Gilt Box Society, 1920 S.C. 534, 57 S.L.R. 463.

LORD PRESIDENT—This petition is presented to the *nobile officium* of the Court. The circumstances are that a charitable bequest of the income of certain heritable property in favour of the minister for the time being of an Original Secession congregation in Stranraer, and for payment of congregational debt has proved inoperative and impracticable owing to the dissolution of the congregation. The proposal made is that the benefit of the bequest, instead of being appropriated to the particular congregation to which the testatrix (I suppose) herself belonged, and which no longer exists, should be given to two funds of the Original Secession Church, namely, the Home Mission Fund and the Mutual Assistance Fund. This latter fund is one as counsel explained formed to increase the stipends of ministers of the Original Secession Church. The reporter approves of this, and so far we see no difficulty in giving effect to the proposed scheme. In view of the dissolution of the congregation the objects of the proposed scheme approximate as closely as may be to those which the testatrix originally selected.

But the petitioners ask that the new scheme should have incorporated in it a general power of sale of the heritable property, the latter being regarded for the purposes of the new scheme as an investment of the permanent capital of the charitable fund which the administrators of the new scheme are to have power to vary. The testatrix expressly prohibited alienation of the heritable property under pain of nullity. Now under the Trusts Act 1921 the door is opened wide to trustees to obtain powers of sale, even when sale is prohibited by the terms of the trust. Resort to the *nobile officium* of this Court is therefore unnecessary and inappropriate in such a case; and the reporter very properly points out that it is not the practice of the Court to anticipate, as it were, a possible application for powers of sale by the trustees under a new scheme by an exercise of the *nobile officium* in a *cy près* petition. But the circumstances of this heritable property as disclosed in the petition are highly special in their character. It now constitutes the only permanent asset of the trust, but it is so old and dilapidated that expenditure which the trust has no means to defray is required to keep it lettable. In part at least it is already no longer habitable. Sale, and the investment of the price obtained for the sites with the old buildings still standing on them, offer the only practicable means of using the sole permanent asset remaining to the trust for any charitable purpose. If the power of sale was sought to be incorporated in the scheme merely because it was considered that the income of the trust might be improved by changing the form of its assets, the crave for such incorporation could not be granted. That would be a matter for the administrators of the new scheme to consider, and they could apply for powers under the recent Trust Act 1921 if they saw fit to do so. But in the present case the position is that, except with a power to vary the form in which the only permanent asset of the trust is directed by the testatrix for ever to remain, the new scheme—or indeed any scheme—limited to the administration of the revenue obtained from it cannot in any reasonable sense be a practical one. In short, a general power to sell and to hold the proceeds and administer the revenue arising from such proceeds must be incorporated in the new scheme unless it is to prove abortive and inoperative.

In these special circumstances I think we should sanction the proposed scheme in favour of the two funds already named and also allow the incorporation in it of the general power of sale.

LORDS SKERRINGTON, CULLEN, and SANDS concurred.

The Court approved of the scheme and allowed the incorporation in it of the power of sale.

Counsel for Petitioners—Macphail, K.C. —Normand. Agents—Traquair, Dickson, & M'Laren, W.S.

Tuesday, May 22.

FIRST DIVISION.

[Exchequer Cause.

INVESTORS' MORTGAGE SECURITY COMPANY, LIMITED *v.* INLAND REVENUE.

Revenue—Corporation Profits Tax—Exemption — Profits Consisting of Dividends from (a) Public Utility Companies and (b) Companies Owning Controlling Interests in Public Utility Companies — Finance Act 1920 (10 *and* 11 *Geo. V, cap.* 18), *sec.* 52 (1) *and* (2) *and Proviso* (*i*), *and sec.* 53 (2) *and Proviso* (*a*)—*Finance Act* 1921 (11 *and* 12 *Geo. V, cap.* 32), *sec.* 58 (1) *and* (2).

Where the profits of a company which was not itself exempt from corporation profits tax under section 52 (2), proviso (*i*) of the Finance Act 1920 included dividends received from companies so exempted, viz., "public utility" companies as defined by section 58 (2) of the Finance Act 1921, and companies owning controlling interests in "public utility" companies, *held* that the dividends so received were not exempted from corporation profits tax under the proviso or under section 58 (1) of the Finance Act 1921.

The Finance Act 1920 (10 and 11 Geo. V, cap. 18) enacts—Section 52—"1. Subject as provided in this Act there shall be charged, levied, and paid on all profits being profits to which this part of this Act applies, and which arise in an accounting period ending after the thirty-first day of December nineteen hundred and nineteen, a duty (in this Act referred to as "corporation profits tax") of an amount equal to five per cent. of those profits: . . . 2. The profits to which this part of this Act applies are, subject as hereinafter

provided, the following :—That is to say, (*a*) the profits of a British company carrying on any trade or business, or any undertaking of a similar character, including the holding of investments . . . : Provided that this part of this Act shall not during the period between the first day of January nineteen hundred and twenty and the thirty-first day of December nineteen hundred and twenty-two apply to the profits of (*i*) a company which carries on wholly in the United Kingdom any gas, water, electricity, tramway, hydraulic power, dock, canal, or railway undertaking, and which by or by virtue of any Act is precluded either from charging any higher price or from distributing any higher rate of dividend than that authorised by or by virtue of the Act." Section 53—"1. For the purpose of this part of this Act profits shall be taken to be the actual profits arising in the accounting period, and shall not be computed by reference to the income tax year or on the average of any years. 2. Subject to the provisions of this Act, profits shall be the profits and gains determined on the same principles as those on which the profits and gains of a trade would be determined for the purposes of Schedule D set out in the First Schedule to the Income Tax Act 1918, as amended by any subsequent enactment, whether the profits are assessable to income tax under that schedule or not: Provided that for the purpose of this part of this Act (*a*) profits shall include all profits and gains arising from any lands, tenements, or hereditaments forming part of the assets of a company, and all interest, dividends, and other income arising from investments or any other source and received in the accounting period, not being interest, dividends, or income received directly or indirectly from a company liable to be assessed to corporation profits tax in respect thereof, and no deduction shall be allowed on account of the annual value of any premises used for the purposes of the company."

The Finance Act 1921 (11 and 12 Geo. V, cap. 32) enacts—Section 58—"1. Where a company owns a controlling interest in, and directs or is entitled to direct the management of any public utility company, any profits derived by that company from the public utility company at any time between the first day of January nineteen hundred and twenty and the thirty-first day of December nineteen hundred and twenty-two shall be, and shall be deemed always to have been, excluded from the profits chargeable with corporation profits tax under Part V of the Finance Act 1920. 2. In this section the expression 'public utility company' means such a company as is mentioned in paragraph (*i*) of the proviso to sub-section (2) of section fifty-two of the Finance Act 1920."

The Investors' Mortgage Security Company, Limited, *appellants*, being dissatisfied with a decision of the Commissioners for the General Purposes of the Income Tax Acts at Edinburgh confirming an assessment to corporation profits tax in the sum of £2579, 9s. made on the company under section 52 of the Finance Act 1920 for the accounting period ending 30th September 1920, appealed by way of Stated Case, in which J. W. Sinton, Inspector of Taxes, Edinburgh, was *respondent*.

The Case set forth, *inter alia*—"4. The company is not one of those companies whose profits are specifically exempted from corporation profits tax under proviso (*i*) of section 52 (2) of the Finance Act 1920. 5. The company receives dividends from public utility companies whose profits are exempt under the said proviso. It also receives dividends from companies whose profits, owing to the fact that the said companies own a controlling interest in public utility companies, are excluded in whole or in part from the profits chargeable with corporation profits tax under section 58 of the Finance Act 1921 above cited.

"For the company it was contended that for the determination of their profits for the purposes of corporation profits tax under Part V of the Finance Act 1920, all sums received by it during the accounting period in respect of the distribution of profits by such a company as is mentioned in paragraph (*i*) of the proviso of sub-section (2) of section 52 of the Finance Act 1920 fell to be excluded from assessment thereunder for the reasons —(1) That profits of companies specified in section 52 (2) of proviso (*i*) of the Finance Act 1920, *i.e.*, public utility companies, are exempt from corporation profits tax, and such profits when received by the company should not be included in the profits of the company liable to tax. The charging section of the Act does not merely except public utility companies from the tax, but clearly exempts the profits of these companies. (2) That profits of said public utility companies having been clearly and distinctly excluded from the definition of profits in the charging section 52, cannot by inference from other sections of the Act be brought in as profits which are liable to taxation, and consequently such profits during the period specified were exempted from the tax. (3) That profits exempted under the charging section cannot be held to be again brought into charge by section 53, especially as sub-section (1) of that section is distinctly stated to be subject to the provisions of Part V of the Act, and the profits arising from such companies as mentioned in paragraph (*i*) of the proviso of sub-section (2) of section 52 are declared not to be profits under Part V of the Act which deals with the tax. (4) That in order to entitle the Inland Revenue to collect a tax there must be clear and unequivocal words in the Act imposing the tax. Provisions inferring an intention to impose the tax without distinct words doing so cannot authorise the collection of the tax. The charging section in the said Act having exempted the profits of public utility companies from the whole provisions of Part V, any subsidiary section declaring how profits are to be arrived at can only apply to profits charged, and any subsidiary section of the Act cannot be construed as inferring an intention to subject certain profits to the tax when the charging section has clearly exempted these profits. (5) That section 58

of the Finance Act 1921, though declaring that certain companies owning a controlling interest in and directing the management of public utility companies are to be exempt from the tax as regards the profits received by them from public utility companies, does not except by inference declare that other companies holding these shares are to be liable; and (6) that the declaratory statement in the 1921 Act, that certain companies were not to be held liable in respect of profits received from public utility companies, cannot be held as imposing a liability which was not imposed by the 1920 Act. The enacting section of the 1920 Act did not impose liability for corporation profits tax on profits of public utility companies for the period mentioned, and any declaratory statement in the 1921 Act that some companies were not liable in respect of these profits cannot be held by inference to make the company and all other companies liable.

"H. M. Inspector of Taxes (Mr J. W. Sinton) contended on behalf of the Crown (1) that the company's contention that the exemption conferred by the proviso to section 52 (2) on the profits of certain companies extends to exempt such profits in the hands of the shareholders receiving them in the form of dividends is entirely fallacious, is not warranted by the terms of section 52 (2), and is entirely opposed to the intention and general scheme of the Act and to the terms of the subsequent section. (2) That the profits charged by the assessment are the profits of the company and not the profits of the companies from which such profits are derived. (3) That whenever the profits of an exempted company are distributed as dividends they cease to be the profits of that company and become the profits of the recipient company. In other words, the exemption only applies to the profits of the exempted company while in the hands of such company, because once these profits leave their hands in the shape of dividends they become the profits of some other person or body—in this case the company. (4) That section 52 must be read along with section 53, which latter section clearly lays down that in dealing with a company liable to the tax all profits of that company are to be charged, excepting only dividends or income received from a company liable to be assessed to corporation profits tax in respect thereof. As the dividends claimed to be excluded by the company were not received from a company liable to be assessed as stated, they must obviously be included in the charge on the company; and (5) that section 58 of the Finance Act 1921 is indirect evidence that the profits claimed to be excluded were assessable under the terms of the 1920 Act, as otherwise this section would not have been required to exempt the controlling company. IV. The Commissioners, after due consideration of the facts and arguments submitted to them, refused the appeal and confirmed the assessment."

The *questions* for the opinion of the Court were—"1. Whether profits received by the company from public utility companies are exempt from corporation profits tax? and 2. Whether profits received by the company from companies falling within section 58 of the Finance Act 1921 are excluded from the profits chargeable with corporation profits tax, and if so, to what extent?"

The arguments of the parties sufficiently appear from the Case. Reference was made to *Attorney-General* v. *Theobald*, 24 Q.B.D. 557.

LORD PRESIDENT—This appeal is presented by an investment company against an assessment to corporation profits tax for the accounting period ending 30th September 1920. Corporation profits tax was introduced by the Finance Act 1920, and is chargeable under sub-section (1) of section 52 of that Act on the profits of all companies. But by the proviso to sub-section (2) of the section just referred to certain companies which I shall describe (in the language of the Finance Act 1921—see section 58 (2)) as "public utility companies" are exempted from liability to the tax as regards any accounting period ending prior to 31st December 1922. It will be seen that the period of exemption covers the accounting period to which the assessment appealed against applies. Further, by sub-section (1) of section 58 of the Finance Act 1921 a similar exemption—for the same period—is provided in favour of companies which own a controlling interest in a "public utility company," with regard to any profits derived by such controlling companies from the "public utility company." The appellant company is neither a "public utility company" nor one which owns the controlling interest in any such company. But the profits of the appellant company include dividends received both from "public utility companies" and from companies which own a controlling interest in such companies. The question is whether the true meaning and effect of the exceptions contained in the proviso to sub-section (2) of section 52 of the Finance Act 1920, and in sub-section (1) of section 58 of the Finance Act 1921, entitle the appellant company to exclude from their account of taxable profits dividends received by it from "public utility companies" or from companies owning a controlling interest in such companies.

While the dividends distributed on its shares by a "public utility company," or by a company which controls such a company, are no doubt derived from the profits of those companies (which are temporarily exempted from taxation), it is, I think, plain that—as received by the shareholding company—they are no more than constituents of the revenue of the shareholding company. They enter into the computation of the profits of the shareholding company, but they are not in themselves profits of the shareholding company. They cannot therefore be excluded from the shareholding company's account of taxable profits.

The argument presented by the appellant company turned upon a view of the general scheme of the Finance Acts, based partly upon the exemption of the profits of "public

utility companies" and companies which control them, and partly upon the exemption contained in the proviso to sub-section (2) of section 53 of the Finance Act 1920. By sub-section (2) it is enacted that for the purposes of corporation profits tax, profits are to be determined on the principles of Schedule D of the Income Tax Act 1918, but that, while that is so, there is to be included in the computation of profits all profits and gains arising from land (which otherwise would have fallen under Schedule A), and also all interests, dividends, and other income arising from investment or any other source and received in the accounting period, provided always that such interests, dividends, or income are not received directly or indirectly from a company which is liable to be assessed to corporation profits duty on its profits; that is to say, from a company other than a "public utility company" or a company which owns a controlling interest in a "public utility company." The suggestion made was that the principle of this exception is that the same money—once taxed as part of the profits of a "public utility" or controlling company, into the coffers of whatsoever company it may go as interest, dividends, or otherwise—is not to be subject to corporation profits tax again. Then it is said, that such being the scheme of the statute, it must be intended that the original exemption of the profits of "public utility" and controlling companies attaches to the money in which those profits originally consisted into whatsoever hands it may go by way of dividends or interest thereafter. If we were at liberty to construe a taxing statute by reference to theories of this kind it might be necessary to consider this argument seriously, but it is familiar that in construing a taxing statute speculations of this sort are inadmissible. The duty of the Court is to apply the statute in accordance with its express terms. Whatever may have been the motive of the exemption in the proviso to sub-section (2) of section 53 of the Finance Act 1920, I have no doubt that the profits of this investment company which are liable to corporation profits tax include dividends received from "public utility companies" and controlling companies, inasmuch as these dividends are *not* received from companies liable to be assessed to corporation profits tax.

I think it is legitimate, in support of the view I have expressed, to take into account the fact that the second of the two Finance Acts above referred to—that, namely, of 1921—introduced retrospectively a provision that the profits of a company which held the stock of a "public utility company" to such an extent as to control the "public utility company" were to escape corporation profits tax in so far as its profits were derived from dividends, or interest, or otherwise, from the "public utility company" so controlled. I do not, indeed, think the two Acts can be read together in the absence of any provision in the later statute that they were to be so read, but I think it is legitimate to consider that a declaration of that kind in the Act of 1921 was considered by Parliament to be necessary, which it could not have been if the meaning of the Act of 1920 was that which the appellants attribute to it.

On the whole matter I think the two questions ought to be answered, as regards the first in the negative, and as regards the second in the negative.

LORD SKERRINGTON — The Finance Act 1920 defines the classes of companies whose profits are to be exempted from corporation profits tax, but it is admitted that the appellant company does not fall within any of these categories. It appears, however, that part of the profits of the appellant company have been received by it from companies which are themselves exempted from the tax in question, and it was argued that these profits ought to be held to be free of tax in the hands of the appellant company. I can find nothing in the Act of 1920 which either expressly or by necessary implication justifies any such exemption. No doubt it is true that "interest, dividends, or income received directly or indirectly from a company liable to be assessed to corporation profits tax in respect thereof" may not be subjected a second time to this tax in the hands of the company which receives such interest, &c. (section 53 (2) (*a*)), but this equitable provision does not entitle us to read into that statute a declaration that profits which were free of tax in the hands of the company which earned them shall remain free of tax in the hands of every other company. The Finance Act 1921 does, however, in its 58th section introduce an exemption somewhat on the lines of that claimed by the appellants, but it is expressed in terms which are of restricted application and which do not assist the appellant company. I accordingly agree that both questions of law should be answered in the negative.

LORD CULLEN — The particular profits here were not the profits of any public utility company but the profits of the appellant company. Accordingly the exempting proviso at the end of section 2 (*b*) does not apply. Nor does the exemption in section 53 (2) apply, in respect that the original company, as it may be called, is not one liable to be assessed for the tax. Accordingly, as the profits of the appellant company fall under the definition of "profits" contained in section 52, and as there is no exemption available to it, it seems to me to be clear that both questions should be answered in the negative.

LORD SANDS — I agree with your Lordship in the chair.

The Court answered the questions in the negative.

Counsel for the Appellants—Macmillan, K.C.—Dykes. Agents—Shepherd & Wedderburn, W.S.

Counsel for the Respondent—Leadbetter, K.C. — Skelton. Agent — Stair A. Gillon, Solicitor of Inland Revenue.