COURT OF SESSION (FIRST DIVISION)—19TH, 20TH AND 25TH JUNE, 1952

HOUSE OF LORDS—9TH AND 10TH NOVEMBER, 1953, AND 25TH JANUARY, 1954

Wilsons (Dunblane), Ltd.

v.

Commissioners of Inland Revenue[1]

Over-ruled by S23 FA 1954

Income Tax, Schedule D—Initial and annual allowances—Sale of plant and machinery to a person over whom vendor had control—Income Tax Act, 1945 (8 & 9 *Geo.* VI, *c.* 24), *Section* 59.

W, who carried on a wool spinning business, took his two sons into partnership on 16*th November,* 1944, *bringing into the firm the whole of the business assets. The starting figure in the firm's books for the machinery and plant taken over was* £8,000, *this being the written-down figure in W's books. The partners elected under Rule* 11 (1) *of the Rules applicable to Cases* I *and* II *of Schedule D, that the assessments to Income Tax under Case* I *of Schedule D should be computed as if the trade carried on by W had been discontinued and a new trade had been set up.*

On 16*th November,* 1945, *the business was acquired by the Appellant Company, the whole of the issued share capital of which had been allotted to the former partners. The price paid by the Company for the machinery and plant was* £17,554, *being the price which it would have fetched if sold in the open market.*

Assessments to Income Tax under Case I *of Schedule D on the profits of the Company for the years* 1946–47 *to* 1950–51 *inclusive were made on the footing that the sale was one to which Section* 59 (1) (*a*), *Income Tax Act,* 1945, *applied, and that this Section required the initial and annual allowances in respect of the machinery and plant to be computed as if the price paid had been* £8,000, *this being the sum taken to be the "limit of re-charge" on the partnership.*

On appeal to the Special Commissioners against these assessments it was contended on behalf of the Company that Section 59, *Income Tax Act,* 1945, *did not apply because the sale had taken place before* 6*th April,* 1946, *the "appointed day" under that Act. Alternatively, it was contended that as the machinery and plant had been sold at the price which it would have fetched if sold in the open market, Sub-section* (2) *of Section* 59 *did not apply, and that Sub-section* (3) (*b*) *of that Section did not modify Sub-section* (2) *so as to make it apply to the sale. It was also contended that the "limit of re-charge" in relation to the partnership which sold the machinery and plant was not* £8,000, *but was its cost to W.*

The Special Commissioners dismissed the appeal.

The only matter argued before the Court of Session and the House of Lords was that relating to the application of Section 59 (2) *and it was held that the Sub-section had no application in the present case.*

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(1) Reported (C.S.) 1952 S.C. 417; (H.L.) 217 L.T. Jo. 71; [1954] 1 All E.R. 301; [1954] 1 W.L.R. 282; 98 S.J. 106.

CASE

Stated for the opinion of the Court of Session as the Court of Exchequer in Scotland under the Income Tax Act, 1952, Section 64.

At a meeting of the Commissioners for the Special Purposes of the Income Tax Acts held at Edinburgh on 11th April, 1951, for the purpose of hearing appeals, Wilsons (Dunblane), Ltd., hereinafter called "the Company", appealed against assessments to Income Tax made upon the Company under Case I of Schedule D, Income Tax Act, 1918, for the following years and in the amounts shown:—

	£	
1946–47	2,500	additional assessments
1947–48	600	additional assessments
1948–49	1,000	additional assessments
1949–50	16,000	less £2,000 capital allowances
1950–51	15,190	less £3,500 capital allowances
	195	balancing charge

The question before us turned on the proper deductions in respect of wear and tear of machinery and plant to be allowed in the several years under Rule 6 of the Rules applicable to Cases I and II of Schedule D. The issue arose under Section 59 of the Income Tax Act, 1945, which contains special provisions regarding deductions in respect of wear and tear following on certain sales, including sales of machinery or plant.

I. The following facts were admitted or proved:—

(1) The Company at all material times carried on the business of wool spinners.

(2) For some thirty years up to 15th November, 1944, the business now carried on by the Company had been conducted by Mr. Alexander B. Wilson, as sole proprietor, trading as Alexander Wilson & Co.

(3) On 16th November, 1944, Mr. Alexander B. Wilson, hereinafter referred to as "Mr. A. B. Wilson" took his two sons into partnership, Mr. A. B. Wilson taking a one-half share and each son taking a one-quarter share in the profits. A copy of the contract of co-partnery is annexed and forms part of this Case[1].

(4) Mr. A. B. Wilson brought into the partnership firm on 16th November, 1944, the whole assets of the business, including the machinery and plant then belonging to him which had been acquired by him from time to time in the course of business. These assets were taken into the accounts of the partnership firm at the figures at which they appeared in the accounts of Mr. A. B. Wilson immediately before the partnership firm acquired them. The aggregate figure for these assets was £28,764 15*s.* 8*d.* and Mr. A. B. Wilson's capital and current accounts in the partnership books were credited with the sums of £25,000 and £3,764 15*s.* 8*d.*, respectively, in respect of the said assets.

(5) At 15th November, 1944, the machinery and plant appeared in the balance sheet of Mr. A. B. Wilson's said business at a written down figure of £8,000, and this figure formed the starting figure in the firm's books for machinery and plant for the partnership year commencing on 16th November, 1944.

(6) Following the transfer of Mr. A. B. Wilson's business to the said partnership as aforesaid, application was made under Section 32 of the Finance Act, 1926, requiring that the tax payable for all years of

[1] Not included in the present print.

assessment should be computed as if the trade carried on by Mr. A. B. Wilson had been discontinued at 16th November, 1944, and a new trade had then been set up or commenced. The assessments on Mr. A. B. Wilson down to 15th November, 1944, and those on the partnership from 16th November, 1944, were respectively dealt with under the "cessation" and "new business" provisions of the Income Tax Acts.

(7) For the partnership year commencing on 16th November, 1944, and ending on 15th November, 1945, the allowances in respect of wear and tear of machinery and plant continued to be calculated on the written down values appearing in the computations of Mr. A. B. Wilson's liability. For the year of assessment 1944–45 the allowances so calculated were apportioned between Mr. A. B. Wilson and the partnership on a time basis.

(8) For Income Tax purposes the written down value of the machinery and plant was £8,822 at 15th November, 1944, and £7,956 at 15th November, 1945.

(9) On 16th November, 1945, the business was taken over from the partnership by the Company, which had been incorporated for this purpose on 4th October, 1945, the whole of the issued shares of the Company being allotted to the former partners, in the proportion of 50 per cent. to Mr. A. B. Wilson and 25 per cent. to each of his said sons.

(10) The assets of the partnership business as at 16th November, 1945, were bought by the Company in accordance with an agreement of sale, under which the price paid for machinery and plant was £17,554.

(11) The said price was the price which the machinery and plant would have fetched if sold in the open market on 16th November, 1945.

(12) "The buyer", i.e., the Company, was "a body of persons over whom the seller", i.e., the partnership, had "control", in terms of paragraph (*a*) of Section 59 (1) of the Income Tax Act, 1945.

(13) The Company's accounts were made up to 15th November in each year and the Company's liability to Income Tax was computed on the basis of such accounts. In accordance with Section 29 (1) of the Finance Act, 1926 (which was made applicable to trades, professions, or vocations by Section 23 of the Finance Act, 1927) the gross assessments to be made on the Company under Schedule D for the years 1945-46 and 1946-47 were computed by reference to the Company's accounts for the trading year ended 15th November, 1946. For the year 1945-46 the Company was only liable to Income Tax for the period from 16th November, 1945 (the date on which it commenced trading) to 5th April, 1946, and the gross assessment under Schedule D for that period was calculated by making an apportionment on a time basis of the profit for the said year ended 15th November, 1946.

From the gross assessment for 1945–46 as so computed, there was allowed a deduction in respect of wear and tear in the sum of £569 which was also for the period from 16th November, 1945, to 5th April, 1946, being the day before "the appointed day" referred to in the Income Tax Act, 1945 (which "appointed day" was by Section 18 of the Finance (No. 2) Act, 1945, declared to mean 6th April, 1946). The said deduction of £569 in respect of wear and tear was calculated by reference to the sum of £17,554 paid by the Company as aforesaid for the machinery and plant.

For the year 1946–47 there was allowed a deduction in respect of wear and tear in the sum of £709 and an initial allowance under Section 15 of the Income Tax Act, 1945, in the sum of £1,631. Both the said wear and tear allowance of £709 and the initial allowance of £1,631 were calculated by reference to a figure of £7,431 which was the aforesaid sum of £8,000 (which formed the starting figure in the books of the firm for machinery and plant for the year commencing on 16th November, 1944, and which was taken to represent the limit of re-charge under Section 59 (3) of the said Act) less the aforesaid sum of £569 allowed as wear and tear for the period from 16th November, 1945, to 5th April, 1946.

(14) In the computation for the following years also under appeal from 1947–48 to 1950–51, the allowances in respect of wear and tear had been made by reference to the aforesaid sum of £8,000, less the wear and tear allowances granted since 16th November, 1945, and the initial allowance granted for the year 1946–47.

II. The provisions of the aforesaid Section 59, Sub-sections (1) to (3) and (5) of the Income Tax Act, 1945, as amended by Section 58 (2) of the Finance (No. 2) Act, 1945, are here set forth in full for convenience of reference, as regards both the contentions of the parties and our determination thereon, as hereinafter appearing. Sub-section (4) is not reproduced because it has in our view no application to this case. It deals with a sale to which paragraph (*a*) of Sub-section (1) of the said Section 59 applies where the parties to the sale have elected that the provisions of Sub-section (4) shall apply. No such election was made in this case.

"59.—(1) The provisions of this section shall have effect in relation to sales of any property were either—

(*a*) the buyer is a body of persons over whom the seller has control, or the seller is a body of persons over whom the buyer has control, or both the seller and the buyer are bodies of persons and some other person has control over both of them ; or

(*b*) it appears with respect to the sale or with respect to transactions of which the sale is one, that the sole or main benefit which, apart from provisions of this section, might have been expected to accrue to the parties or any of them was the obtaining of an allowance or deduction under any of the following enactments, that is to say, any of the provisions of this Act or of Rule 6 or Rule 7 of the Rules applicable to Cases I and II of Schedule D or of section nineteen of the Finance Act, 1941, or of Part IV of the Finance Act, 1944.

References in this subsection to a body of persons include references to a partnership.

(2) Where the property is sold at a price other than that which it would have fetched if sold in the open market, then, subject to the succeeding provisions of this section, the like consequences shall ensue for the purposes of the enactments mentioned in subsection (1) of this section [other than the said section nineteen], in their application to the income tax of all persons concerned, as would have ensued if the property had been sold for the price which it would have fetched if sold in the open market.

(3) Where the sale is a sale of machinery or plant—

(*a*) no initial allowance shall be made to the buyer ; and

(*b*) subject to the provisions of the next succeeding subsection, if the price which the property would have fetched if sold in the open market is greater than the limit of re-charge on the seller, the last preceding subsection shall have effect as if for the reference to the price which which the property would have fetched if sold in the open market there were substituted a reference to the said limit of re-charge :

Provided that this subsection shall not apply in relation to a sale of machinery or plant which has never been used if the business or

part of the business of the seller was the manufacture or supply of machinery or plant of that class and the sale was effected in the ordinary course of the seller's business;

Provided also that where the sale is one to which paragraph (*a*) of subsection (1) of this section applies and took place before the appointed day, and the seller acquired the machinery or plant on or after the sixth day of April, nineteen hundred and forty-four, paragraph (*a*) of this subsection shall not apply.

In this subsection the expression "the limit of re-charge" means, in relation to a person who sells machinery or plant—

(i) if he provided that machinery or plant for himself before the appointed day, the actual cost to him of the machinery or plant, including in that actual cost any expenditure in the nature of capital expenditure on machinery or plant by way of renewal, improvement or reinstatement;

(ii) if he provided the machinery or plant for himself on or after the appointed day, the expenditure incurred by him on the provision thereof.

. . . . . .

(5) As respects Rules 6 and 7 of the Rules applicable to Cases I and II of Schedule D, the provisions of this section shall have effect as respects tax for the year of assessment in which the appointed day falls and any subsequent year of assessment.

III. It was contended on behalf of the Company:—

(1) that, although the sale from the partnership to the Company fell within the description of (*a*) of Section 59 (1) of the Income Tax Act, 1945, the Section applied, for the purpose of wear and tear allowance, only as regards a sale taking place on or after the appointed day, viz. 6th April, 1946, and that nothing in the Section or in Part II of the Act (which related to machinery and plant) made it apply retrospectively to a case such as the present where the sale took place between the date of the Royal Assent to the Act, viz. 15th June, 1945, and the appointed day;

(2) that, in particular, the only indication that any part of the Section applied to the case of a sale before the appointed day was contained in the second proviso to Section 59 (3), and that this proviso was concerned solely with the initial allowance under Section 15 of the Act, which in Sub-sections (2) and (3) thereof dealt, solely as respects initial allowances, with expenditure on the provision of machinery or plant on or after 6th April, 1944, but before the appointed day;

(3) that, if Section 59 had been intended to apply for the purposes of the wear and tear allowance to any sale before the appointed day, there would have been an indication to such effect in the aforesaid second proviso to Sub-section (3), the more so since Section 16 (which related to such allowances) made no reference to the case of machinery or plant provided before the appointed day;

(4) that, even if—contrary to the above contentions (1) to (3)—Section 59 applied for the purposes of the wear and tear allowance to certain cases of a sale before the appointed day, it did not apply to the present case, which did not fall within the terms of Sub-section (2) read by itself, since the property, viz. the machinery and plant, was not

"sold at a price other than that which it would have fetched if sold in the open market";

(5) that Section 59 (3) (*b*) did not modify Sub-section (2) so as to make it apply to the present case, since

> "the reference to the price which the property would have fetched if sold in the open market"

was to be found in the concluding words of Sub-section (2) and in those words alone;

(6) that, in consequence of the above contentions (1) to (3) or, failing those, of contentions (4) and (5), the wear and tear allowance to the Company should be computed for all the years under appeal on £17,554, being the price paid by it for the machinery and plant, and should not have been so computed only as regards the period from 16th November, 1945, to 6th April, 1946, being the appointed day;

(7) that even if—contrary to all the above contentions—Section 59 applied for the purposes of the wear and tear allowance to the present case, "the limit of re-charge" as defined in the last paragraph of Sub-section (3) was not £8,000, which bore no relation to the written down value of the machinery and plant;

(8) that the limit of re-charge in relation to the partnership which sold the machinery and plant did not mean "the actual cost" thereof to the partnership, which could not be ascertained since there was no actual sale to the partnership when it was set up on 15th November, 1944, but must mean the cost to Mr. A. B. Wilson by whom, and not by the partnership, the machinery and plant were "provided".

IV. It was contended on behalf of the Crown:—

(1) that Section 59 of the Income Tax Act, 1945, applied to machinery or plant purchased before the appointed day, i.e., 6th April, 1946;

(2) that the terms of the second proviso to Section 59 (3) of the Income Tax Act, 1945, and the necessity for such a proviso showed that Section 59 extended to sales before the appointed day;

(3) that similarly for certain purposes, viz. those of initial allowances, Section 15 (2) and (3) of the Act showed that the Act extended to sales before the appointed day;

(4) that Section 59 (3) applied to this case and that the reference therein to Sub-section (2) of that Section did not limit the application of Sub-section (3) to cases where property was sold at a price other than that which it would have fetched if sold in the open market;

(5) that in any event Section 1 (*b*) of the Interpretation Act, 1889, under which the singular includes the plural, applied to the words in Section 59 (3) (*b*)

> "the reference to the price which the property would have fetched if sold in the market"

so that "the reference" could mean more than one such reference; that there were two such references in Subsection (2) of the Section, the first being in the opening words, and the second in the closing words, and that by virtue of Sub-section (3) (*b*) each such reference must be read in the present case, where the open market price was "greater than the limit of re-charge on the seller", as if it were a reference to the said limit of re-charge;

(6) that, when the partnership was set up on 16th November, 1944, and Mr. A. B. Wilson brought the assets of the business into it, at the figures shewn in the closing and opening entries in Mr. A. B. Wilson's and the partnership books, respectively, there was a sale from him at

these figures, to the partnership, which was a separate *persona*, and the limit of re-charge in relation to the partnership on its selling the machinery and plant to the Company on 16th November, 1945, was the cost of the said machinery and plant to the partnership;

(7) that Mr. A. B. Wilson having received, on the aforesaid sale to the partnership, a credit of £28,764 15*s.* 8*d.* for the assets, of which £8,000 was attributed to machinery and plant, the said amount of £8,000 was the actual cost to the partnership and therefore the limit of re-charge under the last paragraph of Section 59 (3);

(8) that the allowances in respect of wear and tear to the Company had been computed on the correct basis, in terms *inter alia* of Section 59 (5), under which the provisions of the Section relating to wear and tear have effect as respects the year 1946–47 (in which the appointed day fell) and any subsequent year of assessment: that as regards the fiscal year 1946–47, since the basis year (i.e. the trading year which formed the basis of computation of profit for Income Tax purposes for a particular fiscal year) was the Company's trading year to 15th November, 1946, the said allowance was correctly computed on £17,554 (being the price paid for the machinery and plant) as respects the part of the basis year ending on the appointed day, 6th April, 1946, and had rightly been computed on £7,431 only (being the limit of re-charge, i.e. the figure of £8,000 reduced by the amount of the said allowance previously given) as respects the part of the said basis year from the appointed day to 15th November, 1946, and that the allowance for the subsequent fiscal years had also been correctly computed by reference to the said figure of £8,000 reduced by the aggregate of the said allowances previously given.

V. We, the Commissioners who heard the appeal, gave our decision as follows:—

The first question which we had to answer was whether Section 59 of the Income Tax Act, 1945, in the context of Part II of the said Act, applied for purposes of the allowance in respect of wear and tear to a sale of machinery or plant made before the appointed day, i.e. 6th April, 1946. The sale to the Company had taken place on 16th November, 1945.

As a general principle we took the view that, in the absence of any clear directions in a taxing Act of any year, there must be an assumption that the Act applied to any transaction of a kind with which it was concerned taking place either from the commencement of the year, in this case 6th April, 1945, or, if not, from the date of the Royal Assent, in this case 15th June, 1945. In Section 59 it was laid down by Sub-section (5) that, for purposes of wear and tear, the Section should have effect as respects tax for the year of assessment in which the appointed day fell, viz. 1946–47, and for any subsequent year. But, as regards the date of transactions in relation to which the Section should so have effect, there was no clear direction such as existed in Section 15 of the Act: the latter Section dealt with initial allowances, Sub-section (1) authorising such an allowance in the case of expenditure on the provision of machinery or plant incurred on or after the appointed day, while Sub-sections (2) and (3) extended it to cases of expenditure so incurred on or after 6th April, 1944. While, however, there was no clear direction, in our opinion the second proviso to Section 59 (3) of the Act implied that, apart from the said proviso Section 59 did not for any

of its purposes exclude the case of sales before the appointed day. Were it not for the proviso, (*a*) in Sub-section (3) would have applied so as to take away the title to any initial allowance in cases falling within Section 15 (2) and (3) of the Act. The proviso obviated this result, but left the application of Section 59 unaltered in other respects. For the reasons indicated above we were of opinion that the Section applied for the purposes of wear and tear allowance to the case of sales between 6th April, 1945, and 6th April, 1946, or at least to the case of sales between the date of Royal Assent, 15th June, 1945, and 6th April, 1946. Thus the first ground of the Company's appeal failed.

The second question before us was whether (*b*) in Sub-section (3) of Section 59 modified the provisions of Sub-section (2) so as to make it apply to the present case.

The machinery and plant sold to the Company was not property sold in the open market. Sub-section (2) made a comparison between the actual sale price of property and the price which it would have fetched if sold in the open market: since the actual price to the Company, £17,554, was the same as the open market price, Sub-section (2) as it stood had no application. There followed Sub-section (3) which related only to sales of machinery or plant, and in (*b*) thereof compared the price which such property would have fetched if sold in the open market (in this case the same as the actual price) with

> " the limit of re-charge on the seller ".

The crux of the question before us was the meaning, in relation to Sub-section (2), of the words in Sub-section (3) (*b*)

> "the reference to the price which the property would have fetched if sold in the open market".

Reliance had been placed for the Crown on the provision of Section 1 (*b*) of the Interpretation Act, 1889, under which the singular includes the plural, but we doubted whether it was necessary to call this provision in aid, for it might well be said that the complete " reference " was to be found in two places, i.e. both in the opening and in the closing words of Sub-section (2). But, in any case, whether or not by virtue of the Interpretation Act, we were of opinion that " the reference " was so to be found. The opening words of Sub-section (2)

> " at a price other than that ",

i.e. the price,

> " which it would have fetched if sold in the open market "

appeared to us to contain as clear a reference of the kind indicated in Sub-section (3) (*b*) as that contained in the closing words of Sub-section (2): it followed, on this view, that Sub-section (2) must have effect as if for the reference in each place there were substituted a reference to the limit of re-charge on the seller. " Reference " was a very general term. Sub-section (2) was not modified by quoting particular words therein and substituting other words, but by pointing to a reference or references therein and substituting another reference or other references. For the foregoing reasons we held that the Company also failed in the second ground of its appeal.

There remained the question as to what was " the limit of re-charge " in relation to the partnership which sold the machinery and plant to the Company. We were far from saying that the definition in the last paragraph of Sub-section (3) was clear, but in our opinion the interpretation put forward on behalf of the Company did violence to the words. It was the actual cost to the seller, i.e. the partnership, which had to be taken, and it was impossible to say that that cost was the original

cost to Mr. A. B. Wilson. In our opinion there was no alternative to the proposition of the Crown that the limit of re-charge was determined by reference to £8,000, being the written down figure at which Mr. A. B. Wilson had brought the machinery and plant into the partnership.

We held that the appeal failed on all points, and that the annual allowances in respect of wear and tear had been computed on the correct basis—i.e. by being calculated by reference to the limit of re-charge as from the appointed day, 6th April, 1946—both as respects the year 1946-47 and as respects later years. We left the figures to be agreed.

VI. On the figures being agreed on the basis of our decision we adjusted the several assessments before us to the following amounts:—

	£
1946-47 ...	2,800
1947-48 ...	583
1948-49 ...	488
1949-50 ...	15,355 less £3,269 capital allowances
1950-51 ...	15,144 less £6,734 capital allowances
	165 balancing charge

VII. The Appellant 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 and sign a Case for the opinion of the Court of Session as the Court of Exchequer in Scotland, which Case we have stated and signed accordingly.

VIII. The question of law for the opinion of the Court is whether for the purposes of the annual allowance in respect of wear and tear Section 59 of the Income Tax Act, 1945, applies to the sale of machinery and plant by the partnership to the Company, having regard to the date of sale and the sale price, and, if so, whether the limit of re-charge in relation to the partnership has been correctly taken as determined by reference to the figure of £8,000.

G. R. Hamilton,
F. N. D. Preston,
} Commissioners for the Special Purposes of the Income Tax Acts.

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

30th April, 1952.

The case came before the First Division of the Court of Session (the Lord President (Cooper) and Lords Carmont and Russell) on 19th and 20th June, 1952, when judgment was reserved. On 25th June, 1952, judgment was given against the Crown, with expenses.

Mr. R. P. Morison, Q.C., and Mr. David Watson appeared as Counsel for the Company, and the Solicitor-General for Scotland (Mr. W. R. Milligan, Q.C.) and Mr. I. H. Shearer for the Crown.

The Lord President (Cooper).—When this case was before the Special Commissioners three live issues arose for decision, viz. (1) whether by reason of the date of the "sale" of machinery and plant by the firm to the limited Company the application of Section 59 of the Income Tax Act, 1945, was

(The Lord President (Cooper).)

excluded; (2) if not, whether on a sound construction of its terms Section 59 (2) applied to the circumstances of this case; and (3) what was the "limit of re-charge" in relation to the firm which sold the machinery and plant to the Company?

All three questions were answered by the Special Commissioners adversely to the Appellants' contentions, and before us they have acquiesced in the adverse answers to questions (1) and (3). It is thus possible to confine attention solely to question (2), the practical significance of which is this that, if the Appellants are right, they will be entitled to compute their wear and tear allowances on the basis of an initial figure of £17,554; and if they are wrong, these allowances will fall to be computed on the basis of a figure of £8,000. Whether they are right or wrong depends on the interpretation to be given to Sub-sections (2) and (3) of Section 59; and this is a matter of no little difficulty because of the inherent complexity of the subject and the intricacy of the scheme to which the draftsman had to give expression. Before examining the language used, I shall endeavour to indicate in brief outline the background against which the Section must be viewed, and the purpose, so far as discoverable, which it was designed to achieve.

The wear and tear allowance is no novelty in Income Tax law, its modern source being Rule 6 of the Rules applicable to Cases I and II of Schedule D; and it is regulated by a mass of decisions, practice, and minor statutory amendments into which it is unnecessary to enter. The explanation of the allowance is doubtless to be found in the fact that it is in the general interest that encouragement should be offered to industrialists to maintain their equipment at a high standard by allowing them a partial relief from Income Tax computed by reference to the depreciation of their plant and machinery. In recent years the encouragement so offered has been successively increased, and a substantial step in advance was taken in the Act of 1945, passed at a time when hostilities were ending and reconstruction was in the air. The effect of that Act was to introduce an elaborate scheme of initial allowances, annual allowances, balancing allowances and balancing charges, referable to capital expenditure not only on machinery and plant but also on industrial buildings, mines, oil wells, agricultural structures and other subjects; and at the same time sundry amendments were effected on the pre-existing law and practice relating to allowances. As the basis of the 1945 scheme of allowances was capital expenditure and as second-hand plant and machinery notoriously commanded values after the war which they would not have possessed in the old days, it is plain that there was a risk that excessive allowances or duplicate allowances might be claimable as a result of what I may describe as simulate sales or transfers from one concern to an associated concern. It was evidently to meet that risk that Section 59 was passed. The side note is

> "Special provisions as to certain sales",

and the "sales" singled out for special treatment are defined by Sub-section (1) as sales where the buyer and seller are not independent persons but the one is under the control of the other, or both are under the control of a third party; or sales the sole or main benefit from which is the obtaining of an allowance. In the terminology of Scots law these cases might be compendiously, though not quite accurately, described as transactions between conjunct and confident persons, and simulate sales. In this case the transfer in question was effected by the simple conversion of a partnership into a limited company, and it is common ground that Sub-section (1) (*a*) applies. It is not said that Sub-section (1) (*b*) applies.

(The Lord President (Cooper).)

The broad effect of the subsequent Sub-sections of Section 59 is to secure that in cases to which Sub-section (1) applies, the nominal purchase consideration shall be disregarded for the purposes of Income Tax and shall be notionally replaced by the market price or (in the case of machinery and plant) by an artificial figure called " the limit of re-charge ". All this seems to me to be highly intelligible as a scheme. It remains to consider whether it has been successfully carried into effect.

Sub-section (2) applies to *all* property covered by a " sale ", but it only applies where the price is other than that which the property would have fetched if sold in the open market: and the direction is that in such a case (i.e. where the transfer is based on either an inflated or a deflated consideration), the market price shall be substituted for the purpose of specified enactments relating to allowances in place of the inflated or deflated price. Once again the underlying idea is sufficiently plain, viz., that no objection is taken to " sales " of the type described in Sub-section (1) if the " price " is not an artificial price but the market price. On general principles it is not easy to see why any objection should be taken to such a transfer, for, if its basis is market price, the relationship of transferor and transferee is *prima facie* irrelevant. Now in this instance Sub-section (2) does not apply, since it is found that the figure of £17,554 taken as the basis of the transfer from the firm to the limited Company was in fact the open market price.

But, so the argument proceeds, Sub-section (2) does apply to the present case with modifications by virtue of the provisions of Sub-section (3), which relates only to one type of property comprised in a " sale ", viz., machinery or plant. The first paragraph of Sub-section (3) denies an initial allowance in all cases to which Sub-section (1) applies, with certain exceptions which may be disregarded. So far as cases under Sub-section (1) (*a*) are concerned, I have failed to discover any clear reason in principle for this prohibition as expressed. It is not plain to me why (assuming the other conditions to be satisfied) an initial allowance should be given in respect of second-hand plant if acquired at the market price from a stranger, but denied if acquired at the same price from a " conjunct and confident person ". The prohibition must just be accepted as a positive statutory rule.

Then comes Sub-section (3) (*b*), the relevant provisions of which are as follows:

> ". . . if the price which the property would have fetched if sold in the open market is greater than the limit of re-charge on the seller,"

and that is this case

> " the last preceding subsection shall have effect as if for the reference to the price which the property would have fetched if sold in the open market there were substituted a reference to the said limit of re-charge ".

At first sight this seems plain enough, but when we turn back to the " last preceding subsection " two related difficulties emerge. In the first place, Sub-section (2) is only applicable

> " where the property is sold at a price other than that which it would have fetched if sold in the open market " ;

and that is not this case. The Appellants therefore maintain that the operative provisions of Sub-section (2) are in terms inapplicable to them and have not been made applicable by anything in Sub-section (3) (*b*).

(The Lord President (Cooper).)

In the second place, the device of legislation by reference adopted in Sub-section (3), if strictly read, will not work. We are told to look in Sub-section (2) for "*the*" reference to

> "the price which the property would have fetched if sold in the open market",

and we find this single reference in the concluding words of Sub-section (2), but not in the opening words which prescribe the condition precedent for the application of the Sub-section.

It was accepted by the Inland Revenue that the draftsmanship was imperfect, and that, if the words were taken in their literal sense, their argument could not succeed. They invited us to take two liberties with the language; (1) to substitute for "the reference" and "a reference" in Sub-section (3) (*b*) the word "references"; and (2) to substitute for

> "price other than that which it would have fetched if sold in the open market"

in Sub-section (2) the words "price other than the price which the property would have fetched if sold in the open market". These may seem relatively slight variations, and I do not doubt that, where an enactment is capable of being read in a sense different from the literal meaning of the words used, the Court may exceptionally prefer the secondary meaning if the literal reading results in

> "manifest absurdity or futility, palpable injustice, or absurd inconvenience or anomaly"

(*Craies on Statute Law* 5th Ed. 82 ff). Is this such a case?

The first observation to be made is that the drafting technique employed in legislation by reference is only too familiar, particularly in the very common section dealing with the application of a United Kingdom statute to Scotland. When in such a case the provision is that a given section shall apply or have effect as if for the reference to ABC there were substituted a reference to XYZ, the invariable procedure is to look in the section for ABC, and to write instead XYZ. I have never seen such a provision which referred to "*the* reference to ABC" when in fact there were several references to ABC, still less a provision which referred to "*the* reference to ABC" when in fact there was one reference to ABC and another to ABD. Exact precision is so manifestly indispensable in prescribing the substitution of one factor in place of another that only a clear conviction as to the intention of the legislature would justify tampering with the statutory formula even in detail.

The Special Commissioners relied with hesitation upon the Interpretation Act to assist them over the first of the hurdles (though only the first) by noting that the singular includes the plural; but I find it quite impossible to accept the view that this rule has any application to the effect of converting "the reference" into "references". The general application of this rule would, I fear, produce chaotic results in many statutes which proceed by way of legislation by reference. This argument was given up by the Inland Revenue.

In the end of the day the question seems to me to turn upon the argument *ab inconvenienti*, and it is here that my chief difficulty arises. I am unable to discover any such inconvenience, palpable injustice, or manifest absurdity in the Appellants' reading of the Section as would justify us in substituting for what Parliament said what we suppose Parliament really

meant. In *Grundt* v. *Great Boulder Gold Mines,* Lord Greene, M.R., said ([1948] Ch. 145, at p. 159):

> ". . . although the absurdity or the non-absurdity of one conclusion as compared with another may be of assistance . . . to the court in choosing between two possible meanings of ambiguous words, it is a doctrine which has to be applied with great care, remembering that judges may be fallible in this question of an absurdity . . . it is a doctrine which must not be relied upon and must not be used to re-write the language in a way different from that in which it was originally framed."

In the present case I venture to doubt whether the language literally read discloses any real ambiguity, and in any event it seems to me to be perfectly possible that the Appellants' reading is in accordance with the true intention of Parliament. It was argued for the Inland Revenue that the acceptance of the Appellants' interpretation might mean that some traders would be able to get a second series of annual allowances on plant and machinery after the persons from whom they had brought it had already received allowances which had reduced the written-down value of the same plant and machinery in their books to nothing. That might happen. But it might not. It is quite possible that the seller might have received no allowances at all. Everything would depend upon how long the previous trader had held the machinery and what allowances he had received. The whole subject of allowances is so technical and complicated that it is nearly impossible to deduce from the Acts the principle on which all the multifarious provisions proceeded or to discover an overriding equity or purpose for every Sub-section. It may well be that Parliament deliberately intended that Sub-section (2) should not under any circumstances apply to cases where the " sale " took place at market prices, and that the intention was that the Sub-section should apply, either *suo proprio vigore* or by virtue of the provisions of Sub-section (3), only in cases of " sales " at an artificially inflated or deflated price. The Inland Revenue can only succeed, and the Special Commissioners only reached their conclusion, by speculating that Parliament intended more than this, and I am not disposed to engage in such speculation. If I am wrong, the error is one for correction by amending legislation.

I would allow the appeal ; answer the question of law by a finding that Section 59 of the Income Tax Act, 1945, does not apply in this case ; and remit the case back to the Commissioners for adjustment of the figures accordingly.

Lord Carmont concurred.

Lord Russell.—I am of the same opinion. I venture to add two sentences. If it were, which it is not, part of the judicial function, in interpreting the effect of obscure and ambiguous language in a taxing statute to guess at the intention of Parliament, I should be inclined to guess that the draftsman of Section 59 has been trying to give effect to the intention for which in this case the Inland Revenue contended. But on a proper construction of the critical words round which the argument addressed to us was centred I am not satisfied that the language used is reasonably capable of being interpreted to the effect found by the Special Commissioners in its application to the circumstances of this case.

The Crown having appealed against the above decision the case came before the House of Lords (Viscount Simon and Lords Reid, Normand, MacDermott and Keith of Avonholm) on 9th and 10th November, 1953,

when judgment was reserved. On 25th January, 1954, judgment was given unanimously against the Crown, with costs, confirming the decision of the Court below.

The Solicitor-General for Scotland (Mr. W. R. Milligan, Q.C.), Sir Reginald Hills and Mr. W. R. Grieve appeared as Counsel for the Crown, and Mr. R. P. Morison, Q.C., and Mr. David Watson, Q.C., for the Company.

Lord Reid.—My Lords, after carrying on the business of wool spinning for many years, Mr. A. B. Wilson in 1944 took his two sons into partnership and brought into the partnership the whole assets of the business at the figures which then appeared in his accounts. The machinery and plant stood in his balance sheet at a written down value of £8,000. On 16th November, 1945, the partners formed the Respondent Company to take over the business, all the shares being allotted to the partners. The Company bought the machinery and plant for £17,554. It has been found by the Special Commissioners that this was the price which they would have fetched if sold in the open market at that date. The question in this case is whether allowances in respect of wear and tear of that machinery and plant from 1946 onwards should be calculated with reference to the sum of £8,000 or the sum of £17,554. It is admitted that before the Income Tax Act, 1945, came into operation the proper basis was the cost to the Company, £17,554.

The Income Tax Act, 1945, contained a new and elaborate scheme for determining allowances: obviously this was designed at least in part to meet the situation at the end of the war when prices had risen steeply and new equipment was scarce. The Act covered other types of equipment besides machinery and plant, and various initial allowances, annual allowances, balancing allowances, and balancing charges were introduced: one difference between machinery and plant and other equipment is that allowances for other equipment are in general based on cost of construction, whereas allowances for machinery and plant are based on its cost to the trader seeking the allowances. In the case of a trader buying secondhand machinery or plant the cost to him might far exceed the original cost of construction. In that case he would get allowances much greater than those available to the trader who sold the plant or machinery to him. It was plain that this might possibly lead to arrangements between traders whereby machinery or plant changed hands in order to get increased allowances at the expense of the Revenue, and Section 59 of the Act prevents this result in certain cases.

Section 59, so far as relevant to this case, is as follows :—

> "(1) The provisions of this section shall have effect in relation to sales of any property where either—
>
> (*a*) the buyer is a body of persons over whom the seller has control, or the seller is a body of persons over whom the buyer has control, or both the seller and the buyer are bodies of persons and some other person has control over both of them; or
>
> (*b*) it appears with respect to the sale or with respect to transactions of which the sale is one, that the sole or main benefit which, apart from the provisions of this section, might have been expected to accrue to the parties or any of them was the obtaining of an allowance or deduction under any of the following enactments, that is to say, any of the provisions of this Act or of Rule 6 or Rule 7 of the Rules applicable to Cases I and II of Schedule D or of section nineteen of the Finance Act, 1941, or of Part IV of the Finance Act, 1944.
>
> References in this subsection to a body of persons include references to a partnership.

(2) Where the property is sold at a price other than that which it would have fetched if sold in the open market, then, subject to the succeeding provisions of this section, the like consequences shall ensue for the purposes of the enactments mentioned in subsection (1) of this section, in their application to the income tax of all persons concerned, as would have ensued if the property had been sold for the price which it would have fetched if sold in the open market.

(3) Where the sale is a sale of machinery or plant—

(*a*) no initial allowance shall be made to the buyer; and

(*b*) subject to the provisions of the next succeeding subsection, if the price which the property would have fetched if sold in the open market is greater than the limit of re-charge on the seller, the last preceding subsection shall have effect as if for the reference to the price which the property would have fetched if sold in the open market there were substituted a reference to the said limit of re-charge:

Provided that this subsection shall not apply in relation to a sale of machinery or plant which has never been used if the business or part of the business of the seller was the manufacture or supply of machinery or plant of that class and the sale was effected in the ordinary course of the seller's business;

Provided also that where the sale is one to which paragraph (*a*) of subsection (1) of this section applies and took place before the appointed day, and the seller acquired the machinery or plant on or after the sixth day of April, nineteen hundred and forty-four, paragraph (*a*) of this subsection shall not apply.

In this subsection the expression "the limit of re-charge" means, in relation to a person who sells machinery or plant—

(i) if he provided that machinery or plant for himself before the appointed day, the actual cost to him of the machinery or plant, including in that actual cost any expenditure in the nature of capital expenditure on machinery or plant by way of renewal, improvement or reinstatement;

(ii) if he provided the machinery or plant for himself on or after the appointed day, the expenditure incurred by him on the provision thereof."

This Section only applies where either there was an ulterior object behind the sale (Sub-section (1) (*b*)) or the buyer and seller were not independent (Sub-section (1) (*a*)). There is no suggestion in this case of any ulterior object but the fact that the partners controlled the Respondent Company which bought from them admittedly brings the case within Sub-section (1) (*a*) and so brings the rest of the Section into operation. Sub-section (4) has no application to this case: the question at issue turns on the proper interpretation of Sub-sections (2) and (3).

Sub-section (2) applies to sales of all kinds of equipment dealt with in the Act, but Sub-section (3) only applies to sales of machinery or plant. The only part of Sub-section (3) which directly affects this case is Sub-section (3) (*b*), which provides that, if the price which the property would have fetched if sold in the open market (in this case £17,554) is greater than the limit of re-charge on the seller (in this case £8,000), Sub-section (2) is to have effect subject to a certain modification set out in the latter part of Sub-section (3) (*b*). In order to discover the meaning of this latter part of Sub-section (3) (*b*) it is necessary to examine closely both the terms of Sub-section (2) and the terms of Sub-section (3) (*b*). I think it helpful to begin by noting the structure of Sub-section (2). It begins by stating a condition which must be satisfied before the Sub-section can have any operative effect —the property must have been sold at a price other than the market price. If that condition is satisfied "then, subject to the succeeding provisions" of the Section, certain consequences are to ensue. That structure, in my view,

(Lord Reid.)

indicates that the initial condition must first be satisfied in every case and that only then are the "succeeding provisions" to be looked at: if they do not apply then the consequences set out in Sub-section (2) itself will follow, but if any of the succeeding provisions apply then the consequences enacted by that provision will apply instead of the consequences enacted in Sub-section (2).

The modification of Sub-section (2) which is directed by Sub-section (3) is that the former Sub-section is to

> "have effect as if for the reference to the price which the property would have fetched if sold in the open market there were substituted a reference to the said limit of re-charge".

I turn to look for the reference to that price in Sub-section (2) and I find at the end of Sub-section (2) a clear reference to that price and at the beginning of Sub-section (2) words which might or might not be interpreted as a reference to that price. Neither the words at the beginning of Sub-section (2) nor the words at the end of it correspond exactly with the words in Sub-section (3). The words in Sub-section (3) are

> "the price which the property would have fetched . . .",

those at the end of Sub-section (2) are

> "the price which it would have fetched . . .",

and the words at the beginning of Sub-section (2) are

> "that which it would have fetched . . .".

But the words "it" and "that" in these contexts plainly represent "the property" and "the price" respectively, and I cannot regard these changes as of any importance. The difficulty about the first reference in Sub-section (2) is of a different character. What is there being denoted is

> "a price other than that which it would have fetched if sold in the open market",

and it is, I think, a nice question whether a statement about a price other than X should be held to be a reference to X. The answer may depend on the context.

In Sub-section (3) the words used are not "as if for any reference to the price", or "as if for references to the price", but are

> "as if for the reference to the price . . ."

in the singular. When the draftsman of this Section intended to refer to "references" in the plural he did so: at the end of Sub-section (1) I find

> "References in this subsection to a body of persons include references to a partnership."

So the change from the plural in Sub-section (1) to the singular in Sub-section (3) (*b*) must be taken to have been deliberate and therefore significant.

It is plain and not disputed that Sub-section (3) (*b*) directs the substitution of the limit of re-charge in one place—in the latter part of Sub-section (2). The question in this case is whether it also directs that substitution in another place—in the initial condition of Sub-section (2). If it does, it is agreed that the application of Sub-section (2), so altered, reduces the sum on which the Respondent Company is entitled to allowances for wear and tear to £8,000 and the appeal succeeds. But if it does not, then, as the price paid by the Company was the price which the machinery and plant would have fetched if sold in the open market and not "a price other than" that price, the condition for the application of Sub-section (2) is not satisfied, the price paid by the Company stands, and the appeal fails. If the opinions which I have already expressed are correct there are two strong indications that Sub-section (3) (*b*) only directs the substitution of the limit of re-charge in one place—in the latter part of Sub-section (2). These are the use of the

singular "the reference" in Sub-section (3) (*b*) and the structure of Sub-section (2). And there is no real difficulty in holding that the phrase

> "a price other than that which it would have fetched if sold in the open market"

is not a reference to

> "the price which the property would have fetched if sold in the open market".

Therefore, simply taking the words which Parliament has used in Section 59 the appeal must fail.

But the Appellants found on more general considerations to show that the Respondent's interpretation leads to results which are quite unreasonable and contrary to the general policy of the Act. I doubt whether Section 59 is sufficiently ambiguous to make it right to take account of such matters, but I need not decide that because I cannot accept this argument on its merits. The argument in what seems to me its most attractive form is this. Sub-section (2) in its unaltered form directs that if property is not sold at the market price consequences shall ensue as if it had been sold at the market price. If the Respondent is right, Sub-section (2) in its altered form will direct that if property is not sold at the market price consequences shall ensue as if it had been sold for the amount of the limit of re-charge. This is an unreasonable provision, and the only reasonable provision would be that if property is not sold at the amount of the limit of re-charge then consequences shall ensue as if it had been sold at that amount. This is the Appellants' interpretation: the words of the Section make it possible to adopt it and it should be adopted. I reject the argument because the result of the Respondent's interpretation does not seem to me to be absurd or wholly inexplicable. When buyer and seller are at arm's length the purchase price which they agree to stands as the basis for allowances and that purchase price will normally be the market price. When buyer and seller are not at arm's length the sale is suspect and Section 59 rejects the agreed purchase price, perhaps because it is likely to be something different from the market price. If that is so, it would not be altogether unreasonable to say that although the sale is of the suspect class, yet if it is in fact made at the market price it shall be treated as a genuine sale. I am far from saying that that was in fact the intention: we are not concerned with intention except in so far as it can be deduced from the words of the Act. The argument I am dealing with is that the altered form of Sub-section (2) as the Respondent would have it is so unreasonable that any possible alternative should be preferred, and it is enough to meet that argument to show that it is not impossible to suppose that it could have been intended.

I therefore move that this appeal should be dismissed.

Lord Normand.—My Lords, before **Lord Simon's** lamented death I had intimated to him that I would concur with an opinion prepared and finally revised by him in this appeal. In these circumstances I am to deliver his opinion as my own. I shall thus have the privilege of preserving his judgment on one of the last Scottish appeals heard by him. Before I read it I may be allowed to associate myself with the words of my noble and learned friend on the Woolsack about Lord Simon. It is indeed true that Scottish lawyers share with their English brethren the grievous sense of loss that his death has brought to all of us.

Here, then, is his opinion which I adopt as my own.

(Lord Normand.)

The Income Tax Act, 1945, provided for a series of "allowances" which could be claimed from the Revenue authorities and enjoyed by taxpayers owning certain property (including machinery and plant) used in their business. These provisions were obviously intended to assist or give encouragement to trade after the war, and came into force on an "appointed day" which was 6th April, 1946. These allowances were not deductions to arrive at assessable income, such as could be subtracted from gross income, but were treated separately and operated to reduce the taxpayer's liability to tax until the relief they gave from tax on the allowances was completely enjoyed. Thus, if assessable income in a given tax year was £5,000 and the allowances amounted to £2,000, Income Tax fell to be paid on £3,000. But if assessable income for the year was less than £2,000, while there would be no Income Tax to pay in that year, the balance of the allowance remained available to be used to reduce tax in a future year.

The statute provides for "initial allowances", "annual allowances", "balancing allowances" and "balancing charges", the last named operating to increase the total tax due above the tax on assessable income. This might arise, for example, if the value of second-hand plant rose and it was sold at a figure above the price paid for it when it was new, or above the price to which it had been written down by wear and tear allowances made by the Revenue authorities for the purposes of Income Tax. In such a case the sum total of such allowances would manifestly be more than was justified. To take figures: if an item of plant cost £1,000 and sufficient annual allowances for depreciation had been given by the tax authorities to reduce the balance of cost to nil, and if the plant were then sold at a figure equal to or in excess of its original cost, the seller would have to bear a "balancing charge" which would result in his paying tax on the £1,000. If, however, the allowances had only amounted in all to £600, the balancing charge would be £600 and tax would be borne on this figure.

The question of law to be decided in the present appeal arises upon a Case stated by the Special Commissioners sitting in Edinburgh. It is a question of construction of Section 59 of the Act, Sub-section (3) (*b*)—a question easy to state, but involving a close reading of the words to answer. The appeal is against the Interlocutor of the Court of Session which reversed the decision of the Special Commissioners in favour of the Crown.

Section 59, so far as relevant, runs as follows:—

"(1) The provisions of this section shall have effect in relation to sales of any property where either—

(*a*) the buyer is a body of persons over whom the seller has control, or the seller is a body of persons over whom the buyer has control, or both the seller and the buyer are bodies of persons and some other person has control over both of them; or

(*b*) it appears with respect to the sale or with respect to transactions of which the sale is one, that the sole or main benefit which, apart from the provisions of this section, might have been expected to accrue to the parties or any of them was the obtaining of an allowance or deduction under any of the following enactments, that is to say, any of the provisions of this Act or of Rule 6 or Rule 7 of the Rules applicable to Cases I and II of Schedule D or of section nineteen of the Finance Act, 1941, or of Part IV of the Finance Act, 1944.

References in this subsection to a body of persons include references to a partnership.

(2) Where the property is sold at a price other than that which it would have fetched if sold in the open market, then, subject to the succeeding provisions

of this section, the like consequences shall ensue for the purposes of the enactments mentioned in subsection (1) of this section, in their application to the income tax of all persons concerned, as would have ensued if the property had been sold for the price which it would have fetched if sold in the open market.

(3) Where the sale is a sale of machinery or plant—

(*a*) no initial allowance shall be made to the buyer ; and

(*b*) subject to the provisions of the next succeeding subsection, if the price which the property would have fetched if sold in the open market is greater than the limit of re-charge on the seller, the last preceding subsection shall have effect as if for the reference to the price which the property would have fetched if sold in the open market there were substituted a reference to the said limit of re-charge:

Provided that this subsection shall not apply in relation to a sale of machinery or plant which has never been used if the business or part of the business of the seller was the manufacture or supply of machinery or plant of that class and the sale was effected in the ordinary course of the seller's business ;

Provided also that where the sale is one to which paragraph (*a*) of subtion (1) of this section applies and took place before the appointed day, and the seller acquired the machinery or plant on or after the sixth day of April, nineteen hundred and forty-four, paragraph (*a*) of this subsection shall not apply.

In this subsection the expression 'the limit of re-charge' means, in relation to a person who sells machinery or plant—

(i) if he provided that machinery or plant for himself before the appointed day, the actual cost to him of the machinery or plant, including in that actual cost any expenditure in the nature of capital expenditure on machinery or plant by way of renewal, improvement or reinstatement;

(ii) if he provided the machinery or plant for himself on or after the appointed day, the expenditure incurred by him on the provision thereof."

(4) [not relevant].

(5) As respects Rules 6 and 7 of the Rules applicable to Cases I and II of Schedule D, the provisions of this section shall have effect as respects tax for the year of assessment in which the appointed day falls and any subsequent year of assessment."

The precise question is as to the proper interpretation and application of the words in Sub-section (3) (*b*).

The facts which give rise to this question are as follows.

For some thirty years up to 15th November, 1944, the business now carried on by the Respondent Company had been conducted by Mr. Alexander B. Wilson as sole proprietor, trading as Alexander Wilson and Co. On 16th November, 1944, Mr. Alexander Wilson took his two sons into partnership, himself taking a one-half share and each son taking a one-quarter share in the profits. Mr. Alexander Wilson brought into the partnership firm on 16th November, 1944, the whole assets of the business, including the machinery and plant then belonging to him which had been acquired by him from time to time in the course of his business. These assets were taken into the accounts of the partnership firm at the figures at which they appeared in the accounts of Mr. Alexander Wilson immediately before the partnership firm acquired them. The aggregate figure for these assets was £28,764 15*s.* 8*d.*

At 15th November, 1944, in the balance sheet of Mr. Alexander Wilson's business, the machinery and plant appeared at a written down figure of £8,000, and this formed a starting figure in the firm's books for machinery and plant for the partnership year commencing on 16th November, 1944.

(Lord Normand.)

Following the transfer of Mr. Alexander Wilson's business to the partnership, application was made under Section 32 of the Finance Act, 1926, requiring that the tax payable for all years of assessment should be computed as if the trade carried on by Mr. Alexander Wilson had been discontinued at 16th November, 1944, and a new trade had then been set up or commenced. The assessments on Mr. Alexander Wilson down to 15th November, 1944, and those on the partnership from 16th November, 1944, were respectively dealt with under the " cessation " and " new business " provisions of the Income Tax Acts.

On 16th November, 1945, the business of the partnership was transferred to the Respondent Company, which had been incorporated for this purpose on 4th October, 1945 ; the whole of the issued shares of the Company being allotted to the former partners in the proportion of 50 per cent. to Mr. Alexander Wilson and 25 per cent. to each of his sons. The assets of the partnership as at 16th November, 1945, were bought by the Respondent Company in accordance with an agreement of sale, under which the price paid for machinery and plant was £17,554. This was the price which the machinery and plant would have fetched if sold in the open market on that date. The buyer, i.e., the Respondent Company, was a body of persons over whom the seller, i.e., the partnership, had control, and therefore Section 59 of the Income Tax Act, 1945, could apply in relation to the sale. The actual question, however, now to be decided between the parties is whether Sub-sections (2) and (3) of Section 59 can, on a sound construction, be held to apply to the circumstances of this case. The Commissioners held that they could so apply. The Court of Session held that they could not. If the Commissioners' view were right, the annual allowance would be calculated on a figure of £8,000: if the Court of Session is right, the calculation would be on a figure of £17,554.

It will be seen that the expression " the limit of re-charge " is defined as meaning in relation to a person who sells machinery or plant, if he provided it for himself before the appointed day (which is this case), the actual cost to him of the machinery and plant plus expenditure upon it in the nature of capital expenditure.

The Revenue authorities contend that the limit of re-charge was £8,000, but even so the application of Sub-section (3) (*b*) to Sub-section (2) is a question of some nicety.

Sub-section (3) (*b*) directs us to look at Sub-section (2) to find in it

> " the reference to the price which the property would have fetched if sold in the open market "

and to substitute a reference to the limit of re-charge. Where, then, do we find in Sub-section (2) a reference to the price which the property would have fetched if sold in the open market? There is plainly a reference to this price in the concluding words of Sub-section (2), but the Solicitor-General contends that there is also a reference to this price in the opening words of Sub-section (2) and that the phrase in that Sub-section,

> " Where the property is sold at a price other than that which it would have fetched if sold in the open market "

is such a reference. This amounts to saying that a reference to a figure which is greater or less than X is a reference to X. I do not think that this is so. Moreover, the direction in (3) (*b*) is to search for " the reference " to the open market price, which is to be found in the previous Sub-section, and the inference from the language is that this is to be found in one place

only in Sub-section (2) and not in two, for Sub-section (3) (*b*) speaks of "the reference", not "any reference" or "references". At the end of Sub-section (1), there is a contrasting phrase

> "References in this subsection to a body of persons include references to a partnership",

and in Sub-section (1) (*a*) there are no less than three references to "a body of persons".

There is a further consideration. When the structure of Sub-sections (2) and (3) is considered, it is to be observed that Sub-section (2) lays down the condition that it applies

> "Where the property is sold at a price other than that which it would have fetched if sold in the open market",

and it is only if this condition, which I will call condition A, is satisfied that Sub-section (2) has any application at all. "Property" is not limited to plant and machinery, but would include buildings. Sub-section (3), on the other hand, is limited to the case where the sale is a sale of one kind of property, namely, "machinery or plant", and Sub-section (3) (*b*) can only have an application in this case. Moreover, Sub-section (3) (*b*) only applies if the price which the machinery or plant would have fetched if sold in the open market is greater than the limit of re-charge on the seller. This I call condition B. It seems to me that the proper application of (3) (*b*) is therefore limited to the case where both condition A and condition B are satisfied, and Sub-section (2) cannot have effect unless this is so. In the present case condition B is satisfied, but condition A is not.

For the above reasons, I have come to the conclusion that the contention of the Crown fails and that the view taken by the Court of Session is right.

The statutory provisions under consideration, including the awkward and obscure modification of what is in Sub-section (2) by what is in Sub-section (3) (*b*) are copied into the consolidating Income Tax Act, 1952, without alteration (Section 327 and Fourteenth Schedule). And so the problem of interpretation remains. But your Lordships are not engaged in framing Income Tax proposals. That is the task of the legislature. We, as a judicial tribunal, are concerned only with the proper interpretation and application of the language which Parliament has employed. If the result is unsatisfactory, it is for the legislature to correct it.

At that point the judgment prepared by Lord Simon ends. I add only that I have had the advantage of reading the Opinions of the other learned and noble Lords who took part in the hearing of the appeal, and that I agree with their reasoning as well as with their conclusion that the appeal fails.

Lord MacDermott.—My Lords, the question for determination is whether Section 59 of the Income Tax Act, 1945, applies to the computation of the wear and tear allowances of the Respondent Company in respect of certain plant and machinery for the fiscal years 1946–47 to 1950–51. This turns entirely upon the true construction of Sub-sections (2) and (3) of that Section which, omitting what is not material, read thus:

> "(2) Where the property is sold at a price other than that which it would have fetched if sold in the open market, then, subject to the succeeding provisions of this section, the like consequences shall ensue for the purposes of the enactments mentioned in subsection (1) of this section (other than the said section nineteen) in their application to the income tax of all persons concerned, as would have ensued if the property had been sold for the price which it would have fetched if sold in the open market.

(Lord MacDermott.)

(3) Where the sale is a sale of machinery or plant—

. . . . . .

(*b*) . . . if the price which the property would have fetched if sold in the open market is greater than the limit of re-charge on the seller, the last preceding subsection shall have effect as if for the reference to the price which the property would have fetched if sold in the open market there were substituted a reference to the said limit of re-charge ".

On the facts as found, the sale relevant to this appeal was the sale to the Respondent Company of machinery and plant, the price paid therefor was £17,554, and this was the price which the said machinery and plant would have fetched if sold in the open market. The " limit of re-charge " mentioned in Sub-section (3) was, in the circumstances and according to the statutory definition of the term, the sum of £8,000, that being the actual cost to the sellers of the machinery and plant sold.

In the course of the debate three different ways of reading Sub-sections (2) and (3) of Section 59 were canvassed before your Lordships in relation to a sale of machinery and plant in which (as in this case) the open market price exceeds the limit of re-charge and the condition of paragraph (*b*) of Sub-section (3) is therefore satisfied. For brevity I shall refer hereafter to these facts—that is to say, the fact that what was sold was machinery and plant and the fact that the open market price was more than the limit of re-charge—as " the relevant facts."

The substance and effect of these three constructions may be stated as follows:—

Construction I.—On the relevant facts, paragraph (*b*) of Sub-section (3) directs the application of Sub-section (2) after modification at two points, so that (i) its opening and conditional words are changed from

" where the property is sold at a price other than that which it would have fetched if sold in the open market "

to " where the property is sold at a price other than the limit of re-charge ", and (ii) its concluding and operative words are changed from

" the like consequences shall ensue . . . as would have ensued if the property had been sold for the price which it would have fetched if sold in the open market "

to " the like consequences shall ensue . . . as would have ensued if the property had been sold for the limit of re-charge ".

This construction was placed by the Appellants in the forefront of their case. If it is sound, the appeal succeeds, as Section 59 then applies to the annual wear and tear allowance of the Respondent Company, with £8,000, the limit of re-charge, and not £17,554, the sale price, as the amount by reference to which such allowance should be calculated.

Construction II.—On the relevant facts, paragraph (*b*) of Sub-section (3) directs the application of Sub-section (2) after modification at one point only, namely, by substituting a reference to the limit of re-charge for the reference to the open market price in the concluding and operative part of that Sub-section. This is the same as the second of the modifications required by construction I, the difference between these two constructions being that in II the opening and conditional words of Sub-section (2) remain unaltered.

This construction was submitted on behalf of the Respondent Company and was upheld by the First Division. If it is sound, the appeal fails and Section 59 is inapplicable, as the facts then take the case outside the opening words of Sub-section (2).

Construction III.—This construction was advanced by the Appellants as an alternative to construction I. It accepted the view that the only modification worked by Sub-section (3) (*b*) in the text of Sub-section (2) was that of construction II, namely, the substitution of the limit of re-charge for the open market price in the operative and concluding part of Sub-section (2); but it added that, on the relevant facts, the words

> " the last preceding subsection shall have effect ",

in Sub-section (3) (*b*), were mandatory and amounted to a direction that Sub-section (2) as so modified was to become operative regardless of the terms of its condition. On this interpretation the whole emphasis is placed on the expression " shall have effect ". The relevant facts having occurred, the operative part of Sub-section (2) is to come into force with a reference to the limit of re-charge inserted in lieu of the reference to the open market price. If this construction is sound, the appeal succeeds and £8,000 becomes the material " starting " figure instead of £17,554.

My Lords, these three constructions appear to cover the possibilities of the situation and it is now necessary to choose between them. I must confess that in this task I find no guidance in the general policy or intendment of the Income Tax Acts or in the scheme of the Act of 1945. That is not to say that guidance of this kind is never available in this particular legislative field. For example, if, of two possible constructions, one would impose a tax on income and the other a tax on capital, the golden rule that Income Tax is a tax upon income and not upon capital would supply a solution. But the complicated subject of allowances for wear and tear does not seem to present any certain aid of this nature, at all events as respects the present question. Here I find no current of legislative purpose capable of carrying the issue one way or the other. Nor is any one of the possible interpretations to be preferred on the ground that it, unlike the others, avoids some manifest absurdity, some palpable injustice, or some gross anomaly. Speculation is possible but it leads nowhere. At the end of the day there remains, so far as I can discern, no good reason for asserting that any of the constructions enumerated would conflict with the general scheme and purpose of the legislation. In these circumstances all one can do is to take the statute and see what it says according to the ordinary and everyday meaning of the language used.

Proceeding thus, my choice falls at once on construction II. More than the others it seems to me to reflect the natural meaning of Sub-section (3) (*b*). Given the relevant facts, what that paragraph says is that Sub-section (2) shall have effect as if for " the reference " to the open market price there were substituted

> " a reference to the said limit of re-charge ".

Now that, with its use of " the reference " in the singular, appears to me to be an apt way of altering the concluding and operative part of Sub-section (2) but not of altering both that part and the opening and conditional part as well. And that aptness is, I think, emphasised by the way in which Sub-section (2) is drafted, for the expression

> " subject to the succeeding provisions of this section "

which occurs therein qualifies only the concluding and operative part, and suggests that it, rather than the opening part, may be subject to later modification.

(Lord MacDermott.)

Construction I, on the other hand, involves applying "the reference" to the open market price to both parts of Sub-section (2) and reading the words in the opening part of that Sub-section

> "at a price other than that which it would have fetched if sold in the open market"

as including a reference to the open market price. "Reference" is a comprehensive expression, and modifying enactments which operate, not by substituting one set of words for another set of words, but by substituting a reference to one subject-matter for a reference to another subject-matter, will not necessarily be ineffectual merely because of some descriptive variation, as a pronoun for a noun, the plural for the singular, or such as may be entailed by the use of shortened forms. I do not, therefore, say that construction I is bound to fail because the word "reference" is used in the singular in Sub-section (3) (*b*) or because the subject-matter of "open market price" cannot be spelt out of the wording of the opening part of Sub-section (2); what I hold is that, when every aspect is considered, this construction is markedly less apt and rests less easily on the language of the statute than construction II. Moreover, the position of the words

> "subject to the succeeding provisions of this section"

in Sub-section (2) points as much against construction I as it points in favour of construction II. If construction I had been the intention of the legislature, I cannot but think that these words would have been found at the very beginning of that Sub-section.

Construction III must, in my opinion, also be rejected, though on somewhat different grounds. The words "shall have effect" do not appear to have a constant meaning when used in relation to statutory provisions. They may signify that the provision to which they relate is to apply and become operative, or they may be used to signify that if and when it becomes applicable it is to operate in a particular way. When used, as they are in Sub-section (3) (*b*), with respect to a conditional enactment, the latter seems to be the appropriate meaning. To read these words in that Sub-section according to construction III would be to ignore the condition in Sub-section (2) altogether. I cannot believe that such a drastic treatment of the text was ever intended. To hold that it was would be to disregard completely a condition depending on the facts of the actual sale and to substitute a condition which related only to open market value and the limit of re-charge and had nothing to say to the price obtained on the sale with which Section 59 is primarily concerned.

For these reasons I am of opinion that the First Division was right and that the appeal should be dismissed.

Lord Keith of Avonholm.—My Lords, the Respondents are entitled to allowances in respect of machinery and plant used by them in their business of wool spinners, under Rule 6, as amended by subsequent legislation, of the Rules applicable to Cases I and II of Schedule D of the Income Tax Act, 1918. The question raised in this appeal by the Revenue is what is the figure on which these allowances are to be calculated. This depends on whether or not Section 59 of the Income Tax Act, 1945, in some of its provisions, applies to the circumstances in which the machinery and plant were acquired by the Respondents.

(Lord Keith of Avonholm.)

Section 59 of the Income Tax Act, 1945, is a Section hedged round by conditions and qualifications. To bring the Section into operation at all it is necessary that either Sub-section (1) (*a*) or Sub-section (1) (*b*) shall apply to the transaction in question here. It is common ground that Sub-section (1) (*a*) does apply. We are entitled thus to look at Sub-sections (2) and (3) of the Section and see whether these Sub-sections are applicable in the circumstances of the present case.

The material facts are that on 16th November, 1945, the Respondents in the present appeal (whom I shall call "the Company") took over from a partnership the business of wool spinners carried on by the partnership and the whole assets of the business. The assets included machinery and plant for which the price of £17,554 was paid and this price, it is found,

> "was the price which the machinery and plant would have fetched if sold in the open market on 16th November, 1945".

The Income Tax Act, 1945, did not come into operation until the appointed day, which was later fixed as 6th April, 1946, and the present case is concerned with what are the proper allowances to be made to the Company in respect of wear and tear of machinery and plant subsequent to the Act of 1945 coming into operation. The Company says that the wear and tear allowances should be made on a cost to it of £17,554, paid for the machinery and plant. The Revenue say that these allowances should be made on a figure of £8,000 which they say was the cost to the seller (the partnership) of the machinery and plant at the date of the sale and which according to them becomes "the limit of re-charge" as that phrase is defined in Sub-section (3) of Section 59 of the Income Tax Act, 1945. The exact significance of this phrase will become clearer when I come to refer more particularly to the language of Sub-section (3).

To succeed in their appeal the Revenue must show that Sub-section (3) of Section 59 can in some way be invoked as applicable to the circumstances of this case. It is conceded that Sub-section (2) taken by itself cannot assist them. To make the position clear I quote Sub-section (2):

> "(2) Where the property is sold at a price other than that which it would have fetched if sold in the open market, then, subject to the succeeding provisions of this section, the like consequences shall ensue for the purposes of the enactments mentioned in subsection (1) of this section, in their application to the income tax of all persons concerned, as would have ensued if the property had been sold for the price which it would have fetched if sold in the open market."

My Lords, I said at the outset that the provisions of Section 59 were hedged round with conditions. The condition in Sub-section (2) is that the property is sold at a price other than that which it would have fetched if sold in the open market. That is not this case, for it is agreed that the machinery and plant were sold at the open market price. Accordingly it is recognised that Sub-section (2) by itself does not help the Revenue's case. But it is said the Sub-section is substantially modified and, as so modified, fits the present case by invocation of the language of Sub-section (3) (*b*). I quote Sub-section (3) (*b*) so far as relevant:

> "(3) Where the sale is a sale of machinery or plant—
>
> . . . . . .
>
> (*b*) subject to the provisions of the next succeeding subsection, if the price which the property would have fetched if sold in the open market is greater than the limit of re-charge on the seller, the last preceding

(Lord Keith of Avonholm.)

> subsection shall have effect as if for the reference to the price which the property would have fetched if sold in the open market there were substituted a reference to the said limit of re-charge:
>
> . . . . . .
>
> In this subsection the expression 'the limit of re-charge' means in relation to a person who sells machinery or plant—
>
> (i) if he provided that machinery or plant for himself before the appointed day, the actual cost to him of the machinery or plant, including in that actual cost any expenditure in the nature of capital expenditure on machinery or plant by way of renewal, improvement or reinstatement".

The learned Solicitor-General submitted two separate and, I think, mutually exclusive arguments as to the effect of this provision. First, by a process of substitution of words from Sub-section (3) (*b*) he sought to read Sub-section (2) as if it commenced "Where the property is sold at a price other than the limit of re-charge", etc. Starting thus, he would be well on the road to invoking Sub-section (2) in his favour, because if £8,000 is the limit of re-charge, there is no doubt that the machinery and plant were sold to the Company at a price greater than the limit of re-charge. But I have come to reject this contention because, in my opinion, the opening words of Sub-section (2) are not a reference to "the price which the property would have fetched if sold in the open market" but the very opposite, a reference to a price which the property would not have fetched in the open market. There is a reference in the concluding words of Sub-section (2) to the price which the property would have fetched if sold in the open market, but if "limit of re-charge" is substituted here, it does not aid the Revenue, for the whole Sub-section is still qualified by the opening words of the Sub-section.

The second contention for the Revenue is more subtle and, I think, more difficult. Their first contention involved taking Sub-section (2) and modifying it by the substitution of words taken from Sub-section (3) (*b*). Their second contention proceeds rather on taking Sub-section (3) (*b*) and reading into it words taken from Sub-section (2). It is to be noticed that Sub-section (3) (*b*) is again dependent on a condition, namely,

> "if the price which the property would have fetched if sold in the open market is greater than the limit of re-charge on the seller".

This, the Revenue say, is the case here. The sum of £17,554, the open market price, is greater than the sum of £8,000, the limit of re-charge. They then say this is a new and independent condition which takes the place of the condition precedent with which Sub-section (2) opens. They accordingly ignore this condition in Sub-section (2) and on a combined reading of Sub-section (2) and Sub-section (3) (*b*) read the statutory provision as if it ran as follows:—

> "(3) Where the sale is a sale of machinery or plant—
>
> . . . . . .
>
> (*b*) subject to the provisions of the next succeeding subsection, if the price which the property would have fetched if sold in the open market is greater than the limit of re-charge on the seller, the like consequences shall ensue for the purposes of the enactments mentioned in subsection (1) of this section in their application to the income tax of all persons concerned, as would have ensued if the property had been sold for the limit of re-charge."

(Lord Keith of Avonholm.)

My Lords, this reading is attractive, but it takes certain liberties in the matter of re-writing the terms of the statutory provisions. It assumes, for instance, that the opening condition of Sub-section (2) falls to be deleted, or at least ignored. But that is not to give Sub-section (2) effect with the substitution merely of limit of re-charge for open market price. It may be that the legislature intended both the opening condition of Sub-section (2) and the condition precedent of Sub-section (3) (*b*) to operate. To illustrate: it might be that machinery or plant was sold at a price greater or less than the open market price. This would satisfy the condition in Sub-section (2). The open market price then becomes the datum line for the purposes of Sub-section (2). But assume that the open market price is greater than the limit of re-charge on the seller. Under Sub-section (3) (*b*) this introduces a new datum line namely, the limit of re-charge. To say, however, that, if the machinery or plant is in fact sold at the open market price and this is greater than the limit of re-charge, the limit of re-charge is to be substituted for the open market price seems to me to be pure speculation as to the intention of the legislature. The statute nowhere says so. The words in Sub-section (3) (*b*)

> "if the price which the property would have fetched if sold in the open market"

are, I think, important. They seem to be a reference back to the concluding words of Sub-section (2) and these, in turn, are dependent on the opening words of the Sub-section:

> "Where the property is sold at a price other than that which it would have fetched if sold in the open market".

My Lords, I think I have said enough to show that in any event the meaning of this statutory provision is surrounded with much doubt and confusion. It is impossible, in my opinion, to say that there is any of the relevant and material provisions of Section 59 which clearly and unambiguously operates to deprive the taxpayer, in the circumstances of this case, of the right to have his wear and tear allowances based, as would normally be done, on the cost to him of his machinery and plant. That is in this case on the sum of £17,554. I draw no distinction between a statutory provision invoked as a taxing provision and a statutory provision said to deprive, or restrict, the taxpayer in the matter of some established taxation allowance or relief. In each case the impact of the statute on the taxpayer must be clear on a fair reading of the statute. The language of Rowlatt, J., in *Cape Brandy Syndicate* v. *Commissioners of Inland Revenue*, [1921] 1 K.B. 64, at page 71(1), as approved by my late noble and learned friend Lord Simon in *Canadian Eagle Oil Co., Ltd.* v. *The King*, [1946] A.C. 119, at page 140(2), is, in my opinion, here very apt. I would only say that when Rowlatt, J., says,

> "There is no room for any intendment",

I think he means there is no room for any presumption of intention and I would go no further than this. It may often be the case that from a reading of the language of a statute, or a particular provision of a statute, it is not difficult to extract the policy or intention of the legislature. But that is not so in this case. I agree that the appeal should be dismissed.

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(1) 12 T.C. 358, at p. 366. (2) 27 T.C. 205, at p. 248.

Questions Put:

That the Interlocutor appealed from be reversed.

The Not Contents have it.

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

The Contents have it.

[Solicitors:—Solicitor of Inland Revenue (England) for Solicitor of Inland Revenue (Scotland); Peacock and Goddard for Tho. & J. W. Barty and Fraser and Stodart & Ballingall, W.S.]