No. 750.—HIGH COURT OF JUSTICE (KING'S BENCH DIVISION).—17TH, 18TH, 21ST AND 25TH JANUARY, 1929.

COURT OF APPEAL.—2ND, 3RD, 6TH AND 7TH MAY AND 6TH JUNE, 1929.

HOUSE OF LORDS.—20TH FEBRUARY, 13TH MARCH AND 4TH APRIL, 1930.

THE COMMISSIONERS OF INLAND REVENUE *v.* DALGETY AND COMPANY, LIMITED.[1]

Dominion Income Tax relief—Finance Act, 1916 (6 & 7 *Geo.* V, *c.* 24), *Section* 43; *Income Tax Act*, 1918 (8 & 9 *Geo.* V, *c.* 40), *Section* 55; *and Finance Act*, 1920 (10 & 11 *Geo.* V, *c.* 18), *Section* 27.

A company incorporated and controlled in England and trading in Australia and New Zealand paid both United Kingdom Income Tax and Dominion Income Tax in respect of its profits derived from trading operations in those Dominions. In addition to the trading profits the Company had other income, which was subject to United Kingdom Income Tax only. The Company paid under deduction of United Kingdom Income Tax at the full rate substantial amounts of debenture interest which it was agreed should be regarded, for the purposes of a claim to Dominion Income Tax relief, as having been paid out of the Company's income that was subject to United Kingdom Income Tax only, so far as such income was available for that purpose, and as to the balance as having been paid out of the trading profits that were subject to both United Kingdom Income Tax and Dominion Income Tax.

The Company claimed that it was entitled to relief in respect of the total amount of trading profits on which it had paid both United Kingdom Income Tax and Dominion Income Tax, its right to relief not being affected by the fact that it was entitled to deduct and had deducted United Kingdom Income Tax at the full rate from the debenture interest paid out of those profits.

Held, *that the Company was entitled to the relief claimed.*

CASE.

Stated under the Finance Act, 1921, Section 28, and the Income Tax Act, 1918, Section 149, 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 Commissioners for the Special Purposes of the Income Tax Acts held on 7th February, 1927, for the

(1) Reported (K.B.D. & C.A.) [1930] 1 K.B. 1 and (H.L.) 46 T.L.R. 340.

purpose of hearing appeals, Dalgety and Company, Limited, hereinafter called the Company, claimed relief in respect of Colonial or Dominion Income Tax under Section 43 of the Finance Act, 1916, and Section 55 of the Income Tax Act, 1918, for the years ending respectively 5th April, 1917, 5th April, 1918, 5th April, 1919, 5th April, 1920, and under Section 27 of the Finance Act, 1920, for the years ending 5th April, 1921, 5th April, 1922, 5th April, 1923, and 5th April, 1924.

2. The Company is a company incorporated in England under the Companies Acts with an authorised capital which during the years in question consisted of 200,000 Ordinary Shares of £20 each, on all of which £5 per share has been paid up, and 100,000 Preference Shares of £10 each, of which 50,000 have been issued and fully paid up. The Company has also issued debentures and Debenture Stocks (both of which are hereinafter included in the expression "debentures") which during the years in question amounted to approximately £2,500,000. Under these debentures the principal and interest were secured on the whole undertaking and assets of the Company.

3. The business of the Company is that of general merchants, shipping and insurance agents, and bankers. Apart from dividends which are taxed by deduction and income from property which is charged to Income Tax under Schedule A, practically the whole of its income arises from trading profits earned by trading operations in Australia and New Zealand, but as the control of the Company is exercised in England, such trading profits are all assessed to British Income Tax under Case 1 of Schedule D. Dominion Income Tax has also been paid on such trading profits arising in Australia and New Zealand.

4. For each of the years under review a claim for relief in respect of Colonial or Dominion Income Tax has been made by the Company, and has been admitted in part by the Commissioners of Inland Revenue. No question now remains in dispute in regard to the rate at which relief should be granted for any year, the sole point at issue being whether the amount on which the relief due to the Company is to be calculated is the whole amount of the profits earned by it in Australia and New Zealand or only the balance of such profits remaining after deducting therefrom the excess of the interest paid by it on its debentures over the amount of income arising in the United Kingdom. It is agreed that the debenture interest should be regarded as paid out of income arising in the United Kingdom so far as there was such income available for the purpose and consequently to that extent would not affect the amount of relief to which the Company might be entitled. The balance of the debenture interest was paid out of the said trading profits.

5. The following figures for two typical years, of which the first is governed by Section 43 of the Finance Act, 1916, and the second by Section 27 of the Finance Act, 1920, illustrate (i) the method which the Company claims and (ii) the method which the Crown claims should be followed in calculating the amount of relief due :

Relief 1918–19.

(*a*) Total Profits		£468,089
(*b*) Taxed Dividends and Schedule A		48,820
(*c*) Profits (excluding line (*b*)), i.e., trading profits taxed under Case 1, Schedule D, and also to Dominion Income Tax		419,269
(*d*) Debenture Interest	£104,065	
(*e*) *Less* (*b*) above	48,820	
		55,245
(*f*) Net Profits		£364,024
(i) *Claimed by the Company.* Relief due on line (*c*) i.e., on whole of profits made in the Dominions (not deducting any debenture interest) amounting at agreed rates to		£49,713
(ii) *Allowed by the Revenue.* Relief due on line (*c*) as above less balance of debenture interest amounting to £55,245 as above (i.e., relief on line (*f*)) amounting at agreed rates to		£43,820
Difference between the two methods ...		£5,893

Relief 1923–24.

(*a*) Total Profits		£578,051
(*b*) Taxed Dividends and Schedule A.		79,506
(*c*) Profits (excluding line (*b*)), i.e., trading profits taxed under Case 1, Schedule D, and also to Dominion Income Tax		£498,545
(*d*) Debenture Interest	£114,228	
(*e*) Less (*b*) above	79,506	
		34,722
(*f*) Net Profits		£463,823
(i) *Claimed by the Company.* Relief due on line (*c*), i.e., on whole of profits made in the Dominions (not deducting any debenture interest) amounting at agreed rates to		£50,838
(ii) *Allowed by the Revenue.* Relief due on line (*c*) as above less balance of debenture interest amounting to £34,722 as above (i.e., relief on line (*f*)) amounting at agreed rates to		£47,567
Difference between the two methods ...		£3,271

6. In computing the profits for assessment under Case I, Schedule D, no deduction was allowed in respect of debenture interest. In paying such debenture interest the Company deducted the full rate of United Kingdom Income Tax.

7. It was contended on behalf of the Company :

(*a*) That the Company had paid United Kingdom Income Tax on the whole of its income which included the part thereof earned in Australia and New Zealand.

(*b*) That the Company had also paid Colonial or Dominion Income Tax on the part of its income earned in Australia and New Zealand.

(*c*) That the Company was therefore entitled to relief from United Kingdom Income Tax on all that part of the income.

(*d*) That the Company's right to relief was not affected by the fact that it was entitled to deduct and had deducted United Kingdom Income Tax on payment of interest to its debenture holders.

8. It was contended on behalf of the Crown, inter alia

(*a*) That the Company was not entitled to relief in respect of any income the tax on which it was entitled to deduct out of any payment made by it to any other person.

(*b*) That so far as the profits were applied in payment of debenture interest they were not income of the Company within the relief provisions in question.

(*c*) That as the Company had not ultimately borne United Kingdom Income Tax on the amount paid by way of debenture interest it had not paid such tax within the meaning of the Sections providing for the allowance of relief.

(*d*) That the method of computing the relief contended for by the Crown as set out in paragraph 5 hereof was correct.

9. We, the Commissioners who heard the claim, gave our decision upon the point now in dispute in the following terms :

" The first question with which we have to deal is whether " the Company is entitled to Dominion Income Tax Relief upon " the whole amount of the profits earned by it in Australia and " New Zealand, or only on the balance remaining after deducting " from those profits the excess of debenture interest paid by it " over the amount of income arising in the United Kingdom.

" The Company has, in the first instance, paid United Kingdom " Income Tax on the whole of its profits, wherever arising, " without any deduction in respect of debenture interest. It has " also paid Dominion Income Tax on the profits arising in

" Australia and New Zealand without deduction in respect of " debenture interest. It has deducted United Kingdom Income " Tax from the interest paid to its debenture holders, but has not " deducted, and was not entitled to deduct, Dominion Income Tax " from such interest.

" It is urged on behalf of the Company that all its profits " from Australia and New Zealand, including those which have " been applied in the payment of debenture interest, have borne " both United Kingdom and Dominion Income Tax, that in the " literal and natural sense the Company has paid both taxes and " nobody else has in any sense paid both taxes, and that the " Company is a person, and the only person, who can claim the " relief granted by the Sections from this double burden. It is " submitted that this view is supported by the decision of the " House of Lords in the case of the *Scottish Union and National* " *Insurance Company* v. *New Zealand and Australian Land* " *Company, Limited* [1921] 1. A.C. 172.

" On behalf of the Crown it is contended that the Sections " require a claimant for relief to show that he has paid double " tax on some part of his net total income, and that he has " ultimately borne the United Kingdom tax from which he claims " relief. It is argued that Section 17 of the Income Tax Act, 1918, " precludes the allowance of relief in respect of any income the tax " on which the claimant is entitled to charge against any other " person, or to deduct out of any payment which he is liable to " make to any other person, and that the contention of the Crown " is supported both by the definition of ' appropriate rate ' in " Section 27 of the Finance Act, 1920, and by the judgments in " the *Scottish Union* case, which depend on a consideration of the " question of the incidence of the burden of the tax.

" Section 17 of the Income Tax Act, 1918, appears to raise a " formidable objection to the Company's claim, and the argument " based upon it calls for careful consideration. Section 17 " reproduces in substance a limitation contained in Section 163 of " the Income Tax Act, 1842, and both in substance and in form " (except for the substitution of ' claimant ' for ' individual ') a " limitation contained in the provisions of the Finance Acts of 1907 " and 1916 as to relief on earned and unearned income respectively. " Section 163 of the Act of 1842 related to the conditions on which " persons with small incomes could claim exemption from Income " Tax, and it was subsequently applied to claims for abatement " and other reliefs dependent on total income from all sources. " For the years 1916–17 to 1918–19, the Crown cannot rely upon " the form of Section 17, but for this line of argument must rest " upon Section 163 of the Act of 1842. Section 17 of the Act of " 1918 does not really alter the position as regards the later years. " It is one of a series of Sections relating to exemption, abate- " ment and relief dependent on total income. The ' claimant '

" referred to in Section 17, as in Sections 10 to 15, is an individual " described in Section 9 who claims and proves that his total " income from all sources does not exceed a specified amount. The " accident that in the Act as finally printed Section 17 appears " as a separate Section cannot have the effect that the Consolidation " Act has extended the scope of this provision to classes of claimants " to whom it did not previously apply. (Historically the Report " of the Joint Select Committee of both Houses of Parliament on " the Bill shows that some slight hesitation was felt as to the " propriety of passing these Sections in the form eventually " adopted, on the ground that they might conceivably effect an " alteration of the law in the sense, not of extending, but of " restricting, the scope of the provision reproduced, as excluding, " by the substitution of the word ' individual ' for the word " ' person ', a possible argument, which the Committee considered " to be invalid, that Section 163 might apply to corporate bodies). " The argument based on this provision has therefore no weight " unless a claim under Section 43 of the Finance Act, 1916, " Section 55 of the Income Tax Act, 1918, or Section 27 of the " Finance Act, 1920, implies a proof of total income from all sources " in accordance with Sections 163 and 164 of the Act of 1842, " Sections 9 and 27 of the Act of 1918, and Section 17 of the " Act of 1920. Against this suggestion may be set the generally " accepted view that Sections 163 and 164 of the Act of 1842 did " not apply to companies, and the reappearance of the word " ' person ' in Section 27 of the Act of 1920 after ' individual ' " had been adopted in the provisions as to proofs of total income " from all sources. If these last named provisions are to be " applied to claims under the Dominion Income Tax Relief Sections " made by companies, it can only be an implied analogy.

" The obscure provisions of Section 27 of the Act of 1920 as " to the determination of the rate of United Kingdom Income Tax " have no application for years prior to 1920–21. From that time " onwards they raise several difficult questions as to the proper " method of determining the rate appropriate to an individual. " For example, what is the relation of the definition of ' rate of " ' United Kingdom Income Tax ' in subsection 8 (*d*) to the " definition of ' appropriate rate ' in subsection (1)? Has ' payable ' " in the one the same meaning as ' has borne or is liable to bear ' " in the other? Has ' Taxable income ' in Section 27 (8) (*d*) the " same meaning as in Section 17? Does ' Taxable income ' in " either case include or exclude income the tax on which the " claimant is entitled to charge against any other person or to " deduct out of any payment which he is liable to make to any " other person? Assuming, however, that the practice of deter- " mining the rate appropriate to an individual by dividing the tax " ultimately borne by him by his net total income after deducting " charges and the allowances granted by Sections 17 to 22 of the

" Act of 1920 correctly interprets the intention which the Act has " failed to elucidate, and that the substantial object of these " complicated provisions is to provide that in determining the " appropriate rate account should be taken of the half-rate relief " which an individual can obtain on the first £225 of his taxable " income, we are not much helped towards a solution of our " problem. In the case of a company, any rational method of " determining the appropriate rate will produce the result that the " appropriate rate is the standard rate, and, after all, the amount " of income used as a divisor in determining the rate has no " necessary relation to the income on which relief is to be given. " The determination of rates is merely a preliminary proceeding, " the rates when determined have to be applied to quite a different " amount of income. In such a Section as this, even if the " meaning of taxable income were clear, there is no presumption " that the word ' income ' has the same meaning throughout. If " it were otherwise, it might be worth notice that in determining " the rate of the Federal tax on the Australian income the debenture " interest is, perhaps necessarily, included in the amount of income " used as a divisor.

" The judgments in the *Scottish Union* case appear, so far as " they go, to be in favour of the Company. The burden of tax of " which the incidence was considered was the burden of the " Colonial tax. The House of Lords was fully aware that the " preference shareholders ultimately bore the burden of the United " Kingdom Tax, but this did not suggest any doubt as to the right " of the Company to claim repayment of a portion of that tax. " Again in *Sheldrick* v. *South African Breweries, Ltd.*(1) the right " of the Company to relief in respect of all its South African " profits was treated as unquestionable, though Section 27 (5) " obliged it to pass on the relief so obtained to the preference " shareholders. Thus in the one case the Company was held to be " entitled to claim and retain the relief for the benefit of the " ordinary shareholders, though they did not ultimately bear the " United Kingdom tax on the profits distributed to the preference " shareholders, while in the other case, under the Act of 1920, the " preference shareholders obtained the relief though they had not " suffered any Dominion Income Tax.

" These decisions appear to be incompatible with the view that " it is an essential condition of a title to relief that the claimant " should ultimately bear both taxes, and if, apart from sub- " section (5) of Section 27 of the Act of 1920, a company could " claim relief for the benefit of ordinary shareholders in respect of " profits the United Kingdom tax on which was ultimately borne " by preference shareholders the fact that United Kingdom tax " was ultimately borne by debenture holders would not in itself

(1) [1923] 1 K.B. 173.

" seem to create an obstacle to relief in respect of profits applied in " payment of interest to them. On the other hand the decisions " are not conclusive against the argument that the income on which " relief can be given must be part of the net total income of the " claimant. Preference shareholders are members of the company " and there is no doubt that profits distributed to them form part " of the income of the company. Debenture holders are not " members of the company, and it is a debatable question whether " profits applied in payment of interest to them are or are not part " of the income of the company earning them.

" We come back, then, with little or nothing to guide us, to " the question whether in applying the Sections relating to Colonial " or Dominion Income Tax relief, profits used by a company in " payment of interest to its debenture holders are to be regarded " as forming part of the company's income or must, for the purpose " of ascertaining the amount of the company's income, be deducted " from the total profits earned.

" Upon the whole there appears to be no sufficient reason for " departing from the conclusion at which we arrived in a case " which came before us early in 1920, though our colleagues sub- " sequently dissented from it in a case arising under the Act of " 1920, that the profits and gains on which a company has been " assessed to and has paid British Income Tax in the first instance " must be regarded as a part of the company's income for the " purposes of Section 43 of the Finance Act, 1916, and that the " company is entitled to claim repayment under the Section if it " has paid Colonial Income Tax on the same profits and gains, " notwithstanding that those profits and gains have been partially " or wholly applied to the payment of debenture interest from which " the company can deduct tax; and the position seems to be the " same under the Act of 1920. The decision of the Courts, though " they do not amount to a direct authority, tend to support this " view. The contrary contention of the Crown involves the " invocation of the provisions of Sections 163 and 164 of the Act " of 1842, or their equivalent, merely on the strength of the use " of the words ' his income ', and it leads logically to a very " narrow restriction of the possibility of relief in respect of the " earnings of a company, if not indeed to the conclusion which " we cannot, and are not asked to, accept, that the Sections " granting relief do not apply to companies at all."

Our decision upon a further question in regard to the rate at which relief should be allowed on the Australian profits, which was in favour of the Crown, has been accepted by the Company.

10. In accordance with the above decision we determined that the total amount of relief allowable to the Company, in terms of duty, for the years in question was as under, it being agreed

between the parties that these figures were correct if our decision was right in principle :—

	£	s.	d.
1916–17	25,644	15	0
1917–18	27,142	10	0
1918–19	49,713	1	3
1919–20	55,005	7	6
1920–21	73,624	10	9
1921–22	73,274	13	4
1922–23	47,161	19	5
1923–24	50,838	6	7

11. The Appellants immediately upon the determination of the claim declared to us their dissatisfaction therewith 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 the Finance Act, 1921, Section 28, and the Income Tax Act, 1918, Section 149, which Case we have stated and do sign accordingly.

P. WILLIAMSON,
N. ANDERSON,
} Commissioners for the Special Purposes of the Income Tax Acts.

York House,
23, Kingsway,
London, W.C.2.
29th March, 1928.

The case came before Rowlatt, *J.*, in the King's Bench Division on the 17th, 18th and 21st January, 1929, when judgment was reserved. On the 25th January, 1929, judgment was given in favour of the Crown, with costs.

The Attorney-General (Sir T. Inskip, K.C.) and Mr. R. P. Hills appeared as Counsel for the Crown and Mr. A. M. Latter, K.C., and Mr. A. M. Bremner for the Respondent Company.

JUDGMENT.

Rowlatt, J.—In this case there is an appeal from the decision of the Special Commissioners upon an appeal to them which was heard at a meeting on the 7th February, 1927, with reference to the taxation for eight years, the first being the year which ended in April, 1917, and the last in April, 1924.

I again feel it my duty to call attention to this gross delay. This is a question which touches not merely the rights of the individual parties, but—a point which affects the affairs of many people—the construction of legislation introduced in 1916, and, in my judgment, it is a shocking thing that these matters should drag

(Rowlatt, J.)

on in this way, whether you look at it from the point of view of the public whose affairs cannot be settled while these questions are outstanding, or from the point of view of the Revenue who are supposed to raise from the Income Tax yearly a sum for the service of the current year. I have drawn attention to this before; it does not do any good. On one occasion the late Lord Chancellor was informed, and apparently believed, that it was due to the existence of points of argument. The points of argument have been got rid of; they do not touch the question. I am not saying whose fault it is, or whether it is the fault of anybody, or whether it could be avoided. All I desire to do is to draw attention to a situation which is extremely regrettable.

Now the question involved arises with reference to the relief introduced by the Finance Act of 1916 in favour of Income Tax payers having a source of income in a Dominion and bearing, in the first instance, double taxation, namely, both under the Dominion laws and under the laws of this country. As regards the first three years before me, it depends upon the construction of Section 43 of the Act of 1916; as regards the fourth year, it depends upon the provisions of the Income Tax Act of 1918; and as regards the last four years, it depends upon the provisions of the Finance Act of 1920, combined with one provision in the Income Tax Act of 1918. As regards all the years, in the first instance, the point depends upon the construction of the principal Sections giving the relief which, to all intents and purposes, with the alteration of a word, are in the same language for this purpose. With regard to the fourth year, there is a subsidiary point as to whether this relief is not forbidden by Section 17 of the Act of 1918; and as regards the last four years, there is a similar subsidiary point as to whether it is not forbidden by that same Section, but with a somewhat new flavour in it, if I may use that word, of the Act of 1920. But the first question is as regards all the years whether this relief can be obtained upon the construction of the Sections giving the relief.

Now the point is this: The Appellants, the Company, Messrs. Dalgety, have a Dominion income; they are an English Company; they pay tax on the Dominion income, and they pay Income Tax on the same income again here; but they have an issue of Debentures outstanding, and the question is whether they can claim relief upon their income less the interest which they have had to pay out of it to the Debenture holders, or whether they can claim relief upon the whole income upon which, in the first instance, they directly do pay United Kingdom Income Tax and have paid, of course, the Dominion Income Tax; in other words, can they get back relief in respect of so much of their income as has to be devoted, and has been devoted, to the payment of their Debenture interest?

(Rowlatt, J.)

Now Section 43 of the Act of 1916 is as follows, and of course this Section does not only apply to companies, because there may be individuals who have a Dominion income of the same sort which is subject to charges. The words of Section 43 are as follows :— " If any person who has paid, by deduction or otherwise, United " Kingdom income tax for the current income tax year on any " part of his income at a rate exceeding three shillings and sixpence " proves to the satisfaction of the Special Commissioners that he " has also paid any Colonial income tax in respect of the same part " of his income, he shall be entitled to repayment of a part of the " United Kingdom income tax paid by him ", and then the Section proceeds to define the amount which is to be repaid. I do not think anything turns, I may say at once, upon the words " any part ". If the whole of his income falls within this Section, the Section is equally applicable if he has paid it on every part of his income, and the part of the income which is referred to here has no reference at all to any part of the income which he keeps, or to the part which he has to spend in paying his Debenture holders. It is not with reference to that that the word " part " is used. It means : Supposing his other income is outside this region altogether, that of course can be neglected for this purpose. I pass from those words altogether. That was that Section. Now Section 55 of the 1918 Act reproduced it in the same terms so far as we are at present concerned ; and Section 27, Sub-section (1), of the Finance Act of 1920 again uses the same words, except that for the word " repayment " it substitutes the word " relief "—" relief from " instead of " repayment of ". As I have already said, it is upon the construction of these Sections that the question in the first place turns. As throwing light upon it, a great many considerations were adverted to in the argument before me, as they had been before the Commissioners, and I had the advantage in this case of a very careful judgment by the Commissioners ; but as I understand, other Commissioners have come to a different conclusion in another case upon the same subject matter. Included in what was referred to before me were the decisions in three cases dealing with the rights *inter se* as regards this relief of Preference and Ordinary shareholders. I do not think, however, that much assistance is gained in that way towards the elucidation of the present problem. There could never be contemplated the possibility of any claim on the part of a company to deduct its Preference dividends from its taxable income, for any purpose such as the present, and the Preference and Ordinary shareholders are not directly taxable, but are merely participants *inter se* in the burden of the company's tax. Charge holders or Debenture holders of a company, or encumbrancers on the income of an individual, are themselves taxable as on an interest of money or annual payment, though they pay that tax by deduction when paid out of profits already taxed.

(Rowlatt, J.)

Now leaving out of consideration Section 17 of the Act of 1918, which is the Section alleged expressly to forbid what the Company are seeking to do here and which does not apply in the case of all the years under discussion, the question is whether the word " income " means " income less charges ". Now it seems to me that within the four corners of Section 43 of the Act of 1916, and Section 27, Sub-section (1), of the Act of 1920, and Section 55 of the intermediate Act of 1918, there is a clear indication of what the answer must be. The enactments award repayment and relief where tax is twice levied on the same income. Now income charged with interest payments only bears double tax in so far as it exceeds the interest paid out of it, and such income in so far as it exceeds the interest paid out of it alone seems to be within the purpose of the Section, and is therefore alone, in my judgment, what is described by the word " income " as used therein. To give an allowance outside the scope of the grievance in view is foreign to the very nature of a relieving section.

On this short ground, and without discussing the bearing of Section 17 in the case of the fourth year, or the last four years, I think the Crown are entitled to my judgment; but I cannot refrain from pointing out the ulterior difficulties which would result from giving effect to the contention of the Company. If that is correct, they receive back or get allowed part of the tax deducted from the Debenture interest. I know of no provision under which they would hold that deducted tax for the Crown, but if they did, we should arrive by a circuity at the same result as if they failed in the claim now in question. If, however, they can retain this sum, what is the position ? Suppose a Debenture holder or a charge holder, if it is not the case of a company, has an income below the exemption limit, can he obtain repayment of the full tax when the Crown has not had it, or has he no right to recover it and so must lose his exemption in part when he is clearly entitled to it ? There is no provision whereby the company must pass on to him the relief obtained such as exists for Preference shareholders under Section 27, Sub-section (5), of the Act of 1920, which varied the consequences which flowed from Section 43 of the Act of 1916, as decided in the *Scottish Union* case(1).

If this is the extraordinary position as regards the Debenture holder, what, on the other hand, is the position of a company ? They possess this repaid tax and can divide it in dividend; they would have it, and could divide it to an extent corresponding to the interest they had paid, even though their income had been insufficient to pay the interest in full; and we should behold a Company in the position of paying a dividend though they had not

(1) The Scottish Union & National Insurance Co. *v.* New Zealand & Australian Land Co., Ltd., [1921] 1 A.C. 172.

(Rowlatt, J.)

paid their Debenture interest in full—paying the two concurrently in fact—and when they paid the dividend they would either deduct a sum for Income Tax or they would not. If they did, they would deduct tax which they had not paid, for repaid Income Tax cannot be a profit or gain itself taxable, and the shareholders, if below the exemption limit, could not get it back. If, on the other hand, they did not deduct it, the shareholder would get a dividend not tax free, in the common use of that phrase, but immune from tax and outside of Income Tax altogether.

The difficulty in this case is undoubtedly to justify cutting down the word " income " so as to read it as " income less charges ". One is not entitled to cut down a plain word so as to give it merely what one thinks is a more reasonable effect, or to provide for what one thinks is a mere *casus omissus*. When one finds, as I think we find here, that to give a word its unrestricted meaning leads to results which fundamentally pervert the clearly intended object of the Section, and, further, cannot be fitted into the other parts of the scheme of the tax, it seems to me that in giving effect to these considerations one is only doing what was done in *Colquhoun* v. *Brooks*(1), as set forth in the famous judgment of Lord Herschell.

For these reasons, I think the Crown succeeds in respect of all the years in question, with costs.

The Company having appealed against this decision the case came before the Court of Appeal (Lord Hanworth, *M.R.*, and Lawrence and Sankey, *L.JJ.*) on the 2nd, 3rd, 6th and 7th May, 1929, when judgment was reserved. On the 6th June, 1929, judgment was given unanimously against the Crown, with costs, reversing the decision of the Court below.

Mr. A. M. Latter, K.C., and Mr. A. M. Bremner appeared as Counsel for the Company, and the Attorney-General (Sir T. Inskip, K.C.) and Mr. R. P. Hills for the Crown.

JUDGMENT.

Lord Hanworth, M.R.—This is an appeal from a judgment of Mr. Justice Rowlatt given on the 25th January, 1929, whereby he reversed the decision of the Commissioners who had decided in favour of Messrs. Dalgety & Company, Limited. From this decision the Crown appealed to Mr. Justice Rowlatt who gave judgment in favour of the Crown, and from his decision Messrs. Dalgety & Company, Limited, have appealed to this Court.

The case raises some intricate and difficult questions of Income Tax law. Messrs. Dalgety & Company, Limited, are a company

(1) 2 T.C. 490.

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incorporated in England under the Joint Stock Companies Acts who carry on business both in Australia and New Zealand. Tax is paid in both those Dominions upon the profits earned by the Company in them. The Company, consequently, claimed the relief which is given by the Income Tax Acts to those who pay both Colonial Income Tax and United Kingdom Income Tax.

There are assessments in eight successive years in respect of which the relief is claimed, namely, the years ending April 5th, 1917 to 1924; but the Sections under which the relief is claimed are not the same in every year. Relief from United Kingdom Income Tax in case of the payment of Dominion Income Tax upon the same profits was first given by Section 43 of the Finance Act, 1916. That Section applies to the three several years ending the 5th April, 1917, 1918, 1919. Then Section 55 of the Income Tax Act, 1918, which came into force on the 6th April, 1919, applies to the relief claimed in respect of the year ending on the 5th April, 1920, and Section 27 of the Finance Act, 1920, applies to the last four years, 1921, 1922, 1923, 1924. Section 43 of the Finance Act, 1916, and Section 55 of the Income Tax Act, 1918, are *in pari materia*. Section 27 of the Finance Act, 1920, expands the terms and method of the relief given into eight Sub-sections. It is possible that different considerations may therefore apply to the first four years in which the relief is given by the simpler Section, and the latter four years to which more elaborate provisions apply.

The authorised capital of the Company during the eight years in question consisted of 200,000 Ordinary shares of £20 each, on all of which £5 per share had been paid up, and 100,000 Preference shares of £10 each, of which 50,000 have been issued and are fully paid. The Company has also issued Debentures and Debenture stock—called hereinafter debentures—which amounted to approximately £2,500,000 during the relevant years. By the terms of the debentures the principal of, and interest upon them were secured upon the whole undertaking and assets of the Company. The business of the Company is that of general merchants, shipping and insurance agents and bankers. Apart from dividends which are taxed by deduction, and income from property which is charged to Income Tax under Schedule A, practically the whole of its income arises from trading profits earned by trading operations in Australia and New Zealand. The control of the Company is exercised in England and consequently all these trading profits are assessed to British Income Tax and, as already stated, Dominion Income Tax has also been paid upon these same profits in Australia and New Zealand before they are remitted to London.

The Commissioners allowed the full relief claimed. That relief was cut down but not refused altogether by the judgment of Mr. Justice Rowlatt. No question arises upon the figures in the case.

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The sole point in dispute is whether the sum on which relief given to the Company because of its having paid Dominion Income Tax is to be calculated on the whole amount of the profits earned by it in Australia and New Zealand and on which both income taxes have been paid, or only on the balance of these profits remaining, after deducting from them the sum required out of them to pay the interest on its debentures which could not be provided and paid out of the Company's income arising in the United Kingdom.

It is agreed that the income arising in the United Kingdom should be considered to have been used in the first place, and *pro tanto*, in satisfaction of the interest on the debentures. This income did not suffer payment of Dominion Income Tax, so no question arises about it in the present case. The question is whether relief should be allowed in respect of the additional sum out of the trading profits remitted from the Dominions and which has suffered Dominion Income Tax and was needed to pay the balance of the debenture interest. Some simple figures will make the point clear. For the year ending April, 1919, debenture interest had to be paid to the amount of £104,065. That interest was in part satisfied by taxed dividends and Schedule A profits—home profits they may be called—to the extent of £48,820, leaving a further sum to be provided for the payment of the debenture interest of £104,065 minus £48,820 —£55,245. This sum was provided out of the total profits of £419,269 which came over here from the Dominions and was taxed there ; but the Revenue authorities refuse to allow relief from Dominion Income Tax upon this particular sum, although they do allow relief upon the remainder of the profits so remitted after deduction of the sum used to pay the balance of the debenture interest : in figures, £419,269 minus £55,245—£364,024. It is not disputed that the whole sum of £419,269 had paid Dominion Income Tax and also United Kingdom Income Tax. But the contention of the Crown is that the Company have not in truth and in fact paid the two taxes upon part of it, namely, upon this sum of £55,245, because the Company when they paid or distributed that sum to the debenture holders deducted—as they were required to do under the Acts—Income Tax upon these payments of interest, and were so to speak recouped, or at any rate cannot be said to have paid, the United Kingdom Income Tax on these sums which total £55,245.

It is important, therefore, to consider the principle on which deductions of Income Tax are made from payments of interest and the effect of them. The provision for them is now embodied in the General Rules 19 *et seq.* under the Income Tax Act, 1918, which replace previous enactments in the same sense. Rule 19—in short—provides that " Where any yearly interest of money . . . is " payable wholly out of profits or gains brought into charge to tax, " no assessment shall be made upon the person entitled to such

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" interest . . . but the whole of those profits or gains shall be " assessed and charged with tax on the person liable to the " interest . . . without distinguishing the same, and the person " liable to make such payment, whether out of the profits or gains " charged with tax or out of any annual payment liable to deduction, " or from which a deduction has been made, shall be entitled, on " making such payment, to deduct and retain thereout a sum " representing the amount of the tax thereon at the rate . . . of " tax in force during the period through which the said payment " was accruing due. The person to whom such payment is made " shall allow such deduction upon receipt of the residue . . . and " the person making such deduction shall be acquitted and discharged " of so much money as is represented by the deduction, as if that " sum had been actually paid." There are a number of ancillary provisions. Rule 20 deals with the profits and gains of a company which are to be computed before any dividend is made to the shareholders. Rule 21 deals with the position when the payment of the annual interest is made not out of, or not wholly out of, profits or gains brought into charge. In that case it is specifically provided that the person making the payment is to hand over to the Inland Revenue the amount so deducted which was not provided out of profits or gains that had been brought into charge; and under Rules 22 and 23 provision is made for the settling of disputes as to the deductions made or to be made, and for a penalty if the person to whom the interest is payable refuses to allow the deduction for the tax. From these Rules it is clear that (*a*) the tax so deducted is the tax that ought to be paid by the person entitled to the interest; (*b*) no assessment is made upon the person entitled to the interest, and that the system of deduction—in other words, payment at the source—is adopted in respect of his liability; (*c*) an express provision is made as to when the person making the payment subject to the deduction of the tax is to render an account and hand over the deductions to the Crown—that is when the interest paid is provided out of moneys not charged, or not wholly charged, to tax; (*d*) but, that when the interest is paid out of profits and gains brought into charge to tax, in that case the person making the payment or interest is entitled to deduct and retain thereout the sum that represents the tax deducted; (*e*) the person making the deduction " shall be " acquitted and discharged of so much money as is represented by " the deduction, as if that sum had been actually paid ". At one time it was suggested that a company so paying Income Tax on its profits and deducting it from interest on dividends paid to its shareholders was acting as agent for its shareholders. That view is dispelled by the speech of Lord Cave in *Commissioners of Inland Revenue* v. *Blott* (1), [1921] 2 A.C. at page 171, when he says that no

(1) 8 T.C. 101, at p. 136.

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agency properly so called is involved. This is clear, I think, if one keeps in mind that the company is a taxpayer and has to pay Income Tax on its profits before deductions, and that the person entitled to the yearly interest of money is also a separate taxpayer independently liable to pay his tax.

So far, therefore, upon consideration of these Rules, it would seem that the contention of the Company is correct. There is no agency. The tax deducted is the tax that is due from the person to whom the interest is paid, and no set-off, unless specially provided and indicated, can arise between the tax paid by the Company and the tax payable by a wholly different taxpayer. Further the provision for handing over the tax collected does not apply to the present case at all.

The question raised is not in respect of the payment of dividends as to which special legislation has been made. Section 27, Subsection (5), of the Finance Act, 1920, in terms provides that the relief obtained in respect of the payment of Dominion Income Tax shall be passed on to the shareholders and that the deduction made from any payment of dividend to them shall not exceed " the rate " of the United Kingdom income tax as reduced by any relief from " that tax given under this section in respect of any payment of " Dominion income tax ". We are here considering that payment of interest to debenture holders which is of a different nature from the distribution of dividends to the shareholders and is not specially dealt with anywhere as is the Income Tax deducted from any dividends in Sub-section (5). It is an expense which has to be met out of the profits or gains. There is a specific prohibition against the allowance of any deduction of such an expense in the ascertainment of profits ; see Rule 3 (*l*) of the Rules under Cases I and II of Schedule D.

The effect of the Sections which I have referred to, or their predecessors, was considered in *London County Council* v. *Attorney-General* (1), [1901] A.C. 26. The point that arose for decision was whether the right to retain the tax deducted prevailed in the circumstances of that case. Some interest upon stock was provided out of moneys which had paid tax under Schedule A, and not under Schedule D. Section 24 of the Act of 1888 contained three words which are omitted from Rule 21—" and not payable or not wholly " payable out of profits or gains brought into charge *to such tax* ". The argument was that such tax meant Income Tax under Schedule D and did not include tax paid under Schedule A. That argument was held unsound by the House of Lords, and the deductor was held entitled to retain the sum equivalent to the tax deducted. Lord Davey in his speech considering this right of deduction says at page 42 (2) : " It is not open to doubt, and was not disputed, that

(1) 4 T.C. 265. (2) *Ibid.* at p. 298.

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" Sections 60 and 102 alike mean that the person paying the yearly " interest may deduct and retain the amount for his own benefit, " and that the scheme of the Act is so far clear and is in favour of " the taxpayer ", and later on (1) " therefore, the Crown receiving " the tax on the whole income, in the first instance, from the owner, " has no further claim against the mortgagee or annuitant, on whose " account the owner is deemed to have paid as well as on his own ". Summing it up on page 45 (2): " I hold that the London County " Council are entitled to retain for their own benefit so much of the " deduction made by them from the interest paid by them to their " mortgagees in respect of Income Tax as is equal to the Income Tax " paid by them on their real estate under Schedule A, or, which " comes to the same thing, to account to the Crown only for the " deducted Income Tax on so much of the interest as is not paid out " of their income which has already been taxed ". These passages make it clear that the tax deducted is paid on quite a different account from that of the deductor—namely, the taxpayer who is entitled to have the interest paid to him ; and further that the right to retain the tax deducted is one which is given clearly and ought to be enforced in favour of the deductor. Further in *Sugden* v. *Leeds Corporation*, [1914] A.C. 483, Lord Haldane, Lord Chancellor, at page 490 said (3): " But the Acts give him the right to deduct " the tax due from the recipient in respect of the annual payments, " and, as he has himself already paid tax on the whole profits, to " retain for himself the amount so deducted ". The case of the *Scottish Union and National Insurance Company* v. *New Zealand and Australian Land Company, Limited*, [1921] 1 A.C. 172, supports this view. It overruled the decision of Mr. Justice Astbury in *Rover* v. *South African Breweries*, [1918] 2 Ch. 233, which had refused to accept the proposition that the company's tax and the shareholder's tax are two distinct things. It is pointed out in the *Scottish Union* case that it is the company, and the company only, who could qualify for relief by paying the two income taxes in the Dominion and in the United Kingdom. Lord Finlay, at page 182, does not accept the proposition that the company were agents for the shareholders in the payment of the Dominion tax. The case appears to negative the view that the company can only deduct the net amount of the United Kingdom tax after deduction of the sum obtained by way of relief therefrom.

Mr. Justice Rowlatt has felt the difficulty that arises upon the plain terms of the Sections giving relief, all of which begin : " If any " person who has paid by deduction or otherwise United Kingdom " income tax ". The words " by deduction or otherwise " are of no significance in this connection. They merely embrace among those who are to have the relief, those who have paid the tax by deduction,

(1) *Ibid.* at p. 299. (2) *Ibid.* at p. 301. (3) 6 T.C. 211 at p. 253.

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as well as those who have paid directly. Can the word " paid " be cut down, or altered, so as to mean borne : or to effect the same result can the words " in respect of the same part of his income " be read as " in respect of the same part of his income less charges " ? Mr. Justice Rowlatt adopts the latter course under the authority of the speech of Lord Herschell in *Colquhoun* v. *Brooks* (1). In that case the Court of Appeal, 21 Q.B.D. 52, held the operation of the Statute to be limited to what that Court thought it ought to deal with, and no more, and that it did not include " an absolutely " foreign trade ". The decision was affirmed in the House of Lords, 14 App. Cas. 493, but the reasoning of the Court of Appeal was not accepted. The *ratio decidendi* of the House of Lords was that the interpretation put upon the wide words of the charging Section must be cut down in view of the absence of machinery to carry into effect the larger, though possible, meaning. This question of the absence of machinery is important. It is a strong step to give such a construction to an Act of Parliament as necessitates some alteration of its wording, and that because of a preconceived notion of what the Statute was intended to mean and effect. Lord Sterndale's observations on this subject in *Sheldrick* v. *South African Breweries, Limited*, are at pages 184 and 185 of [1923] 1 K.B. He rejects an interpretation for which good reasons were offered by Counsel to explain what the Legislature must have intended, and he bases his decision " upon the plain words of the Sub-section, which I think " are not equivocal and which, if they do not convey the intention " of the Legislature should be altered by the Legislature so as to " express what it did intend ". The same difficulty as to machinery arises in the present case, if the solution adopted by Mr. Justice Rowlatt is accepted, for it was forcibly pointed out by Mr. Latter that there is no machinery provided whereby the income less charges is to be arrived at for the purposes of the relief Sections. I, therefore, reject an interpretation which requires machinery that is not provided, as was decided by the House of Lords in *Colquhoun* v. *Brooks*.

The other argument is that " paid " in the relief Sections connotes not merely payment but " paid and borne ". On this head it is to be noted that the words " borne or is liable to bear " are actually found in Sub-section (1) of Section 27 of the Act of 1920, the Section which at present gives and has developed the scheme of giving relief owing to the payment of Dominion Income Tax. Those words were necessary to deal with the proper estimation of the United Kingdom tax, in view of the modern system of excusing payment upon certain allowed portions of income and other reliefs that have been allowed in the assessments for the United Kingdom tax. But though the words are found in the very Sub-section, the

(1) 2 T.C. 490.

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commencement of the Section still remains: "If any person who "has paid". It would surely, if the Legislature had meant it, have been easy to have introduced words and made the Section run: "If any person who has paid and borne". Again Sub-section (5) was introduced to alter the effect of the decision in the *Scottish Union* case. It provides that the deduction from dividends paid shall be at "the rate of the United Kingdom income tax as reduced by any "relief from that tax given under this section in respect of any "payment of Dominion income tax". That Sub-section expressly is not intended to cover the present case, for the inclusive definition given immediately before Sub-section (5) applies only to Sub-section (4). In my judgment, therefore, it is not possible to alter the Section and read "paid" as equivalent to "paid and borne".

There remains the question whether the relief claimed is inhibited and barred by Section 17 of the Income Tax Act, 1918. On this point I accept the careful reasoning of the Commissioners, and do not desire to add to it more than to state this by way of reinforcement of their view. If Section 17 inhibits the relief, then this argument carries the Attorney-General too far. It would forbid too much. I think Section 17 must be read in its proper setting, and as referring to exemption and abatements—now "allowance or "deduction"—which belong to that part of the Act where it is found. There may be difficulties caused by Section 64, Sub-section (1) of the Finance Act, 1920, and construing Part II of that Act "with the "Income Tax Acts"; but I cannot hold that the relief given by Section 27 of that Act of 1920 is to be nullified *instanter* by Section 17 of the Income Tax Act, 1918, contrary to the plain words of Section 27, words which for the reasons I have given must, in my judgment, be interpreted as they stand, to mean what they say.

The appeal must be allowed with costs here and below, and the decision of the Commissioners restored.

Lawrence, L.J.—This appeal raises a question which is not free from difficulty, namely, whether the relief in respect of Dominion Income Tax to which the Company is entitled ought to be calculated on the whole amount of its profits earned in the Dominions or only on the balance of such profits after deducting therefrom so much of the interest paid by it on its debentures as its income arising in the United Kingdom was insufficient to meet.

The facts which have given rise to this question have been fully stated by the Master of the Rolls, and there is no need to repeat them.

Mr. Latter contended that the Company, having paid United Kingdom Income Tax on the whole of its income earned in the Dominions and having also paid Dominion Income Tax in respect of

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the same income, is entitled to relief on the whole amount of such income; and that its right to this relief is not affected by the fact that the Company was entitled to deduct and has in fact deducted United Kingdom Income Tax on payment of the debenture interest.

The Attorney-General on the other hand contended that as the Company had deducted the United Kingdom Income Tax from the debenture interest and had therefore not ultimately borne such tax, it had not in fact "paid" such tax within the meaning of the relevant Sections of the Income Tax and Finance Acts; further, that in so far as the profits of the Company were applied in payment of the debenture interest they were not "income" of the Company within the meaning of those Sections; and lastly, that in respect of the four years ending on the 5th April, 1924, the Company (by virtue of Section 17 of the Income Tax Act, 1918) was not entitled to relief in respect of income, the tax on which it was entitled to deduct from any payment made by it to its debenture holders.

The case is somewhat complicated by the fact that the relief claimed by the Company extends over a period of eight years and that different enactments apply to different parts of that period. The question we have to decide, however, turns mainly on the true meaning of the words "any person who has paid, by deduction or "otherwise, United Kingdom income tax on any part of his income" which occur in each of the three relevant Sections, viz:—Section 43 of the Finance Act, 1916; Section 55 of the Income Tax Act, 1918; and Section 27 of the Finance Act, 1920.

The first point to be determined is whether "income" in those Sections means "taxable income" or "income less charges".

As a general rule the word "income" is used in the Income Tax Acts to denote "taxable income"; see (amongst other instances pointed out by Mr. Latter) Section 164 of the 1842 Act and Section 27 (1) of the 1918 Act. In the former Section the expression is "the income of such claimant" and in the latter "his income" and in both cases the taxable income and not the income less charges is obviously meant. There are no doubt instances in the Income Tax Acts where the context clearly shows that "income" means "income less charges" especially in those Sections which deal with exemption from or abatement of Income Tax dependent upon the claimant's total income from all sources, in which cases however there is usually found a provision that relief is not to be granted in respect of any income the tax on which the claimant is entitled to charge against any other person.

In my opinion there is nothing in the context in any of the relevant Sections to indicate that the word "income" is intended to mean anything other than the income in respect of which the claimant has to pay Income Tax. No machinery is provided for

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ascertaining the net income going into the pocket of the person claiming relief in respect of Dominion Income Tax such as is to be found in the provisions giving relief dependent upon small incomes or upon the claimant's total income from all sources.

The Attorney-General placed some reliance on the complicated provisions of Section 27 of the 1920 Act dealing with the ascertainment of the appropriate rate of Income Tax for the purpose of arriving at the amount of the relief, as showing that the word "income" in the relevant Sections means "income less charges". I agree with the Commissioners that the obscure provisions of that Section as to the appropriate rate of the United Kingdom tax (which were inserted for the first time in the 1920 Act) do not have the effect of cutting down the meaning of the word "income" in the relevant Sections of the earlier Acts nor in the earlier part of Section 27 of the 1920 Act. The appropriate rate, however ascertained, becomes the standard rate and the amount of the income used as a divisor in determining that rate bears no necessary relation to the income on which relief is to be given.

On the whole, therefore, I am of opinion that the Commissioners were right in their view that "income" in the relevant Sections means "taxable income".

The next question is whether the Company has "paid" the United Kingdom Income Tax within the meaning of the relevant Sections. The Sections give relief to the person who has paid both the United Kingdom Income Tax and the Dominion Income Tax in respect of the same income. If that person can show that he has paid the double tax he has satisfied all the requirements of the Sections and is entitled to the relief. The relief is from United Kingdom Income Tax and not from Dominion Income Tax.

The Attorney-General contended that "paid" in the context in which it is found means "ultimately borne". On this point I think that useful guidance is to be obtained from the decision of the House of Lords in the *Scottish Union Case*, [1921] 1 A.C. 172. In that case the relief had been granted by the taxing authority and the question to be decided was as to the incidence of the burden of the tax as between the preference shareholders and the ordinary shareholders. The case therefore affords no assistance on the question whether profits applied in payment of debenture interest are or are not part of the "income" of the company earning them, as both the rival claimants were members of the company and the profits distributed amongst them undoubtedly formed part of the income of the company, whereas debenture holders are creditors and not members of the company. On the question of the meaning of the word "paid" however, the case has in my opinion a distinct bearing. The preference shareholders ultimately bore the burden of the full United Kingdom Income Tax on the dividends paid to them

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and yet this fact apparently did not suggest any doubt either to the taxing authority or to the Court as to the right of the company to claim repayment of a portion of that tax for the benefit of the ordinary shareholders who had not borne any part of it.

The effect of this decision in so far as it affects shareholders is got rid of by Section 27 (5) of the 1920 Act, and in *Sheldrick's* case, [1923] 1 K.B. 173, the preference shareholders were held entitled to the benefit of the relief although they had not borne the burden of the Dominion Income Tax. On the question whether the relevant Sections were intended to operate only in those cases in which the ultimate burden of the double tax should happen to fall on the same person I can see no distinction in principle between the case of a company deducting the tax from the preference dividends and the case of a company deducting the tax from the debenture interest, except that, under the 1920 Act, the company in the former case is bound to pass on the relief it obtains to its shareholders.

Applying the principle underlying the decisions in the two cases I have mentioned to the point now under consideration I can see no valid ground why a company should not obtain for the benefit of its shareholders relief in respect of the double tax paid by it merely because the burden of the United Kingdom Income Tax on the debenture interest was ultimately borne by the debenture holders.

The Company has in the natural and literal sense paid both the United Kingdom Income Tax and the Dominion Income Tax. No one else has paid or become liable to pay both these taxes, and no one else can claim relief under the relevant Sections. The Company is not bound to pass on this relief to the debenture holders. There is nothing in the various Acts to require the Company, as a condition of obtaining relief, to show that it will ultimately have to bear the burden of the United Kingdom Income Tax which it has paid and from which it claims relief. The Legislature has not provided any means for enabling the taxing authority to ascertain on whom the burden of the United Kingdom Income Tax paid by the Company will ultimately fall, and in my opinion the obvious inference to be drawn from the absence of any such provisions is that the taxing authority is not concerned with that question.

For these reasons I am of opinion that the contention of the Crown that " paid " means " ultimately borne " is not well founded.

There remains the question as to the effect of Section 17 of the 1918 Act. The substance of this Section appeared first in Section 163 of the 1842 Act. It re-appeared in Sub-section (5) of Section 19 of the 1907 Act and finally in Section 17 of the 1918 Act.

The enactment in question applied at first to the exemption from Income Tax of persons with small incomes and subsequently to abatements and other reliefs dependent upon the total income

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from all sources of individuals. The Attorney-General was therefore constrained to admit that this enactment could only apply if at all to the last four years of the period under review, that is to say, after the coming into force of the 1920 Act.

The Attorney-General based his contention on the grounds (1) that, by virtue of Section 64 of the 1920 Act, Part II of that Act (in which Section 27 is to be found) was to be construed together with the Income Tax Acts and (2) that the word " relief " was used for the first time in Section 27 instead of the word " repayment " which occurred in the earlier enactments.

In my judgment this contention fails. Although one ought not to be surprised at anything contained in the Income Tax and Finance Acts, I agree with Mr. Latter that it would be most startling if an alteration in the law seriously affecting a large class of tax-payers were to be brought about by any such method.

In my judgment the plain answer to the contention of the Crown is that Section 17 of the 1918 Act is one of a series of Sections relating to exemption, abatement and relief depending upon total income from all sources and has nothing to do with relief in respect of Dominion Income Tax ; that the word " claimant " in Section 17 (as in the preceding Sections 10 to 15) means the individual described in Section 9 who claims and proves that his total income from all sources does not exceed a certain amount ; and lastly, that Section 27 (5) of the 1920 Act shows that Section 17 of the 1918 Act does not apply to relief in respect of Dominion Income Tax as it provides for the passing on of such relief in cases where the company is entitled to deduct and retain United Kingdom Income Tax from payments made to its shareholders.

For these reasons, which are substantially those given by the Commissioners, I am of opinion that Section 17 of the 1918 Act does not preclude the Company from obtaining relief under Section 27 of the 1920 Act in respect of any income the United Kingdom Income Tax on which it is entitled to deduct and retain out of any payment of debenture interest.

In the result the appeal succeeds and should be allowed with costs.

Sankey, L.J.—The Appellants are an incorporated company whose business is that of general merchants, shipping and insurance agents and bankers. Apart from dividends which are taxed by deduction and income from property which is charged to Income Tax under Schedule A, practically the whole of its income arises from trading profits earned by trading operations in Australia and New Zealand, but as the control of the Company is exercised in England such trading profits are all assessed to British Income Tax under Case I of

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Schedule D. Dominion Income Tax has also been paid on such trading profits arising in Australia and New Zealand. They have a Dominion income and they pay Dominion Income Tax upon that income. They also pay Income Tax again in England and they have an issue of debentures outstanding. The question is whether they can claim relief upon their income, less the interest which they have had to pay out of it to the debenture holders, or whether they can claim relief upon the whole income upon which in the first instance they directly pay United Kingdom tax and have also paid the Dominion Income Tax.

It must be added that in paying their debenture interest the Company pay such interest less the United Kingdom Income Tax. The relief claimed extends over a period of years, 1916 to 1923, and as regards the first three years it depends upon the construction of Section 43 of the Finance Act, 1916. As regards the fourth year it depends upon Section 55 of the Income Tax Act, 1918, and as regards the last four years it depends upon Section 27 of the Finance Act, 1920.

With regard to the fourth year there is a point as to whether this relief is not forbidden by Section 17 of the Income Tax Act, 1918, and as regards the last four years there is a similar point as to whether it is not forbidden by that same Section. Relief in respect of United Kingdom Income Tax where a person had already paid a Colonial Income Tax was originally granted by the 1916 Act, was continued from year to year and is now regulated by the code contained in Section 27 of the 1920 Act.

There are verbal differences between these various Sections which however do not in my opinion affect the point at issue, which depends upon the proper construction of Section 27 of the 1920 Act. It is not necessary for me to read that Section again ; it is a long Section and has been frequently read in the course of the case. The real question for determination is : Have the Appellants paid within the meaning of Section 27 of the 1920 Act and the other cognate Sections United Kingdom Income Tax on any part of their income upon which they have also paid Colonial Income Tax ?

In order to answer this question properly the meaning of two words " paid " and " income " has to be determined. (1) Has the Company "*paid*" United Kingdom Income Tax—(2) " on any part of " its "*income*" ?

The Appellants say : We have paid because we have in fact, to use a neutral word, handed over the amount of the tax to the Crown. The Crown say : You have not paid because, although you have handed over the amount to the Crown, you have deducted it from the debenture interest and you are not entitled to the relief claimed because you have not borne the burden.

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The real question after all is the meaning of the word " paid ", upon which the meaning of the word " income " may shed some light. It would be a strange result if on a true interpretation of the Section relief were granted where there had been, as in this case, no burden, but if that be the proper interpretation of the Section the Court must give effect to it however much they may feel their decision would defeat the real object of Parliament.

In construing Income Tax Acts one must not forget the canon to be employed. The Court is not to be guided so much by the objects which they think such Acts are to achieve as by considering whether the words of the Act have reached the alleged subject of taxation. This construction was laid down with great clearness in two cases by Lord Halsbury. In *Lord Advocate* v. *Fleming*, [1897] A.C. 145, at p. 152, he said in dealing with such Acts : " We have no governing " principle of the Act to look at : We have simply to go on the Act " itself to see whether the duty claimed under it is that which the " Legislature has enacted." In *Tennant* v. *Smith*, [1892] A.C. 150, an earlier case, he said (1) : " . . . in a taxing Act it is impossible, I " believe, to assume any intention, any governing purpose in the " Act, to do more than take such tax as the Statute imposes. In " various cases the principle of construction of a taxing Act has been " referred to in various forms, but I believe they may be all reduced " to this, that inasmuch as you have no right to assume that there " is any governing object which a taxing Act is intended to attain " other than that which it has expressed by making such and such " objects the intended subject for taxation, you must see whether a " tax is expressly imposed. Cases, therefore, under the taxing Acts " always resolve themselves into a question whether or not the " words of the Act have reached the alleged subject of taxation."

What then is the meaning of the word " paid ". It must be given its natural and primary meaning rather than an artificial and ultimate meaning. If, for example, A and B owe C £10 and A hands over a £10 note to C, A has paid C and none the less because he can get back £5 from B. So too a person has paid Income Tax although subsequently to the payment he may be entitled to get it back because he was not liable to pay the particular amount. In such a case the fact of payment is one of the conditions precedent to relief.

Over and above this, this Court at any rate is bound by authority as to the meaning of the word " payment ". In *Scottish Union and National Insurance Company* v. *New Zealand and Australian Land Company, Limited*, [1921] 1 A.C. 172, it is stated at the top of page 174 that the United Kingdom Income Tax was paid by the company, but the argument for the Appellants on page 176 was that the company had not in fact paid United Kingdom Income Tax on its profits brought into charge.

(1) 3 T.C. 158, at p. 163.

(Sankey, L.J.)

It appears therefore that the question whether it had paid or not was directly involved and the above argument was rejected. Lord Finlay for example says, on page 184: "The Company has in "fact paid the United Kingdom Income Tax and it is the Company "that is entitled to the repayment received". In these circumstances both reason and authority compel us to hold that the Company in the present case have paid the tax. The learned Judge in his judgment says: "The enactment awards repayment and "relief where tax is twice levied on the same income", and in the present case the tax has been twice levied on the same Company and the consideration that the Company have charged the tax against the debenture holders does not alter the fact that the tax has been levied on the Company.

What is the meaning of the word "income"? That word is used in many collocations in the Income Tax Act and various Finance Acts, as for example "total income from all sources"; "earned income"; "total income for purposes of the Super-tax". It is however always necessary to consider not generally what its meaning is, but what is its meaning in the particular place in which it finds itself. I think the word here must mean "taxable income" —that is the whole income upon which the tax is levied, which included the debenture interest; see Schedule D of Income Tax Act, 1918, Rule 3, under Cases I and II, sub-head (*l*), which provides that annual interest is not to be deducted in computing the amount of the profits or gains to be charged.

In my view Section 17 does not refer to relief granted in respect of United Kingdom Income Tax where a person has already paid Colonial Income Tax. Historically that Section is the direct descendent of Section 163 of the Income Tax Act, 1842. The fact that it appears in a rather different place in the Income Tax Act, 1918, cannot make it apply to a relief which it was not meant to apply to when such relief was originally granted, still less to a relief which was not in terms granted till two years later. In my view the argument is best put by the Commissioners in the present case as follows: "Section 17 reproduces in substance a limitation contained "in Section 163 of the Income Tax Act, 1842, and both in substance "and in form (except for the substitution of 'claimant' for "'individual') a limitation contained in the provisions of the "Finance Acts of 1907 and 1916 as to relief on earned and unearned "income respectively. Section 163 of the Act of 1842 related to the "conditions on which persons with small incomes could claim "exemption from Income Tax, and it was subsequently applied to "claims for abatement and other reliefs dependent on total income "from all sources . . . The 'claimant' referred to in Section "17, as in Sections 10 to 15, is an individual described in Section 9 "who claims and proves that his total income from all sources does

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" not exceed a specified amount. The accident that in the Act as " finally printed Section 17 appears as a separate Section cannot " have the effect that the Consolidation Act has extended the scope " of this provision to classes of claimants to whom it did not " previously apply ".

I am therefore of opinion that the appeal should be allowed, with costs.

Mr. Bremner.—I understand your Lordships' Order is that the appeal is allowed with costs here and below, and the decision of the Commissioners is restored.

Lord Hanworth, M.R.—Yes, Mr. Bremner.

Mr. Bremner.—If your Lordship pleases.

The Crown having appealed against this decision, the case came before the House of Lords (Lord Buckmaster, Viscount Dunedin and Lords Warrington of Clyffe, Thankerton and Macmillan) on the 20th February and on the 13th March, 1930, when judgment was reserved. On the 4th April, 1930, judgment was given unanimously against the Crown, with costs, confirming the decision of the Court below.

The Attorney-General (Sir W. A. Jowitt, K.C.) and Mr. R. P. Hills appeared as Counsel for the Crown, and Mr. A. M. Latter, K.C., and Mr. A. M. Bremner for the Company.

JUDGMENT.

Lord Buckmaster.—My Lords, by Section 27 of the Finance Act, 1920, it is enacted that " If any person who has paid, by deduction " or otherwise, or is liable to pay, United Kingdom income tax for " any year of assessment on any part of his income proves to the " satisfaction of the Special Commissioners that he has paid Dominion " income tax for that year in respect of the same part of his income " he shall be entitled to relief from United Kingdom income tax " paid or payable by him on that part of his income at a rate thereon " to be determined as follows :—(*a*) If the Dominion rate of tax " does not exceed one-half of the appropriate rate of United Kingdom " tax, the rate at which relief is to be given shall be the Dominion " rate of tax : (*b*) In any other case the rate at which relief is to be " given shall be one-half of the appropriate rate of United Kingdom " tax." The meaning of that section is the chief issue of this appeal.

It reproduced with some alterations, immaterial for the present purpose, Section 55 of the Income Tax Act, 1918, which in turn was the re-enactment of Section 43 of the Finance Act, 1916.

(Lord Buckmaster.)

In the Act of 1918 the expression "United Kingdom income "tax" is defined for purposes of the Section as "income tax "chargeable in accordance with the provisions of this Act" and this is only altered in the later statute by substituting the words "the Income Tax Acts" for the last two words of the former definition. These are all the statutory provisions that need immediate attention; the dispute as to their meaning arises in the following way.

The Respondents are a company incorporated in England under the Companies Acts and carrying on a business of merchants, insurance agents and bankers, both in the United Kingdom and in New Zealand and Australia. Its income chiefly arises from operations carried on in the latter countries, and in respect of such income it is liable to Income Tax in the United Kingdom and in those Dominions.

For the years in question the Company paid the full United Kingdom Income Tax on all its profits and gains and also the Dominions taxes on so much as was earned within their jurisdiction. In these circumstances it claimed relief from the double tax for the years beginning April, 1916, and ending April, 1924. The claim necessarily depended, as to the portion up to April, 1920, upon the earlier, and after that period upon the later, statute, but, as already pointed out, the difference between the two is immaterial for the present purpose.

The claim was disallowed by the Commissioners of Inland Revenue upon the ground that the Company had issued debentures and in paying interest thereon had deducted the full amount of the United Kingdom Income Tax. If, therefore, the claim were allowed in full the Company would receive back a sum which would cause the amount of profits distributed by way of dividend to the shareholders to escape the full burden of tax measured in terms of the rate imposed in the United Kingdom.

The actual figures are not material. The question in dispute can be stated in general terms and it is this. If a company registered and carrying on business in the United Kingdom has issued debentures charging its total assets with repayment of capital and interest, can it obtain relief in respect of Income Tax paid in the Dominions on the amount of all the profits and gains that have paid double tax, or only on the residue after deduction of the debenture interest properly payable out of the profits that are doubly taxed?

The Special Commissioners held the Company entitled to the relief they claimed. Mr. Justice Rowlatt took a different view, but the opinion of the Special Commissioners was restored by the Court of Appeal.

(Lord Buckmaster.)

I have intentionally stated the proposition in the limited terms applicable to the Respondent Company and have omitted the consideration of the case where the debentures create no security—a case less favourable to the Crown.

It is plain that the right conclusion to be drawn must depend upon the meaning of the words "income" and "paid" in the relevant Sections. According to the contention of the Crown the former means income after deducting all payments charged upon it, and the latter means paid without recourse for its recoupment. This may well be a reasonable view of what ought to be done in the circumstances, but it cannot be too often repeated that our duty is not to see what, in our judgment, the Legislature might reasonably do, but that which their Acts declare that they have done, whether by way of imposed burden or of provided relief.

In case of evenly balanced uncertainty the probability of a wise purpose must be considered and may turn the scales, and so also must it be borne in mind where, without some such concession, the words would have no rational meaning, but in all Acts the words used, interpreted as part of the whole Statute, constitute the proper guide.

Taking the words in order there can be no doubt the Company did pay "United Kingdom income tax" on the full amount. The Income Tax charged "in accordance with the provisions of the "Income Tax Acts" was charged on the whole of its profits and gains. Nothing less would have been accepted and no other person was liable to make the payment. But it is urged that even if this be accepted, to the extent of the debenture interest, the payment was made on behalf of the debenture-holders. To this extent that is true, namely, that, having paid, the Company was entitled to deduct the tax from the debenture interest, and, to the extent of that deduction, it was the debenture-holders' tax that was thus discharged. But it was not the debenture-holders who made the payment, but the Company. By Section 209 of the Act of 1918, which remains unrepealed, it is expressly provided that in arriving at the amount of profits or gains for the purpose of Income Tax "no deduction shall be made on account of any annual interest, "annuity or other annual payment to be paid out of such profits "or gains in regard that a proportionate part of the tax is allowed "to be deducted on making any such payment", and by General Rule 19 of the Act of 1918 it is expressly provided that the whole of the profits and gains shall be assessed and charged with tax on the person liable to the interest or annual payment without distinguishing the same. In accordance with this the Company and they alone could be assessed, from them alone was the amount of the assessment claimed, by them alone was it paid, and they were

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prohibited from making any deduction from such assessment in respect of annual sums charged on their profits.

The definition in Section 55 expressly invests the words " United " Kingdom Income Tax " with the meaning that it is the tax chargeable in accordance with the provisions of the Act, and that tax is chargeable on all the profits and gains and the amount paid is the amount which the Company are bound to pay and for which they are alone responsible.

If there had been no debentures the claim for relief could not have been resisted and the existence of the debentures cannot in my opinion limit the Company's rights and give greater rights to the Crown. It is only the application of the income that has caused the difficulty and with this the taxing authority has no direct concern.

The case of the *Scottish Union* (1) [1921] 1 A.C. 172, has no direct bearing on the present one, for in that case the division of profits was as between different classes of shareholders who together constituted the company, thus a similar result ensued, for the dividend on the preference shares was paid after the deduction of the full United Kingdom Income Tax with the result that there, as here, the ordinary shareholders received the full benefit of a relief based on a sum not measured by their share of the profits but on the total amount. The fact, however, that the distribution was amongst members of the company and that the company as a whole was in no way advantaged really robs the case of all value, and I think even prevents its use for the purpose for which it was employed by Lord Justice Lawrence.

A further argument was, however, based on the words of Section 17 of the Act of 1918, which is in these words, " A claimant " shall not be entitled to exemption, abatement or relief, in respect " of any income the tax on which he is entitled to charge against " any other person, or to deduct, retain or satisfy out of any payment " he is liable to make to any other person." The words are apt to cover the present case: the question is do they apply? They are to be found in Part III of the Act of 1918 which is headed " Exemption, Abatement and Relief ".

This part of the Act is confined to specified claims for relief; it begins with Section 9 and proceeds down to and including Section 15 to state the cases in which relief may be claimed. Section 16 shows how the allowance may be made and Section 17 then follows; the remaining sections of this part of the Act deal with the machinery for making and regulating the claims arising under the earlier Sections. In this same Act by Section 55 the provisions with regard to the double tax are first introduced—neither

(1) Scottish Union and National Insurance Company v. New Zealand and Australian Land Company, Ltd.

(Lord Buckmaster.)

by express words nor by reference are the provisions of Section 17 made applicable.

Dealing with this Act alone it is my opinion that Section 17 can only be construed as referring to the special reliefs provided in the separate portions of the Acts in which it stands and were it intended to have had general application it would be found in the general clauses of the Act, as for example, in those which are grouped in Part X under the head "Miscellaneous", which, though chiefly dealing with matters of administration, yet in Section 209, as an illustration, specially make general provision with regard to the method of arriving at the amount of profits and gains.

So far, therefore, as the Act of 1918 is concerned, in my opinion, Section 17 does not apply to Section 55.

The matter, however, does not rest there. The Finance Act of 1920 provides by Section 64 that Part II of the Act, which includes Section 27, shall be construed together with the Income Tax Acts. This by itself carried the matter no further, for Section 27 only replaces Section 55 of the Act of 1918 and thus leaves the construction of Section 17 of that Act unaltered, but in its Third Schedule the Act of 1920 provides that the words of Section 17 shall be altered by substituting the words "allowance or deduction" for the words "exemption, abatement", and by Schedule IV repeals Sections 9 to 13, Sub-sections (1) and (2) of Section 14 and Section 15 of the Act of 1918. The Sections thus repealed cover the cases mentioned in Part III of the Act of 1918 as cases entitled to relief, and the argument is that in consequence Section 17, having no longer its proper foundation on which to rest must, as it is expressly preserved and amended, find a new foundation in Section 27 of the Act of 1920.

The simple answer to that proposition is that no new meaning has been conferred upon the words of the Section except so far, if at all, as the words "allowance or deduction" confer it, but these clearly relate to the new Sections in the Act of 1920 which take the place of those repealed in Part III and in these new Sections the words "allowance" and "deduction" are found throughout.

The argument of the Crown amounts to this. Be it granted that Section 17 of the Act of 1918 did not apply to the provisions of Section 55 of that Statute (Lord Justice Lawrence says this was expressly admitted by the Attorney-General), yet none the less it does apply to Section 27 of the Act of 1920 although the Sections to which it did have application before are replaced by corresponding Sections to which it can still refer. In other words, a privilege possessed by the subject in relation to taxation is to be taken away by some repealing and amending words in a Schedule and a general clause as to construing Acts together. I do not believe that any such argument has ever prevailed in construing a taxing statute and it certainly cannot prevail in the present case.

Viscount Dunedin.—My Lords, I concur and I will now read the judgment of my noble and learned friend Lord Warrington of Clyffe.

Lord Warrington of Clyffe (read by Viscount Dunedin).—My Lords, the Respondents are a Company incorporated in England under the Companies Acts with a share capital consisting of Preference and Ordinary shares and with a debenture debt of £2,500,000 of which both principal and interest are secured on the entire undertaking and assets of the Company.

Apart from dividends taxed by deduction and income charged to Income Tax under Schedule A, practically the whole of its income arises from trading operations in Australia and New Zealand. Dominion Income Tax has been paid in Australia and New Zealand in respect of such last-mentioned income.

The control of the Company is exercised in England and the same income has also been assessed to British Income Tax under Case I of Schedule D.

In paying interest to their debenture holders the Company have, as they were bound and entitled to do, deducted from such interest the amount of United Kingdom Income Tax at the full rate. The present case is not concerned with any claims by debenture holders, if any such there be, who have also paid Dominion Income Tax in respect of such interest.

In the year ending 5th April, 1917, and in each successive tax year down to and including that ending the 5th April, 1924, the Respondents have made a claim for relief in respect of the Dominion Income Tax so paid as above-mentioned under the statutory provisions from time to time in force, all of which were in practically the same form so far as this case is concerned. It will be enough to refer to the last enactment on the subject, viz. the Finance Act, 1920, Section 27 (1), which is as follows:—"If any person who "has paid, by deduction or otherwise, or is liable to pay, United "Kingdom income tax for any year of assessment on any part "of his income proves to the satisfaction of the Special Commis- "sioners that he has paid Dominion income tax for that year in "respect of the same part of his income, he shall be entitled to "relief from United Kingdom income tax paid or payable by him "on that part of his income at a rate thereon to be determined" as in the Act provided.

No question arises as to the rate and the only point at issue is whether the amount of relief is to be calculated on (*a*) the whole of the profits earned by them in the Dominions, or only on (*b*) the balance of such profits remaining after deducting therefrom the excess of the interest paid by it on its debentures over the amount of income arising in the United Kingdom. It is agreed that the debenture interest should be regarded as paid out of income arising in the United Kingdom so far as that will go.

(Lord Warrington of Clyffe.)

The Respondents insist on the principle referred to as (*a*), the Appellants on (*b*). The Commissioners adopted the view of the Respondents. They were required to state a Case which came before Mr. Justice Rowlatt. He set aside the assessment of the Commissioners, adopting the view of the Crown. The Court of Appeal (Master of the Rolls Lord Hanworth and Lords Justices Lawrence and Sankey) unanimously allowed the appeal and restored the assessment of the Commissioners. The Crown appeals to this House.

The Respondents' contention is a simple one. The Company is a person who has paid or is liable to pay United Kingdom Income Tax on part of his income, viz. in this case the trading profits earned in the Dominions and has also paid Dominion Income Tax on the same part of his income, and is therefore entitled to relief from United Kingdom Income Tax payable on that part of his income. Reading the words of the statute in their ordinary and natural meaning there is no answer to this contention. But the Crown says the words are not so to be read. The Respondents have deducted from the interest payable to the debenture-holders the United Kingdom tax in respect of that interest and it is said they have thus recovered a corresponding portion of the United Kingdom Income Tax paid or payable by them in respect of the profits from their Dominion trade and ought not therefore to be treated as having paid United Kingdom tax on the whole of such profits. Now this view obviously requires that the words of the Section be read in a sense other than their ordinary and natural meaning, as for example, " paid " must be read " paid and ultimately borne ". I can find nothing in the other provisions of the Act to indicate that the ordinary construction would bring about a result not contemplated by the Legislature, and I therefore see no ground for the application of the principle of construction adopted in the well-known case of *Colquhoun* v. *Brooks* (1), 14 App. Cas. 493, in which the absence of machinery to give effect to the Act, if wide words were used in their ordinary and general meaning, was held to be sufficient to justify a more limited construction.

I agree, therefore, with the learned Judges of the Court of Appeal that the words of the Statute ought to be construed in the ordinary and natural sense and that the Respondents have made out a claim to relief calculated on the whole of the profits brought into charge in respect of which Dominion Income Tax has been paid. With all respect to Mr. Justice Rowlatt, I cannot adopt his view that income in this Section means only so much as exceeds the amount of the interest paid out of it. The Company pays tax on the whole of that part of its income which is also subject to Dominion Income Tax and none the less that on making a payment of interest payable out of its profits and gains it deducts, as it is entitled to do,

(1) 2 T.C. 490.

(Lord Warrington of Clyffe.)

the tax payable by the recipient. The Company is not accountable to the Revenue for this tax nor does its right to deduct it depend upon its having paid its own tax on its profits and gains (see Rule 19 of All Schedules Rules).

As to the minor point under Section 17, I agree with the views expressed by the Commissioners and the Court of Appeal and have nothing to add.

I think the appeal ought to be dismissed with costs.

Lord Thankerton.—My Lords, the Respondent Company is a company incorporated in England, but the main part of its income arises from trading profits earned in Australia and New Zealand. As the Company is controlled from England these trading profits are all assessed to United Kingdom Income Tax under Case I of Schedule D. Dominion Income Tax has also been paid on such profits arising in Australia and New Zealand.

The Respondent Company claims relief from United Kingdom Income Tax in respect of Dominion Income Tax for the eight financial years ending on 5th April in each year from 1917 to 1924 inclusive.

The Company has a large debenture issue, and in paying the debenture interest the Company has deducted, as they were entitled to do, the full rate of United Kingdom Income Tax. Parties are agreed as to the rate at which relief should be granted for the respective years, and that payment of the debenture interest should be treated as having been primarily met out of the Company's income arising in the United Kingdom, only the balance of such interest being treated as having been paid out of the overseas income. The only question is whether the Company in claiming relief is entitled to include that portion of the overseas profits, which is to be thus regarded as having been applied in payment of debenture interest.

As regards the first three years in question, the matter depends on construction of Section 43 of the Finance Act, 1916, as regards the fourth year on Section 55 of the Income Tax Act, 1918, and as regards the remaining four years on Section 27 of the Finance Act, 1920. As regards the last four years a subsidiary point is raised by the Crown, which is based on Section 17 of the Income Tax Act, 1918, as amended by the Finance Act, 1920.

The earlier statutory provisions are not materially different and the main question may be conveniently considered in relation to the terms of Sub-section (1) of Section 27 of the Finance Act, 1920, the material portion of which is as follows, "If any person who "has paid, by deduction or otherwise, or is liable to pay, United "Kingdom income tax for any year of assessment on any part of "his income proves to the satisfaction of the Special Commis- "sioners that he has paid Dominion income tax for that year in

(Lord Thankerton.)

"respect of the same part of his income, he shall be entitled to "relief from United Kingdom income tax paid or payable by "him on that part of his income at a rate thereon to be determined "as follows:— . . . ." Sub-section (8) (*b*) defines "United "Kingdom income tax" as meaning Income Tax chargeable in accordance with the provisions of the Income Tax Acts.

The Respondent Company paid the Dominion Income Tax on the whole of the overseas trading profits, including that part which was applied in payment of debenture interest, and has not recovered any part of that tax by deduction or otherwise from the debenture-holders.

Further, the Respondent Company has paid United Kingdom Income Tax, for which it alone was liable, on the whole of its profits.

The Crown maintains that the deduction by the Company of the appropriate amount of United Kingdom tax on payment of the debenture interest disables the Company from thereafter claiming that they have "paid" that amount of United Kingdom tax within the meaning of Section 27 (1) of the Act of 1920 or that the profits so far as applied in payment of debenture interest are part of their "income" within the meaning of that Section.

The Special Commissioners decided in favour of the Respondents, Mr. Justice Rowlatt in favour of the Crown, and the Court of Appeal in favour of the Respondents. I agree with the decision of the Court of Appeal. In my opinion the natural meaning of the language used is in favour of the Respondents' contention. In accordance with the provisions of the Income Tax Acts the whole of the Company's profits, whether applied in whole or in part in payment of debenture interest, or not so applied at all, forms their income for the purpose of assessment and charge under Schedule D and, in my opinion, the fact that they are entitled, though not bound, to recover the appropriate proportion by deduction on payment of the interest cannot be held to alter the position. The Company are entitled to make that deduction whether they have paid their Income Tax or not; and are under no liability to account to the Crown for it. The contention of the Crown involves construing "paid" to mean "paid and ultimately borne", a construction for which I see neither necessity nor warrant.

On the subsidiary point raised by the Crown under Section 17 of the Income Tax, 1918, I agree with the reasons of the Court of Appeal for its rejection.

I concur in the motion proposed.

Lord Macmillan.—My Lords, the Respondent Company has in fact in each of the eight years in question paid United Kingdom Income Tax on the whole of its profits wherever arising at the full rate chargeable in each of these years. On the part of these profits

(Lord Macmillan.)

which arose in Australia and New Zealand the Company has also in each year paid the Dominion Income Tax chargeable. As regards this part of its total profits the Company has thus paid both United Kingdom Income Tax and Dominion Income Tax. On this statement the case would appear to fit precisely the language of Section 43 of the Finance Act, 1916, Section 55 of the Income Tax Act, 1918, and Section 27 of the Finance Act, 1920, so as to entitle the Company to the relief thereby provided. I observe that when Section 43 of the Act of 1916 was under consideration in this House in the case of the *Scottish Union and National Insurance Company* v. *New Zealand and Australian Land Company, Limited* [1921] 1 A.C. 172, Viscount Finlay, after quoting the statutory prerequisites of relief, said(1):—"It is the company, and the company alone, who fulfil "this requirement . . . . it has paid the Colonial taxes and the "United Kingdom income tax, and it is the only person entitled "to claim and to receive from the Commissioners the repayment "provided for by S. 43." In that case, however, the right of the company to relief was not in issue and the only question was whether the company, having had the benefit of relief under Section 43 of the Act of 1916, ought, when paying dividends to its preference shareholders, to deduct tax at the full United Kingdom rate or at a rate diminished to the extent of the relief received. The decision was that tax was deductible at the full United Kingdom rate.

In the present case no question would have arisen as to the Respondent Company's right to relief but for the circumstance that it happens to have issued debentures and debenture stock. In paying interest to the debenture-holders the Company has properly deducted Income Tax at the full rate current in the United Kingdom and not at the rate at which its profits would actually bear United Kingdom Income Tax if the statutory relief were accorded and taken into account. So far as the debenture interest has been or is deemed to have been paid out of profits arising in the United Kingdom which have borne full United Kingdom Income Tax and in respect of which there is of course no claim for relief, no question arises. But in so far as the debenture interest has been paid out of profits arising in the Dominions it has been paid out of a fund which if the relief claimed is accorded will have borne less than the full United Kingdom Income Tax. The Company having deducted tax at the full United Kingdom rate when paying its debenture interest will consequently benefit to the extent of the difference which it retains.

The Crown contends that this is not right and that before any relief from United Kingdom Income Tax is accorded in respect of the profits arising in the Dominions there should be deducted the amount of the debenture interest paid out of these profits.

(1) [1921] A.C. at pp. 181 and 182.

(Lord Macmillan.)

This contention was supported by an argument to the effect that in all cases of relief under the Income Tax code income is reckoned net after deduction of all charges. The Crown further maintained that the Company had not in fact borne the United Kingdom Income Tax on its Dominion profits applied in paying the debenture interest because it had recouped itself by deducting tax at the full United Kingdom rate when paying that interest, and that the Company was consequently not entitled to relief in respect of that part of its income, the persons who had really paid the United Kingdom Income Tax being the recipients of the debenture interest who had paid it by deduction.

To sustain the Respondent Company's claim may be to produce a result which can be represented as anomalous, but in my opinion the justification of its claim follows inevitably from the combined effect of the statutory scheme of relief and the system of deduction at the source under Rule 19 of the General Rules applicable to all Schedules.

There can be no question that the Company has paid full United Kingdom Income Tax on the whole of its income, including the portion derived from the Dominions and applied in paying its debenture interest. No deduction from assessment has been made in respect of its debenture interest and none could properly be made. The amount of the debenture interest is not deductible for the purpose of ascertaining the net assessable income of the Company. It is true that the Company will not have borne full United Kingdom Income Tax on the portion of its income derived from the Dominions and applied in paying its debenture interest if the relief claimed is accorded. But the right to deduct Income Tax at the full United Kingdom rate when paying its debenture interest is plainly conferred on the Company by Rule 19, for the condition is that the interest shall be " payable wholly out of profits or gains brought into charge to tax " and the whole profits of the company have been brought into charge to tax. Actual payment, not ultimate incidence, is the criterion both of the right of relief and of the right to deduct.

Since the decision in the case of the *Scottish Union and National Insurance Company* v. *New Zealand and Australian Land Company*, *cit. sup.*, the Legislature has attempted a reconciliation of the right of relief and the right to deduct by enacting in the Finance Act, 1920, Section 27 (5), as regards the payment of dividends that " Where " under Rule 20 of the General Rules applicable to Schedules A, B, C, " D and E, a body of persons is entitled to deduct income tax from " any dividends, tax shall not in any case be deducted at a rate " exceeding the rate of the United Kingdom income tax as reduced " by any relief from that tax given under this section in respect " of any payment of Dominion income tax." I am not sure that the effect of this enactment could not be shown to be as anomalous

(Lord Macmillan.)

as the present claim is said to be, but at any rate no similar provision is made for the case of payment of interest on debentures, and the right to deduct the full United Kingdom Income Tax remains where debenture interest is paid out of profits or gains brought into charge to tax.

But does the Respondent Company's present claim, if upheld, really result in an anomaly? It is true that if it is granted the Company will have paid its debenture interest out of a fund which will have contributed to the United Kingdom revenue less than the full rate of United Kingdom tax, but it will have paid it out of a fund which has borne in the shape of combined United Kingdom and Dominion Income Tax at least the equivalent of the full United Kingdom tax. I rather think that this practical result is just the necessary consequence of the scheme of relief, and it does not seem inherently unjust. No part of the Respondent Company's income will in the end have escaped without paying and bearing tax at least on the scale of the full United Kingdom Income Tax, although the United Kingdom revenue will only receive a share of that total tax.

On the other hand, the contention of the Crown involves a discrimination in the matter of relief between companies which have and companies which have not made a debenture issue. I do not find any justification in the relevant legislation for such a discrimination. Further, the contention that the recipient of the debenture interest and not the Company has paid the United Kingdom Income Tax within the statutory meaning would preclude the operation of any relief, for if the Company has not paid United Kingdom Income Tax it can have no claim to relief while the recipient of the debenture interest who in the ordinary case will have paid no Dominion Income Tax will equally have no claim to relief. The result would be that no relief would be accorded in respect of moneys which had in fact borne both United Kingdom and Dominion Income Tax, and the intention of the Legislature would be defeated.

As regards the separate but important point raised on Section 17 of the Income Tax Act, 1918, in relation to the last four years in question, I am satisfied, as was the Court of Appeal, that it is adequately met by the reasoning of the Commissioners.

I am therefore of opinion on the grounds which I have indicated that the appeal should be dismissed.

Questions put:

That the Order appealed from be reversed.

The Not Contents have it.

That this appeal be dismissed with costs.

The Contents have it.

[Solicitors:—The Solicitor of Inland Revenue; Messrs. Bircham and Co.]