A HIGH COURT OF JUSTICE (CHANCERY DIVISION)—14TH, 15TH AND 16TH DECEMBER 1971

COURT OF APPEAL—14TH, 17TH AND 18TH JULY AND 17TH OCTOBER 1972

B HOUSE OF LORDS—22ND, 26TH, 27TH AND 28TH NOVEMBER 1973 AND 12TH FEBRUARY 1974

Mills *v.* Commissioners of Inland Revenue[1]

Surtax—Settlement—Arrangement—Settlor—Fees for actress's services C *paid to company but enuring for her benefit—Actress aged* 14 *when arrangements made—Settlement with more than one settlor—From whom income originates—Income Tax Act* 1952 (15 & 16 *Geo.* 6 & 1 *Eliz.* 2, *c.* 10), *ss.* 405, 409 *and* 411.

The Appellant was an actress. In 1960, *when she was* 14, *a film production company was anxious to enter into a contract with her. Consequently her father formed a company ("S Ltd."), and on* 18*th May* 1960 *he settled the shares in it* D *on trust for her absolutely at* 25. *On the same day the Appellant entered into a service agreement with S Ltd. to render her exclusive services as an artiste to it for five years for a salary of* £400 *a year. In* 1961 *an agreement was made between S Ltd., the film company and the Appellant whereby S Ltd. undertook to make the Appellant's services as an actress available to the film company for five years in return for payments to be made to S Ltd. ranging from* $30,000 *in the first year* E *to* $75,000 *in the fifth year. The bulk of S Ltd.'s profits was paid by way of dividend to the trustees of the settlement. None of this income was distributed by the trustees.*

When the arrangements were made the Appellant knew that her father was making arrangements with regard to her possibly considerable earnings which would be for her ultimate benefit, and she signed the necessary documents without F *reading them. It was not contended on her behalf that the service agreement was therefore void or if voidable should be avoided.*

The Appellant was assessed to surtax for the years 1962–63 *to* 1964–65 *on the footing that the undistributed income of the trustees fell to be treated as her income under s.* 405, *Income Tax Act* 1952. *On appeal, it was contended for the Appellant that there was only one settlement to which s.* 405 *was applicable,* G *namely, that executed by her father on* 18*th May* 1960, *in relation to which he alone was the settlor; alternatively, that if the incorporation of S Ltd. and the execution of the said settlement and the service agreement taken together constituted a "settlement", her father alone was the settlor in relation thereto; that even if she was also a settlor, the income originated, within s.* 409, *from her father, who settled the shares and made the arrangements; and that on neither basis had* H *she provided funds for the settlement. For the Crown it was contended that the formation of S Ltd., the execution of the settlement by the Appellant's father and the execution of the service agreement constituted an "arrangement", and therefore a "settlement", in relation to which she was a "settlor"*

(1) Reported (Ch.D.) [1972] 1 W.L.R. 473; [1972] 2 All E.R. 86; 116 S.J. 297; (C.A.) [1973] Ch. 225; [1972] 3 W.L.R. 980; [1972] 3 All E.R. 977; [1973] S.T.C. 1; 116 S.J. 802; (H.L.) [1974] 2 W.L.R. 325; [1974] 1 All E.R. 722; [1974] S.T.C. 130; 118 S.J. 205.

within the meaning of s. 411(2) *as having provided funds directly or indirectly for the purpose thereof; that for the same reason she was a "settlor" in relation to the settlement of* 18*th May* 1960; *that it was not material that her father might also be a settlor; and that, since she had an interest in the undistributed income arising under the settlement (whether simple or composite), it should be treated as her income. The Special Commissioners held that there was an "arrangement" constituting a "settlement" in relation to which the Appellant was a settlor as having provided funds for the purpose thereof, and confirmed the assessments.*

The Court of Appeal (Orr L.J. dissenting) held that since when the settlement (whether simple or composite) was made the Appellant had not reached the legal age of discretion, and she was not capable of understanding the documents, she had not entered into it nor provided funds for the purposes thereof.

Held, *in the House of Lords,* (1) *that the Special Commissioners were correct in holding that the incorporation of S Ltd., the issue of the shares therein, the making of the settlement of* 18*th May* 1960 *and the making of the service agreement was an arrangement constituting a settlement within s.* 411(2), *Income Tax Act* 1952, *but it was not clear why they did not also include the tripartite agreement between S Ltd., the film company and the Appellant;* (2) *that the Appellant had the capacity in law to enter into the service agreement;* (3) *that she was a settlor both* (a) *because by entering into the service agreement she had entered into the arrangement constituting a settlement, and* (b) *because by entering into the service and tripartite agreements she had indirectly provided funds for the trust, since the source of the dividends paid by S Ltd. was money paid for her work which but for the arrangement would have been received by her, and there was consequently a strong inference that she had provided those funds for the purpose of the settlement, which could only be rebutted by evidence (of which there was none) establishing that they had been provided for another purpose;* (4) *that under s.* 409 *the position in relation to the Appellant had to be considered as if she were the only settlor, and it was unnecessary to consider what the position would have been if the other settlor, her father, had been affected by s.* 405.

Copeman *v.* Coleman 22 T.C. 594; [1939] 2 K.B. 484; Commissioners of Inland Revenue *v.* Prince-Smith 25 T.C. 84; [1943] 1 All E.R. 434; *and* Crossland *v.* Hawkins 39 T.C. 493; [1961] Ch. 537 *approved.*

CASE

Stated under the Taxes Management Act 1970, s. 56, by the Commissioners for the Special Purposes of the Income Tax Acts for the opinion of the High Court of Justice.

1. At a meeting of the Commissioners for the Special Purposes of the Income Tax Acts held on 29th and 30th June 1970 Miss Hayley C. R. V. Mills (hereinafter called "the Appellant") appealed against the following assessments to surtax:

Year	*Amount of assessment*
1962–63	£42,161 (main)
1963–64	£14,403 (main)
1964–65	£50,034 (further)

2. Shortly stated, the questions for our decision were:

(*a*) whether the formation of Sussex Productions Ltd. (hereinafter called "the company") on 18th February 1960, the execution on 18th May 1960 of an agreement between the Appellant and the company (hereinafter called "the agreement for service") and the making of a deed of settlement on the same date by the Appellant's father (hereinafter called "the settlement") together

constituted an arrangement which is a settlement of which the Appellant is deemed to be the settlor within the meaning of s. 411(2), Income Tax Act 1952; and

(*b*) whether under the provisions of s. 405, Income Tax Act 1952, any undistributed income of the settlement fell to be treated as the Appellant's income and was thus assessable to surtax on her.

3. The following witnesses gave evidence before us:

(*a*) the Appellant;

(*b*) Mr. L. E. W. Mills C.B.E., the father of the Appellant (hereinafter referred to as "Mr. Mills");

(*c*) Mr. A. B. McFarlane, a retired bank manager and a trustee of the settlement;

(*d*) Mr. J. A. Don Fox, a chartered accountant, who specialised in accounting matters relating to members of the entertainment industry and acted as accountant to the Appellant from 1964.

4. The following agreed documents were admitted before us:

(1) Memorandum and articles of association of the company.

(2) The deed of settlement dated 18th May 1960.

(3) The agreement for service of the same date.

(4) Minutes of the first board meeting of the company held on the same date.

(5) Letter dated 14th June 1960 from Walt Disney Productions Ltd. to Messrs. Langton & Passmore.

(6) Agreement dated 13th January 1961 between Walt Disney Productions Ltd., the company and the Appellant.

(7) Supplemental agreement for service dated 17th August 1965 between the company and the Appellant.

(8) A bundle of correspondence.

(9) Summaries of the profit and loss accounts of the company and of the income tax returns of the trustees of the settlement.

Copies of such of the above as are not annexed hereto as exhibits are available for inspection by the Court if required.

5. As a result of the evidence, both oral and documentary, adduced before us we find the following facts proved or admitted:

(*a*) The Appellant is the daughter of Mr. Mills, who is well known as an actor in films under the name of John Mills. In 1958 Mr. Mills acted in a film called "Tiger Bay", in which, at the suggestion of the director of the film, a part was taken by the Appellant for payment of £100 per week expenses. She was then a schoolgirl aged twelve years.

(*b*) Following this Mr. Mills was approached by a Mr. Walter Disney to enquire if the Appellant would act in a film to be made in America called "Pollyanna". The Appellant acted in this film and was paid a weekly amount for expenses. In addition, a sum of money was given by the maker of the film to a children's charity.

(*c*) The expenses paid to the Appellant for her parts in "Tiger Bay" and "Pollyanna" were placed by Mr. Mills in a bank account in his name. The balance in this account was transferred to the Appellant in 1969.

(*d*) After the making of "Pollyanna" Walt Disney Productions Ltd. were anxious in 1960 to enter into a contract with the Appellant to secure her exclusive services as a film actress for a period of years. Mr. Mills was not particularly anxious that the Appellant should take up a career in the film making business, which he described to us as a "jungle", and he put no pressure on her to enter the business. The Appellant herself, by then in 1960 a schoolgirl of 14 years, was not at the time interested in the monetary rewards of acting, being comfortably provided for by her father.

(*e*) The Appellant having signified her willingness to make films with Walt Disney Productions Ltd., Mr. Mills's concern then was that any money earned by her should not be squandered by the Appellant or her relatives. He had witnessed cases, particularly in the United States, when a child actor's earnings had been appropriated by the child's parents and only in part applied for the child's benefit. He was therefore anxious to make arrangements for the Appellant's earnings to be "legally protected" so that they would not be available for spending by either Mr. or Mrs. Mills and would be saved for the benefit of the Appellant.

(*f*) With this in mind Mr. Mills approached his solicitors, his bank manager and his accountant to provide him with the means to protect his daughter's earnings. Following, and in accordance with, the advice given to him, the transactions set out in para. (*g*) below were carried out as part of a comprehensive plan. Mr. Mills was aware that the scheme devised by his advisers would save tax, but he was not familiar with the details of the scheme, which he left to his advisers. Before the arrangements were carried out Mr. Mills tried to explain to the Appellant what was being done for her, but, not surprisingly, he found her not very interested. She knew that her father was making arrangements with regard to her possibly considerable earnings from films which would be for her ultimate benefit and she signed the necessary documents without reading them. She did not know that under the agreement for service she was entitled to a salary and was under the impression that she had never received the salary. In fact the salary was credited to a current account which the company maintained for the Appellant and to which they debited expenses incurred on her behalf. While she was filming in Hollywood she received pocket money of $5 a week from her parents. At the time of these transactions the Appellant had no bank account of her own save an account with the Post Office Savings Bank into which were paid presents in cash. She had at that time no conception of the amounts being received by the company in respect of the exploitation of her services.

(*g*) The company was incorporated on 18th February 1960, with a nominal capital of £100 divided into 100 £1 shares, the subscribers to its memorandum being two clerks in the firm of solicitors who acted for Mr. Mills, each of whom subscribed for one share. A copy of the company's memorandum and articles of association, marked "1", is attached to and forms part of this Case[1]. 98 shares in the company were allotted to Mr. Mills on 18th May 1960, on which date Messrs. S. J. Passmore, A. B. McFarlane and A. E. Thirlby were appointed the first directors of the company. Messrs. Passmore and Thirlby were partners in the firm of solicitors acting for Mr. Mills and Mr. McFarlane was his bank manager. On the same date, namely 18th May 1960, Mr. Mills settled the 100 shares in the company on trust for the Appellant absolutely upon her attaining the age of 25 years. The trustees of the settlement were Messrs. S. J. Passmore, A. B. McFarlane and A. E. Thirlby, the aforementioned directors of the company, and Mr. J. A. Basden, who was Mr. Mills's accountant.

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(1) Not included in the present print.

A A copy of the deed of settlement, marked "2", is attached to and forms part of this Case[1]. Also on the same date, 18th May 1960, the Appellant entered into the agreement for service whereby she bound herself to render to the company for five years from 1st April 1960 her exclusive services as an artiste in films and stage plays, etc. for a salary of £400 per annum. A copy of the agreement for service, marked "3", is attached to and forms part of this Case[1].
B Finally, on 18th May 1960 the company approved for registration the transfer of all the 100 shares therein to Messrs. Passmore, Thirlby, Basden and McFarlane, the trustees of the settlement.

(*h*) When the transactions referred to in sub-para. (*g*) above were carried out the contract with Walt Disney Productions Ltd. for the provision of the Appellant's services had not been made. It was known, however, that a five-
C year contract was a virtual certainty and that the contract would provide a guaranteed minimum of $30,000 for the first year of the five. An agreement was made on 13th January 1961 between Walt Disney Productions Ltd., the company and the Appellant, whereby the company undertook to make available to Walt Disney Productions Ltd. for a period of five years the exclusive services of the Appellant as an actress in the making of five films. The payments in
D respect of the Appellant's services were to range from $30,000 U.S. in the first year to $75,000 U.S. in the fifth year. A copy of the agreement for service, marked "6", is attached to and forms part of this Case[1].

(*i*) The accounts of the company show the following, *inter alia*:

	5th August 1960 to 30th September 1961	Year ended 30th September 1962	1963	1964
E	£	£	£	£
Profit before tax	32,720	42,858	32,368	65,067
Taxation	18,000	30,233	27,551	35,537
Profit after tax	14,720	12,625	4,817	29,530
F Dividends paid or proposed (net)	12,500	12,500	7,000	30,000
Balance of profit	2,220	125	−2,183	−470
Balance of profit b/fwd. ..		2,220	2,345	162
G Balance of profit c/fwd. ..	2,220	2,345	162	−308

All the dividends declared by the company were paid to the trustees of the settlement.

(*j*) The income tax returns of the trustees of the settlement disclose that they received net income from dividends (including those referred to above
H from the company) and rent as follows:

	Year to 5th April 1963	1964	1965
	£	£	£
Net	25,378	7,610	30,678

None of this income was distributed. This income, "grossed up", was the
I income which was assessed under the assessments appealed against.

[1] Not included in the present print.

6. It was contended on behalf of the Appellant that: A

(*a*) the evidence adduced before us disclosed only one settlement to which the provisions of s. 405, Income Tax Act 1952, were applicable, that is to say, the settlement executed by Mr. Mills on 18th May 1960, of which settlement Mr. Mills was the settlor;

(*b*) the only income arising under such settlement as aforesaid was that returned by the trustees of the settlement for tax purposes (referred to in para. 5(*j*) above); B

(*c*) even if, which was not admitted, the Appellant could also be said to be a "settlor" within the meaning of s. 411(2), Income Tax Act 1952, s. 409, Income Tax Act 1952, would require any income arising under the settlement to be treated as income originating from Mr. Mills and not from the Appellant;

(*d*) if, which was disputed, the incorporation of the company, the creation of the settlement and the execution of the agreement for service could be said together to constitute a "settlement" to which the provisions of s. 405 were applicable, the settlor in relation thereto would be Mr. Mills, who made the arrangements said to constitute the "settlement" and who was the only person who provided funds under the arrangements; C

(*e*) in relation to neither the simple settlement referred to in sub-para. (*a*) or (*c*) above nor a possible composite settlement touched on in sub-para. (*d*) above could the Appellant be said to have provided funds therefor; and D

(*f*) in any event, the assessments should be discharged.

7. It was contended on behalf of the Commissioners of Inland Revenue that:

(*a*) the evidence adduced before us disclosed an arrangement constituting a settlement to which the provisions of s. 405 applied; E

(*b*) the Appellant was a settlor in relation to that settlement, in that within the meaning of s. 411(2) she had provided or undertaken to provide funds directly or indirectly for the purpose of the settlement, and also for the same reason of the settlement executed by Mr. Mills on 18th May 1960;

(*c*) it was immaterial to the issue before us that Mr. Mills might also be a settlor in relation to the settlement, whether simple or composite; F

(*d*) the Appellant having admittedly an interest in the income arising under the settlement, whether simple or composite, the income so arising, none of which had been distributed, should, under the provisions of s. 405(1), be treated for all the purposes of the Income Tax Act 1952 as the income of the Appellant; and G

(*e*) the assessments should be confirmed in principle.

8. The following authorities were referred to at the hearing before us: *Copeman* v. *Coleman* 22 T.C. 594; [1939] 2 K.B. 484; *Commissioners of Inland Revenue* v. *Prince-Smith* (1943) 25 T.C. 84; *Lord Herbert* v. *Commissioners of Inland Revenue* 25 T.C. 93; [1943] 1 K.B. 288; *Chamberlain* v. *Commissioners of Inland Revenue* (1943) 25 T.C. 317; *Hood Barrs* v. *Commissioners of Inland Revenue* (1946) 27 T.C. 385; *Yates* v. *Starkey* 32 T.C. 38; [1951] Ch. 465; *Thomas* v. *Marshall* 34 T.C. 178; [1953] A.C. 543; *Crossland* v. *Hawkins* 39 T.C. 493; [1961] Ch. 537; Blackstone's Commentaries on the Laws of England, 16th edn. (1825), vol. 1, at page 452; Ex parte *Macklin* (1755) 2 Ves. Sen. 675. H

9. We, the Commissioners who heard the appeal, took time to consider our decision, and gave it in writing on 20th August 1970, as follows.

(1) Having reviewed the evidence adduced before us, we find that the following acts were done as part of, and in furtherance of, an integrated scheme planned by Mr. Mills, on advice, solely for the benefit of the Appellant: (*a*) the incorporation of the company on 18th February 1960; (*b*) the issue of 100 shares therein to Mr. Mills; (*c*) the making of a settlement on 18th May 1960; and (*d*) the making of an agreement for service on the same day. In this scheme Mr. Mills was acting throughout on behalf of his daughter, the Appellant, and she entered into the agreement for service on the advice of her father, relying on his advice that the agreement was for her benefit. We infer that the Appellant could have been advised to enter into the agreement for service only on the footing that she would at some time enjoy the large profits arising from her earnings which were known to be going to accrue to the company by virtue of that agreement. In other words, the creation of the company and the settlement of the shares therein were necessary preliminary acts if the Appellant was to be advised to sign, for her own benefit, the agreement for service.

(2) We hold that the scheme set out in sub-para. (1) above is an arrangement which constitutes a settlement within the meaning of s. 411(2); that the Appellant is a settlor in relation to that settlement, as, in the circumstances set out in sub-para. (1) above, she has provided or undertaken to provide funds directly or indirectly for the purpose of the settlement; and that the Appellant has within the meaning of s. 405(2) an interest in income arising under or property comprised in that settlement.

(3) In the light of what we have found and held, we are of opinion that the provisions of s. 405 are apt to require that the undistributed income of the settlement for the years in question shall be treated as the income of the Appellant.

(4) We confirm in principle the surtax assessments appealed against and leave figures to be agreed.

10. Figures were agreed between the parties on 29th October 1970, and on 18th November 1970 we adjusted the assessments accordingly.

11. The Appellant's representative immediately after the determination of the appeal declared to us her dissatisfaction therewith as being erroneous in point of law and required us to state a Case for the opinion of the High Court pursuant to the Taxes Management Act 1970, s. 56, which Case we have stated and do sign accordingly.

12. The question of law for the opinion of the Court is whether on the facts found by us as set out in para. 5 above the decision embodied in para. 9 hereof was correct.

W. E. Bradley }
H. G. Watson } Commissioners for the Special Purposes of the Income Tax Acts

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

28th April 1971

The case came before Goulding J. in the Chancery Division on 14th, 15th and 16th December 1971, when judgment was given in favour of the Crown, with costs. A

Stuart Bates Q.C. and *D. C. Potter* for the taxpayer.

J. E. Vinelott Q.C., Patrick Medd and *J. P. Warner* for the Crown.

The following cases were cited in argument in addition to those referred to in the judgment:—*Chamberlain* v. *Commissioners of Inland Revenue* (1943) 25 T.C. 317; *Yates* v. *Starkey* 32 T.C. 38; [1951] Ch. 465. B

Goulding J.—In this case the Appellant, Miss Hayley Mills, appeals from a decision of the Special Commissioners. They upheld surtax assessments made on the Appellant in respect of the year of assessment 1962–63 and each of the two following years. C

The facts of the controversy, as found by the Special Commissioners in their Case Stated, are as follows. The Appellant is the daughter of Mr. L. E. W. Mills, who is well known as an actor in films under the name of John Mills. In 1958 Mr. Mills acted in a film called "Tiger Bay", in which, at the suggestion of the director of the film, a part was taken by the Appellant on payment of £100 per week expenses. She was then a schoolgirl aged 12. Subsequently a well- D known film producer, Mr. Walt Disney, approached Mr. Mills to enquire whether the Appellant would act in a film to be made in America and to be called "Pollyanna". She did act in that film, and received a weekly amount for expenses. In addition the maker of the film gave a sum of money to a children's charity. The expenses paid for the Appellant's part in "Tiger Bay" and "Pollyanna" were placed by Mr. Mills in a bank account in his name, E and the balance in that account was transferred to the Appellant in 1969. After the making of "Pollyanna" Walt Disney Productions Ltd. (which I take to be a company connected with Mr. Walt Disney) were anxious in 1960 to enter into a contract with the Appellant to secure her exclusive services as a film actress for a period of years. Mr. Mills was not particularly interested in that prospect; and, as the Special Commissioners found, the Appellant, who in 1960 reached F the age of 14 years, had no particular interest in earning money for acting, as she was comfortably provided for by her father. However, the Appellant did in the end say she was willing to make films for Walt Disney Productions Ltd. Mr. Mills's concern then was that any money earned by her should not be squandered by the Appellant or her relations. He had witnessed cases, particu- G larly in the United States, when a child actor's earnings had been appropriated by the child's parents and only in part applied to the child's benefit. He was therefore anxious to make arrangements for the Appellant's earnings to be "legally protected", so that they would not be available for spending by either himself or his wife and would be saved for the Appellant's benefit. With this in mind Mr. Mills approached his solicitors, his bank manager and his account- ant to provide him with a method of protecting the Appellant's earnings; and H certain transactions, which I will enumerate in a minute, were then carried out as part of a comprehensive plan. Mr. John Mills was aware that the scheme would save tax, but he was not familiar with its details, which he left to his advisers. Before the arrangements were carried out Mr. Mills tried to explain to the Appellant what was being done for her but not surprisingly he found her not very interested. She knew that he was making arrangements with regard I to her earnings from films that would be for her ultimate benefit and she knew the earnings would possibly be considerable. She signed the necessary docu- ments without reading them. She did not know that under the agreement for service she was entitled to a salary, and at some time—it is not clear from the Case Stated when—was under the impression that she had never received the

A salary. In fact it was credited to a current account which a certain company maintained for the Appellant—that is a company which I shall mention in a moment, not the Disney company. To that account expenses incurred on the Appellant's behalf were debited. While she was filming in Hollywood she received $5 a week as pocket money from her parents. At the time of the transactions the Appellant had no bank account of her own, except one with the B Post Office Savings Bank, into which were paid cash presents which she received. She had at the time no conception of the amounts being received by the company in respect of the exploitation of her services.

Now I come to the transactions, which the Special Commissioners have found were carried out as part of a comprehensive plan. First of all, on 18th February 1960 a company was incorporated with the name of Sussex Productions C Ltd., and with suitably wide objects for the purpose of the scheme. I shall refer to Sussex Productions Ltd. simply as "the company". It had a nominal capital of £100, divided into shares of £1 each. Two of those shares were subscribed for in the usual way by the signatories to the memorandum of association. They were two clerks in the firm of solicitors acting for Mr. John Mills. A number of further steps in the same plan were taken on a day some three months later, D namely 18th May 1960. On that day 98 shares, being the remaining share capital of the company, were allotted to Mr. Mills. Three gentlemen were appointed as first directors of the company; they were Mr. Passmore and Mr. Thirlby, who were partners in the firm of solicitors acting for Mr. Mills, together with Mr. McFarlane, who was his bank manager. Still on the same day the 98 shares which were allotted to Mr. Mills and the two subscribers' shares were E transferred to the three gentlemen whom I have named as directors, together with a fourth, a Mr. Basden, who was Mr. Mills's accountant, and a settlement of the 100 shares was executed by Mr. Mills as settlor and by the four transferees as trustees. The terms of that settlement are quite short. It recites that Mr. Mills was desirous of making provision for the Appellant and accordingly of creating the trusts appearing from the deed of settlement, and that he had caused to be F transferred into the joint names of the four trustees the 100 shares constituting the capital of the company. The beneficial trusts of the trust fund so brought into being were, first of all, a trust for the beneficiary—that being the definition in the deed of the Appellant—absolutely upon her attaining the age of 25 years, such contingent gift carrying the intermediate income. If the Appellant should fail to attain 25 then the fund was to go to her children, if any, and failing them G for the testamentary appointees of the Appellant, with an ultimate trust in default of all those I have mentioned for Mr. Mills himself absolutely; and Mr. Mills retained the power of appointing new trustees during his life.

The transactions of 18th May 1960 were completed by the execution on that date of a service agreement by the Appellant. She thereby undertook to render to the company for five years from 1st April 1960 her exclusive services H as an artiste in films and stage plays and otherwise for a salary of £400 per annum. It is not necessary for me to read the details of that document. I should, however, refer shortly to clause 6, which was as follows:

> "Notwithstanding anything hereinbefore contained the Company shall be at liberty at any time or times during the said period to enter into any contract or contracts whereby the Company undertakes to procure I the Artiste to act in any stage play or performance as an artiste or in any film or films and to give all services customarily given by an actor or artiste and so that any such contract or contracts may contain such terms and be

(Goulding J.)

subject to such provisions as may from time to time be agreed between the Company and the other party or parties to the contract or contracts in question." A

That provision was evidently apt to provide for the contemplated arrangement with Walt Disney Productions Ltd. In May 1960 no contract had yet been made with Walt Disney Productions Ltd., but it was known, in the words of the Special Commissioners, that "a five-year contract was a virtual certainty and that the contract would provide a guaranteed minimum of $30,000 for the first year of the five." An agreement was in fact made on 13th January 1961, with three parties, Walt Disney Productions Ltd., the company and the Appellant, whereby the company undertook to make available to Walt Disney Productions Ltd. for a period of five years the exclusive services of the Appellant as an actress in the making of five films. The payments in respect of the Appellant's services by Walt Disney Productions Ltd. to the company were to range from $30,000 in the first year to $75,000 in the fifth year. Those payments would be increased in certain events if the Appellant was required to give her services for a longer time than the minimum in any year. In consequence of the company's agreement with the Appellant to have her services for £400 a year and its agreement with Walt Disney Productions Ltd. to provide her services for the very much higher remuneration which I have just mentioned, the company made very substantial profits, which it proceeded in large part to pay out by way of dividends to its shareholders, namely, the trustees. B C D

In the surtax assessments made upon the Appellant the dividends thus received by the trustees from the company have been included in the Appellant's total income. To justify that step the Crown rely upon s. 405 of the Income Tax Act 1952. The material part of the section is as follows: E

"If and so long as the settlor has an interest in any income arising under or property comprised in a settlement, any income so arising during the life of the settlor in any year of assessment shall, to the extent to which it is not distributed, be treated for all the purposes of this Act as the income of the settlor for that year and not as the income of any other person". F

It is not disputed that one or more of the transactions in this case constituted a settlement. It is not disputed that the Appellant has an interest in income arising under or property comprised in the settlement. It is not disputed that the dividends paid to the trustees were in the relevant years income which was not distributed by them within the meaning of the section. The two controversial questions are these. First of all, was the Appellant a settlor within the definition applicable for the purposes of s. 405? Secondly, if she was a settlor, were the dividends properly treated in relation to the Appellant as income arising under the settlement? Both questions turn on express statutory provisions regarding the interpretation of terms used in that Part of the Act of 1952 which contains s. 405. The first question turns on the term "settlor". That term, and likewise the term "settlement", is defined by s. 411(2) of the Act. It is as follows: G H

"In this Chapter, 'settlement' includes any disposition, trust, covenant, agreement or arrangement, and 'settlor', in relation to a settlement, means any person by whom the settlement was made; and a person shall be deemed for the purposes of this Chapter to have made a settlement if he has made or entered into the settlement directly or indirectly, and in particular (but without prejudice to the generality of the preceding words) if he has provided or undertaken to provide funds I

A directly or indirectly for the purpose of the settlement, or has made with any other person a reciprocal arrangement for that other person to make or enter into the settlement."

The Crown puts its case on the footing that the settlement is either the trust deed dated 18th May 1960 or, alternatively, the whole group of transactions specified by the Special Commissioners as having been carried out as part of a B comprehensive plan, namely, the formation of the company, the allotment of its shares, the transfer of the shares to the trustees and the settlement thereof by the deed of settlement and finally the service agreement signed by the Appellant. In my judgment the difference between the two alternatives is not crucial. The Crown contends that on either view the Appellant, by entering into the service agreement with the company at a remuneration of only a few hundred pounds C a year, provided funds indirectly for the purpose of the settlement, that is, the deed alone or the wider arrangements, as the case may be, and that she is therefore a settlor within s. 411(2). If the matter were untouched by authority I should feel considerable doubt whether a person who agrees with a company to work for less than a full remuneration for his services thereby provides the profits which accrue to his employer in consequence of his services or the D dividends received by the shareholders out of those profits. The point, however, is not a novel one in the context of the Act of 1952. *Crossland* v. *Hawkins*[1] 39 T.C. 493 was a case where the facts had some similarity to those now under examination, although there were also marked differences. The relevant definition of "settlor" was there to be found in s. 403, not s. 411 of the Act, but the difference between the two sections is not material. At first instance, where E the Crown was unsuccessful, Danckwerts J. said this, at page 501:

> "It was strenuously argued on behalf of the Crown that Mr. Hawkins had provided £25,000 and therefore a fund for the settlement. In my view he had not done anything of the sort. All he had done was to provide services, and those services went to the company; and it was the company which became entitled to the £25,000. It is true that the services provided F by Mr. Hawkins in pursuance of his contract enabled the £25,000 to be earned, and therefore to be payable to the company, but it was not his money in view of the contract into which he had entered."

The case of *Crossland* v. *Hawkins* then went to the Court of Appeal, and there the Crown succeeded. According to the report of the appeal contained in [1961] Ch. 537, at page 545, counsel for the taxpayer in the Court of Appeal G submitted *inter alia* that *prima facie* the provision of services is not the provision of funds. Although there may in the end have been some element of concession in the discussion and decision of the appeal, it seems clear to me that the Lords Justices disagreed with the Judge below on this point. There is a dictum of Donovan L.J. to that effect at page 551 of the report (2) and both Pearce L.J. and Upjohn L.J. said in general terms that they agreed with his judgment. I H must therefore hold the service agreement to have effected a provision of funds for the purpose of the settlement whether the settlement is identified in the wider or the narrower sense.

The Appellant seeks to escape from s. 405 by saying that, young child as she was, she made no settlement and no arrangement, either personally or by an agent. Mr. John Mills, it is argued, was acting throughout on behalf of his I minor daughter simply in the role of a father. He was not her agent, she was not his principal, his acts were not her acts. I am unable to accept the force of those arguments as disposing of the Crown's contentions. The Appellant

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(1) [1961] Ch. 537. (2) 39 T.C. 493, at p.506.

(Goulding J.)

confessedly signed the service agreement as part of the arrangements which were being made by her father for her benefit. She does not suggest that because of her infancy the document was void *ab initio* nor that she has since repudiated it. Accepting then the interpretation of s. 411(2) of the Act of 1952 which I get from *Crossland* v. *Hawkins*[1], it is a simple matter of fact that the Appellant did provide funds for the purpose of the relevant settlement and therefore was a settlor in relation to such settlement.

I turn to the second question. It arises because the Appellant was not the only settlor in relation to the settlement (whether it be the deed of 18th May 1960 or the full arrangement). In spite of certain language in the Case Stated which suggests the contrary, the Crown concedes that in forming the company and settling its shares Mr. John Mills was acting on his own account and not as agent for the Appellant. Hence he too provided funds for the purpose of the settlement, namely, the share capital of the company, though it was only his daughter's act in entering into the service agreement which gave the shares a substantial value. The provisions governing settlements with two or more settlors are contained in s. 409 of the Act of 1952. That section is a reenactment of provisions originally contained in the Finance Act 1943. They are well known among those who cultivate this field of the law to have been enacted to meet the difficulty disclosed by Macnaghten J.'s decision in *Lord Herbert* v. *Commissioners of Inland Revenue*[2] 25 T.C. 93. I must read four of the subsections of s. 409:

> "(1) In the case of any settlement where there is more than one settlor, this Chapter shall, subject to the provisions of this section, have effect in relation to each settlor as if he were the only settlor. (2) References in this Chapter to the property comprised in a settlement include, in relation to any settlor, only property originating from that settlor and references in this Chapter to income arising under the settlement include, in relation to any settlor, only income originating from that settlor . . . (5) References in this section to property originating from a settlor are references to—(*a*) property which that settlor has provided directly or indirectly for the purposes of the settlement; and (*b*) property representing that property; and (*c*) so much of any property which represents both property provided as aforesaid and other property as, on a just apportionment, represents the property so provided. (6) References in this section to income originating from a settlor are references to—(*a*) income from property originating from that settlor; and (*b*) so much of any such income of a body corporate as is mentioned in paragraph (*b*) of subsection (1) of section four hundred and eleven of this Act as corresponds to property originating from the settlor which is comprised in the settlement; and (*c*) income provided directly or indirectly by that settlor."

To make that last subsection intelligible I should read s. 411(1)(*b*), which is to this effect:

> "In this Chapter, 'income arising under a settlement' includes— . . . (*b*) where the amount of the income of any body corporate has been apportioned under Chapter III of Part IX of this Act for any year or period, or could have been so apportioned if the body corporate were incorporated in any part of the United Kingdom, so much of the income of the body corporate for that year or period as is equal to the amount which has been or could have been so apportioned to the trustees of or a beneficiary under the settlement."

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(1) 39 T.C. 493. (2) [1943] 1 K.B. 288.

A Coming back to s. 409, the Crown applies it in the present case by invocation of subs. (6)(*c*). The dividends in question are, it is said, income provided directly or indirectly by the Appellant, therefore income originating from her, therefore income arising under the settlement in relation to her as settlor. Here again but for the guidance afforded by *Crossland* v. *Hawkins*(1) I might hesitate to identify the dividends paid by the company with the funds indirectly provided
B by the Appellant, bearing in mind the necessary intervening steps, to be taken in accordance with the Companies Act and the memorandum and articles of association, of ascertaining the company's divisible profits and of declaring dividends. However, the Court of Appeal seems to have felt no such difficulty in *Crossland* v. *Hawkins*, and I must follow their guidance. Once again I refer in particular to Donovan L.J.'s judgment, [1961] Ch. at page 551(2).

C One other point has troubled me as regards s. 409. With the assistance of *Crossland* v. *Hawkins* the dividends can be attributed to the Appellant under subs. (6)(*c*). Nevertheless they can, in my judgment, be equally well attributed to Mr. Mills under subs. (6)(*a*), since they are indisputably, as it seems to me, income from shares which he has provided for the purposes of the settlement. I feel little doubt that the framers of what is now s. 409 hoped to achieve an
D unequivocal allocation of any specific item of income to one settlor and one only. Any other result indeed fits oddly with the formula in s. 405, whereby undistributed income is to be treated for tax purposes as the income of the settlor and not the income of any other person. Mr. Warner says, however, and in my view correctly, that as a matter of strict logic the point is surmounted by the terms of s. 409(1), which I have already read, and which provides that in
E the case of any settlement where there is more than one settlor the relevant provisions of the Act shall, subject to the provisions of s. 409 itself, have effect in relation to each settlor as if he were the only settlor. Mr. Warner accepts that in certain circumstances his construction opens the possibility of concurrent assessments on two or more persons in respect of the same income. That might be possible, for example, had Mr. John Mills retained a beneficial interest for
F himself under the settlement in the present case. Mr. Warner, however, rightly observed that such a situation is not unprecedented in legislation directed against methods of avoidance of tax. My readiness to be reassured on this particular point is increased by the absence of any reference to it (or to the analogous point under s. 401 of the Act of 1952) either in *Crossland* v. *Hawkins* itself or in *Commissioners of Inland Revenue* v. *Leiner* (1964) 41 T.C. 589, where also
G the point would seem to have been open on the facts.

Accordingly in my judgment the income here in question is under s. 409 sufficiently attributed to the Appellant as settlor, and therefore the appeal must fail.

Vinelott Q.C.—Will your Lordship then dismiss the appeal? I do not think any consequential Order is required. The assessment stands. My Lord,
H we ask for the costs of the appeal.

Goulding J.—I think that must follow, must it not?

Bates Q.C.—It must follow, my Lord, yes.

Goulding J.—Then I dismiss the appeal with costs.

Vinelott Q.C.—I am obliged, my Lord.

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(1) 39 T.C. 493. (2) *Ibid.*, at p. 506.

The taxpayer having appealed against the above decision, the case came before the Court of Appeal (Lord Denning M.R. and Buckley and Orr L.JJ.) on 14th, 17th and 18th July 1972, when judgment was reserved. On 17th October 1972 judgment was given against the Crown, with costs (Orr L.J. dissenting).

Stewart Bates Q.C. and *D. C. Potter Q.C.* for the taxpayer.

J. E. Vinelott Q.C., *Patrick Medd* and *J. P. Warner* for the Crown.

The following cases were cited in argument in addition to those referred to in the judgments:—*Bulmer* v. *Commissioners of Inland Revenue* 44 T.C. 1; [1967] Ch. 145; *Chamberlain* v. *Commissioners of Inland Revenue* (1943) 25 T.C. 317; *Commissioners of Inland Revenue* v. *Leiner* (1964) 41 T.C. 589; *Ransom* v. *Higgs*(1) T.C. Leaflet No. 2432; [1973] 1 W.L.R. 1180; *Thomas* v. *Marshall* 34 T.C. 178; [1953] A.C. 543.

Lord Denning M.R.—Mr. John Mills is an actor of distinction. His daughter, Hayley Mills, was born on 10th April 1946. As a schoolgirl she showed great promise as an actress. When she was only 12 she acted in two films with much success. In consequence, when she was 13 a film company called Walt Disney Productions Ltd. were anxious to secure her exclusive services for five years. Walt Disney wanted her to work not only in England but also in America. She could not be allowed to do it except by licence of the authorities under the Children's Acts: and the application for a licence had to be made by or with the consent of her parents. No difficulty was anticipated about this, but Mr. John Mills was concerned to see that any money earned by her should not be squandered. He had witnessed cases, particularly in the United States, when a child's earnings had been appropriated by the child's parents and only in part applied for the child's benefit. He was, therefore, anxious to have proper arrangements made on her behalf to safeguard her earnings. He approached his solicitors, his bank manager and his accountant: and they got out a scheme to protect the daughter and also to save tax on her earnings. In consequence these things took place. First, on 18th February 1960 a private company was formed called Sussex Productions Ltd. It had very wide objects covering all aspects of the theatrical and film world. The directors were two of the partners in the firm of solicitors acting for Mr. Mills and his bank manager. Second, on 18th May 1960 Mr. Mills set up a trust for the benefit of the daughter, Miss Hayley Mills. The trustees were the same two partners and bank manager, but in addition Mr. Mills's accountant. Third, on the same day, 18th May 1960, Mr. Mills paid for 100 shares of the private company, and forthwith transferred them to the trustees of his daughter's trust. These were the only funds held by the trust. Fourth, on the same day, 18th May 1960, there was placed before Miss Hayley Mills for signature an agreement between the private company and herself, which contained these clauses:

> "1. The Company hereby engages the Artiste and the Artiste hereby agrees to render to the Company the Artiste's exclusive services as an artiste . . . during the period of five years from the first day of April 1960 . . . 3. The Company will pay to the Artiste by way of remuneration for her services a salary at the rate of £400 per annum such salary to commence as from the first day of April 1960 . . . 6. . . . the Company shall be at liberty at any time or times during the said period to enter into any contract or contracts whereby the Company undertakes to procure the Artiste to act in any stage play or performance as an artiste in any film or

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(1) To be published later in Tax Cases.

A films . . . 7. . . . the Artiste (as employee of the Company, and not of the other contracting party) shall duly and to the best of her ability do all such things and perform and observe all such terms provisions and stipulations as may be necessary or desirable to enable the Company duly to carry out perform and observe its obligations under any such contract or contracts".

That agreement was signed for the company by one of the solicitors, and it was
B signed by Miss Hayley Mills and witnessed by the accountant.

It is plain from the Commissioners' findings that Miss Mills did not understand in the least what she was signing. She was, of course, just 14 at the time. The Commissioners found this (in para. 5(*f*) of the Case):

"Before the arrangements were carried out Mr. Mills tried to explain to [his daughter] what was being done for her, but, not surprisingly, he
C found her not very interested. She knew that her father was making arrangements with regard to her possibly considerable earnings from films which would be for her ultimate benefit and she signed the necessary documents without reading them. She did not know that under the agreement for service she was entitled to a salary and was under the impression that she never received the salary. In fact the salary was
D credited to a current account which the company maintained for [her] and to which they debited expenses incurred on her behalf. While she was filming in Hollywood she received pocket money of $5 a week from her parents. At the time of these transactions [she] had no bank account of her own save an account with the Post Office Savings Bank into which were paid presents in cash."

E Those findings enable us to picture her—a typical schoolgirl of 13 with a little pocket money and some small savings in the Post Office. Yet, instead of going through the usual education at school and university, she is committed to acting in films for five years. She is told where to sign, and does so, not knowing in the least what it is all about.

Just over six months later, on 13th January 1961, when she was still only 14,
F there was another agreement put before her for signature. It was between Walt Disney Productions Ltd., Sussex Productions Ltd. and Miss Mills. It is a formidable document of 21 pages. It gave Walt Disney the right to the exclusive services of Miss Mills for five years and put her under all sorts of obligations to them. But there was one small freedom left to her—it was expressly provided that nothing in the agreement should bind her to change the colour of her hair
G (except that she agreed to wear a wig if the producer so required). There was to be a very large payment in U.S. dollars to be made for her services, but this was payable to Sussex Productions Ltd., and not to her. The Commissioners found that Miss Mills signed this agreement, like the others, without reading it. I do not suppose that she understood the first thing about it. The Commissioners expressly found that "she had at that time no conception of the amounts being
H received by the company in respect of the exploitation of her services."

Sussex Productions Ltd. did well by exploiting her services. For the first year they received over £40,000 for her services. They paid the agents 10 per cent. commission, amounting to over £4,000. They paid the directors' fees, £1,000. They paid tax of £18,000. They did not pay Miss Mills anything except that they credited her with a salary of £400, which they set off against
I expenses. They paid a dividend on the shares of £12,500. That, of course, went to the trustees of her settlement.

(Lord Denning M.R.)

Now the Crown claim that all the dividends received by the trustees must be regarded as the income of Miss Mills. They say that there was a "settlement" of which she was a "settlor"; that the dividends must be regarded as her income (see s. 405 of the Income Tax Act 1952); and that she must herself pay surtax on the grossed-up figure of the dividends. I cannot tell what this would be for the first year, but I see that the assessment of the income chargeable to surtax for the year 1962–63 was £42,161, and that the surtax thereon is £18,043. I will not go into details for the subsequent years. All I would say is that, if the contention of the Crown is right, the greatest beneficiary from Miss Mills's services will be the Revenue themselves. For the first year alone they have received £18,000 in income tax from the company. They will also receive a very large sum in surtax from her. Then there is all the agents' commission of 10 per cent. on the sum paid by Walt Disney, the directors' fees (£1,000 a year) and solicitors' and accountants' charges. By the time that all of these have reaped their harvest, there will not be much left for Miss Mills. It is obvious to me that if Miss Hayley Mills is bound to pay the surtax now claimed to the Revenue authorities, the whole of these arrangements were not for her benefit in the least. They ought never to have been entered into by her father, or anyone advising him or her. They could only be justified as being for her benefit if they resulted in a substantial saving of surtax. The Commissioners realised this. They said (in para. 9(1) of the Case) that:

> "... the Appellant could have been advised to enter into the agreement for service only on the footing that she would at some time enjoy the large profits arising from her earnings, which were known to be going to accrue to the company by virtue of that agreement."

Nevertheless, whether the advice was proper or improper, the task of this Court is simply to see whether the dividends paid to the trustees are to be regarded as her income or not. This depends on the statutory provisions, to which I now turn.

The settlements

Section 411(2) of the 1952 Act says: "'settlement' includes any disposition, trust, covenant, agreement or arrangement". There were here two settlements: (i) the "trust" set up by Mr. Mills by the trust deed of 18th May 1960 for the benefit of his daughter, and for which he provided the trust fund, namely, 100 shares in the company; (ii) the "arrangement" which was given effect by the formation of the company, the issue of 100 shares to Mr. Mills and the agreement for service by Miss Hayley Mills.

The settlors

The same subsection goes on to say that:

> "'settlor', in relation to a settlement, means any person by whom the settlement was made; and a person shall be deemed... to have made a settlement if he has made or entered into the settlement directly or indirectly, and in particular (but without prejudice to the generality of the preceding words) if he has provided or undertaken to provide funds directly or indirectly for the purpose of the settlement".

As I read that subsection, the first part of it shows the general intention of the Legislature, namely, that the "settlor" means "any person by whom the settlement was made". But the Legislature could see that that definition was so general as to give rise to much uncertainty. So it added, in the second part,

A a "deeming" provision so as to remove that uncertainty and to explain more fully what it was intended to cover: see *per* Lord Radcliffe in *St. Aubyn* v. *Attorney-General* [1952] A.C. 15, at page 53; and *Public Trustee* v. *Commissioners of Inland Revenue* [1960] A.C. 398, at page 418. But this "deeming" is only explanatory. If itself it gives rise to uncertainty, resort may be had to the governing concept that a settlor is one "by whom the settlement was made".

B Now take each of the settlements in turn. First, the "trust" set up by Mr. Mills by the trust deed for the benefit of his daughter. Mr. Mills was clearly a settlor. He made the settlement directly and he provided the funds for it, namely, 100 shares in the company. Second, the "arrangement" in pursuance of which the company was formed, and so forth. Mr. Mills was clearly a settlor of this also. The Commissioners set out the acts which con-
C stituted the arrangement, and said (in para 9(1) of the Case):

> "... we find that [they] were done as part of, and in furtherance of, an integrated scheme planned by Mr. Mills, on advice, solely for the benefit of the Appellant".

In view of that finding, it is clear that he made the arrangement, directly or indirectly. Furthermore, by providing the 100 shares, he provided funds,
D directly or indirectly, for the purposes of the arrangement.

But was Miss Hayley Mills a settlor also of one or both of the "settlements"? It is possible that there may be two settlors of one settlement. But is this such a case?

Miss Hayley Mills

When I turn to Miss Hayley Mills, the fact is that when these arrangements
E were being made she was a schoolgirl of 13: and when the formal documents were signed she was only just 14. This differentiates this case at once from *Crossland* v. *Hawkins*(1) [1961] Ch. 537. Jack Hawkins was a grown man, an actor of great distinction, who had all his wits about him. The "arrangement" (which was the settlement in that case) was "his arrangement". Pearce L.J. said so: [1961] Ch., at page 553(2). Jack Hawkins was aware of the proposals and actively
F forwarded them by personally carrying out and assisting in the vital parts. Indeed, his Counsel conceded(3) that if there was an "arrangement" he was a settlor.

But I do not see that Miss Mills can be said to be a "settlor" of either of the settlements here. She had not reached the age of discretion. This used, by the common law, to be fixed for boys at 14 and for girls at 16: see In re *Agar-*
G *Ellis* (1883) 24 Ch.D. 317, at page 331, *per* Cotton L.J. and at page 335, *per* Bowen L.J.; *Thomasset* v. *Thomasset* [1894] P.295, at page 298, *per* Lindley L.J. Even in these days, when children are said to mature earlier, she had not reached it. She was in the custody of her father (see *Hewer* v. *Bryant* [1970] 1 Q.B. 357; *Todd* v. *Davison* [1972] A.C. 392), who was beyond doubt in law and in fact her natural guardian. She was incapable of making a will or a settlement, or indeed
H making any contract on her own account: for the simple reason that she had not sufficient understanding to know what it entailed, or at any rate not a sufficient discretion to exercise a sound judgment upon it. If her father thought it desirable to make a contract for her benefit, he ought to make it on his own responsibility as her next friend, and not in any way so as to bind her. Whenever a child is

(1) 39 T.C. 493. (2) *Ibid.*, at p. 508. (3) [1961] Ch., at pp. 543–4.

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sent to school it is the parent who makes the contract for the education, never the child itself. In none of our books will you find any case where a contract has been held binding on a child who has not reached the age of discretion. None of the textbooks even mention it except Goff and Jones on The Law of Restitution (1966), at page 308: "A child who has not reached the 'age of understanding' probably cannot make a contract at all. But a child who has reached such an age has a limited contractual capacity." The nearest cases that I can find relate to apprentices. In the old days, when children below the age of discretion were apprenticed the indenture was always made by the parent. Even though the apprenticeship was for the benefit of the child, he could not be sued upon the indenture either at law: see *Gylbert* v. *Fletcher* (1629) Cro. Car. 179; or in equity: *De Francesco* v. *Barnum* (1889) 43 Ch.D. 165, at page 169; (1890) 45 Ch.D. 430, at page 437. But the parent could be sued for failure of the child to do what he should: see *Whitley* v. *Loftus* (1730) 8 Mod. 190; *Branch* v. *Ewington* (1780) 2 Doug. K.B. 518.

Apart from this rule of law as to children below the age of discretion, there is a further reason why Miss Hayley Mills should not be held to have made these settlements, or either of them. She had not the least understanding of this particular arrangement or of the documents which she signed: and those who put them before her must have known it. In these circumstances the law will say *non est factum*—it is not her deed. It is not her settlement. It is not her contract. This doctrine, on recent authority, applies, not only to the blind or illiterate, but also to those who are unable, through innate incapacity, or through dotage or nonage, without any fault of their own, to have any real understanding of the purport of the particular document: see *Gallie* v. *Lee* [1971] A.C. 1004, at page 1016A, *per* Lord Reid; at page 1027 D/F, *per* Lord Wilberforce; at page 1034 C/D, *per* Lord Pearson. No one could suggest that Miss Hayley Mills was at fault in any way. She could not be found guilty of contributory negligence: see *Gough* v. *Thorne* [1966] 1 W.L.R. 1387.

I have spoken only of children who have not reached the age of discretion. Above that age and below 21, a young person, even though he was still legally an "infant", could make a contract for necessaries or for service if it was for his benefit to do so. It happened in the case of a professional billiard player aged 20: *Roberts* v. *Gray* [1913] 1 K.B. 520; and a professional boxer aged 18: *Doyle* v. *White City Stadium Ltd.* [1935] 1 K.B. 110. He could make a marriage settlement: see *Edwards* v. *Carter* [1893] A.C. 360 (a young man of 20). In that very case Lord Macnaghten said, at page 367:

> "... every one who is *of sufficient age and intelligence* to execute a deed, whether he is an infant or a man of full age, and who does execute a deed, must be treated as knowing the contents of the instrument which he executes"

—thus implying that if he was not of sufficient age and intelligence it would be otherwise.

Was she a "settlor"?

What then was the effect of all this on the present case? Apply the definition of "settlor". The effect is that Miss Hayley Mills cannot be treated as having "made" the settlements, or either of them. She had not the understanding or discretion to have "made or entered into the" arrangement "directly or indirectly". There remains the question, did she provide funds "directly or

A indirectly for the purpose of the settlement". My first answer to this is that she herself did not provide any funds. All she did was to act, at her father's request, in making films at Hollywood and elsewhere. She had no conception of the amounts received by the company. The Commissioners so found. In these circumstances it was the company which received the funds and provided them for the settlements. She did not do so. I would agree in this respect with B what Danckwerts J. said in *Crossland* v. *Hawkins* (1961) 39 T.C., at page 501, and not with the *obiter dictum* of Donovan L.J. at page 506; [1961] Ch., at page 551. But an even more telling answer comes from the words "for the purpose of" the settlement. The word "purpose" connotes a mental element. The Shorter Oxford Dictionary gives it as "intending or meaning to do something" or "the object for which anything is done". In *Newton* v. *Commissioner of* C *Taxation* [1958] A.C. 450, at page 465, it was said to mean "the end in view". According to this, in order that Miss Hayley Mills herself should provide funds "for the purpose of the settlement", she must have had the object—the end in view—of promoting the purposes of the settlement. For that to be her purpose, she must have had some understanding of the "arrangement" and have intended to facilitate it. No doubt Jack Hawkins in his case had all the necessary under- D standing and intention. By providing his services he was knowingly and intentionally providing funds for the company, out of which it could pay dividends. But Miss Hayley Mills was so young that she had neither the knowledge nor the intention. In my opinion, therefore, Miss Hayley Mills was not a "settlor" of either of the settlements.

Whilst saying that Miss Mills was not a "settlor", I would not suggest E that the arrangements made on her behalf were a nullity and void. They have been executed and carried into effect. They cannot and should not be dismantled. They should be treated in law—as they were in fact—as being made by her father on her behalf. He was the real principal and was responsible in law, just as any other unnamed principal, for their being carried into effect. Although Miss Mills signed the service agreement, it should be regarded as made F by her father on her behalf—just as a father used to be a party to an apprenticeship deed. He was the real settlor and not she.

Other objections

There are other objections to a finding that she was a "settlor". The first is that the whole object of the arrangement was that she should be relieved from surtax. Otherwise the scheme had no rational purpose. If that object G fails and she is liable for surtax, the scheme was not for her benefit at all, and someone or other would have something to answer for.

The second is that, if she is a "settlor", then she and her father are both "settlors" of the same settlements. It is true that s. 409 of the Act contemplates that there may be two settlors of one settlement: but it also assumes that the "property" or "income" originating from one can be separated from the H "property" or "income" originating from the other. It appears too from s. 405(1), as the Judge said (1), that the framers of the Act "hoped to achieve an unequivocal allocation of any specific item of income to one settlor and one only". Yet, if Miss Hayley Mills and her father are both settlors, the income originating from each is the selfsame income, namely, the income from the shares. It cannot be allocated between them. Such a situation was never con- I templated by the Act.

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(1) Page 379 *ante*.

(Lord Denning M.R.)

Conclusion

In my opinion the "settlor" in this case was the father, Mr. John Mills, himself. It was he who made the settlements and each of them. It was not his daughter, Hayley Mills. She ought not to be held to be a "settlor", nor should the income from the shares (paid to the trustees) be regarded as her income.

I would allow the appeal accordingly.

Buckley L.J.—The Special Commissioners found as a fact that the transactions which I am about to mention were carried out as a part of a "comprehensive plan", which they held to be an "arrangement" constituting a "settlement" within the meaning of the Income Tax Act 1952, s. 411(2). These transactions were (*a*) the incorporation of the company, Sussex Productions Ltd., on 18th February 1960, (*b*) the allotment of 100 shares of the company to the Appellant's father, Mr. John Mills, or his nominees, of which two were subscribed on the incorporation of the company and 98 were allotted on 18th May 1960, (*c*) the execution on 18th May 1960 by Mr. Mills of the settlement whereby the 100 shares of the company were settled on the Appellant absolutely upon her attaining the age of 25 years, and (*d*) the signing by the Appellant on 18th May 1960 of the service agreement by which she bound herself to give the company for five years from 1st April 1960 her exclusive services as an actress at a salary of £400 per annum. The Commissioners held that the Appellant was a "settlor" within the terms of the definition of the expression "settlor" in s. 411(2) in relation to the "settlement" (which I will call "the statutory settlement") constituted by this "arrangement". It is common ground that Mr. Mills paid to the company in full the amount payable in respect of the 100 shares and that, when the settlement was executed, he was the beneficial owner of the shares. He was accordingly the settlor in the ordinary sense of that term in respect of the settlement effected by the deed of 18th May 1960, which I will call "the formal settlement".

Goulding J. on the appeal from the Commissioners did not decide whether these transactions together constituted an "arrangement" for the purposes of the section, taking the view, which I think is correct, that this was not crucial. In this Court the Appellant's Counsel has accepted that there was an arrangement within the meaning of the section, but not that it was made by the Appellant. The question for decision is whether the Appellant is to be regarded as a "settlor" of either the formal settlement or the statutory settlement. This turns upon whether she can properly be said to have provided or undertaken to provide funds directly or indirectly for the purposes of either of these settlements. In deciding this question in favour of the Crown the learned Judge was largely influenced by the decision of the Court of Appeal in *Crossland* v. *Hawkins*(1) [1961] Ch. 537.

In that case Mr. Jack Hawkins, the distinguished actor, was himself the instigator and the architect, although in some respects vicariously through his solicitor and accountant, of the scheme which was carried into effect. That scheme had many features in common with the comprehensive plan in the present case. The most important difference between the two cases is, I think, that the artiste who contracted to give his services at less than their commercial value to a company whose issued shares were settled on trusts for the benefit of Mr. Hawkins's children was Mr. Hawkins himself, the author of the scheme. To

(1) 39 T.C. 493.

A demonstrate the importance of this difference I will first consider what is meant by the expression "has provided . . . funds directly or indirectly for the purpose of the settlement" in s. 411(2). Is the question whether a man has so provided funds to be answered on purely objective grounds or subjectively? Is it sufficient if the consequence of his actions has been that the funds subject to the trusts of the settlement have been increased or must it be shown that he has acted with a B benefit to the settlement in view? Taking first what may seem to be an extreme instance, in a sense all the employees of a public company, some shares in which are held by trustees of a settlement, could be said to contribute to the profits of the company and so to the shareholders' dividends or the value of their shares, and so to the income of the settlement or the value of its capital assets. If, as *Crossland* v. *Hawkins*(1) seems to indicate, activities which result in C an increase in the income or value of a settled fund can constitute the provision of funds for the settlement, it might be said that every employee of such a company in some measure provides funds for a settlement on the trusts of which some shares of the company are held; but it would be ridiculous to suppose that Parliament intended that in such a case every employee of the company should be treated as a settlor. A stockbroker who advised trustees of D a settlement to invest part of their trust fund in shares of a company which he expects to be shortly taken over on advantageous terms, including, perhaps, a payment in cash over and above the existing market value of the shares, might in the event of his expectations being fulfilled be said in a sense to have provided funds for the purpose of the settlement. The exercise of his personal skill or specialised knowledge would have resulted in an increase in the assets of the E trust, but I cannot suppose that Parliament intended that such a man should be treated as a settlor. One reason, in my opinion, why the definition of "settlor" contained in s. 411 would not apply to either of these cases is that neither the employees of the company nor the stockbroker would have been concerned with the objects or purposes of the settlement. The employees of the company would in all probability have been entirely ignorant of the settlement. The F stockbroker would have been likely to have known of the settlement's existence and would have advised the trustees with a view to advancing the interests of the trust, but would have done so for reward in the ordinary course of his professional business. Or to take another instance coming nearer in some respects to the present case: suppose that a man owing a debt of honour or of gratitude to a friend without any legal obligation proposed to discharge it by G paying £1,000 to the friend, and that the latter asks that the sum be paid not to him but to the trustees of a settlement, which is done. The payment of the money to the trustees would obviously be a provision of funds for the settlement. On a purely objective view the payer could be said to have made that provision, but I think that the friend should properly be regarded as the person making this provision. It would be just as if the money had been first paid to H him and then paid by him to the trustees. The payer would have acted at his behest. As in the cases of the employees of the company and of the stockbroker, the payer of the £1,000 would not have been actuated by any desire to benefit the persons interested under the trusts. Although in this instance his action would not have been self-regarding, it would not have been related to any motive connected with the settlement.

I In contrast, the scheme adopted by Mr. Hawkins was so designed that his professional activities as an actor alone endowed the shares, which were the only asset of the formal settlement in that case, with a value and in fact made

(1) 39 T.C. 493.

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them a most fecund income-earning asset. It was clear that his purpose in adopting the scheme and in entering into the service agreement which formed part of it, by which he gave to the company the right to his services as an actor at far less than their commercial value, was to benefit his children by the large profit which he was able to earn for the company and so for the trust. In the judgments of the Court of Appeal in *Crossland* v. *Hawkins*(1) Mr. Hawkins's personal connection with and responsibility for all the aspects of the scheme were emphasised. That case was concerned with Chapter II of Part XVIII of the Act, relating to settlements on children, whereas the present case is concerned with Chapter III, relating to settlements where the settlor retains an interest, but the terms of the relevant definitions are substantially the same (compare ss. 403 and 411). In my opinion in these sections the expression "provide funds . . . for the purpose of the settlement" denotes the making of a contribution to the resources of the settlement and imports a motivating intention in this way to benefit those interested under the trusts. This interpretation of the definition of "settlor" seems to me not only to give to the expression "provide funds for the purpose of the settlement" its most natural primary meaning, but also to accord with what appears to be the policy of these parts of the Act, which I take to be that a man should not be able to avoid liability for tax upon what would otherwise be his taxable income by transferring or undertaking to transfer what is his or what is at his disposal to trustees of a settlement falling within the statutory provisions. I realise, of course, that the tax positions of the employees of the company and of the stockbroker would not be in any way related to or affected by any benefit to the settlement resulting from their actions, but this only serves to indicate that there is no reason to construe the definition of "settlor" in a way which might extend to them.

How does this apply to the present case? The formal settlement was without doubt made by Mr. Mills. In my opinion, the statutory settlement was also made by him. The transactions which constituted the arrangement were, as the Commissioners found, carried out in accordance with advice given to Mr. Mills by his solicitors, his bank manager and his accountant in response to his request to be provided with a means to protect his daughter's earnings. In these respects it is common ground that Mr. Mills, though clearly acting in the Appellant's interests, was not acting as her agent. The arrangement was accordingly, in my judgment, his arrangement and not hers.

The Crown puts the case in two ways. First, it is said that by signing the service agreement, knowing that it formed part of arrangements which were for her benefit, the Appellant adopted the machinery of the whole scheme and so provided funds, in the form of her earnings in excess of her salary under the agreement, for the purposes of the settlement. Secondly, it is said that the Appellant's state of mind is irrelevant, that the test is purely objective and that her acts in signing the agreement and thereafter earning more than her salary under it have in fact resulted in her providing funds for the settlement. With regard to the first of these contentions, the Commissioners found that the Appellant knew that her father was making arrangements with regard to her possibly considerable earnings from films which would be for her ultimate benefit, and that she signed the agreement without reading it. They held that the Appellant entered into the agreement in reliance on her father's advice that it was for her benefit. They inferred that she could have been so advised only on the footing that she would at some time enjoy the large profits arising from her earnings, and held that the creation of the company and the settlement of

(1) 39 T.C. 493.

A the shares were necessary preliminaries to her being so advised. This may be broadly accepted, although it ignores the contingent interests under the settlement of the Appellant's issue and others, including Mr. Mills—should she have died under 25. These contingent interests were, I think, essential to the view that the Appellant could be regarded as a settlor, for no one could in equity create a settlement under which he himself was the sole beneficiary, and one B would be disinclined to suppose that Parliament could have intended the statutory definitions to embrace such a case. But even accepting the conclusion that the settlement of the shares was a necessary condition of the Appellant being advised to sign the service agreement, this does not, in my judgment, justify treating the Appellant as a party to the arrangement. The only person who, it seems, attempted to explain to the Appellant what was happening was C her father. He, although he was aware that the scheme devised by his advisers would save tax, was not familiar with its details. It is clear that no attempt can have been made to explain the scheme to the Appellant with any particularity. It seems to me to be manifest from the Commissioners' findings that she can have had no conception of benefiting anyone except, perhaps, herself, and can have had no formed intention of providing any funds for the purpose of the D settlement. In any case, she was then a child of only 14 years of age and lacked the legal capacity, as well probably as the knowledge and understanding, necessary to enable her to make any effective decision in this respect. Accordingly, in my judgment, the case must be decided upon the footing that the Appellant had not, when she signed the agreement, any intention of providing funds for the settlement. She was, in my view, in much the same position as the E man who in my example paid £1,000 to the trustees of a settlement at the instance of his friend. Just as in that case the friend procured the payment, so I think, Mr. Mills must be regarded as having procured his daughter's signature to the agreement. He alone exercised an effective will in this connection. By so doing it was he who procured for the company the profit represented by the excess of the Appellant's earnings over her salary. It was he and not the F Appellant who, in my judgment, "provided" this profit within the meaning of the definition. In the course of the argument some reliance was placed upon the fact that, when she attained her majority, the Appellant did not repudiate the agreement or the arrangement; but in the years of assessment which are in question she was still a minor. If she did not provide funds for the settlement when she signed the agreement in May 1960, she cannot, I think, be said to have G done so at any time before the end of the last of those years of assessment. With regard to the second of the Crown's contentions, I have already indicated my reasons for considering that the definition of "settlor" imports an intention to benefit those interested under the relevant settlement. Accordingly I feel unable to accept this contention. I have also indicated in what I have already said why, in my judgment, the Appellant cannot on the facts of this case be held H to have had any such intention.

In the result, I differ from Goulding J. in not sharing his view that on the authority of *Crossland* v. *Hawkins*[1] he was bound to hold that the service agreement signed by the Appellant effected a provision of funds for the purpose of the settlement. In my judgment, *Crossland* v. *Hawkins* is distinguishable from the present case on its facts in that (1) Mr. Hawkins was the author of the I arrangement in his case, being answerable for the acts of his agents, whereas the Appellant was in no sense responsible for the arrangement in the present case, (2) Mr. Hawkins acted in all respects with the intention of benefiting his children

(1) 39 T.C. 493.

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through the settlement, whereas the Appellant did no more than sign the agreement, her signature to which was procured by her father, in circumstances in which it cannot be said that she had any intention of benefiting anyone but herself, and (3) Mr. Hawkins was an adult answerable for the results of his own actions, whereas the Appellant was at the relevant time a child of 14 years of age, incapable of binding herself contractually or otherwise, or of forming an effectual determination so to do.

For these reasons I conclude that the Appellant was not a settlor within the definition in respect of either the formal settlement or the statutory settlement. I would therefore allow this appeal.

The learned Judge, having reached the contrary conclusion on the question whether the Appellant was a settlor, went on to consider a second question relating to the application of s. 409, dealing with settlements where there is more than one settlor. If the Appellant was a settlor that section would come into play, because it is not disputed that Mr. Mills was also a settlor. On this question also the learned Judge felt himself to be bound by *Crossland* v. *Hawkins*[1], and in particular by an observation of Donovan L.J.[2], [1961] Ch., at page 551, which I for my part think was no more than an *obiter dictum*. The observation to which I think the learned Judge was referring was this:

> "Even if the matter stopped there I should in those circumstances have little difficulty in holding that when the dividend was ultimately declared it came from funds indirectly provided by Hawkins for the purpose of the deed of settlement."

Before reaching this point in his judgment the learned Lord Justice had already decided the case on another ground. He went on to consider other arguments which had been presented, and could, no doubt, have decided the case, had he thought fit, on an alternative ground; but, although the point may be a somewhat technical one, the language of the passage which I have cited does not seem to me to be the language of decision. In any event, the point with which we are concerned under s. 409 did not (nor did any similar question under s. 401) arise in *Crossland* v. *Hawkins*, and so it cannot have been directly decided.

There can be no doubt that the Appellant had an interest under the settlement in the dividends received by the trustees on the settled shares as well as in the shares themselves. If she was a settlor, therefore, she would *prima facie* fall within the terms of s. 405(1). That section, however, must be read with s. 409(2). The shares are consequently only to be treated for the purposes of s. 405 in relation to her as property comprised in the settlement if they originated from the Appellant, that is (see s. 409(5)) if they were property which she had provided directly or indirectly for the purposes of the settlement. The shares were unquestionably provided, not by the Appellant, but by Mr. Mills, so they must be disregarded. The dividends are only to be treated for the purposes of s. 405 in relation to the Appellant as income arising under the settlement if they were income originating from the Appellant (see s. 409(2)), that is (see s. 409(6)) if they were (*a*) income from property originating from the Appellant, which they were not, or (passing over para. (*b*)) (*c*) if they were income provided directly or indirectly by her. The question, therefore, resolves itself to this: were the dividends income provided directly or indirectly by the Appellant? Accepting for this purpose that the company's profits were provided by the Appellant, were the dividends as such provided by her?

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(1) 39 T.C. 493. (2) *Ibid.*, at p. 506.

A It is common ground that the Finance Act 1943, s. 20, which was the predecessor of s. 409 of the 1952 Act, was enacted to meet the difficulty disclosed by *Herbert* v. *Commissioners of Inland Revenue*[1] [1943] 1 K.B. 288. The earlier section was in fact prefaced by the words "For the removal of doubts". The section is clearly designed to provide machinery for apportioning settled property and settlement income amongst the settlors where there are more B than one. A construction which will achieve this in every case is consequently to be preferred to one which will fail to do so in some cases. I consequently approach the interpretation of s. 409(6) with an inclination to find that the paragraphs embody mutually exclusive alternatives. It cannot be disputed that the dividends in the present case fall within subs. (6) (*a*) as income from the settled shares, that is, as income from property originating from Mr. Mills. C On this footing the dividends constitute income originating from Mr. Mills. It is said, however, that they also fall within subs. (6) (*c*) as income indirectly provided by the Appellant, on which footing they would fall to be treated as income originating from the Appellant. The learned Judge accepted this, although he recognised that the resulting possibility of concurrent assessments on both Mr. Mills and the Appellant in respect of the same income would fit D oddly with the provisions of s. 405.

I do not think that one is compelled to reach so awkward and inappropriate a result. Accepting, as I do for the present purpose, that, by entering into the service agreement and by thereafter earning for the company more than her salary under the agreement, the Appellant provided *profits* for the company and so provided "funds" for the settlement—since those profits, whether distri- E buted in dividend or not, increased the resources of the settlement—it does not, in my judgment, follow that she must be held to have provided, even indirectly, the trust *income* received in the form of dividends declared out of those profits. She could not have ensured the declaration of any dividends. The income was provided by the members of the company who declared the dividends, that is the trustees; and even they could only declare such dividends as the directors F might recommend. The dividends fall within s. 409 (6)(*a*) as income originating from Mr. Mills, not because he provided that income, but because it is income from property which he provided. Subsection (6) (*c*), in my judgment, need not and should not be construed in a manner which brings it into conflict with subs. (6) (*a*). There are, of course, ways in which a settlor can ensure that trustees receive income under a settlement besides settling shares or other G income-producing capital assets, as, for instance, by a covenant to make annual payments or the purchase of an annuity. Subsection (6) (*c*) has a sensible and distinct field of operation in respect of benefits of this nature which a settlor may be shown to have provided directly or indirectly. It is not necessary to construe the paragraph as extending to dividends in the declaration of which the settlor had no part, even if they are paid out of profits provided directly or indirectly by H the settlor. The chain of cause and effect is not continuous between the acts of the Appellant and the receipt by the trustees of the dividends.

I would only add that Donovan L.J. in the passage cited did not speak of the dividends as having been provided by Hawkins, but as having come from funds indirectly provided by him for the purpose of the settlement; but it is not, I think, justifiable to analyse his language too minutely, for, as I have said, he I was not concerned with the construction of s. 409(6) or of the corresponding language in s. 401.

If, therefore, I were wrong on the first point, I would allow this appeal on this second ground.

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(1) 25 T.C. 93.

ORR L.J.—The Special Commissioners in this case found as a fact that the following acts were done in furtherance of an integrated scheme planned by the Appellant's father, Mr. John Mills, on advice, and solely for the benefit of the Appellant, namely (*a*) the incorporation of the company on 18th February 1960, (*b*) the issue of 100 shares therein to Mr. Mills, (*c*) the making of the settlement on 18th May 1960 and (*d*) the making of the agreement for service on the same date.

There was ample evidence to support this finding, which has not been challenged in the appeal, and also the Special Commissioners' conclusion, in my view inevitable, based upon it, that these acts together constituted an arrangement and therefore a statutory settlement for the purposes of s. 411(2) of the Income Tax Act 1952. The two issues, and the only issues, which arise in the appeal are (1) whether the Appellant was a settlor in respect of that settlement, and (2) if she was, whether the undistributed income, the subject of the assessments, was in law income originating from the Appellant for the purposes of s. 409(2) and (6) of the Act.

The first of these issues turns on the provision of s. 411(2) of the Act, whereby a person is deemed to have made a settlement if he has provided or undertaken to provide funds directly or indirectly for the purposes of the settlement, and raises two questions, the first, whether the Appellant in the circumstances of this case "provided" funds or can only be said to have provided services, and the second whether, if she provided funds, she did so "for the purpose of the settlement".

In my judgment the first of these questions was decided adversely to the Appellant on, for all material purposes, similar facts in the judgment of this Court in *Crossland* v. *Hawkins*[1] [1961] Ch. 537. That was a case in which an actor had entered into a service agreement with a limited company whereby he agreed, in return for a modest salary, to give his services exclusively to the company, with the result that it derived very large sums from his professional engagements, which sums were passed on by way of dividend to the trustees of a settlement for the benefit of his children. The case turned on statutory wording, similar to that with which we are now concerned, contained in Chapter II of Part XVIII of the 1952 Act, dealing with settlements on children; but as to its facts it differed, *inter alia*, from the present case in that the actor was an adult, whereas the present Appellant was a minor at the time of the relevant transactions, and also in that in the *Hawkins* case the agreement for service was entered into first and the deed of settlement was not executed until three months later, so that one of the issues in that case was whether the subsequent execution of the settlement had been contemplated at the outset so as to form part of a single arrangement. The Special Commissioners in the *Hawkins* case found on the evidence that Mr. Hawkins was aware that steps were being taken to put into effect proposals of his solicitors and accountants but was not consulted with regard to them and was not present at any meeting when the settlement was discussed and made, and they concluded that there was no arrangement and that Mr. Hawkins was not a settlor in respect of the formal settlement contained in the deed. On appeal, Danckwerts J. affirmed this decision, accepting the Commissioners' conclusion that there had not been at the outset any comprehensive arrangement, and holding that, as respects the formal settlement, Mr. Hawkins could not be regarded as having contributed anything to it. In the course of his judgment he said, 39 T.C. at page 501:

> "It was strenuously argued on behalf of the Crown that Mr. Hawkins had provided £25,000, and therefore a fund for the settlement. In my

(1) 39 T.C. 493.

A view he had not done anything of the sort. All he had done was to provide services, and those services went to the company; and it was the company which became entitled to the £25,000. It is true that the services provided by Mr. Hawkins in pursuance of his contract enabled the £25,000 to be earned, and therefore to be payable to the company, but it was not his money in view of the contract into which he had entered."

B On a further appeal to this Court the case for the Crown was put on the alternative grounds that Mr. Hawkins had contributed funds for the purpose of the formal settlement and that he had similarly contributed funds for the purpose of a comprehensive arrangement embracing all the relevant steps. Leading Counsel for the taxpayer conceded early in his argument that, if there was from the outset a concerted plan, there was an arrangement, and therefore a settlement,
C of which Mr. Hawkins was a settlor; but he later argued ([1961] Ch., at page 545) with reference to the formal settlement that the provision of services was not the provision of funds, and the Court had before them the judgment of Danckwerts J. containing the passage above quoted.

The Court allowed the Crown's appeal, the leading judgment, with which the other members of the Court agreed, being delivered by Donovan L.J., who
D considered first the Crown's claim that there was a comprehensive arrangement, and held that the Commissioners' decision that there was no arrangement was a finding of mixed law and fact which could not be regarded as reasonable. But he then proceeded ([1961] Ch., at pages 550 *et seq.*[1]) to consider the Crown's alternative argument based on the formal settlement alone, and on that basis, taking into account an admission for the taxpayer that the proposals of
E the solicitors and accountants had included the formal settlement, said (at page 551[2]):

> "Even if the matter stopped there I should in those circumstances have little difficulty in holding that when the dividend was ultimately declared it came from funds indirectly provided by Hawkins for the purpose of the deed of settlement."

F The other members of the Court, as I have said, agreed with this judgment, and, like Goulding J., I am left in no doubt that this Court in the *Hawkins* case was rejecting for the purpose of the Crown's argument based on the formal settlement the view of Danckwerts J. that in the circumstances all that Mr. Hawkins had provided was services and that he had not provided any funds. *A fortiori* the Court must also have taken the view that he provided funds and not merely
G services for the purposes of the comprehensive arrangement, but, as I have said, it was conceded for the taxpayer that if there was a comprehensive arrangement he was a settlor in respect of it. I am unable to take the view that what was said by Donovan L.J. in the above passage was only *obiter dictum*, for it appears to me that this Court decided the *Hawkins* case in favour of the Crown both on the basis that there was a comprehensive arrangement and also on the alter-
H native basis that there was only a formal settlement, and in my judgment that decision is binding in this case, of which the facts are for the present purpose indistinguishable. But I need not pause on the point because, if the passage above quoted was *obiter dictum*, I respectfully agree with it. I accept, with reference to the doubts expressed by Goulding J. on this question, that there could be cases in which an actor might for genuine commercial reasons agree to
I provide his services to a producer for less than their full value, but such a case is in my view far removed from the present case, in which the company were not

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(1) 39 T.C. 493, at pp. 506–7. (2) *Ibid.*, at p. 506.

themselves going to use the Appellant's services but merely to derive a profit by letting them out to others, and in which the initial salary agreed was a minute fraction of the rewards which it was anticipated, at the time when the agreement for service was made, that the Appellant would obtain from Walt Disney Productions Ltd. The question whether in such circumstances she provided funds directly or indirectly was in my judgment a question of fact for the Commissioners, properly directing themselves as to the law. For the reasons I have given, and with all respect to the contrary view, I am satisfied that they did properly direct themselves as to the law, and in my judgment there was ample material to justify their finding that there was an indirect provision of funds by the Appellant.

The next question which arises is whether the funds were provided "for the purpose of the settlement". It is claimed that this requirement was not satisfied because, on the evidence accepted by the Commissioners, the Appellant took little interest in the arrangements which her father was making on her behalf. A similar argument had been advanced in the *Hawkins* case(1), in which it was claimed, and found by the Commissioners, that Mr. Hawkins did not interest himself in the arrangements made by his solicitors and accountants; but the Court rejected that argument, and Pearce L.J., with whose judgment Upjohn L.J. agreed, dealt with it as follows ([1961] Ch., at page 553(2)):

> "The mere fact that he did not concern himself with some of the 'steps' in the legal machinery involved does not make it any the less his arrangement within the section. A man does not avoid the incidence of section 397 by merely being absent from and leaving to his solicitors and accountants certain parts of the legal machinery if he is aware of the proposals for an 'arrangement' or a settlement and actively forwards them by personally carrying out and assisting in the vital parts in which his performance and co-operation are necessary. Nor can he avoid liability by merely giving his solicitors carte blanche to effect some scheme for the benefit of his family and refusing to concern himself with its precise form."

In that case, however, the solicitors and accountants were the agents of Mr. Hawkins, whereas in the present case it is common ground that, although the Special Commissioners have found that Mr. Mills acted throughout on behalf of the Appellant, in the sense of acting for her benefit, he did not act as her agent. It has been argued by Mr. Vinelott that the words "for the purpose of the settlement" do not import any element of intention at all, but are merely directed to the result which will be achieved by the provision of funds. I cannot accept this view, which does not appear to me to give effect to the ordinary meaning of the word "purpose", and in my judgment the words do import an element of intention; but where, as here, the settlement is a statutory one arising from an arrangement, it is not, in my judgment, necessary that the settlor should have specifically directed his or her mind to the detailed provisions of the formal deed of settlement. The Special Commissioners found as a fact, in para. 5(*f*) of the Case Stated, that the Appellant knew that her father was making arrangements with regard to her possibly considerable earnings from films which would be for her ultimate benefit, and she signed the necessary documents without reading them; and in their decision the Commissioners concluded that she entered into the agreement for service on the advice of her father, relying on his advice that the agreement was for her benefit. In my judgment the necessary element of intention was present in that the Appellant,

(1) 39 T.C. 493. (2) *Ibid.*, at p. 508.

A being aware that her father was making arrangements designed for her benefit, and being willing on his advice to participate in those arrangements, so far as her participation was required, intended that all those things should be done which the arrangements involved.

It was not contended either before the Special Commissioners or Goulding J., and has not been contended in this Court, that the agreement for service was B void *ab initio* either on the ground of the Appellant's incapacity or on any other ground; nor has she, after attaining full age, sought to avoid it, as it was open to her to do. It may well not have been in her interest to take either of these courses, since, if the artificial structure created by the arrangement were dismantled, the resulting position, as it appears to me, would be that the Appellant had given services as an actress for which large sums were paid which belonged C in law to her, and it would have been open to the Revenue to raise alternative assessments on that basis. In these circumstances, not having heard any argument on the matter, I would wish to reserve my opinion on the questions whether the authorities cited by Lord Denning M.R. involve that a contract made by a child under the age of discretion is void *ab initio*, and whether for this purpose different ages of discretion are to be attributed to the two sexes; the D doubt which I feel on both these points being founded on the judgment and reasoning of Fry L.J. in *De Francesco* v. *Barnum* (1890) 45 Ch.D. 430 (a case involving apprenticeship deeds entered into by girls aged respectively 14 and 12), at pages 438–9.

Before leaving this part of the case I should refer to an argument by Mr. Bates that in *Crossland* v. *Hawkins*[1] the taxpayer had not only signed the E agreement for service but was also a director of the company, and had as such agreed to the issue of shares to the trustees and to the payment of the dividend, and that it would be wrong to hold the Appellant to be a settlor in this case when she had only signed an agreement for service. But in both cases one of the two vital steps (the other being the execution of the deed of settlement) was the signing of that agreement, and the other activities of Mr. Hawkins were, as it F appears to me, more important as respects the unity of the arrangements than in relation to the issue of whether he was a settlor. Mr. Bates did not contend, and in my judgment could not contend, that it is necessary before an individual can be held to be a settlor that he or she should have participated at every stage of an arrangement, and in my judgment it was in the present case amply sufficient to constitute the Appellant a settlor that she should have signed the agreement for G service.

I would add only a few words as to the second issue in the case, namely, whether the undistributed income in question was in law income provided directly or indirectly by the Appellant, and therefore income originating from her for the purpose of s. 409(2) of the Act. It follows, in my judgment, from the reasoning, to which I have already referred, of this Court in the *Hawkins* case H that the undistributed income in question is identifiable with income which the Appellant had provided for the purposes of the statutory settlement, and the requirements of the subsection are therefore satisfied, and in my judgment none the less so because the Appellant played no part in the declaring of the dividends. Mr. Bates, however, in his argument on this issue relied on a point which is referred to at the end of the judgment of Goulding J., that the construction of I s. 409 which is advanced by the Crown could lead to a situation in which two settlors might be taxed in respect of the same income. It is accepted that such a situation could not arise in the present case, since Mr. Mills, although a settlor,

(1) 39 T.C. 493.

(Orr L.J.)

had no interest in any income arising under or property comprised in the settlement, nor could it have arisen in the *Hawkins* case(1), since Mr. Beadle, who was undoubtedly a settlor, was not a parent of the child beneficiaries; but it is admitted by the Crown that double taxation could in theory arise. I accept, however, Mr. Vinelott's argument that this is a case, of which there are others in the fiscal code, in which the Legislature for valid reasons has left it to the Revenue authorities to act reasonably in the circumstances, and Mr. Bates's argument, in my judgment, involves putting a construction on the statutory words which they cannot reasonably bear.

For these reasons I, for my part, would have dismissed this appeal.

Bates Q.C.—My Lord, I ask that the matter be remitted to the Commissioners so that the assessments may be adjusted in accordance with the majority decision.

Lord Denning M.R.—Yes, the appeal must be allowed and the matter remitted accordingly.

Bates Q.C.—If your Lordship pleases; and I would ask for the costs of the appeal.

Lord Denning M.R.—Mr. Medd, you cannot object to that, can you?

Medd—My Lord, I cannot object; I think that is the proper form of order. I would ask, however, if I may, for leave to appeal to the House of Lords. My reason for saying that is that, first, there are a lot of cases in which some of the points—and I accept there are not a lot dealing with minors—but there are a lot of cases of this type of arrangement which will hang I think, in part at least, on the views which your Lordships have given on the dictum of Donovan L.J., and also on the observations of Orr L.J. on the effect, if either of your Lordships are right, whether one has to look upon it as dismantling the whole settlement and see what the position is. It is a matter of some importance. There is, of course, a fair amount of money at stake. Perhaps I may be allowed to say this, that, so far as the Judges who have dealt with this matter, they are 2 all.

Bates Q.C.—May I say this? It would be very unfortunate that this particular taxpayer should have to pay the costs of going to the House of Lords in order that a matter of principle in which my friend is interested should be decided.

Lord Denning M.R.—You would like some condition imposed, would you?

Bates Q.C.—I would like some condition. I suggest they should offer some condition—namely, that the order for costs here and below should not be adjusted in the House of Lords.

Lord Denning M.R.—Have you anything to say about that, Mr. Medd?

Medd—If your Lordships should think it proper that some such condition should be imposed, the Crown would not seek to disturb the order for costs in this Court—I think the ordinary rule is to undertake not to disturb the costs here or below.

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(1) 39 T.C. 493.

A **Lord Denning M.R.**—Sometimes we go so far as to say costs in the House of Lords.

Medd—I leave it entirely to your Lordships.

(The Court conferred.)

Lord Denning M.R.—We give leave to appeal to the House of Lords on the condition that the Crown do not seek to disturb the order for costs here or in the B Court below. The appeal will be allowed with costs here and below and the matter remitted to the Commissioners to adjust it according to the judgment. We leave the House of Lords to deal with their own costs, you see.

The Crown having appealed against the above decision, the case came before the House of Lords (Lords Reid, Morris of Borth-y-Gest and Hodson, C Viscount Dilhorne and Lord Salmon) on 22nd, 26th, 27th and 28th November 1973, when judgment was reserved. On 12th February 1974 judgment was given unanimously in favour of the Crown, with costs.

(1)*John Vinelott Q.C.*, *Patrick Medd Q.C.* and *P. L. Gibson* for the Crown. The main question is whether the income was provided directly or indirectly by the taxpayer for the purpose of the settlement.

D Section 409 of the Income Tax Act 1952 deals with the application of Chapter III of Part XVIII to settlements where there is more than one settlor. Reliance is placed on the definition of "settlor" in s. 411(2).

Prima facie the taxpayer provided funds indirectly for the purposes of the settlement. The Act is objective. The taxpayer knew that her money was being siphoned to trustees for her benefit, but even if she did not know it did E not matter, since motive and intention are irrelevant. To further the purposes of a settlement one does not need to have volition. If the taxpayer agrees to give services for remuneration which is paid to someone else, she provides that sum; so she indirectly provided the remuneration which Walt Disney Productions Ltd. paid to Sussex Productions Ltd. She provided the funds since she provided someone else with services which that person could exploit.

F All depends on the terms of the second contract dated 13th January 1961. The contract of service with Sussex dated 18th May 1960 might have been regarded in itself as an ordinary commercial transaction. If the taxpayer's services earned the profit, she provided the profit. If the transaction was an ordinary commercial transaction it is implicitly excluded by s. 411(2).

If a person provides services to X on terms that X pays Y, he is providing a G fund just as much as if he first contracted with X and then assigned his remuneration to Y. The taxpayer entered into an agreement with Sussex the effect of which was to require her to act for Disney. It was intended by the taxpayer that she should contract to serve Disney, and the interposition of the agreement with Sussex was intended to siphon the profits into Sussex. By signing the agreement of 13th January 1961 between Disney and Sussex the taxpayer was H put into direct contractual relation with Disney. Under the original agreement for service dated 18th May 1960 between the taxpayer and Sussex it would have been open to Sussex to procure the taxpayer's services to Disney without her entering into any contract with Disney at all. But she did become bound contractually to Disney to provide services directly to them. They were to I control her services and give her instructions, and she agreed to carry them out.

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(1) Argument reported by F. H. Cowper Esq., Barrister-at-law.

Thereafter Sussex could not have countermanded an order to her from Disney, because she had agreed to serve Disney. Without the second agreement Disney could have given Sussex instructions and Sussex could have given the taxpayer instructions.

Suppose X owns all the 1,000 shares in a company which is about to make a very large profit and is minded to direct half that profit into a settlement for the benefit of his children. He makes a settlement of property not including any of those shares, and then sells 100 shares for full value to the trustees. Then he amends the company's articles so as to make the 100 shares entitled to 50 per cent. of the profits. X has provided that fund indirectly because the money did not come from him but from the profits of the company.

The relevant sections are widely drafted to catch people who may put money into settlements. To fall within the enactment tax must be avoided by putting assets into a settlement in such a way that the money can still come back to the person who provided it.

One applies s. 409 to each settlor in turn. There is no conflict because the same income may be said to have originated from two people. Since the net of the legislation is cast widely there is a theoretical possibility of the same income being taxed twice, which must be left to the discretion of the Revenue.

The questions which arise are: (1) Is the taxpayer a person who has provided funds directly or indirectly? (2) If yes, is she a person who has provided funds for the purpose of the settlement? (3) If yes, is the income arising under the settlement income which originated from her within s. 409(6)?

The Commissioners found that the arrangement which constituted a settlement within s. 411(2) included the formation of the company.

At common law a contract on disposition of property by an infant is voidable but not void. To this there are exceptions. (1) A contract for necessaries is valid and binding, and that includes a contract for services which is not prejudicial to the infant. A contract may be voidable on the ground that the infant is incapable of making an informed judgment. (2) Another exception to the general rule is that a contract which is necessarily prejudicial to an infant is not voidable but void, e.g., a service agreement which imposes an unreasonable burden on him: *De Francesco* v. *Barnum* (1889) 43 Ch.D. 165; (1890) 45 Ch.D. 430. The plea of *non est factum* would depend on the circumstances of the particular case. There is no rule of law in England that an infant is incapable of making a contract at any age, though it may be that, if a boy of four purported to enter into a complex legal transaction, he could successfully plead *non est factum* when he was of full age on the ground that it was not his act at all. The age of discretion has nothing to do with contractual capacity. It has not been suggested that a girl of 14 cannot enter into a contract.

At common law a father had an absolute right to the custody of his infant child, but habeas corpus would not be granted if the child was out of his custody and, having reached the age of discretion, expressed a wish not to return. But if the infant was under the age of discretion the Court would not inquire into his wishes. The Abduction Act 1557 (4 & 5 Ph. & M. c. 8) made it an offence to "take away maidens that be inheritors, being within the age of sixteen years". At common law the age of marriage was 12 for a girl and 14 for a boy. This derived from the common law. A person over the age of 14 is presumed to have a degree of reason sufficient to make him responsible for his crimes: see Halsbury's Laws of England, 3rd edn., vol. 21 (1957), p. 151, para. 336.

A The taxpayer's father acted on her behalf in the sense that he was her intermediary, and acted in her interests in creating an apparatus from which she could operate by entering into the service agreement.

The taxpayer provided funds directly or indirectly: see *Copeman* v. *Coleman* 22 T.C. 594, 600–1; [1939] 2 K.B. 484 and *Commissioners of Inland Revenue* v. *Prince-Smith* (1943) 25 T.C. 84.

B The taxpayer provided funds for the purpose of the settlement. She provided the source of the funds when she entered into the service agreement with Sussex and when she entered into the two agreements directing her virtually certain earnings to the company, the shares of which were held in trust for her. She became the settlor when she entered into the service agreement with Sussex or, alternatively, with Disney. In signing the vital document, the service C agreement, she took the essential step, informing the whole scheme with life.

Did she know the purpose of all this? She knew all that she needed to know. She knew as much as most settlors know even when they are of full age. No one in Chancery practice would try to explain to a young lady of 18 all the complications of a family settlement to which she is a necessary party. It would have been different if the taxpayer had been six years old; then *non est* D *factum* could have been pleaded. But there was nothing in the evidence to show that she had not reached an age when she could understand what she was doing. There is no presumption in English law that a child of 14 is to be deemed incapable of making a contract: see Ex parte *Macklin* (1755) 2 Ves.Sen. 675.

It is not necessary for the Court to enter into purpose or motive. The E purpose here was to make the funds available to the settlement. The word "purpose" is ambiguous, in that it may mean "motive", but in this case it has nothing to do with motive. It is not a question of psychological intention. If one puts money into a settlement one provides it, even if one does not know what the purposes of the settlement are. Under this Act one is required to find whether the taxpayer provided money for the settlement, not to inquire F into her state of mind. There is no need for her to have some particular motive or intention: see *Crossland* v. *Hawkins* 39 T.C. 493; [1961] Ch. 537.

As to question (3), income directly or indirectly provided by the taxpayer must be treated as originating from her by virtue of s. 409(6)(*c*), which, together with s. 409(2), limits the application of s. 409(1).

St. Aubyn v. *Attorney-General* [1952] A.C. 15, cited by Lord Denning G M.R. in the Court of Appeal, is very different from the present case: see *Thomas* v. *Marshall* 34 T.C. 178, 203–4; [1953] A.C. 543 and *Yates* v. *Starkey* 32 T.C. 38, 53; [1951] Ch. 465.

Under the arrangement that the dividends should go through the company and into the hands of the trustees of the settlement the company was never more than a conduit pipe. If it is found as a fact that, looking at the transaction H objectively, the money has left A and come into the hands of trustees for the person who has provided the funds, the case falls within s. 411(2). This taxpayer intended the money to be dealt with according to the terms of the settlement. Starting with ss. 405, 406 and 407, dealing with the circumstances in which surtax is to be charged, there is no reason to construe s. 411, the definition section, narrowly.

I The commerciality of a transaction is one way of demonstrating that it is outside this group of charging sections. There may be other ways of establishing this, but that is the one way which so far has emerged from the decided

cases: *Copeman* v. *Coleman* 22 T.C. 594; *Bulmer* v. *Commissioners of Inland Revenue* 44 T.C. 1; [1967] Ch. 145. In the case of a family settlement a member of the family who had some property connected with the family might sell it to the trustees for full market value and they might later sell it at a profit. That would be an example of a commercial transaction.

This taxpayer provided funds indirectly for the settlement, and s. 409(6)(*c*) automatically applies. The provision was indirect because of the interposition of the company. She provided the funds when she entered into the service agreement. Even if at the first stage she did not know what her services were worth, she knew when she approved the Disney contract.

If the taxpayer had been assessed under Case II of Schedule D the income tax payable by her would have been larger than that payable by the company. There is authority to the effect that the fact that double taxation may arise in some circumstances is no ground for giving an artificial construction to the words of this enactment. Section 405 provides the criterion whereby income is to be treated as that of the settlor and not as that of any other person. When s. 405 applies the income is to be treated as the settlor's income although a beneficiary would otherwise be taxable.

The taxpayer's father could not be assessed, though if the trustees had applied the income for her maintenance, he might have been charged under Chapter II of Part XVIII of the Act on the footing that the child's income was his.

If the income had not been distributed the Commissioners of Inland Revenue might have given a surtax direction under s. 245. See also Chapter III of Part IX, relating to the situation in the event of a winding up of the company.

Stewart Bates Q.C., *D. C. Potter Q.C.* and *David Milne* for the taxpayer. In finding the person providing funds for the purposes of a settlement one is looking for the person who intended to provide them. There must be knowledge and understanding out of which the necessary intention could arise. The test is subjective. In all the reported cases that test is satisfied by an intention to benefit someone other than the settlor. The element of bounty makes it more likely that the intention will be found. In *Crossland* v. *Hawkins* 39 T.C. 493 the vital question was whether there was an arrangement, and what knit the thing together was the purpose of the taxpayer. There was no settlement here because the taxpayer was not intending to benefit anyone but herself.

One does not have to look for an intention in the circumstances of the present case because clearly the intention was that the money should go into the settlement. The taxpayer did no more than enter into a service agreement on her father's advice, but the intention was his, not hers. On the evidence there was no evidence that she so intended. She had no conception of the amounts which were to be received under the Disney contract. In order to be liable under this legislation she would have had to have an intention to provide funds for the purpose of the settlement. She would have had to know that she was providing funds for that purpose. Her father was not her agent. He was only doing what any responsible father in the normal circumstances of this family would have done. What is being assessed here is the dividends from the shares, not the income of the company. The taxpayer entered into the contract with the company. The shares, which are very valuable, were put into the settlement by her father for her benefit. The taxpayer entered into part of the arrangement, the service agreement, but not into the arrangement as a whole. She did not know a thing about it. The quality of her knowledge

A was nebulous. In the Case Stated it is said that when her father tried to explain the arrangement to her she was not very interested. But, if she was to be liable, it was important that she should have the requisite intention. The fact is that her father was making a reasonable arrangement for his daughter and got her to enter into this service agreement. She was not intending to make a provision for anybody: see *Crossland* v. *Hawkins* 39 T.C. 493, 502, 503, 504–5,
B 507–8, where there was clearly an element of bounty. The taxpayer in the present case was not intending to benefit anyone in the sense in which the expression was used in that case. The arrangement was her father's: see also *Commissioners of Inland Revenue* v. *Leiner* (1964) 41 T.C. 589, 596; *Bulmer* v. *Commissioners of Inland Revenue* 44 T.C. 1, 28; and *Commissioners of Inland Revenue* v. *Wachtel* 46 T.C. 543, 554–5; [1971] Ch. 573.

C The funds which came into this settlement were dividends. It was the taxpayer's father's valuable shares that provided the funds. Accordingly it is a wrong analysis to say that the taxpayer provided the funds. Her father made the shares very valuable by getting her to act for Disney. They became valuable as a result of the agreement with Disney. He was the beneficial owner of the shares, and they were valuable because his daughter had entered into the service
D agreement and provided services under it. It was an instance of a father looking after his child. Reliance is placed on *Lord Herbert* v. *Commissioners of Inland Revenue* 25 T.C. 93; [1943] K.B. 288.

Because someone else provided the funds within s. 409 the taxpayer did not: see subss. (1) and (5)(*a*) and (*b*). In considering this scheme one must look for "property originating from the settlor". One is here dealing with dividends
E from the shares in Sussex, dividend income from shares provided by the taxpayer's father. When that is established it is the end of the inquiry designed to find the property which is the origin of the income, which under the section must originate from one settlor. The section is designed to achieve an unequivocal allocation of income. The dividends came from the shares and are the "income from [the] property". Since that income originated from the taxpayer's father,
F it could not have originated from her. She could only be a settlor if she provided the funds for the settlement. If, for any reason, it could be said that the income was not provided by her father the position would be different.

If *Crossland* v. *Hawkins* 39 T.C. 493, 506–7 had fallen to be considered under s. 409 it could have been said that the income was in fact provided by the taxpayer and not by his father-in-law.

G *Chamberlain* v. *Commissioners of Inland Revenue* (1943) 25 T.C. 317, 329 (Lord Thankerton), 331–2 (Lord Macmillan), shows that in applying these provisions one is looking at the dividend and asking where it originated from. It also supports the view that the legal position is not affected by the contention that the company is a mere conduit pipe.

It is accepted that under s. 412 a number of persons might qualify to be
H charged to tax under these provisions, but there is no authority to establish that the Revenue may pick whom it chooses. Section 409 sets out to avoid any such discretion.

Ransom v. *Higgs*[1] [1973] 1 W.L.R. 1180 was a very different case from the present.

Compare with s. 409 the terms of s. 487(1) of the Income and Corporation
I Taxes Act 1970, which is expressly referred to as a tax avoidance provision.

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(1) T.C. Leaflet No. 2490; to be published later in Tax Cases.

To bring the present case within ss. 409 and 411 there must be an intention. There was none. The taxpayer did not understand what was being done. She would be entitled to plead *non est factum.*

Potter Q.C. following. For the purposes of the ensuing submissions on s. 409 it is assumed, for the purposes of argument only, that the taxpayer and her father were both settlors. The income accruing to the company is not in issue. The shares were property provided by the father directly for a classic deed of settlement. So the taxpayer is only a second settlor if she too has provided funds.

Section 409 of the Act of 1952 is a re-enactment of provisions amending provisions in the Finance Act 1936 and the Finance Act 1938. It also relates to ss. 404 and 407, which are anti-tax-avoidance sections.

Herbert's case 25 T.C. 93 was concerned with s. 38(2) of the Finance Act 1938, the predecessor of s. 404(2). Subsection (1) of s. 404 presupposes a settlement of income. Subsection (2) deals with capital. Section 405 does not contain such a two-pronged attack on income and capital. Section 407 also relates to income. In this group of sections, to which s. 409 applies, there are provisions relating to income settlements and capital settlements. Section 409 was directed at the mischief revealed by *Herbert's* case.

Under s. 409, when there are two settlors, one predicates that each is the only one. Then under subs. (3) one must look for "income originating from that settlor". References to such income include, by subs. (6)(*a*), "income from property originating from that settlor". That has a function in income settlements. There is an unqualified allocation of income to one settlor only. The alternative interpretation would be that Parliament has conferred a discretion on the Revenue. That is unacceptable: see *Herbert's* case.

The taxpayer's father is admitted to be a settlor in relation to the deed of settlement. The income with which we are dealing is the income of shares which he put into the settlement. Section 409 is designed to deal with the situation where the Revenue does not know which of the settlors to charge. If the taxpayer's father had given her only a protected life interest there would have been a case of double taxation. The origin of s. 409 is in s. 20 of and Part I of Sch. 6 to the Finance Act 1943.

In *F. S. Securities Ltd.* v. *Commissioners of Inland Revenue* 41 T.C. 666, 692, 696–7; [1965] A.C. 631 it was in the Crown's interest to argue against double taxation. *Commissioners of Inland Revenue* v. *Clifforia Investments Ltd.* 40 T.C. 608, 614, 615; [1963] 1 W.L.R. 396 was a case very similar to the present. In applying the statutory provisions to such a case as *Herbert's* case the solution is to be found in s. 409(5)(*c*). Section 409 must result in an unequivocal allocation. Alternatively, in applying s. 409, even if such an allocation is not possible in every case, yet it is to be preferred, because that is the object of the section.

In itself providing services cannot be providing funds. There is no authority for that. The result of so holding would be extraordinary. Thus a retired civil servant who took a job running a charity would be providing services and not funds. Or a retired executive of a company might work in running its retirement benefit scheme, only taking his out-of-pocket expenses, though his services were worth £5,000. His wife and family might be objects of the charity and of the benevolent fund. If he were regarded as a settlor and his services were taken as providing funds, the results would be ludicrous. A trustee of a family settlement under which he and the family benefited, providing his services free, could not be providing funds.

A Though the provision of services plus the machinery whereby they can be converted into funds is a provision of funds, mere acquiescence in the creation of machinery is different, particularly with the nebulous knowledge which this 14-year-old girl had. Her participation fell far short of what was required. There must be active participation in the machinery for converting the services into funds. Otherwise all sorts of people, whom Parliament never intended to B include, would be caught. Chancery counsel in advising young persons on the making of gifts and dispositions have to ensure that they understand (1) what they will get without the settlement; (2) what they will get with it; (3) what else they could have done, the broad alternatives; (4) how the whole thing, the machinery and the arrangement, works.

The vital point in this case is that the taxpayer was a girl in the custody of C her father. At common law he had a right to his daughter's services. The right of action for seduction was based on *quare servitium amisit.*

The taxpayer's father had the choice of sending her to school, keeping her at home to make the tea or giving her a secure career in the film world. But for this scheme she would have been at Cheltenham or Roedean. A girl of 14 could not get work as a film star for the asking.

D Earnings do not necessarily mean the money she owns. There is no finding of fact that this girl knew that she would be the owner of her earnings, nor that she knew the difference between getting a job for herself or accepting a job in the films. No matter how anxious she might have been to go into films, her father would have had a veto. This was not a tax avoidance scheme but primarily a scheme to protect her earnings. No man embarking on a E commercial scheme would choose the course which would attract the greatest amount of tax: *Commissioners of Inland Revenue* v. *Brebner* 43 T.C. 705, 718–9; [1967] 2 A.C. 18.

Section 411(2) defines a "settlor" as "any person by whom the settlement was made", and he is deemed to have done so "if he has made or entered into the settlement directly or indirectly". The words "entered into" have no F technical meaning. The taxpayer did not enter into the settlement by signing the service agreement. It would be too wide an interpretation of the words to say that all the parties to the transaction entered into the settlement. A person makes a settlement if at the start of the day he has property or funds and at the end of the day he has not got them. This girl did not have the free disposition of her services. Her father was in a position to prevent her having free disposi- G tion of her earnings. He could tell her that she might go into films on these terms and no others.

[Lord Reid intimated that their Lordships only wished to hear argument in reply on s. 409.]

Vinelott Q.C. in reply. The contentions put forward for the taxpayer would not avoid double taxation. Under s. 409 one is dealing with a situation H where there are two settlors. One must not approach it on the presupposition that one will always get an unequivocal allocation between the two. Both may be persons to whom the income can be attributed under s. 409 on the taxpayer's construction.

The taxpayer's construction was also inconsistent with s. 409 (1) and (2). In subs. (1) one is directed to look at the settlement as if each of the two settlors I were the only one and to disregard everyone else. If one does that there is no reason for putting a gloss on subs. (6)(*c*), because if one applies the section to one settlor it matters not that the income may be attributed to the settlor under more than one paragraph.

There was never a possibility that the taxpayer's father would be caught by liability. The possibility that two joint settlors will be assessable under the charging provisions is very remote. It has never happened in any reported case. If it did happen, it would be easy for the settlor indirectly caught to assign his interest.

The dichotomy between capital and income settlements is false, because what is settled as income may be capital in the settlement, income for the settlor but capital for the trustees, e.g., in the case of settled annuities.

In *Herbert's* case 25 T.C. 93 the situation was that under a family arrangement (the details of which are set out at pages 94–5) Lord Pembroke and Lord Herbert were joint settlors. The assessment on Lord Herbert was set aside because Lord Pembroke was also a settlor, and it was said that under s. 38(2) of the Finance Act 1938 (s. 404(2) of the Income Tax Act 1952) the income had to be treated as his income and as the income of no other person. If Lord Pembroke had been assessed the same argument could have been raised on the ground that Lord Herbert was a settlor. That meant that in any case where there were two settlors s. 38(2) was ineffective. The predecessor of s. 409 was introduced to avoid this absurdity.

The *F. S. Securities* case 41 T.C. 666 only emphasised the presumption that one does not tax the same person twice in regard to the same income. No one would challenge that. But one must construe the section as it stands: see *Canadian Eagle Oil Co. Ltd.* v. *The King* 27 T.C. 205; [1946] A.C. 119 cited in that case. The principle never applied where legislation of this kind might result in two persons being taxed in respect of the same income: see *Lord Howard de Walden* v. *Commissioners of Inland Revenue* 25 T.C. 121, 134; [1942] 1 K.B. 389. As in that case, there is here no double taxation in the strict sense.

The *Clifforia* case 40 T.C. 608 affords no guidance in the present case. There a liberal construction was adopted to achieve the ends of the Act.

Here there was unquestionably an arrangement within the legislation.

Lord Reid—My Lords, for the reasons given by my noble and learned friend Viscount Dilhorne, I would allow this appeal.

Lord Morris of Borth-y-Gest—My Lords, for the reasons contained in the speech prepared by my noble and learned friend Viscount Dilhorne, which I have had the advantage of reading, I would allow the appeal.

Lord Hodson—My Lords, for the reasons given by my noble and learned friend Viscount Dilhorne, I agree that the appeal should be allowed.

Viscount Dilhorne—My Lords, in 1960 Walt Disney Productions Ltd. were anxious to enter into a contract with Miss Hayley Mills, the Respondent, to secure her exclusive services for a period of years. She was then a schoolgirl of 14 years of age and had already acted in two films. Mr. Mills, her father, was not particularly anxious that she should take up a career in the film-making business and put no pressure on her to do so. She was not at that time interested in the monetary rewards of acting, being comfortably provided for by her father.

From these findings of fact made by the Special Commissioners it is to be inferred that she made the decision to act of her own volition. Having signified her willingness to make films with Walt Disney Productions Ltd., Mr. Mills was concerned to see that any money earned by her should not be squandered by her or her relatives. He was anxious to make arrangements to secure that her earnings should be "legally protected" so that they would not be available for spending either by him or by his wife and would be saved for her benefit. With that in mind he consulted his solicitors, his bank manager and his accountant "to provide him with the means to protect his daughter's earnings". They produced a somewhat complicated scheme, which was carried into effect. On 18th February 1960 a company, Sussex Productions Ltd., was formed with a nominal capital of £100, divided into 100 £1 shares, the subscribers to its memorandum being two clerks in the firm of solicitors who acted for Mr. Mills, each of them subscribing for one share. On 18th May 1960 98 shares were allotted to Mr. Mills, on which date two partners in Mr. Mills's firm of solicitors and Mr. Mills's bank manager were appointed directors. Also on 18th May 1960 Mr. Mills settled the 100 shares in Sussex Productions Ltd. in trust for the Respondent absolutely on her attaining the age of 25, and, if she failed to attain a vested interest, in trust for any children she might have, and subject thereto in trust for such persons as she might by will appoint, and in default of appointment in trust for Mr. Mills absolutely. The trustees of the settlement were the three directors of Sussex Productions Ltd. and Mr. Mills's accountant. On the same day, 18th May 1960, the Respondent entered into a service agreement with Sussex Productions Ltd., whereby she bound herself to render to that newly-formed company her exclusive services as an artiste in films and as an artiste in stage plays for the period of five years from 1st April 1960 at a salary of £400 a year.

Before these arrangements, which the Commissioners found as a fact were part of a comprehensive plan, were carried out on 18th February and 18th May 1960 Mr. Mills, who was advised that they would save tax but who was not familiar with the details of the scheme, tried to explain to the Respondent what was being done for her. He found her not very interested. The Commissioners found that:

> "She knew that her father was making arrangements with regard to her possibly considerable earnings from films which would be for her ultimate benefit and she signed the necessary documents without reading them."

The Commissioners also found that she did not know that under the service agreement she was entitled to receive a salary and that "she had at that time no conception of the amounts being received by the company in respect of the exploitation of her services." At that time no amounts were being received by the company for the exploitation of her services. "It was known, however", so the Case states, "that a five-year contract" with Walt Disney Productions Ltd. "was a virtual certainty and that the contract would provide a guaranteed minimum of $30,000 for the first year of the five."

On 13th January 1961 an agreement was made between Walt Disney Productions Ltd., Sussex Productions Ltd. and the Respondent whereby Sussex Productions undertook to make available to Walt Disney Productions the exclusive services of the Respondent for five years in the making of five films and the Respondent agreed to render to Walt Disney Productions her sole and exclusive services. Walt Disney Productions were to pay for her services sums ranging from $30,000 U.S. in the first year to $75,000 U.S. in

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the fifth year. Under this agreement Sussex Productions received very large sums of money. That company declared dividends, and the income tax returns of the trustees of the settlement disclosed that the trustees received net income from dividends amounting in 1963 to £25,378, in 1964 to £7,610 and in 1965 to £30,678, none of which was distributed. This income, grossed up, was the income assessed under the assessments to surtax appealed against, which were, for the year 1962–63 £42,161, for the year 1963–64 £14,403 and for the year 1964–65 £50,034.

If the contentions advanced on Miss Mills's behalf are well-founded, then liability for very large sums for surtax is avoided. It cannot have escaped Mr. Mills's notice that the plan devised by his advisers might greatly reduce his daughter's liability and so be to her benefit. The Commissioners inferred that Miss Mills could have been advised to enter into the service agreement with Sussex Productions only on the footing that she would at some time enjoy the large profits arising from her earnings which were known to be going to accrue to that company by virtue of its agreement with Walt Disney Productions. "In other words", they said, "the creation of the company and the settlement of the shares therein were necessary preliminary acts if the Appellant [now the Respondent] was to be advised to sign, for her own benefit, the agreement for service."

Goulding J. dismissed Miss Mills's appeal from the Commissioners. The Court of Appeal by a majority (Lord Denning M.R. and Buckley L.J., Orr L.J. dissenting) allowed the appeal from Goulding J.

Section 405 (1) of the Income Tax Act 1952, so far as material, is in the following terms:

> "If and so long as the settlor has an interest in any income arising under or property comprised in a settlement, any income so arising during the life of the settlor in any year of assessment shall, to the extent to which it is not distributed, be treated for all the purposes of this Act as the income of the settlor for that year and not as the income of any other person . . ."

The income received by the trustees of the settlement by way of dividends declared by Sussex Productions was ultimately, on her reaching the age of 25, to go to Miss Hayley Mills. She therefore had an interest in it. It was not distributed, and so if she was settlor, coming within the section, of a settlement which comes within the section, the income received by the trustees is required to the extent to which it was not distributed to be treated as her income for that year and not as the income of any other person.

Section 411 (2) reads as follows:

> "In this Chapter"—which includes ss. 404 to 411 of the Act—" 'settlement' includes any disposition, trust, covenant, agreement or arrangement, and 'settlor', in relation to a settlement, means any person by whom the settlement was made; and a person shall be deemed for the purposes of this Chapter to have made a settlement if he has made or entered into the settlement directly or indirectly, and in particular (but without prejudice to the generality of the preceding words) if he has provided or undertaken to provide funds directly or indirectly for the purpose of the settlement, or has made with any other person a reciprocal arrangement for that other person to make or enter into the settlement."

The settlement of the shares in Sussex Productions was clearly a settlement within the definition. It was also part of an arrangement which, by reason of the definition, must also be regarded as a settlement for the purposes of

s. 405 (1). The Commissioners held that the incorporation of Sussex Productions, the issue of the shares therein, the making of the settlement of 18th May 1960 and the making of the service agreement on that day were all acts done in furtherance of an integrated scheme planned solely for the benefit of Miss Hayley Mills and that the scheme was an arrangement and so constituted a settlement to which s. 405 (1) applied. In *Copeman* v. *Coleman*(1) [1939] 2 K.B. 484 and in *Commissioners of Inland Revenue* v. *Prince-Smith*(2) [1943] 1 All E.R. 434 not wholly dissimilar transactions to those in this case were held to constitute arrangements which were, by the Finance Act 1936, s. 21, to be treated as settlements, and in my opinion the Commissioners were clearly right in holding that the acts referred to above constituted an arrangement and so a settlement, though why they did not include the tripartite agreement between Walt Disney Productions, Sussex Productions and the Respondent as part of the arrangement, I do not understand.

This being so, was she a settlor? She had not made or entered into the settlement created by the vesting of the Sussex Productions shares in the trustees on the trusts specified, but she was a settlor if she directly or indirectly entered into the arrangement or directly or indirectly provided funds for the purpose of the arrangement or of the settlement created by the vesting of the shares. Lord Denning M.R. held that she was not a settlor. He held that it was Sussex Productions which provided the funds for the settlement, that the word "purpose" connoted a mental element and for her to provide funds for the purpose of the settlement she must have had the object—the end in view—of promoting the purposes of the settlement, and that she was so young that she had neither the knowledge nor the intention to do so. She had not, in his view, reached the age of discretion. He said that she was incapable of making a settlement or any contract on her own account, for she had not sufficient understanding to know what it entailed or at any rate not a sufficient discretion to exercise a sound judgment upon it.

Buckley L.J. posed the question whether the question whether a man has provided funds for the purpose of a settlement is to be answered on purely objective grounds or subjectively. He held there must be a motivating intention by the provision of funds to benefit those interested under the trusts. In his opinion(3) Miss Mills "can have had no conception of benefiting anyone except, perhaps, herself, and can have had no formed intention of providing any funds for the purpose of the settlement." He said that she "lacked the legal capacity, as well probably as the knowledge and understanding, necessary to enable her to make any effective decision in this respect" and that she was "incapable of binding herself contractually or otherwise, or of forming an effectual determination so to do."(4)

Lord Denning M.R.'s conclusion that Miss Hayley Mills had not provided funds for the settlement is not one with which I can agree. In *Crossland* v. *Hawkins*(5) [1961] Ch. 537, where the arrangement was very similar to that in this case, it was held by the Court of Appeal that moneys paid to a company for Mr. Hawkins's acting and received by way of a dividend by the trustees of a trust for his children were indirectly provided by Mr. Hawkins. Similarly, in this case it is, to my mind, taking too narrow a view of the arrangement to conclude that the funds which went to the trustees by way of dividends were just provided by Sussex Productions. To do so means shutting one's eyes to the fact that the source of the dividends was money paid for Miss Mills's

(1) 22 T.C. 594. (2) 25 T.C. 84. (3) Page 389 *ante*.
(4) Page 390 *ante*. (5) 39 T.C. 493.

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work, and money which but for the arrangement would have been received by her. In my opinion, she must be held to have provided funds for the purpose of the "settlement". A

I do not agree with Lord Denning M.R. that the word "purpose" in this section connotes a mental element or with Buckley L.J. that there must be a motivating intention. I do not myself think that it assists to consider whether the question he posed is to be answered objectively or subjectively. I do not consider it incumbent, in order to establish that a person is a settlor as having provided funds for the purpose of a settlement, to show that there was any element of *mens rea*. Where it is shown that funds have been provided for a settlement a very strong inference is to be drawn that they were provided for that purpose, an inference which will be rebutted if it is established that they were provided for another purpose. In this case there is not a shred of evidence that the funds were provided for any other purpose. In support of his conclusion that there must be a motivating intention to benefit those interested under the trust Buckley L.J. pointed out that the employees of a company, some shares in which were held by trustees, could be said to contribute to the profits of the company and so to the shareholders' dividends and so to the income of the settlement. He also pointed out that a stockbroker might, if the advice he gave to the trustees of a settlement proved well founded, be said to be contributing to the settlement. The difference between those cases, on the one hand, and *Crossland* v. *Hawkins*[1] and this case, on the other, is that in *Crossland* v. *Hawkins* and in this case funds which ordinarily would have been received by Mr. Hawkins and by Miss Mills for their acting were diverted to companies which were channels for their transmission to trustees. It is not the provision of services but of funds which comes within the section. B C D E

Both Lord Denning M.R. and Buckley L.J. held that Miss Mills on account of her age was incapable of entering into a settlement or of making a contract. I cannot agree that that was so. Under the common law an infant's contracts are generally voidable at the instance of the infant. Exceptions to this rule are contracts for necessaries and certain other contracts, such as contracts of service and apprenticeship if they are clearly for the infant's benefit. Contracts which are obviously prejudicial are wholly void: see Halsbury's Laws of England, 3rd edn., vol. 21 (1957), page 138 and the cases there cited. The service agreement entered into by Miss Mills might be regarded as prejudicial to her, for she received in consequence of it far less than the sums paid for her acting, if the fact that it was part of an arrangement designed to ensure the avoidance of surtax and so the receipt by her of much greater sums on reaching the age of 25 is ignored. Miss Mills has never contended that the service agreement was void or if voidable should be avoided. She has made no plea of *non est factum*; and it is not surprising that she has not, for such a plea, if it had succeeded, would have been fatal to the contention that she was not liable to surtax on the payments made by Walt Disney Productions Ltd. for her acting. It would have followed that her contract with Sussex Productions Ltd. was a nullity and the fees received by that company for her acting would have been received on her behalf and held in trust for her. In the absence of any such contentions or plea it would be wrong to deal with this case as if those contentions or that plea had been preferred. That she had the capacity in law to enter into the contract is, in my view, clear. By entering into it she entered into the arrangement which constitutes a settlement. By entering into it and by entering into the agreement with Walt Disney she secured that what was earned by her acting should be paid to Sussex Productions and so she indirectly provided funds for the trust. F G H I

(1) 39 T.C. 493.

A For these reasons she was, in my opinion, a settlor within the definition in s. 411 (2).

There may be more than one settlor of a settlement to which this subsection applies, and s. 409 of the Act states what is to happen in that case. It reads as follows:

"409.—(1) In the case of any settlement where there is more than
B one settlor, this Chapter shall, subject to the provisions of this section, have effect in relation to each settlor as if he were the only settlor."

Mr. Mills was clearly a settlor coming within s. 411 (2), but in view of the terms of this subsection one has to consider the position in relation to Miss Mills as if she were the only settlor. Section 409 continues as follows:

"(2) References in this Chapter to the property comprised in a
C settlement include, in relation to any settlor, only property originating from that settlor and references in this Chapter to income arising under the settlement include, in relation to any settlor, only income originating from that settlor. (3) In considering for the purposes of this Chapter, in relation to any settlor, whether any, and if so, how much, of the income arising under the settlement has been distributed, any sums paid partly
D out of income originating from that settlor and partly out of other income must (so far as not apportioned by the terms of the settlement) be apportioned evenly over all that income...(5) References in this section to property originating from a settlor are references to—(*a*) property which that settlor has provided directly or indirectly for the purposes of the settlement; and (*b*) property representing that property; and
E (*c*) so much of any property which represents both property provided as aforesaid and other property as, on a just apportionment, represents the property so provided. (6) References in this section to income originating from a settlor are references to—(*a*) income from property originating from that settlor; and... (*c*) income provided directly or indirectly by that settlor."

F As Miss Hayley Mills indirectly provided income for the settlement, that income has to be treated as income originating from her, and so as income arising under the settlement in which Miss Mills has an interest. It has, therefore, by virtue of s. 405 (1) to be treated in respect of any year of assessment in which it has arisen, to the extent to which it is not distributed, as her income.

It may be that a case will arise in which it can be said that income has
G been provided directly by one settlor and indirectly by another, in which case there may be a liability in respect of undistributed income falling on both settlors. What would be the position then has not to be determined in this case, for in this case it is clear that Mr. Mills is not a settlor affected by s. 405 (1).

For the reasons I have stated, in my opinion this appeal should be allowed.

H **Lord Salmon**—My Lords, I agree with the opinion of my noble and learned friend Viscount Dilhorne, and would allow the appeal.

Questions put:

That the Order appealed from be reversed except as to costs and the judgment of Goulding J. restored.

The Contents have it.

I That the Respondent do pay to the Appellants their costs in this House.

The Contents have it.

[Solicitors:—J. D. Langton & Passmore; Solicitor of Inland Revenue.]