NO. 414—IN THE HIGH COURT OF JUSTICE (KING'S BENCH DIVISION)—2ND JULY, 1918

COURT OF APPEAL—21ST, 27TH AND 31ST MARCH, 1919

HOUSE OF LORDS—17TH MAY, 1920

W. M. G. SINGER v. A. W. WILLIAMS (Surveyor of Taxes) (1)

Income Tax, Schedule D—Dividends of shares of a foreign corporation—Income Tax Act, 1842 (5 *&* 6 *Vict. c.* 35), *Section* 100, *Schedule D, Cases IV and V—Finance Act,* 1914 (4 *&* 5 *Geo.* 5, *c.* 10), *Section* 5.

The Appellant, who resided in the United Kingdom, was assessed to Income Tax under Schedule D for the year 1915–16 *in respect of dividends derived from an American corporation in which he was a shareholder. The liability to tax was computed in accordance with the Rules of Case V of Schedule D as modified by Section* 5 *of the Finance Act,* 1914, *on the average of the full amount of the income arising in the three years preceding the year of assessment. The Appellant contended* (1) *that the shares in the foreign company were securities chargeable under the Rules of Case IV of Schedule D on the basis of the income of the year of assessment,* (2) *that in any event the provisions of Section* 5 *of the Finance Act,* 1914, *required the tax to be charged on the basis of the income of the year of assessment and not on the average amount of the income of the three preceding years, and* (3) *further, that if the latter basis were correct, Sub-clause* (*b*) *of Section* 5 *of the Finance Act,* 1914, *operated to exclude from the computation of liability any income which was paid or became due before the* 6*th April,* 1914.

Held, (1) *that the shares in the American corporation were foreign possessions chargeable under the Rules of Case V of Schedule D, Section* 100 *of the Income Tax Act,* 1842, *as extended by Section* 5 *of the Finance Act,* 1914, (2) *that Section* 5 *of the Finance Act,* 1914, *which provides that the tax on income arising from securities, stocks, shares and rents in any place out of the United Kingdom shall be computed on the full amount of the income, whether remitted to the United Kingdom or not, does not alter the basis of computation provided by the Rules of Cases IV and V, Schedule D, Section* 100, *Income Tax Act,* 1842 ; (3) *that while the income referred to in Sub-clause* (*b*) *of Section* 5 *of the Finance Act,* 1914, *is excluded from taxation, it is not excluded from computation of the three years' average under the Rules of Case V of Schedule D in order to arrive at the amount of the income to be taxed for the year of assessment.*

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(1) Reported K.B.D. [1918] 2 K.B. 432 ; C.A. [1919] 2 K.B. 94 ; and H.L. in [1920] 36 T.L.R. 659.

CASE

Stated under Section 59 of the Taxes Management Act, 1880, by the Commissioners for the General Purposes of the Income Tax Acts for the Division of Romsey in the County of Southampton.

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1. At a meeting of the above Commissioners on the 6th day of October, 1916, the above Appellant appealed against an assessment on him under Schedule D of the Income Tax Acts for the year ended the 5th April, 1916, in the sum of £80,000 in respect of foreign possessions on the following amongst other grounds :—

That in view of Section 5 of the Finance Act, 1914, such computation should be based on the amount of the profits in the year of assessment and not on the average amount thereof in the three preceding years.

This case relates only to the above ground, the other grounds having been withdrawn by the Appellant.

2. The facts proved or admitted relating to the above ground were that the Appellant resides, and for several years past has resided, at Norman Court in the said Division of Romsey and his income, so far as it is the subject matter of the assessment in question, is derived from the dividends which he received as a shareholder in an American corporation, *i.e.*, the Singer Manufacturing Company of New Jersey in the United States of America.

3. It was contended on behalf of the Appellant as regards the above ground that, in view of the terms of Section 5 of the Finance Act, 1914, the profits of the Appellant for the purposes of the assessment under appeal must be computed on the basis of the actual amount thereof in the year of assessment ending 5th April, 1916, and not on the average of the amount thereof in the three previous years of average, and further that, if it should be held that the income chargeable must be based on the average of preceding years, then by virtue of the provisions of the Income Tax Acts and of Sub-clause (*b*) of the said Section 5 of the Finance Act, 1914, no sums which were paid or became due before April 6th, 1914, could be brought into computation.

4. In answer thereto it was contended on behalf of the Surveyor of Taxes for the Crown that the provisions of Section 5 of the Finance Act, 1914, in no way alter or repeal the rule laid down in Case 5 of Schedule D, Section 100 of the Income Tax Act, 1842, that the duty is to be computed on an average of the three preceding years.

5. We decided that on the true construction of Section 5 of the Finance Act, 1914, the computation fell to be made on the average of the three preceding years.

6. It was agreed between the parties that, if the computation were made on the basis of the actual amount of profits in the year of assessment, the figure of assessment should be £47,080 and that, if the computation were made on an average of the three preceding years, the figure of assessment should be £76,687. If the further contention by the Appellant that, if the income is chargeable on the basis of preceding years, no sums which were paid or became due before April 6th, 1914, can be brought into the computation, is correct,

then an adjustment is to be made by reference to the figures given in the answer by the Appellant to our Precept dated August 18th, 1916.

7. We accordingly reduced the assessment to the sum of £76,687, and confirmed it in that amount, whereupon dissatisfaction was expressed on behalf of the Appellant and subsequently a Case was demanded on his behalf as regards our decision, which we hereby state and sign accordingly for the opinion of the High Court thereon.

Dated this 13th day of January, 1917.

SPENCER F. CHICHESTER.
H. W. EADEN.
GEORGE BRISCOE.

The Case was argued on the 2nd July, 1918, before Mr. Justice Sankey, when Mr. Edwardes Jones appeared for the Appellant, and the Attorney-General (Sir F. E. Smith, K.C., M.P.) and Mr. T. H. Parr for the Surveyor of Taxes. Judgment was given in favour of the Crown with costs.

JUDGMENT

Sankey, J.—The Appellant resides near Southampton and receives income, so far as it is the subject matter of the assessment in question, from dividends as a shareholder in the American corporation entitled the Singer Manufacturing Company of New Jersey in the United States of America.

Before the Finance Act of 1914 a charge in respect of income from foreign securities was made under the 4th Case of Schedule D and from foreign possessions under the 5th Case of Schedule D in Section 100 of the Income Tax Act, 1842, and this charge was based on the sums received in the United Kingdom as therein set out.

Under Section 5 of the Finance Act, 1914, the tax in respect of income arising from securities, stocks, shares or rents in any place out of the United Kingdom is to be computed on the full amount of the income, whether the income has been or will be received in the United Kingdom or not.

The Commissioners have assessed the Appellant for the accounting period ending April 5th, 1916, upon the average of the amounts received as dividends on his shares over the previous three years, and he contends :—

(1) that, by reason of the words in the earlier part of Section 5 of the Finance Act of 1914, he can only be assessed on the actual amount received during the one year :

(2) that, by reason of the words in the later part of the Section, " nothing " in those provisions as to the receipt of sums in the United Kingdom " shall be construed so as to render liable under those rules to income " tax for the current or any subsequent year any sum which " represents any income from shares which was paid or became " due before the 6th April, 1914," a similar result is reached.

(Sankey, J.)

As to (1), the 4th Case above referred to enacts that the duty to be charged is to be computed on a sum not less than the full amount of the sums received in the current year. The 5th Case enacts that the duty is to be computed on an average of the full amount of the actual sums received during the three preceding years.

It was first contended by the Appellant that shares were securities and came within the 4th Case, and that, therefore, the actual amount received during the current year must be taken and not the averaged amount.

Having regard to the decisions of Mr. Justice Wright in *Bartholomay Brewing Company* v. *Wyatt*[1], and *Nobel Dynamite Trust* v. *Wyatt* [2] ([1893], 2 Q.B. 499), and of Lord Justice Moulton in *Gramophone and Typewriter, Ltd.* v. *Stanley*[3] ([1908], 2 K.B. 97), I am of opinion that it is not open to me to uphold this contention, and that dividends from shares are assessable under Case 5 ; that is, on an average of three years.

It was then contended that Section 5 expressly or impliedly overruled those decisions. As to the Section expressly overruling them, there is nothing therein to that effect. It nowhere says so. As to its impliedly overruling them, it was argued that, because it says that Income Tax is to be computed on the full amount of the income, this meant the full amount of the income received in the particular year and not the averaged amount.

In my view this contention is incorrect. Section 5 was a new departure in legislation, in that it made taxable dividends on shares not remitted to this country, but the income is to be computed as provided in the Income Tax Act, 1842, as interpreted by the decisions thereunder ; that is to say, on an averaged amount.

As to (2), it was contended on behalf of the Appellant that no sums which were paid or became due before April 6th, 1914, could be brought into computation ; that the Section was not retrospective ; and that these sums would be brought into computation if the average of three years were taken.

In my view this is a misapprehension. The real question is, what is the meaning of the words " and nothing in those provisions as to the receipt of " sums in the United Kingdom shall be construed so as to render liable under " those rules to income tax for the current or any subsequent year any sum " which represents any income from shares which was paid or became due " before the 6th April, 1914 " ?

I think that these words refer to sums actually received, and that the true effect of them is to prevent income paid or due before that date and retained abroad from being liable to Income Tax under the 4th or 5th Cases of Schedule D if subsequently remitted to or received in the United Kingdom— in other words, they are inserted to prevent a double taxation of such sums, and have no application to the user of such sums for the purpose of an arithmetical computation of the average income.

In the result, both grounds taken by the Appellant fail and the appeal must be dismissed.

Mr. Parr.—My Lord, the appeal will be dismissed with costs ?

Sankey, J.—Yes.

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(1) 3 T.C. 213. (2) 3 T.C. 224. (3) 5 T.C. 358.

An appeal having been entered against the judgment of Mr. Justice Sankey, the Case came on for hearing in the Court of Appeal before the Master of the Rolls, and Warrington and Scrutton, L.JJ., on the 21st, 27th and 28th March, 1919. Sir John Simon, K.C., and Mr. Edwardes Jones appeared for the Appellant, and the Attorney-General (Sir Gordon Hewart, K.C., M.P.), and Mr. T. H. Parr for the Crown.

On the 31st March, 1919, judgment was delivered unanimously in favour of the Crown with costs, affirming the decision of the Court below.

JUDGMENT

The Master of the Rolls.—The questions raised by this Appeal are whether the dividends which the Appellant, W. M. G. Singer, receives as a shareholder in the American corporation entitled The Singer Manufacturing Company of New Jersey, in the United States of America, fall to be assessed for Income Tax under the Fourth Case of Schedule D as " foreign securities ", or under the Fifth Case of Schedule D as " foreign possessions ", and, if the latter, whether any sums which were paid or became due in respect of dividends before 6th April, 1914, can be brought into the computation in ascertaining the average of the three years previous to the year of assessment. The assessment in question is for the year ending 5th April, 1916.

Before the Finance Act of 1914, Income Tax was levied upon the amount received in the United Kingdom in respect of income from " foreign securities " and " foreign possessions ", but by the Finance Act, 1914, Section 5, the tax " in respect of income arising from securities, stocks, shares or rents in any " place out of the United Kingdom . . . shall be computed on the full amount " of the income, whether the income has been or will be received in the United " Kingdom or not." The Appellant has been assessed for the year 1915–16 upon the dividends received from the American company on an average of the three preceding years, as directed by Schedule D, Fifth Case. The Appellant contends that such assessment is erroneous and that the assessment should have been on the income of the current year, in accordance with Schedule D, Fourth Case. This depends upon whether the shares in companies abroad fall within the description of " foreign securities " in the Fourth Case, or " foreign possessions " in the Fifth Case.

In *Bartholomay Brewing Company* v. *Wyatt*(1), ([1893], 2 Q.B. 499), it was held by Mr. Justice Wright that profits received in England from shares in an American Brewery company held here fell within the Fifth Case, and not within the Fourth Case : " Shares in a company are not securities but portions " of its capital " (*see* page 516). Again, in *Gramophone, Limited* v. *Stanley*(2) ([1908], 2 K.B. 89), Lord Justice Fletcher Moulton expressed the same view : " The holding of shares in a foreign corporation, entirely situated and carrying " on business in a foreign country, comes unquestionably under Case V " (*see* page 97). And again at page 104 : " The shares remain, in my opinion, " possessions in that foreign country, and come under the Fifth Case ". The language used by Lord Herschell in *Colquhoun* v. *Brooks*(3) (14 A.C. 493) at page 505, is not in any way inconsistent with this view. He refers to income arising from " investments or from possessions outside the United Kingdom,"

(1) 3 T.C. 213.   (2) 5 T.C. 358.   (3) 2 T.C. 490.

(The Master of the Rolls)

and may well have used the term " investments " as equivalent to " foreign " securities ", without intending to include shares in companies in that description, but including shares in companies abroad under the description of " possessions outside the United Kingdom ".

I am of the same opinion as Mr. Justice Wright and Lord Justice Fletcher Moulton that the word " securities " in the Fourth Case does not include shares in companies, which are not " securities " in any proper sense of the word, although the same word with a context to aid it may in some cases, for instance in wills, be used with a sense and meaning extending to include shares in companies. The word " shares " as used in the latter part of Schedule D, Fourth Case, obviously means " shares of annuities " and does not assist to give any wide meaning to " securities ". The result is that shares in American companies come within the Fifth Case as foreign possessions.

It was further urged that the language of Section 5 of the Finance Act, 1914, precluded any computation based upon an average of the three preceding years, as the Section says " notwithstanding anything in the rules under the " fourth and fifth case in Section one hundred " of the Act of 1842, but these words are used, as these two Rules are departed from by including for taxation the full amount of the income, and not merely the amount received in the United Kingdom, as provided for by both these Rules.

The remaining point taken by the Appellant was that, having regard to Clause (*b*) of the Finance Act, 1914, Section 5, any income which was paid or became due before the 6th April, 1914, ought not to be included in computing the average of the three preceding years, and as these three years are 1912–13, 1913–14 and 1914–15, the effect would be to exclude two years from the computation. In my opinion there is no foundation for this contention. The income referred to in Clause (*b*) is excluded from taxation, but is not excluded from the computation of the three years' average in order to arrive at the amount of the current year's income to be taxed.

In my opinion the Appeal fails and should be dismissed.

Warrington, L.J. (*read by* **Scrutton, L.J.**).—The question in this Case is whether, in assessing the Appellant to Income Tax on income from shares in a foreign company, the duty to be charged should be computed on the income of the current year or on an average of the three preceding years.

Subject to two minor points, which I will deal with hereafter, the decision turns on the further question whether the shares are to be treated as " securities ", and therefore within Case 4 under Schedule D, or as " posses- " sions ", and therefore within Case 5. The answer depends on the true construction of the language in which Cases 4 and 5 are expressed.

Dealing with the question in the first instance without reference to authority, I am of opinion that, although for some purposes and in some contexts the word " securities " may have a meaning wide enough to comprise a number of things which are not securities for money in the proper sense, in this Statute the word has not that wider meaning, and that shares in a trading company are comprised in the expression " possessions ", and are therefore within the 5th Case. The reason for providing for computation on an average in the one

(Warrington, L.J., *read by* **Scrutton, L.J.)**

case and not in the other seems obvious, namely, that the one class of income may be liable to fluctuation, whereas the other would normally be constant. Income from shares in a company may be, and often is, liable to fluctuation, and one would expect, therefore, to find it included in the 5th Case rather than under the head of income from securities, which normally at all events may be expected to be constant. Moreover, shares in a company are in truth portions of its capital and are not properly described as securities.

The question, however, has already been decided, in accordance with the view expressed above, in the Case of the *Bartholomay Brewing Company* v. *Wyatt*(1) ([1893], 2 Q.B., page 499). It is true that the shares there in question constituted the entire capital of the foreign company ; this fact, in my opinion, has no material bearing on the question. An opinion to the like effect was expressed by Lord Justice Fletcher Moulton in the *Gramophone and Typewriter, Limited* v. *Stanley*(2) ([1905] 2 K.B., page 97).

On principle, therefore, as well as on authority, I think the income in the present Case falls under Case 5 and not under Case 4.

It was contended that this construction should, if possible, be avoided, inasmuch as it gives rise to a difference in the mode of dealing with income from shares in British companies and income from shares in foreign companies. It is said that a shareholder in a British company pays tax at the current rate in the £ on the actual amount of his dividend warrant, whereas, acting on the view expressed above, a shareholder in a foreign company would pay tax on the average of his warrants for three years. But this apparent anomaly arises from the fact that in the case of a British company the shareholder is paying a part of the tax paid by the company and this has already been computed on the principle of average. In the case of a foreign company the profits of the company itself cannot be charged at all, and the tax falls for the first time on the income of the shareholder. At any rate, it seems to me that the suggested anomaly arises from the plain words of the Act and that we ought not, because of it, to give a strained and unnatural construction to those words.

It was further contended that under Section 26 of the Customs and Inland Revenue Act, 1885, and the Sections there referred to of earlier Acts, a banker collecting the amount of warrants for his customer would have to deduct and pay the tax at the current rates on the amount of such warrants without reference to the principle of average. But assuming that a banker merely collecting a warrant for an ordinary customer is within that Section, as to which I express no opinion, I see no difficulty in adjusting the liability of the taxpayer on the principle of average. The provision in question is merely intended to facilitate collection, and does not determine the position of the taxpayer as between himself and the Crown.

It remains to consider two points taken on the construction of Section 5 of the Finance Act, 1914, by which the tax is imposed on the entire income from shares in foreign companies, whether received in the United Kingdom or not. The first arises on the opening words of the Section : " Income Tax " in respect of income arising from . . . shares . . . in any place out of the " United Kingdom shall, notwithstanding anything in the rules under the

(1) 3 T.C. 213. (2) 5 T.C. 358.

(Warrington, L.J., *read by* **Scrutton, L.J.)**

" fourth and fifth case in section one hundred of the Income Tax Act, 1842, " be computed on the full amount of the income, whether the income has been " or will be received in the United Kingdom or not." It is in the Rules there referred to that the provision is found limiting the tax to income received in the United Kingdom, and it is in the Rule under the 5th Case that the provision is found for computation on an average of three years, and it is contended on the part of the Appellant that both these provisions are abrogated by the words " notwithstanding ", etc. In my opinion, however, the words " whether " the income has been or will be received in the United Kingdom or not " show that what was intended to be abrogated was the provision limiting the taxable income to that which is received in the United Kingdom and that the method of computation remains unaffected.

The second point arises on the words " nothing in those provisions " (namely, the provisions of the Income Tax Acts) " as to the receipt of sums in the United " Kingdom shall be construed so as to render liable under those rules to income " tax for the current or any subsequent year any sums which represent . . . " (*b*) income from any such . . . shares . . . which was paid or became due " before the sixth day of April nineteen hundred and fourteen ". The year of assessment in the present Case ended on the 5th April, 1916, and it is contended that the provision I have read prevents the application of the principle of average, inasmuch as one of the three years would be prior to the 6th April, 1914.* The answer is, that it is not sought to render liable to tax any income which was paid or became due before that date. Such income is only taken account of for purposes of computation.

On the whole, I am of opinion that the Appeal fails and must be dismissed

Scrutton, L.J.—Before 1914, foreign securities and foreign possessions paid Income Tax on the income received in England. The Finance Act of 1914 substituted the full amount of income for the income received. Mr. Singer, who derives income from shares in a United States company, and who is a member of a family which has done much to elucidate the law of Income Tax in England by its struggles to pay no more than the amount that it justly ought to pay in its view, raises three points on the construction of that Act. The actual point raised appears to me to be of comparatively small importance, for, if Mr. Singer's view that he is only to be taxed on the income of the year prevails, in this year he gets a benefit, but he will have to pay more in some subsequent year than he would have done if the doctrine of average prevailed. In the long run, he will remain as he was whichever system is adopted, but he would in this year get a temporary benefit, which he would lose in some future year if his construction is adopted.

The first point that he takes is that his income is from securities under Case 4, and not from possessions under Case 5; and he says that shares in foreign companies are securities and not possessions. The word " securities " seems to me quite inappropriate and inaccurate to describe shares in companies. Shares in companies and the income therefrom are not secured on anything. The share is a part of the capital—not a security. The income, the dividend,

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* *Note*: This should have read " as *two* of the years would be prior to the 6th April, 1914."—*See* explanation by Scrutton, L.J., on page 429.

(Scrutton, L.J.)

is not secured on anything. Further, the word "securities" was first used in 1842. The first English Limited Liability Company Act was in 1844, and Limited Liability Companies were then a very rare thing. As far as I know, there were no foreign Limited Liability Companies in 1842, and it seems to me, therefore, very unlikely that the word "securities" was selected by the Legislature in 1842 to cover a non-existing form of property at the time. So much without authority.

With authority, we have the decision of Mr. Justice Cave and Mr. Justice Wright in the *Bartholomay*[1] Case that securities fall within Case 5 and not within Case 4; and we have what impresses me very considerably, that after that decision Parliament has, in my view, twice recognised and adopted its accuracy. When in the Finance Act of 1914 this matter was dealt with, Parliament expressly adopted the language "securities, stocks, shares or "rents" using "stocks" and "shares" as distinguished from "securities". I am also impressed by the fact that when Parliament last year codified the Income Tax Acts, purporting only to codify them and not to amend them, it expressed the law on this point in its Schedule in Case 5: "The tax in "respect of income arising from stocks, shares or rents . . . shall be computed "on the full amount thereof on an average of the three preceding, years". On calling Sir John Simon's attention to that view of the Legislature, he says boldly that the Legislature was wrong, that it made a mistake, and that in purporting to codify the Act it has really amended it. A more natural explanation appears to me to be that the view which Parliament had adopted, which was the view of Mr. Justice Cave and Mr. Justice Wright, was the correct view and that, therefore, shares in a foreign company fall within, as I have said, foreign possessions in Case 5 and not within securities in Case 4.

But a very elaborate argument was addressed to us, with great emphasis and conviction, that the practice of banks under a series of Sections, to which we were referred, showed that the view, which I have hitherto suggested was the correct one, was in fact incorrect. Section 26 of the Customs and Inland Revenue Act, 1885, expanding a long series of Sections which are all recited, and to all of which we were referred, requires banks receiving certain income, which may include dividends from foreign companies, to do certain acts with regard to it with a view that the Inland Revenue shall receive its Income Tax on those sums, and it was stated very confidently that banks never deal, nor does the Inland Revenue, with a three years' average, but merely deduct Income Tax on the one year's sum that has been received. Now, I have some familiarity with the practice and I have carefully gone through the Sections, and I am quite satisfied that the argument is founded on a complete misapprehension. The acts which the banks are required to do will be found in the Income Tax (Foreign Dividends) Act, 1842, Section 2, and a bank is required to deliver to the Commissioners an account of the amount of dividends, whereupon the Commissioners are to make assessments, in that Act under Schedule C, but in a later Act (the Income Tax Act of 1853) under Schedule D; and then the bank is to deduct, in accordance with the assessment, the Income Tax. If the bank only returned one year's payment, what are the Inland Revenue Commissioners to do, assuming that it is a foreign dividend coming

[1] Bartholomay Brewing Co. *v.* Wyatt. 3 T.C. 213.

(Scrutton, L.J.)

within Case 5? They have Rules provided for them; they are to act under the Rules in Case 1 for dealing with an average. If they have nothing to get an average from, as, in Case 1, if the business has been established within the three years or within the year of assessment, they are to deal with it by specified Rules or under Case 6—in either case on one year's receipts only. If the banks have only returned one year's receipts, the Commissioners have no option under the Rules but to assess on one year's payments, and the banks must then deduct the assessment; but if the banks should, as they ought to do in regard to their customers' interests, return the receipts of the three previous years, the Commissioners will have no option but to follow the language of the Statute and assess on the previous three years' average; if they do not, they will be striking the Rules in Case 5 out of the Statute. It is very likely more convenient for the Commissioners not to make too many enquiries as to whether there were previous receipts. It is much simpler for them to deal with it on the one figure which the banks return; but the fact that when they only get a return of one year they only assess on one year, which is quite in accordance with the Act, does not show in any way that the views which I have previously expressed, which have been sanctioned by Parliament, as to the three years' average applying to dividends from foreign shares, are in any way incorrect. The fact, therefore, is that the practice of the banks, assuming it to be exactly as stated by Counsel for the Appellant, appears to me to have no bearing whatever on the true construction of Case 4 and Case 5.

Two subordinate points were stated by Sir John Simon, but not more than stated. They are these. It was said that in the Act of 1914, when the Act provided that the tax should be assessed on the full amount of the income notwithstanding anything in the Rules under Case 4 and Case 5 in Section 100, it left out, and required everyone dealing with the case to leave out, that part of the Rules which dealt with average. In my view, the words of the Act itself " whether the income has been or will be received in the United Kingdom " or not " show that what Parliament was dealing with was the question of received income as distinguished from full income, and that there was no intention to strike out the rest of the Rules from the Act, which are alone the Rules under which the Commissioners could proceed to assess at all.

The last point, which again was merely stated in a sentence without being argued with any vigour or conviction by Sir John Simon, is that, if part of the income that you are to form an average from fell before the 6th April, 1914, you cannot bring it into the average on which you are computing the income of 1916. " Nothing in these provisions shall be construed so as to " render liable under these Rules to Income Tax for the current year income " which was paid or became due before the 6th April, 1914." That, in my view, does not in any way preclude the income of the current year being computed, in the way provided, by an average of the three preceding years. You are not rendering that previous income liable for Income Tax in the current year; you are only rendering the conventional income of the year 1916, or whatever the year may be, liable in accordance with the Rules provided in the Act.

For these reasons I agree with the judgment proposed by my brothers, and think the Appeal should be dismissed.

The Attorney-General.—The Appeal will be dismissed with costs?

The Master of the Rolls.—Yes.

Scrutton, L.J.—The Master of the Rolls has pointed out to me that in Lord Justice Warrington's judgment there appears to be a slip in the sentence in which he makes the last point with which I dealt in my own judgment—the point as to the three years' average. Lord Justice Warrington has treated the three years of average as being the year of assessment and the two preceding years. That must be a slip, as the Statute directs the three preceding years to be taken, and that sentence should be altered accordingly.

An Appeal having been entered from the decision of the Court of Appeal, the Case came on for hearing in the House of Lords on the 17th May, 1920, before Viscount Cave and Lords Atkinson, Shaw of Dunfermline, Wrenbury and Phillimore, when judgment was delivered unanimously in favour of the Crown, with costs.

Sir John Simon, K.C., and Mr. Edwardes Jones appeared for the Appellant, and the Attorney-General (Sir Gordon Hewart, K.C., M.P.), Mr. T. H. Parr and Mr. R. P. Hills for the Crown.

JUDGMENT

Viscount Cave.—My Lords, this Appeal raises a question as to the mode in which the income from certain foreign investments should be assessed to Income Tax under the Income Tax Acts and Section 5 of the Finance Act, 1914.

The Appellant, who is domiciled or ordinarily resident in this country, is the holder of shares in an American corporation called the Singer Manufacturing Company of New Jersey. The dividends on these shares are not remitted to this country, but are placed to the credit of the Appellant in the United States. The Commissioners for the Romsey Division of the County of Hants, acting under the above-mentioned Section of the Finance Act, 1914, assessed the Appellant to Income Tax in respect of the year ending on the 5th April, 1916, in the sum of £80,000 (since reduced to £76,687), as being the profit received from the above shares on an average of the three years preceding the year of assessment. The Appellant objected to this assessment on the ground that on the true construction of the statutes he was not liable to be assessed on a three years' average, but only on the actual amount of dividend received in the year of assessment, namely £47,080. On an appeal to the High Court of Justice, the assessment made by the Commissioners was confirmed by Mr. Justice Sankey, whose decision was afterwards affirmed by the Court of Appeal. Thereupon this appeal was brought. In the course of the argument for the Appellant, reference was made to certain earlier statutes relating to Income Tax, which are now repealed. It appears to me that, for the purposes of this Case, no reliable inference can be drawn from the language of these statutes, and that the decision must depend on the construction of the Income Tax Act, 1842, as modified by later statutes.

By the Act of 1842 foreign income was made assessable under Schedule D of the Act, and fell either within the "fourth Case" of the Schedule as "interest arising from foreign securities" or within the "fifth Case" as "foreign possessions". The rules for assessment provided that in both cases the duty should be computed only on the amounts received in Great Britain;

(Viscount Cave)
and it was declared that in assessments falling under the fourth Case the duty should be computed on the sum received in Great Britain " in the current " year ", that is, in the year of assessment, but that in those falling under the fifth Case the computation should be made " on an average of the three " preceding years ". Under that Act, therefore, the mode in which the income was to be computed for the purpose of assessment was dependent on the nature of the property from which it was derived. If that property was a foreign security, the actual income for the current year was to be the basis of taxation; if it was a foreign possession of some other kind, the taxation was to be upon a three-year average, as in the first Case. By the Income Tax Act, 1853, some modification was made in the general words in Schedule D, and the tax was extended to Ireland; but it was provided by Section 5 of this Act that the regulations and provisions of the Act of 1842 (so far as consistent with the new Act) should continue to apply. Accordingly, it was held in *Colquhoun* v. *Brooks*(1) [(1889), L.R. 14 App. Cas., p. 493], that, notwithstanding the generality of the language in Schedule D of the Act of 1853, the tax on foreign income was still regulated by the fourth and fifth " Cases " in the Act of 1842, and was therefore leviable only on sums received in the United Kingdom.

It appears to have been found by experience that the limitation of the tax on foreign income to income received in the United Kingdom led to transactions by which the liability to tax was avoided; for it was within the power of a person resident in the United Kingdom to cause his foreign income or some part of it to be paid to his account abroad and invested or expended there, so that the liability to Income Tax should not attach to it. It was no doubt for this reason that the Legislature enacted Section 5 of the Finance Act, 1914, which, so far as material, provided as follows :—" Income " tax in respect of income arising from securities, stocks, shares, or rents in " any place out of the United Kingdom shall, notwithstanding anything in the " rules under the fourth and fifth case in section one hundred of the Income " Tax Act, 1842, be computed on the full amount of the income, whether " the income has been or will be received in the United Kingdom or not, subject " in the case of income not received in the United Kingdom to the same " deductions and allowances as if it had been so received . . . and the " provisions of the Income Tax Acts (including those relating to returns) " shall apply accordingly . . . ." Then followed a saving Clause, to which I shall refer hereafter, and a proviso that the Section should not apply in the case of a person not domiciled or ordinarily resident in the United Kingdom. The effect of this enactment is plain. It abrogates, in respect of the four sources of income specified in the Section—namely, securities, stocks, shares, and rents—the limitation imposed by the earlier statutes and explained in *Colquhoun* v. *Brooks*, that is to say, that foreign income to be taxable must be received in the United Kingdom; but in other respects it leaves untouched the provisions of those statutes, including the division of foreign property into foreign securities and other foreign possessions and the distinction in the method of assessing the income accruing from those sources respectively. Accordingly, in cases falling within the Section, the interest from foreign securities must still be computed for the purpose of the tax on the amount received in the current year, while the profits from other foreign possessions must continue to be computed on a three-year average. It follows from the above summary that the main question to be determined in the present Case is whether the shares in the Singer Manufacturing Company of New Jersey, which are the subject of the assessment in dispute, are " foreign securities "

(1) 2 T.C. 490.

(Viscount Cave)

within Case 4 or " foreign possessions " within Case 5. If they are " foreign " securities ", then the assessment, which was made upon an average of three years, was wrongly made ; but if not, they are clearly " foreign possessions ", and in that case the assessment should stand.

My Lords, the normal meaning of the word " securities " is not open to doubt. The word denotes a debt or claim, the payment of which is in some way secured. The security would generally consist of a right to resort to some fund or property for payment ; but I am not prepared to say that other forms of security (such as a personal guarantee) are excluded. In each case, however, where the word is used in its normal sense, some form of secured liability is postulated. No doubt the meaning of the word may be enlarged by an interpretation clause contained in a statute, as by the interpretation clauses in the Conveyancing and Law of Property Act, 1881, the Settled Land Act, 1882, the Trustee Act, 1893, and the Finance Act, 1916 ; or the context may show, as in certain cases relating to the construction of wills, (*In re Rayner*, L.R. [1904], 1 Ch., 176 ; *In re Grant & Eason*, L.R. [1905], 1 Ch., 336), that the word is used to denote, in addition to securities in the ordinary sense, other investments such as stocks or shares. But, in the absence of any such aid to interpretation, I think it clear that the word " securities " must be construed in the sense above defined, and accordingly does not include shares or stock in a company. In the present case there is no interpretation clause, and there appears to me to be no context which affects the ordinary meaning of the word " securities ".

The combination in the fourth Case of the word " interest " with the word " securities " tells strongly in favour of a strict interpretation of the latter word ; and the same combination reappears in Schedule G, Rule 10. The exception from the fourth Case of " such annuities, dividends and shares as " are directed to be charged under Schedule C of this Act " affords no argument to the contrary, as the dividends there referred to are plainly dividends on Government Annuities, and the " shares " are shares of such annuities. The context, therefore, so far as it goes, is in favour of the view that the shares of a foreign company are not " securities " within the meaning of the fourth Case, and accordingly fall within the fifth Case. This was so decided, in *Bartholomay Brewing Company* v. *Wyatt*(1) [L.R. (1893), 2 Q.B., 499], where Mr. Justice Wright said that " shares in a company are not securities, but " portions of its capital ", and to the same effect is the dictum of Lord Justice Moulton in *Gramophone Limited* v. *Stanley*(2) [L.R. (1908), 2 K.B., 89] that " the holding of shares in a foreign corporation entirely situated and carrying " on business in a foreign country falls unquestionably under Case 5 ". I see no reason for questioning those opinions, with which I fully agree. It was argued on behalf of the Appellant that a decision in favour of the Respondent would lead to an anomalous distinction between shares in foreign companies and shares in British companies, as, in the case of shares of the latter kind, tax is deducted under Section 54 of the Income Tax Act, 1842, from the dividend for each year ; but it appears to me that any argument to be derived from Section 54 tells the other way. As pointed out by Lord Justice Warrington in the Court of Appeal, the shareholder in a British company pays, by way of deduction, a part of the tax paid by the company, and this has already been computed on the principle of average ; while in the case of a foreign company the profits of the company cannot be charged at all and the tax falls for the first time on the income of the shareholder. This being so, a closer analogy

(1) 3 T.C. 213. (2) 5 T.C. 358.

(Viscount Cave)
is established between the two cases by applying the principle of average to the dividends on foreign shares than by taxing the dividend for each year.

Counsel for the Appellant also relied upon certain provisions contained in Section 10 of the Income Tax Act, 1853, and in some later statutes, [*See* Revenue (No. 2) Act, 1861, Section 36 and Customs and Inland Revenue Act, 1885, Section 26], which require bankers and others entrusted with the payment of foreign dividends to persons in the United Kingdom to pay to the Revenue authorities the tax on such dividends as assessed by the Commissioners under Schedule D, charging the amounts so paid to the persons entitled to the dividends in question. They pointed out that paying agents of the character described have generally no materials for arriving at an average of the dividends receivable by any particular shareholder, and accordingly must and do pay and deduct tax at the current rate in respect of the amounts actually received in the year of assessment, without reference to any average, and they contended that these enactments and the practice followed in carrying them into effect throw a light on the construction of the Act of 1842 and the meaning of the word " securities " therein contained. My Lords, it may be that the practice is as stated. No doubt it is convenient, and in the long run inflicts no injustice upon the shareholders concerned, but I am not satisfied that it is in strict and technical accordance with the enactments in question. It does not appear to me that it would be beyond the power of the Commissioners, who are required by the statutes to determine the sums to be deducted, to proceed by way of average, and, however this may be, I am unable to see how the fact that, upwards of ten years after the passing of the Act of 1842, special machinery was provided for collecting in a limited class of cases the tax thereby imposed can alter the general liability of the taxpayer as between himself and the Crown or affect the construction of the earlier Act of 1842. Indeed, any weight which might otherwise be given to these provisions as a parliamentary construction of the earlier Statute is overborne by the considerations (1) that in Section 10 of the same Act of 1853 the " stocks, funds or shares " of a foreign company are clearly distinguished from the " securities given by or on account of any such company " ; (2) that in Section 5 of the Finance Act, 1914 (which was passed after the above cited decisions as to the meaning of the word " securities ") stocks and shares are referred to as something distinct from securities ; and (3) that in the Schedule to the Income Tax Act, 1918, the consolidating Statute now in force, stocks and shares are classified as coming under Case V and not under Case IV. An argument was founded on the direction contained in Section 5 of the Act of 1914 that the tax should be computed on the " full amount " of the income, whether received in the United Kingdom or not ; and it was suggested that the expression " full amount " there used meant the actual income for the year. But the expression " full " amount " is found in the rules relating to Case V in the Act of 1842 as well as in other parts of the Income Tax Acts ; and no inference can be drawn from the use of the same expression in Section 5 of the Act of 1914.

A last argument was founded upon the saving Clause contained in Section 5. That Clause, which immediately follows the direction (above set out) that the provisions of the Income Tax Acts shall apply, is as follows :—" and nothing in those provisions as to the receipt of sums in the United Kingdom shall be " contrued so as to render liable under those rules to income tax for the current " or any subsequent year any sums which represent . . . (*b*) income from " any such securities, stocks, shares, or rents which was paid or became due " before the sixth day of April, nineteen hundred and fourteen." It was contended that, if the tax is computed upon an average of three years preceding

(Viscount Cave)

the financial year 1915–1916, such computation must include income which was paid or became due before the 6th April, 1914, and accordingly is an infringement of paragraph (*b*) of the above Clause. It appears to me that this argument rests upon a misunderstanding of the provision in question. The enactment is that " nothing in those provisions " (that is to say, in the provisions of the Income Tax Acts) " as to the receipt of sums in the United " Kingdom shall be construed so as to render liable under those rules to income " tax for the current or any subsequent year " income which was paid or became due before the duty was imposed in the new form ; and the object appears to be to protect the taxpayer from being liable to a double tax, namely, the tax under the new Act on all foreign income of the nature described, and the tax under the earlier statutes on similar income accrued before the date mentioned and remitted after that date to the United Kingdom. It has no reference to the computation of income for the purposes of Section 5 of the new Act.

For the above reasons it appears to me that the dividends in question were properly assessed upon an average of three years, and accordingly that this appeal fails and should be dismissed with costs.

Lord Atkinson.—My Lords, I concur. Schedule D of the Act of 1842 treats the interest arising from " securities " upon which Income Tax is to be charged as something, if not different in kind, at all events different in the mode in which it is to be measured for the purpose of this tax, from the income arising from " foreign possessions ". The first question for decision, therefore, is :— Are shares in a manufacturing company, like shares in those companies which carry on their business in the United States of America, " securities " or " foreign possessions " within the meaning of the Income Tax Acts of 1842 or 1853 ? Now, shares in such a company are portions of the capital of the company. The company carries on its manufacture in factories built on American soil for the benefit of its shareholders. The net profits made by those operations are divisible in whole or in part amongst those shareholders. These profits are, as it were, the fruit of the tree planted on American soil, and, should the company be wound-up, if its assets were more than sufficient to discharge all its debts and liabilities, the overplus would be divisible amongst its shareholders. A share in such a company resembles a *chose in action* in this respect, but in this respect only, that it is assignable and the assignee would be entitled to sue upon it to obtain his appropriate share of the net profits just as the original holders would be. In my opinion, therefore, shares in such a company are " foreign possessions " within the meaning of the Fifth Case, Schedule D of the Income Tax Act of 1842, rather than securities within the " Fourth Case ". In popular language, shares such as these may sometimes be described as securities, and the context in wills and other instruments in which the word " securities " is found may show that the word was used to include shares in companies.

In *Colquhoun* v. *Brooks*[1] (14 A.C. 493) the matter dealt with was the " income derived by the Respondent who was resident and domiciled in " England from a trading firm carrying on a business in Australia in which " firm he was a partner ", not a shareholder. In that respect the Case differs from the present, but the reasoning upon which the judgments of Lords Herschell and Macnaughten were based applies, I think, to the present Case. At page 508[2] of the Report, Lord Herschell said :—" Now the word " ' possessions ' is not used in the part of Schedule D which describes the " subjects of the tax. Speaking generally they are defined to be profits arising " from property and those arising from trades and professions ; when therefore

(1) 2 T.C. 490. (2) 2 T.C. at p. 502.

(Lord Atkinson)

"the word 'possessions' is employed it seems to indicate an intention to "cover more than 'property' and it is difficult to see why, unless the intention "were to embrace something more, the latter word was not used. 'Possessions' "is a wide expression; it is not a word of technical meaning; the Act supplies "no interpretation of it. I cannot see why it may not fitly be interpreted as "relating to all that is possessed in His Majesty's Dominions outside the "United Kingdom or in foreign countries which is a source of income. And, "if so, I do not think any violence would be done to the language if it were "held to include the interest which a person possesses in a business carried on "elsewhere."

It would appear to me that these last words apply to a shareholder in a foreign manufacturing company equally with a partner in a foreign firm engaged in commerce.

Lord Macnaughten at p. 516(1), after reviewing the earlier legislation of this subject of Income Tax, said :—"Turning now to the 'fifth case', I ask why "are not the Respondent's profits and gains from his Melbourne business "within the 'fifth case'? What is the meaning of the term 'possessions' in "that Case? The word 'possessions' is not a technical word. It seems to "me that this is the widest and most comprehensive word that could be used. "Why, for instance, should 'possessions' in Ireland not mean everything, "every source of income that the person has in Ireland whatever it may be. ". . . I use the expression 'source of income' because it is as a 'source of "'income' that the Act contemplates and deals with property, and everything "else that a person chargeable under the Act may have, and the Act itself "in Section 52 uses the expression 'sources' chargeable under the Act, and "'all sources contained in the several Schedules' as describing everything "in respect of which the tax is imposed."

This Case was decided in 1889, twenty-five years before the Act of 1914 was passed, and it was held in it that the Respondent's portion of the profits of his foreign firm not received in the United Kingdom was not liable to Income Tax, but that the portion of those profits which was received in the United Kingdom and was, because of that, subject to Income Tax, which had to be computed on an average of the three years as directed in the first Case of Schedule D is, "on a sum not less than the full amount of the balance of the "profits and gains of the trade, manufacture, or concern mentioned on a fair "and just average of three years ending on such day of the year immediately "preceding the year of assessment on which the accounts of the said trade, "manufacture, adventure, or concern shall have been usually made up, or on "the fifth day of April preceding the year of assessment." By the 5th Section of the Finance Act, 1914, Income Tax in respect of income arising from securities, or from something treated as other than securities, namely, "stocks, "shares or rents", is to be computed on the full amount of the income, whether the income has been or will be received in the United Kingdom or not, subject in the case of income not so received to the same deductions and allowances as if it had been received, and also subject to the other deductions named.

It was urged on behalf of the Appellant that, owing to the provisions of certain of the machinery or collecting sections of the Act of 1842, it would be quite impossible to make the computation directed to be made where the Income Tax was to be levied on the full amount of the income under the 5th Section of the Act of 1914. There may be some difficulty in applying these Sections to such a case, but I am not at all convinced that it exceeds to a substantial degree, if at all, the difficulty of applying them to cases where only the portion of the income received in the United Kingdom was subject to

(1) 2 T.C. at p. 508.

(Lord Atkinson)

the tax. The provisions of the Income Tax Act relating to returns are made applicable to the former case as they always have been to the latter, and the receiver of the income in such a case will be under the same obligation to make those returns as he was when only a portion of his income was received in the United Kingdom. By the first provisions of this Section 5, income from any securities, stocks, shares or rents on which Income Tax has been paid under the Section, or which was paid or became due before the 6th April, 1914, was not to be rendered liable under the rules to Income Tax for the current or any subsequent year. But though Income Tax cannot be levied on such sums of income as these, there is nothing to prevent them being taken into account in fixing the fair and just average of the income for three years as required by Schedule D, Case V and Case I.

Sir John Simon urged, as I understood him, that in the present instance to take the profits and gains received by the Appellant in the year 1913 for the purpose of arriving at this average would amount in effect to taxing them. I do not think this is so. For instance, if the income accruing to the Appellant in that year was very small, the taking it into account for the purpose of averaging would reduce the income to be taxed in the year 1916 much below what was actually received. Where the income from any source is variable in amount from year to year, the taking of the three years' average of it is in relief of the taxpayer rather than the contrary.

In my view, the decision of the Court of Appeal was right on both points. I, therefore, think that the Appeal should be dismissed with costs here and below.

Lord Shaw of Dunfermline.—My Lords, I agree. The Appellant is ordinarily resident in the United Kingdom. He receives certain income in this country "as a shareholder in an American Corporation, *i.e.*, the Singer Manufacturing "Company of New Jersey in the United States of America". The simple question in the Case is whether the income consisting of the dividends so received falls within the Fourth Case or the Fifth Case of Schedule D of the Income Tax Act of 1842. In other words, does this income fall under the denomination of "interest arising from . . . foreign securities", or under the Fifth Case, "in respect of . . . foreign possessions"?

Possession is a wide generic term. It comprehends all that a man possesses, and, whether it be the shares of the Singer Company or the dividends received from those shares, it is no doubt true that the word "possessions" would cover them. "Foreign possessions" in this wide generic sense would cover "foreign securities" also but for the fact that the Statute under construction has enumerated foreign securities as a different Case, and one to be treated on different principles from the case of foreign possessions. Foreign securities, so to speak, are cut out of the comprehensive term and made to stand by themselves in a different and separate category.

The word "securities" has no legal signification which necessarily attaches to it on all occasions of the use of the term. It is an ordinary English word used in a variety of collocations: and it is to be interpreted without the embarrassment of a legal definition and simply according to the best conclusion one can make as to the real meaning of the term as it is employed in, say, a testament, an agreement, or a taxing or other statute as the case may be. The attempt to transfer legal definitions derived from one collocation to another leads to confusion and sometimes to a defeat of true intention. Of these two things, accordingly, "foreign possessions" and "foreign securities", which of the two terms fits the case of the shares in the Singer Company of

(Lord Shaw of Dunfermline)

New Jersey? A security means a security upon something. Securities, in the present instance, being in contrast with, or separation from, possessions, cannot be taken as the same word would be taken if applied, for instance, to the lodging by a customer of securities with his bank; in which case the term would naturally apply to the scrip which he hands over the counter. Securities in the Fourth Case of Schedule D appear to me to mean securities upon something as contrasted with the possession of something. The term involves the idea of the relation of creditor with debtor, the creditor having a security over property, concern, assets, goods or other things, which are, so to speak, put in pledge by the debtor and form the security for the fulfilment of his obligation to the creditor. This is not the position of Mr. Singer's title. He is a shareholder. The relation between him and his fellow shareholders is not that of creditor with debtor but of partner or joint adventurer with the other shareholders. His relation with the company is that of part owner of the concern. The property which he so holds falls, in my opinion, accordingly, as a matter of construction, under the term "possessions" and not under the term "securities". The remarks of Mr. Justice Wright in *Bartholomay Brewing Company* v. *Wyatt*(1), and of Lord Justice Moulton in *Gramophone Ltd.* v. *Stanley*(2) may, as was argued, have been *obiter*, but I am humbly of opinion that they were entirely sound.

The practical results, my Lords, of this view seems to confirm it completely. For in practice the return from securities is in the general case a fixed and certain return; whereas in practice the income or dividends derived from shares is or may be in the general case variable and uncertain, depending as it does upon the rise or fall of the fortunes of the business. To the former, *i.e.*, securities with a fixed return, the principle of averaging up one year with another is not in place; whereas to the latter, the case of variable returns from possessions, the principle of averaging up during a course of three years naturally applies. I think the statute meant in this practical way to have the assessment proceed, and the distinction of the case of securities taxed year by year as the fixed income comes in, from the case of possessions taxed upon the average of the variable return, follows the line of incidence which the Legislature of set purpose meant to pursue. In my opinion that purpose was sufficiently accomplished by the distinction between the two Cases, and, I may add that I am not satisfied that in the working out of the Statute there may be produced such difficulties as were conjectured in argument, and these would need, in my opinion, to be shown to be well nigh insuperable before they could affect the interpretation of the Act.

Lord Wrenbury (*read by* **Lord Atkinson**).—My Lords, I agree. I desire only to add a few words as to the meaning of the expressions "securities" in Case IV, and "Foreign Possessions" in Case V of Schedule D, for it is on the meaning of these words that the decision of this Case depends.

A security, I take it, is a possession such that the grantee or holder of the security holds as against the grantor a right to resort to some property or some fund for the satisfaction of some demand, after whose satisfaction the balance of the property or fund belongs to the grantor. There are two owners, and the right of the one has precedence of the right of the other. A share in a corporation does not answer the above description. There are not two owners, the one entitled to a security upon something and the other entitled to the balance after satisfying that demand. A share confers upon the holder a right to a proportionate part of the assets of the corporation; it may be a proportionate part of its profits by way of dividend, or it may be a proportionate part of its distributive assets in liquidation. There is no owner

(1) 3 T.C. 213. (2) 5 T.C. 358.

(Lord Wrenbury, *read by* **Lord Atkinson)**
other than himself. These meanings must no doubt yield to any inference to be drawn from the context in which the expression occurs, and necessarily to any express definition such as that in Section 27 (7) of the Finance Act, 1916. Here there is no such context or definition. Our attention has been drawn to provisions in the Acts which no doubt render it difficult or laborious to ascertain the three year average in the case of shares in a foreign corporation. They are not, I think, sufficient to affect that which is the meaning of the word " securities " as I have stated it.

I think the Appeal fails.

Lord Phillimore.—My Lords, I agree. This is not a question of the liability to tax, but solely of the measure by which the taxable income of the Appellant for the year in question is to be ascertained; whether the source of income for which it is proposed to tax the Appellant is to be considered as interest arising from foreign securities, in which case it is to be computed as that which has been or will be received in Great Britain in the current year, under the Fourth Case of Schedule D, or whether it comes under the Fifth Case as income from foreign possessions, in which case it is to be computed on an average of the three preceding years.

In common with the rest of your Lordships, I attach no importance to an argument which was based on the language of the Act which brought this income within the sphere of taxation, that is, Section 5 of the Finance Act of 1914. The object of that Act is to make persons resident in this country taxable on their income arising from securities, stocks, shares, and rents in any place out of the United Kingdom, whether the income has been or will be received in the United Kingdom or not. As regards such income when received out of the United Kingdom, it is to be taxed in future in the same way as if it had been received in the United Kingdom, that is, according to the same measure. If, supposing, it had come into this country it would have been taxable under the Fifth Case, it not coming into this country is taxable under the same Case; and the measure which would have to be applied, if the dividends on Singer's shares in the Singer Company had been remitted to the Appellant in this country, instead of being retained in the United States, is the same as the measure applicable to this Case. The contention on behalf of the Surveyor is based upon a strict construction of the language of Cases IV and V. The argument on behalf of the Appellant rests upon the anomalies which such a construction would produce, and also partly upon an inference from certain statutes with regard to the payment of Income Tax by persons entrusted with payment in England of dividends on the shares in foreign companies.

The first suggested anomaly is that, whereas in respect of companies in the United Kingdom the shareholder pays the Income Tax appropriate to the particular dividend, which is usually, though not always, deducted by the company before payment, and so pays Income Tax upon the actual sum he receives yearly; the holder of shares in a foreign company will, if he comes under the Fifth Case, pay on a computation of the average of the three preceding years. It is true that the effect of this will be that the measure of Income Tax paid on dividends from companies outside the United Kingdom, will year by year be different from the measure of Income Tax paid or borne on dividends declared by companies in the United Kingdom. But a British company, taken as a corporate entity, does pay Income Tax like any other trader upon a notional annual income arrived at by computing the average of its profits for the three preceding years, and the method by which this Income Tax is in turn transferred to the shareholder is that provided by Section 54 of the Act of 1842, which provides that there should be allowed out of the dividends which it pays " a proportionate deduction in respect of

(Lord Phillimore)
"the duty so charged". A foreign company, which does not pay the British Income Tax in its corporate capacity, makes no such proportionate deduction: and it is not unreasonable that when the shareholder comes to pay, instead of having his tax deducted at the source, he should pay upon the three years' average as being a shareholder in a trading concern.

The next anomaly arises in this way. By the Income Tax (Foreign Dividends) Act of 1842, every person entrusted with the payment of annuities, or dividends, or shares of annuities out of the Revenue of any foreign State has to deliver an account to the Commissioners for Special Purposes, who will make an assessment on such person under Schedule C. He is then authorised to pay the Income Tax and deduct it from the payment which would have to be made to the investor. By Section 10 of the Income Tax Act, 1853, these provisions are extended to the assessing and charging under Schedule D of the duties on all interest, dividends, or other annual payments, payable out of or in respect of stocks, funds, or shares of any foreign company, and there is subsequent legislation which carries the matter somewhat further in the same direction. It is said, as it seems to me correctly, that the person entrusted, who is to make his return, will make his return yearly, and will return for assessment and tax the interest or dividends accruing to his principal for that year and will deduct from the sum he pays to his principal the tax of that year, and that there will be no question of average, and, therefore, that where the Act of 1853 or subsequent similar legislation applies, the measure will be that applicable to the Fourth Case, and not that applicable to the Fifth. As I have said, it appears to me that this contention is right. The argument then proceeds:—If this be so, and yet the contention of the Commissioners is right for a case where dividends are paid direct to the shareholder and not to a person entrusted, the mere difference of machinery will make a difference in the measure. Having arrived at this conclusion, then you must admit, it is said, that a difference in the mode of payment, which the company and perhaps the shareholder can make at pleasure, will make a difference in the measure by which the tax is to be computed, with a result which may be injurious to the Revenue. Then the argument concludes:—Either this shows that the true meaning of the word "securities" in the Fourth Case is such as to include under it stocks, funds, and shares or, whatever might otherwise be deemed to be the meaning, the Act of 1853 has put a statutory construction upon this word.

My Lords, there is force in this argument, and at one time I was a good deal swayed by it, but I think it is not strong enough. The result may well be that the anomaly exists that there are two measures, one applicable where the shareholder receives his foreign dividends direct, and one applicable when there is a person entrusted by the company with the payment of dividends. The result is strange, but not impossible, and the arguments for the Appellant being exhausted, I turn to the arguments for the Surveyor. They are derived from the actual language. I have not been myself much impressed by the word "securities". No doubt the proper meaning is that which has just been given by the noble and learned Lord, Lord Wrenbury. No doubt also the Court of Chancery has construed the word "securities" when it appears in the instrument creating the trust, as confined to securities in the strict sense of the word, unless there should be other words in the instrument showing that the creator of the trust had attached to them a different meaning. But then it must be remembered that the Court of Chancery started with the view that there was only one investment open to trustees, that is in Consolidated Bank Annuities; that even investments in other government stocks, such as Reduced 3 per cent. or New 3 per cent., were only gradually and somewhat

(Lord Phillimore)

grudgingly admitted, and that thenceforward, as from time to time the area of trustees' investments has been extended, either by the private instrument or by Act of Parliament, the Court has always looked on each new investment as having the duty of making good its title to admission. In a popular sense the word "securities" includes, I think, nowadays the scrip of stocks and shares. It may be said that this sense is a loose one, but so I think is the word "possessions" used in the Fifth Case. To me "possessions" would mean something tangible. Possessions abroad would mean such things as a sugar plantation or bales of goods, and I should distinguish *choses in possession* from *choses in action*, and include in the latter stocks and shares carrying dividends as well as all interest-bearing debts. But there is high authority for saying that the word "foreign possessions" in the Fifth Case includes any form of property from which profit can be derived, and would indeed include property coming under the Fourth Case, if it had not been specifically cut out from the larger mass. Perhaps the real explanation is that in 1842 there were few incorporated companies, fewer which were foreign companies, and fewer still which were foreign companies having shares owned in Great Britain, so that, while the Legislature has used language which has been construed as wide enough to include all foreign species of property, what were principally in mind at the time were investments in lands, or in plantations or factories abroad. Accepting then the argument of the Crown that the Fifth Case deals with the mass and the Fourth Case with the excepted body only, I am impressed in the Fourth Case not so much by the word "securities" as by the words "interest arising from securities". Even there the language is not very clear. The words run, "The duty to be charged in respect of interest "arising from securities in the British plantations in America or in any other "of her Majesty's dominions out of Great Britain and foreign securities, with "the exception of annuities . . . charged under Schedule C." Do these words mean the duty to be charged in respect of interest arising from foreign securities, or do they mean the duty to be charged in respect of foreign securities? It might be hard to say; but the matter is cleared up by Schedule G, Rule 10, where the phrase used is "every person receiving in Great "Britain interest from securities out of Great Britain," while Rule 11 speaks of "every person receiving in Great Britain profits from possessions out of "Great Britain." Reading the language of the Fourth Case by the construction put upon it by these Rules, I can have no doubt that the Fourth Case is limited to securities in the narrower and technical sense, and that these shares are not such securities, and are to be assessed on the three-yearly average, and that the decision of the Court of Appeal is right and should be confirmed.

Questions put:

That the Order appealed from be reversed.

The Not Contents have it.

That the Order appealed from be affirmed and this Appeal dismissed with costs.

The Contents have it.