No. 305.—IN THE HIGH COURT OF JUSTICE (KING'S BENCH DIVISION).—7th and 8th July, 1908.

COURT OF APPEAL.—1st, 2nd and 17th February, 1909.

HOUSE OF LORDS.—15th and 16th November and 8th December, 1909.

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ATTORNEY-GENERAL *v.* TILL.(1)

Income Tax.—Incorrect Return.—Penalty.—Section 55 *of the Income Tax Act*, 1842.

Held, *affirming* Lord Advocate *v.* Sawers,(2) *that the penalties imposed by Section* 55 *are incurred not merely by non-delivery of a return, but by delivering a return which is not true and correct.*

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(1) Reported [1910] A.C. 50.

(2) 3 T.C. 617.

APPELLANT'S CASE.

1. This is an Appeal from an Order of the Court of Appeal, dated the 17th February, 1909, allowing an Appeal by the now Respondent from a Judgment of the Lord Chief Justice of England in the King's Bench Division, dated the 8th July, 1908. The said Judgment of the Lord Chief Justice was one in favour of the now Appellant for £50 and costs, upon an Information filed by the Appellant against the Respondent under the Income Tax Act, 1842.

2. The question in issue in this Appeal is whether a person who negligently delivers an incorrect statement of his profits and gains renders himself liable to the penalties imposed by Section 55 of the Income Tax Act, 1842.

3. The sections upon the construction of which the case immediately turns are Sections 52 and 55 of the said Act of 1842. This Act ceased to be in force in 1845, but it was re-enacted in that year for three years, and has for a number of years been in each year re-enacted by the Finance Act of the year. The Act in force for the year of Assessment in this case was the Finance Act, 1905, which by Section 6 (2) puts in force all enactments relating to Income Tax which were in force on 5th April, 1905, including Sections 52 and 55 of the Act of 1842.

4. The Attorney-General by his Information claimed from the Respondent a penalty of Fifty Pounds in respect of an alleged neglect or failure to deliver such a statement of his profits and gains during the year ended 5th April, 1906, as was required by the said Act. To this Information the formal plea of not guilty was pleaded by the Defendant, and issue was thereon joined.

5. The Information came on for trial between the Lord Chief Justice and a Special Jury on the 7th and 8th July, 1908, when evidence both oral and documentary was led on behalf of the Informant (the Appellant) and the Defendant (the Respondent). The facts proved or admitted are shortly set out in the following paragraphs.

6. By Deed of Assignment of 8th June, 1899, and made between Annie Coombs and the Respondent, the goodwill of the business of a solicitor which had been carried on at Dorchester by Thomas Coombs, deceased, the husband of the said Annie Coombs, was assigned to the Respondent, and as a consideration therefor the Respondent covenanted to pay to Annie Coombs an annuity of £200 for 15 years. In June, 1901, the Respondent married Mrs. Coombs, and thereafter he ceased to pay her the said annuity.

7. The Respondent made returns of his income under Schedule D in every year after he acquired the business. In making such returns he deducted the said annuity of £200 per annum. This deduction was made contrary to the 4th Rule in the 1st Case, Schedule D, Section 100, of the Income Tax Act, 1842, but as Mrs. Coombs, until her marriage with the Respondent, returned and was assessed on the annual payment of £200, no loss was, until the said marriage, suffered by the Revenue. In the years

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1901-2 and 1902-3, the Respondent again deducted the annuity in making his return, but in each case the annuity was added by the Income Tax Commissioners in making the assessment, and the Respondent was assessed on, and paid on, his profits without any deduction of the annuity in those years. In making his returns for the years 1903-4, 1904-5, and 1905-6, however, the Respondent again deducted the annuity from his profits. In July, 1906, certain enquiries with reference to the returns for 1905-6 and 1906-7 were made by the then Surveyor of Taxes at Dorchester. The enquiry and the reply of the Respondent, so far as material, were as follows:—

Enquiries.	*Answers.*
2. I take this opportunity of enquiring whether in calculating the profits for average any deduction has been made for any of the following items?	
(1) Interest on capital or any annuity?	2. (1) For interest on capital. An annuity of £200 to Mrs. Till, my wife, on which Income Tax is assessed and paid by her.

8. The statement in this Answer with reference to the annuity is admitted to be incorrect. Mrs. Till had never in fact since her marriage with the Respondent in 1901 made a return of, or been assessed, or paid Income Tax in respect of the £200. On the contrary, in 1901-2 and 1902-3 the Respondent himself had been assessed in respect thereof and paid the tax thereon. Since the latter year no one had been assessed in respect thereof or paid income tax thereon, with the result that for the years 1903-4, 1904-5, and 1905-6 the Revenue suffered the loss of the tax on £200, being part of the profits of the Respondent earned by his business as a solicitor.

9. It was admitted by the Respondent and his Counsel at the trial that the return mentioned in the Information was not, in fact, a true and a correct statement of the assessable profits and gains of the Respondent as required by the said Act.

10. At the trial the Lord Chief Justice ruled that there was no question for the Jury, but at the request of the Respondent's Counsel he nevertheless asked the Jury one question, to which they returned the answer that the mistake in the return was due to the neglect of the Respondent. The Lord Chief Justice, following the decision in the case of the *Lord Advocate* v. *Sawers*,(1) (35 Sc. L.R. 190), with which he expressed his concurrence, directed judgment to be entered for the Crown.

11. From this judgment the Respondent appealed to the Court of Appeal, and the Court (consisting of the Master of the Rolls

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and the Lords Justices Moulton and Buckley) on the 17th February, 1909, gave judgment, allowing the appeal, and directing judgment to be entered for the Respondent with costs.

12. The Appellant humbly submits that the judgments appealed against are wrong and ought to be reversed with costs, and that the judgment of the Lord Chief Justice is right, and ought to be restored for the following amongst other

REASONS.

(1) Because the Respondent neglected to deliver a true and correct statement of his profits and gains as required by the said Act, and thereby incurred the penalty imposed upon him by the judgment of the Lord Chief Justice.

(2) Because, upon the true construction of the said Sections, the penalty is incurred upon failure or neglect to deliver such a true and correct statement as is required by the said Act.

(3) Because the Court of Appeal were wrong in deciding that no penalty is by the Act imposed for delivery of a statement untrue and incorrect, except in the case of fraud or where the statement delivered is purely illusory.

(4) Because the delivery of a statement which is untrue and incorrect through negligence is not a delivery in compliance with the requirements of the Act.

(5) Because, upon the construction of Sections 50 and 55 of the Act, it is apparent, and was conceded by the Master of the Rolls and Buckley, L.J., that the delivery of an incorrect list would render a person liable to the penalty imposed by Sec. 55, and no reason was sugested why a statement should for this purpose be in a different position from a list.

(6) Because the statement sent in by the Respondent was, on the admitted facts, so illusory as to constitute no statement at all, and in fact resulted in his evading payment of the Income Tax properly payable.

(7) Because the construction contended for by the Appellant was adopted in 1897 by the Inner House of the Court of Session in the said case of *Lord Advocate* v. *Sawers*(1) (35 Sc. L.R. 190), and the legislature in re-enacting the said sections in every subsequent year must, in accordance with an established rule of construction, be deemed to have re-enacted them as construed by the Inner House.

(8) Because upon the true construction of the Act the decision of the Court of Appeal was wrong and the decisions of the Inner House of the Court of Session in *Lord Advocate* v. *Sawers* and of the Lord Chief Justice in the present were correct.

S. T. EVANS.
WILLIAM FINLAY.

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RESPONDENT'S CASE.

1. The first question to be determined in this Appeal is whether a party who has delivered a statement under Section 52 of the Act of 1842 of his income, in which there has been a deduction or omission not allowed by the Act, is liable to the penalties imposed by Section 55 of that Act, that is to say, whether Section 55 applies only to a case of refusing or neglecting to deliver a statement at all (as asserted by the Respondent), or applies also to the case of delivering a statement in which there is some omission or error, not the result of fraud (as asserted by the Appellant).

2. The facts, shortly, as found or admitted in the Court below, are, that the Respondent delivered a statement of his income for assessment for the year 1905-6 on the 20th May, 1905, on the form supplied for that purpose, and it is not denied that the amount returned as the income of the Respondent from his profession was based on true and correct figures of the actual net income thereof, being an average for the past three years; that is to say, no false or fictitious figures were used in the computation, but owing to an error which had been adopted some years previously by the Respondent, or his clerk, with the cognizance and approval of the then Surveyor of Taxes, in computing the net income of the business an annuity of £200 was deducted, which, on the change of Surveyors, had resulted in this sum escaping assessment. The Appellant in the King's Bench disclaimed any charge of fraudulent intent, and the Lord Chief Justice confirmed this in his findings of fact, but on submitting the question of fact to the Jury whether the error in the return was due to want of reasonable care on the part of the Respondent or his clerk, they found that there was neglect on his part.

3. The mistake was discovered on the 14th July in the following year through replies voluntarily supplied by the Respondent, and not in pursuance of the formal procedure provided for in Sections 120 *et seq.* of the Act, and the return for that year, 1906-7, was amended in the hands of the Surveyor with the consent of the Respondent, and the assessment was made for that year in accordance with the amended return, and the proper duty paid. The Respondent informed the Surveyor that the same error had occurred in the amount returned on his statement for the year 1905-6 (which statement is the subject of this case). It is not pretended that the Surveyor proceeded to surcharge the amount of duty thereby shown to be omitted for that year, as he was required to do by Section 161 of the Act, nor did he give any notice of such surcharge to the Respondent as required by that Act and the Act of 1880, Sections 63 *et seq.*, therefore the Respondent had no opportunity of making a formal amended return for that year as contemplated by those sections, but he did tender to the Inland Revenue Solicitor the amount claimed by the Surveyor to have been omitted for that year, which was refused.

4. On the 27th April in the next year, 1907, this prosecution was commenced in respect of the year 1905-6, and on the 29th April proceedings were also commenced before the Commissioners to recover as a penalty £131 19*s*., being £20 and treble the amount of the whole duty payable in respect of the year 1906-7, three months after the full duty for that year had been paid.

5. The second question to be determined on this Appeal is, therefore, whether, even if this Court finds that Section 55 does cover the case of delivering a statement in which there is an error or omission in the computation of the amount returned, can the penalty be imposed when the party has done all in his power to bring himself within the sections of the Act under which the mistake would be purged, that is, by consenting to a surcharge of the amount claimed to be omitted and tendering payment of the same, although this could not formally be done before the Commissioners, because the Surveyor had not proceeded in the formal way to recover by way of surcharge the sum omitted, as he is expressly required to do under the Act of 1842, Section 161 (last clause), incorporating 50 George 3, c. 105, rr. 10-17, now superseded in some respects by the Taxes Management Act, 1880, Section 63 *et seq.*, under which sections and amended sections it is clearly contemplated that no penalty attaches if the surcharge is agreed to.

6. The third question to be determined on this appeal is whether, if Section 55 in any part covers the case where a statement is actually delivered, as well as a case where no statement at all is delivered, the penalty of £50 recoverable in the High Court is appropriate to the case of a party himself shown to be chargeable for the duties in question. The Respondent respectfully submits that the penalty of £20 and treble duty recoverable before the Commissioners is the only penalty appropriate to a party himself shown to be chargeable to the duties in question, and that the penalty of £50 recoverable in the High Court is only appropriate to cases where the party in default is one who is required to deliver lists, &c., for the purpose of charging other parties to the duties, as in Sections 50 and 51, or who himself has not yet been shown to be chargeable for any duty, but has failed to comply with the special notice to furnish particulars of his own income under Section 48.

It is respectfully submitted that this Appeal should be dismissed for the following among other

REASONS.

1. The construction contended for by the Appellant that Section 55 includes the case of delivering a statement which is not true and correct must include every case, as well innocent as if proceeding from fraud, covin, art, or wilful neglect, with intent to evade the duty, and this construction will result in the following anomalies in the Act itself:—

(1) The penalty imposed by this section recoverable before the Commissioners is £20 and treble the whole duty

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at which the person ought to be charged under the Act, and this for an error not the result of fraud, or even wilful negligence as contended by the Appellant, while under Section 178: "If any person who by "making and delivering any such statement which "shall be false or fraudulent . . . shall not be "charged and assessed according to the true intent "&c. . . . he shall be charged . . treble "the amount of the difference between the sum with "which such person shall have been charged and the "sum with which he ought to have been charged." Thus, taking an income of £1,000 which has been erroneously computed in the statement at £800, if the error is innocent, or proceeds from want of reasonable care, the penalty would be (at 1*s*. in the £ duty) £170 (if the Appellant is correct), while if the same error was due to actual and deliberate fraud the penalty would only be £30.

(2) Again, take the case of a person whose income is partly derived from lands and who, without fraudulent intent, includes in the computation in the statement of his income a sum received from this land less than the real sum received. By the construction of the Appellant he may be penalised to the extent of £20 and three times the duty on his whole income, while a person who commits a much more serious offence by wilfully delivering, in compliance with Section 67, an account of the annual rent of lands for purposes of assessment which shall be false, is only penalised by Section 68 to the extent of three times the duty payable in respect of that land.

(3) Again, if an error is discovered by information voluntarily given by the person chargeable, he is penalised under this Section (if the Appellant's construction is correct) in £20 and treble the duty on the whole of his income, even though the error does not proceed from fraud or wilful neglect, while if he declines to give information except on formal proceedings under Section 120 *et seq.*, that is, under the precept of the Commissioners, the penalty for the error, if so discovered, even if actually fraudulent, is only treble the excess of the duty found to be chargeable, and in the absence of fraud, covin, gross or wilful neglect, there is no penalty at all, Section 127.

(4) So again, when the error is discovered after the first assessment, if the Surveyor does his duty and proceeds to recover the amount omitted by surcharge under Section 161, which incorporates 50 Geo. 3, c. 105, rr. 10 *et seq.*, and the party agrees to the surcharge, there is no penalty, and even if he does not agree and after notice and due opportunity of reconsidering

his statement he refuses to amend it or delivers another, and it is eventually discovered that the statement, or the amended statement, is still incorrect, the penalty is only treble the duty omitted (not the whole duty chargeable), and even that is remitted if the party satisfies the Commissioners that there was no fraud; while the Appellant contends that the Surveyor may neglect his duty to surcharge, invoke this Section 55 and penalise the party for the error, even when innocent and without fraud, in three times the amount of duty on his whole income and twenty pounds.

2. The construction of the Appellant would deprive persons of the defences contemplated by the Act. Sections 170 *et seq.* contemplate the case of discovering an error either by way of appeal of the party or by objection raised by the Surveyor, and these sections provide the machinery to determine whether such objections are well founded, the procedure being the issue of a precept from the Commissioners for the person chargeable to furnish a schedule setting out particulars of how he arrives at the computation of his chargeable income. Then, under Section 122, if it is discovered that an error has been made the party may amend his statement, or the schedule, if need be, and upon that amendment, if agreed, the Commissioners shall make the assessment in accordance with the amended statement, and only single duty is assessed. This principle of purging an error is also recognised in Section 129. As pointed out in Reason No. 1, even if the error is not purged in this way, a penalty is only assessed in the case of fraud, covin, &c., and it is considerably less than the Appellant seeks to impose for an innocent error. Again, in the case of an error being discovered after first assessment, under Section 61 of the Act the Surveyor is required to certify the omission to the Commissioners and give notice to the party, and then, under 50 Geo. 3. c. 105, rr. 10 to 17 (which are incorporated in the Act), if the party consents to the surcharge he is only chargeable with the single duty on the amount omitted, no matter how the error arose, and even if he insists, after notice and reconsideration of his statement, and then eventually his statement is proved to be incorrect, the penalty is only treble the amount of the duty omitted, and even that may be remitted if the error was not made wilfully and with intent to defraud. (The Act of 50 Geo. 3. is quoted and not the substituted Taxes Management Act, 1880, Section 63 *et seq.*, because in considering the construction of the Act of 1842 the provisions of correlative Acts then in force must, of course, be considered, and not an Act subsequently passed, though, as a matter of fact, the provisions of the substituted Act are practically similar.) It cannot be reasonably argued that the Act of 1842 intended that these equitable provisions for the protection of the taxpayer could be nullified by simply making Section 55 apply to all cases of error. In this case the result of that construction is that the Surveyor, by neglecting his duty under

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Section 161 to collect the omitted duty by surcharge and notice, and thus giving the party the opportunity of purging the error by consent and amendment of his statement, is enabled to prosecute him for a penalty many times greater in amount for an innocent error than he could, under the above quoted provisions of the Act, for an error made wilfully with intent to defraud. And in the other case of an error being discovered before assessment, it results in the Surveyor being able to annul the equitable provisions of Section 120 *et seq.*, and 129, by the simple process of approaching the party, obtaining voluntary information, by which an error is discovered, and the latter's consent to have his return amended accordingly in the hands of the Surveyor before the statement has reached the Commissioners, so that the proper amount is assessed and paid, and then, three months afterwards, invoking Section 55, as construed by the Appellant, and denying the party the opportunity of purging the error, or his defence under Section 129, by saying that no amended statement was ever delivered; which process was adopted by the Surveyor in respect of the same error in the statement for the year 1906-7.

3. The construction would also result in the taxpayer holding the Revenue servants at arm's length, and making the collection more difficult and expensive. From what has been said in the two previous Reasons, it is evident that if this construction is to prevail, voluntary information will be refused by the taxpayer and he will in all cases insist on the formalities provided by the Act, because when they are adopted he will evidently be in a much better position than if he gives his information voluntarily.

4. If the Appellant's construction is adopted, the penalties are excessive, oppressive, and altogether inadequate to the character of the offence for which they are sought to be imposed. In the case in question, for an error admittedly not fraudulent, the penalties amount to £131 19*s*. before the Commissioners, and £50 and costs in the High Court, and this in the case of a party whose income is a small one.

5. The construction of the Appellant is unnecessary, because on perusal of the sections of the Act specifically imposing penalties, it will be seen that every set of circumstances which can be conceived as an infringement of the Act, omitting cases of innocent error, which it is evident the Act did not intend to penalise (see also Lord Kinnear's Judgment in *Lord Advocate* v. *MacLaren*, Court of Exchequer, Scotland, 42 S.L.R., 762; 5 T.C., at p. 114), are dealt with specifically, and the appropriate penalty imposed, and on examination of the penalties it will be seen that they are uniform for offences of similar character. They are also sensible and practicable. Thus, if the offence is committed by third parties, not themselves assessable—*e.g.*, those required to deliver lists of lodgers and employees, etc. (Section 50), agents, etc. (Section 51), persons served with special notice before or if not shown to be assessable (Section 48), trustees (Section 53), officers of corporations (Section 40), persons required to give evidence on income of others (Section 125)—in all these cases the

penalty is a fixed sum recoverable in the High Court; while in cases where the party is himself shown to be chargeable his penalties are always based on the amount of duty omitted, and are uniform: thus, when the offence is contumacious refusal to furnish statements by the party, it is treble the whole duty eventually found to be payable, because the whole duty might through the action of the party have been lost, while on the other hand when a statement, etc., has been delivered, and there is an untruth or incorrectness, fraudulent, or made with intent to evade the duties, the penalty is in all cases only treble the duty on the amount omitted.

6. The construction of the Appellant will also make the penal provisions of the Act uncertain. On perusal of the specific penal Sections it will be seen that in some cases the offences defined would also fall within the defence of delivering a list, declaration or statement which is not true and correct, and which would therefore also come, by the construction of the Appellant, within Section 55 and that entirely different penalties are imposed, so that there would be two widely differing penalties for the same Act, without any direction as to when one or the other is appropriate. Further, if the construction of Section 55 by the Appellant is correct, even in that one section, there are two widely different penalties, recoverable in different tribunals for the same offence without anything to explain why two different penalties were imposed, and in what particular set of circumstances each is appropriate; while if the Section is limited to cases of neglect or refusal to deliver the Section is sensible and practicable, because on that construction, referring back to Section 48, the penalty of treble duty before the Commissioners is appropriate and applicable to cases where the party in default is himself chargeable with duty, and the penalty of £50 in the High Court is appropriate and applicable to a case of a party who either is himself not chargeable, or at the time of the prosecution, which may be immediate, has not been shown to be chargeable. The Appellant, in order to make his construction of Section 55 sensible, has to invoke Section 22 (3) of the Inland Revenue Regulation Act, 1890, which he assumes extends the period before commencing proceedings in the High Court to two years, and then says the proceedings before the Commissioners are appropriate when prosecution is commenced within one year, and the High Court proceedings when that period is passed. When it is considered that at the time Section 55 was enacted this differentiation in the statutory periods did not exist, and the Act which is alleged to have differentiated the respective periods did not pass until forty-eight years after Section 55 was enacted, it is difficult to understand how such an explanation can be seriously put forward. If the specific penal sections of the Act are taken as exclusive, and Section 55 limited to the case of refusing or neglecting to deliver a statement, then these uncertainties and anomalies disappear.

7. Section 55, when considered in the light of its own terms, is only applicable to the case of non-delivery. The words of the

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Section are: "Ought to deliver any list, &c., as aforesaid." In the ordinary and proper use of the word "as" it is adverbial only, and cannot qualify a substantive unless in conjunction with some other word, *e.g.*, "such." A few other words are recognised in standard dictionaries as properly predicated for the purpose of making it adjectival, but the word "any," which is merely a particle, is not recognised in any dictionary for that purpose. The matter of the sections also shows that it is intended to refer to non-delivery only, the gist of the offence aimed at being shown by the words "within the time allowed," "wilfully delay," "subject to stay of prosecution by subsequent delivery," none of which attributes to the offence aimed at can refer to what is contained in the statement, but only to the delivery of it. It was argued in the Court of Appeal that the proviso as to delivery of statements by trustees, &c., does show that the incorrectness of the statement is intended to be covered because of the word "imperfect," but it was pointed out there that the word "imperfect," as shown by the context, and the use of the word in other sections of the Act (*e.g.*, Section 129) is not used synonymously with the words "incorrect or untrue," but is rather the antithesis of the word "complete" as used in Section 120. It will be seen that in Sections 51 and 53, relating to persons in a fiduciary position, they are required to deliver lists of the moneys and values, &c., received by them from others, and that is quite a different return from that made on a statement delivered by a party himself chargeable, which latter is a computation in one amount of the total income he is chargeable on. It frequently occurs in practice that a trustee, agent or receiver, has not a complete knowledge of all the sources of income, still less the actual values thereof, of the person for whom he is acting, and this is eminently the case when the party resides abroad, or the sources of his income are in foreign countries. Now, if the trustee delivers no lists, &c., he is liable to penalties forthwith under Section 48 for non-delivery, and if he should deliver one which he knows must be inaccurate owing to his want of knowledge, it would subject him to a charge of being wilfully negligent at least; and the Respondent submits that it is to meet these cases that the proviso is made permitting such a person such a provisional list—that is to say, an imperfect but not, of course, an incorrect or untrue one. Then, again, as pointed out in Reason No. 6, if the section is to cover an incorrect or untrue statement, the last paragraph imposing, without any explanation, an entirely different penalty from that already imposed in the previous part of the section for the same offence is insensible. So also the proviso for a stay of proceedings by a subsequent delivery cannot apply to the case of incorrectness or untruth in the contents, because the words themselves contemplate that there has been no statement delivered at all, and the proviso is that, when a prosecution is commenced for not complying with Section 48, the party may obtain a stay by delivering an imperfect list, statement, &c. If the words "as aforesaid" are referred back to Section 48, which only relates to the duty of delivering lists.

&c., and not to their correctness or truth, the section becomes intelligible, because Section 48 empowers the Commissioners to issue summons for non-delivery forthwith, the evident object of all these earlier sections being to enable the Commissioners to ascertain who is assessable, and the offence aimed at in Section 55 is the obstruction of such object by refusing the information afforded by these lists, &c. In a careful study of the Act it will be found that in no case has the draughtsman used the words "as aforesaid" to qualify a noun without the word "such" to predicate them, *e.g.*, Sections 47, 48, 106 and 131. The Appellant also admits that the words of the Section do not grammatically and properly define the offence which he is attempting to charge, because although in his information following the words of the Act up to a point, when he comes to the definite charge he interpolates the word "such," and says, "yet the defendant has not delivered any such statement as aforesaid," feeling, no doubt, that if he charged "has not delivered any statement as aforesaid," he would not be able to substantiate it.

8. The Respondent respectfully submits if there are two constructions possible of a penal section the one that avoids the penalty must be adopted:—*Dickinson* v. *Fletcher*, 9 C.P. 1 (1873); *Tuck* v. *Priester*, 19 Q.B.D. 629 (1887).

ON THE SECOND QUESTION TO BE DETERMINED,

Namely: Even if the Court finds that Section 55 does cover the case of delivering a statement in which there is an error or omission in the computation of the amount returned, can the penalty be imposed when the party has done all in his power to bring himself within the sections of the Act, under which the mistake would be purged.

9. The sections of the Act making provision for purging the error have been fully discussed above, and the Respondent submits that he did all in his power to comply with the principles contained in those sections, namely, by giving to the Surveyor information that the deduction had been made, agreeing the amount which the Surveyor claimed had been lost to the revenue by that deduction, and offering that amount to the Solicitor of Inland Revenue, and that he should not be deprived of this defence by the deliberate neglect of the Surveyor to surcharge the amount omitted, which, if he had done, the Respondent could have formally amended the statement and escaped all penalty.

ON THE THIRD QUESTION TO BE DETERMINED,

Namely: If Section 55 in any part covers a case where a statement is actually delivered, is the penalty of £50 recoverable in the High Court appropriate to the case of a party himself chargeable for the duties in question.

10. The meaning of Section 55 has been the subject of previous reasons, and other sections of the Act throwing light on its construction have been fully discussed, and the Respondent

respectfully submits that the only intelligible construction of the section is that the penalty recoverable before the Commissioners is alone appropriate to a person who is himself chargeable with the duties in question, and who can therefore be penalised on the basis of the amount of the duty with which he ought to be charged, and that the £50 penalty in the High Court only applies to a case where the party in default is not himself chargeable with the duties in question.

11. That the judgment of the Court of Appeal is correct in law and ought to be affirmed for the reasons contained in the Judgments of the Lords Justices of Appeal.

The case was argued before the House of Lords on the 15th and 16th November, 1909, when the Solicitor-General (Sir S. T. Evans, K.C., M.P.), and Mr. W. Finlay, appeared as Counsel for the Crown. The Respondent (Mr. Herbert Till) appeared in person. Judgment was delivered on the 8th December, 1909 in favour of the Crown.

JUDGMENT.

The Lord Chancellor.—My Lords, I hold that this Appeal should be allowed, and, in view of the exhaustive criticisms to which your Lordships have subjected these somewhat obscure sections, I will only say a few words.

I attach great importance to the rule that unless penalties are imposed in clear terms they are not enforceable. Also, where various interpretations of a section are admissible, it is a strong reason against adopting a particular interpretation if it shall appear that the result would be unreasonable or oppressive.

After listening attentively to the argument and considering the 55th Section both by itself and in connection with other parts of this and other Acts to which we were referred, I have come to the conclusion that neither canon is violated by the contention of the Crown. When the 55th Section enacts, "that if any "person who ought by this Act to deliver any list, declaration "or statement as aforesaid, shall refuse or neglect so to do within "the time limited in such notice" he shall be liable to a penalty, surely it means that he must either be liable to the penalty or must do what by the Act he ought to do as to the delivery of the list, declaration, or statement. What he ought to do is described in the preceding sections and amongst them is Section 52 which requires him to deliver "a true and correct "statement in writing." If he does not deliver a true and correct statement, or if he does not deliver any statement at all, he, in either case, equally fails to do what he ought to do under the Act. I confess that the distinction sought to be drawn between the use of the words "any statement" and the possible, but not adopted, use of the words "such statement" seems to

me to take more account of grammar than of substance. If the latter words had been used the meaning of the section would, it is true, have been incontestable. As it is, I think they do not offend against grammar and are sufficiently clear, and would have been so regarded but for the fact that with a severe precision in the use of language the thought underlying the words might have been still more plainly expressed. My noble and learned friend Lord Gorell has adduced additional reasons from the other contents of this and from the contents of other sections fortifying this conclusion, and I will not dwell upon them. They seem to me very cogent.

Mr. Till, however, argued that upon this view a very hard penalty may fall upon a person who without any fault on his part makes a statement incorrect even in a small particular; and he urges that it is no answer to say the Crown would never use such power. I entirely agree with him that such an answer could not prevail. But I do not think it is true that an innocent mistake exposes a man to these penalties. The Act appears to have been formed in full view of the conditions under which the Income Tax has to be collected. On the one hand, hundreds of thousands, if not millions, of people are required to make returns. It is necessary therefore that there should be a sharp weapon available in order to prevent the requirements of the Act being trifled with. On the other hand, the making of the return or statement is not always easy, and mistakes may occur notwithstanding that care may have been used to avoid them, still more when proper care has not been used. Accordingly, provision is made for penalties which are to fall in the event either of unpunctuality or of inaccuracy in the return or statement required. But alongside of that are to be found provisions to relieve a man from the penalty if he mends his mistake. In the present case this result could be secured by Section 129. I see nothing either harsh or unreasonable in this. A fair balance is held, and while the revenue is protected against procrastination and carelessness which, if practised on any large scale, would make the collection of the tax an intolerable business, any one who though honest has been neglectful may redeem his neglect.

In regard to the argument that upon this construction the penalty for incorrectness is more heavy than are other penalties for more serious disobedience, I am not satisfied that it is so, or at all events that it is conspicuously so; but I do not pursue the subject, for I think it does not signify whether it be so or not.

I am in a sense sorry for Mr. Till, because he has evidently persuaded himself as well as the Court of Appeal that he has found a loophole of escape from the contention of the Crown, and he will have to pay dearly for his error. It seems to me however that he has been trifling with a thoroughly just claim, and cannot complain that the Crown should put in force against him, though no charge can be made or is made of any dishonesty, the penalty prescribed for exactly this kind of conduct.

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Lord Atkinson.—My Lords, I have had the advantage of reading the Judgment which my noble and learned friend Lord Gorell is about to deliver, and I concur in the conclusion at which he has arrived, and the reasoning by which he has arrived at it. Like him, I think that the Appeal should be allowed, but I do not think the contention of the Crown, as I understood it, is well founded, namely, that any taxpayer who sent in a statement of the gains and profits earned by him in his trade or business, as required by the 52nd Section of the Income Tax Act of 1842, which was erroneous in fact, necessarily became liable to the penalties imposed by the 55th Section of that Statute. With all respect to the Court of Appeal it would appear to me that finding themselves confronted with this contention they allowed themselves to be too much influenced by the quite natural repugnance, which one must necessarily feel, against adopting a construction of these enactments which would render the subject liable to those very heavy penalties, if, while honestly endeavouring to furnish a correct statement according to his lights, he made some mistake or was guilty of some error in estimating what his gains and profits amounted to.

I do not think that the provisions of the Statute are so unjust and oppressive as that. It is only necessary to read the last six lines of the first part or paragraph of the 52nd Section to see that the amount of the gains and profits to be stated is an estimated amount and the estimate is to be made for the period and according to the rules contained in the respective schedules to the Act. Many persons might find a difficulty in applying those rules, and it is scarcely conceivable that the legislature should have intended that a person who estimated the amount of his gains and profits to the best of his judgment and belief, according to those rules, should be liable to the penalties imposed by Section 55 if he should not apply them with perfect accuracy and that his estimate was consequently incorrect.

That this is so is shewn by reading the 190th Section. This Section provides that " The Schedule marked G, with the rules " and directions therein contained, shall, in making the returns " of the amount of annual value or profits upon which duty is " chargeable under the Act so far as the same are applicable to " each person," be observed by the persons making them. One of the rules applicable to the declaration of a person returning a statement of profits under Schedule D is the 15th Rule. It provides that the person shall declare the truth of the statement, and that the profits are fully stated upon every description of property appertaining to the declarant " estimated to the best " of his judgment and belief according to the directions and " Rules of the Act."

If in making this estimate he applies those rules and directions according to the best of his judgment or belief, he is not liable to these penalties though he may have perchance fallen into error. I do not think there is anything in Section 129 inconsistent with this construction of Section 190. If a person discovers that the statement he has lodged, though framed according

to the best of his judgment and belief at the time he made it, is wrong in fact, he might be guilty of a fraud upon the Revenue if he allowed himself to be assessed on an estimate which he subsequently discovered to be erroneous. Accordingly, Section 129 provides that when he discovers any defect or wrong statement in the Statement he has delivered he may correct it. No doubt the words "and such person shall not afterwards be subject to any proceedings by reason of such omission or wrong statement" would seem to suggest that the person would be liable if he had made a statement not true in fact, though true and accurate according to his belief, but I do not think this is enough to override the plain words of Section 190 and the Rules.

In this case the question left to the Jury was not framed precisely as it should have been. They should, in my opinion, have been asked whether, in their opinion, the Respondent in making his return applied the Rules in the Schedule according to the best of his judgment and belief. They have found, in answer to the question left to them, that he was guilty of negligence in framing his statement, which I think must be taken to be a finding that he did not estimate his gains and profits "to the best of his judgment and belief according to those rules." His statement was admittedly, incorrect, and, having regard to this finding, I think he became liable to the penalty sued for. The Judgment and decision of the Court of Appeal was in my opinion wrong and should be reversed, and this Appeal be allowed with costs.

Lord Gorell.—My Lords, the Appeal in this case is from an Order of the Court of Appeal, dated 17th of February, 1909, allowing an Appeal by the Respondent from a Judgment of the Lord Chief Justice of England, dated the 10th July, 1908, and ordering judgment to be entered for the Respondent with costs of the Appeal to the Court of Appeal and of the Trial in the King's Bench Division.

The Judgment of the Lord Chief Justice was for the present Appellant for £50 and costs, upon an Information filed against the Respondent under the Income Tax Act, 1842.

The case raises a point of law on the construction of the 55th Section of the said Act of 1842, and it is unnecessary for its determination to set out the facts, except so far as to state that in April, 1907, proceedings were instituted by the Attorney-General against the Respondent for not sending in a correct Return of his profits and gains as a Solicitor for assessment of Income Tax under Schedule D of the said Act which is kept in force for the year of assessment in the Case by the Finance Act, 1905. Section 6 (2) of the latter Act puts in force all such enactments relating to Income Tax as were in force on the 5th April, 1905, including the said Act of 1842.

The return in question was made by the Respondent on the 20th May, 1905, and was less by a sum of £200 than it should have been in circumstances which were detailed in the evidence.

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It was admitted at the trial before the Lord Chief Justice that the return was incorrect. There was no suggestion that it was fraudulently made, but the Jury found that there was neglect upon the part of the Respondent.

The Lord Chief Justice followed the decision of the Scottish Courts in the case of *The Lord Advocate* v. *Sawers* (35 Sc.L.R. 190), but the Court of Appeal differed from the conclusion arrived at in that case.

The question mainly turns on Sections 52 and 55 of the Statute of 1842, but as leading up to them it will be convenient to refer to a few earlier sections.

Under Section 47 the Assessors are to fix general notices on Church Doors, &c., requiring all persons who are by the Act required to make out and deliver any list, declaration, or statement, to make out and deliver the same as directed within a limited time. Under Section 48 the Assessors have to deliver to, or at the house of, persons chargeable with duties notices requiring them to prepare and deliver as directed all such lists, declarations, or statements, as they are respectively required to do by the Act within a limited time, and in case of refusal or neglect to comply with the requirement "then the Commissioners shall forthwith issue a summons under their hands to such person making default as aforesaid in order that the penalty for such refusal or neglect may be duly levied; and the said Commissioners shall moreover proceed to assess, or cause to be assessed, every person making such default in manner herein directed."

Section 49 merely prescribed the place of delivery. Section 50 requires every person when required as prescribed to prepare and deliver a list in writing containing "to the best of his information and belief" the names of lodgers, inmates, and others, &c., provided that no person shall be liable to the penalties thereinafter mentioned for any omission of the name or residence of any person in his service or employ, and not resident in his dwelling-house, if it shall appear to the Commissioners that such person is entitled to be exempted from duty.

Section 51 requires every person acting for another to prepare and deliver a list in writing in such form as the Act requires signed by him containing "a true and correct statement" of the particulars mentioned in this section in order that the duty may be duly charged.

Section 52 provides that every person chargeable under the Act shall, when required so to do whether by any general or particular notice given in pursuance of the Act (that is, under Section 47 or 48) within the period to be mentioned in such notice as aforesaid, prepare and deliver to the person appointed to receive the same, and to whom the same ought to be delivered, *a true and correct statement in writing* in such form as the Act requires; and signed by the person delivering the same containing . . . the amount of the profits or gains arising to such person from all and every the sources chargeable under the Act according to the respective Schedules thereof, which amount

shall be estimated for the period and according to the respective rules contained in the respective Schedules of the Act, and to the statement is to be added a declaration that the same is estimated on all sources contained in the said several Schedules, describing the same, after setting against or deducting from such profits or gains such sums, and no other, as are allowed by the Act, and every such statement is to be made exclusive of the profits and gains accrued or accruing from interest of money or other annual payment arising out of property of any other person, for which such other person ought to be charged by virtue of this Act.

It may be here noticed that by Section 190, Schedule G and the rules therein are to be observed in executing the Act, and that the 15th Rule requires a general declaration by each person returning a statement of profits under (*inter alia*) Schedule D, declaring the truth thereof, and that the same is fully stated on every description of property or profits included in the Act relating to the said duties, and appertaining to the party, *estimated to the best of his judgment and belief*, according to the directions and rules of the Act. The form for making this declaration is on page 3 of the Return made by the Respondent just above his signature.

It will be seen that the 52nd Section imposes a Statutory duty on the person chargeable to do three things: to prepare the statement, to sign it, and to deliver it; and further, it is to be true and correct, but this may well mean in the sense prescribed by the 15th Rule of Schedule G. The Respondent's statement was not true and correct in any such sense, for the finding of the Jury disposed of any suggestion that the estimate had been made to the best of his judgment and belief.

Section 53 imposes on a trustee or agent of a person incapacitated or non-resident in Great Britain the duty of delivering a true and correct statement in writing signed by the trustee or agent of the amount of the profits or gains to be charged on him on account of such other person. The duty thus imposed receives a qualification in favour of trustees by virtue of the latter part of Section 55.

Section 54 imposes the duty on Officers of Corporations to prepare and deliver true and correct statements of the profits and gains to be charged, estimated on the annual profits before dividend made.

The 55th Section is as follows:—"That if any person who "ought by this Act to deliver any list, declaration, or statement "as aforesaid shall refuse or neglect so to do within the time "limited in such notice or shall under any pretence wilfully "delay the delivery thereof, and if information thereof shall be "given, and the proceedings thereupon shall be had before the "Commissioners acting in the execution of this Act, every such "person shall forfeit any sum not exceeding twenty pounds and "treble the duty at which such person ought to be charged by "virtue of this Act, such penalty to be recovered as any penalty

"contained in this Act is by law recoverable, and the increased "duty to be added to the assessment, but nevertheless subject "to such stay of prosecution or other proceedings by subsequent "delivery of such list, declaration or statement, in the case "following (that is to say) if any trustee, agent, or receiver or "other person hereby required to deliver such list, declaration or "statement on behalf of any other person shall deliver an "imperfect list, declaration, or statement, declaring himself "unable to give a more perfect list, declaration, or statement, "with the reasons for such inability, and the said Commissioners "shall be satisfied therewith, the said trustee, agent, or receiver "or other person as aforesaid shall not be liable to such penalty "in case the Commissioners shall grant further time for the "delivery thereof; and such trustee, agent, receiver, or other "person shall, within the time so granted, deliver a list, declara- "tion, or schedule as perfect as the nature of the case will enable "him to prepare and deliver; and every person who shall be "prosecuted for any such offence by action or Information in "any of Her Majesty's Courts, and who shall not have been "assessed in treble the duty as aforesaid, shall forfeit the sum "of £50 pounds."

This section is ill-expressed, so much so that that part of it which relates to trustees, &c., is confused and involved to a degree which renders it almost unintelligible.

It is contended by the Respondent that the section applies only to non-delivery of a statement at all, as distinct from delivery of an untrue and incorrect statement, and this contention has been accepted by the Court of Appeal.

As I understand the Judgments, they are based on three main grounds, viz.: That the wording of the Section is not such as to impose in plain terms a penalty in the latter case; that to hold that it does would have the result that any error or omission however slight, or however innocent, would involve liability for the penalty, and that this cannot have been intended; and that other sections in the Act show that the penalty is confined to cases of non-delivery.

In approaching the consideration of the meaning of the section I think it may be observed that when a statutory duty is imposed by a section immediately preceding a penal section it is not unreasonable to expect to find the sanction is co-extensive with the duty the performance of which is required. The question then is whether that is so in the present case.

First with regard to the language of the section it will be noticed that the section relates not only to Section 52, but to several other of the sections above mentioned, in two of which, 48 & 50, penalties are expressly referred to, and this reference must, I think, be to the penalties imposed by Section 55. The 48th Section deals with non-delivery and its consequences, and in Section 50 the reference to penalties is clearly in cases where there has been delivery of a list and an omission therein. It

would seem, therefore, that Section 55 was intended to impose penalties for breach of the duties imposed and not merely for non-delivery.

The controversy appears to arise from the omission of the word "such" after the word "any" in the first line of the section, and the consequent puzzle as to what the words "as aforesaid" relate to, *i.e.*, whether to the verb or the nouns, or, in other words, only to mere failure to deliver within the proper time, whether by refusal or neglect, or also to failure to deliver that which according to the duty imposed ought to be delivered. In my opinion it is reasonably clear that the word "such" has been inadvertently omitted and that the section should be read as if it were inserted. This word is found inserted twice a little later on in the section which has "but nevertheless subject to such "stay of prosecution or other proceedings by subsequent delivery "of *such* list, declaration or statement in the case following; "(that is to say) if any trustee, agent, or receiver, or other person "hereby required to deliver *such* list," &c., &c. The word "such" in these two places must, I think, clearly relate to that which has to be delivered according to the previous sections.

The frame and object of the sections which are to compel the necessary disclosure for the purposes of taxation seem to me to show that the construction contended for by the Respondent is unreasonable. I may refer to and adopt the language of the Lord Ordinary (Lord Stormonth-Darling) in the case above mentioned, where he says, "If a man were to put in a piece of blank "paper and call it a statement, or if he were to lodge a state-"ment flagrantly and extravagantly deficient or incorrect, then, "according to the argument of the Defender, he would be exempt "from prosecution—at all events under Section 55. The reason-"able reading of Section 55 is, that if there is a failure to "deliver the kind of statement required by Section 52 either "by failure to deliver any statement at all, or by delivery of a "statement which is untrue or incorrect, then the penalty is "incurred and may be recovered in the prescribed manner."

Then again the insertion of the provision in favour of trustees, &c., whatever its true reading may be, shows that the section is not dealing only with mere failure to deliver. If the earlier part of the section dealt only with such failure, there is no adequate reason why a trustee or agent should be specially dealt with; but there is such reason if he be required under penalty to deliver a true and correct statement, for he may not have the same means of furnishing accurate particulars of another person's income as he would have had if he were preparing a statement of his own. I agree with the President of the Inner House in the aforesaid case, who considered that "the necessary impli-"cation of the provision is that a trustee who gives in an in-"correct statement would be liable for the penalty but for the "relaxation which is enacted in his favour, and the implication "necessarily applies to everybody else as well as a trustee."

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Next with regard to the argument that this construction would give rise to much hardship, because then any error or omission however innocent would involve liability for the penalty, and that, therefore, it would be unreasonable so to construe the section, I confess I should not be satisfied without further argument addressed to this point that the penalty would be incurred in such a case. It may be that, if a statement is made to the best of the declarant's judgment and belief according to the directions and rules of the Act, he is not liable to a penalty merely because there is an innocent error or omission; but that is not the case before your Lordships, where a return has been negligently made. It is not necessary in my opinion to decide any such point in this case. Moreover, it is difficult to suppose that the Crown in such a case would seek to impose a penalty, and even if the attempt were made the relieving Section 129, upon which I will comment further on, would come into play.

Further, it was not disputed that a person neglecting to deliver a list, declaration, or statement would be liable to the penalty if the delivery did not take place within the time limited for the purpose; so that the penalty might (but for the relieving section) be imposed if the delivery took place a day too late, and this might prove to be a greater hardship than the imposition of a penalty for incorrectness. I should expect that common experience would show that these hardships do not arise in practice, and that unless there be some contumacy or improper attempt at evasion difficulties do not usually arise.

Then with regard to the inference, if any, to be drawn from the other Sections of the Act which the Respondent (who, I may here observe, argued his case extremely well) relied on, and many of which are commented upon in the Judgment of the Court of Appeal, I am unable to find that they afford any clear support to the Respondent's argument. His principal point was that some of these imposed penalties for offences graver than the mere delivery of an incorrect statement, and yet that the penalties were less severe for those offences than that imposed in the case of such delivery, if the contention of the Crown be correct. But this does not necessarily lead to the conclusion that the contention which the Crown supports cannot and ought not to be placed upon the section, and it does not follow that because there are other provisions, notably those in Section 178, against frauds and evasions, that the Section in question is to receive a different construction to that which ought, according to its terms, to be placed upon it.

One important section requires some further examination, viz.: the 129th. This section is also badly drafted. It may perhaps be doubted whether it applies only to the immediately preceding sections, but it comes in the category of sections relating to Schedule D, and, in my opinion, covers the case of a statement to be made and delivered according to the provisions of Section 52. It refers to both statements and schedules, but I need not in stating its effect refer to the latter. The first part deals with the

case of a person who shall have delivered a statement, and shall discover any omission or wrong statement therein, and makes it lawful for him to deliver an additional statement rectifying such omission or wrong statement, and such person shall not afterwards be subject to any proceeding by reason of such omission or wrong statement. It seems to be a necessary implication that but for the delivery of such additional statement he would be liable under Section 55 for having delivered an untrue or incorrect statement, and that, therefore, that section should be construed as the Crown contends. It then deals with the case where a person shall not have delivered a statement within proper time, and permits of him delivering a statement at any time before proceedings have been taken to recover the penalty, and thus avoiding proceedings. Its terms then seem to become general, and provide that if any proceeding shall have been actually had before the Commissioners to recover the penalty, they may, on proof to their satisfaction that no fraud or evasion whatever was intended, stay such proceedings on terms as to costs. And if proceedings have been commenced in any Court the Commissioners may certify that in their judgment no fraud or evasion was intended by the party making such omission, and a Judge of such Court may stay the proceedings on such terms as he shall think fit. It then deals with the case of the delivery of an imperfect statement, and provides for time being given by the Commissioners if they are satisfied by sufficient reason why a perfect statement cannot be delivered and for relief against penalty if as perfect a statement be delivered as from the nature of the case can be given.

I am unable to agree with the view that those parts of the Section which deal with cases where proceedings have been commenced relate only to cases where there has been no delivery at all of a statement. This view seems to be partly derived from the use of the word "omission" in the latter half of the section, which, when the terms of the whole section are considered, appears to be used so as to cover omission to deliver at all and omission to deliver a proper statement.

The Section was evidently framed to give persons power to make a delivery and to make amendments, and, although it is ambiguously worded, I think the reasonable meaning to give to it is that it permits of the exercise of the powers conferred by it, in proper cases both before and after proceedings and both in respect of non-delivery and delivery of an incorrect statement, so as to mitigate hardships which might otherwise arise.

Two further points were made by the Respondent in argument before your Lordships: that the powers of surcharge given by Section 161, or the Taxes Management Act, 1880, Sections 63, *et seq.*, ought to have been exercised so as to permit of relief from penalty and that the last sentence of Section 55 does not apply to this case but only to cases where the party in default is one who is required to deliver lists, &c., for the purpose of charging other parties to the duties. I am unable to trace from the

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record to what extent, if at all, these points were made in the Court of Appeal, as bars to the proceedings, for they are not referred to in the Judgments; and they do not appear to be of much weight, for, as to the first the powers of surcharge can hardly be read as extinguishing the operation of Section 55, and as to the second it is clear that the alternative proceedings mentioned in the said sentence may be taken against every person upon whom the duties to which the Section refers have been imposed, who shall not, for offences dealt with by it, have been assessed in treble the duty as provided by it.

My Lords, it is matter for regret that the Respondent should not have adhered to the position which he accepted in his letter of 3rd December, 1906, and paid the taxes which he was then willing to pay and the Surveyor of Taxes was ready to accept. By so doing the Respondent would have avoided this unfortunate litigation.

I think the appeal should be allowed with costs here and below and the Judgment of the Lord Chief Justice restored.

Lord Shaw of Dunfermline.—My Lords, the question in issue in this appeal is whether a person who negligently delivers an incorrect return of his profits and gains to the Inland Revenue Authorities renders himself liable to the penalty of £50 imposed by Section 55 of the Income Tax Act, 1842.

That Act has been re-enacted by Finance Acts of succeeding years. The actual Statute under which the particular instance of its application is in question now was the Finance Act, 1905, applying, of course, as it did to the statement by the Respondent, Mr. Till, of his income for assessment for the year 1905-6 and returned to the Inland Revenue by him on the 20th May, 1905.

By the information filed by the Attorney-General, the penalty before mentioned was claimed. After certain proceedings, which need not be referred to, but in the course of which a special Jury affirmed that the return had been negligently made, the Lord Chief Justice, Lord Alverstone, directed Judgment to be entered for the Crown.

In the Scotch case of the *Lord Advocate* v. *Sawers* (35 Sc.L.R. 190), the same point was also settled favourably to the Crown by a declaration of the First Division.

The learned Lords Justices have reversed the Judgment of the Lord Chief Justice, have differed from the decision of the Court of Session, and have entered Judgment for the Defendant. This difference of judicial opinion in the two Kingdoms on the construction of an Imperial Statute adds importance to the question.

The difference was fully before the minds of the learned Lords Justices, and I have thought it, my Lords, due and respectful to them to consider with much care the reasons upon which they proceed. These are compendiously and conveniently formulated in a series of propositions, six in number, by the learned Master of the Rolls, to which I shall afterwards refer *seriatim*.

The case has been argued before your Lordships' House upon the footing that while neglect has thus been affirmed the Respondent was not guilty of any fraudulent conduct. I think that the admission to that effect by the Crown was entirely proper.

If the penalty is due it is agreed that it is alone exigible under Section 55.

It is agreed, (1) of course, that the Respondent falls within the category of "any person who ought by this Act to deliver any List, Declaration, or Statement as aforesaid," that (2) he is not in a position, as Trustee, Agent, or Receiver, to escape liability for the penalty, or obtain further time to cure "an imperfect List, Declaration, or Statement," or to deliver a List, &c., "as perfect as the nature of the case will enable him to prepare and deliver"; (3) that he has not been assessed in treble the duty; and (4) that the forfeiture of Fifty Pounds would accordingly apply if the List, Declaration, or Statement required by Statute was not timeously returned.

Mr. Till maintains, however, that "any List, Declaration, or Statement as aforesaid" means a List, Declaration, or Statement of any kind, true o untrue, correct or incorrect. The Crown maintains that the words "List, Declaration, or Statement aforesaid" refer to Section 52 and provide for a true and correct statement in writing. That is the whole point, apparently very simple, of the case.

Other sections of the Act have been relied on in the Court below, and in the arguments before this House. The chief of these are three in number. By Section 48 it is provided that assessors shall deliver at the residences of persons chargeable notices "requiring every such person to prepare and deliver, in "manner directed by this Act, all such Lists, Declarations, and "Statements as they are respectively required to do by this Act."

What, my Lords, are "such lists," &c., "as they are respectively required," "to prepare and deliver"? The answer to that question is contained in Section 52. That section is in the following terms: "And be it enacted, that every person charge-"able under this Act shall, when required so to do, whether by "any general or particular Notice given in pursuance of this Act, "within the period to be mentioned in such Notice as aforesaid, "prepare and deliver to the person appointed to receive the same, "and to whom the same ought to be delivered, a true and correct "statement in writing, in such form as this Act requires and "signed by the person delivering the same, containing the annual "value of all lands and tenements in his occupation, whether the "same be situate in one or more Parish or Parishes, and the "amount of the Profits or Gains arising to such person from all "and every the sources chargeable under this Act, according to "the respective Schedules thereof, which amount shall be esti-"mated for the period and according to the respective Rules con-"tained in the respective Schedules of this Act; to which State-"ment shall be added a Declaration that the same is estimated on "all the sources contained in the said several Schedules,

"describing the same, after setting against or deducting from "such Profits or Gains such sums, and no other, as are allowed "by this Act; and every such Statement shall be made exclusive "of the Profits and Gains accrued or accruing from interest of "money, or other annual payment arising out of the property of "any other person, for which such other person ought to be "charged by virtue of this Act."

I do not think, my Lords, that it requires anything more than the language of this section to show that what is fundamental to it is the truth and correctness of the statement in writing thus required to be prepared and delivered. This is positively and naturally demanded, because by it a taxing basis is reached, and upon it taxation proceeds. The statement in the case of profits and gains must be to some extent and *ex necessitate* an estimate according to the best of a deponent's judgment and belief; and this would no doubt be the interpretation—in short, that under these conditions the statement should be true and accurate as an estimate.

Of the other sections mainly relied on the chief is Section 129. It has been already seen that *in gremio* of Section 55 the case of corrections and inaccuracies upon the part of an agent or trustee was dealt with, but it seems to have been thought expedient to make a wider provision for the amendment of returns. Accordingly, Section 129 provides as follows:—"Provided always and be it "enacted, that if any person who shall have delivered a State- "ment or Schedules shall discover any omission or wrong state- "ment therein, it shall be lawful for him to deliver an additional "Statement or Schedule rectifying such omission or wrong state- "ment, and such person shall not afterwards be subject to any "proceeding by reason of such omission or wrong statement; and "if any person shall not have delivered a Statement or Schedule "within the time limited by the Commissioners for that pur- "pose, it shall be lawful for him to deliver a Statement or "Schedule, in manner herein directed, at any time before a pro- "ceeding shall be had to recover the penalty herein mentioned, "and no proceeding shall be afterwards had for recovering such "penalty; and if any proceeding shall have been actually had "before the Commissioners for recovering such penalty, it shall "be lawful for the same Commissioners, on due proof to their "satisfaction that no fraud or evasion whatever was intended, to "stay such proceedings, either on the term of paying or without "paying the costs then incurred, as the Commissioners shall think "fit, and if any proceeding shall have been commenced in any "Court, it shall be lawful for the Commissioners to certify that "in their judgment no fraud or evasion was intended by the party "making such omission, and it shall be lawful for any Judge of "such Court, on a summary application, to stay such proceedings "on such terms as he shall think fit; or if such person shall have "delivered an imperfect Statement or Schedule, and shall give "to the Commissioners a sufficient reason why a perfect State- "ment or Schedule cannot be delivered, the said Commissioners,

"being satisfied therewith, shall give further time and so from "time to time, for the delivery of such Statement or Schedule; "and such person shall not be liable to any penalty for not having "delivered such Statement or Schedule within the time before "limited, in case such person shall have delivered as perfect a "Statement or Schedule as from the nature of the case he was "enabled to give, and so from time to time as long as the Com-"missioners shall grant further time as aforesaid."

It is admitted that the Respondent did not deliver any rectifying or additional Statement or Schedule; that the Commissioners have not made any certification; and that, in short, Section 129 has not been and cannot now be invoked. Mr. Till maintains that his statutory duty was completely discharged by returning a declaration or statement, although that declaration or statement was negligently untrue and inaccurate. This contention has been confirmed by the Court of Appeal.

I now turn to the Master of the Rolls' reasons, to which I have alluded. The proposition of the learned Judge is that Section 55 "applies only to non-delivery as distinct from delivery of an im-"perfect or inaccurate statement."

The first point mentioned in support thereof is (1) "The Act "in other sections speaks of a person as having delivered 'such "account as aforesaid,' although it is false (see Section 68 and "Section 178)."

My Lords, I have looked at the sections referred to, and it humbly appears to me that there would be no real inconsistency, even although Section 55 had stated in terms that the taxpayer was to deliver a true and accurate statement, in making subsequent provision imposing penalties for the delivery of "false or "fraudulent" accounts, statements, and so forth. The main duty imposed being to make statements which are true and accurate, it in no way appears to me inconsistent with the duty of making them true and accurate that "every Person who shall "wilfully deliver any such Account as aforesaid which shall be "false" shall be liable to a penalty. By "such account as "aforesaid" it can, of course, be maintained that there is a repugnancy in language between "such true and accurate "account" and "which shall be false," but the real meaning of the language employed in different sections of the Act of Parliament is to make operative both a duty and a penalty, and this is done quite simply by treating the phrase "such account as afore-"said which shall be false" as equivalent to the providing of a penalty for the falsehood of that which was bound to be returned as true. It purported to be true, it turned out to be false, and all that the sections relied upon provide is simply to penalise wilful delivery of a false account.

The second point mentioned of the Master of the Rolls is as follows: "The words 'as aforesaid' naturally refer to Section "48, where the words are 'make out such lists, declarations or "statements as may be applicable to such person'; that is to say "lists, declarations or statements of the character appropriate to

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"the particular person and nothing more. To avoid misconception I may add that a document may be so illusory that the tribunal would be justified in holding that there had been no delivery, but no such case arises here."

My Lords, I can only say that it appears to me to be the sounder view that the words "as aforesaid" refer to all the previous sections dealing with the list, declaration or statement, including very particularly Section 52. I fail to understand why reference in Section 55 should be held to be made to Section 48 and not to the later and nearer section, viz., Section 52. It provides actually what the statement is to be, and expressly that it is to be true and accurate. I cannot bring myself to understand why in Section 55, declaring the penal consequences of not delivering "any List, Declaration, or Statement as aforesaid," it should be permissible to omit the reference to Section 52, which answers the reference of the words "as aforesaid" by telling what and what manner of statement is not to be refused, neglected, or delayed.

But it humbly appears to me that Section 48 does not bear the construction put upon it by the Court of Appeal. The learned Master of the Rolls says "the words 'as aforesaid' naturally refer to Section 48, where the words are 'make out such lists, declarations, or statements as may be applicable to such person.'" My Lords, no doubt these words do occur in the latter portion of Section 48, that portion dealing with the case of refusal to make out such statements, etc., "as may be applicable to such person." But, my Lords, what are the statements there referred to? They are mentioned in the earlier portion of Section 48 itself, which deals with the notice demanding the return, and it does so in these words: "Requiring every such person to prepare and deliver, in manner directed by this Act, all such Lists, Declarations, and Statements, as they are respectively required to do by this Act." This, as I say, is the language of Section 48 itself. Where and how is it that they are so "required"? It is under Section 52, and the requirement is to deliver "a true and accurate statement." The three sections accordingly, Sections 48, 52 and 55 run accurately together. I only add with regard to this point, and the use of the word "illusory" by the Master of the Rolls and the other learned Judges of the Court of Appeal, that if by the word "illusory" be meant something seemingly accurate but in fact deceptive, that does not, in my humble judgment, render the return no return, but it renders it an untrue and inaccurate return, and I do not think the reason is supported by the reference to that term.

The third point is "The Act contains provisions not of a penal character for rectifying any omission or wrong statement in a Statement or Schedule (Section 129)."

My Lords, I regret that I am compelled very strongly to differ with regard to the inference to be derived from Section 129. The provision by Statute of a means of escape from penal consequences on convincing the authorities that there was no fraud, and that the error was excusable, seems to me exclusively to point to the initial duty having been to make a true and accurate

statement. Both in construing and in administering this Act of Parliament it would appear to me to be a strong, and, indeed, extraordinary thing, to hold that the method of arriving at a true and accurate basis of taxation was to say to the taxpayer: You may deliver anything, true or untrue, accurate or inaccurate, and thereupon you may proceed in the direction of accuracy by appeals to the authorities, presumably on the eve of possible proceedings of a penal character, to permit correction of what was initially wrong. The simpler and better construction of the Statute would appear to be that when a taxpayer is required to make a statement "as aforesaid" he is to make it true and accurate, and from the administrative point of view this would enable all the authorities to start departmental work upon the natural and business-like assumption of a first datum of accuracy.

The fourth point is as follows:—"The Act imposes a penalty "on a false or fraudulent statement which is less severe than "that which on the other hypothesis is imposed upon an honest mistake (Section 178)."

This, my Lords, is well worthy of consideration. The Act itself in its course is directed against great varieties of irregularities, inaccuracies, omissions, delays, and fraudulent and negligent practices. Mr. Till, in his careful argument, went through the relevant sections, and it became quite apparent that it would be unsafe to deduce from them any view that penalties were graduated in this Inland Revenue Act on any scale of moral delinquency. One administrative reason may be referred to, namely this: totally irrespective of the presence or absence of fraud, a defect in certain particulars or returns, if easily passed over, or unless heavily punished, might become widespread and habitual, and so cause great interruption to the efficiency of departmental work. I think this observation apt in reference to the return in question here, which forms, in my view, a cardinal and fundamental part of the claim of taxation. I observe also that the mitigations possible under Section 129 *pro tanto* dissipate any argument grounded on comparative severity.

The fifth point stated is as follows:—"The proviso in the "middle of Section 55, dealing with the case of trustees acting "on behalf of parties chargeable, presupposes non-delivery of "any statement, and then authorises a delivery after prosecution "of an imperfect list."

My Lords, this view seems to be inconsistent with the provisions and terms of Section 55 itself. That Section, my Lords, does not appear to me to presuppose "non-delivery of any statement" by trustees. Its provisions are expressly that if a trustee "shall "deliver an imperfect list," &c. . . . "declaring himself "unable to give a more perfect list." The point need not be further referred to, except to add that this provision as to trustees confirms the view of Section 55 to the effect that under it accuracy is expected all round, but that in the case of trustees, who may not have access to the information which presumably would be in the

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possession of an ordinary taxpayer dealing with his own gains and profits, special provisions for dealing with delay or imperfections not unnaturally occur.

The sixth head is: "The Revenue is protected by the power possessed by the Commissioners to assess a person making default (Section 113), and to surcharge. (Sections 161, 162.)"

My Lords, the power of assessment and surcharge does not appear to me to assist the construction of Section 55. Such powers are inserted in the Act, simply because, in addition to all kinds of penalties, the Inland Revenue must in-gather taxation, and if the taxpayer will not furnish the information himself, some means must be provided of recovering the duty, and these powers are given to enable them to proceed with the best available estimate.

My Lords, my respect for the learned Lords Justices has constrained me to follow the exact lines of the investigation into these provisions which they have themselves pursued. In the result and for reasons which have already sufficiently appeared in the course of the inquiry, I have come to the conclusion that the Judgment of the learned Lord Chief Justice was correct, and ought to be restored.

With regard, my Lords, to the Scotch decision of *Sawers*, I see no reason whatever for adopting the view that it was inadequately presented or imperfectly considered. The Lord Ordinary, Lord Stormonth-Darling, expresses his opinion thus —" It seems to me that when Section 55, coming as it does " immediately after Section 52, refers to any statement as afore- " said, it must be understood as meaning the true and correct " statement which is required by Section 52. Anything else " would really lead to absurdity. If a man were to put in a " piece of blank paper, and call it a statement, or if he were to " lodge a statement fraudulently and extravagantly deficient or " incorrect, then, according to the argument of the Defender, " he would be exempt from prosecution, at all events under " Section 55. The reasonable reading of Section 55 is that, if " there is a failure to deliver the kind of statement required by " Section 52, either by delivering no statement at all, or by " delivering a statement which is untrue or incorrect, then the " penalty is incurred and may be recovered in the prescribed " manner."

To the cogency, my Lords, of the Opinion of this distinguished Judge it might have been possible to add one other consideration: and that consideration is added by my learned predecessor Lord Robertson in these words—" The provision in favour of trustees " in the 55th Section does not apply directly to a prosecution " in one of Her Majesty's Courts, but it bears on the present " question, because the necessary implication of the provision " is that a trustee who gives in an imperfect return would be " liable to the penalty but for the relaxation which is enacted " in his favour, and the implication necessarily applies to every- " body else as well as a trustee."

My Lords, these *dicta* express fully and clearly my opinion as to the sound construction of the Act. In my view, *Sawers'* case was rightly decided in Scotland, and this English appeal should be allowed.

Questions put.

That the Order appealed from be reversed.

The Contents have it.

That the Judgment of the Lord Chief Justice be restored.

The Contents have it.

That the Respondent do pay to the Appellant the costs both in this House and in the Court below.

Mr. Till.—Might I be allowed to address a few words to your Lordships on the points of costs? I would submit, my Lords, that this case should be governed by the ordinary rule as to the payment and receipt of costs by the Crown. The ordinary rule, as laid down in *Johnson* v. *The King* (1904, A.C. at p. 825), is that the Court should " adhere to the practice of the House of " Lords and that in future the rule should be that the Crown " neither pays nor receives costs unless the case is governed by " some local Statute or there are exceptional circumstances justi-" fying a departure from the ordinary rule."

Lord Gorell.—Did not the Lord Chief Justice give costs against you?

Mr. Till.—Yes, I think he did.

The Solicitor-General.—Yes, and the Court of Appeal for you.

Lord Atkinson.—What was the nature of the case you referred to of *Johnson* v. *The King*?

Mr. Till.—It was a civil action following, however, a penal action. To support my application I would say that the learned Solicitor-General in the Court of Appeal, when the Judgment was given, expressed the opinion that the Defendant would not be able to recover costs in this House even if they were awarded.

Lord Atkinson.—That is, to recover costs against the Crown?

Mr. Till.—Yes.

The Solicitor-General.—No, it was quite the other way.

Mr. Till.—Now, if that is the case, I would suggest that the Crown would not avail itself of its own power to recover costs against a subject in a case where, if the subject had been successful, he could not have recovered his costs against the Crown. Now there are no exceptional circumstances here as contemplated by the Court in *Johnson* v. *The King*. The Crown has deliberately disclaimed all charges of fraud or contrivance with intent to evade the duties.

Lord Atkinson.—What has that to do with the question of costs? If the Crown are entitled to their costs are they not still entitled, although they might not accuse you of fraud?

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Mr. Till.—I say they may be entitled, but under this case of *Johnson* v. *The King* it is laid down clearly that the costs in your Lordships' House are not awarded either for or against the Crown except where there are exceptional circumstances which would justify it.

Lord Gorell.—It seems rather strange that the Crown should be brought up here at its own expense.

Mr. Till.—I only take the rule as laid down there. The Respondent, according to the Judgment of the Lord Chief Justice is an honest man. His only offence, if it is an offence, is that he has challenged the effect of Section 55 as construed by the Crown. It is a point of law which has proved to be of considerable public interest and which in the express opinion of the Lord Chief Justice was one that ought to be argued. I think under those circumstances I am entitled to ask that the costs be not awarded against the Respondent in this case—that is to say that the usual rule applies.

Lord Atkinson.—Will you kindly apply yourself to the point of whether or not the Crown have a legal right to get costs, and whether there is any practice that would prohibit them from getting them.

Mr. Till.—I have only this case to rely upon, in which apparently they state that to be the rule of this House. I can refer your Lordships to no other decision.

Lord Atkinson.—We constantly award costs in such cases. We did it yesterday in a revenue case of a similar kind.

Mr. Till.—But, my Lords, even if that is so, I would ask you to consider your decision to award costs against me. I think it was a point of law that I might have been justified in asking to have decided by this House. I think your Lordships will plainly see from reading the evidence that it was not done for the purpose of any evasion of the duty or escaping payment.

Lord Atkinson.—It is a little difficult to find any other purpose except to evade. What was the other purpose?

Mr. Till.—The other purpose was this: I contested the right of the Crown to force me to pay a statute-barred claim by producing this Section 55 and saying, "If you do not pay the "back duties we shall put this into effect." That is the whole point. It has been felt to be a grievance not only by myself but by others. The Department are not adverse to me as a dishonest man. They said they had another way of collecting this revenue from me.

Lord Atkinson.—You have many times urged that they have not charged fraud against you—that you have not been fraudulent; but that is no reason why you should not pay the costs if you have been unsuccessful, and that is the penalty of want of success generally speaking.

Mr. Till.—I cannot urge anything further. It would be a very heavy additional penalty if I have to pay the costs. I submit that for your Lordships' consideration.

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The Solicitor-General.—Your Lordships do not often allow a discussion on the question of costs in this House, and I only desire to say two things. First of all, to correct the statement made by the Respondent that I said in the Court of Appeal that he would not be entitled to recover costs if he won. What happened in the Court below before the Lord Chief Justice was this: We got costs against the Respondent; in the Court of Appeal he was the successful party and he was entitled to his costs against us. I asked for a stay of proceedings. The Court of Appeal do not often give a stay of proceedings for costs. All I said—and not unkindly to the Respondent—was this: In this particular case, having regard to the circumstances in which the Respondent stands, I do not think we shall be able to recover the costs if we are successful in the House of Lords. Mr. Till has entirely misapprehended what I said. I never said he would not be entitled to costs or that we would not be entitled to costs there. With regard to the case of *Johnson* v. *The King* they were merely discussing the old common law rule in the Privy Council which was that usually, and unless there is some Statute governing the matter, the Crown neither received nor paid costs. That is not the case here. In revenue cases there is an express enactment.

Lord Gorell.—Which covers this class of case?

The Solicitor-General.—Yes. The Act of Parliament is 22 and 23 Vic., cap. 21 sec. 21. It says: " The costs of all suits, " informations, and other proceedings and of any interlocutory " matter or proceeding on the revenue side of the Court of " Exchequer, whether in law or equity, may be adjudged, " decreed, or ordered by the Court or a Judge between the Crown " and the subject on the same principles as such costs are now " allowed between subject and subject." Another Act of Parliament is 18 and 19 Vic., cap. 90, secs. 1 and 2, which says: " In all informations instituted by the Crown " (this was one) the Crown if successful is entitled to recover costs, or the Defendant if successful. In revenue cases it is the invariable rule, as far as I am aware (and I have consulted my predecessors), that costs are invariably allowed to the one side or the other as the case may be.

Lord Atkinson.—It will not be necessary to trouble you further, Mr. Solicitor. Their Lordships awarded costs only yesterday in a revenue case, the case of *Winans* v. *The Attorney-General.*

Question put.

That the Respondent do pay to the Appellant the costs both in this House and in the Court below.

The Contents have it.