not "income arising from a scholarship".

By s 61 a benefit provided at the cost of an employer for a child of a higher-paid employee gives rise to a charge to income tax on the employee as though the employee had received additional remuneration equal to the cost of the benefit. Section 61 assumes that a benefit conferred on a child relieves the parent-employee of expenditure which the employee would otherwise be obliged to meet or which the employee would wish to be met. A benefit is not bestowed on a child against the wishes of the parent. A financial benefit to a child relieves the pocket, or at any rate, gladdens the heart, of the parent. Expressly, and by implication, s 61 assumes that in many, most or all respects a benefit conferred on a child is a benefit conferred on the parent not less H I

- A valuable to the parent than the benefit which the employee would have received if his remuneration had been increased by his employer by the cost of the benefit.

For the purposes of s 61, the exact form of the benefit conferred on the child is immaterial. The Act draws no distinction and there is no logical distinction between the types of benefit provided. Payment by an employer of the cost of accommodation of a child of an employee at a convalescent home, or the purchase of books and clothing and equipment for a child, or a contribution to the maintenance of the child, which may or may not take the form of a scholarship, all constitute benefits for the purposes of s 61 and have the same effect as the provision of the convalescent accommodation for the employee himself, or the provision of clothing for the employee, or the purchase of a night club or golf club subscription. All these benefits relieve the employee of expenditure which he would be obliged to meet or which he would wish to be met. They all give rise to a charge to tax on the employee under s 61. I am not concerned to approve or disapprove the provision of fringe benefits, or to approve or disapprove the imposition of tax on higher-paid employees in respect of fringe benefits. But s 61 is by no means as draconian as junior Counsel for the taxpayer lamented, and does not wholly discourage the provision of fringe benefits. In the present case, for example, a contribution at the cost of the employer to the maintenance of a child results in the higher-paid employee-parent being taxed on the amount of that contribution, but he would be worse off if he found the contribution to the child's maintenance himself out of his taxed income. The significance of s 61 is that, rightly or wrongly, it treats any and every kind of benefit to a child as being a benefit to the parent. Not only does s 61 deliberately apply to every conceivable form of benefit at the cost of an employer which may be said to enure in any way to the advantage of the employee, without exception, but it would be illogical to provide any exception.

If the taxpayers are right in the present case, there is a special exemption from s 61. Their submission involves contradiction between s 61 of the 1976 Act and s 375 of the 1970 Act to be resolved in favour of the taxpayers. The contradiction arises because s 61, according to the argument for the taxpayers, provides that income arising from a scholarship shall be subject to income tax, whereas s 375 of the 1970 Act provides that income arising from a scholarship shall be exempt from income tax. In my opinion, no such conflict arises because s 61 does not have the effect of taxing income arising from a scholarship. Section 61 provides that an amount equal to the cost of any benefit shall be treated as emoluments of the employment, and chargeable to income tax accordingly under Schedule E. The income which arises under s 61 is the income of an emolument. The income which is taxed under s 61 arises because the child of the higher-paid employee receives a benefit at the cost of the employer and because the cost of the benefit is deemed to be an emolument of the employee. The benefit to Martin, for example, is £600 being a contribution to his maintenance requirements. It so happens that this £600 is provided as the result of a scholarship established by ICI, but it could equally have been an allowance or grant made by ICI without falling within the definition of a scholarship. In either event, the £600 which is taxed under s 61 is an amount equal to the cost of the benefit which amount is treated as an additional emolument received by the employee. In my opinion, that amount cannot fairly be described as "income arising from a scholarship". The only income which arises from a scholarship is the sum paid by the trustees to the scholarship holder, Martin. That sum is not taxed by s 61, or at all. I am

unable to accept the view that income created by s 61, and arising from an emolument, is at one and the same time, income arising from a scholarship under s 375. On behalf of the taxpayers, reliance was placed on a press release issued by the Revenue, and it was also argued that if the expression "at the cost" is broadly construed in order to give rise to liability under s 61, the expression "income arising from a scholarship" under s 375 should also be broadly construed. In my opinion, the press release is not relevant to statutory construction, and the approach which I have adopted is neither broad nor narrow, but merely gives effect to the words used by the legislature in s 61 and s 375. A B

On behalf of the taxpayers it was argued that s 61 is unfair because it would impose tax on a higher-paid employee if his child received a scholarship from a charity established by the employer. That submission, if well founded, might dispose Parliament to exclude from the ambit of s 61 benefits received from a charity. But it would be illogical for Parliament to exclude from the ambit of s 61 a scholarship, but not to exclude other forms of benefit received from a charity. It would be even more illogical for Parliament to exclude from the ambit of s 61 a scholarship which, as in the present case, is not received from a charity, while taxing a higher-paid employee in respect of all other benefits whether received from a charity or not. Section 375 does not exempt any "benefit" from s 61, but exempts scholarship income from tax. Section 61 provides that, for income tax purposes, Mr. Wicks shall be deemed to have received from his employer, ICI, an additional salary of £600, equal in amount to the sum of £600 provided for Martin at the cost of ICI. An emolument is not a scholarship; and income arising from an emolument is not income arising from a scholarship. C D E

For these reasons, and in agreement with the conclusion reached by Oliver L.J. in the Court of Appeal, I would dismiss these appeals.

Appeals allowed, with costs.

[Solicitors:—V. O. White; Solicitor of Inland Revenue.]

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