

(1) PENANG AND GENERAL INVESTMENT TRUST, LTD. AND RAMSDEN v.  
COMMISSIONERS OF INLAND REVENUE<sup>(1)</sup>

(2) ROOMWOOD INVESTMENTS, LTD. v. COMMISSIONERS OF INLAND REVENUE<sup>(2)</sup>

(3) MARQUESS OF TITCHFIELD v. COMMISSIONERS OF INLAND REVENUE<sup>(2)</sup>

*Sur-tax—Undistributed income of investment company—Shares held by trustees of a settlement—Method of apportionment of income—Finance Act, 1922 (12 & 13 Geo. V, c. 17), Section 21 and First Schedule; Finance Act, 1936 (26 Geo. V & 1 Edw. VIII, c. 34), Section 20; Finance Act, 1937 (1 Edw. VIII & 1 Geo. VI, c. 54), Section 14; Finance Act, 1938 (1 & 2 Geo. VI, c. 46), Sections 38 and 41.*

(1). *The Appellant Company (hereinafter called "the Company") was a company to which Section 21, Finance Act, 1922, applied, and was an "investment company" within the meaning of Section 20 (1), Finance Act, 1936. Its issued capital was divided into "A", "B" and "C" shares. The "B" shares were entitled to the whole of the dividends declared, but in the event of a liquidation the "B" and "C" shares were entitled only to return of capital, and the "A" shares to the whole of the assets then remaining. All the "A" and "B" shares were issued to the second Appellant (hereinafter called "the Appellant") by whom they were transferred to two bodies of trustees by deeds of settlement.*

*It was admitted that the Appellant had an interest in the income arising under the settlement of the "A" shares, as subsequently varied, within the meaning of Section 38 (3), Finance Act, 1938.*

*The actual income of the Company for 1937–38 was £82,000 but only £2,000 was distributed by the Company within the year of assessment. The assessing Commissioners issued a direction under Section 21 (1), Finance Act, 1922, as extended by Section 14 (2) (a), Finance Act, 1937, in respect of the Company's income for that year. Under Section 14 (3), Finance Act, 1937, they apportioned the income by attributing to the members interests corresponding to their interests in the assets in the event of a winding up, so that nearly all the income was apportioned to the trustees who held the "A" shares. The amount so apportioned to these trustees was assessed to Sur-tax as the Appellant's income by virtue of Sections 38 (2) and (3) and Section 41 (4) (a) (ii), Finance Act, 1938. It was admitted that, if the direction and apportionment were upheld, this assessment was correct.*

*The Company appealed against the direction and apportionment, contending (inter alia) that its income could only be distributed to the holders of the "B" shares who, being trustees, were not liable to Sur-tax in respect of*

<sup>(1)</sup> Reported (C.A.) [1942] 1 K.B. 420; (H.L.) [1943] A.C. 486.

<sup>(2)</sup> Reported (C.A.) [1942] 1 K.B. 420.

income received by them as such; that it was not possible for the Company to distribute its income to its members "in such manner as to render the amount distributed liable to be included in the statements to be made by the members of the company of their total income for the purposes of surtax" within the meaning of Section 21, Finance Act, 1922, and Section 14(2)(a), Finance Act, 1937; and that the Special Commissioners were not, therefore, entitled to make the direction. The Special Commissioners confirmed the direction and apportionment, and the consequential assessment upon the Appellant.

(2) & (3). By an agreement dated 24th June, 1933, the Appellant Company in the second case (hereinafter called "the Company"), which had been incorporated on 20th June, 1933, and was an "investment company" within the meaning of Section 20(1), Finance Act, 1936, acquired from the Appellant in the third case (hereinafter called "the Appellant") certain assets, the purchase money being payable as and when demanded; in October, 1936, £6,800 was paid by the Company to the Appellant on account thereof. The Company's issued capital was £1,000 divided into 50 £1 ordinary shares and 950 £1 six per cent. cumulative preference shares, each share carrying one vote. All the ordinary shares were held by the Appellant until 19th February, 1937, when they were transferred to the trustees of a settlement made by him on that day: it was not disputed that any income of these trustees fell to be treated as income of the Appellant under Section 38 of the Finance Act, 1938. Of the preference shares, 800 were transferred to the Appellant on 26th February, 1937.

The actual income of the Company for the year ended 8th July, 1937, was £101,692, and interim and final dividends on the ordinary shares amounting to £93,123 in all, were paid to the trustees out of that income on 26th February, 16th April and 20th July, 1937. A direction was issued by the assessing Commissioners under Section 21, Finance Act, 1922, in respect of the Company's income for that year, which was apportioned as follows: £6,848 to the Appellant (i.e., £6,800 in respect of the amount paid on account of the purchase money, and £48 dividend on his preference shares), £9 to the other preference shareholders, and the balance, £94,835, to the trustees. An additional assessment to Sur-tax for the year 1937-38 was made upon the Appellant on the basis that the amount of £94,835 apportioned to the trustees should be included as his income by virtue of Sections 33 and 41(4)(a)(ii), Finance Act, 1938.

The Company appealed against the apportionment, contending that as the trustees had no beneficial interest in the shares held by them they were not members of the Company within the meaning of Paragraph 8 of the First Schedule, Finance Act, 1922, for the purpose of apportionment. The Appellant appealed against the additional assessment to Sur-tax on the ground that the dividend received by the trustees on 26th February, 1937, out of the income which was the subject of apportionment should not be included in the computation of his income for the year 1937-38; the Crown contended that income apportioned to a member of a company under Section 21 was deemed to have been received by him on the date to which the accounts of the company were made up, viz., 8th July, 1937. The Special Commissioners confirmed the apportionment and the additional assessment.

Held, that the decisions of the Special Commissioners in each case were correct, and, in particular, that

- (i) the fact that the only members of a company are trustees not liable

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*to Sur-tax does not preclude the Special Commissioners from making a direction under Section 21, Finance Act, 1922, and*

- (ii) *an apportionment of the company's income to trustees may validly be made.*

CASES

- (1) *Penang and General Investment Trust, Ltd. and Ramsden v. Commissioners of Inland Revenue*

CASE

Stated under the Finance Act, 1922, Section 21, and 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 5th July, 1940, Penang and General Investment Trust, Ltd. (hereinafter called "the Company") appealed against:—

- (a) A direction made upon the Company under Section 21, Finance Act, 1922, and Section 14 (2) (a) of the Finance Act, 1937, for the year of assessment ending 5th April, 1938.
- (b) An apportionment of the actual income of the Company for the said year of assessment among the members of the Company under Section 21, Finance Act, 1922, and Section 14 (3), Finance Act, 1937.

Sir J. F. Ramsden, Baronet, appealed against the consequential additional Sur-tax assessment upon him in the sum of £81,867 for the year ending 5th April, 1938.

2. The Company, which was incorporated on 10th June, 1937, for the purpose of carrying on the business of an investment trust, is an investment company as defined by Section 20 (1) of the Finance Act, 1936.

A copy of the memorandum and articles of association of the Company is attached hereto, marked "A", and forms part of this Case<sup>(1)</sup>.

3. The nominal and issued capital of the Company is £856 11s. 0d. divided as follows:—

	£	s.	d.
749 "A" ordinary shares of £1 each	...	749	0 0
100 "B" ordinary shares of £1 each	...	100	0 0
151 "C" voting shares of 1s. 0d. each	...	7	11 0
		<hr/>	
		856	11 0

The "A" ordinary shares are not entitled to dividends but are entitled to the balance of surplus assets in a winding up, after repayment of the amount paid up on the other classes of shares.

The "B" ordinary shares are entitled to receive the whole of the dividends declared by the Company and to repayment of capital in a winding up.

The "C" voting shares are only entitled to repayment of capital in a winding up but not to dividends.

4. (a) The said 749 "A" ordinary shares were originally owned beneficially by Sir John Frecheville Ramsden, Baronet, but were transferred by

<sup>(1)</sup> Not included in the present print.

him to trustees by a deed of settlement dated 24th June, 1937. The said deed of settlement was varied by a deed dated 7th December, 1937. Copies of these two deeds are attached hereto, marked " B " and " C " respectively, and form part of this Case<sup>(1)</sup>.

(b) The said 100 " B " ordinary shares were also originally owned beneficially by the said Sir John Frecheville Ramsden, Baronet, but were transferred by him to trustees by a deed of settlement dated 24th June, 1937; the said deed of settlement was varied by a deed dated 7th December, 1937, and further varied by a deed dated 20th July, 1938. Copies of these three deeds are attached hereto, marked " D ", " E " and " F " respectively, and form part of this Case<sup>(1)</sup>.

(c) The said deeds of settlement marked " B " and " D ", and deeds of variation marked " C " and " E ", are in similar terms, and it was admitted by Sir John F. Ramsden, the settlor, that he had an interest in the income arising under or property comprised in the said settlements within the terms of Section 38 (3), Finance Act, 1938.

(d) The 151 " C " voting shares are held by 10 persons.

5. The directors of the Company at all material times were:—

Sir John F. Ramsden, Baronet, governing director.

Mr. J. C. Burleigh.

Mr. Glynn H. R. Barton.

6. The Company's accounts are made up to 30th June each year. Copies of the balance sheets and revenue accounts of the Company for the period 10th June, 1937, to 30th June, 1938, and for the year to 30th June, 1939, are attached hereto, marked " G " and " H ", and form part of this Case<sup>(1)</sup>.

7. The revenue account for the period 10th June, 1937, to 30th June, 1938, shows an income after deduction of expenses of £62,049. The said sum of £62,049 is the net figure after deduction of Income Tax.

8. The actual income of the Company as agreed for the year of assessment ending 5th April, 1938, was £81,974 2s. 1d. made up as follows:—

Dividends on shares in Penang Rubber	£	s.	d.
Estates Co., Ltd. ... ..	82,000	0	0
Loan interest ... ..	136	19	9
Bank interest ... ..	22	2	4
	<hr/>		
	82,159	2	1
Less management expenses ... ..	185	0	0
	<hr/>		
	81,974	2	1

9. The following dividends were paid by the Company on the said 100 " B " ordinary shares of the Company:—

20th December, 1937. Interim dividend (net) £1,000

31st March, 1938. Interim dividend (net) £500

5th August, 1938. Final dividend (net) £60,500

The amount of income distributed by the Company to the trustees of the settlement of the " B " shares within the year of assessment ending 5th April, 1938, was £1,500 net, after deduction of Income Tax, or £2,000 gross.

The net amount of the interim dividends, viz., £1,500, was distributed by the trustees of the " B " settlement to beneficiaries during the year ending

(1) Not included in the present print.

5th April, 1938. No part of the final dividend, amounting to £60,500, was so distributed, but on 9th September, 1938, £59,775 out of this sum was loaned by the trustees to the Company.

10. Sub-section (2) of Section 14, Finance Act, 1937, provides that " In the case of a company to which section twenty-one of the Finance Act, 1922, applies, being an investment company, the following provisions shall have effect ". Of the said provisions the following are material:—

- " (a) the Special Commissioners may, if they think fit, give a direction " under subsection (1) of that section if it appears to them that " the company has not within any year of assessment distributed " to its members, in such manner as to render the amount distributed liable to be included in the statements to be made by " the members of the company of their total income for the " purposes of surtax, a reasonable part of its actual income from " all sources for that year;
- " (b) in determining for the purpose of this subsection whether the " company has or has not distributed as aforesaid a reasonable " part of its actual income from all sources for any year of assessment, the Special Commissioners shall deem all the said income " to have become available for distribution as soon as it became " due and payable to the company ".

11. In determining the respective interests of the members of the Company for the purpose of apportioning income, the Special Commissioners attributed to each member an interest corresponding to his interest in the assets of the Company available for distribution among the members in the event of a winding up, in accordance with Section 14 (3), Finance Act, 1937.

The actual income of the Company, namely, £81,974 2s. 1d., was apportioned under Section 14 (3), Finance Act, 1937, as follows:—

	£	s.	d.
Trustees of settlement of 100 " B " shares of £1 each ... ..	100	0	0
The ten holders of the " C " voting shares of 1s. 0d. each ... ..	7	11	0
Trustees of settlement of 749 " A " shares of £1 each ... ..	81,866	11	1
	<u>81,974</u>	<u>2</u>	<u>1</u>

12. The additional assessment of £81,867 was made upon Sir J. F. Ramsden, Baronet, on the ground that the income apportioned to the trustees of the said settlement of the 749 " A " shares must be treated as his income by virtue of Section 38 (2) and (3), Finance Act, 1938, and Section 41 (4) (a) (ii), Finance Act, 1938.

It is admitted that this assessment is correct if the direction and apportionment on the Company are upheld by the High Court.

13. It was contended on behalf of the Company and Sir J. F. Ramsden, that:—

- (a) The Company had distributed nearly all its income within a reasonable time after 30th June, 1938, the date to which the accounts were made up.
- (b) Since the income of the Company if it had in fact been distributed during the years of assessment would have been distributed wholly to the trustees of the settlement of 24th June, 1937, (settlement " D " ), the Special Commissioners were not entitled to make a

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direction under Section 14 (2), Finance Act, 1937, for the year 1937-38.

- (c) The said direction should be discharged.
- (d) The apportionment under Section 14 (3), Finance Act, 1937, might involve a double assessment because the dividends (amounting to £1,500 net) which had been paid by the Company to the trustees of the settlement of the " B " shares had been distributed by those trustees to two recipients who would have to include the sum so received in their respective returns of total income for the purposes of Sur-tax (if liable to pay Sur-tax).
- (e) The apportionment should be discharged.

14. It was contended on behalf of the Crown that:—

- (a) The Company did not distribute within the year of assessment ending 5th April, 1938, a reasonable part of its income.
- (b) The direction made by the Special Commissioners under Section 14 (2), Finance Act, 1937, should be confirmed.
- (c) The apportionment under Section 14 (3), Finance Act, 1937, was correct and should be confirmed.

15. Having considered the evidence and arguments adduced before us we held that upon the facts before us the direction and apportionment should be confirmed.

We therefore confirmed the said direction and apportionment, and also the consequential assessment in the sum of £81,867 upon Sir J. F. Ramsden, Baronet.

16. Both the Company and Sir J. F. Ramsden immediately after the determination of the respective appeals 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 Income Tax Act, 1918, Section 149, and the Finance Act, 1922, Section 21, which Case we have stated and do sign accordingly.

N. ANDERSON, } Commissioners for the Special Purposes  
C. C. GALLAGHER, } of the Income Tax Acts.

Turnstile House,  
94/99 High Holborn,  
London, W.C.1.

4th November, 1940.

(2) *Roomwood Investments, Ltd. v. Commissioners of Inland Revenue*

CASE

Stated under the Income Tax Act, 1918, Section 149, and Section 21 and Paragraph 10 of the First Schedule of the Finance Act, 1922, 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 16th February, 1940, Roomwood Investments, Ltd. (hereinafter called " the Company ") appealed against a notice of apportionment made under Section 21 of the Finance Act, 1922, in respect of the income of the Company for the year ended 8th July, 1937.

An appeal against an additional assessment to Sur-tax in the sum of £46,301 for the year ending 5th April, 1938, made upon the Marquess of Titchfield personally, was heard by us together with the appeal by the Company.

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2. The Company was incorporated on 20th June, 1933. By an agreement dated 24th June, 1933, the Company acquired from the Marquess of Titchfield a certain sum of stock, and his interest during the lives of the Duke of Portland and the Marquess of Titchfield and the survivor of them in certain investments.

The consideration for the said stock and the interest in the investments was £903,400 payable as and when demanded by the Marquess of Titchfield with interest at 4 per cent. per annum.

3. The authorised and issued capital of the Company is £1,000, divided into 50 ordinary shares of £1 each and 950 6 per cent. cumulative preference shares of £1 each. The said 50 ordinary shares were held by the Marquess of Titchfield until 19th February, 1937, when they were transferred to the trustees of a settlement dated 19th February, 1937, a copy of which is attached hereto, marked "A", and forms part of this Case<sup>(1)</sup>.

The names of the trustees were entered on the Company's share register as the holders of the said 50 ordinary shares in May, 1938.

The said preference shares were held by various individuals. On 26th February, 1937, 800 preference shares were transferred to the Marquess of Titchfield. The remaining 150 preference shares are held by 5 other persons. Each share, ordinary and preference, carries one vote. The Company came within the provisions of Section 21, Finance Act, 1922, by virtue of the provisions of the Finance Act, 1936.

4. The accounts of the Company are made up to 8th July in each year. Copies of the balance sheet, revenue account and appropriation account of the Company for the year ended 8th July, 1937, are attached hereto, marked "B", and form part of this Case<sup>(1)</sup>.

The actual income of the Company for the year ended 8th July, 1937, was £101,692.

5. On 9th February, 1939, a direction was issued by the Special Commissioners under Section 21, Finance Act, 1922, that the actual income of the Company for the year ended 8th July, 1937, should be deemed to be the income of the members of the Company, and the amount thereof should be apportioned among the members. No appeal was made by the Company against the said direction. On 17th March, 1939, the actual income of the Company, namely, £101,692, was apportioned to the Marquess of Titchfield, and the Company has appealed against this apportionment.

6. Out of the profits of the Company for the year ended 8th July, 1937, the Company paid the following dividends on its ordinary shares to the trustees of the settlement dated 19th February, 1937:—

	£		£
26th February, 1937 (interim) ...	34,000 (net)	...	44,590 (gross)
16th April, 1937 (interim) ...	23,500 (net)	...	31,333 (gross)
20th July, 1937 (final) ...	12,900 (net)	...	17,200 (gross)
	70,400		93,123

7. On 10th October, 1936, £6,800 was paid by the Company to the Marquess of Titchfield on account of the purchase money payable by the Company under the said deed of 24th June, 1933.

8. By letter dated 23rd June, 1939, the Special Commissioners intimated to the Company that they were prepared to amend the apportionment under appeal as follows:—

<sup>(1)</sup> Not included in the present print.

	£
The Marquess of Titchfield ... ..	6,848
The preference shareholders (other than the Marquess of Titchfield) ... ..	9
The trustees of the said settlement of 19th February, 1937 ... ..	94,835
	<hr/>
	101,692

The £6,848 apportioned to the Marquess of Titchfield was made up as follows:—£6,800 as set out in paragraph 7 hereof, and £48 dividend on his preference shares.

The sum apportioned to the trustees of the settlement, namely, £94,835, included the amount of the three dividends paid to the trustees as set out in paragraph 6 hereof.

9. During the fiscal year 6th April, 1937, to 5th April, 1938, the trustees of the settlement dated 19th February, 1937, received income amounting to £104,656 (gross) which included the two dividends paid by the Company on 16th April and 20th July, 1937, as shown in paragraph 6 hereof.

This income, namely, £104,656, fell to be treated as the income of the Marquess of Titchfield by virtue of Section 38, Finance Act, 1938, and was included by him in his statement of total income for the purposes of Sur-tax for the year 1937-38, and he has paid Sur-tax in respect thereof. The Marquess of Titchfield has also included in his statement of total income for the purposes of Sur-tax for the year 1937-38 the said sum of £48, dividend on his preference shares, and has paid Sur-tax thereon.

10. The additional assessment to Sur-tax in the sum of £46,301 made upon the Marquess of Titchfield for the year 1937-38 was computed as follows:—

Amount to be apportioned to the Marquess of Titchfield ...	£ 6,848
Less preference dividend already included in his personal assessment ... ..	48
Amount assessable under Section 21, Finance Act, 1922, upon the Marquess in the name of the Company ... ..	<hr/> 6,800
Income arising under the settlement of 19th February, 1937, as stated in paragraph 9 hereof ... ..	104,656
Add amount apportioned to the trustees of the settlement in accordance with Section 41, Finance Act, 1938 ... ..	94,835
	<hr/> 199,491
Deduct amounts included in both above sums of £104,656 and £94,835, viz., gross dividends paid on 16th April, 1937, and 20th July, 1937 ... ..	48,533
	<hr/> 150,958
Less amount already included in assessment on the Marquess of Titchfield under the provisions of Section 38, Finance Act, 1938 ... ..	104,657*
	<hr/> 46,301

\* £1 has been added here to adjust odd shillings.



11. It was contended on behalf of the Company that:—

- (a) The amended apportionment of £94,835 set out in paragraph 8 hereof was not warranted by the Act.
- (b) No apportionment could lawfully be made on the trustees of the settlement of 19th February, 1937, who were not members of the Company for the purpose of apportionment.
- (c) Alternatively, the apportionment of £94,835 was excessive in amount.
- (d) The dividend paid by the Company to the trustees on 26th February, 1937, i.e., £34,000 (net) should not be included in the computation of the income of the Marquess of Titchfield for the year ending 5th April, 1938. This contention is relevant to the appeal by the Marquess of Titchfield against the additional assessment to Sur-tax for the year ending 5th April, 1938, in the sum of £46,301.

12. It was contended on behalf of the Crown that:—

- (a) The trustees of the settlement of 19th February, 1937, as the holders of the said 50 ordinary shares were members of the Company.
- (b) The apportionment of £94,835 to the said trustees was correctly made.
- (c) Income apportioned to a member under Section 21 of the Finance Act, 1922, is deemed to have been received by him on the date to which accounts of the Company were made up, i.e., 8th July, 1937.
- (d) The income apportioned to the trustees of the said settlement was, therefore, income of the Marquess of Titchfield for the year 1937-38.
- (e) The proposed amended apportionment set out in paragraph 8 hereof is correct and should be confirmed.
- (f) The additional assessment on the Marquess of Titchfield in the sum of £46,301 has been correctly computed and should be confirmed.

13. Having considered the evidence and arguments adduced before us we decided as follows:—

We hold that the amount to be apportioned to the trustees of the settlement of 19th February, 1937, is £94,835, and we amend the apportionment as follows:—

	£
The Marquess of Titchfield ... ..	6,848
Other preference shareholders ... ..	9
Brian Grierson Bailey and others as trustees of the settlement of 19th February, 1937 ... ..	94,835

We are satisfied that the computation of the assessment on the Marquess of Titchfield set out in the letter of 19th September, 1939, from the assessing Special Commissioners is correct, and we therefore confirm the additional assessment of £46,301.

14. The Company immediately after the determination of the appeal declared to us its 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 Section 21 and Paragraph 10 of the First Schedule to the Finance Act, 1922, and Income Tax Act, 1918, Section 149, which Case we have stated and do sign accordingly.

N. ANDERSON, }  
MARK GRANT-STURGIS, } Commissioners for the Special Purposes  
of the Income Tax Acts.

Turnstile House,  
94/99 High Holborn,  
London, W.C.1.

17th October, 1940.

ROOMWOOD INVESTMENTS, LTD. v.

MARQUESS OF TITCHFIELD v.

(3) *Marquess of Titchfield v. Commissioners of Inland Revenue*

## CASE

Stated under the Finance Act, 1927, Section 42 (7), and 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 16th February, 1940, the Marquess of Titchfield (hereinafter called "the Appellant") appealed against an additional assessment made upon him to Sur-tax in the sum of £46,301 for the year ending 5th April, 1938.

An appeal by Roomwood Investments, Ltd. against a notice of apportionment under Section 21 of the Finance Act, 1922, in respect of the income of the Company for the year ended 8th July, 1937, was heard together with this appeal.

2. The facts, contentions of the parties, and our decision in this appeal are set out in the Case stated by us with reference to the said appeal of Roomwood Investments, Ltd., which Case may be referred to as incorporated in this Case (*see page 224 ante*).

3. The Appellant immediately after the determination of the appeal declared to us his 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, 1927, Section 42 (7), and Income Tax Act, 1918, Section 149, which Case we have stated and do sign accordingly.

N. ANDERSON, }  
MARK GRANT-STURGIS, } Commissioners for the Special Purposes  
of the Income Tax Acts.

Turnstile House,  
94/99 High Holborn,  
London, W.C.1.

17th October, 1940.

The first case came before Macnaghten, J., in the King's Bench Division on 9th and 10th July, 1941, and the second and third cases on 10th and 11th July, 1941, when judgment was reserved in each case. On 15th July, 1941, judgment was given in favour of the Crown in each case, with costs.

Mr. J. Millard Tucker, K.C., and Mr. L. J. Stein appeared as Counsel for the Penang and General Investment Trust, Ltd. and Sir John F. Ramsden; Mr. Cyril L. King, K.C., and Mr. Frederick Grant for Roomwood Investments, Ltd. and the Marquess of Titchfield. and the Solicitor-General (Sir William Jowitt, K.C.) and Mr. Reginald P. Hills for the Crown.

## JUDGMENTS

(1) *Penang and General Investment Trust, Ltd. and Ramsden v. Commissioners of Inland Revenue*

**Macnaghten, J.**—In this case the first named Appellant, the Penang and General Investment Trust, Ltd., appeals against (a) a direction made upon the Company by the Special Commissioners under Section 21 of the Finance Act, 1922, and Section 14 of the Finance Act, 1937, for the year of assessment ending 5th April, 1938, and (b) an apportionment of the actual income

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(Macnaghten, J.)

of the Company for that year under those enactments; and the second named Appellant, Sir John F. Ramsden, Baronet, appeals against the consequential additional Sur-tax assessment upon him in the sum of £81,867 for the year ending 5th April, 1938.

The Company was incorporated on 10th June, 1937, under the Companies Act, 1929, as a private company limited by shares with a capital of £856 11s. 0d. divided into 749 "A" ordinary shares of £1 each, 100 "B" ordinary shares of £1 each, and 151 "C" voting shares of 1s. each. The rights conferred by the articles of association on the holders of these three classes of shares were somewhat unusual. The holders of the 749 "A" ordinary shares are entitled in the event of the liquidation of the Company to the whole of the surplus assets after repayment of the capital subscribed by the holders of the "B" and "C" shares, but they are not entitled to participate in any dividends distributed by the Company. The holders of the 100 "B" ordinary shares are entitled to all the dividends declared by the Company, and are also entitled in a winding up to repayment of the capital subscribed on their shares. The holders of the "C" shares are entitled in a winding up to repayment of the subscribed capital, but they are not entitled to participate in any dividends.

All the ordinary "A" and "B" shares were issued to Sir John Ramsden, and originally he was the beneficial owner of these shares. By the articles of association he was appointed governing director of the Company for life, with power to nominate his successor in that office.

By a deed of settlement dated 24th June, 1937, made between Sir John Ramsden (therein called the settlor) of the one part and the settlor and R. W. James of the other part, the 749 "A" ordinary shares were settled upon the trusts set forth in the deed, and those shares were then transferred into the names of Sir John Ramsden and Mr. James; and by another deed of settlement of the same date made between Sir John Ramsden (therein called the settlor) of the one part and Mr. Donald MacLeod and Mr. James Charteris Burleigh and the settlor of the other part, the 100 "B" ordinary shares were settled upon the trusts set forth in that deed, and those shares were then transferred into the names of Mr. MacLeod, Mr. Burleigh and Sir John Ramsden. The settlement of the "A" shares was subsequently varied by a deed dated 7th December, 1937, and by that deed Sir John Ramsden was precluded from taking any benefit under the settlement. The settlement of the "B" shares was likewise varied by a deed dated 7th December, 1937; but by another deed dated 20th July, 1938, the deed of 7th December, 1937, was revoked and cancelled, and it was provided that neither Sir John Ramsden nor his wife should take any benefit under the settlement of the "B" shares.

The Company was formed for the purpose of carrying on the business of an investment trust. It is an "investment company" as defined by Section 20 of the Finance Act, 1936, and it is admittedly a company to which Section 21 of the Finance Act, 1922, applies.

By Section 14 (2) (a) of the Finance Act, 1937, it is provided as follows: "In the case of a company to which section twenty-one of the Finance Act, 1922, applies, being an investment company, the following provisions shall have effect:—(a) the Special Commissioners may, if they think fit, give a direction under subsection (1) of that section if it appears to them that the

**(Macnaghten, J.)**

“ company has not within any year of assessment distributed to its members, “ in such manner as to render the amount distributed liable to be included in “ the statements to be made by the members of the company of their total “ income for the purposes of surtax, a reasonable part of its actual income “ from all sources for that year ”.

The actual income of the Company for the year of assessment ending 5th April, 1938, was £81,974 2s. 1*d.*; but during that year the Company distributed no more than £2,000. The Special Commissioners accordingly directed that for the purposes of assessment to Sur-tax the actual income of the Company for that year should be deemed to be the income of the members of the Company.

By Section 14 (3) of the Finance Act, 1937, it is provided that: “ Where “ a direction is given under subsection (1) of section twenty-one of the “ Finance Act, 1922, with respect to an investment company, the Special “ Commissioners, in determining the respective interests of the members “ for the purpose of apportioning income in accordance therewith under “ paragraph 8 of the First Schedule to that Act, may, if it seems proper to “ them so to do, attribute to each member an interest corresponding to his “ interest in the assets of the company available for distribution among the “ members in the event of a winding up.”

Pursuant to that Sub-section, the Special Commissioners apportioned the income of the Company as follows:—to the trustees of the “ B ” shares, £100; to the holders of the “ C ” shares, £7 11s. 0*d.*; and to the trustees of the “ A ” shares, £81,866 11s. 1*d.*

The Company appeals against the direction made by the Special Commissioners and also against their apportionment of the income, which by that direction is for the purposes of assessment to Sur-tax deemed to be the income of the members of the Company; but the argument on behalf of the Company was for the most part as to the validity of the direction.

The argument as I understood it was this. No direction can be made under Sub-section (1) of Section 21 of the Finance Act, 1922, unless it appears to the Special Commissioners that the Company has not distributed a reasonable part of its actual income in such manner as to render the amount distributed liable to be included in the statements to be made by the members of their total income for the purposes of Sur-tax; the Section, therefore, presupposes that the Company is able to make such a distribution; but in the case of the Appellant Company the income must be distributed to the holders of the “ B ” ordinary shares, and it cannot be distributed by way of dividend to anyone else.

Now, it so happens that the holders of the “ B ” ordinary shares are trustees. Trustees are not liable for Sur-tax in respect of the trust income received by them; and therefore, it is not possible for the Company to distribute any part of its income in such a manner as to render the amount distributed liable to be included in the statement to be made by the “ B ” shareholders of their total income for the purposes of Income Tax; and therefore, it is argued, Section 21 is not applicable to the Appellant Company.

The argument is a bold one and somewhat late in the day. Sur-tax is a tax on individuals; companies are not liable to that tax. If the argument were sound, Section 21 would not be applicable in a case where the shares in the company are registered in the names of other companies and not in

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the names of individuals. This would indeed afford to taxpayers an easy way of escape from the provisions of Section 21; all they need do is to put their shares in the name of a company, and then the Section would become inapplicable. No one seems to have thought of this before.

But, in my opinion, the argument is not well founded, and there is, I think, more than one conclusive answer to it.

Sub-section (6) of Section 21 of the Finance Act, 1922, as amended by subsequent legislation, provides as follows: "This section shall apply to any company which is under the control of not more than five persons and which is not a subsidiary company or a company in which the public are substantially interested"; and it is not, I think, possible to construe Sub-section (1) so as to restrict the generality of the provisions of Sub-section (6). Moreover, as the Solicitor-General pointed out, the words in Sub-section (1) on which the argument is based, are plainly intended to cover not only the case where the company does not distribute a reasonable part of its actual income by way of dividend to its members, but also the case where it distributes its income either in repayment of debentures or in any other way which would exclude the income in the hand of the recipient from liability to Sur-tax.

Further, by Sub-section (7) of Section 21 it is provided that, "In this section the expression 'member' shall include any person having a share or interest in the capital or profits or income of a company"; and therefore the beneficiaries under a trust deed, though they are not registered holders of any shares, are for the purposes of the Section to be regarded as members of the company, and by apportionment to the trustees the income received by the beneficiary could be reached in his hands.

Sir John Ramsden appeals against the assessment to Sur-tax made upon him under the provisions of Section 38 (2) and Section 41 (4) (a) of the Finance Act, 1938. Under those Sub-sections it is provided that income apportioned to the trustees of a settlement, such as the settlement of the 749 "A" shares, shall be treated as the income of the settlor. It is admitted that, if the appeal of the Company against (a) the direction, and (b) the apportionment made by the Special Commissioners, fails, the appeal by Sir John Ramsden against the assessment upon him must fail also—the Special Commissioners have no option in the matter: the Statute compels them to "treat" the income apportioned to the trustee as his income.

I am of opinion, therefore, that these appeals must be dismissed.

**Mr. Hills.**—My Lord, the appeals will be dismissed with costs?

**Macnaghten, J.**—Yes.

**Mr. Hills.**—If your Lordship pleases.

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(2) *Roomwood Investments, Ltd. v. Commissioners of Inland Revenue*

(3) *Marquess of Titchfield v. Commissioners of Inland Revenue*

**Macnaghten, J.**—These are appeals by Roomwood Investments, Ltd. against a notice of apportionment made under Section 21 of the Finance Act, 1922, in respect of income of the Company for the year ended 8th July, 1937, and by the Marquess of Titchfield against an additional assessment for Sur-tax in the sum of £46,301 for the year ending 5th April, 1938.

**(Macnaghten, J.)**

Roomwood Investments, Ltd. was incorporated on 20th June, 1933, under the Companies Act, 1929, as a company limited by shares with a capital of £1,000 divided into 50 ordinary shares of £1 each and 950 6 per cent. cumulative preference shares of £1 each.

By an agreement dated 24th June, 1933, the Company acquired from the Marquess of Titchfield certain assets at the price of £903,400 payable as and when demanded by the Marquess with interest at 4 per cent. per annum. The 50 ordinary shares were held by the Marquess until 19th February, 1937, when he transferred them to the trustees of a settlement dated 19th February, 1937, made between himself (therein called the settlor) of the one part, and Mr. Brian Grierson Bailey and others of the other part (therein called the trustees). The names of the trustees were entered on the Company's share register as the holders of the 50 ordinary shares in May, 1938. The preference shares were held by various individuals. On 26th February, 1937, 800 of those shares were transferred to the Marquess of Titchfield, the remaining 150 preference shares being held by some five other persons. The actual income of the Company for the year ended 8th July, 1937, was £101,692.

The Company is a company to which Section 21 of the Finance Act, 1922, applies. On 9th February, 1939, a direction was made by the Special Commissioners under that Section, that the actual income of the Company for the year ended 8th July, 1937, should be deemed to be the income of the members of the Company, and the amount thereof should be apportioned among the members. No appeal was made by the Company against that direction. By an amended apportionment the Special Commissioners apportioned the actual income in the following manner:—to the Marquess of Titchfield, £6,848; to the preference shareholders, other than the Marquess of Titchfield, £9; and to the trustees of the settlement of the 50 ordinary shares, £94,835.

So far as the appeal by the Company against this apportionment is concerned, the argument on behalf of the Appellants ultimately came to this. That whereas by Paragraph 8 of the First Schedule to the Finance Act, 1922, it is provided that: "The apportionment of the actual income from all sources of the company shall be made by the Special Commissioners in accordance with the respective interests of the members", those words "in accordance with the respective interests of the members" should be read as if the word "beneficial" were inserted between the words "respective" and "interests", so that the paragraph would then run: "The apportionment of the actual income from all sources of the company shall be made by the Special Commissioners in accordance with the respective *beneficial* interests of the members".

I see no reason for the insertion of that word. On the contrary, it seems to me clear that the Special Commissioners are entitled, and indeed, apart from other provisions in the Finance Acts, it would be their duty to apportion the actual income in accordance with the interests of the members as set forth in the memorandum and articles of association of the Company. The Company is not concerned with any equitable interests in its shares: no notice of any equity may be entered on its register. Therefore, as it seems to me, apart from any other express statutory permission, the Special Commissioners in making the apportionment are entitled to apportion in accordance with the

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interests of the holders of the shares as set forth in the Company's memorandum and articles of association.

The argument is enforced by the fact that the enactment, which I have already read in the previous case<sup>(1)</sup>, provides that where there is an apportionment to trustees of a settlement the assessment may be made upon the settlor. The Statute contemplated a case where the apportionment has been made upon persons who had no beneficial interest in the shares. It is unnecessary to repeat what I have said in the previous case.

In my opinion, this appeal fails and the appeal of Lord Titchfield against the assessment made upon him must also fail.

**Mr. Hills.**—My Lord, each appeal is dismissed with costs?

**Macnaghten, J.**—Yes.

*Roomwood Investments, Ltd. v. Commissioners of Inland Revenue*

*Marquess of Titchfield v. Commissioners of Inland Revenue*

*Penang and General Investment Trust, Ltd. and Ramsden v. Commissioners of Inland Revenue*

Appeals having been entered against the decisions in the King's Bench Division, the cases came before the Court of Appeal (Lord Greene, M.R., and Clauson and du Parcq, L.JJ.) on 19th, 20th and 21st November, 1941, when judgment was reserved. On 12th December, 1941, judgment was given unanimously in favour of the Crown in each case, with costs, confirming the decisions of the Court below.

Mr. Cyril L. King, K.C., and Mr. Frederick Grant appeared as Counsel for Roomwood Investments, Ltd. and the Marquess of Titchfield; Mr. J. Millard Tucker, K.C., and Mr. L. J. Stein for the Penang and General Investment Trust, Ltd. and Sir John F. Ramsden, and the Solicitor-General (Sir William Jowitt, K.C.) and Mr. Reginald P. Hills for the Crown.

## JUDGMENT

**Lord Greene, M.R.**—The judgment of the Court will be delivered by Clauson, L.J.

**Clauson, L.J.**—This is the judgment of the Court, consisting of the Master of the Rolls, myself and du Parcq, L.J.

These appeals involve the consideration of Section 21 of the Finance Act, 1922, as amended by various later Acts, and of Section 38 of the Finance Act, 1938. It is convenient to deal with the construction and operation of these Sections before applying them to the facts of the three cases under appeal.

Section 21 of the Act of 1922 recites that it is enacted "with a view to preventing the avoidance of the payment of super-tax through the withholding from distribution of income of a company which would otherwise be distributed". The Section applies to certain companies the characteristics of which have been varied from time to time by the amendment of the Section; but we need not burden this judgment with the varying details of these characteristics, since it is admitted that the two Companies which come into consideration in these three cases are possessed of the characteristics required for the applicability of the Section. Assuming the Section to be applicable to a particular company, the Section does not become operative

<sup>(1)</sup> See pages 228/231 *ante*.

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as regards it unless it appears to the Special Commissioners that for a year or period ending after 5th April, 1922, for which accounts have been made up, the company has failed to distribute to its members "in such manner as" to render the amount distributed liable to be included in the statements "to be made by the members of the company of their total income for the" purposes of super-tax "a reasonable part of its actual income for the said year or other period.

Here emerges the first point material to these appeals. A corporate body is not liable to Super-tax and cannot be called upon to make a statement of its total income for Super-tax; further, an individual is not liable to Super-tax in respect of income which he receives as a trustee, and cannot be called upon to include such income in a statement of his total income for Super-tax. It was admitted for the purposes of argument, as we understand it, that if among the registered members there were to be found a single one who was an individual owning his shares beneficially, and thus liable to have to make a Super-tax return which would include any dividend paid on his share, and if the company failed to pay a reasonable dividend, it could be predicated of the company that it had failed to distribute a reasonable part of its income "in such manner as to render the amount distributed liable" to be included in the statements to be made by the members of the company "of their total income for the purposes of super-tax". It was, however, suggested that, if all the registered members of the company were either corporate bodies or persons holding their shares as trustees, it would be impossible for the company to distribute to its members a reasonable part of its income "in such manner as to render the amount distributed liable" to be included in the statements to be made by the members of the company "of their total income for the purposes of super-tax"; and thus the conclusion was reached that the condition for the operation of the Section impliedly required that at least one member should be an individual holding his shares beneficially. We agree with the view expressed on this matter by Macnaghten, J., in his judgment in the *Penang* case<sup>(1)</sup>. The language used appears to us to be amply accounted for by the desire of the Legislature to prevent the avoidance of Super-tax by the process of making a "capital" distribution whether by the device of bonus shares or otherwise. We cannot accept the view that the words used by the Legislature were in substance a suggestion to those who might desire to frustrate the intention of the Section to achieve that object by placing the shares in the names of corporate bodies or trustees. The words seem to us to bear a meaning which we can paraphrase thus: "in such manner as to render the amount distributed Super-taxable in the hands of a person whose income is Super-taxable".

The next step to be taken in order to bring the Section into operation in regard to a company is that the Commissioners should direct that for purposes of assessment to Super-tax the company's income should for the relevant period be deemed to be the income of the members; this direction having been given, the amount of this income is to be apportioned among the members.

By virtue of Sub-section (7) of Section 21 the expression "member" is to include any person having a share or interest in the capital or profits or income of a company. By virtue of Sub-section (8) of Section 21, the provisions in the First Schedule to the Act of 1922 are to have effect in regard to apportion-

<sup>(1)</sup> See pages 228/231 ante.



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ment and otherwise for the purpose of carrying into effect and in connection with Section 21. It is to be noted that under Paragraph 8 of the Schedule the apportionment is to be made in accordance with the respective interests of the members; that under Paragraph 9 the income apportioned to a member is to be deemed to have been received by him on the date on which the accounts of the company for the relevant period were made up, and that under Paragraph 10 the Commissioners are to notify the apportionment to the company by serving on it a statement of the income apportioned and either the amount apportioned to each member or the amount apportioned to each class of shares, as they think fit.

It was suggested in the arguments in these cases that the effect of the provisions which we have so far mentioned was such that no apportionment could be made to a member unless he were a person who would be liable to Super-tax, and that, therefore, an apportionment to a member who is a corporate body, or is found to be a trustee, would not be a valid apportionment. We agree with the view expressed by Macnaghten, J., in his judgment in the *Roomwood Investments* case<sup>(1)</sup> that this is an erroneous view of the provisions in question. We see no difficulty at all in holding that the provisions to which we have so far referred plainly authorise the Commissioners to apportion the company's income to members on its register though they may not be liable to Super-tax. We do not find it necessary to fortify the point by referring to the provisions of later legislation; but it is quite plainly the fact that the Legislature in subsequent Acts assumed that such an apportionment would be a good one.

The apportionment having been made, the next step is to assess the Super-tax chargeable in respect of the amount of the company's income apportioned to a member, and this is to be done (see Sub-section (2) of Section 21) by assessing it upon the member in the name of the company; and it is to be payable by the company.

For the purposes of the present case it is sufficient to say that since the Finance Act, 1927, the statutory provisions to which we have referred must for all relevant purposes be read as referring to Sur-tax in place of Super-tax.

We do not propose to burden this judgment by going through the subsequent legislation in detail, but it is necessary to note that by virtue of the Finance Act, 1937, Section 14 (3), the Commissioners are given power, in determining the respective interests of the members for the purpose of apportioning income, to attribute to each member an interest corresponding to his interest in the assets of the company available for distribution among the members in the event of a winding up. It was suggested in argument before us that this power was one which must be read as subject to some implied limitation and was other than a power given by the Legislature to the Commissioners without control or fetter. We do not appreciate what the implied fetter or limitation is suggested to be. In our opinion the power thus given to them is quite unfettered.

We now turn to Section 38 of the Finance Act, 1938, which is in Part IV of the Act under the heading "Income Tax (Settlements)". It was common ground that the settlements with which the present cases are concerned were of such a character that by reason of Section 41, Sub-section (4) (a) (ii), of the Act of 1938, any income of a company apportioned to the trustees of

(<sup>1</sup>) See pages 231/3 ante.

**(Clauson, L.J.)**

the settlement under Section 21 of the Act of 1922 must be treated as "income arising under a settlement", and accordingly, must, in view of Section 38, Sub-section (2), be treated as income of the settlor, in the one case Lord Titchfield and in the other Sir John Ramsden.

We now turn to the facts of the three cases. In the *Roomwood* case the income of the company for the financial year ending 8th July, 1937, was £101,692. In February, 1939, the Commissioners issued a direction, admittedly valid, that that income should be deemed to be the income of the members of the Company and that the amount should be apportioned. In the first instance the whole amount was apportioned to the Marquess; but this was admittedly inaccurate, and by arrangement the apportionment must now be treated as having been made as to £6,800 on the Marquess as a loan creditor under certain provisions of the Finance Act, 1936 (with which it is unnecessary to deal, as no point is raised on this part of the apportionment); as to £48 to the Marquess as a preference shareholder; as to £9 to certain other preference shareholders, and as to £94,835 to certain members holding the whole of the ordinary shares who are in fact the trustees of a settlement of those shares made by the Marquess. No question is raised on the validity of the apportionment to the Marquess or to the other preference shareholders. The validity of the apportionment to the settlement trustees is, however, questioned on the ground that on the true construction of the Acts no apportionment can validly be made except to an individual who would be under liability to pay Sur-tax on a dividend received by him on the shares held by him, and the trustees would admittedly not be so liable. We have already expressed our views on this point. For the reasons we have given, the contentions of the Company and of the Marquess on this point must fail.

The only other question raised may be stated as follows. During the fiscal year 6th April, 1937, to 5th April, 1938, the settlement trustees received two dividends on their shares, one on 16th April, 1937, and one on 20th July, 1937. On these no question arises. But the trustees also received a dividend on 26th February, 1937, of £44,590. The amount of the Company's income for the year ending 8th July, 1937, which has been apportioned under Section 21 of the Act of 1922, comprises in it an amount of £44,590 which has in fact gone to pay the dividend paid on 26th February, 1937, that is, during the period in respect of which the Company's income, the subject of apportionment, accrued, but before the commencement of the fiscal year in respect of which Sur-tax has been assessed. In our judgment the payment of the dividend is not material for the purpose of charging the Marquess with Sur-tax. He must be charged with Sur-tax on the income arising under the settlement, that being treated as his income under Section 38 of the Act of 1938: and, by virtue of Section 41, Sub-section (4) (a) (ii), of the Act of 1938, the income arising under the settlement includes the amount apportioned to the trustees, irrespective of the fact that that amount comprised the profits which were in fact distributed in dividend. On this reading of the Act not only an amount of the profits corresponding to the February dividend is Sur-taxable but also the amounts corresponding to the April and July dividends: all these seem to us to be on the same footing; but the Commissioners, quite properly, do not seek to bring in the two latter dividends because they have in fact borne Sur-tax in respect of the fiscal year 1937-38; but, as we understand it, they are not prepared to release

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their claim in respect of the sum corresponding to the February dividend since that has not borne Sur-tax for that year or indeed any other year. In our view, the position they take in regard to this sum is quite unimpeachable.

We turn now to the *Penang* case. In this case the Company's capital is divided into 749 "A" ordinary shares of £1 each, 100 "B" ordinary shares of £1 each, and 151 "C" voting shares of 1s. each. The "A" ordinary shares carry no dividend rights but take all surplus assets in a winding up after repayment of the capital paid up on the other shares. The "B" ordinary shares are entitled to all dividends and to repayment of their capital in winding up. The "C" voting shares are entitled to repayment of capital in a winding up but to nothing more, and, accordingly, to no dividends. The Commissioners exercised the power given to them by the Act of 1937, Section 14 (3), and, finding that the Company came within Section 21 of the Act of 1922 and had not made such a distribution as would save them from the operation of that Section, apportioned the relevant income of the Company to the extent of the capital paid up on the "B" shares and the "C" voting shares to the holders of those shares, and, as to the balance, to the holders of the "A" ordinary shares who were in fact the trustees of a settlement made by Sir John Ramsden of such a character that under the statutory provisions, which we need not again particularise, the amounts apportioned to the trustees were Sur-taxable in Sir John Ramsden's hands.

The points taken for the Company and Sir John Ramsden were as follows. First, it was said that the direction was bad because this Company could distribute its income only to the holders of the "B" ordinary shares, that is, to the settlement trustees, and that, as they would not be liable to Sur-tax in respect of shares which they did not hold beneficially, it was not possible for the Company to distribute its income in such manner as to make it liable to be included in its members' statements for Sur-tax. We have already expressed our views as to the meaning of this part of the Section, and on what we conceive to be the true construction of the Section this point must fail. Secondly, it was said that no apportionment to trustees was authorised by the Section. We have already dealt above with this point, and on the view of the Act which we have already expressed it must fail. We ought to mention that Counsel for the Company and Sir John Ramsden were apparently prepared to admit that, if the trustees should be bare trustees of a dividend for an individual entitled to immediate payment from them, the apportionment to them might be valid; but the point, having regard to the terms of the settlement, did not arise. Thirdly, it was said that the Commissioners were not justified in exercising their discretion in apportioning the income according to capital rights. We have already expressed our opinion that the discretion left to them in this matter by the Act is wholly unfettered; and accordingly, in our view, this point also fails.

The three appeals will be dismissed, with the usual result as to costs.

**Mr. King.**—Would your Lordships give to Roomwood Investments, Ltd. and the Marquess of Titchfield leave to appeal if they are so advised? It is rather a large figure in the case of the Marquess of Titchfield, £46,000.

**Lord Greene, M.R.**—Mr. Hills, it is an important matter to the taxpayer, and a substantial sum is involved.

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**Mr. Hills.**—My Lords, my clients are in your Lordships' hands in this matter.

**Lord Greene, M.R.**—Yes, Mr. King, you may take your leave. That is in the Roomwood Investments case and Lord Titchfield's case?

**Mr. King.**—Yes, they go together.

**Mr. Stein.**—My Lords, I am also instructed to ask for leave to appeal in the Penang and General Investment Trust, Ltd. case.

**Lord Greene, M.R.**—Mr. Hills, I think the same observations apply?

**Mr. Hills.**—Yes, the same observations apply.

**Lord Greene, M.R.**—Very well, you may have leave.

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*Penang and General Investment Trust, Ltd. and Ramsden v. Commissioners of Inland Revenue*

An appeal having been entered against the decision in the Court of Appeal, this case came before the House of Lords (Viscount Simon, L.C., and Lords Atkin, Thankerton, Macmillan and Romer) on 15th, 16th, 18th, 19th, 22nd and 23rd March, 1943, when judgment was reserved. On 19th April, 1943, judgment was given unanimously in favour of the Crown, with costs, confirming the decision of the Court below.

Mr. J. Millard Tucker, K.C., and Mr. L. J. Stein appeared as Counsel for the Penang and General Investment Trust, Ltd. and Sir John F. Ramsden, and the Solicitor-General (Sir David Maxwell Fyfe, K.C.), Mr. J. H. Stamp and Mr. Reginald P. Hills for the Crown.

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JUDGMENT

**Viscount Simon, L.C.**—My Lords, this is an appeal from a decision of the Court of Appeal, (Lord Greene, M.R., Clauson and du Parcq, L.J.J.) affirming a judgment in favour of the Crown pronounced by Macnaghten, J., upon a Case stated by the Commissioners for the Special Purposes of the Income Tax Acts, who had upheld a direction given and apportionment made in respect of the income of the Appellant Company for the year 1937–38 under Section 21 of the Finance Act, 1922. This Section, as its opening words declare, was passed "with a view to preventing the avoidance of the payment "of super-tax" (now Sur-tax) "through the withholding from distribution "of income of a company which would otherwise be distributed".

The Special Commissioners followed up the direction (dated 28th August, 1939) and the apportionment (dated 19th December, 1939) by an assessment upon the second Appellant of £81,867 as "settlor" (see Sections 38 (2) and (3) and 41 (4) (a) (ii) of the Finance Act, 1938), but it is unnecessary to trace out the application of these complicated Sections since it is admitted (see paragraph 12 of the Case Stated) that this assessment is correctly made if the direction and apportionment are upheld.

The Appellant Company is a company to which Section 21 applies, and is moreover an "investment company" as defined by Section 20 (1) of the Finance Act, 1936. It was incorporated on 10th June, 1937, and its nominal and issued capital amounted to £856 11s. 0d. divided as follows: 749 "A" ordinary shares of £1 each; 100 "B" ordinary shares of £1 each, and 151 "C" voting shares of 1s. each. The "A" shares and "C" shares are not entitled to any dividend; the "C" shares are entitled to repayment of capital in a winding up; the "B" shares are entitled to receive the

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whole of the dividends declared by the Company and to a repayment of capital, and the "A" shares to the balance of surplus assets, in a winding up. Both the "A" shares and the "B" shares are registered in the names of trustees holding them under discretionary trusts established by settlements made by the second Appellant, Sir John Ramsden.

The Company's structure is unusual, and when it is added that in its first year of life this Company, with its modest capital of £856 odd, made a profit (mainly from shares it had acquired in Penang Rubber Estates Co., Ltd.) of £81,974, that is, at the rate of 9,500 per cent. on its capital, it may be safely inferred that the whole arrangement was entered into in the hope of escaping Sur-tax thereby.

This, however, is not the point. The Appellants are entitled to succeed, whatever the purpose of these arrangements may be, unless the provisions of the relevant statutes authorise the direction and the apportionment which have led to the assessment.

The main contention of the Appellants is a contention of law arising on the construction of Section 21. As Sur-tax applies to the income of an individual (Section 38(1) of the Finance Act, 1927) and is charged in respect of a "total income from all sources" of that individual when this exceeds the exempted minimum, it is clear that the tax cannot apply to a trustee in respect of income coming to him on trust and received by him for the benefit of another. Such income, for purposes of Sur-tax, is part of the total income of the beneficiary. The Appellants argue that, inasmuch as the only shares in the Company that can receive any dividend are the "B" shares, and the "B" shares are all registered in the names of trustees, it is impossible for this Company to distribute to its members any part of its income "in such manner as to render the amount distributed liable to be included in the statements to be made by the members of the company of their total income for the purposes of super-tax". The argument then is that, since *lex non cogit ad impossibilia*, it cannot be within the powers of the Special Commissioners (or at any rate cannot be a proper exercise of their powers) under Section 21 to give a direction on the view that a reasonable part of the Company's income has not been distributed "in such manner", when the Company is not in a position to make any such distribution at all.

The argument, in my opinion, breaks down *in limine*. The phrase in the Section refers to a mode of distributing the Company's income, and not to the result of the distribution on shareholders of a particular class.

In the case of *Commissioners of Inland Revenue v. Blott*, [1921] 2 A.C. 171; 8 T.C. 101, this House decided that a company with undistributed profits could, by suitably devised arrangements, distribute bonus shares "in such manner" that the distribution was a distribution of capital and not of income. *Commissioners of Inland Revenue v. Burrell*, 9 T.C. 27, was a further illustration of the same principle. Yet another decision which illustrated how a company's profits could be distributed in a manner which did not expose the recipient to Super-tax is *Commissioners of Inland Revenue v. Sansom*, [1921] 2 K.B. 492; 8 T.C. 20. It is not without significance that these cases arose shortly before the Finance Act, 1922, was passed. Again, if a company with undistributed profits goes into liquidation, its assets are distributed to the contributories "in such manner" that they are capital in their hands. It is the contrast between a manner

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of distribution which gives the opportunity for the law providing for Sur-tax to be applied, and a manner of distribution which cannot result in attracting Sur-tax, which is the distinction at which Section 21 is aimed. The authority of the Special Commissioners to make a direction under Section 21 in cases where it appears to them that the company has not made a reasonable distribution, is not in the least affected by the fact that the recipients are trustees. The Appellants' first point, therefore, fails.

The next point to be considered is whether an apportionment under Section 21 can be rightly made (as was the case here) to trustees on the share register. The argument urged against this seems to assume that the assessments to Sur-tax must be made on the same persons as are named in the apportionment. But is this so? The Section says that the direction is made "for purposes of assessment", and that upon apportionment among the members Sur-tax "shall be assessed and charged . . . in respect of the sum "so apportioned", but it does not say that the individual named in the apportionment is necessarily the individual to be assessed. If a part of the income is apportioned to a shareholder who is a trustee holding the share in trust for a beneficiary, it would be the beneficiary who would be assessed. A statement of income from all sources must include amounts received from a trustee. Moreover, by Sub-section (7) of Section 21 the expression "member" is to include any person having a share or interest in the capital or profits or income of the company. I incline to think that, inasmuch as the apportionment is "among the members", it would be legitimate for the Special Commissioners to apportion a proper fraction to the beneficiary in the first instance, if they already knew that the shareholder on the register was a bare trustee. Information as to this could be obtained under Paragraph 11 of the First Schedule. But whether the Special Commissioners have the information, and act upon it, in the first instance, or not, it seems to me clear that an original apportionment to a trustee may properly be followed up by an assessment on the beneficiary.

I should be prepared to reach the conclusion that an apportionment can be made to shareholders who are trustees by interpreting the words of Section 21 as they stand. This view, moreover, is certainly the view taken by the Legislature when enacting paragraph (ii) of Section 41 (4) (a) of the Finance Act, 1938, which defines "income arising under a settlement"; for that paragraph, when referring to apportionment under Section 21 of the Act of 1922, contemplates an apportionment of income "to the trustees of or "a beneficiary under the settlement". The Appellants, quoting *Ormond Investment Co., Ltd. v. Betts*, [1928] A.C. 143; 13 T.C. 400, are driven to contend that this is an erroneous assumption made by the Legislature as to the previous state of the law—a contention particularly difficult to sustain in a Finance Act which is to be read with previous Finance Acts as a single code; but, for the reasons above given, the assumption is correct.

This is really the end of the case, for it was admitted on behalf of the present Appellants before Macnaghten, J., that the Appellant Company did not distribute within the year of assessment a reasonable part of its income. The penal provisions of Section 21 of the Act of 1922 originally applied only if it appeared to the Special Commissioners that there had not been a distribution of a reasonable part of the company's income "within a reasonable time after the end of any year", etc.; but by Section 14 (2) (a) of the Finance Act, 1937, the Special Commissioners are empowered, if they think fit, to give a direction in the case of an investment company (which the Appellant Company is) where the company has not "within any year of

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"assessment" distributed "a reasonable part of its actual income from all sources for that year". This admission having been made, it was not open to the Appellants to argue that there was no sufficient evidence to support this conclusion; indeed, the Case Stated raises no such contention.

On the whole matter I am of opinion that the appeal fails, and I move that it be dismissed with costs.

My Lords, my noble and learned friend **Lord Atkin** authorises me to say that he agrees with this opinion.

**Lord Thankerton.**—My Lords, I agree with the noble and learned Lord on the Woolsack. In view of the admissions in this case, it is only necessary to deal with the two main arguments of the Appellants, which respectively challenged the validity of the direction and the validity of the apportionment under Section 21 (1) of the Finance Act, 1922, as subsequently amended, it being admitted that the Appellant Company is one to which the Section applies.

The conditions precedent to the issue of a direction are that it should appear to the Commissioners that the company has not, within the period prescribed, "distributed to its members in such manner as to render the amount distributed liable to be included in the statements to be made by the members of the company of their total income for the purposes of super-tax, a reasonable part of its actual income from all sources" for the prescribed period. The Appellants maintain that, as the only registered shareholders to whom a distribution of income by way of dividend could have been made were the trustees of the "B" settlement, who were not liable to Sur-tax there could be no distribution in the manner predicated by the Section; that especially in a penal provision such as this Section, the maxim *lex non cogit ad impossibilia* applies, and, accordingly, the condition precedent to the issue of a direction cannot arise, and the direction in this case was unwarranted by the terms of the Section. The argument of the Appellants was that where all the registered shareholders of a company, to whom a distribution of its net income could be made, were trustees with only a fiduciary interest in their holding, the Section could not apply, but the Appellants conceded that their contention would be defeated if only one of such shareholders had the beneficial interest in his holding. This concession, in my opinion, does not help them at all.

I am unable to accept the Appellants' construction. In my opinion, the words above quoted refer to the quality of the distribution predicated. It appears to me to be clear that this part of Sub-section (1) had within its purview the failure of a company to distribute a reasonable part of its income as income, which, in an appropriate case, would render it returnable as part of the recipient's total income for purposes of Sur-tax. My construction of the words quoted may easily be expressed by the substitution of "would" for "to" and the insertion of the words "if any" after "statements", as follows:—"distributed to its members in such manner as *would* render the amount distributed liable to be included in the statements, *if any*, to be made by the members of the company of their total income for the purposes of super-tax". Accordingly, the Appellants' ground of challenge of the direction fails, and, in that view, the Appellants did not dispute the finding that the Company had failed to distribute a reasonable amount of its actual income within the prescribed period.

**(Lord Thankerton.)**

The Appellants' challenge of the validity of the apportionment was based on the view that the apportionment, according to the terms of Sub-section (1) of Section 21, as amended, could only be made on members of the Company, on whom Sur-tax could be assessed and charged, that is, on members who had a beneficial interest, and that the apportionment in the present case, which was made on trustees only, was invalid. I am of opinion that the Appellants' construction is too narrow, and that this is sufficiently demonstrated by Paragraphs 8 and 11 of the First Schedule to the Act of 1922, which contemplate the ascertainment of the beneficial owner after the apportionment has been made. This does not necessarily exclude the ascertainment of the beneficial owner prior to making the apportionment. I am therefore of opinion that the apportionment on the trustees was valid, and, in that view, the Appellant has conceded, as stated in paragraph 12 of the Case, that the assessment is correct. This concession relieves me from considering, in the present case, whether, in view of the terms of Sub-section (2) of Section 21, there should be an apportionment, whether original or amended, on the member sought to be assessed and charged, and I express no opinion on that point.

Accordingly, I agree in the motion proposed by my noble and learned friend.

**Lord Macmillan.**—My Lords, the Special Commissioners of Income Tax, professing to exercise the powers conferred on them by Section 21 of the Finance Act, 1922, and Section 14(2) and (3) of the Finance Act, 1937, directed that for the purpose of the assessment of Sur-tax the actual income of the Appellant Company for the year of assessment ending on 5th April, 1938, should be deemed to be the income of its members and, further, made an apportionment of the actual income of the Appellant Company among the members, whereby a sum of £81,867 was apportioned to the trustees of a settlement made by the Appellant, Sir John Ramsden, consequent upon which an additional assessment to Sur-tax in that sum was made upon him as the settlor. The Appellants challenge the validity both of the direction and of the apportionment.

The point arises in this way. Under the constitution of the Appellant Company its nominal and issued capital is divided into "A" ordinary shares which are not entitled to dividends, "B" ordinary shares which are entitled to the whole of any dividends declared by the Company, and "C" voting shares which are not entitled to dividends. All the "B" ordinary shares originally belonged to Sir John Ramsden but were transferred by him to trustees under a deed of settlement dated 24th June, 1937, which was varied by two subsequent deeds in 1937 and 1938. These trustees thus become the only parties entitled to receive dividends out of the Company's profits. In the course of the year of assessment the Company declared and paid to the trustees interim dividends amounting to £2,000 gross on the "B" shares. The Special Commissioners were of opinion that this was not a reasonable part of the Company's income for the year, which amounted to £81,974 2s. 1d., and made the direction, the validity of which is now contested.

It was admitted that the Company was an investment company within the statutory meaning and that the relevant legislation applied to it. I shall throughout refer to Sur-tax without discriminating it from the Super-tax which it superseded.



**(Lord Macmillan.)**

In order that the Special Commissioners may give a direction under Section 21 (1) of the Finance Act, 1922, as amended by Section 14 (2) of the Finance Act, 1937, in the case of a company such as the Appellant Company, it must appear to them that the company has not within the year of assessment "distributed to its members in such manner as to render the amount distributed liable to be included in the statements to be made by the members of the company of their total income for the purposes of super-tax, a reasonable part of its actual income from all sources" for the year of assessment. Under the constitution of the Company the only distribution of any part of its actual income which it could competently make was to the holders of the "B" shares, and the holders of these shares, being trustees, were under no obligation to make a statement of total income for the purposes of Sur-tax. Consequently, it was argued, the Appellant Company could not make any distribution of its income, reasonable or unreasonable, in such manner as to render the amount distributed liable to be included in statements to be made by the members of the Company of their total income for the purposes of Sur-tax. The only parties to whom the Company could make any distribution were trustees who were under no liability to make a return of total income for Sur-tax purposes. If the Company could not distribute any of its income in such a manner as to have the result indicated, it could not appear to the Special Commissioners that it had not distributed a reasonable part of its income in that manner.

This argument, in my opinion, is based on a misreading of the language of Section 21 of the Act of 1922. The Section may not be happily expressed but its meaning is plain enough, once its origin and purpose are understood. The circumstance that the income of a company is not in general liable to Sur-tax in its hands but becomes liable to Sur-tax only in the hands of its members after distribution among them, so far as the total income of the recipient members renders them liable to Sur-tax, naturally suggested a means of evading liability to Sur-tax. If a company refrained from distributing its income among its shareholders or distributed only a small part of its income, then its income altogether or *pro tanto* escaped Sur-tax. But if no distribution or only an inadequate distribution of income were made the shareholders got no benefit or only an inadequate benefit. So resort was had to means of distributing the profits of a company in such a way that they should reach the shareholders otherwise than as income liable to Sur-tax. There were various ways of achieving this result. Thus, the company might convert its undivided profits into paid up capital and then make a bonus allotment of the new shares among its shareholders. The distribution of these shares did not constitute a distribution of income and the recipients were under no obligation to include the value of the shares in their return of total income for Sur-tax purposes (*Commissioners of Inland Revenue v. Blott*, [1921] 2 A.C. 171; 8 T.C. 101). The same result could be attained by the issue of debentures or debenture stock. It was thus possible by resort to such expedients to effect a distribution of a company's profits among its members "in such manner as" *not* "to render the amount distributed liable to be included in the statements to be made by the members of the company of their total income for the purposes of" Sur-tax. The Section is designed to meet the cases where a company refrains from distributing any or a reasonable part of its income or, by utilising one of the expedients indicated, distributes its income in such a manner that the recipients are under no obligation to include what they receive in any return of total income which they are bound to make. In such cases the Special Commissioners are

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empowered to make a notional distribution of the company's income, disregarding what the company has actually done.

The condition precedent of the operation of the Section is not that the company should have failed to make such a distribution of its income that all, or at least some of, the recipients should be liable to return what they receive in statements of total income for Sur-tax. The condition is that the company should have failed to make a distribution of its income in such a form as to oblige the recipients to include what they receive in any statement of total income which they may be liable to make for Sur-tax purposes. If it makes a reasonable distribution in this form it is immaterial that some or all of the recipients happen not to be liable to make a return of total income for Sur-tax purposes. It is the character of the distribution, not its ultimate tax effect, that is referred to in the Section.

Applying this reading of the Section to the present case, I see no obstacle to the issuing of a direction by the Special Commissioners in the fact that the only members of the Company to which the Company could make a distribution of its income happened to be trustees who were under no obligation to make a return of total income for Sur-tax purposes.

If then it was competent for the Special Commissioners in the present instance to issue a direction under the Section, the next question is whether they made a valid apportionment of the Company's income. The apportionment is to be "among the members" of the company. But it may be a very different apportionment from that which the company itself could have made. The Section contains a Sub-section (7) enacting that "the expression 'member' shall include any person having a share or interest in the 'capital or profits or income of a company'". A company can distribute its profits only among its registered shareholders, but the Special Commissioners in their apportionment are not so restricted. Further, under Section 14(3) of the Finance Act, 1937, the Special Commissioners in making their apportionment "may, if it seems proper to them so" to do, attribute to each member an interest corresponding to his interest "in the assets of the company available for distribution among the members 'in the event of a winding up.'" The apportionment may be among the members or to each class of shares (1922 Act, First Schedule, Paragraph 10). Power is conferred on the Special Commissioners to require information as to the beneficial ownership of any shares (*ibid.*, Paragraph 11).

What the Special Commissioners did in the present case was to apportion the actual income of the Company to the shareholders on the register in accordance with their interests in the assets of the Company on a winding up. Under the constitution of the Company the holders of the "B" ordinary shares and of the "C" voting shares were entitled on a winding up to receive payment only of the amount paid up on their shares, namely, £100 and £7 11s. 0d. All the rest of the surplus assets belonged to the holders of the "A" ordinary shares. These "A" shares, like the "B" shares, were also the subject of a deed of settlement by the Appellant, Sir John Ramsden, which was dated 24th June, 1937, and was varied by a subsequent deed of 7th December, 1937. The result of the Special Commissioners' appropriation of the actual income of £81,974 2s. 1d. was, accordingly, to attribute £100 to the trustees who were the holders of all the "B" shares; £7 11s. 0d. to the ten individual holders of the "C" shares, and the balance of £81,866 11s. 1d. to the trustees who were the holders of all the "A" shares. If the trustees of the "A" shares had been bare trustees for the distribution of the trust

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income among the beneficiaries, the Special Commissioners, availing themselves of the expanded definition of "member", might no doubt have made an apportionment among the beneficiaries instead of to the trustees, but the provisions of the trust deed, which it is not necessary to particularize, precluded this. It was not a bare trust.

The apportionment to the trustees of the "A" shares was challenged on the ground that as trustees they had no beneficial interest in the shares and were under no obligation to make a return of total income for Sur-tax purposes. In my opinion, the Special Commissioners, in virtue of their powers as above set out and construed, were entitled to apportion the sum of £81,866 11s. 1d. to the trustees of the "A" shares, who were the registered holders of these shares (though of course not *qua* trustees), and members of the Company. It was immaterial that they were under no liability to make a return of the total trust income for Sur-tax purposes.

It is to be noted that Section 41 (4) (a) (ii) in Part IV of the Finance Act, 1938, which by Section 55 of that Act is to be construed as one with the Income Tax Acts, makes express reference to the case of an apportionment under Section 21 of the 1922 Act to trustees under a settlement.

It is, of course, true that the trustees of the "A" shares were not liable to pay Sur-tax on this income notionally attributed to them. But the resources of the law were not exhausted. The Special Commissioners next invoked Sections 38 (2) and (3) and 41 (4) (a) (ii) of the Finance Act, 1938, and treated the income of the trustees as the income of the settlor, namely, the Appellant, Sir John Ramsden, on whom, accordingly, an additional assessment to Sur-tax in the sum of £81,867 was made. It is unnecessary to discuss the justification of this last step for it was admitted, as appears from the Stated Case, that if the direction and the apportionment were in order, as I hold them to have been, then the personal assessment on the Appellant, Sir John Ramsden, was correct.

There are two matters I should mention in conclusion. It appears that the Company after the conclusion of the year of assessment ending on 5th April, 1938, in point of fact paid a final dividend of £60,500 net to the holders of the "B" shares. The Appellants in their printed Case to this House maintained that, in the circumstances, the Company had made a reasonable distribution of its income in the year of assessment and that the Special Commissioners were consequently not justified in issuing their direction. The Appellants, however, admitted that in the Courts below they had accepted the position that the Company had not distributed a reasonable part of its income in the year of assessment. This point was accordingly not open to the Appellants in this House, and your Lordships decided to express no opinion upon it. The other point is that, as a result of the apportionment, the £2,000 distributed by way of interim dividends to the "B" shareholders would appear to be brought twice into assessment. The matter was left somewhat obscure but an assurance was given by the Solicitor-General that the proper steps would be taken to prevent any double taxation.

The appeal should, in my opinion, be dismissed.

**Lord Romer** (read by Lord Thankerton).—My Lords, your Lordships are in possession of the material facts in this case and I need not repeat them. Whether upon those facts there was evidence upon which the Special Commissioners could properly find that the Company had not within the year of assessment ending on 5th April, 1938, distributed to its members a reasonable part of its income for that year, is a question that your Lordships cannot be

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called upon to decide in this appeal. In the Case submitted for the opinion of the Court the several contentions of the Appellants are quite clearly stated and they do not include a contention that there was no such evidence. Nor was any such contention advanced by the Appellants either before Macnaghten, J., or before the Court of Appeal. It is too late for them to advance it now. Nor are your Lordships asked to decide the question whether—upon the assumption that the direction and apportionment given and made by the Special Commissioners under the provisions of Sub-sections (2) and (3) respectively of Section 14 of the Finance Act, 1937, can be justified—the assessment of £81,867 upon Sir John Ramsden was properly made. It has been admitted by Sir John that upon such assumption the assessment upon him cannot be successfully attacked. In these circumstances I refrain from expressing any opinion upon either of the two questions to which I have referred, and will turn at once to a consideration of the two other questions, which are the only ones that have to be decided upon this appeal. The first of them is this. Can a direction be given under Section 21 (1) of the Finance Act, 1922, or Section 14 (2) of the Finance Act, 1937, where all or some of the shares in the company concerned are held by trustees? The second of the questions is whether the apportionment made in the present case under Sub-section (3) of the last-mentioned Section was a proper exercise by the Special Commissioners of the discretion that the Sub-section gives them.

The Appellants contend that a negative answer should be given to both of these questions. As to the first of them, their contention is as follows. Both Sub-section (1) of Section 21 of the Finance Act, 1922, and Sub-section (2) of Section 14 of the Act of 1937 presuppose that the shares of any company to which they are to be applied are so held that one at least of its members is liable to include his proportion of any income of the company distributed to its members in a statement to be made by him of his total income for the purposes of Sur-tax. If, therefore, there be no such member, as will be the case if all the members are trustees, no direction, it is said, can be given under either Sub-section. As to this I would observe in the first place that to be logical the Appellants should contend that no company can be the subject of a direction under either Sub-section unless every one of its members is liable to include any income of the company distributed to him in a statement of his income for the purposes of Sur-tax. For the words of each Sub-section are "as to render the amount distributed liable to be included in the statements to be made by the members", and this means the whole amount distributed. But I am satisfied that the Sub-sections apply to a company even though there is no single member who can be called upon to include any income of the company distributed to him in a statement of his income for the purposes of Sur-tax. The Sub-sections, I think, contemplate two possibilities and two only. The first is that the company may have altogether failed to distribute a reasonable part of its income. In that case the company will necessarily have failed to distribute the income in the particular manner referred to in the Sub-sections because it will have failed to distribute it in any manner at all. The words "in such manner" can have no reference to such a case. The other possibility is that the company has in fact distributed a reasonable part of its income among its members but has not distributed it as income. The company, for instance may have capitalised it and distributed it as capital. In such a case the amount distributed would not be liable to be included in the statements made by the members for the purposes of Sur-tax, whether they were trustees or not.

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It would not have been distributed in the manner mentioned in the Sub-sections and consequently a direction could be given by the Special Commissioners. There is, of course, yet another possibility. The company may have distributed a reasonable part of its income as income, but, owing to one or more of its members being trustees, the whole amount distributed will not have been liable to be included in Sur-tax statements. If a direction could be given in such a case and an apportionment then be made under Section 14 (3) of the Act of 1937 in accordance with the interests of the members in the assets of the company available for distribution in a winding up, quite fantastic results might ensue. But in truth this third possibility is in no way covered by the words of the Sub-sections. In cases where there has been a distribution of a reasonable part of the income of a company the Sub-sections are, in my opinion, upon their true construction concerned only with the nature of what has been distributed, and not with the nature of the persons among whom the distribution has been made. If what has been distributed be a reasonable part of the company's income but be of such a nature that it would not be liable to be included in the Sur-tax statements of any recipients, the whole income of the company can be made the subject of a direction. If, however, income has been distributed as income, no direction can be given merely because all or some of the members are trustees. It is true that in such case the whole amount distributed will not be liable to be included in Sur-tax statements of the members. But this will not be because of the manner of its distribution but because of the nature of the persons amongst whom it has been distributed, and that is a matter with which the Sub-sections are in no way concerned.

In the present case, for the reasons already mentioned, it must be taken that in the year ending on 5th April, 1938, the Appellant Company did not distribute a reasonable part of its income for that year. It follows that the Special Commissioners were entitled to give a direction under Section 14 (2) of the Finance Act, 1937, in spite of the fact that the holders of all the "A" and "B" shares were trustees.

The only other question to be decided is whether, having given such a direction, the Special Commissioners properly exercised their discretion in making the consequent apportionment among the members under Section 14 (3) of the Act of 1937, instead of in accordance with the members' interests in the Company's income. As to this I have little to say. Had the apportionment been made in the latter way the whole income of the Company for the year in question would have been allotted to the trustees of the "B" shares. Whether in that case any income so allotted could have been treated for the purposes of Sur-tax as the income of the Appellant is a question that has not been discussed before your Lordships. If it could not, the Appellant has, of course, been seriously prejudiced by the way in which the Commissioners have exercised their discretion. If on the other hand it could be so treated, the Appellant has been prejudiced by reason of the fact that an apportionment to the trustees of the "B" shares would have been subjected to a deduction of the £2,000 gross paid to them as dividends in the year in question. This deduction would have been made under the words introduced at the end of Section 21 (1) of the Act of 1922 by Section 31 (2) of the Finance Act, 1927. He has been further prejudiced in that he will not be able to get recoupment of the Sur-tax that may be paid by him on the £81,867 as he would have done under Part I of the Third Schedule to the Finance Act, 1938, had the apportionment of the whole income of the Company been made to the trustees of the "B" shares. For no income can

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arise at present under the settlement of the "A" shares to the trustees or any other person. But I am not prepared to deduce from these circumstances that the Commissioners have not properly exercised their discretion. It is reasonably plain from the history of this case that Sir John Ramsden is one of those persons who rightly or wrongly exercise much ingenuity in discovering gaps in the nets spread by the Legislature from time to time for the purpose of collecting Sur-tax for the national revenue, and in so arranging their affairs as to escape through one or more of such gaps. If Sir John sees no impropriety in exercising for this purpose the powers of managing his affairs that are allowed to him by the laws of the country, it does not lie in his mouth to accuse the Special Commissioners of impropriety if they choose to exercise the powers given to them by these same laws in such a way as to defeat Sir John's object, and procure for the national revenue as large an amount from Sur-tax as is possible in the circumstances.

My Lords, for these reasons I would dismiss this appeal.

*Questions put:*

That the Order appealed from be reversed.

*The Not Contents have it.*

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

*The Contents have it.*

[Solicitors:—Capel Cure, Glynn Barton & Co., for the Penang and General Investment Trust, Ltd. and Sir John F. Ramsden; Baileys, Shaw & Gillett, for Roomwood Investments, Ltd. and the Marquess of Titchfield; Solicitor of Inland Revenue.]

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