No. 116.—House of Lords, 16th, 17th May, 1st, 4th, 5th July, and 9th August 1889.

Colquhoun. v Brooks.

Colquhoun (Surveyor of Taxes) v. Brooks. (*l*)

Income Tax.—Trade carried on Abroad.—Foreign Possessions. —A person resident in this country is partner in a firm engaged in a trade carried on entirely out of the United Kingdom.

Held, *That his partnership is a foreign or colonial possession chargeable under the 5th Case of Schedule D., and consequently he is liable only in respect of so much of the profit accruing to him as is remitted to this country.*

This is a case stated under the statute 43 & 44 Vict. c. 19, s. 59, by the Commissioners for General Purposes of Income Tax Acts for the city of London, for the opinion of the Queen's Bench Division of the High Court of Justice.

1. At a meeting of the Commissioners for the General Purposes of the Income Tax Acts, and for executing the Acts relating to the Inhabited House Duties for the City of London, held at the Land Tax Rooms, Guildhall Buildings, in the said city, on Thursday, the 4th day of June 1885, Henry Brooks, herein-after called the Appellant, appealed against the sum of 9,219*l.*, being part of an assessment of 20,513*l.* under Schedule D. to the Act 16 & 17 Vict. c. 33. for the year ending 5th April, 1885, under the following circumstances.

2. Mr. Henry Brooks, who resides solely in England, and is a partner in Henry Brooks and Co., of No. 73, Bishopsgate Street Within, merchants, duly made his return for the said firm for Income Tax in respect of the profits or gains of his said trade, on an average of three years, at the sum of 8,294*l.*, and was assessed on the said sum, and duly paid the tax thereon. Mr. Henry Brooks returned and paid tax in addition thereto on a sum of 3,000*l.* received by him in respect of a remittance from Australia under the following circumstances.

3. Mr. Brooks is also a partner in the firm of Brooks, Robinson, & Co., of Melbourne, Australia, who carry on business of Window Glass, Oil, and Colour Merchants, and Storekeepers at Melbourne. The two businesses are entirely distinct.

Mr. Brooks has a large capital invested in the business of Brooks, Robinson, & Co.

4. Various sums of money have from year to year been remitted to Mr. Henry Brooks in respect of his interest in the Australian firm, which he has duly returned for assessment, and the said

(*l*) Reported L. R. 14 App. Cas. 493.

sum of 3,000*l.* represented the entire sum received by him during the financial year ending 5th April 1884.

5. The amount, however, standing to the credit of Mr. Henry Brooks in the books of the firm of Brooks, Robinson, & Co., as representing the estimated profits due to him for the year ending 5th April 1885, would, if realised, amount to the sum of 9,219*l.* in addition to the said sum of 3,000*l.*

6. This sum of 9,219*l.* was arrived at by an estimate and valuation on taking of stock on a certain fixed day after deducting therefrom the estimate and valuation of the preceding year, but as a matter of fact only a portion of the amount had been actually realised.

7. Of the sum of 9,219*l.* the sum of 439*l.* was the share of interest due to the said Henry Brooks from a deposit of a capital sum with certain Colonial banks in Australia.

8. No portion of the sum of 9,219*l.* had been received in England or had at any time formed part of the income of this country.

9. On the above facts the Surveyor of Taxes contended that the said Henry Brooks should be assessed, not only on the sum of 3,000*l.* remitted from Australia as aforesaid, but also on his estimate of profits of the firm of Brooks, Robinson, & Co., of Melbourne, amounting to 9,219*l.* as aforesaid; and that the said Henry Brooks should make his return and be assessed under Case 1, Rules 1, 2, 3, and 4 to Schedule D., to the Act 5 & 6 Vict. c. 35., and that duty be paid on the same thereunder.

10. Mr. Henry Brooks, on the other hand, contended that those provisions were not intended, and did not apply to the assessment for Income Tax on such an interest as he had in the firm of Brooks, Robinson, & Co., and applied only to cases where a trade was conducted, either in the United Kingdom, or elsewhere, by the person assessed; and that the details of the said rules, providing for the taking of an average of profits of trade, the various deductions to be allowed or disallowed in respect of repairs, depreciation of machinery, trade, plant, house rent, and interest of capital, &c., show that the said rules were inapplicable to his case. He contended that he was only liable to be assessed on such sums as came home to him and were received in England, and that the income arising from his money interest in the said firm of Brooks, Robinson, & Co. was in the nature of income from securities; and further thereon contended that the said income should be charged under the 4th Case, or, in the alternative, under the 5th Case of the 5 & 6 Vict. c. 35. Mr. Brooks further referred to 5 & 6 Vict. c. 35., 4th and 5th Cases, also ss. 106, 108, s. 89; 5 & 6 Vict. c. 80. s. 2; and 16 & 17 Vict. c. 34. ss. 5 & 10; 24 & 25 Vict. c. 91., all of which sections provided for the assessment and payment of income from trade, at the place where such trade is carried on, but in cases where the income arises abroad, only on its arrival in Great Britain.

11. The Commissioners of Taxes were of opinion that the assessment should be confined to such sums as were from time to

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time received by Mr. Henry Brooks in Great Britain, allowed the Appeal accordingly, and reduced the assessment to 11,294*l.*

12. The Surveyor of Taxes, immediately after the determination of the said Appeal by the said Commissioners, expressed his dissatisfaction with the same as being erroneous in point of law, and duly required the Commissioners to state and sign a case for the opinion of the High Court of Justice, under the 48 & 44 Vict. c. 19, which we have stated and do sign accordingly.

The question for the opinion of the Court is—

Whether the said Henry Brooks is liable to be assessed on the said sum of 9,219*l.*, or any part thereof,

If the Court be of opinion that the said Henry Brooks is liable to be assessed on the said sum, or any part thereof, the General Commissioners' assessment is to be increased by such amount as the Court shall find; but if the Court shall be of opinion that the said Henry Brooks is not liable so to be assessed, the said assessment is to stand confirmed.

GEO. H. CHAMBERS,
J. G. HUBBARD,
J. STEWART HODGSON,
THOMAS HANKEY,
D. P. SELLAR,
WM. CAVE FOWLER,
} Commissioners of Taxes for the city of London.

Guildhall Buildings,
3rd February, 1887.

THOMAS HEWITT,
Clerk to the Board.

Sir E. Clarke, S.G., for the Surveyor.—The Respondent is a person residing in the United Kingdom, and profits arise or accrue to him from a trade carried on elsewhere than in the United Kingdom, viz., in Melbourne. He is, therefore, within the charging words in Schedule D., section 2, 16 & 17 Vict. c. 34.

[*Halsbury, L.C.*—Do you contend that a subject of a foreign State residing here, carrying on a business abroad from which profits are derived, not one farthing of which is earned in this country or ever comes here, is liable to pay Income Tax thereon in consequence of simply residing here?]

Yes, subject to this limitation: he must be residing here; he must not be here merely for a temporary purpose. If he is residing here there is no hardship. Persons residing here and enjoying the protection of the laws of this country ought to bear its burdens.

[*Lord Herschell.*—But his trade or profession is not enjoying the protection of the laws of this country.]

He is enjoying it himself. He is in the same position as a British subject who is residing here. In the case of the Income Tax the idea is not that a particular property shall be taxed, but that each person shall be taxed according to his property. The

Respondent here is a British subject, and therefore in this case the hardship suggested by the Lord Chancellor does not arise. The words of Schedule D. must have some construction; they must include somebody, and if it were necessary to impose a limitation no limitation could be suggested which would not leave this particular person taxable.

(The Solicitor-General being called elsewhere, the argument was continued by the Attorney-General.)

Sir R. Webster, A.G.—The first case of Schedule D., section 100, 5 & 6 Vict. c. 85., contains the rules for charging the duties in respect of any trade, manufacture, adventure, or concern in the nature of trade not contained in any other schedule. Rule 2 of this case extends the duty to every person and to every adventure or concern carried on by them in the United Kingdom or elsewhere. Throughout the rules for charging Schedule D. the income derived from the carrying on of an employment or business is kept separate from the dividends or other results of possessions and securities. In certain specified cases receipt is to be the test of liability, but in respect of profits from a vocation or trade entitlement or disposing power is to be the test.

A person here for a temporary purpose only, without any view of establishing his residence here, would not be chargeable for foreign trading profits, even if his temporary presence exceeded six months, but under the special provision of section 39, 5 & 6 Vict. c. 85., after six months' temporary presence here he becomes chargeable for the sums received in this country from foreign securities and foreign possessions. Section 39 is not an exempting section in the proper sense of the word; it is a special charging section under limited circumstances.

There has been a whole series of cases in which the question of residence has been discussed. Some of them were argued at great length, but in none of them is a remittance home suggested as being a test of taxability. Subject to the question as to residence, it is assumed that the whole income is liable. *In re Young,*(*m*) *Rogers* v. *Inland Revenue,*(*n*) *Lloyd* v. *Sulley*(*o*).

In the cases of *Cesena Sulphur Co.* v. *Nicholson*(*p*) and *Calcutta Jute Mills* v. *Nicholson*(*q*) the question put for the opinion of Court was whether the Companies were liable to make a return of all the annual profits from the business abroad, or only of such of the profits made abroad as were remitted to this country for distribution amongst the shareholders residing in the United Kingdom, and judgment was given upon the basis that the whole profits were to be taxed. In the case of *Imperial Continental Gas Association* v. *Nicholson*(*r*) the points for argument were that the Appellants were not liable to be taxed upon the whole of their profits wherever made, but that the assessment should be

(*m*) Vol. I., p. 57.
(*n*) Vol. I., p. 225.
(*o*) Vol. II., p. 37
(*p*) Vol. I., p 88
(*q*) Vol. I., p. 83.
(*r*) Vol. I., p. 138.

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confined to the profits which were actually received in England, and in this case also it was decided that the whole profits were chargeable.

Scrutton (for *Brooks*) :—The contention of the Crown is that a person residing in the United Kingdom is liable for profits made in a trade carried on entirely out of the United Kingdom, although such profits may never be received in this country. I ask your Lordships, therefore, first to consider what is meant by residence in the United Kingdom. The term must cover some part of a residence *animo revertendi*, because if a man comes to England for two or three years with the intention of going back to his native country at the end of the third year it is clear that during the one, two, or three years he is here he is a person residing in the United Kingdom. I submit that "residence" under Schedule D. means being in fact in the United Kingdom. In our view section 39 is an exemption from a liability imposed by Schedule D. It is described as an exemption in the third paragraph of the section itself :—"Provided also that any person who "shall depart from Great Britain after claiming such ex- "emption." The second part of the section applies to people who have two qualifications, and must have both of them in order to be exempted; they must be here for a temporary purpose, and they must be here for less than six months. If either of these qualifications be wanting the exemption does not apply. In *Attorney-General* v. *Coote*(*s*) the Defendant was only here for two weeks, but he was here with the view or intent of establishing residence here, and so the Court held that having only one of the qualifications he did not come within the exemption. We say the other branch of the proposition is equally true, viz., that if he is a temporary resident for more than six months he is liable.

The words arising or accruing in the charging section of Schedule D. should be read distributively, and accruing means received. I read the charge in this way :—For and in respect of annual profits or gains arising to any person residing in the United Kingdom from any profession, trade, &c. carried on in the United Kingdom, or accruing to any person residing in the United Kingdom from any profession, trade, &c. carried on elsewhere.

Profit from capital invested by a man who is virtually a sleeping partner in a business carried on exclusively abroad is a profit derived from a foreign possession. The profits from foreign possessions are directed by the fifth case of Schedule D. to be computed on an average of three years as directed by the first case without other deduction or allotment than is allowed in such case. The first case, and the averages and deductions refer to trades, and in that view it would be difficult to contend that a business carried on wholly abroad does not fall within the

(*s*) 4 Price, 183. 2 T. C. 385.

possessions charged by the fifth case. Section 106 shows that the Legislature does not seem to have contemplated the taxation of a trade carried on wholly outside the United Kingdom, unless the profits can be dealt with as coming from possessions or property out of the United Kingdom. If Mr. Brooks is liable under the first case, what is he to return? Not the whole profits of the partnership, because it has been decided in *Sulley* v. *Attorney-General* that that cannot be done. Not his own profits separately, for that is expressly forbidden by the third rule applying to the first and second cases of Schedule D. And by whom is he to be assessed? Section 106 says by the Commissioners for the parish where the trade is carried on, but this trade is carried on in Melbourne.

The general words of Schedule D. must be regarded as limited by a consideration of the jurisdiction of the legislature. Every statute is to be so interpreted and applied, as far as its language admits, as not to be inconsistent with the comity of nations, or with the established rules of international law.

Le Lous (2 Dodson's Admiralty Reports, 28).
The Annapolis (Lushington's Admiralty Reports, 306).
Ex parte *Blain* in re *Sarvero* (L. R. 12, Chan. D., 522).
Bulkeley v. *Schutz* (L. R. 3, Privy Council, 764).
The *Zollverein Case* (Swabey, 96).
Cope v. *Doherty* (4 Kay and J., 367).
Tuck v. *Pruster* (L. R. 19 Q.B.D., 630).
Rossiter v. *Cahlmann* (8 Exch., 361).

In cases under the Legacy and Succession Duty Acts considerations of territorial jurisdiction have induced the Courts to give a limited construction to general words in Taxing Acts.

Attorney-General v. *Cockerel* (1 Price, 165).
Attorney-General v. *Beatson* (7 Price, 560).
In re *Bruce* (2 Crompton and Jervis, 451).
Attorney-General v. *Forbes* (2 Clark and Finelly, 48).
Arnold v. *Arnold* (2 Mylnes and Craig, 256).
Thomson v *Advocate-General* (12 Clark and Finelly, 1).
Attorney-General v. *Wallace* (1 Chan. App. 1).
Attorney-General v. *Campbell* (5 H. of L., 524).

Sir H. James (for *Brooks*).—The case of the *Cesena Sulphur Co.* and *Calcutta Jute Mills* v. *Nicholson* do not affect the present case. In those cases the whole arguments and judgments were confined to the one point of residence. It was contended on behalf of the Crown that the profits had constructively flowed into England, and were returned by virtue of the resolutions passed by the English Company.

The first meaning of possessions is what a man possesses. In dealing with the taxation of an individual, if you ask what are his possessions, you would not confine the meaning of the word

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to landed property; you would include Consols and all he had. And why should not a man be said to possess a trade.

Dicey in reply.

Halsbury, L.C.—My Lords, I have had an opportunity of reading the judgment prepared by my noble and learned friend Lord Herschell, and, although the question is a very difficult one, I am of opinion that the conclusion at which he has arrived is the true conclusion, and therefore, I am prepared to assent to the judgment which he is about to deliver.

Lord Fitzgerald.—My Lords, the Defendant in this case resides solely in England, where he is a partner in an English firm, and we may assume him to be a domiciled British subject. No question arises on his income out of his English business. He is also a partner in an Australian firm carrying on business at Melbourne, in which he has a large capital invested, and from which he has actually received in this country the sum of 8,000*l.* on account of profits for the financial year ending 5th April 1884, and on that he had paid Income Tax.

The case stated further finds "the amount standing to the "credit of Mr. Henry Brooks in the books of the Australian "firm as representing the estimated profits due to him for the "year ending 5th April 1885, would, if realised, amount to the "sum of 9,219*l.* in addition to the said sum of 8,000*l.* This "sum of 9,219*l.* was arrived at by an estimate and valuation on "taking of stock on a certain fixed day, after deducting there-"from the estimate and valuation of the preceding year, but as "a matter of fact only a portion of the amount had been actually "realised. No portion of the sum of 9,219*l.* has been received "in England or had at any time formed part of the income" of Mr. Brooks in this country.

At first sight it struck me very strongly that the Defendant was chargeable here for Income Tax in respect of this sum of 9,219*l.*, though not actually received in this country, but as being income arising out of trade carried on in Melbourne, his share of the profits having been actually ascertained and fixed and accruing to him in this sense, that it was so completely under his control that by an act of his will he could have it actually transferred to his bankers here. There would be no hardship and nothing dangerous or to be deprecated in charging the Defendant on his share or profits so ascertained, but the facts of the case do not warrant us doing so. On looking critically at the findings in the case it will be perceived that there is no sufficient finding to warrant us in coming to the conclusion that the profits of the Australian firm have been so ascertained for the year 1885 as to be legitimately the subject of taxation here. It is only put that the profits due to him would, *if realised*, amount to 9,219*l.*, a sum "arrived at by an estimate and valuation" on stock-taking on

some particular day (not stated) and "deducting therefrom the "estimate and valuation of the preceding year"—also made on a day not stated—"but as a matter of fact only a portion of the "amount had been actually realised." What the meaning of the word "realised" there is I do not know. The Australian firm does not appear to carry on any portion of their business in this country. The Defendant does not appear to have taken or to take any active part in the conduct of its business, nor are its funds remitted to him, save so far as they may represent his actual ascertained profits not required for the purposes of the business of the firm and remitted to him in this country so as to be at his disposal here as income. We are, therefore, remitted to and called on to decide whether the contention of the Surveyor of Taxes was right, that the Defendant was liable to be assessed on this sum of 9,219*l.* though he had not actually received it, nor had it actually come within the United Kingdom.

The language of the 16 & 17 Vict. c. 34, sec. 2, Schedule D., is so comprehensive that I doubt whether a net of language could be devised stronger and more apt to include the profits arising or accruing to the Defendant from a business carried on elsewhere than in the United Kingdom, and must and ought to have full effect unless we can infer from the other provisions of the particular Act, or of the Code, that it was not the intention of the Legislature to tax income from trade carried on wholly and solely elsewhere than in the United Kingdom, unless and until it has actually come to the United Kingdom as the income of some person residing in the United Kingdom.

My Lords, I have not only conferred with my noble and learned friends (Lord Herschell and Lord Macnaghten) on the construction of the Income Tax Acts in reference to this special and difficult question. I have had the great advantage also of reading and carefully considering an elaborate review of the Income Tax Acts which is about to be delivered by my noble and learned friend (Lord Macnaghten) who will follow me. I concur in the conclusion at which both my noble and learned friends have arrived, and I, therefore, confine myself to expressing concurrence in their conclusions.

There are, no doubt, insuperable difficulties in giving full effect to the universal language of the 2nd section of the 16 & 17 Vict. c. 34., and Schedule D. of that Act, and I am of opinion that the enactment must be controlled in the manner and to the extent which will be described by my noble and learned friends who are about to address the House, viz., that such profits derived from trade carried on entirely elsewhere than in the United Kingdom are not assessable for Income Tax until received here by the person entitled to them being a resident in the United Kingdom.

Lord Herschell.—My Lords, this appeal arises upon a case stated by the Income Tax Commissioners. The Respondent is a merchant residing in England and carrying on business there, and in respect of the profits or gains of this business he was duly

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assessed and has paid the tax. He paid the tax in addition on a sum of 8,000*l.* received by him in respect of a remittance from Australia. This sum formed part of the profits of a business carried on at Melbourne in which the Respondent was a partner and had a large capital invested. The estimated profits due to him for the year in question in respect of his share of the business amounted to 9,219*l.*, in addition to the sum of 8,000*l.* already mentioned. The Surveyor of Taxes contended before the Commissioners that the Respondent ought to be assessed not only upon the 8,000*l.* received in this country, but upon his entire share of the profits which accrued during the year of assessment. The Commissioners rejected this contention, but stated a case for the opinion of the Court. Upon the argument of this case before two learned judges of the Queen's Bench Division they were divided in opinion, but the junior Judge having withdrawn his judgment to allow of an Appeal, the Court of Appeal gave judgment in favour of the Respondent, adopting the view of the Commissioners. The solution of the question raised by the case depends entirely upon the construction to be put upon the provisions of the Income Tax Acts. The claim of the Crown is based upon the terms of Schedule D., which impose the tax upon the annual profits or gains arising or accruing to any person residing in the United Kingdom from any trade, whether carried on in the United Kingdom or elsewhere. The Respondent does reside in the United Kingdom, profits did arise or accrue to him from a business carried on elsewhere than in the United Kingdom; therefore, say the learned counsel for the Crown, the case is within the very terms of the Act, and he must be held liable to assessment. I think it must be admitted that the words of the statute do *primâ facie* support this contention. For, notwithstanding the ingenious criticism to which they have been subjected by the learned counsel for the Respondent in their able argument, I think that, giving to the language of the enactment its natural meaning, the facts stated do apparently bring this case within it.

It is urged, however, on behalf of the Respondent, that if this construction be adopted a foreigner residing for a short time only in this country would be subjected to taxation here in respect of the whole of his business earnings in his own country or elsewhere, that so to tax him would be opposed to international comity, and that a construction which would involve such a consequence cannot be correct. I think the learned counsel for the Respondent are right in saying that the result which they point out would follow in the case of a foreigner, but I do not feel satisfied that it would involve a violation of international law, and that the construction contended for by the Crown ought on that ground to be summarily rejected. Reliance was placed upon the decisions under the Legacy and Succession Duty Acts, which have imposed a limit upon the broad language of the enactments, subjecting legacies and successions to taxation. But it must be remembered that it was necessary to put some

limit upon these general terms in order to bring the matters dealt with within our territorial jurisdiction. Without such a limitation the Legacy Duty Act, for example, would have been applicable although neither the testator nor the legatee, nor the property devised or bequeathed, was within or had any relation to the British dominions. A construction leading to this result was obviously inadmissible. The Income Tax Acts, however, themselves impose a territorial limit, either that from which the taxable income is derived must be situate in the United Kingdom or the person whose income is to be taxed must be resident there. If the latter condition be fulfilled, I think it is competent for the Legislature to determine the measure of taxation to be applied in the case of a person so resident. At the same time I am far from denying that if it can be shown that a particular interpretation of a taxing statute would operate unreasonably in the case of a foreigner sojourning in this country, it would afford a reason for adopting some other interpretation if it were possible consistently with the ordinary canons of construction.

I think it cannot be denied that if the view put forward on the part of the Crown be correct, the incidence of the tax will be strangely anomalous. Schedule D. imposes the tax upon the annual profits or gains arising or accruing to any person residing in the United Kingdom from any kind of property whatever, whether situate in the United Kingdom or elsewhere. This in terms would apply to all such profits and gains, whether they found their way to this country or not. But by section 100 of the 5 & 6 Vict. the duties thus imposed are to be charged according to certain rules. One of these relates to the duty to be charged in respect of interest arising from securities in the British plantations in America, or in any other of Her Majesty's dominions outside Great Britain (for which may now be read the United Kingdom), and foreign securities. The duty to be charged in respect of these is directed to be computed on a sum not less than the full amount of the sums which have been or will be received in the United Kingdom in the current year. Another of these rules, styled the fifth case, prescribes the duty to be charged in respect of possessions in the British plantations of America, or in any other of Her Majesty's dominions out of the United Kingdom and foreign possessions. The duty in respect of these is to be computed on a sum not less than the full amount of the actual sums annually received in the United Kingdom, computing them on an average of the three preceding years. It is clear, therefore, that as regards income arising from investments or from possessions outside the United Kingdom, the tax is only to fall upon so much of the income as is received in this country. I reserve what I have to say about the word "possessions," but I desire to point out that if the contention of the Crown be well founded, whilst the taxation of what I will term foreign income arising from the sources mentioned is limited to the amount which finds its way here, there is no such limit in the case of foreign income arising from a

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trade or profession or employment carried on abroad, the whole of which is subject to taxation, though no part of it ever reaches this country. No reason has been or can be suggested for so startling a difference. The distinction between the income from property, such as a sugar plantation in the West Indies, and from business carried on there, would often be a very fine one, and why a person interested in the latter should be burdened with taxation of which a person interested in the former is free was beyond the ingenuity of the learned counsel for the Crown to explain. Indeed, in this very case, if the business in which the Respondent is a partner were disposed of to a joint stock company, and he retained his interest in the form of shares in that company, though the annual return to him might be precisely the same, he would, I take it, be clearly free from the taxation it is now sought to impose. I am quite aware that there are inequalities in the incidence of the Income Tax, and that the anomalies I have pointed out, glaring though they be, will not avail the Respondent if the taxation be imposed by the clear language of the statute. But Lord Blackburn, who pointedly dwelt upon this in the case of the *Coltness Iron Company* v. *Black*, said (*t*) :—" The object of those framing a Taxing Act " is to grant to Her Majesty a revenue; no doubt they would " prefer, if it were possible, to raise the revenue equally from " all, and as that cannot be done, to raise it from those on whom " the tax falls with as little trouble and annoyance and as " equally as can be contrived, and when any enactments for the " purpose can bear two interpretations, it is reasonable to put " that construction upon them which will produce these effects."

It is beyond dispute, too, that we are entitled and, indeed, bound, when construing the terms of any provision found in a statute, to consider any other parts of the Act which throw light upon the intention of the Legislature, and which may serve to show that the particular provision ought not to be construed as it would be if considered alone and apart from the rest of the Act. It is contended by the Respondent that if we thus seek the aid to be derived from other provisions of the Income Tax Acts we shall be led to the conclusion that the view presented by the Appellant is erroneous.

In the first place, it is said that, although elaborate machinery is provided for carrying out the taxing purposes of the Act, none of it is applicable to the assessment of the profits of a trade carried on entirely outside the United Kingdom and no part of which is received here. If this be correct it certainly goes far to show that the Legislature cannot have intended to tax such profits. The 106th section of the Act provides first for the assessment of " every householder except persons engaged in any " trade, manufacture, profession, or employment." It next deals with the case of " every person " so engaged, and enacts that he is to be chargeable by the Commissioners acting for the parish or place where such trade, manufacture, profession, or

(*t*) Vol. I., at foot of p. 316.

employment is carried on or exercised, whether it be carried on or exercised wholly or in part in Great Britain. It next provides that every person not being a householder nor engaged in any trade or profession, who shall have a place of ordinary residence, shall be charged by the Commissioners acting for the place where he shall ordinarily reside. Lastly, it deals with every person "not herein-before described." He is to be charged in the place where he resides at the time of beginning to execute the Act in each year. The counsel for the Crown argued that the Respondent fell within this last category. But I think this argument cannot be sustained. He certainly is a person engaged in a trade within the earlier description, and therefore cannot be included in a class not therein-before described. And there is no other provision to be found in the statute which seems to apply to the case of profits derived from a trade carried on entirely outside the United Kingdom. The 108th section enacts that the duty to be assessed in respect of the profits or gains arising from foreign possessions or foreign securities, "or in the "British plantations in America or in any other of Her Majesty's "dominions," may be assessed by the Commissioners acting for London, Bristol, Liverpool, and Glasgow, according to the regulations mentioned, "as if such duty had been assessed upon "the profits or gains arising from trade or manufacture carried "on in such places respectively." It further provides that the assessment is to be made by the Commissioners acting for such of the said places at or nearest to which the property shall have been first imported into Great Britain, or at or nearest to which the person who shall have received remittances or money arising from property not imported resides. I think that in this section, if anywhere, one would have expected to find a provision dealing with the profits of a business carried on outside the United Kingdom, the more so as the assessment referred to in the section is to be made by the Commissioners as if it had been upon the profits of "a trade or manufacture" carried on in London and the other places named. But it is admitted that this section is confined to property or money brought to this country; it affords no aid therefore to the present Appellant, though I shall have to ask your Lordships to consider presently whether upon the true construction of the statute it does not cover the case with which we have to deal.

For the reasons I have given I think the Respondent has successfully shown that the Act has not provided the requisite machinery for assessing the duty on trade profits arising and remaining abroad, which is strong to show that it was not intended to tax them. But the difficulty of the Appellant does not end here. The Act prescribes certain rules for ascertaining the duties to be charged in respect of any trade, manufacture, adventure, or concern in the nature of trade. One of these rules provides that the computation of duty arising in respect of any trade carried on by two or more persons jointly shall be made and stated jointly and in one sum, and it designates the partner

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who is to make the return on behalf of himself and the other partner or partners, which is to be sufficient to charge the partners jointly. It further provides that no separate statement shall be made "in the case of any partnership," except for the parties separately claiming an exemption or accounting for separate concerns, and that if no such claim is made then such assessment shall be made jointly according to the amount of the profits and gains of the partnership. Now it is not pretended that the whole of the profits of the Australian firm are assessable. The shares of the Australian partners clearly cannot be taxed. Yet where is there any provision for a separate statement and assessment such as the Crown contend for here? If the result of rejecting the argument presented on behalf of the Crown were to land your Lordships in the conclusion that profits arising from a business carried on abroad, even though received here, were not subject to the tax, it would present a formidable obstacle to yielding to the argument of the Respondent, though I am not sure that the difficulties you would have to encounter in refusing your assent to it would not even then be greater. But I do think your Lordships are driven to this conclusion. The rule, styled the fifth case, which I have already referred to, deals with the duty to be charged in respect of possessions in any of Her Majesty's dominions out of Great Britain and foreign possessions. Now the word "possessions" is not used in the part of the Schedule D. which describes the subjects of the tax. Speaking generally, they are defined to be the profits arising from property and those arising from trades and professions. When, therefore, the term "possessions" is employed it seems to indicate an intention to cover by it something more than "property." And it is difficult to see why, unless the intention were to embrace something more, the latter word was not used. "Possessions" is a wide expression; it is not a word with any technical meaning; the Act supplies no interpretation of it. And I cannot see why it may not fitly be interpreted as relating to all that is possessed in Her Majesty's dominions out of the United Kingdom, or in foreign countries. And if so, I do not think any violence would be done to the language if it were held to include the interest which a person in this country possesses in a business carried on elsewhere. So to construe the Act would have the advantage of removing the glaring anomaly to which I have referred as inevitably flowing from the rival construction and of taxing alike such portion only of the profits arising abroad whether from property or trade as is received in the United Kingdom.

The conclusion at which I have arrived is greatly fortified by a consideration of the 39th section of the Act, which provides that no person who shall actually be in Great Britain for some temporary purpose only, and not with any view or intent of establishing his residence therein, and who shall not actually have resided in Great Britain for six months in one year, shall be charged with the duties mentioned in Schedule D. as a person

residing in Great Britain in respect of the profits or gains received from or out of any possessions in any of Her Majesty's dominions, or any foreign possessions, or from securities in any of Her Majesty's dominions or foreign securities, but that every such person shall after such residence for such space of time be chargeable to such duties. The object of this enactment is plain. The Act contains no definition of the words "a person residing," and it was therefore apprehended that they might be held to embrace a foreigner sojourning in this country for a brief time, and for a temporary purpose only. It accordingly exempts such a person from taxation; the duties are only to be chargeable after a residence of six months. But from what does it exempt him? Only from moneys received here from foreign or colonial possessions. If the construction we are asked by the Appellant to put on the statute be correct, a foreigner temporarily sojourning here for less than six months, though not liable to taxation even on the moneys transmitted to this country arising from his foreign possessions, is not exempted from liability in respect of the entire profits arising from a business carried on abroad though not a penny of it be received here. That a foreigner in such circumstances should be bound to make a statement of these trade profits, and be assessed upon them, would be so unreasonable that I think a construction of the statute leading to such a result should be rejected unless no other be possible. It was indeed said by the Appellant that a foreigner so situated would not be within the description of a person "residing" in this country. But if so there was no need for the exemption which assumes that the person dealt with would otherwise be chargeable, and it would be difficult to resist the argument that, except so far as he was exempted, he was intended to be charged with the duties imposed by the Act. The whole section points, to my mind, strongly to the conclusion that moneys received in this country arising from possessions or securities outside its limits were supposed to be the only portion of what I have termed foreign income which was taxable.

I do not think it necessary to dwell on the case of the *Cesena Sulphur Company* v. *Nicholson*(*v*) on which much reliance was placed in support of this appeal. The head office, and therefore the principal place of business of the Companies whose income was under consideration, was in England, and the argument turned principally upon where those Companies resided. I need not stop to inquire whether the facts raised the same question as your Lordships have to determine. It is quite certain that the important considerations which have been pressed in argument upon this House were not present to the minds of the learned Judges who took part in these decisions. And they cannot, therefore, be regarded as authorities determining the question.

I do not pretend to say that any construction of the Act is free from difficulty, or to deny that some anomalies may possibly

(r) Vol. I., p. 88.

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result from that which I advise your Lordships to adopt, but it appears to me to be one least open to objection, and which is most in accordance with the intention of the Legislature, so far as I can gather it from the provisions of the Acts taken as a whole. For these reasons I think the judgment appealed from ought to be affirmed.

Lord Macnaghten.—My Lords, this is a case of great importance and no little difficulty, but after the assistance afforded by the very able and elaborate arguments of counsel, I cannot say that I have any doubt as to what the decision ought to be.

The case raises the question whether a person resident in the United Kingdom, and engaged in a trade carried on entirely abroad, is liable to Income Tax in respect of all the profits of that trade, or only in respect of so much of those profits as may be brought to this country, either in kind or money. The trading in the present case was carried on at Melbourne, in Australia. The business was a partnership business; but I apprehend the question would have been the same if no one but the Respondent had been interested in the concern.

Many topics which were discussed, and properly discussed, at considerable length during the argument may, I think, be laid aside. It does not appear to me that any light is thrown upon the question by considering the Legacy Duty Acts or the Succession Duty Act, or the decision on those statutes. Nor do I think that any assistance can be gained by referring to one or two cases in which, perhaps, the question was involved or suggested, but where it did not receive much attention. Nor is there, I think, any room for the argument that the expression "arising or accruing to any person" in the first sentence of Schedule D. means "received by any person in the United Kingdom." Moreover, although the contention on the part of the Crown, if carried to its legitimate conclusion, would certainly lead to startling results in the case of a foreigner temporarily resident in this kingdom, I do not think that even those results are so plainly at variance with what is due to the comity of nations as to compel your Lordships summarily to reject that contention without considering carefully what the Legislature has actually said. And certainly, however unreasonable the consequences in other cases may be, there is nothing, I think, so very unreasonable in taxing a British subject who resides permanently in this country on the whole of his income, whether he chooses to bring it home or not.

It seems to me that the question must be determined on a consideration of the language of the Income Tax Acts, under which the claim is made, with such assistance as may properly be derived from a reference to Acts *in pari materiâ*. And I think that the question after all really lies in a narrow compass. Does the case fall within the "first case" of Schedule D. in the Income Tax Act of 1842, and under the head of "Duties to be

" charged in respect of any trade, manufacture, adventure, or " concern in the nature of trade, not contained in any other " schedule of this Act; " or does it fall within the " fifth case " under the head of " The duty to be charged in respect of posses- " sions in Ireland, or in the British plantations in America, or in " any other of Her Majesty's dominions out of Great Britain, and " foreign possessions? " Or, to put the question more shortly still, what is the meaning of the term " possessions " in the " fifth case " of Schedule D. and in other places in the Act where it is used in the same connexion?

In order to determine this question it is not, I think, immaterial to refer to the earlier Income Tax Acts from which the existing Acts are more or less copied.

The Income Tax Acts of 1806 and 1803, in regard to the question before your Lordships, differ so little, if they differ at all, from the Acts now in force that I may pass them by, and turn at once to the original Act, the Act of 1799, 39 Geo. III. c. 13.

By that Act certain rates and duties therein specified were to be raised " throughout the kingdom of Great Britain upon all " income arising from property in Great Britain belonging to " any of His Majesty's subjects although not resident in Great " Britain; and upon all incomes of every person residing in Great " Britain, and every body politic or corporate, or company, " fraternity, or society of persons (whether corporate or not " corporate) in Great Britain, whether any such income as afore- " said shall arise from lands, tenements, or hereditaments, where- " soever the same shall be situate in Great Britain or elsewhere, " or from any kind of personal property or other property what- " ever, or from any profession, office, stipend, pension, employ- " ment, trade, or vocation."

Section 77 enacted, in order that the estimates of annual income chargeable by virtue of the Act might be made according to known rules, and with as much uniformity as the respective cases would admit, that in all cases the income chargeable by virtue of that Act should be estimated according to the rules and directions prescribed by that Act and the Schedule thereunto annexed, as far as the same respectively were applicable to such income; and, in all cases where the same were not applicable, then according to the best of the knowledge and belief of the person making the return.

Commissioners, to be styled Commercial Commissioners, " to " ascertain the income of persons engaged in trade and manu- " facture " were to be appointed for certain districts, and it was enacted (section 102) that income from property in the American plantations, and imported into Great Britain, might be ascertained by the Commercial Commissioners for London, Bristol, Liverpool and Glasgow in the same manner as if such income had arisen from trade or manufactures carried on in such places respectively, and (section 108) that incomes received in Great Britain arising from property of persons in such plantations

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not imported into Great Britain might be also ascertained in like manner.

The Schedule to the Act, in accordance with which the income chargeable by virtue of the Act was to be estimated, contains a collection of "cases" and "rules" not differing much from the "cases" and "rules" in the schedules to the present Income Tax Acts. It is headed, "Rules for estimating the income to "arise within the current year of persons to be assessed under "the Act of the 39th year of His present Majesty." These cases and rules are arranged under four divisions, which are as follows:—I. Income arising from lands, tenements, and hereditaments. II. Income arising from personal property and from "trades, professions, offices, pensions, stipends, employments, "and vocations. III. Income arising out of Great Britain. "IV. Income not falling under any of the foregoing rules."

Division III. is divided into two headings:—"Seventeenth "case. 1st. From foreign possessions," where "the full amount "of the actual net income received in Great Britain" was to be estimated according to the year immediately preceding, or the average of the three preceding years. "Eighteenth case. "2nd. Money arising from foreign securities," where the annual income was to be estimated according to the produce of the preceding year, or the expected produce of the current year.

It cannot, I think, be doubted, that "foreign securities" are a class of foreign possessions, and that "money arising from foreign securities" was included in a separate subdivision merely because the income chargeable was to be estimated on a slightly different basis. It is obvious that the subjects comprised in the two subdivisions, whether the second is properly a separate subdivision or not, were meant to exhaust the whole category described in Division III., "Income arising out of Great Britain." Now it can hardly be supposed that the framers of the Act could have overlooked the possibility that "income arising out of Great Britain" might include income arising from trade carried on abroad. Indeed in the very case mentioned in sections 102 and 103, the case of income arising from property in British plantations in America, the income in produce or money would certainly, for the most part, be income arising from concerns in the nature of trade, and those sections show that that income was to be estimated in the manner in which "income from foreign possessions" was by the schedule directed to be estimated. I am, therefore, forced to the conclusion that in the expression "foreign possessions," as used in the Act of 1799 the word "possessions" is to be taken in the widest sense possible, as denoting everything that a person has as a source of income.

I now come to the Act of 1842, and I think it is only necessary to refer to a very few sections of that Act. For convenience sake, I will take the Act of 1842 as it stood before the passing of the Act of 1853, which substituted "the United Kingdom" for "Great Britain," and I will treat the case as if the Income Tax Acts had not been extended to Ireland.

The income of the Respondent from his business in Melbourne, whether he is to be charged in accordance with the contention of the Attorney-General or not, undoubtedly comes under Schedule D. Undoubtedly, the portion of Schedule D. which is contained in section 2 of the Act of 1842 is expressed in the most comprehensive terms possible, and, if not restrained or limited by what follows, would operate to charge the Respondent in respect of the whole of his Melbourne income. I do not, however, agree with the argument urged at the bar, that the rest of Schedule D. which is found in section 100 is mere machinery, or a mere collection of examples, not diminishing the generality of the earlier part of the schedule, but intended only to furnish a guide where the particular rule applies.

The whole schedule must be read together. Every case that can possibly happen under Schedule D. is enumerated in section 100. For every case which cannot be brought under one or other of the first five cases must fall under the "sixth case." Unquestionably the rules applicable to a particular "case" may cut down, and cut down very materially, the charging words in the earlier part of Schedule D. For instance, it cannot, I suppose, be denied that foreign securities are a "kind of property situate "elsewhere than in Great Britain." By the earlier part of Schedule D. the rates and duties chargeable in respect thereof would be so much for every 20*s.* of the annual profits or gains arising or accruing therefrom. But the rules under the "fourth case" limit the charge to the amount received in Great Britain.

It seems to me that the profits or gains from the Respondent's Melbourne business might be held to fall either under the "first case" or under the "fifth case," if one looked to nothing more than the language of those two "cases." The "first case" deals with "duties to be charged in respect of any trade * * * "not contained in any other schedule." In its terms no doubt that would include the Respondent's business at Melbourne as well as his business in London. The second rule of the "first case" declares that "the said duty is to extend to every person, "body politic or corporate * * * or society, and to every "* * * concern carried on by them respectively in Great "Britain or elsewhere, except such concerns as are mentioned in "Schedule A." Again, in its terms this rule points to a business carried on out of Great Britain as well as to one carried on in Great Britain. But then when one tries to apply the rules and provisions of the Act relating to profits and gains from trades to a trade carried on exclusively abroad one gets into hopeless difficulties. If it is a partnership business, as this is, the return is to be made by the senior partner resident in Great Britain. But then the partner is to make the return "on behalf of him-"self and the other partner or partners," and his return is "sufficient authority to charge such partners jointly," and "no separate statement" is to be allowed in any case of partnership, except for "the purpose of the partners separately claiming an exemption" or "of accounting for separate concerns."

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Then again, the computation of the duty to be charged in respect of any concern in the nature of trade is to be made exclusive of the profits or gains arising from lands occupied for the purpose of such concern. That rule hardly seems applicable to a foreign mine or a sugar plantation in the West Indies.

Then again, by section 106, every person engaged in any trade is to be chargeable by the Commissioners acting for the parish or place where the trade is carried on, whether such trade is exercised wholly or in part only in Great Britain. And there are other provisions which it is not necessary to go through which seem to show that the "first case," though clearly applying to a trade carried on partly abroad and partly in Great Britain was not intended to apply to a trade carried on exclusively abroad.

Turning now to the "fifth case," I ask why are not the Respondent's profits and gains from his Melbourne business within the "fifth case"? What is the meaning of the term "possessions" in that "case"? The word "possessions" is not a technical word. It seems to me that it is the widest and most comprehensive word that could be used. Why, for instance, should not "possessions in Ireland" mean everything, every source of income that the person chargeable has in Ireland, whatever it may be? Why should not "profits from possessions out of Great Britain," which is to be found in Schedule G., No. XI., and recalls the expression "income out of Great Britain" in the Act of 1799, mean profits from every source of income abroad? I use the expression "source of income" because it is as a source of income that the Act contemplates and deals with property and everything else that a person chargeable under the Act may have, and the Act itself, in section 52, uses the expressions "sources chargeable under the Act" and "all the sources contained in the said several schedules" as describing everything in respect of which the tax is imposed.

There are two sections in the Act to which I will refer as showing that the word "possessions" must have this meaning.

Take the 39th section. Under that section an Irishman who happened to be in Great Britain for some temporary purpose only, and not with any intent of establishing his residence there, and whose actual residence in Great Britain did not amount to a period of six months in any one year, was "not to be charged "with the said duties mentioned in Schedule D. as a person "residing in Great Britain in respect of the profits or gains "received from or out of any possessions in Ireland" or "from "securities in Ireland." He was not even to be charged in respect of his receipts in Great Britain from those sources. It could not be suggested that as a temporary resident for less than six months he was to be charged in respect of any gains or profits from an Irish source which were not received in Great Britain. But then the section goes on to say that after six months' residence "such person is to to be chargeable to the said duties;" that is, to the duties "in respect of the profits or gains received from "or out of any possessions in Ireland" or "from securities in

"Ireland." Now, if profits and gains from an Irish business be not included in profits and gains from possessions in Ireland, it is certainly very singular that no mention of them is to be found in section 39. It cannot be supposed that the presence in England of an Irishman engaged in business in Ireland was so rare a thing that it escaped the attention of the framers of the Act. Nor can it, I think, be supposed that a person made liable as a temporary resident in Great Britain by reason of six months' residence there was intended to escape altogether from the payment of Income Tax upon receipts from his Irish business. Yet, what would there be to charge him if the Appellant is right? The only way to give a rational meaning to section 39 is to construe the expression "possessions in Ireland" as including every source of Irish income other than Irish securities which the person made chargeable by the section may happen to possess.

Section 106 seems to me to point clearly in the same direction. It explains in what districts the duties contained in Schedule D. are to be charged. After dealing minutely with the case of persons carrying on business either wholly or partly in Great Britain, it provides for the duty to be assessed in respect of the profits or gains arising from possessions or securities in Ireland, and there, again, there is no mention of profits or gains arising from trade or business in Ireland, and no provision for the place where such profits or gains are to be assessed, unless they are to be taken to be included in the expression "possessions in Ireland." If not so included, the omission to mention them in that section is the more extraordinary, because the greater part of the section is occupied with the subject of profits and gains from trade.

It is obvious, too, I think, that if the expression "possessions in Ireland" be given a narrower meaning than that which I have suggested as its proper meaning, endless difficulties would arise. However much you narrow the meaning of the word "possessions," you cannot narrow it so far as to exclude all trades or concerns in the nature of trade.

Even in the rule applicable to the "fifth case" there is, I think, an indication that the case covers profits from foreign trades. It will be observed that the only deduction or abatement allowed is that allowed in the "first case." On referring to the first case, it will be found that that deduction or abatement is one applicable, and only applicable, I think, to the case of a trade.

Upon the whole I have come to the conclusion that the profits and gains arising from the Respondent's Melbourne business fall under the "fifth case" of Schedule D., and are chargeable accordingly on the actual sums received in the United Kingdom. And, consequently, I am of opinion that the Appeal ought to be dismissed.