VOL. XXV—PART VII

No. 1258—HIGH COURT OF JUSTICE (KING'S BENCH DIVISION)—29TH SEPTEMBER, 1941

COURT OF APPEAL—21ST, 22ND AND 23RD APRIL AND 5TH MAY, 1942

HOUSE OF LORDS—25TH, 26TH, 29TH AND 30TH MARCH AND 9TH JUNE, 1943

(1) A. G. CHAMBERLAIN *v.* COMMISSIONERS OF INLAND REVENUE [1]
(2) W. E. CHAMBERLAIN *v.* COMMISSIONERS OF INLAND REVENUE [1]

Sur-tax—Settlement—Transfer of assets to company controlled by settlor—Creation of trusts for children and acquisition by trustees of shares of company—Whether an arrangement constituting a settlement—" Power. . . to revoke " or otherwise determine the settlement or any provision thereof "—" The " property comprised in the settlement "—Finance Act, 1938 (1 & 2 *Geo.* VI, *c.* 46), *Sections* 38 *and* 41.

(1) *In December,* 1935, *the Appellant in the first case formed an unlimited investment company, with capital divided into preference and ordinary shares, to which he transferred certain assets, the consideration being,* inter alia, *the issue to himself of preference shares in the company. His preference shareholding gave him voting control of the company and he possessed wide powers as governing director. In March,* 1936, *under a deed of settlement, the Appellant paid to trustees a sum of money to be held by them on trusts for his wife and four infant children, the sum in question being invested with his consent in the purchase of ordinary shares of the company; it was not disputed that in view of its terms this settlement was caught by Section* 38 (2) *of the Finance Act,* 1938, *so that any income arising thereunder fell to be treated as the income of the Appellant. On 3rd December,* 1936, *the capital structure of the company was altered by dividing the ordinary shares into five classes distinguished as " A ", " B ", " C ", " D " and " E ". The block of ordinary shares held by the trustees of the settlement of March,* 1936, *were designated " A " ordinary shares. On 7th December,* 1936, *under four deeds of settlement in identical terms, the Appellant paid to the trustees thereof four equal sums of money to be invested as he should direct and to be held on irrevocable trusts for each of his four infant children. The four sums in question were invested by the trustees, respectively, in the purchase of " B ", " C ", " D " and " E " ordinary shares of the company. The ordinary shares carried rights only to such dividends as the company should declare in general meeting, and in the year* 1937–38 *the company paid dividends on the preference shares and on the " B ", " C ", " D " and " E " classes of ordinary shares which were the classes of shares held by the trustees of the respective December settlements.*

An additional assessment to Sur-tax for the year 1937–38 *was made upon the Appellant in a sum representing the difference between the company's income for that year and the amount distributed to him in dividends on his preference shares. On appeal, the Special Commissioners decided that the formation and the structure of the company with the settlements and agreement for sale constituted an arrangement and a settlement within Section* 41 (4) (*b*),

[1] Reported (H.L.) 59 T.L.R. 343.

Finance Act, 1938, *and that the income of the company was rightly treated as the Appellant's income by virtue of Section* 38 (2).

(2) *The facts in the second case and the decision of the Special Commissioners were similar to those in the first case.*

Held, *that in each case the sums settled under the deeds of March and December,* 1936, *were the funds provided for the purpose of the settlements; that the company, though controlled by the Appellant, did not hold its assets as part of the provisions settled on the children, and that the whole assets of the company did not constitute " the property comprised in the settlement " within the meaning of Section* 38 (2), *Finance Act,* 1938.

CASES

(1) *A. G. Chamberlain* 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 19th November, 1940, Mr. Augustus George Chamberlain (hereinafter called " the Appellant ") appealed against an additional assessment to Sur-tax in the sum of £11,898 for the year ending 5th April, 1938.

2. On 20th December, 1935, the Appellant caused Staffa Investment Trust (hereinafter called " Staffa "), an unlimited company having a share capital, to be incorporated under the Companies Act, 1929.

The initial capital of Staffa was £100,000 divided into 50,000 preference shares of 10*s.* each and 7,500 ordinary shares of £10 each. On a poll every member has one vote for every share held by him. A copy of the memorandum and articles of association of Staffa is attached hereto, marked " A ", and forms part of this Case(1).

3. By an agreement dated 23rd December, 1935 (a copy of which is attached hereto, marked " B ", and forms part of this Case(1), the Appellant sold to Staffa for £100,000, 470 shares of £1 each in Commercial Structures, Ltd., a company carrying on a successful building business.

The payment of the purchase price, namely, £100,000, was satisfied as follows:—

As to £17,500 thereof—Staffa issued to the Appellant 35,000 preference shares of Staffa.

As to £82,500—this sum was left by the Appellant on loan to Staffa free of interest.

4. By a deed of settlement dated 10th March, 1936, between the Appellant (as settlor) of the one part, and the Appellant, Mr. W. E. Chamberlain and Mr. R. C. Bartlett (as trustees) of the other part, the Appellant paid to the trustees £3,500 to be held by them on the trusts set out in the said deed of settlement in favour of his wife and four infant children. A copy of the said settlement of 10th March, 1936, is attached hereto, marked " C ", and forms part of this Case(1).

The said sum of £3,500 was invested by the trustees in the purchase of 350 £10 ordinary shares of Staffa.

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(1) Not included in the present print.

It is agreed that the terms of the said settlement of 10th March, 1936, are such that under Section 38 (2) of the Finance Act, 1938, any income arising under the said settlement from property comprised therein must be treated as the income of the Appellant.

5. When the provisions of Section 21 of the Finance Act, 1936, had been considered by the Appellant, an extraordinary general meeting of Staffa was held on 3rd December, 1936, at which a special resolution was passed altering the original article 3 of the articles of association, dealing with Staffa's capital, and substituting therefor the article which will be found inserted between pages 10 and 11 of exhibit " A "(1).

By the substituted article 3 the 7,500 ordinary shares of Staffa were divided into 350 " A " ordinary shares of £10 each (these being the 350 ordinary shares already held by the trustees of the settlement dated 10th March, 1936); 1,750 " B " ordinary shares of £10 each; 1,750 " C " ordinary shares of £10 each; 1,750 " D " ordinary shares of £10 each, and 1,900 " E " ordinary shares of £10 each. Voting rights were not altered. Each class of ordinary shares was entitled only to such dividend (if any) as the company should in general meeting determine.

6. By four deeds of settlement dated 7th December, 1936, the Appellant paid four sums of £100 each to the trustees thereof to be invested as the settlor should direct and to be held by them on trust for each of the Appellant's children, all of whom were then infants. The four settlements are in identical terms, and a copy of one of the said settlements is attached hereto, marked " D ", and forms part of this Case(1).

The said settlements are irrevocable; the income is to be accumulated until the children attain the age of 21, and thereafter there are protective trusts for the children for life.

The four sums of £100 paid to the trustees of the settlements of 7th December, 1936, were invested, respectively, by the trustees in the purchase of 10 " B ", " C ", " D " and " E " £10 ordinary shares of Staffa.

7. On 31st March, 1937, the trustees of each of the said four settlements of 7th December, 1936, received dividends from Staffa and, respectively, invested the proceeds in the purchase of 1,025 £10 ordinary " B ", " C ", " D " and " E " shares of Staffa.

8. The shareholding at 5th April, 1938, was, therefore, as follows:—

A. G. Chamberlain	35,002 preference
Trustees of settlement dated 10th March, 1936	350 " A " ordinary
Trustees of settlements dated 7th December, 1936	1,035 " B " ordinary
	1,035 " C " ordinary
	1,035 " D " ordinary
	1,035 " E " ordinary

The Appellant was in voting control of Staffa and possessed wide powers as governing director, which are set out in article 40 of Staffa's articles of association.

9. In the year ending 5th April, 1938, the trustees of each of the said four settlements of 7th December, 1936, received from Staffa, in respect of their 1,035 ordinary shares of Staffa, dividends amounting to £2,932 10*s.* 0*d.* (gross).

(1) Not included in the present print.

The payment of these four dividends absorbed £11,730 of the income of Staffa for the year ending 5th April, 1938. No dividends have ever been paid in respect of the shares held by the trustees of the settlement dated 10th March, 1936.

10. The actual income of Staffa for the year ending 5th April, 1938, was £12,773:—

£875 was paid by Staffa to the Appellant in dividends on his 35,000 5 per cent. preference shares of 10*s*. each.

£11,898 (i.e., the actual income of Staffa, £12,773, less £875, the preference dividend paid to the Appellant) has been treated as the income of the Appellant under the provisions of Section 38 (2), Finance Act, 1938, and the additional assessment under appeal has been made upon the Appellant in respect thereof.

This assessment was based upon the view that the said settlements of 10th March, 1936, and 7th December, 1936, together with the incorporation and structure of Staffa, constitute an arrangement amounting to a "settlement" within Section 41 (4) (*b*) of the Finance Act, 1938, and that the Appellant is the settlor.

11. A copy of the Appellant's loan account in the books of Staffa is attached hereto marked "E", and forms part of this Case(1).

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

(*a*) the facts above set out do not constitute an arrangement or settlement within Section 41 (4) (*b*), Finance Act, 1938;

(*b*) the said settlements of 7th December, 1936, were the only settlements which were material for the purpose of the appeal and were irrevocable settlements which were not within the provisions of Section 38, Finance Act, 1938;

(*c*) the assessment should be discharged.

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

(*a*) the formation of Staffa together with the said settlements of 10th March, 1936, and 7th December, 1936, constitute an arrangement and a settlement within Section 41 (4) (*b*), Finance Act, 1938;

(*b*) the income of Staffa was rightly treated as the income of the Appellant by virtue of Section 38 (2), Finance Act, 1938;

(*c*) the Appellant as settlor had an interest in the income arising under or property comprised in the settlement within Section 38 (3), Finance Act, 1938;

(*d*) alternatively, the income of Staffa was rightly treated as the income of the Appellant by virtue of Section 21, Finance Act, 1936;

(*e*) the assessment should be confirmed.

14. Having considered the evidence and arguments adduced before us, we held that:—

(*a*) the formation and structure of Staffa together with the said settlements of 10th March, 1936, and 7th December, 1936, and the sale agreement of 23rd December, 1935, constitute an arrangement and a settlement within Section 41 (4) (*b*), Finance Act, 1938;

(*b*) the income of Staffa was rightly treated as the income of the Appellant by virtue of Section 38 (2), Finance Act, 1938.

We therefore confirmed the assessment under appeal.

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(1) Not included in the present print.

15. 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,
G. R. HAMILTON, } Commissioners for the Special Purposes of the Income Tax Acts.

Turnstile House,
94/99 High Holborn,
London, W.C.1.
22nd April, 1941.

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(2) *W. E. Chamberlain* v. *Commissioners of Inland Revenue*

At the same meeting of the Special Commissioners, Mr. W. E. Chamberlain appealed against an additional assessment to Sur-tax made upon him for the year 1937–38 in the sum of £11,898. The facts of this case and the decision of the Special Commissioners were similar to those in the first case, and the Case was stated in similar terms, ***mutatis mutandis.***

The cases came before Lawrence, J., in the King's Bench Division on 29th September, 1941, when judgment was given in favour of the Crown in each case, with costs.

Mr. N. C. Armitage appeared as Counsel for the Appellants, and the Attorney-General (Sir Donald Somervell, K.C.), Mr. J. H. Stamp and Mr. Reginald P. Hills for the Crown.

JUDGMENT

Lawrence, J.—Following the judgment of the Court of Session in the case which has been cited to me, of *Commissioners of Inland Revenue* v. *Morton,* 24 T.C. 259, I dismiss these appeals with costs—because they both follow it, do not they?

Mr. Armitage.—Yes, my Lord.

Lawrence, J.—Very well.

Appeals having been entered against the decision in the King's Bench Division, the cases came before the Court of Appeal (Lord Greene, M.R., du Parcq, L.J., and Singleton, J.) on 21st, 22nd and 23rd April, 1942, when judgment was reserved. On 5th May, 1942, judgment was given unanimously in favour of the Crown in each case, with costs, confirming the decision of the Court below.

Mr. Cyril L. King, K.C., and Mr. N. C. Armitage appeared as Counsel for the Appellants, and the Attorney-General (Sir Donald Somervell, K.C.), Mr. J. H. Stamp and Mr. Reginald P. Hills for the Crown.

JUDGMENT

Lord Greene, M.R.—The judgment of the Court will be read by du Parcq, L.J.

du Parcq, L.J.—The same questions of law are involved in each of these two appeals, which it was agreed must succeed or fail together. For this reason the attention of the Court was directed to the facts of one only. The appeal of Mr. A. G. Chamberlain was selected for our consideration, and is alone dealt with specifically in this judgment.

(du Parcq, L.J.)

The facts are set out in the Stated Case, and need not be stated in detail. The Appellant had devised a method of providing for his children and, at the same time, retaining a large measure of control over the income of the settled funds. He achieved his object by executing carefully drawn deeds of settlement and by bringing into existence an unlimited company which is referred to in the Stated Case as " Staffa ". The assets of Staffa consisted of fully paid shares in a limited liability company in which the Appellant had a substantial interest. These shares were transferred to it by the Appellant under an agreement of sale dated 23rd December, 1935. The purchase price was partly paid by the issue of preference shares to the Appellant, and the greater part of the price was left by the Appellant on loan to Staffa free of interest. The Appellant had voting control of Staffa and was its governing director. The articles of association of Staffa, as they stood at the material time, contained some unusual provisions. The governing director had extraordinary powers, and by the exercise of his voting powers, the Appellant secured the insertion of provisions in the articles as to the redemption of certain classes of the ordinary shares, and as to the payment or withholding of dividend on ordinary shares, to which it will be necessary to refer later.

On 10th March, 1936, the Appellant executed a deed of settlement in favour of his wife and four infant children under which he paid £3,500 to trustees, who invested that sum in the purchase of 350 £10 ordinary shares in Staffa. On 7th December, 1936, he executed four deeds of settlement in favour of his four infant children, under each of which he paid £100 to trustees, and these sums of £100 were also invested in ordinary shares, of certain denominations, in Staffa.

The complexity of the plan adopted for benefiting the Appellant's family is, no doubt, in part due to the regard paid by its inventors to the provisions of the Finance Acts and the incidence of Income Tax. Indeed, the Special Commissioners have found that the amendment in the articles of association of Staffa whereby the ordinary shares were divided into five classes (" A ", " B ", " C ", " D " and " E ") and each class was only to be entitled to such dividend (if any) as the company should from time to time in general meeting determine, was made after consideration by the Appellant of Section 21 of the Finance Act, 1936. This change was made four days before the execution of the settlements of 7th December, 1936, the trustees whereof invested the trust funds in " B ", " C ", " D " and " E " shares, which alone of the ordinary shares had dividends allotted to them in the year ending 5th April, 1938.

The Special Commissioners held that the formation and structure of Staffa together with the settlements and the agreement of sale constituted an " arrangement " for the purposes of Part IV of the Finance Act, 1938, by reason of Section 41 (4) (*b*) of that Act. This is a definition clause by which the expression " settlement " is made to include " any arrangement ". The Commissioners further held that the income of Staffa was rightly treated as the income of the Appellant by virtue of Section 38 (2) of the same Act, which provides that: " If and so long as the terms of any settlement are " such that—(*a*) any person has or may have power, whether immediately " or in the future, and whether with or without the consent of any other " person, to revoke or otherwise determine the settlement or any provision " thereof; and (*b*) in the event of the exercise of the power, the settlor or the " wife or husband of the settlor will or may become beneficially entitled " to the whole or any part of the property then comprised in the settlement

(du Parcq, L.J.)

" or of the income arising from the whole or any part of the property so " comprised ", income arising under the settlement shall be treated as the income of the settlor.

Lawrence, J., upheld the decision of the Special Commissioners, giving no reason of his own, but merely stating that he would follow the decision of the Court of Session in *Commissioners of Inland Revenue* v. *Morton,* 1941 S.C. 467; 24 T.C. 259.

We have no doubt that the Special Commissioners were right in holding that the method adopted by the Appellant in this case was an " arrangement " within the Section. Where things have been done, either at one time or over a period of time, with the deliberate intention that, in conjunction, they shall produce a certain result, there is, in our opinion, an " arrange- " ment ". We should have thought this to be plain apart from authority; but the submission of the Appellant, that some limitation must be put in this context on the generally accepted meaning of the word " arrangement ", is inconsistent with the decision of this Court in *Commissioners of Inland Revenue* v. *Payne,* 23 T.C. 610, a case decided under Section 38 (1) of the Act. The Master of the Rolls, in whose judgment the other members of the Court concurred, there pointed out that the word " arrangement " was not a word of art, and that it was used, in this context, " in what may be des- " cribed as a business sense ". He said that " the whole of what was " done must be looked at ", and that the Appellant in the case then before the Court had " deliberately placed himself into a certain relationship to " the company " (that is, to a limited liability company to which he had covenanted to pay an annuity) " as part of one definite scheme, the " essential heads of which could have been put down in numbered paragraphs " on half a sheet of notepaper." The Appellant in that case had brought about the result he desired " by a combination of obtaining the control of " the company, entering into the covenant, and then dealing with the " company in such a way as to achieve his object "; and the Master of the Rolls said that if a deliberate scheme, perfectly clear cut, of that description was not an " arrangement " within the meaning of the definition clause, he had difficulty in seeing what useful purpose was achieved by the Legislature in putting that word into the definition at all(1).

In the present case the scheme invented by the Appellant, or those who advised him, was more complex than the comparatively simple plan devised by Mr. Payne, but the words of the Master of the Rolls are no less applicable to it. It is convenient to add at this point that the decision in *Payne's* case would be sufficient, in our opinion, to dispose of an argument adduced on the present Appellant's behalf to the effect that, inasmuch as the Legislature has dealt separately with operations effected through bodies corporate, any transaction in which a company is involved must be regarded as unaffected by Section 38 of the Finance Act, 1938, and looked at solely in the light of the legislation which referred specifically to such bodies. Even apart from authority, however, there can be no ground for such a contention in principle or in logic. It is well-known that the same transaction is frequently found to fall within several distinct statutory provisions. It would be absurd, therefore, to refuse to apply to a transaction words which on the face of them are plainly applicable to it, on the ground that such a transaction either is, or might have been expected to be, dealt with in some other Chapter or Section of the Statutes.

(1) 23 T.C., at p. 626.

(du Parcq, L.J.)

The next questions for consideration in the present appeal are whether any person had or might have power to revoke or otherwise determine the " settlement " or any provision thereof, and if any person had such power, whether, in the event of its exercise the consequences mentioned in Section 38 (2) (*b*) would or might ensue. In this Court, the Attorney-General relied on a contention which may be summarised as follows.

The shares held by the trustees of the settlements of December, 1936, were " B ", " C ", " D " and " E " ordinary shares. By reason of an amendment in article 17 of the articles of association of Staffa made on 30th March, 1938, these shares could be redeemed on payment of a sum equal to the capital paid or credited as paid on the shares, together with the apportioned amount of any dividend which would be payable but for such redemption. There need be no apportioned dividend payable, because under article 3, as it stood at the material time, each class of ordinary shares was to be entitled only to such dividend as the company should from time to time in general meeting determine. Further, these shares could be redeemed out of income in a few years, so that there need be no loss of capital or of the future income to be enjoyed by the remaining shareholders. After redemption, the only shareholders would be the Appellant with his large holding of preference shares, and the trustees of the March settlement. The next step might be a winding up of Staffa, when all the assets of that company, after the par value of the Appellant's preference shares had been provided, would go to the trustees of the March settlement. Now the March settlement provided that the trustees should have power at any time during the Appellant's life to declare that the trusts therein declared should cease to apply to the trust fund, and to hold the trust fund " upon trust " for . . . any one . . . of the beneficiaries ", who might be the Appellant's wife. Either the redemption of the shares or the winding up of the company, or both these acts taken together, might properly be described as a determination of a " provision of the settlement ", and the terms of the arrangement constituting the " settlement " gave the Appellant power to determine provisions of the settlement in the sense that the matter was so arranged that his voting rights enabled him to do so. If the power to redeem and to wind up the company were exercised, then the wife of the settlor might become beneficially entitled at least to part of the property then comprised in the settlement. Thus the terms of Section 38 (2) appear to be completely satisfied.

The contention which we have thus stated is, in our judgment, unassailable if it is once granted that the redemption of the shares, or the winding up of the company, or both transactions together, can fairly be said to amount to a determination of a " provision " of the " settlement ". In our view, either of these transactions singly, or both of them regarded as a whole, may, and indeed must, be so regarded. One of the most usual meanings of the word " provision " is (to quote the Oxford Dictionary) " something " provided, prepared, or arranged in advance ", and it follows that anything which, in the words of the Master of the Rolls in *Payne's* case[1], is " an " integral part " of the settlement is properly described as a provision of the settlement. It was not contended that in the event supposed there would not be an exercise of a power, and such a contention would indeed be impossible in view of the further observations of the Master of the Rolls in the same judgment[2].

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[1] 23 T.C., at p. 626. [2] *Ibid.*, at pp. 626/7.

(du Parcq, L.J.)

For these reasons we think that the Special Commissioners and Lawrence, J., arrived at a correct conclusion, and subject to one qualification, we are in agreement with the views expressed by the majority of the Judges of the Court of Session in *Morton's* case(1). The decision of the Court of Session was based ultimately on the ground that if the company were wound up, a shrinking of the value of the assets might result in the settlors becoming the sole persons beneficially entitled to the company's assets. The Respondents in the present appeal preferred to rely on a possibility which seems to us more clearly to satisfy the words of the Section and to be in no sense remote. It has, therefore, become unnecessary for us to express any opinion as to the majority view of the Court of Session on this part of the case, and so far as this Court is concerned the question raised by it remains open for future consideration, should it arise.

In conclusion, it is perhaps desirable to refer to two observations which were made at the Bar in support of the Appellant's argument. First, it was said that if the words of the Section were given the wide meaning which they appear naturally to bear, many transactions would be caught by them which the Legislature may well have intended to leave untouched. Secondly, it was pointed out that, whereas provision had been made by the Legislature for the relief of taxpayers who might be unjustly hit by Section 38 of the Act (see Part II of the Third Schedule), the " settlement " constituted by the arrangement in the present case was such that the settlor was not enabled to avail himself of that relief. The answers to these criticisms are, we think, obvious. To the first it may be replied that whenever the Legislature seeks to find a formula wide enough to include all future devices of human ingenuity, a draftsman lacking the gift of prophecy is bound to use words so all-embracing that unexpected and sometimes inconvenient results may follow. The answer to the second is no less plain. It is generally recognised that the Legislature has an impossible task when it seeks to anticipate every astute move which may be made by experts who pit their wits against those of the skilled advisers of the Crown. That being so it is no matter for surprise if, when Parliament turns to the more grateful task of administering relief, it sometimes fails to provide a palliative for every conceivable case of distress.

The case for the Respondent Commissioners was put in alternative ways at the Bar, and other Sections of the relevant Statutes were relied on. As we agree with the contention which the Attorney-General put in the forefront of his argument, it is unnecesary to express, and we abstain from expressing, any opinion as to his alternative submissions.

Both appeals fail, and must be dismissed.

Mr. Stamp.—With the usual consequences that follow?

Lord Greene, M.R.—The appeals will be dismissed with costs.

Mr. King.—Would your Lordships allow us time to consider whether these cases should be taken to the House of Lords?

Lord Greene, M.R.—There is no need to do that. You make your application now. You need not follow it up.

Mr. King.—May I apply for leave if so advised?

(The Court conferred.)

Lord Greene, M.R.—Well, Mr. Stamp, these Sections are, of course, all novel and difficult.

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(1) 24 T.C. 259.

Mr. Stamp.—Yes.

Lord Greene, M.R.—You were in the case, Mr. Attorney?

The Attorney-General.—Yes, my Lord, I was, but did not have the good fortune of hearing your Lordships' judgment.

Lord Greene, M.R.—There is a good deal to be said for having the law on these very difficult matters finally settled.

The Attorney-General.—Yes. If your Lordships feel that this is a case for leave, I should not object.

Lord Greene, M.R.—Unless there are any observations you wish to make to us why leave should not be given, we should be disposed to grant it.

The Attorney-General.—No. The only observation is the one which has already occurred to your Lordships. Your Lordships are affirming the decision of the learned Judge here.

Lord Greene, M.R.—That, in many cases, is the reason for not granting leave.

The Attorney-General.—Yes.

Lord Greene, M.R.—But these Sections are new. They have really never been considered by any Court so far except this one. Certain other cases are on their way to the House of Lords.

The Attorney-General.—Yes.

Lord Greene, M.R.—There is something to be said for having a comprehensive consideration of this new legislation.

The Attorney-General.—I should not oppose it.

Lord Greene, M.R.—Moreover, in this case the learned Judge below followed a Scottish decision and that involved his accepting a point in the case which this Court has left open.

The Attorney-General.—Yes.

Lord Greene, M.R.—So there is that matter.

The Attorney-General.—Yes. I do not oppose it.

Lord Greene, M.R.—Very well, Mr. King, you may take leave.

Mr. King.—If your Lordship pleases.

Appeals having been entered against the decision in the Court of Appeal, the cases came before the House of Lords (Viscount Simon, L.C., and Lords Atkin, Thankerton, Macmillan and Romer) on 25th, 26th, 29th and 30th March, 1943, when judgment was reserved. On 9th June, 1943, judgment was given unanimously against the Crown in each case, with costs, reversing the decision of the Court below.

Mr. Cyril L. King, K.C., and Mr. N. C. Armitage appeared as Counsel for the Appellants, and the Attorney-General (Sir Donald Somervell, K.C.), Mr. J. H. Stamp and Mr. Reginald P. Hills for the Crown.

JUDGMENT

Viscount Simon, L.C. (read by Lord Thankerton).—My Lords, in these consolidated appeals I have had the advantage of perusing the opinion prepared by my noble and learned friend Lord Thankerton and, finding

(Viscount Simon, L.C.)

myself in agreement with his conclusions and with the reasoning upon which they are based, do not find it necessary to express my own view at length. I move that both appeals be allowed, with costs here and below.

Lord Thankerton.—My Lords, I will now read my own opinion, in which my noble and learned friend **Lord Atkin** has desired me to express his concurrence.

These consolidated appeals relate to an additional assessment to Sur-tax for the year ending 5th April, 1938, made on the Appellant in each case; the amount in each case being the sum of £11,898. On the respective Cases stated by the Special Commissioners, the assessments have been confirmed on appeal by Lawrence, J., in the King's Bench Division, and by the Court of Appeal. It was agreed at the hearing before this House, that the circumstances were so identical that your Lordships' decision on the appeal of Augustus George Chamberlain would govern the decision of the appeal of Walter Ernest Chamberlain, and, accordingly, I will deal with the former appeal, and I will refer to Augustus George Chamberlain as the Appellant.

The claim by the Crown is primarily based on Section 38 (2) of the Finance Act, 1938, along with the material provisions of Section 41 of that Act, which provide as follows:—" 38.—(2) If and so long as the terms of any settle- " ment are such that—(*a*) any person has or may have power, whether " immediately or in the future, and whether with or without the consent of " any other person, to revoke or otherwise determine the settlement or any " provision thereof; and (*b*) in the event of the exercise of the power, the " settlor or the wife or husband of the settlor will or may become beneficially " entitled to the whole or any part of the property then comprised in the settle- " ment or of the income arising from the whole or any part of the property " so comprised; any income arising under the settlement from the property " comprised in the settlement in any year of assessment or from a corre- " sponding part of that property, or a corresponding part of any such income, " as the case may be, shall be treated as the income of the settlor for that " year and not as the income of any other person ". " 41.—(4) For the " purposes of this Part of this Act—(*b*) the expression ' settlement ' includes " any disposition, trust, covenant, agreement or arrangement, and the ex- " pression ' settlor ' in relation to a settlement means any person by whom " the settlement was made; (*c*) a person shall be deemed to have made a " settlement if he has made or entered into the settlement directly or indirectly, " and in particular (but without prejudice to the generality of the foregoing " words of this paragraph) if he has provided or undertaken to provide funds " directly or indirectly for the purpose of the settlement, or has made with " any other person a reciprocal arrangement for that other person to make or " enter into the settlement ".

While the facts are fully narrated in the Case Stated, it may be convenient to give a brief résumé of them. The Appellant and his brother carry on a successful business in the building trade, through a company formed by them, called Commercial Structures, Ltd. They desired to make some provision for their children, and, while they adopted similar measures to secure this end, I need only deal with the steps taken by the Appellant.

1. In December, 1935, the Appellant caused Staffa Investment Trust, to which I will refer as " Staffa ", an unlimited company with a share capital, to be incorporated under the Companies Act, 1929. The initial capital of Staffa was £100,000 divided into 50,000 preference shares of 10*s*. each and 7,500 ordinary shares of £10 each. Three days later, by an agreement dated

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23rd December, 1935, the Appellant sold to Staffa for £100,000, 470 shares of £1 each in Commercial Structures, Ltd., the price being satisfied as follows: as to £17,500 thereof, by the issue to the Appellant of 35,000 preference shares of Staffa; as to £82,500, this sum was left on loan to Staffa free of interest.

2. The next step was the execution of a deed of settlement, dated 10th March, 1936, under which the Appellant paid to trustees £3,500, which was forthwith invested by the trustees in 350 ordinary shares of £10 each of Staffa, and was to be held on the trusts set out in the deed in favour of the Appellant's wife and four children. It is agreed that the terms of this settlement are such that under Section 38 (2) of the Finance Act, 1938, any income arising under the said settlement from property comprised therein must be treated as the income of the Appellant.

3. The enactment of Section 21 of the Finance Act, 1936, admittedly caused a reconsideration of the position by the Appellant and the consequent measures taken in this step and the next one. The Appellant was in voting control of Staffa, and possessed wide powers as governing director under article 40 of Staffa's articles of association. At an extraordinary general meeting of Staffa on 3rd December, 1936, article 3 of the articles of association was altered so as to divide the 7,500 ordinary shares into 350 "A" ordinary shares of £10 each (being those held by the trustees of the settlement of March, 1936), 1,750 "B" ordinary shares of £10 each, 1,750 "C" ordinary shares of £10 each, 1,750 "D" ordinary shares of £10 each, and 1,900 "E" ordinary shares of £10 each. The voting rights were not altered, and each class was entitled only to such dividend (if any) as the company should in general meeting determine.

4. On 7th December, 1936, the Appellant executed four deeds of settlement, under which he paid four sums of £100 each to the trustees under each deed, respectively, to be invested as the Appellant should direct and to be held by them on trust for each of the Appellant's four children, all of whom were then infants. These settlements are irrevocable. The four sums of £100 were invested, respectively, by the trustees in the purchase, respectively, of ten "B", "C", "D" and "E" £10 ordinary shares of Staffa. In March, 1937, the trustees of each of the four settlements invested the amount of dividends received by them in the acquisition of 1,025 £10 shares of the same class, respectively, as the ten shares already held by them.

The assessment under challenge was based upon the view "that the said "settlements of 10th March, 1936, and 7th December, 1936, together with "the incorporation and structure of Staffa, constitute an arrangement amount-"ing to a 'settlement' within Section 41 (4) (*b*) of the Finance Act, 1938, "and that the Appellant is the settlor."

The assessment was arrived at as follows. In the year ending 5th April, 1938, Staffa paid to each of the trustees of the four settlements of 7th December, 1936, dividends in respect of their holdings, amounting in each case to £2,932 10*s*., gross, which absorbed £11,730 of the income of Staffa for that year. No dividends have ever been paid in respect of the "A" ordinary shares, held by the trustees of the settlement of 10th March, 1936. Staffa had also paid to the Appellant dividends on his preference shares amounting to £875. The actual income of Staffa for that year was £12,773, and the balance of £11,898 remaining after deduction of the preference dividends paid to the Appellant, has been treated as the income of the Appellant under Section 38 (2) of the Finance Act, 1938, and the additional assessment under appeal has been made on the Appellant in respect thereof.

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The learned Attorney-General maintained—as, indeed, had been held by the Commissioners and both Courts below— that, in this case, the " income " arising under the settlement " within the meaning of Section 38, was the income of the company, and that " the property comprised in the settlement " was the property held by the company, and he agreed that if his contention was wrong, the assessment could not stand, and it follows that it would be unnecessary, in that view, to deal with any of the other contentions in the case. In my opinion this contention is wrong, for reasons which can be stated very shortly.

I may premise that, in seeking the due application of Section 38 of the Finance Act of 1938, each case is apt to depend on its own facts, and other cases are not likely to be of material assistance. Further, it seems to me that, while the word " settlement " is defined in the widest terms, the more crucial point is likely to be the determination of what the " property comprised " in the settlement " consists of in the particular case. The present case affords, in my opinion, a good illustration of this point, and the question may be thus stated. Did the property comprised in the settlement consist of the whole assets of Staffa, or is the property comprised in the settlement to be found separately comprised in each of the five deeds of settlement, the formation of Staffa being part of the arrangement conceived by the Appellant, whereby a convenient and profitable investment was made available for the moneys respectively settled under the five deeds of settlement?

My Lords, I am of opinion that the latter alternative provides the correct view of the arrangement made by the Appellant, with a view to making provision for his children. While the formation of Staffa provided an available investment for the sums settled under the five deeds of settlement, under which the children's provisions were actually constituted, the continuance of such investment was not essential to the continuance of the trusts under the deeds of settlement. In other words, the sums settled under these deeds were the funds provided for the purpose of the settlement within the meaning of Section 41 (4) (*c*). Staffa, though controlled by the Appellant, did not, in my opinion, hold its assets as part of the provisions settled on the children. I am of opinion that the whole assets of Staffa did not constitute the property comprised in the settlement, and that the assessment cannot stand.

Lord Macmillan (read by Lord Thankerton).—My Lords, an additional assessment to Sur-tax was made on the Appellant, Mr. A. G. Chamberlain, for the year ending 5th April, 1938, in the sum of £11,898. This sum represented the whole actual income for the year of assessment of a company known as the Staffa Investment Trust, less a sum of £875 received by the Appellant by way of dividend on preference shares which he held in the company. The material facts in the case of Mr. W. E. Chamberlain, whose appeal has been consolidated with that of his brother, the other Appellant, are admitted to be such that the two appeals must stand or fall together. I shall confine my attention to the case of Mr. A. G. Chamberlain, to whom I shall refer throughout as the Appellant.

The assessment on the Appellant was based upon Section 38 of the Finance Act, 1938, one of the four Sections composing Part IV of that Act, which bears the heading " Income Tax (Settlements)". This legislation forms part of a code of increasing complexity, beginning with the Finance Act, 1922, Section 20, designed to overtake and circumvent a growing tendency on the part of taxpayers to endeavour to avoid or reduce tax liability by means of settlements. Stated quite generally, the method consisted in the disposal by

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the taxpayer of part of his property in such a way that the income should no longer be receivable by him, while at the same time he retained certain powers over, or interests in, the property or its income. The Legislature's counter was to declare that the income of which the taxpayer had thus sought to disembarrass himself should, notwithstanding, be treated as still his income and taxed in his hands accordingly.

In order that the income of the Staffa Investment company may, under Section 38 (2) of the Finance Act, 1938, be treated as the income of the Appellant, that income must be shown to be income arising under a settlement made by the Appellant from property comprised in the settlement; it must further be shown that the settlement or some provision thereof is revocable or otherwise determinable, and that if such revocation or determination should be effected the Appellant or his wife would become beneficially entitled to the whole or part of the settled property or to the whole or part of the income of the settled property. The term " settlement " includes any disposition, trust, covenant, agreement or arrangement (Section 41 (4) (*b*)) and has thus a wider meaning than in the vocabulary of the strict conveyancer.

The first and indeed the decisive question in the case is whether the Appellant made a settlement comprising the whole assets of the Staffa Investment company.

What he did was as follows. He was the owner of 470 £1 shares in a successful building company known as Commercial Structures, Ltd. Being minded to make a provision for his wife and four children, he formed an unlimited company which he named the Staffa Investment Trust, with an initial capital of £100,000 divided into 50,000 preference shares of 10*s*. each and 7,500 ordinary shares of £10 each. The company was incorporated on 20th December, 1935. On 23rd December, 1935, the Appellant by a sale agreement of that date sold to the company his 470 shares in Commercial Structures, Ltd., the price being satisfied by the issue to him of 35,000 preference shares of the company and as to the balance of £82,500 in cash, which the Appellant left on loan to the company without interest. The 470 shares in Commercial Structures, Ltd. were the only assets of the Staffa Investment company, and its income consisted solely of the dividends received on these shares. The constitution of the company was so framed as to give the Appellant complete control over it.

On 10th March, 1936, the Appellant executed a deed of settlement under which he paid to himself, his brother and his solicitor, a sum of £3,500 to be held on trusts set out in the deed for the benefit of his wife and children. It was the intention of the Appellant that the trust fund should be invested in the purchase of ordinary shares of the Staffa Investment company and this was effected by the acquisition of 350 ordinary shares of the company. It was conceded that this deed of 10th March, 1936, constituted a settlement within the meaning of Section 38 of the Act of 1938, and that any income arising from the property comprised therein, namely the 350 ordinary shares of the Staffa Investment company, was liable to be treated for tax purposes as the income of the Appellant. In view of the passing of the Finance Act, 1936, Section 21, the Appellant by means of a special resolution effected an alteration in the capital arrangements of the Staffa Investment company whereby the 7,500 ordinary £10 shares were divided into 350 " A " shares, being those held by the trustees of the settlement of 10th March, 1936, 1,750 " B " shares, 1,750 " C " shares, 1,750 " D " shares, and 1,900 " E " shares. Each of these classes of ordinary shares was entitled only to such dividend, if any, as the company might declare. The Appellant then

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proceeded to execute four deeds of settlement, all dated 7th December, 1936, each in favour of the same trustees as those appointed by the settlement of 10th March, 1936. By these four deeds he settled four sums of £100 each to be invested by the trustees as he should direct and to be held on trust for each, respectively, of the Appellant's four children, who were then all infants. These settlements were irrevocable and provided for the accumulation of the income until the children attained twenty-one years of age, with protective trusts to operate thereafter during their lives. The trustees of these settlements invested the settled sums of £100 in the purchase, respectively, of 10 of the " B ", 10 of the " C ", 10 of the " D " and 10 of the " E " ordinary £10 shares of the Staffa Investment company. Dividends were paid to the trustees of each settlement in March, 1937, and the trustees utilised the proceeds to apply for 1,025 additional " B ", " C ", " D " and " E " shares, respectively. Further dividends were paid on the " B ", " C ", " D " and " E " shares in 1938. No dividends were ever paid in respect of the shares held under the settlement of 10th March, 1936.

The contention of the Crown, which was upheld by the Special Commissioners and has been affirmed by Lawrence, J., and the Court of Appeal, is that the formation and structure of the Staffa Investment company, together with the sale agreement of 23rd December, 1935, the settlement of 10th March, 1936, and the four settlements of 7th December, 1936, " constitute " an arrangement and a settlement within Section 41 (4) (*b*), Finance Act, " 1938 ". Lawrence, J., in affirming the decision of the Special Commissioners, did not deliver a reasoned opinion as it was admitted before him that the case was governed by the decision of the First Division of the Court of Session in the Scottish case of *Commissioners of Inland Revenue* v. *Morton*, 1941 S.C. 467; 24 T.C. 259.

I find myself unable to agree with the Crown's contention. I accept the view that the statutory expansion of the term " settlement ", which includes an " arrangement ", justifies and indeed requires a broad application of Section 38 of the Act of 1938, but a settlement or arrangement to come within the Statute must still be of the type which the language of the Section contemplates. I agree with Lord Moncrieff that the settlement or arrangement must be one whereby the settlor charges certain property of his with rights in favour of others (*Commissioners of Inland Revenue* v. *Morton, cit. sup.* at page 480; 24 T.C., at page 269). It must comprise certain property which is the subject of the settlement; it must confer the income of the comprised property on others, for it is the income so given to others that is to be treated as nevertheless the income of the settlor. There can be no question that the deeds of 10th March, 1936, and 7th December, 1936, were settlements. Each of them settled a sum of money provided by the settlor and provided for the application of the income for the benefit of third parties, although the four settlements of 7th December, 1936, because of their irrevocability do not fall within Section 38. But none of these settlements comprised any property of the Staffa Investment company. The trust funds were invested in shares of that company, which is quite a different matter. In point of fact, the whole assets of the company have never been settled at all so as to dedicate the whole of its income to any trust purposes.

But it is said that the " formation and structure " of the company was just a part of an " arrangement " which must be looked at as a whole and which, when so looked at, is seen to be a settlement of the company's whole assets, namely, the 470 shares of Commercial Structures, Ltd. which originally belonged to the Appellant. I am prepared to agree that the creation of the

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Staffa Investment company and its very special constitution were essential steps towards the effecting of the Appellant's object. So no doubt was the sale to the company of his 470 shares in Commercial Structures, Ltd. But that sale was for consideration in money or money's worth, and resulted, *inter alia*, in the Appellant receiving 35,000 preference shares of the Staffa Investment company for himself, the income of which he has himself enjoyed. How can it be said that the whole assets of the Staffa Investment company have been comprised in a settlement by the Appellant when he himself retains a substantial interest in the company which has never been the subject of a settlement at all? The most attractive way of presenting the Crown's case is to characterize the whole transaction as a single scheme which begins with 470 shares in Commercial Structures, Ltd. in the hands of the Appellant as his personal property, and after much manoeuvring ends with the income from these shares no longer payable to himself but settled in favour of third parties. He who wishes the end wishes the means. This, however, is not, in my opinion, an accurate legal presentation of the matter, which requires a much closer analysis. I have already pointed out that the Appellant has never settled the whole of the shares in the Staffa Investment company. And further shares might still be issued. It is, I think, fallacious to confuse the steps taken by the Appellant with a view to effecting a settlement or arrangement with the settlement or arrangement itself. When the Appellant created the Staffa Investment company, and sold to it his 470 shares in Commercial Structures, Ltd., he made no settlement or arrangement such as the Statute contemplates. In point of fact, he never settled any shares of the Staffa Investment company. What he did was to settle certain sums of money, with the intention, which he was in a position to carry out, that these sums should be invested in shares of the Staffa Investment company. It was not until he granted the trust deeds that he entered the legal stage of the settlement. All that he did previously was preparatory to making settlements. No settlement or arrangement of the nature of a settlement existed when the company was registered and the Appellant sold to it his shares in Commercial Structures, Ltd. As I have said, what the Appellant settled was money. That money was invested, as it was intended to be, in shares of the Staffa Investment company, but I see nothing to prevent the trustees under the trust deeds from selling their shares in the company and investing the proceeds in other securities. Could it then be said that the whole of the assets of the Staffa Investment company were " settled "?

It is essential to the Crown's case that it should make out that the whole assets of the Staffa Investment company are comprised in a settlement or arrangement made by the Appellant within the meaning of the Statute. In my opinion the Crown has failed to establish this.

It is unnecessary for me, having regard to the view which I have just expressed, to proceed to consider the further questions debated as to whether any " provision " of the " settlement " was determinable and whether the result of such determination would be to the benefit of the Appellant or his wife. But I may say that I find it difficult to characterize the redemption by the Staffa Investment company of the shares held under the trust deeds, or the winding up of the company, as a determination of a " provision " of the settlement. The trustees would continue to hold and administer the redemption moneys or the sums received on a winding up. Moreover, if it could be said that in the event of redemption or winding up the Appellant's wife might become beneficially entitled to at least part of the property comprised in the settlement, then it would appear that the Crown could only

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attribute to the Appellant a " corresponding part " of the income of the property and not, as they have done, the whole income of the property said to be comprised in the settlement.

I am accordingly of opinion that these appeals should succeed. The Legislature must try again, unless by legislation since 1938 it has already defeated such ingenuity as the Appellants have displayed.

Lord Romer.—My Lords, the assessment of which the Appellant, Augustus George Chamberlain (hereinafter called the Appellant), complains in this case was made in the circumstances that are set out in paragraph 10 of the Case stated for the opinion of the Court. The paragraph runs substantially as follows:—The actual income of Staffa for the year ending 5th April, 1938, was £12,773. £875 was paid by Staffa to the Appellant in dividends on his 35,000 preference shares. £11,898, the balance of the £12,773, has been treated as the income of the Appellant under the provisions of Section 38 (2) of the Finance Act, 1938, and the additional assessment under appeal has been made upon the Appellant in respect thereof. This assessment was based upon the view that the settlements of 10th March, 1936, and 7th December, 1936, together with the incorporation and structure of Staffa, constitute an arrangement amounting to a " settlement " within Section 41 (4) (*b*) of the Finance Act, 1938, and that the Appellant is the settlor. The omission from this paragraph of all reference to the sale agreement of 23rd December, 1935, was probably an oversight, for the decision of the Special Commissioners, which has been upheld by the Court of Appeal, is set forth in paragraph 14 of the Case and was in these terms: " Having considered the evidence " and arguments adduced before us, we held that:—(*a*) the formation " and structure of Staffa together with the said settlements of 10th March, " 1936, and 7th December, 1936, and the sale agreement of 23rd December, " 1935, constitute an arrangement and a settlement within Section 41 (4) (*b*), " Finance Act, 1938: (*b*) the income of Staffa was rightly treated as the " income of the Appellant by virtue of Section 38 (2), Finance Act, 1938."

Now the strange thing about all this is that, although we are told what it is that, in the opinion of the Commissioners and the Court of Appeal, constitutes the " settlement ", we are not told of what the property comprised in the alleged settlement consists. It is true that the additional assessment upon the Appellant can only be justified if the whole of the assets of Staffa that produced its income for the year ending 5th April, 1938, can be regarded as constituting the settled property. But the only income-earning property owned by Staffa in that year was the block of shares in Commercial Structures, Ltd. sold to it by the Appellant in December, 1935; and whether the settled property is to be treated as consisting of those shares alone, or is to be treated as comprising the whole of Staffa's assets for the time being, is a question to which I can find no certain answer either in the Case or in the judgment of the Court of Appeal. I am inclined to think, however, that the Court was in favour of the latter of the two alternatives. For in delivering the judgment of the Court, du Parcq, L.J., when contemplating the possibility of a winding up of Staffa at a time when the only ordinary shares outstanding were the shares comprised in the deed of settlement of 10th March, 1936, said that in that event all the assets of the company, after providing for the par value of the Appellant's preference shares, would go to the trustees of that settlement and that in that way the Appellant's wife " might become beneficially " entitled at least to part of the property then comprised in the settlement."(1)

(1) *See* page 324 *ante*.

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But it is conceivable, and indeed probable, that the assets of Staffa distributed on a winding up among the holders of ordinary shares would not include any of the 470 shares in Commercial Structures, Ltd., but the proceeds of their sale which by that time would have ceased to be traceable. And there I am content to leave it. For, even if the various ingredients mentioned in paragraph 14 of the Case can properly be regarded as forming one compound settlement, as to which I shall have something to say later on, the property that is the subject-matter of the settlement is, in my opinion, neither the 470 shares in Commercial Structures, Ltd., nor the whole assets for the time being of Staffa. If a man enters into a contract to buy 1,000 shares in a company with a view to settling 500 of them on his daughter and does so settle the 500 shares by deed, it may well be that consistently with Section 41 (4) (*b*) of the Finance Act, 1938, the settlement can be described as consisting of the contract and the deed together. But the property comprised in the settlement is the 500 shares settled by the deed and not the whole of the 1,000 shares. The mere fact that the contract to buy 1,000 shares was a part of the arrangement for settling 500 of them, is no conceivable justification for saying that the property comprised in the settlement included the other 500, even though the settlement be regarded as consisting of the whole arrangement. And yet that in substance is what has been said by the Special Commissioners and the Court of Appeal in the present case.

Turning again to the facts of the present case, it may be observed that, although in the memorandum of association of Staffa its objects are set out in no less than 24 clauses covering nearly every form of human activity, the acquisition of shares in Commercial Structures, Ltd. is nowhere mentioned. It may further be observed that the deed of settlement of 10th March, 1936, is a settlement of £3,500 cash and contains no reference to the acquisition by the trustees of any shares in Staffa. It would almost seem that the Appellant wished it to appear that there was no connection between Commercial Structures, Ltd., Staffa, and the settlement of the £3,500. It is nevertheless quite plain, and it is now admitted by the Appellant, that the connection between the three was very close, and that the forming of Staffa, the sale to it of the 470 shares in Commercial Structures, Ltd. and the application of the £3,500 in subscribing for 350 ordinary shares in Staffa, were all so many steps taken or caused to be taken by the Appellant for the purpose of making some provision for his children out of the interest that he possessed in Commercial Structures, Ltd. while retaining control over both that company and over Staffa. But the forming of Staffa and the sale to it of the Appellant's 470 shares in Commercial Structures, Ltd., were capable of serving, and may well have been intended to serve, in the future other purposes as well. If, for instance, the Appellant had in his mind the possibility at a later date of issuing and settling on his brothers and sisters further shares in Staffa, whether preference or ordinary, the forming of Staffa and the sale to it of the 470 shares would have been steps taken to effect this purpose also, and could be treated as forming part of such subsequent settlement. Although, therefore, it may be possible to say, in view of Section 41 (4) (*b*) of the Finance Act, 1938, that on 10th March, 1936, there came into existence a compound settlement in the form of an arrangement consisting of the forming of Staffa, the agreement for the sale to it of the 470 shares in Commercial Structures, Ltd., the trust deed of that date and the subscription by the trustees of 350 ordinary shares, the property comprised in that settlement consisted of nothing but the last-mentioned shares. It did not and could not consist of the whole of the assets of Staffa, or even the 470 shares in Commercial Structures, Ltd. that Staffa held, any more than a subsequent settlement such as I have mentioned would

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or could have done. The Appellant had an interest in all such assets as the holder of preference shares, and the holders of any subsequently issued preference shares and of all ordinary shares whenever they might have been issued would also be interested in such assets regardless of the date of their issue and of the date of any settlement of which they might be the subject-matter.

In mentioning the elements that conceivably constituted the settlement that came into existence on 10th March, 1936, I have omitted one that was included by the Special Commissioners. It is the " structure " of Staffa, which means, no doubt, the character and constitution of the company as disclosed by its memorandum and articles of association. But I must confess that, with all respect to the Commissioners, it passes my comprehension how the structure of a company can form part of a settlement. That the constitution and character of Staffa have a very direct and important bearing upon the nature of the subject-matter of the settlement of 10th March, 1936, is of course quite true. For in order to ascertain what is sometimes called the " bundle " of rights " represented by a share in Staffa, recourse must be had to the memorandum and articles of association of that company. But its constitution and character can no more form part of the settlement itself than can the constitution and character of the settlor.

My Lords, I have not so far made any reference to the deeds of settlement of 7th December, 1936. And for this reason. After the execution of the deed of settlement of 10th March, 1936, and the investment of the £3,500 in taking up shares in Staffa, a settlement had been finally made, and one of the purposes, possibly the main purpose, for which Staffa had been formed and the 470 shares in Commercial Structures, Ltd. had been transferred to it had been fully accomplished. I can find nothing that even remotely suggests that at that time it was in the contemplation of the Appellant to settle further Staffa shares upon his children; and had it not been for the Finance Act of 1936 I do not suppose that any such further settlement would in fact have taken place. But Section 21 of that Act put the Appellant in danger of having all the income arising under the settlement of 10th March, 1936, treated as his income for the purposes of Sur-tax, and it was only after he had considered the provisions of that Section that he took the further steps that resulted in the execution of the four deeds of settlement of 7th December, 1936, and the acquisition by the trustees of those settlements of the " B ", " C ", " D " and " E " ordinary shares now held by them. I may observe in passing that these shares could not have been issued at all had the property comprised in the March settlement been all the assets of Staffa, or even the 470 shares in Commercial Structures, Ltd. But I have already given my reasons for thinking that the property comprised in the March settlement consisted merely of the 350 shares now known as the " A " shares in which the £3,500 had been invested, and for the same reasons I am satisfied that the property comprised in the December settlements consisted of nothing but " B ", " C ", " D " and " E " shares, respectively. In order to bring about these last-mentioned settlements, the Appellant no doubt utilised two of the steps he had taken to bring about the March settlement, namely, the forming of Staffa and the agreement of 23rd December, 1935. These two steps will, therefore, be ingredients that are common to the arrangements that respectively constitute the March and December settlements. The settlements are nevertheless quite distinct from one another and cannot properly be regarded as forming one comprehensive settlement. But, after all, the crucial question arising in the case is not whether there is one settlement or five settlements, but whether the property settled can be said to consist of either the total assets

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of Staffa or, alternatively, the 470 shares in Commercial Structures, Ltd. As I am satisfied that this question must be answered in the negative, I would allow the appeal of the Appellant, Augustus George Chamberlain, with whose case alone I have so far dealt. It necessarily follows that, in my opinion, the appeal of his brother, Walter Ernest Chamberlain, should also be allowed.

Questions put:

That the Order appealed from be reversed.

The Contents have it.

That the case be remitted back to the Commissioners for the Special Purposes of the Income Tax Acts with a direction to discharge the assessments.

The Contents have it.

That the Respondents do pay to the Appellants the sum paid by them in respect of Sur-tax relating to the said assessments with interest at the rate of 3 per cent. per annum to the date of payment and do also pay to the Appellants their costs here and below.

The Contents have it.

[Solicitors:—R. C. Bartlett & Co.; Solicitor of Inland Revenue.]