

In the matter of a Reference under Section 51 of the Government of Ireland Act, 1920. In the matter of Section 3 of the Finance Act (Northern Ireland), 1934.

JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE
OF THE PRIVY COUNCIL, DELIVERED THE 27TH MARCH, 1936

Present at the Hearing:

THE LORD CHANCELLOR
(VISCOUNT HAILSHAM).

LORD THANKERTON.

LORD MAUGHAM.

SIR GEORGE LOWNDES.

SIR SIDNEY ROWLATT.

[*Delivered by* LORD THANKERTON.]

In this reference under the provisions of section 51 of the Government of Ireland Act, 1920, the matter to be determined is whether the provisions of section 3 of the Finance Act (Northern Ireland), 1934, are beyond the powers of the Parliament of Northern Ireland.

Section 3 of the Finance Act of 1934 provides as follows:—

“ 3.—(1) There shall be paid to the Exchequer of Northern Ireland by the council of every county and county borough an annual contribution towards the cost to the said Exchequer of educational services.

“ (2) The contributions to be paid by each such council as aforesaid in respect of each financial year shall be as follows:—

“ (a) in respect of the year ending on the thirty-first day of March, nineteen hundred and thirty-five, an amount equal to the sum which would be produced by a rate of sixpence in the pound on the rateable value of the county or county borough;

“ (b) in respect of each subsequent year, an amount equal to the sum which would be produced by a rate of one shilling in the pound on the rateable value of the county or county borough.

“ (3) The contribution to be paid by the council of a county or county borough shall be raised by means of the poor rate, and shall, so far as it represents a rate on the rateable value of a borough or other urban district, be raised by the council of the borough or urban district upon the demand of the county council.

“ Where a council, for the purpose of providing any sums required to be raised by them for the contribution to be paid in respect of the year ending on the thirty-first day of March, nineteen hundred and thirty-five, borrow money temporarily in exercise of the powers conferred upon the council by section three of the Local Authorities

(Financial Provisions) Act, 1921 (or any similar enactment in a local Act), the term within which such money is required to be repaid shall be a period not exceeding six months from the ending of the said year.

“(4) The contributions payable under this section shall be paid in such instalments payable at such times as the Ministry of Finance may direct.

“(5) Expenditure incurred by a council in paying any contribution or meeting any demand under this section shall not be taken into account for the purposes of the deficiency contribution under section twelve or section thirteen of the Local Government (Rating and Finance) Act (Northern Ireland), 1929, as amended by any enactment for the time being in force.

“(6) In this section the expression ‘rateable value’ means the rateable value, subject to the provisions of Part I of the said Local Government (Rating and Finance) Act, of the hereditaments and tenements rated to the poor rate for the financial year immediately preceding the year in respect of which the contribution is to be paid.”

The parties interested, who appeared before the Board, were the Lord Mayor, Aldermen and Citizens of the City of Belfast (hereinafter called “the Corporation”), who challenged the validity of the section above quoted, and the Government of Northern Ireland, who supported the validity of the legislation.

The Corporation bases its challenge on the provisions of section 21 (1) of the Government of Ireland Act, 1920, which provides as follows:—

“21.—(1) The power of the Parliaments of Southern Ireland and Northern Ireland to make laws shall include power to make laws with respect to the imposing, charging, levying, and collection of taxes within their respective jurisdictions, other than customs duties, excise duties on articles manufactured and produced, and excess profits duty, corporation profits tax, and any other tax on profits, and (except to the extent hereinafter mentioned) income tax (including super-tax), or any tax substantially the same in character as any of those duties or taxes, and the Governments of Southern Ireland and Northern Ireland shall have full control over the charging, levying, and collection of such taxes as their respective Parliaments have power to impose, and the proceeds of all such taxes shall be paid into the Consolidated Fund of Southern Ireland or Northern Ireland, as the case may be.

“Provided that it shall not be competent for the Parliament of Southern Ireland or the Parliament of Northern Ireland to impose any tax, whether recurrent or non-recurrent, of the nature of a general tax upon capital, not being a tax substantially the same in character as an existing tax.”

The Corporation maintains that under section 3 of the Act of 1934 a tax is imposed by the Parliament of Northern Ireland which is substantially the same in character as income tax.

In the first place, the Corporation contends that, while in form the contributions under section 3 of the Act of 1934 are paid by the council of a county or county borough to the Exchequer, and it is the council that raises the amount of the contribution by means of the poor rate, the council have no choice in the matter and are merely the hand by which

the central authority imposes the levy on the ratepayers, which is therefore a tax imposed by the central authority on the ratepayers. In the view of the opinion formed by their Lordships on the second contention of the Corporation, it is unnecessary to decide this question, but their Lordships will assume that the first contention of the Corporation is correct.

It therefore remains to consider the second contention of the Corporation, namely, that the tax so imposed by the central authority on the ratepayer is "substantially the same in character" as income tax.

Counsel for the Corporation sought to establish this substantial similarity in character by a detailed comparison of the provisions of the Income Tax Act, 1918, under Schedule A and, in particular, Schedule B, with the provisions of the Poor Relief (Ireland) Act, 1838, along with the fact that under section 187 (1) of the Income Tax Act, 1918, the value of all tenements and rateable hereditaments for the purposes of Schedules A and B is ascertained primarily according to the valuation for poor rate purposes. But, in the opinion of their Lordships, it is the essential character of the particular tax charged that is to be regarded, and the nature of the machinery—often complicated—by which the tax is to be assessed is not of assistance except in so far as it may throw light on the general character of the tax. Such an examination as counsel for the Corporation invited their Lordships to enter upon would tend to narrow the legislative powers of taxation of the Parliament of Northern Ireland almost to the vanishing point, whereas by section 21 (1) of the Act of 1920 legislative powers are conferred in general terms, subject only to the specified exceptions.

In a familiar passage (*L.C.C. v. Attorney-General*, [1901] A.C. 26, at p. 35), Lord Macnaghten has described the character of income tax as follows:—

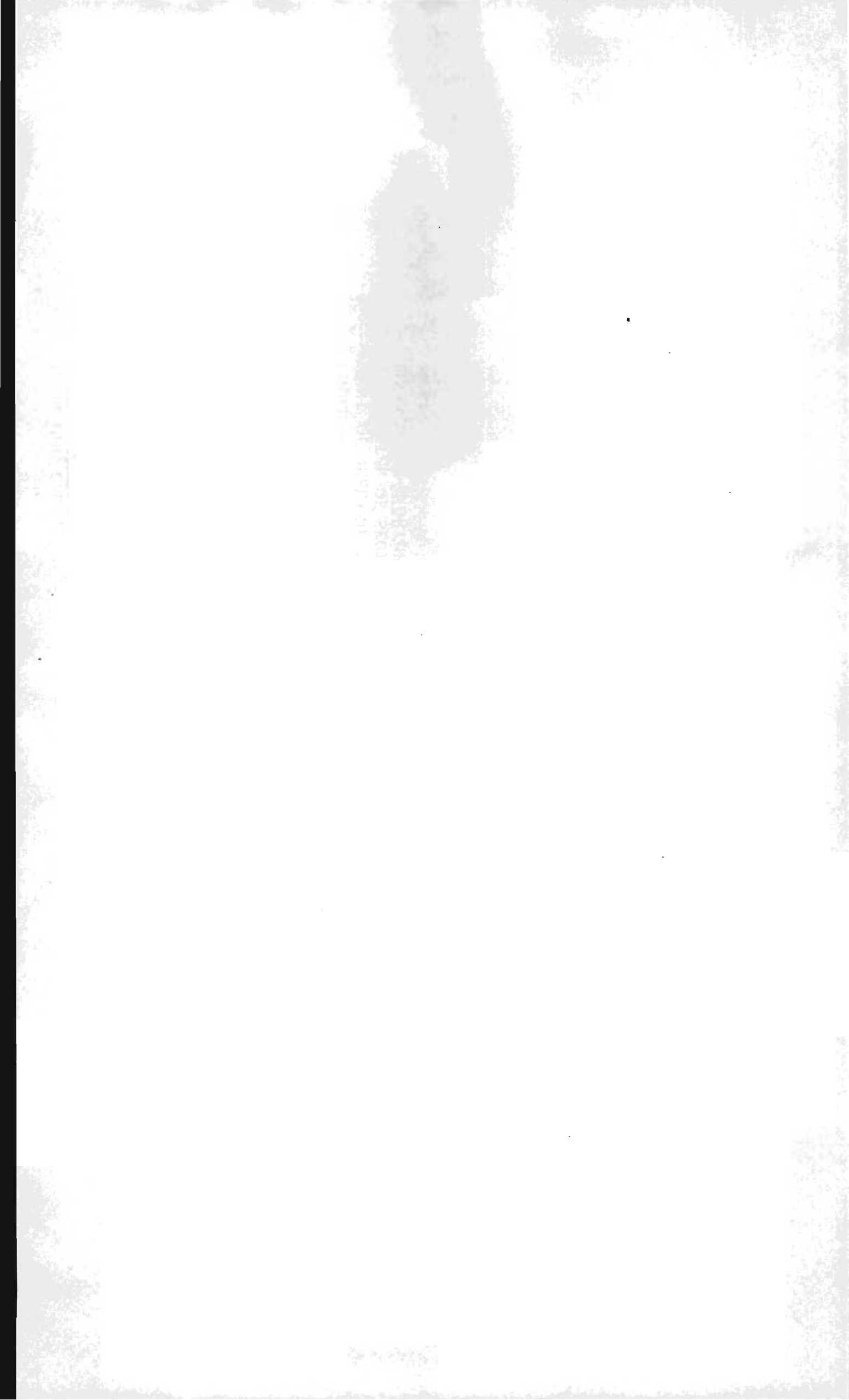
"Income tax, if I may be pardoned for saying so, is a tax on income. It is not meant to be a tax on anything else. It is one tax, not a collection of taxes essentially distinct. There is no difference in kind between the duties of income tax assessed under Schedule D and those assessed under Schedule A or any of the other schedules of charge. One man has fixed property, another lives by his wits; each contributes to the tax if his income is above the prescribed limit. The standard of assessment varies according to the nature of the source from which taxable income is derived. That is all."

The purpose of the income tax Acts is to tax a person's total income from all sources; the method of assessing income derived by ownership or occupation of hereditaments is somewhat arbitrarily based on annual value and not on actual income, but that does not alter the essential characteristic of income tax that it is a tax on income generally.

On the other hand, the poor rate is levied in respect of the occupation of hereditaments, irrespective of a person's income generally, and irrespective of whether the ratepayer

is in fact deriving profits or gains from such occupation. A dwelling house is a burden, not a source of profit, for the occupier who pays rent for it. He is rated on the value of the burden, while he remains unrated in respect of his whole profits, be they from business or from investments. In their Lordships' opinion this marks the essential difference in character between income tax and rates, and it is unnecessary to consider other and less important differences between them.

Their Lordships are therefore of opinion, even assuming that under section 3 of the Finance Act of 1934 a tax is imposed on the ratepayers by the central authority, that such tax is not substantially the same in character as income tax, and that the provisions of section 3 are within the powers of the Parliament of Northern Ireland. Their Lordships will humbly advise His Majesty accordingly.



In the Privy Council.

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DELIVERED BY LORD THANKERTON.

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