No. 401.—In the High Court of Justice (King's Bench Division).—
25th and 30th July, 1913.

Court of Appeal.—
3rd, 4th and 18th December, 1913.

House of Lords.—
21st and 22nd October and 1st December, 1914.

Brooks *v.* The Commissioners of Inland Revenue.[1]

Super-tax.—Assessment to Income Tax for previous year under Schedule D, not conclusive in estimating income for purposes of Super-tax—

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[1] Reported K.B.C. [1913] 3 K.B. 398; C.A. [1914] 1 K.B. 579; and H.L. in [1915] A.C. 478.

Taxes Management Act, 1880 (43 & 44 *Vict.*, *c.* 19), *Section* 57 (10)—*Finance* (1909-10) *Act*, 1910 (10 *Edw. VII.*, *c.* 8), *Sections* 66, 72 *and* 96 (4).

The Appellant's liability to assessment to Income Tax under Schedule D in respect of his business profits for the year ended 5th April, 1909, *was determined upon appeal before the General Commissioners to be* £6,331. *A Case for the opinion of the High Court was not demanded and the determination of the General Commissioners accordingly became final under the provisions of Section* 57 (10) *of the Taxes Management Act*, 1880.

In a return made by the Appellant for Super-tax purposes for the year ended 5th April, 1910, *the profits from his business for the year ended 5th April*, 1909, *were stated by him as* £400. *The Special Commissioners were not satisfied with that return and, under the powers conferred upon them by Section* 72 (5) *of the Finance* (1909-10) *Act*, 1910, *assessed the Appellant to Super-tax in the sum of* £8,064, *which sum included* £6,331 *in respect of his business profits for the previous year. Upon appeal against the Super-tax assessment the Special Commissioners declined to accept the Appellant's evidence as to the amount of his business profits for the year ended 5th April*, 1909, *and, holding themselves bound by the provisions of Section* 66 (2) *of the Finance* (1909-10) *Act*, 1910, *to regard* £6,331 *as the amount of the Appellant's income from that source for the year preceding the year of the Super-tax assessment, confirmed the Super-tax assessment.*

Held, *that such sum was not conclusive and binding on the Special Commissioners for the purpose of assessment to Super-tax, and that the Appellant might prove what was in fact the correct amount of his income for such preceding year.*(1)

Semble, *an Income Tax assessment would not be conclusive for the purposes of a claim of exemption or abatement.*(1)

CASE.

Stated under the Statute 43 and 44 Vict. cap. 19 sec. 59 and 10 Edw. VII. cap. 8 sec. 72 (6) by the Commissioners for the Special Purposes of the Income Tax Acts for the opinion of the King's Bench Division of the High Court of Justice.

1. At a meeting of the Special Commissioners held at the Queen's Hotel Birmingham on 7th July 1911 John Hamer Brooks (hereinafter called the Appellant) appealed against an assessment to the super-tax made upon him for the year 1909-10 ended 5th April 1910 in the sum of £8,064 less the statutory allowance of £3,000.

2. The Appellant has for several years carried on the business of waste dealer as sole proprietor thereof at Brookbottom Mossley in the County of Lancaster and has been assessed to income tax in respect of the profits

(1) This decision has been overruled by the provision as to the estimation of total income for income tax and super-tax purposes contained in Section 18 of the Finance Act, 1915, (see now Sections 5 (2) and 18 of the Income Tax Act, 1918).

derived therefrom; he is also in receipt of income from other sources. For the year ended on the 5th day of April 1909 the Appellant was assessed to income tax Schedule D in respect of the profits of such business in the sum of £400 by first assessment and in the further sum of £3,600 by an additional first assessment making altogether a total of £4,000. He appealed against the said additional first assessment of £3,600 to the Commissioners for General Purposes for the Division of Middleton in the County of Lancaster who on the 9th May 1910 determined as a matter of fact that the amount of the profits of the aforesaid business on the average of the three preceding years and in accordance with the provisions of the Income Tax Acts was £6,331. As it appeared to the said Commissioners for General Purposes that the Appellant ought to have been charged and assessed to an amount beyond the sum of £4,000 as assessed viz. on a total sum of £6,331 they thereupon charged the Appellant in an additional sum viz. £2,331 making a total sum of £6,331.

3. The Appellant did not demand a case under Section 59 of the Taxes Management Act 1880 for the opinion of the High Court thereon as therein provided and the duty on the said assessment of £6,331 was duly paid by him.

4. On the 10th June 1910 the Special Commissioners issued a notice to the Appellant requiring him to make a return of his total income from all sources for the purposes of assessment to super-tax for the said year ended 5th April 1910 in pursuance of Section 72 (2) of the Finance (1909-10) Act 1910 and the Appellant delivered a return dated the 20th August 1910 in which he declared his income from the said business of a waste dealer to be £400 and his total income from all sources to be the sum of £2,039 3*s*. 4*d*. The Special Commissioners were not satisfied with that return and accordingly made an assessment according to the best of their judgment under Section 72 (5) of the said Finance (1909-10) Act 1910 in the sum of £8,064 as including £6,331 in respect of the profits of his said business and £1,733 income from other sources.

5. The question arising in this Case relates solely to the item £6,331 aforesaid; no question arises with reference to the said balance (£1,733) which for the purposes of this Case may be accepted as correct as forming part of the Appellant's income.

6. The Appellant at the hearing of his appeal against the said assessment to super-tax contended that the said assessment or charge amounting to £6,331 under Schedule D mentioned in paragraph 2 hereof did not truly represent the assessable income of his said business as waste dealer but was greatly in excess of such income and that the over assessment by the aforesaid General Commissioners was in the nature of a penalty imposed by them in respect of alleged incorrect returns made by him for the purpose of assessment to income tax for several years prior to the said year ended 5th April 1909 and the Appellant offered to adduce in evidence accounts relating to the business to show what his actual income was from the business " for the previous year " viz. for the year ended 31st October 1908 being the date immediately preceding the 5th April 1909 to which the accounts of the business of the Appellant were made up.

7. On behalf of the Commissioners of Inland Revenue it was contended that the said assessment or charge amounting to £6,331 determined as

aforesaid on appeal for the year 1908-9 ended 5th April 1909 being the year previous to the year to which such super-tax assessment related was to be taken to be the income of the Appellant from that source for the purpose of super-tax for the year 1909-10 ended 5th April 1910.

8. Having duly considered the facts and the arguments adduced before us we did not accept the statements of the Appellant set out in paragraph 6 hereof and we declined to receive the said accounts in evidence as we were of opinion that the said accounts were unnecessary and immaterial the provisions of Section 66 (2) of the Finance (1909-10) Act 1910 rendering it obligatory on us to regard the sum of £6,331 as the Appellant's income from his business as waste dealer at Mossley for the purposes of the super-tax for the year 1909-10 ended 5th April 1910. We accordingly confirmed the assessment to the super-tax in the sum of £8,064 less the statutory allowance of £3,000 as aforesaid.

9. The Appellant thereupon expressed his dissatisfaction with our decision as being erroneous in point of law and in due course required us to state a case for the opinion of the High Court pursuant to 43 & 44 Vict. cap. 19 sec. 59 (1) and 10 Edw. VII. cap. 8 sec. 72 (6) which case we have stated and do sign accordingly.

10. The question upon which the opinion of the Court is desired is whether in the circumstances the provisions of Section 66 (2) of the Finance (1909-10) Act 1910 rendered it obligatory on us to regard the said sum of £6,331 determined as set forth in paragraph 2 hereof as the Appellant's income from his business as waste dealer at Mossley for the purposes of the super-tax for the year 1909-10 ended 5th April 1910 and also whether the aforesaid proffered evidence was rightly rejected.

CHAS. H. RICKMAN,
H. W. PAGE PHILLIPS, } Commissioners for the Special Purposes of the Income Tax Acts.

49, Wellington Street,
Strand, London, W.C.,
27th March, 1912.

The Case was argued on the 25th July, 1913, before Mr. Justice Horridge, when Mr. F. Brocklehurst appeared as Counsel for the Appellant, and the Attorney-General (Sir Rufus Isaacs, K.C., M.P.) and Mr. W. Finlay appeared as Counsel for the Crown. Judgment was delivered on the 30th July, 1913, against the Crown, and the Case ordered to be remitted to the Special Commissioners.

JUDGMENT.

Horridge, J.—In this Case the Commissioners for Special Purposes, in ascertaining the total income of the Appellant for the purpose of Super-tax, have held themselves, as regards the item of £6,331, a portion of the total assessment, bound by the decision of the Commissioners for General Purposes for the division of Middleton, holding that that amount was

the amount in respect of which the Appellant ought to be assessed as the profits of his business on the average of the three years preceding the year ending 5th April, 1909. The substantial question, therefore, before me is whether or not in arriving at the total income for the purpose of Super-tax the Special Commissioners are bound to accept the assessment under Schedule D of the General Commissioners for the purposes of Income Tax at 1*s.* 2*d.* in the £, or whether they ought to enquire afresh and re-assess the Appellant under that Schedule.

There was a point made under paragraph 6 of the Case that the Appellant had only offered to adduce in evidence accounts relating to his business which showed what his actual income from his business was for the previous year, and, therefore, in any event the Commissioners for Special Purposes would be entitled to say that this evidence was not relevant and that he ought to have tendered proper evidence of the average for three years. It was, without argument, conceded on behalf of the Appellant that the evidence tendered was not the right evidence, and the Attorney-General consented not to press this objection and was willing, if I decided that the Special Commissioners were not bound by the decision of the General Commissioners, that the Case should go back to the Special Commissioners to enable the Appellant to tender proper evidence.

The argument on the main question on behalf of the Appellant was that there is nothing in the provisions of the Finance (1909-10) Act, 1910, which makes the decision of the General Commissioners binding in respect of Super-tax, and reliance was mainly placed upon the Case of *Wylie Hill* v. *Commissioners of Inland Revenue* ([1912] S.C. 1246).

On behalf of the Crown it was contended that Super-tax is additional Income Tax, and that as, by Section 66 (2) of the Finance (1909-10) Act, 1910, it is provided as follows: " For the purposes of the super-tax, the " total income of any individual from all sources shall be taken to be " the total income of that individual from all sources for the previous " year, estimated in the same manner as the total income from all " sources is estimated for the purposes of exemptions or abatements " under the Income Tax Acts," it is necessary to look at the manner in which income is estimated for the purpose of exemption or abatement. The provisions with regard to exemptions from Income Tax are contained in Section 163 of the Income Tax Act, 1842, which provides that such exemptions shall be claimed and proved, and the proceedings thereupon shall be had, before the Commissioners for General Purposes in the district where the claimant shall reside, pursuant to and under the powers and provisions by which the duties in Schedule (D) are therein directed to be ascertained and charged, but nevertheless subject to the rules and directions thereinafter contained. Directions are contained in Section 164 of the same Act, which enacts that every person claiming to be entitled to such exemption shall deliver or cause to be delivered to the assessor of the parish or place where such claimant shall reside a notice of his claim for such exemption together with a declaration and statement signed by such claimant and in such form as may be provided under the authority of that Act. By Section 190 of the same Act it is provided that the Schedule marked G and the rules and directions therein contained are to be observed. By Schedule G, Rule 17, a declaration is to be made of " the amount of value or property or profits returned

" or for which the claimant hath been or is liable to be assessed." The provisions with regard to abatement are contained in Section 8 of the Finance Act, 1898, and in the unrepealed portion of Section 28 of the Income Tax Act, 1853, the result of such Sections being to put the assessment for the purposes of abatement on the same footing as for the purposes of exemption.

The contention on behalf of the Crown was, therefore : this Super-tax is a further Income Tax, and the assessment for the purpose of the Super-tax has to be estimated in the same manner as income is estimated for the purpose of exemption or abatement under the Income Tax Acts, and, therefore, there being in effect one tax, namely, the Income Tax, the Acts must be read in such a manner as to hold that an assessment once made under Schedule D for the purpose of Income Tax must be available and conclusive for all purposes including the purposes of the further Income Tax. Further, it was pointed out that the persons who fix the assessment for the purpose of Schedule D are the General Commissioners for the district where the trade, manufacture, adventure or concern is carried on or the profession, employment or vocation exercised, and it cannot have been intended that the Special Commissioners should have the power to revise the decision of such a body. If the decision of the General Commissioners is to be treated as being made for the purposes of Super-tax it seems clear that under Section 57 (10) of the Taxes Management Act, 1880, their decision would be final. I have set out the above contentions with a view to showing the question which was raised for my decision so as to ascertain whether or not the point is directly covered by the decision in *Wylie Hill* v. *Commissioners of Inland Revenue* (*ubi supra*).

There are I think clearly in the judgment of Lord Johnston statements which conclude the question. He says at page 1250 : " Nor is there " anything to indicate that the Special Commissioners are bound by the " previous assessments or barred from going behind them "; and referring to the words of Section 66 (2) it says : " It is to be estimated, not " is to be taken as it has been estimated and, accordingly an estimate " in manner prescribed is required." Further, he used the following language : " That Super-tax and everything connected with it is some- " thing quite apart from Income Tax is, if it were necessary, clearly " shown by the four special Rules which are appended to the Sub-section " (2) which I have just examined. I therefore think that the Special " Commissioners are bound to consider the Appellant's demand in respect " of his farming losses." As regards the decision, it is quite true that it is a decision with respect to an application for a deduction to be allowed from an assessment for Income Tax made by the General Commissioners, which had not been applied for within the proper time so as to obtain relief as regards the assessment for Income Tax as distinguished from Super-tax, but it is a decision of a full court that the assessment for the purpose of Income Tax, as distinguished from Super-tax, is not binding upon the Special Commissioners in making their assessment for the purposes of Super-tax.

In answer to this Case the judgment of Parker, J., in *Bowles* v. *Attorney-General* (1912, 1 Ch. 123) (1) was strongly pressed upon me,

(1) 5 T.C. at p. 688.

but I think that, although that decision does decide that Super-tax is in fact an Income Tax, it merely decides that being an additional Income Tax it is within the words " duties of income tax " within the meaning of Section 30 of the Customs and Revenue Act, 1890, and does not seem to me to be a decision directly on the point which I have to decide. In the case of In *re Hartland* ([1911] 1 Ch. 459) Swinfen Eady, J., at page 466, says: " When the exact point has been raised in a special " Case and fully argued and decided by an unanimous decision of the " Court of Session, and when the question is simply one that turns upon " the construction of a statute which extends to Scotland as well as to " England, I think my duty as a judge of first instance is to follow that " decision, leaving the parties, if so advised, to have it reviewed elsewhere." The Finance (1909-10) Act, 1910, is a statute which extends to Scotland as well as to England, and the decision of the Court of Session was an unanimous judgment of Lord Johnston, the Lord President, and Lord Kinnear. It seems to me to deal expressly with the point raised for my decision in this Case, and I feel it is my duty, without expressing my view of the point dealt with, to hold that this appeal ought to be allowed and the Case remitted to the Special Commissioners.

As regards the costs, it was not contended that the evidence tendered by the Appellant before the Special Commissioners was proper evidence or evidence that they could have accepted or acted upon, and I therefore do not think I ought to order the Crown to pay the costs of the appeal, but that each party ought to pay their own costs.

I think the practice is, Mr. Finlay, that that Case will go up before it comes back to the Commissioners? I have only held myself bound.

Mr. W. Finlay.—If your Lordship had expressed no opinion the position would be different, but, having held yourself bound, I think we should probably desire to raise it elsewhere.

Horridge, J.—What seems to me is that it is a proper course to make an Order to send it back to the Commissioners, but I should think it will not go back to them.

Mr. W. Finlay.—I think not, My Lord. We shall give notice of appeal within a reasonable time.

Horridge, J.—Do you want leave to do that?

Mr. W. Finlay.—No, my Lord, I think not.

The Crown having appealed, the Case came on for hearing in the Court of Appeal before the Master of the Rolls, and Swinfen Eady and Phillimore, L.JJ., on the 3rd and 4th December, 1913, when judgment was reserved. The Attorney-General (Sir John Simon, K.C., M.P.), the Solicitor-General (Sir Stanley Buckmaster, K.C., M.P.), and Mr. W. Finlay appeared as Counsel for the Crown, and Mr. F. Brocklehurst as Counsel for the Respondent.

On the 18th December, 1913, judgment was delivered against the Crown with costs, affirming the decision of the Court below (Phillimore, L.J., dissenting).

JUDGMENT.

The Master of the Rolls.—This appeal relates to Super-tax and involves the consideration of statutes beginning in 1842 and ending in 1910. I venture to think the time has come when all the Income Tax Acts ought to be consolidated so that it may be reasonably possible for the subject to ascertain the nature and extent of his liability.

Super-tax is imposed by Section 66 of the Finance (1909-10) Act, 1910. It is called an " additional duty of Income Tax ". It differs from Income Tax in many ways. It is not taxed at the source. It depends upon the total income of an " individual " from all sources being in excess of £5,000 a year. It is not calculated, like Schedule D, upon an average of three years. It is payable on a figure arrived at by reference to the income of the year previous to the payment. It is assessed by the Special Commissioners (Section 72) who are not the Commissioners who usually assess Income Tax.

By Sub-section (2) for the purposes of the Super-tax, the total income of any individual is to be taken to be the total income of that individual from all sources for the previous year " estimated in the same manner " as the total income from all sources is estimated for the purposes of " exemptions or abatements under the Income Tax Acts "—subject to certain special deductions upon which nothing turns in the present Case. These words refer (*inter alia*) to Sections 133, 134, 163, 164 and 190 of the Act of 1842, Sections 48 to 57 of the Act of 1880, and Sections 23 to 27 of the Act of 1907.

For the purpose of Income Tax the subject has to make a return, or statement, of his income exclusive of income taxed at its source (Section 52 of the Act of 1842). An assessment once made is—subject only to appeal—final (Section 57 of the Act of 1880). And there are provisions limiting the time within which appeals must be presented.

If the accuracy of the assessment is not disputed, there may be a claim for exemption or abatement. Schedule G, XVII, to the Act of 1842 sets forth the " lists declarations and statements of discharge or in order " to obtain exemptions ", the first of which is " declaration of the " amount of value or property or profits *returned* or for which the " claimant *hath been* or *is liable* to be assessed." The language is peculiar, but it seems to contemplate a claim for exemption *before* any assessment has been made, as well as *after*. The Commissioners in the district where the claimant resides are the persons to deal with any such claim.

The contention of the Crown is that an assessment to Income Tax under Schedule D by General Commissioners is conclusive for all purposes, and that the Special Commissioners in estimating income for the purposes of Super-tax are bound to accept that figure, and that the subject is equally bound. It is, however, admitted that every other item in the statement or return furnished by the subject is open to question.

I am unable to accept this contention. A duty is imposed by statute *upon the Special Commissioners* to " *estimate* " the total income, and for that purpose to consider the statement (if any) submitted by the subject. If the subject says that the sum upon which he paid Income Tax under Schedule D was not accurate, I see no reason why he should be estopped from raising the point. The Special Commissioners have ample powers

to check the statement and they can either allow or reject the subject's claim.

This is the single point raised in the present appeal. Brooks was assessed for the year ended on the 5th April 1909, in respect of the profits of his business at £6,331 and he paid Income Tax on that sum. In response to a notice from the Special Commissioners in June 1910, Brooks delivered a return stating (*inter alia*) that the income of his business was £400. The Commissioners declined to accept any evidence on this item and held it obligatory to treat the profits as £6,331.

Mr. Justice Horridge held that the Commissioners were wrong and I agree. The learned judge followed a decision of the Court of Session in *Wylie Hill* v. *Commissioners of Inland Revenue* ([1912] S.C. 1246). That was a Case where the Appellant has been assessed under Schedules A and B in respect of properties owned and occupied by him . He made no claim for deduction in respect of farming losses under Section 23 of the Act of 1890 and paid the full Income Tax. He was out of time for appealing under Section 23. On appeal against the Super-tax assessment, he claimed a deduction under Section 23. The Special Commissioners refused. But the judges in the Court of Session unanimously held that the Commissioners were bound to consider the claim. In principle, this is not distinguishable from the present case, and I am glad to find the view which I have expressed confirmed by the very high authority of Lords Dunedin, Kinnear and Johnston.

I think the appeal must be dismissed.

Swinfen Eady, L.J.—The question raised by this appeal is whether for the purpose of assessment to Super-tax in any year, the assessment to Income Tax under Schedule D for the previous year must be taken as conclusive and binding both on the Crown and on the subject, or whether upon an assessment to Super-tax in any year the portion of such assessment which is based upon the assessment under Schedule D for the previous year may be questioned or varied. No distinction has been drawn between Schedule D and Schedule C and Schedule E, where (in the case of Schedule E) income is not taxed at its source, but is made the subject of assessment. Super-tax is an additional Income Tax within the words " duties of income tax " in Section 30 of the Customs and Inland Revenue Act, 1890. (*Bowles* v. *Attorney-General* [1912], 1 Ch. 123).(1)

By the Finance (1909-10) Act, 1910, Section 66 (2), " For the purposes " of the super-tax, the total income of any individual from all sources " shall be taken to be the total income of that individual from all sources " for the previous year, estimated in the same manner as the total income " from all sources is estimated for the purposes of exemptions or abate- " ments under the Income Tax Acts," but with certain further deductions. See sub-sections (*a*), (*b*), (*c*) and (*d*).

By Section 72, Super-tax is to be assessed and charged by the Special Commissioners, upon whom extensive powers are conferred by the Section.

The Super-tax for any year is based upon the income of the individual for the previous year. It is not collected at its source, as ordinary Income Tax is in many cases. For the purpose of ordinary Income Tax, a

(1) 5 T.C. 685

return is not required of the subject's income taxed at the source, but only of that portion of the subject's income not so taxed. For the purpose of Super-tax a return is required of the whole of the subject's income from all sources, and the Super-tax is assessed and charged on the whole of it, less the statutory deductions.

The income of the subject is to be " estimated in the same manner " as the total income from all sources is estimated for exemptions or abatements. This decides *the manner* in which the income is to be estimated. It is quite different from the manner in which the income of the subject is estimated for the purpose of assessment to ordinary Income Tax, when income upon which tax is paid by deduction is not included in the return. The manner is to be the same as on claims for exemption or abatement, when income from every source must be brought in, for the purpose of ascertaining whether the subject is entitled to the exemption or abatement claimed.

By the Income Tax Act, 1842, Section 190, the Schedule G with the rules and directions contained therein is to be observed by the persons to whom it applies, and Form XVII is the form to be used by a person wishing to obtain exemption. Under paragraphs 1 and 2 of Form XVII, all the income of the claimant has to be returned; paragraph 1 is the subject of assessment under Schedules B, D, and sometimes E. Paragraph 2 is all income taxed at its source. Paragraph 3 extends to deductions; paragraph 4 shows the result of the three preceding paragraphs. These detailed paragraphs point out " the manner " in which income is to be estimated for the purpose of exemption, and for Super-tax the manner is to be the same. There is no provision rendering any assessment by the General Commissioners under Schedules B, D, or E binding on the Special Commissioners who assess Super-tax. The statute only deals with " the manner " in which the income is " to be " estimated." In the ordinary course of events the amount assessed to ordinary Income Tax would probably be taken as the amount to be brought into account in respect of the Schedules B, D, or E, for which the assessment was made, but not as conclusive. Indeed application may have been made for relief under Section 23 of the Act of 1890, Section 27 of the Finance Act, 1896, or Section 24 of the Finance Act, 1907, without the assessment having been amended and in such case the Special Commissioners could not properly adopt the original assessment, although remaining unaltered, but should have regard to the circumstances which have supervened since the original assessment was made, and assess Super-tax according to the altered circumstances

Again, if any person fails to make a return or the Special Commissioners are not satisfied with any return, they may, under Section 72 (5) make an assessment of the Super-tax according to the best of their judgment. There is nothing there to compel them to follow the amount previously assessed upon the taxpayer under Schedules B, D, or E so far as applicable.

I am of opinion that the assessments to Income Tax under Schedules B, D, and E respectively are not absolutely binding and conclusive for Super-tax on either the Crown or the subject. I agree with the opinion expressed by the Court of Session in *Wylie Hill* v. *Inland Revenue Commissioners* ([1912] S. C. 1246).

In my opinion the appeal fails.

Phillimore, J.—This appeal raises a question on Section 66 of the Finance (1909-10) Act, 1910, which provides for Super-tax. It arises upon a Case stated between John Hamer Brooks and the Commissioners in the following way.

Brooks was assessed for the year 1908-9 for Income Tax, Schedule D., upon his business as a waste dealer. He returned his profits upon the average of the three preceding years, at £400; but this return was not accepted and he was assessed at £4,000. He thereupon appealed to the Commissioners and it was by them determined that his income should be assessed at £6,331. He was then required to make a return for the purposes of Super-tax, and he returned his income from other sources as £1,639, and repeated his return that his income from the waste business was £400. The Special Commissioners, not being satisfied with that return made an assessment under Section 72 of the Act of 1910. By this assessment they slightly raised the sum which he had returned as income from other sources to £1,733, and in respect of Schedule D they inserted the figure for which he had been assessed on his appeal, namely, £6,331.

No question arises as to the assessment of the other sources of income but as regards assessment under Schedule D, Brooks contended that £6,331 was greatly in excess of his income, and he offered to produce certain evidence to prove this.

On the other hand the Commissioners of Inland Revenue insisted that £6,331 must be taken to be a concluded figure as well for Super-tax as for Schedule D, and the Special Commissioners took that view and declined to receive the evidence tendered by Brooks. Thereupon they were asked to state a Case and they have done so, and the questions which they have asked are, whether the provisions of Section 66 rendered it obligatory on them to regard the sum of £6,331 as Brooks' income from his business, and whether they rightly rejected the proffered evidence.

On the argument in the King's Bench Division it was admitted that the proffered evidence would not of itself, if tendered, have been appropriate, or at any rate sufficient. But the Crown desiring to take no technical objection and to have the principal point decided, it was agreed that for the purposes of the decision it should be considered that Brooks had tendered such evidence as would be appropriate to showing that the sum of £6,331 was an untrue estimate, if it was open to him to do so.

In the Court below, Mr. Justice Horridge was informed that there was a decision of the First Division of the Court of Session in Scotland which in principle determined this Case in favour of Brooks (*Wylie Hill v. The Commissioners*, 1912 S.C. p. 1246) and following precedent in such matters he thought that he ought to decide in conformity with the opinion of the Scotch Court, and, without expressing any opinion of his own, he so decided in favour of Brooks, and now the Crown is appealing.

Section 66 imposes the duty and also directs the mode of assessment. "The total income of an individual from all sources shall be taken to "be the total income of that individual from all sources for the previous "year, estimated in the same manner as the total income from all "sources is estimated for the purposes of exemptions or abatements "under the Income Tax Acts." This throws us back on Sections 163 and 164 of the Income Tax Act, 1842, and Schedule G. Section 190 of

the same Act, which provide the procedure in order to obtain exemption, a procedure which has been adapted to the provisions in respect of abatement under the Income Tax Act, 1853, and subsequent Acts.

By Section 164 of the Act of 1842 a claimant seeking exemption is, with his claim, to send a declaration and statement setting forth all the sources from which his income arises, and the amount, and any charges thereon, and any sum which he may have charged or been entitled to charge against any other person for duty, or which he might have deducted or retained out of his payments. The Inspector or Surveyor is to peruse this declaration and statement and make certain inquiries; if he approves it, the Commissioners may allow the exemption; if he does not approve, the merits are to be heard by the Commissioners for General Purposes, who are to determine thereon. It follows that the declaration and statement—for which words in later Acts and Forms I think the word " return " is substituted—will contain or may contain items under several of the schedules. Presuming that the claimant is carrying on some profession or business, his modest income therefrom will be assessed under Schedule D. If he has an income from dividends and so forth which are taxed at the source and which come under Schedule C, he will have to collect and enumerate them. He may also have some income under Schedule A, or, conceivably, under Schedules B or C.

Schedule G provides, in not very grammatical language, that the return should contain " First, Declaration of the amount of value or " property or profits returned or for which the claimant hath been or is " liable to be assessed "; secondly, of the amount of income taxable at the source; thirdly, of any annual payment that he has to make out of his property or profits; fourthly, a statement of the amount of his income derived according to the three preceding declarations; and fifthly, statements of any payments which he has to make and out of which he can deduct or retain duty, or a charge which he can make against any one else for such duty.

It would seem that there might be room for legitimate diversity of opinion between the taxpayer and the Crown leading to an appeal to the Commissioners for General Purposes upon matters contained in declarations 2, 3 and 5. There will also be room for similar divergence of opinion upon some at least of the items in the first declaration. The Inspector or Surveyor may say that the claimant has not included all his income taxed at the source under Schedule C, or his income under the other Schedules assessed or unassessed, and in this way the whole return may be a matter of appeal, because, at least, some of the items which compose it will be appealable matters.

This leaves for consideration the question whether the item under Schedule D will be, if it has been already assessed, open to re-examination upon the appeal.

Under the first declaration the claimant is to state the amount of value or property or profits returned, or for which he has been or was liable to be assessed. If he has been already assessed in respect of one item, to wit, under Schedule D, can he make a return other than one which conforms to the assessment? And, whether he can or not, will he not be as to this item concluded by the assessment whether already made when he makes his claim, or made subsequently?

As a contribution to the answer to this question, the Attorney-General pointed out the great inconvenience of allowing this item to be re-opened. The claimant, in case of dispute, appeals to the Commissioners for General Purposes for the district where he resides. They are the people best qualified to judge of his total income. But the assessment under Schedule D is made by the Commissioners of the place where he carries on his business or profession, very possibly a different body.

It would be unreasonable that the Commissioners for the district where he resides, who have not the same means of informing themselves as the Commissioners of the district where he carries on his business, should sit on appeal from the last-mentioned Commissioners, and that a further appeal should thus be given in the case of small incomes and small assessments, which does not exist for taxpayers subjected to large assessments.

It seems to me there is great force in this point.

However this may be, there is a broader ground. If the two parties to a controversy have had the matter in dispute finally determined between them by the ultimate tribunal, they ought not, nor ought either of them, to be allowed to re-open that dispute on any such ground as that the matter which has been decided subsequently becomes an item in another account, even though this other account has, in respect of its other items, or its casting, to be inquired into by a fresh tribunal. If this be the construction of the statutes when a taxpayer applies for exemption or abatement, Section 66 of the Act of 1910, by the words already quoted, provides that for Super-tax the total income should be "estimated in the same manner"; and by Section 72, Subsection (6) the appropriate provisions of the Income Tax Acts as to procedure are, with the necessary modifications, applied to the assessment and recovery of Super-tax.

Early in the argument I was struck by a difficulty which subsequent consideration has removed. The mode of arrival at the income of the Super-tax payer is conventional, and when you come to Super-tax there is in respect of so much of his income as is assessable under Schedule D conventional assessment upon conventional assessment.

In ordinary cases under Schedule D the income for the fourth year is arrived at by taking the average of the income of the three previous years. For Super-tax the payer is assessed and pays upon his income of the fifth year, measured and conventionally measured by his income of the preceding year. His income, as the statute says, is to be taken to be his total income from all sources of the previous year. Assuming that the income of a taxpayer is rapidly falling so that his income of the fourth year is much below the average of the three previous years, and his income of the fifth year much below the fourth and remembering that Super-tax is not payable because the taxpayer had a large income in the preceding year but is a tax on the income of the current year, measured by the income of the preceding year, very great hardship might ensue to the owner of a rapidly falling income.

I do not think that the first answer which the Attorney-General gave to this objection was satisfactory. He drew attention to the fact that there was another side to the shield and that the Crown would lose in respect of a taxpayer whose income was rapidly rising. We are not

dealing with a gaming establishment in which the Crown is croupier or banker, and the taxpayers are gamblers willy-nilly and it is poor consolation to A, whose income is falling while his tax burdens continue, to be told that his more prosperous neighbour, B, is not even paying his rateable share of taxation.

But I think that the provisions of Section 134 of the Income Tax Act, 1842, which enables in certain very striking cases relief to be given upon an assessment under Schedule D with a repayment, if necessary, of duty and an amendment of the assessment, would meet some of the more striking cases of hardship, for I conceive that upon an amendment of the assessment under Schedule D would follow a corresponding amendment of that item in the assessment for Super-tax.

And with regard to the cases of gradual diminution of income, Section 24 of the Finance Act, 1907, makes a somewhat similar provision, and though it is true that the Section does not contain any direction to have the assessment amended such as one finds in Section 134, and did find in Section 133 (now repealed) of the Act of 1842, still I think the words "he shall be entitled to be charged with the actual amount of the profits "or gains so arising instead of on the amount of the profits or gains so "computed," would avail him to have his original assessment treated as superseded *pro tanto*, and that at any rate, the Special Commissioners would have the duty, under Subsection (7) of Section 72, to amend their assessment accordingly. In the same way he will get relief in cases falling under the Act of 1890 according to the Case of *Wylie Hill* v. *The Commissioners* (1) in the Court of Session. This decision, which has been supposed to be inconsistent with the Case of the Crown, may well stand though the judgment in our present Case should be in favour of the Crown. There the taxpayer had a claim to relief and a return of duty in respect of another provision in the Income Tax Acts *in pari materia* with the provisions in Section 24 of the Act of 1907.

But the particular relief had to be claimed within a certain period. The applicant had not troubled when it was a question of ordinary Income Tax, but when he found himself by a retrospective statute—for such is the Finance Act of 1910—burdened with Super-tax, he not unnaturally sought to collect all the relief that he could and asked not that his assessment under Schedule B might be reopened but that it might be taken as modified when introduced as an item in the account for Super-tax by the relief which he could have had in respect of it if he had asked for it in time. His was a very reasonable demand, which I should have thought the Crown would have done well to comply with, if it was possible in any way to waive the objection of time.

But on the Crown choosing to fight, the decision is not that the assessment was to be altered, for the assessment remains in these cases, but that the item was to be carried in to the Super-tax account as a qualified item, assessment minus authorised repayment.

No doubt there are statements in the reasons given by Lord Johnston on behalf of the Court which go very much farther and appear to treat the matter as if every item could be re-opened in an assessment of Super-tax. With those expressions I respectfully disagree.

Upon the whole, I am of opinion that the appeal succeeds, but as my colleagues are of an opposite opinion, the appeal will be dismissed.

(1) [1912] S.C. 1246.

The Master of the Rolls.—The appeal is dismissed with costs.

Mr. W. Finlay.—I apprehend, my Lord, that that means the costs in this Court. Mr. Justice Horridge directed that there should be no costs below, and I suppose that your Lordship does not interfere with that.

The Master of the Rolls.—That is not appealed against.

Mr. W. Finlay.—No, there is no appeal against that, my Lord, therefore that stands. The appeal is dismissed with costs in this Court?

The Master of the Rolls.—Yes.

Notice of Appeal having been given by the Crown, the Case came on for hearing in the House of Lords on the 21st and 22nd October, 1914, before Earl Loreburn and Lords Atkinson, Parker of Waddington, Sumner and Parmoor, when judgment was reserved. The Attorney-General (Sir John Simon, K.C., M.P.), the Solicitor-General (Sir Stanley Buckmaster, K.C., M.P.), and Mr. W. Finlay, K.C., appeared as Counsel for the Crown, and Mr. Walter Ryde, K.C., and Mr. F. Brocklehurst as Counsel for the Respondent.

On the 1st December, 1914, judgment was delivered against the Crown, with costs, affirming the decisions of the Courts below.

JUDGMENT.

Earl Loreburn.—My Lords, I should have been glad to accept the Attorney-General's argument, because I cannot help feeling that the construction rightly placed on this Act by the Court of Appeal is likely to result in considerable inconvenience without any corresponding benefit. But upon the whole I cannot escape from the conclusion at which they felt themselves bound to arrive.

The substance of the controversy is this. In order to fix ordinary Income Tax the General Commissioners must find what is the average of gains and profits made in his business by a particular trader during the specified three years. When this figure has been determined on an appeal the determination is final under Section 57 (10) of the Act of 1880. In order to fix Super-tax, which is declared to be a duty of Income Tax, the amount has to be estimated by Special Commissioners, and they are required to estimate the total income in the same way as in case of exemptions from the ordinary Income Tax. The tribunal is different but the principle is to be the same. In the present Case Mr. Brooks' average income for the three years from his business was determined by the General Commissioners on appeal to be £6,331. When he was required to pay Super-tax, it was necessary to ascertain this average income for the same three years, because the result would be a part of his total income upon which he had to pay Super-tax. But, being dissatisfied with the determination of the General Commissioners, he claimed that he was not bound by this determination for Super-tax purposes, and requested the Special Commissioners to investigate it over again and come to their own conclusion. The Crown claimed that he was bound by what had been already determined. We have to say whether he is bound or not.

I do not think we can say that, apart from statute, there is an estoppel, because Sections 66 and 72 of the Act of 1909-10 tell us that the figures for Super-tax are to be estimated by the Special Commissioners. When one Act requires a particular figure to be fixed by one set of men, and then requires a larger whole which includes that particular figure to be fixed by another set of men, the specific direction will prevail. Therefore the sole question is whether, on the construction of the Act of 1909-10, which brought Super-tax into existence, the Special Commissioners are obliged to accept the determination of the General Commissioners.

It was argued that the whole of the Income Tax Acts are incorporated with the Act creating Super-tax, and that, therefore, Section 57 (10) must be applied and the determination of the General Commissioners on the figure in question is final and binding on the Special Commissioners. It is quite possible, indeed probable, that this was intended; but when I look at Section 57 (10) it seems to me that it does not say more than that the determination is final as regards an assessment for that tax, and no further appeal upon it is to be entertained by that tribunal. The language used is as follows:—"Appeals once determined by the General Commissioners or by the major part of them present on the day appointed for the hearing of appeals shall be final; and neither the determination of the Commissioners nor the assessment then and there made thereupon shall be altered at any subsequent meeting or at any other time or place except by order of the High Court when a case has been required, as provided by this Act."

It does not say that the determination is to be final for all purposes. When, therefore, another tax is imposed by another statute, whether it be a duty of Income Tax or not, and a different tribunal is directed to estimate the same figure as part of a greater whole, I do not read the Section as imposing upon the new tribunal a duty to accept the determination of the old. It seems a great pity that such a piece of work should be done over again and an unnecessary vexation and expense to the Crown, but the possibility has been left open in the wording of a difficult Act dealing with an intricate subject.

I think this appeal should be dismissed.

Lord Atkinson.—My Lords, I concur. The Respondent was, in respect of the balance of the profits of his business for the year ending 5th April, 1909, assessed to Income Tax under Schedule D in the sum of £400 by a first assessment, and in the further sum of £3,600 by a second assessment. He appealed against this second assessment to the Commissioners for General Purposes for the Division of Middleton in Lancashire, who raised his assessment to £6,331. He did not apply under the fifty-ninth Section of the Taxes Management Act, 1880, to have a Case stated, but paid the tax on this sum of £6,331. On the 10th June, 1910, the Special Commissioners required him to make a return of his income from all sources for the purpose of assessment for Super-tax for the year ending the 5th April, 1910, in pursuance of Section 72, Sub-section 2, of the Finance Act of 1910. The Respondent, in reply to this requisition, declared that his income from his business was £400 per annum, and his income from all sources to be £2,039 3*s.* 4*d.* per annum. The Special Commissioners being dissatisfied with this return, in exercise of their powers under Sub-section 5 of Section 72, assessed

him in the sum of £8,064 as his total income, including the sum of £6,331 in which he had already been assessed by the said Commissioners for General Purposes.

In reference to this last item, it was, on behalf of the Appellants, contended that this assessment so made upon appeal was, as it were, a *chose jugée* and that the Special Commissioners were bound under the provisions of Section 66, Sub-section 2 of the Act of 1910 to take that sum as the income of the Respondent from his business for the purposes of the Super-tax for the year ending 5th April, 1910. The Commissioners yielded to this contention, and held themselves precluded from receiving the evidence which the Respondent tendered to show that this assessment was erroneous, and that his true income from his business was £400, as he had declared.

The sole question for decision upon this appeal is whether these Commissioners were, upon the true construction of this Sub-section 2, right in so holding, or whether they were not bound to estimate *de novo* for themselves the amount of the Respondent's income from all sources, including his trade and business.

By the said sixty-sixth Section an additional Income Tax, styled a Super-tax, for the year commencing on the 6th April, 1909, on the excess over £3,000 per annum of the income of any individual whose total income from all sources exceeds £5,000 per annum, is imposed.

It may well be, and no doubt often is, that the only source of income of such a person is the balance of the profits and gains of his trade, business, or profession in respect of which he is assessable to ordinary Income Tax under Section 100, Schedule D, of the Act of 1842. No indication, however, is given in this Section that the amount of these profits and gains determined for the purposes of that Schedule is to be accepted without investigation by the Special Commissioners as the true amount of the taxpayer's income from the profits of his trade or business. On the contrary, Sub-section 2 of this sixty-sixth Section prescribes " that the total income of any individual from all sources shall " be taken to be the total income from all sources, *estimated* in the same " manner as the total income from all sources is *estimated* for the pur- " poses of exemptions under the Income Tax Acts." No distinction is here made as to the manner in which the income from different sources, assessed under the different Schedules of the Act, is to be dealt with. The total is to be " estimated ".

Section 72 of the Act of 1910 prescribes that the Super-tax shall be assessed and charged by the Commissioners for the Special Purposes of the Act relating to Income Tax, referred to as the Special Commissioners. It is upon them the duty is cast of " estimating " the taxpayer's total income. To aid them in this, the taxpayer is required to make a return of his total income. That must, I think, mean what he, according to the best of his belief and judgment, considers his total income to be, and not what some persons other than those Special Commissioners may have decided that it or any part of it is. And if he fails to make this return or the Special Commissioners are not satisfied with any return he may make, then they are empowered to make an assessment of the Super-tax, not be it observed, according to what some other body, or some other persons may have determined, but to the best of their own judgment.

In the case of a man whose business or profession is his sole source of income, it is obvious that if the contention of the Appellants be right, the Special Commissioners would estimate nothing, make no assessment according to the best of their own judgment, but without thought, investigation, or inquiry, merely adopt and register the conclusion of others.

Some reliance was placed on the provisions of Section 57, Sub-section 10, of the Taxes Management Act, 1880, to the effect that the decision on appeal of the Commissioners for General Purposes shall be final, and that neither their determination " nor the assessment then and there " made thereon shall be *altered at any subsequent meeting*, or at any " time or place except by Order of the High Court, when a case has been " required as provided by that Act." [The italics are mine.] This is by no means the only, or the earliest provision as to the finality of such determinations and assessments, though perhaps it is the most explicit. By Section 126 of the Income Tax Act of 1842 the decisions on appeal of the Commissioners for General Purposes in reference to Schedule D are made final and conclusive. So likewise, by Section 130, are the decisions of the Special Commissioners on the same matters when the appeal is made to them instead of to the former Commissioners.

When one turns to the special Sections of the Act of 1842 dealing with the claims to exemptions, numbered 163-167 inclusive, one finds a system of procedure prescribed which takes no account whatever of the determinations and assessments declared by the earlier Sections to be final and conclusive; on the contrary, they clearly indicate that a new inquiry and investigation into the merits of the claim is to take place under the set of supplementary and special rules set forth in Section 164. But the system of procedure thus prescribed is the very thing which, according to the provisions of Section 66, Sub-section 2, of the Act of 1910, is to be followed in estimating the total income of the taxpayer for the purposes of the Super-tax.

This Section 164 requires that the person claiming an exemption shall serve upon the assessor of his parish a notice of his claim, together with a declaration and statement in such form in effect as is by Section 190 directed, declaring and setting forth all the sources of his income, the particular amount arising from each source, any interest or payment charged thereon whereby the claimant's income would be diminished, and every sum which the claimant may have charged or be entitled to charge or to deduct or retain under the authority of the Act.

When Schedule G, referred to in Section 190, head XVII, is looked at, it will be found that the declaration must contain, amongst other things, a declaration of the amount of value or property or profits returned or for which the claimant has been, or is liable to be, assessed.

If the Inspector or Surveyor, who is entitled to inspect and take copies of this declaration, should not, within a time specified object to it, the Commissioners may allow the claim, and if he should object to it on the ground that he has reason to believe that the income of the claimant, and the other particulars required by the Act to be declared or set forth, are not truly or fully declared or set forth in any specified particular, then the merits of the claim for exemption are to be heard and determined upon appeal before the Commissioners for General Purposes, under and

subject to such rules and regulations and penalties as other appeals are under the Act heard and determined.

It would certainly appear to me that, if the claimant should state and declare that he was extravagantly assessed under Schedule D, the Commissioners for General Purposes would wholly fail to discharge the duty imposed upon them if they merely accepted the assessment already fixed upon appeal under this latter Schedule, and refused to permit any inquiry into its justice or correctness. That would not be a hearing and determination of the merits of the claimant's claim; and, in the case where the claimant's sole source of income was the profits of his trade would be little less than a mockery.

In my view, therefore, the provisions as to the finality of the determination of the Commissioners for General Purposes, or of the Special Commissioners on appeal, contained in Sections 126 and 130 of the Act of 1842, as well as those contained in Section 57, Sub-section 10, of the Taxes Management Act of 1880, do not mean that the determinations respectively referred to are to be final and conclusive, not only in the particular matter in which they were actually pronounced, but in all other matters and for all other purposes. As Mr. Ryde, for the Respondents, put it, correctly I think, Section 57 (10) simply means that there shall be no further proceedings before the Commissioners in the particular matter of dispute or inquiry which is the subject of the appeal. I think the words in the Sub-section "and neither the determination of the Commissioners nor the assessment then and there made shall be altered at any subsequent meeting, or any other time or place, except by order of the High Court," go to show this.

I am clearly of opinion, therefore, that the claimant was not estopped by statute from questioning in these proceedings for the *estimation* of the Super-tax to which it was sought to make him liable, the correctness of the antecedent determination as to the amount of the balance of the profits and gains of his business under Schedule D. It was not suggested, as I understood, that he was estopped at common law. It may be very absurd or illogical that the amounts of these profits and gains should be inquired into for a second time. But this is a taxing statute, and taxes cannot be imposed upon the subject under it unless in strict accordance with its provisions. The evil, if it be one, must be cured by legislation.

In my opinion, therefore, the decree appealed from was right and should be affirmed, and this appeal be dismissed with costs.

Lord Parker of Waddington (read by Lord Sumner).—My Lords, I, too, am of opinion that this appeal fails. The ordinary Income Tax for the year beginning the 6th April, 1909, is imposed by Sub-section 1 of the sixty-fifth Section of the Finance (1909-10) Act, 1910, and Sub-section 2 of that Section provides that all enactments relating to Income Tax, in force on the 5th April, 1909, shall, subject to the provisions of the Act, have full force and effect with respect to any duties of income tax thereby granted. The sixty-sixth Section of the Act imposes an additional duty of Income Tax called a Super-tax. It is chargeable for the year commencing the 6th April, 1909, in respect of the income of any individual the total of which from all sources exceeds £5,000, at the rate of 6*d.* for every £ of the amount by which the total income exceeds £3,000. The total income of any individual for the purposes of Super-tax is to be taken to be the total income of that individual from all sources for the previous

year, estimated in the same manner as the total income from all sources is estimated for the purpose of exemption or abatement under the Income Tax Acts.

If the Act had contained no further provisions, it can hardly be doubted that the authority responsible for estimating the total income of the individual, and assessing the duty thereon, would, by virtue of Sub-section 2 of the sixty-fifth Section, have been the same as the authority responsible for the assessment of ordinary Income Tax, and that all the provisions of the Income Tax Acts relating to ordinary Income Tax would have been applicable to Super-tax. But the Act does contain further provisions. It is provided by the seventy-second Section that the Super-tax is to be assessed and charged in all cases by the Commissioners for the Special Purposes of the Acts relating to Income Tax. These Commissioners may serve a notice on any person requiring him to make a return of his total income, and every person so served is bound to make such return in the form required by the notice. If default is made in sending in such return, or if the Special Commissioners are dissatisfied therewith, they are to make an assessment according to the best of their judgment. Finally, all the provisions of the Income Tax Acts relating (*inter alia*) to assessments, appeals, and Cases stated for the opinion of the High Court, are by Section 72 (6) made applicable to assessments of Super-tax, so that the party assessed may appeal against the assessment made by the Special Commissioners, and, if he does so, any determination of the Special Commissioners on such appeal, and any assessment made thereupon, is by virtue of Section 57 of the Taxes Management Act, 1880, final and binding, except that a special Case may be required on a point of law.

So far there can be no dispute; but it is contended on behalf of the Crown that Section 57 of the last-mentioned Act has, by virtue of Sections 65 (2) and 96 (4) of the Act of 1910, a further effect with regard to Super-tax.

The argument on which this contention rests may be stated as follows: For Super-tax purposes total income is to be estimated in the same way as total income is estimated for the purposes of exemption and abatement. This refers us back to Sections 163, 164 and 190 (XVII) of the Act of 1842. If those Sections be examined it will, it is said, be found that, where a person claiming exemption or abatement has been assessed in respect of the profits and gains of a business on an amount determined by the assessing authority upon appeal for the purposes of Schedule D, he is bound to return in respect of such gains and profits, the amount so determined, and the estimating authority is bound to accept such return, the determination being, under Section 57 of the Act of 1880, binding on all persons and for all purposes. Similarly, it is said that where, for the purposes of Schedule D the amount of profits and gains has been determined on appeal, this determination is binding for the purposes of Super-tax, and neither the party assessed nor the Special Commissioners in estimating the total income can go behind such determination.

My Lords, I am far from being satisfied that the determination on appeal of the profits and gains of a business for the purposes of Schedule D is binding on the authority responsible for estimating total income for the purposes of exemption and abatement. Assuming,

however, that it is so binding, it does not, in my opinion, follow that it is binding on the authority responsible for estimating total income for the purposes of Super-tax. Total income, for the purposes of exemption and abatement, may consist wholly of the gains and profits of a business, and if the amount of these profits and gains had already been determined on appeal for the purposes of Schedule D, the estimating authority would, on the assumption I am making, be precluded from themselves making an estimate at all, and be bound by an estimate made by another authority.

Similarly, total income for Super-tax purposes may consist wholly of the gains and profits of a business already determined on appeal for the purposes of Schedule D, and, if the estimating authority be precluded from making an estimate, and similarly bound, it can only be by treating a statutory provision precluding an estimate in certain cases as part of the manner in which the estimate is to be made. I do not think that is a sound method of construction. " Estimate " implies coming to a conclusion on the amount which has to be estimated after considering all the relevant facts. The Special Commissioners have to estimate total income for Super-tax purposes. They are expressly told to estimate it in the same manner as another authority has to estimate total income for a different purpose. This must, I think, mean that they are to proceed as the other authority would have to proceed when making an estimate, and not as the other authority would proceed when precluded from making an estimate. I am therefore of opinion that the contention fails; nor do I think that the provisions of Sections 65 (2) and 96 (4) of the Act of 1910 taken alone could be held to over-ride the express provisions requiring the Special Commissioners to estimate the total income, that is, to determine the amount after considering the relevant facts.

It was further suggested that on the general principles of law governing estoppels, neither the subject nor the Crown ought to be at liberty to go behind the amount of profits and gains when once determined by any competent authority. I do not dispute these general principles, but it seems to me that, where there is a statutory provision requiring an estimate to be made for a statutory purpose and by a statutory authority, the principle of estoppel cannot be invoked to render the provision nugatory in cases where such principle might otherwise have applied.

The appeal in my opinion fails.

Lord Sumner.—My Lords, Super-tax is " an additional duty of " income tax " payable " in respect of the income of any individual the " total of which from all sources exceeds " the prescribed sum, and " for " the purposes of super-tax the total income of any individual from all " sources shall be taken to be the total income of that individual from all " sources for the previous year, estimated in the same manner as the " total income from all sources is estimated for the purpose of exemptions " or abatements under the Income Tax Acts." The question on this appeal is whether the Commissioners for Special Purposes, sitting at Birmingham, when making this estimation for the purpose of Super-tax for the year 1909-10 were bound to take that constituent of the Respondent's income from all sources which consisted of profits or gains from his trade, at the figure at which it had been taken by the Commissioners for General Purposes for the Division of Middleton, in Lancashire, when assessing him to Income Tax under Schedule D for the year ending 5th April, 1909.

The answer depends entirely on the construction of the relevant Sections of the Finance (1909-10) Act, 1910, and of the Acts incorporated with it, and it applies equally whether the General Commissioners were right or wrong, whether a patent mistake had been made in the facts or the exact truth had been discovered to several places of decimals, whether the conduct both of the taxpayer and the General Commissioners was impeccable, or whether misconduct of any kind were imputable to either or both of these parties. Section 96 (4) of the Finance (1909-10) Act, 1910, clearly incorporates with these enactments relating to Super-tax many prior enactments, and particularly Section 57 of the Taxes Management Act, 1880. It is, however, purely an incorporating Section, and the effect of that incorporation in this case is to be decided by reading and construing together Sections 163, 164 and 190 of the Income Tax Act, 1842, Section 57 of the Taxes Management Act, 1880, and Section 66 of the Finance (1909-10) Act, 1910.

The Case for the Crown involves two propositions. The first is that, in estimating a subject's total income from all sources for the purpose of exemptions or abatements under the Income Tax Acts, as they stood prior to 1910, the General Commissioners would be bound to reject evidence of his actual profits or gains from his business and to adopt exclusively the figure at which they had been, in fact, taken for the purpose of assessing him to Income Tax under Schedule D. The second is that the Commissioners for Special Purposes are equally so bound when estimating his total income from all sources for the previous year for the purpose of assessing him to Super-tax.

Even assuming the first proposition to be true, the second is only established if either (*a*) the finality prescribed by Section 57 (10) of the Taxes Management Act, 1880, leads to this result; or (*b*) if the enacting part of Section 190 of the Income Tax Act, 1842, coupled with paragraph XVII (1) of the Schedule to that Section, substitutes the amount " for which the claimant hath been assessed," in cases where he has been assessed for " the amount of value or property or profits returned."

My Lords, I am quite unable to see how Section 57 of the Taxes Management Act, 1880, can have this result. The Section occurs in the part of the Act entitled " Assessment," and the tenor of the whole of its ten Sub-sections shows that it is, what it is called in the heading, a Section about " appeals ". It prescribes the procedure which a person aggrieved by an assessment upon him is to follow before and at the hearing of his appeal by the General Commissioners. Then the last Sub-section, No. 10, provides that, when the Commissioners have determined the appeal, their determination is final. Neither they nor anyone else can re-open it, except under an order duly made by the High Court.

Such a provision is no doubt very beneficial. It was said during the argument that finality is of the essence of the scheme of the Income Tax Acts, and that it is either the warp or the woof—your Lordships were not told which—of the tangled web which they have woven. My Lords, I cannot feel that this much assists the dry interpretation of the Section. In an appeal against an assessment to Income Tax as the Legislature imposed it before 1910, the *litis contestatio* comes to an end at a certain point. Let it be assumed that the finality so attained takes effect also in an application for exemption or abatement from Income Tax as so imposed. Why should it further take effect upon an initial estimation

for the purpose of assessing another and a new tax—for Super-tax is another and a new tax none the less, though it is an additional duty of Income Tax? I see nothing in Section 57 of the Taxes Management Act, 1880, sufficient to subject an original assessment to a new tax to the special finality, which in terms is created for appeals from an assessment to an old tax. There are no express words to this effect in the Finance (1909-10) Act, 1910, and the bare incorporation of Section 57 of the Taxes Management Act 1880, with Part IV of the Act could not be held to have so extreme an effect, unless otherwise it would have no effect at all, which has not been and could not be contended.

Section 190 and Rule XVII of Schedule G of the Income Tax Act, 1842, seem to me inconclusive in themselves. I will assume, without deciding, that when there is an amount " for which the claimant hath been assessed " then it is so far " applicable to the case " of such person as to make it his duty to state it in his declaration in order to obtain exemption. Still this is nothing but his statement. There is nothing to preclude him from also stating the amount of value or profits or property returned, so that both may come before the Commissioners. It is really Section 164 that determines the matter, for it prescribes the powers and duty of the Commissioners by requiring them to hear and determine the merits of such claim for exemption which, *pro tanto*, is exactly what they would not be doing if, disregarding the evidence before them or rejecting the evidence tendered, they simply took a figure fixed on another occasion by other persons for a different though analogous purpose. The incorporation of this machinery into the Super-tax part of the Finance (1909-10) Act, 1910, does not alter it or cause the provisions as to the form of the statement to be signed by the claimant to prevail over the provisions as to the determination of the claim by the Commissioners on the merits.

Again the language of Section 66 (2) of the Finance (1909-10) Act, 1910, is that for the purposes of Super-tax, the total income in question is to be the " total income . . . estimated in the same manner " as in the case of a claim for exemption. To arrive at an arithmetical conclusion consisting of an aggregate of various kinds of income, by taking the amount of one of those kinds of income from a figure fixed in another proceeding is to go much beyond anything suggested by an " estimation " or by the " manner of estimating " and I do not think the argument that estimation of the total is consistent with accepting one item without estimation is sufficient, upon so obscure an enactment, to preclude the taxpayer from the right of proving the facts.

Finally, it was argued that, in the language of Lord Justice Phillimore, " If the two parties to a controversy have had the matter in dispute " finally determined between them by an ultimate tribunal, they ought " not, nor ought either of them, to be allowed to re-open this dispute on " any such ground as that the matter, which has been decided, subse- " quently becomes an item in another account, even though this other " account has, in respect of its other items, or its casting, to be inquired " into by a fresh tribunal." With all respect I think this begs the question; whether the " matter in dispute " or some other matter has been previously determined, whether a re-opening of the dispute is involved, or rather an estimation, according to the facts, are questions depending entirely on the construction of the Act. For the rest this argument is a

mere *argumentum ab inconvenienti*, and is in itself insufficient to entitle the Crown to prevail.

I think that the appeal should be dismissed.

Lord Parmoor.—My Lords, the Respondent, John Hamer Brooks, who for several years has carried on the business of a waste dealer in Lancashire, was assessed under Schedule D by the Commissioners for General Purposes for the year ending 5th day of April, 1909, at a sum of £6,331, in respect of the profits arising from his business. On the 10th June, 1910, the Commissioners for the Special Purposes of the Income Tax Acts required the Respondent to make a return of his total income from all sources for the purpose of assessment to Super-tax for the year ending 5th day of April, 1910. The Respondent delivered a return in which he declared his income from his said business at £400. The Special Commissioners were not satisfied with the return and made an assessment in respect of the profits arising from the said business at £6,331, declining to take evidence, and holding that Section 66 (2) of the Finance (1909-10) Act, 1910, rendered it obligatory on them to accept the sum of £6,331 as the Respondent's income from his said business for the purpose of assessment to Super-tax.

The question is whether this decision of the Special Commissioners is correct. Mr. Justice Horridge held that the Special Commissioners were not bound by the assessment of the Commissioners for General Purposes, and this judgment was affirmed by the Court of Appeal, Lord Justice Phillimore dissenting.

Section 66 of the Finance (1909-10) Act, 1910, imposes an additional duty of Income Tax, referred to in the Act as a Super-tax. For the purposes of this tax the total income of an individual from all sources is to be taken to be the total income of that individual from all sources for the previous year " estimated in the same manner as the total income " from all sources is estimated for the purposes of exemptions or abate- " ments under the Income Tax Acts," subject to certain special conditions which do not apply in the present Case. There is not only a statutory duty imposed on the Special Commissioners to estimate the amount of the total income, but the manner in which the estimate shall be made is obligatory by statute.

If the only duty placed upon the Special Commissioners had been to estimate the amount of the total income for the purpose of Super-tax, in my opinion they would not have fulfilled this duty by declining to consider any evidence tendered by the subject, and adopting as conclusive the assessment of the Commissioners for General Purposes of the business profits under Schedule D at the sum of £6,331. This, however, is not the only duty of the Special Commissioners. They have not only to make an estimate, but to make it in a specified manner. The manner is found in Section 164 and Section 190 (Schedule G, No. XVII) of the Income Tax Act, 1842. These Sections make it clear that the Special Commissioners should consider evidence properly tendered to them and make an independent estimate on their own authority after inquiry. I omit, at this stage, any reference to the argument founded on Section 57 of the Taxes Management Act, 1880, since, for the reasons hereinafter stated, that Section does not, in my opinion, limit in any way the duties placed upon the Special Commissioners by Section 66 of the Finance (1909-10) Act, 1910.

Section 164 and Section 190 (Schedule G, No. XVII) of the Income Tax Act, 1842, contain a full machinery for inquiry and estimate when a claim for exemption is made against the Crown, and enable the particulars of all the figures to be investigated on which the claimant relies in support of his claim for exemption. The Section enacts that, together with a signed declaration and statement, the claimant shall declare and set forth in his claim all the particular sources from whence his income arises, and the particular amount arising from each source. It would, therefore, be incumbent on the claimant, where a portion of his income was derived from profits of business, to declare and state the particular amount arising from such business. This declaration and statement every Inspector or Surveyor is at liberty to peruse or examine. If the Inspector or Surveyor does not object thereto, the Commissioners may allow such claim for exemption and discharge the assessment made upon any property or profits of the claimant. If the Inspector or Surveyor objects to any such claim in writing, and suggests that he has reason to believe that the income of such claimant, or any other particular required by this Act to be declared or set forth is not truly or fully set forth in any specified particular, then the merits of such claim for exemption are heard and determined upon appeal before the Commissioners, under and subject to such rules, regulations, and penalties as other appeals under the Act are directed to be heard and determined. Thus, under Section 164, the Commissioners, in the case of a claim for exemption, have full power to inquire into the particulars on which the claim is based. They are further under an obligation, if the Inspector or Surveyor objects to the claim, to hear and determine the merits of the claim. The Special Commissioners for the purpose of Super-tax are directed to estimate in the same manner as for the purpose of exemption or abatement, and cannot refuse to entertain evidence or to consider the merits in a case in which it is properly tendered for their consideration.

Section 190 (Schedule G. No. XVII) points to the same conclusion. It does not direct a declaration of the assessment made for the purpose of Income Tax under Schedule D, but a declaration of the amount of value or property or profits returned, or for which the claimant has been or is liable to be assessed. In other words, whether the claimant has been assessed or not, he is required to make a declaration of profits returned, or for which he has been or is liable to be assessed, and on this information the Crown can claim full investigation.

The Attorney-General in his argument for the Appellants, relied on Section 57 (Sub-sections 3 and 10) of the Taxes Management Act, 1880. It was contended that the effect of this Section was to make the assessment of £6,331 by the General Commissioners under Schedule D conclusive for all purposes. If this is the effect of the Section, then the Special Commissioners for Super-tax would have no option. Their decision to accept this figure would be right, and they would properly have rejected the claim of the Respondent to adduce evidence in support of his Case.

I do not doubt that this Section applies to the whole series of Income Tax Acts including the Acts of 1842 and 1910, but this leaves open the question of its true meaning and construction. Section 57 (3) gives a right of appeal to the General Commissioners, and Section 57 (10) provides that the determination on the hearing of such appeal shall be final, and that such determination of the assessment shall not be altered at any subsequent meeting, or at any other time and place, except by order

of the High Court. In the present Case there has been no order of the High Court. The Section does no more than make the determination of the General Commissioners final in the case which comes before them on appeal. It has no reference to the powers and duties of the Special Commissioners and in no way delegates from their obligation to estimate for the purpose of Super-tax the total income from all sources in accordance with the statutory directions and requirements.

My Lords, the questions involved in this Case are simply questions of statutory interpretation. In my opinion the appeal fails.

The Attorney-General.—Might I have your Lordships' permission to mention one point of costs? It is not a matter of dispute at all between my learned friend and myself. In the Court of first instance before the Revenue judge there were no costs. I think the reason was because the materials actually supplied by the taxpayer here were admittedly not the right materials, and therefore he could not possibly succeed until the Crown had waived any point of that sort. Therefore the Court of Appeal in the order it made, though of course it decided in favour of the taxpayer, only ordered the Crown to pay the costs of the Court of Appeal. I apprehend that the order your Lordships would make would be an order calling upon the Crown to pay the costs here and in the Court of Appeal but not before the Revenue judge. My learned friend does not dispute that : I only just wanted to make it clear.

Earl Loreburn.—I quite understand. We should not interfere with what occurred with regard to costs in the Court of first instance, because it was upon a special ground, as I understand. We comply with the request : Costs here and in the Court of Appeal, but no costs for either side in the Court of first instance.

The Attorney-General.—I think that is right.

Questions put.

That the Order appealed from be reversed.

The Not Contents have it.

That the Order appealed from be affirmed, the Appellants to pay to the Respondent his costs here and in the Court of Appeal but no order as to costs in the Court of First Instance.

The Contents have it.